THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

Court of General Sessions

THE HONORABLE CARMEN T. MULLEN, CHIEF ADMINISTRATIVE PURPOSES JUDGE

Lower Court Case No;#2006-GS-07-01640, & 01641

Appellate Case No:2020-000110

Nathaniel Johnson,Jr.#211574,.....Petitioner,

V.

State of South Carolina,.....Respondent,

RECEIVED
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SC Court of Appeals

APPENDIX

/s/ Nathaniel Johnson Jr. #211574

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
06-GS-07-1640, 1641,
1642, 1643

STATE OF SOUTH CAROLINA :
:
-vs- : TRANSCRIPT OF RECORD
:
NATHANIEL JOHNSON, JR. :

[redacted]

MARCH 12, 13, AND 14, 2007
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE HOWARD P. KING, JUDGE, AND A JURY.

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

MELISSA M. MILLICAN, ASSISTANT SOLICITOR
GAIL LOVELL, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

STEPHANIE SMART, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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(MONDAY, MARCH 12, 2007.)

THE COURT: MADAM SOLICITOR, WHAT IS THE NEXT MATTER?

MS. MILLICAN: YOUR HONOR, THE NEXT MATTER IS THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR. THE INDICTMENT FOR THAT CASE, 06-GS-07-1640, IT'S A TRUE BILLED INDICTMENT FOR KIDNAPING. 06-GS-07-1641, IS AN INDICTMENT FOR CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. INDICTMENT 06-GS-07-1642, THAT IS A TRUE BILLED INDICTMENT FOR BURGLARY IN THE FIRST DEGREE. AND INDICTMENT 06-GS-07-1643, A TRUE BILLED INDICTMENT FOR USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

THE COURT: ALL RIGHT. IF YOU'LL HAND UP THE INDICTMENTS PLEASE.

(PAUSE.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY PANEL, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE HEARD THE STATE CALL THE CASES OF THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR. AND WHAT I'M GOING TO TELL YOU NOW IS NOT EVIDENCE OF ANYTHING, IT IS SIMPLY THE ALLEGATIONS CONTAINED IN THE INDICTMENT. BUT I'M TELLING YOU THIS SO YOU CAN DETERMINE IF YOU KNOW ANYTHING ABOUT THE CASES OR ANYTHING THAT WOULD PREVENT YOU FROM SERVING AS A JUROR IN THIS CASE. BUT THEY ARE NOT EVIDENCE OF ANYTHING BUT SIMPLY THE CHARGES AGAINST THE DEFENDANT.

IN ONE INDICTMENT, THAT IS INDICTMENT NO. 1640, THE

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STATE CHARGES THAT ON OR ABOUT FEBRUARY THE 7TH, 2006 HERE IN BEAUFORT COUNTY THAT THE DEFENDANT, MR. NATHANIEL JOHNSON, JR., DID UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY AWAY THE VICTIM, ANA RODRIGUEZ, BY ANY MEANS WHATSOEVER, AND THAT IS A CHARGE OF KIDNAPING.

ALSO ON INDICTMENT NO. 1641, CHARGES THAT MR. JOHNSON ON THAT SAME DATE, FEBRUARY THE 7TH, 2006, THAT HE DID ENGAGE IN A SEXUAL BATTERY WITH THE VICTIM, MS. ANA RODRIGUEZ, WITHOUT HER CONSENT. AND THAT IS A CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

AND THE NEXT INDICTMENT, 1642, THAT ON FEBRUARY THE 7TH, 2006 THAT THE DEFENDANT DID WILFULLY AND UNLAWFULLY ENTER THE DWELLING OF ANA RODRIGUEZ WITHOUT CONSENT, WITH INTENT TO COMMIT A CRIME; AND THAT IS A CHARGE OF BURGLARY IN THE FIRST DEGREE.

AND ON FEBRUARY THE 7TH -- THE NEXT INDICTMENT, THE LAST INDICTMENT IS INDICTMENT NO. 1643, AND IT CHARGES THAT THE DEFENDANT DID IN BEAUFORT COUNTY ON OR ABOUT FEBRUARY THE 7TH POSSESS OR VISIBLY DISPLAY A FIREARM DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME, SPECIFICALLY BURGLARY FIRST AND/OR CRIMINAL SEXUAL CONDUCT FIRST.

SO THERE'S FOUR CHARGES AGAINST THE DEFENDANT. KIDNAPING, CRIMINAL SEXUAL CONDUCT FIRST, BURGLARY FIRST,

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AND USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

THESE ARE ONLY ALLEGATIONS AT THIS POINT AND ARE THE ALLEGATIONS THAT HAVE BEEN MADE BY THE STATE.

THE DEFENDANT, MR. JOHNSON, IS REPRESENTED BY MS. SMART.

MS. SMART, WOULD YOU STAND, INTRODUCE YOURSELF, AND HAVE YOUR CLIENT STAND AND FACE THE JURY PLEASE AND INTRODUCE HIM.

MS. SMART: GOOD MORNING, MY NAME IS STEPHANIE SMART. I'M AN ASSISTANT PUBLIC DEFENDER HERE IN BEAUFORT COUNTY. TODAY I'M REPRESENTING MR. NATHANIEL JOHNSON. ALSO SEATED AT COUNSEL TABLE WITH ME IS MR. GENE HOOD.

THE COURT: THANK YOU. THE STATE IS REPRESENTED BY MELISSA MILLICAN. MS. MILLICAN, WOULD YOU STAND, INTRODUCE YOURSELF AND ANY OF THE OTHER ATTORNEYS WHO WILL BE WORKING WITH YOU ON THIS CASE.

MS. MILLICAN: THANK YOU, YOUR HONOR. MY NAME IS MELISSA MILLICAN. I'M AN ASSISTANT SOLICITOR OF BEAUFORT COUNTY. WITH ME IS ---

MS. LOVELL: GAIL LOVELL. I'M ANOTHER ASSISTANT SOLICITOR IN BEAUFORT COUNTY. I WILL BE WORKING WITH MS. MILLICAN IN THIS CASE.

MS. MILLICAN: THANK YOU. ALSO AT MY TABLE IS INVESTIGATOR BRIAN CHAPMAN WITH BEAUFORT COUNTY SHERIFF'S

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OFFICE.

THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN, BEFORE WE SELECT A JURY, I NEED TO ASK YOU A NUMBER OF QUESTIONS. PLEASE GIVE YOUR ATTENTION TO THESE QUESTIONS. AND IF ANY OF THEM APPLY TO YOU, THEN RESPOND ACCORDINGLY.

IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO THE DEFENDANT, NATHANIEL JOHNSON? IF SO, PLEASE STAND.

ALL RIGHT. YES, MA'AM. GIVE ME YOUR NAME PLEASE.

JUROR: SARA GRANT, I'M HIS SISTER.

THE COURT: SISTER. OKAY. LET ME FIND A JURY LIST. WHAT WAS YOUR NUMBER?

JUROR: 74.

THE COURT: 74. OKAY. THANK YOU, MA'AM.

THE FOLLOWING INDIVIDUALS MAY APPEAR AS WITNESSES IN THIS CASE. AND I WOULD ASK THAT IF ANY OF THE WITNESSES ARE PRESENT, THAT YOU STAND WHEN YOUR NAME IS CALLED.

[redacted].

FRANK DILSAVER.

ROBERT BRIAN PATE.

CORPORAL J. MERRILL OF THE BEAUFORT COUNTY SHERIFF'S OFFICE.

INVESTIGATOR BRIAN CHAPMAN OF BEAUFORT COUNTY SHERIFF'S OFFICE.

DEPUTY METRINKO, BEAUFORT COUNTY SHERIFF'S OFFICE.

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YOU'RE GOING TO HAVE TO HELP ME ON THIS ONE. DR. AFOLABI ---

MS. MILLICAN: DR. OGUNTOYINBO, I BELIEVE.

THE COURT: ALL RIGHT. IT'S SPELLED O-G-U-N-T-O-Y-I-N-B-O.

MS. MILLICAN: I BELIEVE HE'S POPULARLY KNOWN AS DR. O.

THE COURT: DR. O AT BEAUFORT MEMORIAL HOSPITAL.

KIMBERLY CLEGG, R.N.

DON BODIKER, R.N.

WENDY DAISE, D-A-I-S-E.

PFC CHRISTOPHER TEASDELL.

SERGEANT BRIAN BAIRD.

SERGEANT JEFF PURDY.

R.K. COOPER.

EILEEN RIOS.

MIKE LYNCH.

KIMBERLY HAHN.

ROBIN TAYLOR.

MARSHA LEITZEL, L-E-I-T-Z-E-L.

SOME OF THESE ARE SLED OFFICERS, SOME OF THEM ARE BEAUFORT COUNTY OFFICERS.

AMY STEPHENS.

BETTY B. BUTLER.

DENISE EARGLE.

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JANICE BRYSON.

EMILY REINHART.

MARILYN FITZPATRICK.

SHANA SORRELLS.

PATTI RUFF.

NIKKI PERRY.

THERESA HOOKS.

NOW, THOSE ARE THE PEOPLE THAT MAY APPEAR AS WITNESSES IN THIS CASE. IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THE PROPOSED WITNESSES? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: IS ANY MEMBER OF THE JURY PANEL CLOSE, PERSONAL FRIENDS OF ANY OF THE PARTIES, THEIR LAWYERS, OR ANY OF THE WITNESSES WHO I HAVE READ OFF TO YOU EXCEPT WHAT HAS ALREADY BEEN DISCLOSED TO ME? IF SO, PLEASE STAND.

YES, MA'AM, YOUR NAME?

JUROR: JUROR 173, CHERYLE SANDERSON.

THE COURT: ALL RIGHT. TELL ME WHAT, IS IT YOU'RE RELATED TO ONE OF THEM?

JUROR: NO, SIR. PERSONAL FRIEND TO ONE OF THE WITNESSES.

THE COURT: ALL RIGHT. WHAT WITNESS IS THAT?

JUROR: JEFF PURDY.

THE COURT: OKAY. AND WOULD THE FACT THAT YOU ARE A

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PERSONAL FRIEND OF THIS WITNESS -- THAT'S SERGEANT JEFF PURDY; IS THAT CORRECT?

JUROR: YES.

THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE IN THIS CASE?

JUROR: NO.

THE COURT: WOULD YOU BE ABLE TO EVALUATE SERGEANT PURDY'S TESTIMONY WITH THE SAME EYE TOWARD CREDIBILITY AS YOU WOULD BE ABLE TO JUDGE ANY OTHER WITNESS' TESTIMONY?

JUROR: YES.

THE COURT: AND WOULD YOU DO THAT PLEASE, MA'AM?

JUROR: YES.

THE COURT: THANK YOU, MA'AM. YES, MA'AM.

JUROR: GEVREY JONES, JUROR 105.

THE COURT: ALL RIGHT. AND MS. JONES, YOU RELATED TO A WITNESS OR JUST A PERSONAL FRIEND OF A WITNESS?

JUROR: NO, SIR. I PREVIOUSLY WORKED WITH SOME OF THE POTENTIAL WITNESSES AT THE BEAUFORT COUNTY SHERIFF'S OFFICE.

THE COURT: OKAY. TELL ME AGAIN WHAT -- WHAT'S THE WITH THEM? I'M SORRY, I DIDN'T HEAR YOU.

JUROR: I WORKED WITH THEM. I WAS PRIOR LAW ENFORCEMENT.

THE COURT: OKAY.

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JUROR: SO I WORKED WITH SOME OF THE POTENTIAL WITNESSES.

THE COURT: OKAY. HOW LONG AGO WAS IT THAT YOU -- YOU WORKED AT THE BEAUFORT COUNTY SHERIFF'S OFFICE?

JUROR: YES.

THE COURT: AND HOW LONG AGO WAS THAT?

JUROR: 1996 TO 2004.

THE COURT: 2004. AND SO YOU'RE ACQUAINTED AND KNEW SOME OF THE WITNESSES THAT I HAVE READ OFF; IS THAT CORRECT?

JUROR: THAT IS CORRECT.

THE COURT: OKAY. THANK YOU, MA'AM.

DOES ANY MEMBERS OF THE JURY PANEL KNOW ANYTHING ABOUT THE FACTS OF THIS CASE AS I HAVE BRIEFLY RECITED THEM TO YOU? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: HAS ANY MEMBER OF THE JURY PANEL READ ANYTHING IN THE NEWSPAPER OR SEEN ANYTHING ON TELEVISION OR ANY OTHER NEWS MEDIA ABOUT THIS MATTER THAT WOULD PREVENT YOU FROM BEING ABLE TO GIVE BOTH SIDES A FAIR AND IMPARTIAL TRIAL BASED UPON THE EVIDENCE THAT YOU HEAR IN THIS COURTROOM? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME, IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR

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CONNECTED BY MARRIAGE TO A MEMBER OF A LAW ENFORCEMENT AGENCY? AND WHEN I SAY CONNECTED BY MARRIAGE OR RELATED BY BLOOD -- LET ME PUT IT THIS WAY: ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO A MEMBER OF A LAW ENFORCEMENT AGENCY -- BY THAT IF THE RELATIONSHIP IS FIRST COUSIN OR CLOSER, NOT DISTANT COUSINS?

YES, MA'AM. I ALREADY KNOW YOU. YES, MA'AM, YOUR NAME?

JUROR: KAREN HEITMAN, JUROR 87.

THE COURT: YES, MA'AM.

JUROR: MY SON-IN-LAW IS AN FBI AGENT.

THE COURT: OKAY.

JUROR: IN VIRGINIA.

THE COURT: ALL RIGHT. THAT'S THE KIND OF INFORMATION WE WANT. WOULD THAT PREVENT YOU FROM GIVING TO BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE YOU HEAR IN THIS COURTROOM?

JUROR: NO, SIR.

THE COURT: OKAY. THANK YOU, MA'AM. YES, MA'AM.

JUROR: I'M NO. 233, SARA CALLAWAY (PHONETIC). MY HUSBAND IS FORMERLY A HARDEEVILLE POLICE OFFICER.

THE COURT: OKAY. THAT'S THE KIND OF INFORMATION WE WANT. WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE?

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JUROR: NO, SIR.

THE COURT: OKAY. THANK YOU, MA'AM.

IS ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY -- AND I DEFINE IMMEDIATE FAMILY AS SPOUSE, PARENT, BROTHER, SISTER, OR CHILD -- ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EMPLOYED BY THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE, THE SOLICITOR, OR ANY PROSECUTING ATTORNEY'S OFFICE? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: HAS ANY MEMBER OF THE JURY PANEL BEEN EMPLOYED IN THE LAST 10 YEARS WITH ANY CIVILIAN OR MILITARY LAW ENFORCEMENT AGENCY OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME -- AND I KNOW THAT JUROR NO. 74 HAS ALREADY INDICATED THAT, SO SHE NEED NOT DISCLOSE THAT AGAIN. BUT ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY BEEN EMPLOYED BY ANY CIVILIAN OR MILITARY LAW ENFORCEMENT AGENCY IN THE LAST 10 YEARS OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME?

(NO RESPONSE.)

THE COURT: ALL RIGHT. WITH REGARD TO THE NEXT QUESTION, LADIES AND GENTLEMEN, THIS MAY BE PERSONAL. AND IF IT DOES APPLY, I'M GOING TO ASK YOU TO COME UP AND DISCUSS IT WITH ME AND THE ATTORNEYS. IS THERE ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY AS I

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HAVE DEFINED THAT TERM -- AND THAT IS, PARENT, SPOUSE, BROTHER, SISTER, OR CHILD -- ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY BEEN THE VICTIM OF A VIOLENT CRIME? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THANK YOU. DURING THE COURSE OF THE TRIAL OF THIS MATTER AND ALSO AT THE END OF THE TRIAL, THE COURT WILL GIVE THE JURORS CERTAIN LEGAL INSTRUCTIONS THAT DEAL WITH THE PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF, AND A NUMBER OF OTHER LEGAL INSTRUCTIONS THAT THE JURY WILL BE REQUIRED TO FOLLOW. IS THERE ANY MEMBER OF THE JURY PANEL WHO FEELS FOR PERSONAL OR PHILOSOPHICAL REASONS THAT THEY WOULD NOT BE ABLE TO FOLLOW THE COURT'S INSTRUCTIONS ON THOSE QUESTIONS -- ON THOSE ISSUES -- ON ANY LEGAL ISSUE THAT THE COURT INSTRUCTS THEM ON? ANYBODY FEELS THAT THEY COULD NOT FOLLOW THE COURT'S INSTRUCTIONS, PLEASE STAND.

(NO RESPONSE.)

THE COURT: HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT IN THIS CASE, NATHANIEL JOHNSON? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: DOES ANY MEMBER OF THE JURY PANEL OR IS ANY MEMBER OF THE JURY PANEL AWARE OF ANY INTEREST, ANY BIAS, OR ANY PREJUDICE FOR OR AGAINST THE DEFENDANT OTHER

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THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME, CAN EACH MEMBER OF THE JURY PANEL GIVE THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE THAT YOU HEAR IN THIS COURTROOM? IF NOT, PLEASE STAND? AGAIN, OTHER THAN WHAT HAS BEEN DISCLOSED TO ME.

(NO RESPONSE.)

THE COURT: AND FINALLY, OTHER THAN WHAT HAS BEEN DISCLOSED TO ME, DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY REASON WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A JUROR IN THIS CASE? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THANK YOU. ARE THERE ADDITIONAL QUESTIONS ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR. THANK YOU.

THE COURT: ON BEHALF OF THE DEFENDANT, MS. SMART.

MS. SMART: NOTHING FURTHER, YOUR HONOR.

THE COURT: COME UP PLEASE, COUNSEL.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE HEARING OF THE JURY PANEL.)

THE COURT: ALL RIGHT. MADAM CLERK, YOU MAY CALL THE

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JURY.

LADIES AND GENTLEMEN -- FIRST OF ALL, LET ME GIVE THIS TO THE COURT REPORTER. MADAM COURT REPORTER, HERE IS THE DEFENDANT'S VOIR DIRE. IF YOU'LL MAKE THAT COURT'S EXHIBIT NO. 1 AND MAKE IT A PART OF THE RECORD PLEASE.

(DEFENDANTS REQUESTED VOIR DIRE, 2 PAGES, MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 1.)

THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN, WE ARE READY TO DRAW THE JURY IN THIS CASE. WHEN YOUR NAME IS CALLED, PLEASE COME THROUGH THE DOORS ON EITHER SIDE UP TO THE FRONT RAIL HERE WITH YOUR BACK TOWARD ME AND FACE THE BACK OF THE COURTROOM. IF YOU ARE ACCEPTABLE TO THE STATE, THE STATE WILL INDICATE BY SAYING, PRESENT THE JUROR. IF YOU'RE ACCEPTABLE TO THE DEFENSE, THEY WILL INDICATE BY SAYING, SEAT THE JUROR, AND YOU WOULD HAVE A SEAT IN THE JURY BOX TO MY LEFT. IF EITHER SIDE EXCUSES YOU, THEN YOU WOULD HAVE A SEAT BACK OUT WITH THE REMAINDER OF THE JURY PANEL.

ONE MORE THING, MS. FIELDS.

(PAUSE.)

THE COURT: ALL RIGHT. MADAM CLERK, YOU MAY DRAW THE JURY.

(THE JURY WAS EMPANELED AT 12:22 P.M.)

THE COURT: ALL RIGHT. ANYTHING WITH REGARD TO THE SELECTION OF THE JURY IN THIS MATTER ON BEHALF OF THE

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STATE?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ON BEHALF OF THE DEFENSE?

MS. SMART: NOTHING FROM DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY SELECTED IN THE TRIAL OF THIS CASE, WE HAVE SOME MATTERS THAT WE ARE GOING TO HAVE TO ATTEND TO THAT ARE GOING TO TAKE US THE REST OF THE DAY. AND WE NEED TO DO THOSE OUTSIDE OF YOUR PRESENCE, SO I AM GOING TO EXCUSE YOU FOR THE REST OF THE DAY. AND I'M GOING TO ASK THAT YOU GO WITH THE BAILIFFS, AND THEY WILL SHOW YOU WHERE YOUR JURY ROOM IS. AND I'M GOING TO ASK YOU TO REPORT BACK TOMORROW MORNING PLEASE AT 9:30. AND IF YOU'LL COME DIRECTLY TO YOUR JURY ROOM. DO NOT COME TO THE JURY ASSEMBLY ROOM. DO NOT COME TO THE COURTROOM, BUT GO DIRECTLY TO YOUR JURY ROOM BACK HERE -- THE BAILIFFS WILL SHOW YOU WHERE THAT IS -- TOMORROW MORNING AT 9:30. WE SHOULD HAVE ALL PRELIMINARY MATTERS OUT OF THE WAY BY THAT TIME AND BE READY TO GO FORWARD WITH THE TRIAL OF THIS MATTER.

OVER THE AFTERNOON RECESS AND THE EVENING RECESS, I WANT TO TELL YOU A COUPLE THINGS, AND SOME OF THESE WILL APPLY -- ALL OF THEM WILL APPLY THROUGHOUT THE TRIAL OF THIS CASE. BUT FIRST OF ALL, I WOULD TELL YOU THAT -- I KNOW YOU DO NOT KNOW ANYTHING ABOUT THE CASE EXCEPT WHAT I TOLD YOU THE ALLEGATIONS OF THE INDICTMENT ARE. BUT IT

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WOULD BE IMPROPER FOR YOU TO DISCUSS THIS CASE WITH ANYONE OVER THE EVENING RECESS, AND IT WOULD BE IMPROPER FOR ANYONE TO DISCUSS IT WITH YOU.

WHEN YOU SEE YOUR FAMILY, YOUR FRIENDS, YOU CAN TELL THEM THAT YOU'RE SERVING ON THE JURY, BUT YOU CAN'T TELL THEM ANYTHING ABOUT THE CASE BECAUSE THE JUDGE TOLD YOU NOT TO. AND THE REASON FOR THAT IS YOU'VE GOT TO DECIDE THE CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM AND NOT ON THE BASIS OF WHAT ANYONE ELSE MIGHT SAY.

ALSO IF ANYONE SHOULD APPROACH YOU OR TRY TO TALK WITH YOU ABOUT THE CASE, GET THEIR NAME AND THEIR DESCRIPTION, REPORT IT TO THE BAILIFF, AND THEY WILL REPORT IT TO ME, AND I WILL DEAL WITH THEM.

ALSO DO NOT READ ANY NEWSPAPER REPORTS OR LISTEN TO ANY TELEVISION OR BROADCAST MEDIA REPORTS ABOUT THE CASE. AGAIN, YOU'VE GOT TO DECIDE THE CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM AND NOT WHAT MIGHT BE PUBLISHED IN THE NEWSPAPER OR ON THE BROADCAST MEDIA. SO IF THERE IS ANYTHING IN THE NEWSPAPER, SIMPLY PUT IT ASIDE. DO NOT READ THOSE STORIES. ALSO IF THERE IS ANYTHING IN THE BROADCAST MEDIA, SIMPLY TURN IT OFF OR DO NOT LISTEN TO THEM.

LATER ON IN THIS CASE I WILL APPOINT ONE OF THE 12 MEMBERS OF THE PRINCIPLE JURY AS THE FOREPERSON OF THE JURY. WHEN I DO THAT, THAT FOREPERSON SHOULD ALWAYS SIT IN

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THE FIRST SEAT ON THE FRONT ROW DOWN HERE. THE ALTERNATE SHOULD ALWAYS SIT ON THE LAST ROW BACK THERE. THE REST OF THE SEATS IN THE JURY BOX ARE NOT RESERVED, AND IT DOES NOT MATTER WHAT ORDER YOU COME AND GO FROM THE COURTROOM. I WOULD SIMPLY ASK THAT YOU GO ALL WAY DOWN SO IT WOULDN'T BE A SITUATION OF CRAWLING OVER ONE ANOTHER, RESERVING THE FIRST SEAT ON THE FRONT ROW FOR THE FOREPERSON WHEN I NAME THAT FOREPERSON, AND THE SEAT IN THE BACK FOR THE ALTERNATE.

AND, FINALLY, I WOULD TELL YOU THAT WHEN YOU ARE REASSEMBLING IN YOUR JURY ROOM TOMORROW AND AT ANY TIME DURING THE TRIAL OF THIS CASE WHEN YOU ARE IN YOUR JURY ROOM, IT WOULD BE IMPROPER FOR YOU TO DISCUSS THIS MATTER AMONG YOURSELVES. ANY DISCUSSION OF THIS MATTER AMONG YOURSELVES PRIOR TO THE COURT TELLING YOU IT IS TIME TO BEGIN YOUR DELIBERATIONS WOULD BE PREMATURE. YOU SHOULD NOT BEGIN ANY DELIBERATIONS UNTIL ALL OF THE TESTIMONY IS IN, UNTIL YOU'VE HEARD THE ARGUMENTS OF COUNSEL, AND THE INSTRUCTIONS ON THE LAW BY THE COURT. AND YOU WILL BE INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS BY EITHER ME OR THE BAILIFFS.

SO WHILE YOU'RE THERE IN THE JURY ROOM AND WHEN YOU ARE ASSEMBLING THERE IN THE JURY ROOM, YOU CAN TALK ABOUT ANYTHING YOU WANT TO TALK ABOUT. GET TO KNOW EACH OTHER A LITTLE BETTER. TALK ABOUT WEATHER, SPORTS, CHILDREN, GRAND

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CHILDREN, ANYTHING AT ALL, BUT DON'T TALK ABOUT THIS CASE UNTIL I TELL YOU IT IS APPROPRIATE TO DO SO.

SO WITH THOSE ADMONITIONS THEN, I'M GOING TO EXCUSE YOU FOR THE REST OF THE DAY, ALLOW YOU TO GO ABOUT YOUR BUSINESS. AND PLEASE GO WITH THE BAILIFF NOW, LET HIM SHOW YOU WHERE THE JURY ROOM IS, HE'LL SHOW YOU HOW TO GET BACK IN HERE TOMORROW, BACK INTO THE BACK, AND BE BACK IN YOUR JURY ROOM TOMORROW MORNING AT 9:30, AND I'LL SEE YOU AT THAT TIME. HAVE A PLEASANT DAY AND I'LL SEE YOU TOMORROW.

(THE JURY EXITS THE COURTROOM AT 12:26 P.M.)

(THE JURY PANEL WAS EXCUSED.)

THE COURT: ALL RIGHT. MS. MILLICAN, IS THERE ANYTHING FURTHER WE NEED TO DO ON THIS MATTER THIS MORNING? I NOTICE THAT THE SCHEDULE CALLED FOR SOME PRETRIAL MOTIONS THAT WERE SCHEDULED FOR THIS AFTERNOON. BUT WE'VE GOT A LITTLE BIT OF TIME NOW, IF THERE'S ANYTHING WE CAN DO.

MS. MILLICAN: YOUR HONOR, THE STATE DOESN'T HAVE ANY PRETRIAL MOTIONS, JUST IN ANTICIPATION THAT THE DEFENSE MIGHT. AND I'M NOT SURE WHAT THE DEFENSE HAS.

THE COURT: ALL RIGHT. MS. SMART.

MS. SMART: YOUR HONOR, I ONLY HAVE ONE PRETRIAL MOTION AS OF RIGHT NOW. THERE ARE OTHERS I'M CONSIDERING AFTER VIEWING THE WITNESS LIST. HOWEVER, THE ONE PRETRIAL MOTION HAS TO DO WITH IN-COURT IDENTIFICATION BY THE VICTIM WHO IS HISPANIC, AND OUR INTERPRETERS AREN'T HERE.

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THE COURT: OKAY. THAT'S PROBABLY SOMETHING WE'RE PROBABLY NOT GOING TO BE ABLE TO TEND TO UNTIL TOMORROW ANY HOW, IS IT, BECAUSE THE INTERPRETERS ARE NOT DUE UNTIL TOMORROW?

MS. MILLICAN: ALSO, THE VICTIM DOES SPEAK ENGLISH.

THE COURT: OKAY.

MS. MILLICAN: IT'S NOT A COMPLETE BAR-ABILITY. AND SHE IS GOING TO ATTEMPT TO TESTIFY IN ENGLISH.

THE COURT: ALL RIGHT. WHAT'S YOUR MOTION, MS. SMART?

MS. SMART: THE VICTIM WASN'T ABLE TO IDENTIFY THE DEFENDANT IN TWO DIFFERENT PHOTO IDENTIFICATIONS, AND I WOULD SUBMIT TO THE COURT THAT IF SHE WERE ABLE TO IDENTIFY THE DEFENDANT TODAY, IT WOULD BE JUST BECAUSE, OF COURSE, HE'S THE ONLY PERSON SITTING AT COUNSEL TABLE.

SHE DID -- THERE IS A SKETCH IN THE POLICE REPORT. HOWEVER, THAT WOULD HAVE BEEN ONE OF MY MOTIONS AS WELL, BECAUSE I DON'T KNOW WHAT SHE DESCRIBED TO THE SKETCH ARTIST TO KNOW WHETHER OR NOT THE SKETCH CAN BE AUTHENTICATED. THEREFORE, WHETHER OR NOT HER DESCRIPTION OF HER BEING ABLE TO IDENTIFY THE DEFENDANT TODAY WOULD BE RELIABLE.

MS. MILLICAN: YOUR HONOR, THE SKETCH ARTIST WILL BE HERE AS A WITNESS TO TESTIFY AS TO THE SKETCH. HE'LL BRING THE ORIGINAL WITH HIM, AND HE CAN TESTIFY TO ANY QUESTIONS MS. SMART MAY HAVE WITH REGARD TO THE SKETCH.

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THE COURT: WHEN IS HE GOING TO BE AVAILABLE, MS. MILLICAN?

MS. MILLICAN: I WASN'T INTENDING TO PRESENT THAT UNTIL PROBABLY LATE TOMORROW AFTERNOON.

THE COURT: WELL, AT WHAT STAGE ARE WE GOING TO CALL THE VICTIM? IS THAT GOING TO BE EARLY ON?

MS. MILLICAN: YES.

THE COURT: SO IF THE ISSUE HAS TO DO WITH THE IDENTIFICATION BY THE VICTIM, I THINK WE NEED TO HAVE THE SKETCH ARTIST HERE EARLIER.

MS. MILLICAN: YOUR HONOR, I BELIEVE -- THERE WAS A PHOTO LINE-UP THAT WAS PRESENTED TO THE VICTIM, AND SHE COULDN'T FROM ONE PICTURE IDENTIFY HIM FROM THAT. BUT I DON'T THINK THAT PRECLUDES HER ABILITY FROM LOOKING AT HIM IN COURT TODAY AND BEING ABLE TO IDENTIFY HIM BECAUSE PICTURES DON'T ALWAYS LOOK LIKE PEOPLE DO IN PERSON.

THE COURT: I DON'T EITHER. I DON'T THINK THAT SHE COULD DO THAT. I'M NOT REAL SURE WHAT MS. SMART'S MOTION IS WHERE THE UNDUE SUGGESTIVENESS COMES IN WITH REGARD TO THE SKETCH. WHAT DOES THAT HAVE TO DO WITH?

MS. SMART: WELL, IF THERE WAS AN OUT-OF-COURT IDENTIFICATION, THEN I WOULD BASE IT ON THE FACT THAT IT MIGHT HAVE BEEN SUGGESTIVE. HOWEVER ---

THE COURT: BUT THAT'S AN IF, AND THAT'S NOT THE CASE HERE.

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MS. SMART: BECAUSE THERE IS NO OUT-OF-COURT IDENTIFICATION, SHE WAS PRESENTED WITH TWO DIFFERENT -- FROM MY READING OF THE POLICE REPORT, SHE WAS PRESENTED WITH DIFFERENT PHOTO LINE-UPS. AND SHE WASN'T ABLE TO PICK THE DEFENDANT OUT OF EITHER OF THOSE PHOTO LINE-UPS.

SO TODAY, OF COURSE, SHE CAN SIT AT THE -- SHE CAN TESTIFY THAT MR. JOHNSON IS THE PERSON BECAUSE HE'S THE ONLY PERSON HERE.

THE COURT: I BELIEVE THERE'S SOME CASES DIRECTLY ON THAT, THAT SAY THAT THAT'S NOT THE LAW. I THINK THAT SHE CAN IDENTIFY HIM IN COURT, YOU KNOW, IF SHE RECOGNIZES HIM.

NOW, THE MATTERS WITH REGARD TO THE INABILITY TO PICK HIM OUT OF THE POLICE LINE-UP ARE MATTERS FOR CROSS EXAMINATION WHICH YOU WILL CERTAINLY HAVE THE RIGHT TO ASK HER ABOUT.

I WOULD NOT SUPPRESS AN IN-COURT IDENTIFICATION. I THINK THAT SHE CAN DO THAT. AND SO I WOULD NOT SUPPRESS THAT.

NOW, WHERE DOES THAT FIT IN WITH REGARD TO -- WHAT ELSE DO YOU HAVE WITH REGARD TO THE SKETCH?

MS. SMART: I'M NOT SURE. I DIDN'T KNOW WHETHER OR NOT SHE COULD SPEAK ENGLISH OR HOW WELL SHE COULD SPEAK ENGLISH. AND I KNOW THAT THERE'S A SKETCH. OF COURSE, I HAVE TO CROSS EXAMINE MR. LYNCH BECAUSE HE WAS THE ONE WHO DREW THE SKETCH AS TO HOW SHE RELATED A DESCRIPTION OF THE

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DEFENDANT TO THE DEFENDANT (SIC), BECAUSE THE POLICE REPORT -- THE DESCRIPTION THE REPORT IS VERY VAGUE.

THE COURT: WELL, AGAIN, I FEEL LIKE THAT IS A MATTER OF CROSS EXAMINATION, AND I DON'T THINK THAT THAT PRECLUDES THE ADMISSIBILITY OF IT AS SOON AS THE STATE LAYS THE RIGHT FOUNDATION, WHICH I THINK THEY WILL DO. OKAY.

MS. SMART: THAT'S THE ONLY ISSUE THAT I HAVE BEFORE THE COURT RIGHT NOW.

THE COURT: ALL RIGHT. THEN THAT BEING THE CASE, WE'LL BE IN RECESS ON THIS MATTER UNTIL 9:30 TOMORROW MORNING.

(A RECESS WAS TAKEN.)

THE COURT: OKAY. LET'S GO BACK ON THE RECORD WITH REGARD TO THE MATTER OF NATHANIEL JOHNSON, JR. IS HE IN LOCK-UP?

(THE DEFENDANT ENTERS THE COURTROOM.)

THE COURT: HAVE A SEAT WITH YOUR ATTORNEY, MR. JOHNSON.

ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO INDICTMENTS 06-1640, 1641, 1642, AND 1643, THE STATE VERSUS NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS PRESENT WITH MS. MILLICAN.

MS. MILLICAN, IS THERE ANYTHING FROM THE STATE THAT YOU WISH TO TAKE UP WITH THE COURT AT THIS TIME?

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MS. MILLICAN: NO PRETRIAL MOTIONS FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT. MS. SMART.

MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. I DON'T HAVE ANY OTHER PRETRIAL MOTIONS, AND I'D ALSO LIKE TO WITHDRAW MY PREVIOUS MOTION.

THE COURT: ALL RIGHT. BY THAT, YOU MEAN THE ONES THAT I HAVE ALREADY RULED ON?

MS. SMART: YES, SIR.

THE COURT: OKAY. BY WITHDRAWAL THEN, YOU ARE NO LONGER MAKING THOSE -- THEY ARE NOT AN ISSUE IN THIS CASE AT ALL, AND YOU WOULD WAIVE ANY RIGHT THAT THE DEFENDANT WOULD HAVE TO APPEAL ON THOSE ISSUES?

MS. SMART: YES, SIR.

THE COURT: ALL RIGHT. THOSE MOTIONS THEN HAVE BEEN WITHDRAWN AND THE COURT'S RULING WILL BE WITHDRAWN AS WELL, AND THEY ARE NO LONGER A PART OF THE RECORD FROM THE STANDPOINT OF BEING GROUNDS FOR APPEAL IN THIS MATTER.

NO OTHER MOTIONS, MS. SMART?

MS. SMART: NO, SIR.

THE COURT: ALL RIGHT. ANY REASON OR DO YOU KNOW OF ANYTHING THAT WOULD PREVENT US FROM GOING FORWARD IN THE MORNING AT 9:30?

MS. SMART: NO, SIR.

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

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MS. MILLICAN: NOTHING FROM THE STATE, THANK YOU.

THE COURT: ALL RIGHT. WE WILL BE IN RECESS IN THIS MATTER UNTIL 9:30 TOMORROW MORNING AT WHICH TIME WE WILL PROCEED ON THE RECORD WITH THE JURY.

MS. MILLICAN: THANK YOU, YOUR HONOR.

MS. SMART: THANK YOU, YOUR HONOR.

(COURT IS IN RECESS.)

(TUESDAY, MARCH 13, 2007.)

(10 LARGE COLOR PHOTOS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NOS. 1 THROUGH 10.)

THE COURT: LET ME SEE COUNSEL PLEASE JUST A MINUTE.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

THE COURT: ALL RIGHT. LET'S NOW GO ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT THE DEFENDANT IS PRESENT WITH HIS COUNSEL, THE STATE IS PRESENT WITH MS. MILLICAN. AND WE HAVE BEEN DISCUSSING THE MATTER, FIRST OF ALL, OF EXHIBITS.

I UNDERSTAND THAT THE STATE HAS GIVEN THE DEFENSE AN OPPORTUNITY TO LOOK AT CERTAIN EXHIBITS AND THAT THEY ARE AGREED UPON AND HAVE BEEN MARKED BY THE COURT REPORTER. WHAT EXHIBIT NUMBERS ARE THOSE, MS. RUTLEDGE?

COURT REPORTER: 1 THROUGH 10.

THE COURT: ALL RIGHT. 1 THROUGH 10 ADMITTED WITHOUT OBJECTION; IS THAT RIGHT, MS. SMART?

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MS. SMART: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. WITHOUT FURTHER AUTHENTICATION THEN, THEY ARE IN THE RECORD AND NEED NOT BE SHOWN BACK AND FORTH WHENEVER YOU GET READY TO USE THEM.

(STATE'S EXHIBIT NOS. 1 THROUGH 10 RECEIVED IN EVIDENCE.)

THE COURT: SECOND MATTER TO BRING UP FOR THE RECORD IS THAT I RECEIVED THROUGH THE BAILIFF A REQUEST BY ONE JUROR ABOUT TAKING NOTES. AFTER CONFERRING WITH COUNSEL, IT IS MY UNDERSTANDING THAT NEITHER SIDE OBJECTS TO MY ALLOWING THE JURORS TO TAKE NOTES IF THEY WISH TO. IS THAT CORRECT, MS. MILLICAN?

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: MS. SMART?

MS. SMART: THAT IS CORRECT.

THE COURT: ALL RIGHT. I WILL SO ADVISE THE JURY.

ALL RIGHT. ANYTHING ELSE BEFORE WE GO FORWARD, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR, THANK YOU.

THE COURT: MS. SMART.

MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. AT THIS TIME I WOULD JUST LIKE TO RENEW MY RULE 5 DISCOVERY MOTION IN CASE THERE IS ANYTHING THAT THE STATE INTENDS TO INTRODUCE THAT HAS NOT BEEN GIVEN TO DEFENSE. I WOULD LIKE

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THAT INFORMATION AS SOON AS POSSIBLE.

AND, SECOND, I WOULD LIKE TO MAKE A MOTION TO SEQUESTER THE STATE'S WITNESSES.

THE COURT: ALL RIGHT. FIRST OF ALL WITH REGARD TO THE RULE 5 REQUEST. MS. MILLICAN, I ASSUME THAT THE STATE HAS COMPLIED WITH RULE 5 ---

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: --- AND BRADY. AND IF THEY HAVE NOT, THEN ANYTHING THAT HASN'T BEEN GIVEN TO THEM, NEEDS TO BE GIVEN TO THEM NOW.

ALL RIGHT. WHAT'S THE STATE'S POSITION ON SEQUESTRATION?

MS. MILLICAN: THE STATE HAS NO OBJECTION TO SEQUESTRATION EXCEPT THAT THE STATE WOULD ASK THAT THE VICTIM AND THE INVESTIGATOR REMAIN IN THE COURTROOM.

THE COURT: ALL RIGHT. FIRST OF ALL, OF COURSE, MS. SMART, IT'S GOT TO BE RECIPROCAL. I DON'T KNOW WHETHER YOUR CLIENT INTENDS TO PUT UP ANY EVIDENCE IN THIS CASE. BUT IF HE DOES AND THERE ARE WITNESSES THAT THE DEFENSE ANTICIPATES, THOSE WITNESSES WOULD HAVE TO BE SEQUESTERED AS WELL.

MOTION FOR SEQUESTRATION WILL BE GRANTED WITH THE EXCEPTION THAT UNDER THE RULE THE VICTIM HAS THE RIGHT TO REMAIN IN THE COURTROOM AS DOES THE PRIMARY INVESTIGATOR.

ALL RIGHT. ANYTHING ELSE, MS. SMART?

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MS. SMART: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. I DO THINK THAT ONE OF THE FIRST THINGS WE NEED TO ALSO -- TELL ME, MS. SMART. TELL ME WHAT THE LANGUAGE SITUATION IS. I SEE YOU HAVE THE INTERPRETER HERE. I'VE MET THIS GENTLEMAN BEFORE BECAUSE HE'S BEEN HERE A COUPLE WEEKS AGO.

MS. SMART: THE VICTIM'S STATEMENT IS WRITTEN IN [redacted]. HOWEVER, WE WERE INFORMED YESTERDAY THAT SHE DOES SPEAK ENGLISH. I THINK SHE'S GOING TO ATTEMPT TO TESTIFY IN ENGLISH. BUT IF SHE DOES HAVE SOME DIFFICULTY AND HAS TO SPEAK IN [redacted], THEN MS. MARTINEZ WILL BE HERE TO INTERPRET FOR US IS SAID ON THE WITNESS STAND FROM THE VICTIM.

THE COURT: ALL RIGHT. WHAT ABOUT THE STATE FROM THE STANDPOINT OF INTERPRETER? ARE YOU GOING TO -- DO YOU HAVE AN OFFICIAL INTERPRETER? IS IT NECESSARY TO ---

MS. MILLICAN: WE DO HAVE AN INTERPRETER. THE STATE DOES HAVE AN INTERPRETER, YOUR HONOR. [redacted] IS GOING TO TRY TO TESTIFY IN ENGLISH FOR THE MOST PART. I BELIEVE SHE'LL BE ABLE TO DO THAT WITHOUT REALLY THE NEED OF A TRANSLATOR. BUT IN CASE SHE NEEDED WORDS OR SHE GOT NERVOUS AND PREFER TO SPEAK [redacted], WE HAVE AN INTERPRETER.

THE COURT: ALL RIGHT. LET'S GO AHEAD THEN AND HAVE MS. YOUNG SWEAR THE INTERPRETER PLEASE IN CASE YOU NEED IT. IF YOU WOULD COME UP HERE PLEASE, MA'AM.

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SHE'S GOING TO SWEAR YOU.

(THE INTERPRETER WAS FIRST DULY SWORN.)

THE COURT: MA'AM, GIVE THE COURT REPORTER YOUR NAME.

INTERPRETER: REBECCA MCCANN.

THE COURT: ALL RIGHT. MS. MCCANN, THANK YOU.

ALL RIGHT. I'M JUST THINKING ABOUT -- IS IT GOING TO BE NECESSARY THAT WE SWEAR THE INTERPRETER? YOUR CLIENT SPEAKS ENGLISH, SO IT'S NOT A QUESTION OF I[redacted]TING TO HIM, IT'S JUST INTERPRETING THE VICTIM'S TESTIMONY. SO I DON'T THINK THERE'S ANY NECESSITY THAT HE BE SWORN. HE IS JUST THE INTERPRETER TO ASSIST [redacted]HE DEFENSE OF THIS MATTER.

MS. SMART: CORRECT.

THE COURT: OKAY. NONETHELESS, THE COURT WILL RECOGNIZE HIM AS AN OFFICIAL INTERPRETER AND IS HERE FOR THAT PURPOSE. OKAY. THANK YOU.

ALL RIGHT. HAVING SAID ALL THAT AND I THINK WE ARE IN PLACE. A[redacted]ODY HAVE ANYTHING ELSE BEFORE THE JURY IS BROUGHT IN AND SWORN ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE.

THE COURT: ON BEHALF OF THE DEFENSE?

MS. SMART: NOTHING, YOUR HON[redacted]

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 9:45 A.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

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THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN. THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE. WE HAVE ATTENDED TO THE PRELIMINARY MATTERS THAT WE NEEDED TO TAKE CARE OF, INCLUDING SOME THAT WOULD EXPEDITE THE TRIAL OF THIS MATTER, AND WE ARE NOW READY TO GO FORWARD.

WITH THAT I'M GOING TO ASK THE CLERK, MS. YOUNG, IF YOU'LL PLEASE SWEAR THE JURY.

(THE JURY WAS DULY SWORN AT 9:46 A.M.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, BEFORE WE BEGIN THE ACTUAL TRIAL OF THIS CASE, I THOUGHT IT MIGHT BE HELPFUL IF I EXPLAIN TO YOU BASICALLY HOW A TRIAL PROCEEDS.

SOME OF YOU MAY HAVE SERVED ON A JURY BEFORE. I KNOW ALL OF YOU HAVE SEEN TRIALS ON TELEVISION. BUT I THINK YOU'LL FIND OUT THAT IN REAL LIFE IT'S A GREAT DEAL DIFFERENT THAN IT IS ON TELEVISION.

FIRST OF ALL, THE STATE WILL MAKE AN OPENING STATEMENT. AN OPENING STATEMENT IS NOT EVIDENCE. IT IS SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND WHAT THE STATE EXPECTS THE EVIDENCE WILL SHOW.

THE DEFENDANT MAY IF HE WISHES TO THROUGH HIS ATTORNEY PRESENT AN OPENING STATEMENT, BUT HE DOESN'T HAVE TO FOR REASONS THAT I WILL EXPLAIN LATER.

FOLLOWING THE OPENING STATEMENT, YOU WILL HEAR THE

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TESTIMONY AND THE EVIDENCE IN THIS CASE. THIS WILL CONSIST OF TESTIMONY FROM THE STATE'S WITNESSES AS WELL AS ANY PHYSICAL EXHIBITS WHICH MAY BE INTRODUCED INTO EVIDENCE.

FOLLOWING THE COMPLETION OF THE TESTIMONY, THE ATTORNEYS WILL AGAIN HAVE THE OPPORTUNITY TO MAKE WHAT IS CALLED A CLOSING STATEMENT OR SUMMATION TO YOU. THIS IS AN OPPORTUNITY FOR THE ATTORNEYS TO SUMMARIZE THE CASE FROM THEIR RESPECTIVE POINTS OF VIEW. AGAIN, THESE ARGUMENTS ARE NOT EVIDENCE.

FOLLOWING THE CLOSING STATEMENTS BY THE ATTORNEYS, I WILL INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA AS IT PERTAINS TO THE ISSUES THAT HAVE ARISEN IN THIS CASE. AND WHEN I HAVE COMPLETED MY INSTRUCTIONS TO YOU, YOU WILL BE PERMITTED TO BEGIN YOUR DELIBERATIONS IN ORDER TO REACH A VERDICT.

NOW, LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE AND I WANT TO TAKE A FEW MINUTES TO TELL YOU SOMETHING ABOUT YOUR DUTY AS JURORS AND TO GIVE YOU SOME PRELIMINARY INSTRUCTIONS. AT THE END OF THIS TRIAL I WILL GIVE YOU MORE DETAILED INSTRUCTIONS AND THOSE INSTRUCTIONS WILL CONTROL YOUR DELIBERATIONS.

IT WILL BE YOUR DUTY TO DECIDE FROM THE EVIDENCE WHAT THE FACTS ARE. YOU AND YOU ALONE ARE THE JUDGES OF THE FACTS. YOU WILL HEAR THE EVIDENCE, DECIDE WHAT THE FACTS ARE, AND THEN APPLY THOSE FACTS TO THE LAW THAT I WILL GIVE

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TO YOU; THAT IS HOW YOU REACH YOUR VERDICT. IN DOING SO, YOU MUST FOLLOW THE LAW WHETHER YOU AGREE WITH IT OR NOT.

THE EVIDENCE WILL CONSIST OF THE TESTIMONY OF WITNESSES, DOCUMENTS, AND OTHER THINGS RECEIVED INTO EVIDENCE AS EXHIBITS, AND ANY FACTS ON WHICH THE LAWYERS AGREE OR WHICH I MAY INSTRUCT YOU TO ACCEPT.

NOW, YOU SHOULD NOT TAKE ANYTHING THAT I MAY SAY OR DO DURING THIS TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR WHAT YOUR VERDICT SHOULD BE; THAT IS A MATTER SOLELY FOR YOUR DETERMINATION.

THE SAME LAW THAT MAKES YOU THE JUDGE OF THE FACTS MAKES ME THE JUDGE OF THE LAW. YOU MUST TAKE THE LAW AS I GIVE IT TO YOU REGARDLESS OF WHAT YOU THINK THE LAW IS OR WHAT THE LAW OUGHT TO BE. IF I'M WRONG ON THE LAW, THERE'S ANOTHER TIME AND PLACE FOR THAT ERROR TO BE CORRECTED. BUT FOR THIS CASE AND THIS TRIAL, YOU MUST ACCEPT THE LAW AS I CHARGE IT TO YOU.

NOW, THIS IS A CRIMINAL CASE BROUGHT BY THE STATE OF SOUTH CAROLINA. THE STATE CHARGES THE DEFENDANT, NATHANIEL JOHNSON, WITH SEVERAL CHARGES. THESE CHARGES ARE CONTAINED IN THE INDICTMENT. THEY ARE -- THE CHARGES AGAINST THE DEFENDANT ARE BURGLARY IN THE FIRST DEGREE, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, KIDNAPING, AND USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND AS I SAY, THE CHARGES ARE CONTAINED IN THE INDICTMENTS WHICH I

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HOLD IN MY HAND.

THE INDICTMENTS ARE NOT EVIDENCE OF ANYTHING. THEY ARE SIMPLY THE DESCRIPTION OF THE CHARGES MADE BY THE STATE AGAINST THE DEFENDANT.

THE DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES AND IS PRESUMED INNOCENT UNLESS AND UNTIL PROVEN GUILTY BEYOND A REASONABLE DOUBT.

A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

A DEFENDANT HAS A RIGHT NOT TO TESTIFY AND NEVER HAS TO PROVE INNOCENCE OR PRESENT ANY EVIDENCE. THE BURDEN OF PROOF IS ALWAYS ON THE STATE OF SOUTH CAROLINA.

NOW, THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE. YOU MUST NOT CONSIDER THEM AS EVIDENCE IN DECIDING THE FACTS OF THIS CASE.

STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE NOT EVIDENCE. QUESTIONS AND OBJECTIONS OF THE ATTORNEYS ARE NOT EVIDENCE. AND TESTIMONY THAT I INSTRUCT YOU TO DISREGARD IS NOT EVIDENCE.

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL.

DIRECT EVIDENCE IS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE.

THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT TO BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY OF

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THE EVIDENCE.

THERE ARE RULES OF EVIDENCE WHICH CONTROL WHAT CAN BE RECEIVED IN TO COURT. WHEN THE LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE AND THE LAWYER ON THE OTHER SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES, THAT LAWYER MAY OBJECT.

IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED OR THE EXHIBIT MAY BE RECEIVED.

IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE ANSWERED AND THE EXHIBIT CANNOT BE RECEIVED.

WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION OR DENY A MOTION TO ADMIT AN EXHIBIT INTO EVIDENCE, YOU MUST IGNORE THE QUESTION OR THE EXISTENCE OF THE EXHIBIT, AND YOU MUST NOT GUESS WHAT THE ANSWER WOULD HAVE BEEN OR WHAT THE EXHIBIT WOULD HAVE SHOWN.

SOMETIMES IT MAY BE NECESSARY FOR ME TO REQUEST THAT YOU LEAVE THE COURTROOM WHILE I DISCUSS WITH THE ATTORNEYS LEGAL QUESTIONS THAT COME UP DURING THE TRIAL. IF THIS OCCURS, YOU SHOULD NOT SPECULATE ABOUT OUR DISCUSSIONS OR THE REASONS THAT YOU WERE ASKED TO LEAVE THE ROOM. THIS IS SIMPLY A PROCEDURE THAT THE LAW REQUIRES WHEN CERTAIN LEGAL ISSUES ARISE.

THERE ALSO MAY BE OCCASIONS WHEN I ASK THE ATTORNEYS TO APPROACH THE BENCH SO THAT I CAN DISCUSS A LEGAL ISSUE WITH THEM IN PRIVATE. I WILL DO THIS AS OFTEN AS POSSIBLE

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SO THAT YOU WILL NOT BE REQUIRED TO LEAVE THE COURTROOM MORE THAN IS ABSOLUTELY NECESSARY.

AGAIN, IF I ASK THE ATTORNEYS TO STEP UP TO THE BENCH OR IF I ASK YOU TO LEAVE THE COURTROOM, PLEASE DON'T THINK THAT ANYBODY IS TRYING TO HIDE ANYTHING FROM YOU OR KEEP ANY EVIDENCE FROM YOU. THIS IS SIMPLY A PROCEDURE USED BY ALL LAWYERS AND BY ALL COURTS TO DETERMINE AND DECIDE LEGAL QUESTIONS.

NOW, IN DECIDING THE FACTS OF THIS CASE, YOU MAY HAVE TO DECIDE WHICH WITNESSES TO BELIEVE AND WHICH WITNESSES NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR ONLY PART OF IT OR NONE OF IT. THIS IS CALLED CREDIBILITY.

IN DECIDING WHAT TO BELIEVE, YOU MAY CONSIDER A NUMBER OF FACTORS INCLUDING THE WITNESS' ABILITY TO SEE OR HEAR OR KNOW THE THINGS THE WITNESS TESTIFIED TO; THE QUALITY OF THE WITNESS' MEMORY; THE WITNESS' MANNER OR DEMEANOR WHILE TESTIFYING; WHETHER THE WITNESS HAS AN INTEREST IN THE OUTCOME OF THE CASE OR ANY MOTIVE, BIAS, OR PREJUDICE; WHETHER THE WITNESS WAS CONTRADICTED BY ANYTHING THE WITNESS SAID OR WROTE BEFORE THE TRIAL OR BY ANY OTHER EVIDENCE; AND HOW REASONABLE WAS THE WITNESS' TESTIMONY WHEN CONSIDERED IN THE LIGHT OF OTHER EVIDENCE WHICH YOU DO BELIEVE.

NOW, JUST A FEW WORDS TO YOU ABOUT YOUR CONDUCT AS

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JURORS. SOME OF THESE I MENTIONED TO YOU YESTERDAY, BUT THEY'RE IMPORTANT ENOUGH THAT THEY BEAR REPEATING.

DO NOT TALK TO EACH OTHER ABOUT THIS CASE UNTIL THE END OF THE CASE WHEN YOU GO TO YOUR JURY ROOM TO DECIDE ON YOUR VERDICT. DO NOT TALK WITH ANYONE ELSE ABOUT THE CASE UNTIL THE TRIAL IS ENDED FOLLOWING YOUR VERDICT AND YOU HAVE BEEN DISCHARGED AS JURORS. THIS MEANS, DO NOT DISCUSS THE CASE WITH MEMBERS OF YOUR FAMILY OR YOUR FRIENDS OR WITH ANYONE ELSE.

AGAIN, AS I SAID, THE REASON FOR THIS IS YOU'VE GOT TO DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM AND NOT ON THE BASIS OF WHAT ANYONE ELSE MIGHT SAY.

YOU MAY TELL YOUR FAMILY OR YOUR FRIENDS THAT YOU ARE A JUROR, BUT DON'T TELL THEM ANYTHING ABOUT THE CASE UNTIL YOU HAVE BEEN DISCHARGED BY ME.

DO NOT LET ANYONE TALK TO YOU ABOUT THE CASE. IF ANYONE SHOULD APPROACH YOU OR TRY TO TALK TO YOU ABOUT THE CASE, GET THEIR NAME AND THEIR DESCRIPTION, REPORT IT TO THE BAILIFFS. THEY WILL REPORT IT TO ME AND I WILL DEAL WITH THEM.

DO NOT READ ANY NEWS STORIES OR ARTICLES OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE. AGAIN, WITH DUE RESPECT TO ALL OF MY GOOD FRIENDS IN THE MEDIA, THEIR REPORTS OF WHAT GOES ON IN COURT ARE NOT ALWAYS COMPLETELY ACCURATE, AND YOU'VE GOT TO DECIDE THE CASE

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BASED UPON WHAT YOU HEAR IN THE COURTROOM.

YOU'RE NOT TO CONSIDER AS EVIDENCE ANYTHING THAT YOU MAY SEE OR HEAR WHEN COURT IS NOT IN SESSION. DO NOT DO ANY RESEARCH SUCH AS CONSULTING DICTIONARIES OR OTHER REFERENCE MATERIALS OR THE INTERNET. AND DO NOT MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN.

IF YOU NEED TO COMMUNICATE WITH ME, SIMPLY HAVE THE FOREPERSON WHEN I NAME THAT FOREPERSON, WHICH WILL BE SOME TIME LATER ON TODAY, GIVE ME A SIGNED NOTE, AND I WILL TRY TO RESOLVE YOUR PROBLEM.

AND FINALLY AND PROBABLY MOST IMPORTANT, DO NOT MAKE UP YOUR MIND ABOUT WHAT YOUR VERDICT SHOULD BE UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY AND THE EVIDENCE IN THIS CASE AND THE INSTRUCTIONS ON THE LAW BY THE COURT. YOU WILL BE INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS BY EITHER ME OR THE BAILIFF.

ARE THERE ANY OBJECTIONS TO MY OPENING REMARKS ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NO, YOUR HONOR, THANK YOU.

THE COURT: MS. SMART?

MS. SMART: NOT FROM THE DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. THE FIRST ORDER OF BUSINESS THEN, LADIES AND GENTLEMEN, IS THE STATE HAS THE RIGHT TO MAKE AN OPENING STATEMENT, AND I WILL RECOGNIZE MS. MILLICAN FOR THAT PURPOSE.

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MS. MILLICAN: THANK YOU, YOUR HONOR.

OPENING STATEMENT BY MS. MILLICAN ON BEHALF OF THE STATE:

ON FEBRUARY THE 7TH, 2006 [redacted] WAS AT HOME. IT'S THE MIDDLE OF T[redacted]AY. THERE WAS A KNOCK AT HER FRONT DOOR. SHE ANSWERED THE DOOR. SHE OPENED IT. NATHANIEL JOHNSON WAS STANDING AT HER FRONT DOOR, CLEAN-CUT, WELL-SPOKEN MAN, NEEDED HELP.

UNDER THE PURVIEW OF NEEDING TO USE HER TELEPHONE, THE DEFENDANT ENTERED HER HOME. [redacted]TURNED HER BACK FOR JUST A MOMENT. AND IN THAT TIME THAT HER BACK WAS TURNED TO THE DEFENDANT, HE GOT UP THE NERVE TO REACH DOWN AND GRIP THE HANDLE OF A DARK, SHINY GUN, HANDGUN, PULL IT OUT AND POINT IT AT HER.

SHE TURNS AROUND AND LOOKS OVER HER SHOULDER, SEES THE BARREL OF A GUN IN HER FACE, IN HER OWN KITCHEN, IN HER OWN HOME. IN THE ROOM WHERE SHE FEEDS HER CHILDREN, THERE'S A MAN HOLDING A GUN TO HER FACE.

HE TELLS HER -- OR FORCES HER BACK TO THE BACK BEDROOM. AND ON HER MARITAL BED, IN HER HOME IN BROAD DAYLIGHT THE DEFENDANT RAPED [redacted].

THIS CASE IS ALL ABOUT POWER. ON FEBRUARY THE 7TH, 2006 THE DEFENDANT OVERPOWERED [redacted] THIS WEEK [redacted] IS IN COURT TO FIND HER VOICE AND TO MAYBE GET SOME OF THAT POWER BACK.

NOW, LADIES AND GENTLEMEN, THERE IS A LOT OF EVIDENCE

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IN THIS CASE THE STATE WILL PRESENT IN ORDER TO PROVE OUR CASE. YOU WILL HEAR TESTIMONY FROM POLICE OFFICERS, FROM SLED AG[redacted]S OUR STATE INVESTIGATIVE BUREAU. YOU'LL HEAR TESTIMONY FROM [redacted] FROM EYEWITNESSES THAT HELPED [redacted] THE DAY OF HER ATTACK. YOU WILL HEAR TESTIMONY FROM DNA EXPERTS, FORENSIC EXPERTS, MEDICAL PERSONNEL. YOU WILL SEE THE DNA THAT WAS COLLECTED THAT DAY AND OTHER EVIDENCE THAT WAS COLLECTED THAT DAY.

BUT WHAT YOU [redacted]G TO THIS COURTROOM IS THE MOST IMPORTANT PART OF THIS CASE, BECAUSE YOU BRING YOUR LIFETIME EXPERIENCES AND YOUR COMMON SENSE. AND I ASK YOU TO APPLY THOSE THINGS IN DETERMINING THE WEIGHT AND CREDIBILITY TO BE GIVEN TO THE EVIDENCE THAT I PRESENT TO YOU IN THIS CASE.

THE DEFENDANT HAS BEEN CHARGED WITH BURGLARY IN THE FIRST DEGREE, KIDNAPING, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

NOW, THE JUDGE WILL GO INTO GREAT DETAIL AT THE END OF THIS TRIAL, EXPLAI[redacted] TO YOU THE EXACT ELEMENTS OF EACH OF THOSE CHARGES. BUT I'LL TELL YOU GENERALLY NOW AS YOU'RE TAKING [redacted]DENCE WHAT YOU'RE LOOKING FOR.

BURGLARY FIRST DEGREE IS THE ENTE[redacted]LLING OF ANOTHER WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN WITH SOME SORT OF AN AGGRAVATING FACTOR

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ACCOMPANYING IT.

CSC FIRST DEGREE -- CRIMINAL SEXUAL CONDUCT FIRST DEGREE IS ENGAGING IN A SEXUAL BATTERY WITH THE VICTIM WITH USE OF AGGRAVATED FORCE.

AND THE KIDNAPING WOULD JUST BE THE CARRYING OR TAKING AWAY OF A PERSON BY FORCE FROM ONE PLACE TO ANOTHER.

NOW, I APPRECIATE YOUR SERVICE THIS WEEK. I KNOW THAT YOU PROBABLY HAVE OTHER PLACES TO BE. BUT YOU HAVE THE AWESOME RESPONSIBILITY OF BALANCING THE SCALES OF POWER AND JUSTICE THIS WEEK, AND I APPRECIATE IT. I HOPE THAT YOU FIND THE DEFENDANT GUILTY.

THANK YOU.

THE COURT: MS. SMART, DOES THE DEFENSE CARE TO MAKE AN OPENING STATEMENT?

MS. SMART: YES, YOUR HONOR.

THE COURT: YOU MAY DO SO.

MS. SMART: THANK YOU. MAY IT PLEASE THE COURT.

THE COURT: YES, MA'AM.

OPENING STATEMENT BY MS. SMART ON BEHALF OF THE DEFENDANT:

GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY. I GREET YOU THIS MORNING WITH GREAT EXPECTATION, VERY GREAT EXPECTATION, BECAUSE THIS IS PROBABLY ONE [redacted] FASCINATING TRIALS THAT YOU ARE GOING TO SEE BECAUSE YOU ACTUALLY HAVE FORENSIC EVIDENCE. YOU WILL ACTUALLY SEE C.S.I. AND ALL THE OTHER SHOWS IN WORK IN BEAUFORT COUNTY

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IN THE STATE OF SOUTH CAROLINA. AND WE APPRECIATE AND RESPECT THAT.

WE'RE NOT GOING TO TRY TO MINIMIZE THE DNA. WE'RE NOT GOING TO TRY TO TELL YOU THAT YOU SHOULDN'T PAY ATTENTION TO THE DNA. WE'RE EXCITED TO HAVE THE DNA.

BUT WHAT WE ARE GOING TO ASK YOU TO DO IS LISTEN TO THE JUDGE'S CHARGE AND THINK ABOUT WHAT HE TOLD YOU ABOUT CREDIBILITY, BECAUSE THAT'S WHERE MR. JOHNSON IS COMING FROM TODAY. HE WANTS YOU TO PAY ATTENTION TO EACH AND EVERY WITNESS THAT THE STATE PRESENTS TO YOU. PAY ATTENTION TO THEIR TESTIMONY, EACH AND EVERY WORD, BECAUSE SOME TIMES YOUR OPINION CAN BE TURNED ON JUST ONE WORD. YOU CAN SEE A DIFFERENT PICTURE BECAUSE IT'S TOLD DIFFERENT WAYS.

I ALSO SAY IN MY OPENING STATEMENTS THAT WE LOOK AT THE GLASS HALF EMPTY OR HALF FULL. I WOULD SUBMIT TO YOU TODAY THAT YOU CAN SEE THE GLASS IN BOTH WAYS. YOU'RE GOING TO SEE IT HALF EMPTY, AND YOU'RE GOING TO SEE THAT VERY SAME GLASS HALF FULL.

SO HOW'S THAT GOING TO HAPPEN, MS. SMART? THIS IS GOING TO BE A VERY EMOTIONAL TRIAL. YOU'RE GOING TO HAVE [redacted] (PHONETIC) -- [redacted], EXCUSE ME, IS GOING TO TELL YOU THAT AN ALLEGED ATTACK HAPPENED AT HER HOME DURING THE MIDDLE OF THE DAY. AND YOU'RE GOING TO FEEL SYMPATHETIC. AND YOU'RE GOING TO FEEL COMPASSION.

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YOU'RE GOING TO BE EMOTIONAL, PROBABLY.

BUT IN THE SAME TIME, YOU'RE GOING TO HAVE TO LISTEN TO THE FACTS. YOU'RE GOING TO HAVE TO LISTEN TO WHAT IS BEING SAID BY EVERY PERSON THAT COMES TO THE WITNESS STAND, AND WE CAN'T JUST HAVE TUNNEL VISION. WE CAN'T JUST THINK THIS LADY HAS BEEN RAPED, OH, MY GOD, I FEEL SO SORRY FOR HER AND SOMEBODY HAS TO PAY.

ONLY SOMEBODY WILL HAVE TO PAY IF THE STATE PROVES TO YOU BEYOND A REASONABLE DOUBT THAT EACH AND EVERY ELEMENT HAS BEEN MET. AND I SUBMIT TO YOU TODAY THAT WHEN YOU CONSIDER THE CREDIBILITY OF EACH AND EVERY WITNESS, THAT THE STATE WILL NOT BE ABLE TO PROVE THAT BURDEN. THEY WILL NOT BE ABLE TO MEET EACH AND EVERY EL[redacted] YOU'RE GOING TO LISTEN TO THE TESTIMONY.

YOU'RE GOING TO LISTEN ESPECIALLY FOR INCONSISTENCIES, BECAUSE THE JUDGE HAS TOLD YOU THAT YOU ARE ALLOWED TO TAKE IN TO CONSIDERATION THE WITNESS' DEMEANOR, WHETHER OR NOT THEY'VE SAID INCONSISTENT STATEMENTS.

AND SO WHEN YOU THINK ABOUT A PERSON BEING A VICTIM OF A CRIME, ASK YOURSELF: WHY WOULD THEY MAKE INCONSISTENT STATEMENTS? WHY NOT JUST TELL THE TRUTH? AND HOW MANY TIMES DOES THE TRUTH CHANGE? IS THERE ONE TRUTH? ARE [redacted] THREE TRUTHS? WHAT EXACTLY IS THE TRUTH?

SO YOU HAVE THIS TRAUMAT[redacted]CTIM WHO MAY OR MAY NOT GIVE INCONSISTENT STATEMENTS, AND THEN YOU HAVE TO START TO

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HAVE TO ASK QUESTIONS: WHY?

SO AS YOU SIT IN THE JURY BOX, IF YOU LISTEN TO TESTIMONY, ASK WHY? WHY? WHY? WHY? WHY? WHY? WHY WAS THIS SAID? WHY WAS THIS DONE? WHY WAS THIS SAID AT THIS PARTICULAR TIME? WHY WAS THIS DONE AT THAT PARTICULAR TIME?

AND IF YOU ASK YOURSELVES THOSE QUESTIONS, I BELIEVE THAT YOU WILL FIND THE DEFENDANT NOT GUILTY.

THANK YOU VERY MUCH.

THE COURT: ALL RIGHT. THANK YOU. MS. MILLICAN, YOU MAY CALL YOUR FIRST WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS [redacted].

[redacted], BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, WHILE SHE IS TAKING A SEAT, LET ME TELL YOU THAT MS. RODRIGUEZ DOES SPEAK ENGLISH AND SHE IS GOING TO ATTEMPT TO TESTIFY IN ENGLISH.

THE LADY BEHIND HER IS AN INTERPRETER IN CASE IT BECOMES NECESSARY TO HAVE HER TESTIMONY IN [redacted] OR IF SHE SPEAKS IN [redacted] TO HAVE IT TRANSLATED TO ENGLISH SO YOU CAN UNDERSTAND IT. SHE HAS ALSO BEEN SWORN IN THIS

CASE TO INTERPRET ACCURATELY, AND THAT'S WHAT HER PURPOSE IN BEING HERE IS -- SO THAT YOU WOULD KNOW THAT.

BUT MY UNDERSTANDING IS THAT [redacted] DOES SPEAK ENGLISH AND WILL ATTEMPT TO TESTIFY IN ENGLISH.

ALL RIGHT. MS. MILLICAN, YOU MAY PROCEED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

THE COURT: WAIT A MINUTE. [redacted], IF YOU WOULD STATE YOUR NAME FOR THE RECORD AND SPELL YOUR NAME PLEASE.

WITNESS: [redacted]. DO YOU WANT ME TO SPELL IT?

THE COURT: YES, PLEASE.

WITNESS: [redacted]

THE COURT: ALL RIGHT. MS. MILLICAN.

DIRECT EXAMINATION BY MS. MILLICAN:

Q THANK YOU, [redacted], HOW OLD ARE YOU?

A 34 YEARS OLD.

Q DO YOU HAVE ANY CHILDREN?

A I HAVE THREE KIDS.

Q WHAT DO YOU DO FOR A LIVING?

A I OWN A CLEANING BUSINESS. I AM HOUSEKEEPER.

Q ON FEBRUARY THE 7TH, 2006 WERE YOU LIVING ON 94 CUFFY ROAD ON ST. HELENA?

A YES, MA'AM.

Q WERE YOUR CHILDREN AT HOME THAT AFTERNOON?

A NO. THEY WERE IN THE SCHOOL.
Q WAS YOUR HUSBAND AT HOME THAT AFTERNOON?
A [redacted]ING.
Q WERE ANY OF YOUR NEXT DOOR NEIGHBORS AT HOME THAT AFTERNOON?
A EVERYBODY WAS WORKING.
Q [redacted] LOT OF NEXT DOOR NEIGHBORS WHERE YOU LIVED AT 94 CUFFY ROAD?
A IT'S HOUSE NEXT -- NEXT TO MY HOUSE AND A NEW HOUSE JUST IN THE PRO[redacted]THIS TIME. SO, NO, IT'S INSULATED PLACE.
Q WHAT HOURS OF THE DAY DURING THE WEEK ARE YOU USUALLY [redacted] HOME BY YOURSE[redacted]
A AFTER 12:00. I NORMALLY WORK A COUPLE HOURS, 9:00 TO 12:00. I ALWAYS TRY TO BE AT HOME AT 12:00 TO FIX LUNCH TO MY HUSBAND. SO BETWEEN 1[redacted] AND 3:00 O'CLOCK.
Q AND AT 3:00 O'CLOCK, WHAT HAPPENS AT 3:00 O'CLOCK?
A I HAVE TO GO AND PICK MY BABIES FROM THE SCHOOL.
Q ON FEBRUARY THE 7TH, 2006 DO YOU RECALL IF THERE WERE ANY PEOPLE THAT WERE WORKING AROUND YOUR HOUSE?
A I REMEMBER THAT WAS A WHITE TRUCK JUST IN FRONT OF THE HOUSE THAT WAS IN THE PROCESS OF BUILDING; WAS PEOPLE WORKING THERE. AND DIFFERENT TRUCKS AND DIFFERENT PEOPLE WAS ALWAYS IN THIS HOUSE BECAUSE OF THEY WERE BUILDING.
Q ON THAT DAY WERE THERE PEOPLE THERE?

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A YES, I SAW ONE TRUCK AND -- AND -- AND PEOPLE WORKING JUST IN FRONT.

Q DID SOMEONE KNOCK ON YOUR DOOR THAT AFTERNOON?

A YES, SOMEBODY KNOCK ON THE DOOR. AND I SAW THROUGH THE WINDOW, AND I SAW THIS GUY KNOCK ON THE DOOR. AND -- AND SINCE VERY OFTEN A LOT OF PEOPLE WAS KNOCKING THE DOOR, ASKING FOR HOSE. SOME TIMES THE PHONE -- WAS NO STRANGE FOR ME TO HAVE -- THEY WERE KNOCKING AND ASKING FOR SOMETHING -- ASKING FOR HELP. SO I OPEN THE DOOR. AND HE ASKED ME FOR THE PHONE.

Q NOW, WHO WAS THE PERSON THAT ASKED YOU FOR THE PHONE THAT KNOCKED ON YOUR DOOR?

A THIS GUY.

Q CAN YOU DESCRIBE WHAT COLOR HIS SHIRT IS?

A HE'S WEARING A BLUE SHIRT.

MS. MILLICAN: YOUR HONOR, PLEASE LET THE RECORD REFLECT THAT THE WITNESS HAS POINTED OUT THE DEFENDANT.

THE COURT: THE RECORD WILL SO REFLECT.

Q WHAT DID HE LOOK LIKE THAT DAY? HOW WAS HE DRESSED?

A HE WAS WEARING SPORT CLOTHES, DARK COLOR WITH STRIPES HERE -- SPORT -- SPORT CLOTHES.

Q DID HE SEEM CALM OR NERVOUS OR ---

A NO. AT THIS TIME HE -- HE -- HE WAS VERY NICE. I THOUGHT WAS A VERY OKAY GUY. HE KNOCKED. HE ASKED FOR USE THE PHONE. AND SUDDENLY BECAUSE I -- I JUST TRIED TO BE A

NICE LADY WITH ALL THE PEOPLE, I NEVER THOUGHT THAT SOME -- SOMETHING BAD.

THE COURT: MS. MILLICAN, LET ME INTERRUPT YOU FOR JUST A MINUTE. WE TALKED ABOUT THIS AND THEN I FORGOT TO TELL THE JURY. I DID HAVE A REQUEST, I THINK, THAT SOME OF YOU MIGHT WANT TO TAKE NOTES.

THERE IS NO OBJECTION ON THE PART OF THE PARTIES IF ANYBODY WISHES TO TAKE NOTES DURING THE COURSE OF THE TESTIMONY. AND IF ANYBODY WOULD LIKE SOME PADS, WE'LL GET SOME PADS FOR YOU. OKAY. WE WILL ALLOW YOU TO DO THAT. WE'LL WAIT JUST A MINUTE, MS. MILLICAN, AND LET'S DO THAT.

(PAUSE.)

THE COURT: WHILE THEY'RE GETTING THAT, LET ME JUST GIVE YOU SOME INSTRUCTIONS ON THAT. THE PURPOSE IN ALLOWING YOU TO TAKE NOTES IS SIMPLY TO REFRESH YOUR OWN RECOLLECTION. SO IT IS NOT TO CONTROL ANYBODY ELSE'S THINKING ON THE JURY. IT IS SO THAT YOU WILL BE ABLE TO WHEN YOU GO TO YOUR JURY ROOM, TO REFRESH YOUR RECOLLECTION OF WHAT YOU RECALL THE TESTIMONY WAS ABOUT.

BUT NOBODY SHOULD GIVE ANY MORE EMPHASIS TO THE RECOLLECTION OF ONE WITNESS THAN THEY WOULD GIVE TO ANOTHER WITNESS. BUT IT IS SOLELY FOR THE PURPOSE OF THAT -- OF ONE JUROR OVER ANOTHER JUROR, IT IS SOLELY FOR THE PURPOSE OF THAT JUROR REFRESHING THEIR OWN RECOLLECTION.

ANY OBJECTION TO THAT, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: OKAY.

(PAUSE.)

THE COURT: ALL RIGHT. THANK YOU, COUNSEL AND LADIES AND GENTLEMEN OF THE JURY. WE WILL PROCEED. GO AHEAD, MS. MILLICAN.

MS. MILLICAN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION CONTINUED:

Q [redacted] DID YOU KNOW THIS MAN ON THAT DAY?

A NO.

Q DO YOU RECALL IF YOU EVER SAW SOMEBODY THAT MAYBE LOOKED LIKE HIM BEFORE?

A THE TRUE TIME BEFORE THIS BAD THING HAPPENED TO ME, I USED TO TAKE MY BABIES ALMOST EVERY SINGLE AFTERNOON TO THE PARK. AND ONE DAY SOMEBODY THAT WAS WEARING SPORT CLOTHES AND -- AND -- AND RIDING A BICYCLE JUST STOPPED BY THE PARK AND START LOOKING FOR SIGNAL IN HIS CELL. AND HE WALK THERE TO MY BABIES AND -- AND MYSELF. AND HE SAID SOMETHING LIKE, CAN YOU BELIEVE I CAN'T HAVE A SIGNAL IN -- IN MY PHONE.

AND AFTER THAT HE STARTED TALK ABOUT DIFFERENT KIND OF THINGS. I STILL LOOKING. MY BABIES ARE PLAYING ON THE PLAYGROUND. SO I REMEMBER SAID SOMETHING LIKE HE WAS RETIRED. HE -- HE MAKE GOOD MONEY BECAUSE OF THIS. AND AFTER THAT HE START SAYING SOMETHING LIKE YOU ARE PRETTY

AND THIS KIND OF THING. AND SO WAS IT. I -- I -- I -- I PICK MY BABIES AND -- AND -- GO.

BUT THE TRUTH, I CAN'T TELL YOU FOR SURE THAT THIS GUY WAS THE SAME GUY. THIS GUY. I CAN TELL YOU FOR SURE HE WAS WHO KNOCKED MY DOOR. HE WAS WHO HURT ME. THAT'S FOR SURE.

BUT TIME WHEN THIS GUY JUST MAKE CONVERSATION, I JUST -- I DIDN'T PAY ATTENTION. I WAS PAYING ATTENTION ON MY KIDS AND WAS IT.

WAS -- WHEN -- WHEN THIS GUY WAS IN MY HOME AND WHEN THE POLICE WAS ASKING ME A LOT OF QUESTIONS, I JUST TOLD HIM ABOUT THESE SITUATION AND WAS IT.

Q BUT JUST TO UNDERSTAND, YOU'RE NOT SURE IF THE INCIDENT IN THE PARK, THAT WAS THE DEFENDANT OR NOT?

A TRUE.

Q BUT YOU ARE SURE THAT ---

A I AM REAL SURE.

Q --- THE INCIDENT IN YOUR HOME WAS THE DEFENDANT?

A WAS HIM.

Q DID THIS DEFENDANT COME INSIDE YOUR FRONT DOOR TO USE THE TELEPHONE?

A YES, HE KNOCK THE DOOR. HE ASKED ME TO USE THE PHONE. HE -- HE WAS KNOCKING THE FRONT DOOR.

MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN TO USE AN ILLUSTRATION?

THE COURT: YES, YOU MAY STEP DOWN. SHE WANTS TO SHOW YOU SOMETHING AND HAVE YOU DEMONSTRATE TO THE JURY.

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

THE COURT: IS THIS IN EVIDENCE? IS THE ILLUSTRATION IN EVIDENCE?

MS. MILLICAN: NO, THE ILLUSTRATION I'M NOT USING FOR EVIDENCE. I'M JUST USING IT FOR PURPOSES OF ILLUSTRATION AS SHE TESTIFIES TO GIVE THE JURY AN IDEA OF WHERE THINGS ACTUALLY TOOK PLACE.

THE COURT: ALL RIGHT. THAT WILL BE FINE. LET ME REMIND YOU, [redacted], YOU ARE AWAY FROM THE MICROPHONE NOW, SO YOU'RE GOING TO HAVE TO KEEP YOUR VOICE UP SO THAT I CAN HEAR YOU AND EVERYONE IN THE COURTROOM CAN HEAR YOU. OKAY?

WITNESS: YES.

MS. MILLICAN: YOUR HONOR, COULD WE ASK THE JURY IF EVERYONE ON THE JURY CAN SEE THIS ILLUSTRATION?

THE COURT: I BELIEVE THEY CAN SEE IT.

MS. MILLICAN: OKAY.

Q NOW, [redacted], IS THIS A FAIR AND ACCURATE REPRESENTATION OF THE HOUSE YOU LIVED AT IN 94 CUFFY ROAD?

A YES, MA'AM.

Q ALL RIGHT. FROM THE POINT THAT THE DEFENDANT WALKED IN YOUR FRONT DOOR, COULD YOU SHOW THE JURY WHERE YOUR FRONT DOOR IS?

A RIGHT HERE.
Q POINT TO IT.
A THIS IS THE FRONT DOOR.
Q CAN YOU SHOW THE JURY WHAT HAPPENED FROM THAT POINT ON?
A I WAS IN THE KITCHEN AND THIS GUY KNOCK THE DOOR. I WALK HERE. AND I JUST SAW THROUGH THE WINDOW. AND I SAW THIS GUY. AND -- AND -- AND ASK CAN I HELP YOU?
AND HE SAID, MAY I USE YOUR PHONE?
AND -- AND HOW I ALWAYS HAPPY AND TELLING MY KIDS NEVER TALK TO STRANGERS, [redacted] I HAVE TO ---
MS. SMART: OBJECTION ---
THE COURT: JUST A MOMENT. YES, MA'AM.
MS. SMART: OBJECTION, YOUR HONOR. SHE'S NARRATING.
THE COURT: I'M SORRY?
MS. SMART: SHE'S NARRATING. SHE'S NOT ANSWERING QUESTIONS.
THE COURT: I THINK SHE IS ANSWERING. OBJECTION IS OVERRULED. SHE WAS ASKED WHAT SHE DID AND SHE HAS THE RIGHT TO TELL IT. [redacted]
GO AHEAD.
A BECAUSE A LOT OF PEOPLE WHO WERE WORKING AT THE NEW HOUSE WERE ASKING FOR DIFFERENT KIND OF STUFF, WAS NO STRANGE THAT SOMEBODY KNOCK AT MY DOOR ASKING FOR SOMETHING. SUDDENLY THEY SAY ---

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THE COURT: JUST LIMIT IT TO WHAT YOU DID.

A I -- I OPEN. I SHOW HIM WHERE THE PHONE WAS. HE -- HE WALKED. HE TOOK ---

Q [redacted], WHERE'S THE PHONE IN THE PICTURE?

A HE TOOK THE PHONE -- THE PHONE WAS HERE. I -- I WAS HERE. HE WAS HERE. HE TOOK THE PHONE. HE DIALED. NOBODY ANSWERED THE PHONE. AND HE ASKED ME IF I KNEW THE PEOPLE THAT LIVES IN THIS OTHER HOUSE.

AND I TOLD HIM, YES, I KNOW THESE PEOPLE.

AND HE ASKED ME IF THEY WERE THERE?

AND I TOLD HIM -- I TOLD HIM, THEY ARE WORKING.

AND HE ASKED ME FOR MR. GREEN.

AND I TOLD HIM, I -- I DON'T KNOW ANYONE WITH THIS NAME. I -- I REALLY DON'T KNOW MR. GREEN. AND I JUST TOLD HIM I KNOW THEY WERE JUST NEW NEIGHBORS IN FRONT OF MY -- MY HOUSE.

Q AND IS THIS PARTICULAR ILLUSTRATION AN ACCURATE AND FAIR DEPICTION OF YOUR NEIGHBORHOOD WHERE YOU LIVE?

A YES. I LIVE HERE. I HAVE ANOTHER NEIGHBOR WHO WAS HERE WHO WAS WORKING.

HE ASKED ME FOR MR. GREEN. I TOLD HIM I DO NOT KNOW ANYBODY WITH THIS NAME. I ALSO TOLD HIM I HAVE NEW NEIGHBORS, AND I TOLD HIM MAYBE THEY ARE GREEN. I WOULDN'T KNOW BECAUSE NEW PEOPLE THERE.

Q [redacted], IS THAT HOUSE THE ONE THAT WAS UNDER

CONSTRUCTION?

A YES. YES. WHEN -- WHEN I OPEN THE DOOR WHEN HE ASKED FOR THE PHONE, I SAW PEOPLE WALKING HERE BY THE WHITE TRUCK. BECAUSE OF THAT, WHEN HE KNOCK MY [redacted], I THOUGHT WAS MIGHT BE ONE OF THESE WORKERS ASKING FOR SOMETHING.

AND SADLY I JUST A TRUST LADY. I -- I JUST TRUST EVERYBODY. I -- I KNOW THAT I AM NOT NOW.

SO HE USE THE PHONE. HE DIALED TWICE. AND -- AND -- AND AGAIN WAS ANSWER MACHINE. JUST HERE. WAS AN ANSWER MACHINE, AND -- AND -- AND HE TOLD ME IT'S -- IT'S NOBODY THERE.

AND I WAS HERE. AND I ASKED TO TAKE A MESSAGE.

AND HE TOLD ME, OKAY.

SO I TURNED MY BACK. I TURNED MY BACK IN ORDER TO GET PENCIL AND PAPER. AND WHEN I JUST TURNED MY FACE AGAIN IN FRONT OF HIM -- OF HIM, HE COCK THE GUN AND PUT THE GUN ON MY FACE. I WAS SHOCKED. I WAS SHOCKED BECAUSE I THOUGHT WAS SOMEBODY ASKING FOR PHONE. I AM SORRY. AND THE NEXT MOMENT HE WAS WITH THE GUN -- COCK THE GUN AND HE POINT AT ME. I'M SORRY. I STARTED, PLEASE I AM A VERY POOR LADY. DON'T HURT ME. TAKE WHATEVER YOU WANT. PLEASE DON'T HURT ME.

AND HE TOLD ME YOU HAVE TO DO WHAT I ASK YOU TO DO OR I KILL YOU. AND WITH HIS GUN, HE SHOWED AND HE TOOK ME -- ASKED ME TO GO TO THE BEDROOM POINTING AT [redacted]

AND I ALWAYS -- I -- I WAS BEGGING HIM, PLEASE DON'T KILL ME. TAKE WHATEVER YOU WANT, BUT DON'T KILL ME. AND -- AND I WAS HERE. AND HE WAS HERE.

THE COURT: EXCUSE ME, MS. MILLICAN. ASK HER TO MOVE TO THE SIDE A LITTLE BIT SO THE COURT REPORTER CAN SEE HER. I THINK SHE WOULD BE ABLE TO HEAR BETTER IF SHE CAN SEE HER. GO AHEAD.

A AND HE TOOK ME -- HE TOLD ME TO PULL THE PANTS DOWN. AND ALWAYS I WAS ASKING, PLEASE DON'T KILL ME. TAKE WHATEVER YOU WANT. JUST LEAVE PLEASE.

AND HE TOLD ME TO PULL THE PANTS DOWN. AND -- AND -- AND I DID. SO I WAS ON THE BED. I PULLED THE PANTS DOWN. HE WAS IN FRONT OF ME WITH THE GUN. AND -- AND THEN HE -- HE -- HE -- HE WAS ON TOP OF ME. AND -- AND -- AND HE START TRYING TO RAPE ME. I WAS FIGHTING ALL THE TIME. HE IS A VERY BIG GUY, BUT EVEN IF HE IS VERY [redacted] WITH THIS HAND I TRIED TO COVER MY PART -- MY VAGINA. AND -- AND -- AND WITH THIS HAND I -- I ALWAYS TRY TO FIGHT BACK. I WAS TERRIFIED. I THOUGHT HE WOULD KILL ME.

Q [redacted], WHAT DID HE DO WITH THE GUN AT THAT POINT?

A WHEN -- BECAUSE I WAS ALWAYS MOVING ABOUT, FIGHTING A LOT, HE PUT THE GUN ON THIS PART OF THE PANTS. AND HE -- HE -- HE WAS HERE. AND SO HE WAS HERE. I WAS ON THE BED. AND -- AND -- AND IN ORDER TO -- HE PUT THE GUN HERE AND TAKE HIS PART OUT. AND HE WAS ---

THE COURT: SHE NEEDS TO MOVE AWAY FROM THE DIAGRAM BECAUSE WE NEED TO SEE HER AND THE COURT REPORTER NEEDS TO SEE HER.

WITNESS: I'M SORRY.

THE COURT: OKAY. GO AHEAD.

A HE PUT THE GUN HERE. HE WAS ON TOP OF ME. AND -- AND HE START TO RAPE ME. I ALWAYS WAS BEGGING HIM, PLEASE DON'T KILL ME. I TOLD HIM MY HUSBAND IS ABOUT TO COME. HE -- HE CAME TO EAT LUNCH. I TOLD HIM MY HUSBAND IS -- IS -- IS A VERY JEALOUS GUY, AND HE'S GOING TO KILL US. PLEASE, PLEASE STOP. DON'T DO THIS TO ME.

HE -- HE -- AT THIS TIME HE WAS VERY NERVOUS. HE WAS VERY NERVOUS. HE WAS IN A BIG HURRY. AND WE -- WE WERE FIGHTING. HE WAS ON ME. AND BECAUSE ALWAYS WE ARE MOVING A LOT, THE GUN SLIDE OFF.

Q [redacted], WHAT SORT OF WAISTBAND DID HE HAVE ON THE PANTS HE WAS WEARING?

A HE -- HE -- HE WAS WEARING THIS KIND OF ELASTIC THING HERE. I -- I -- I -- I JUST CAN TELL YOU THAT HE PUT THE GUN HERE AND -- AND HE WAS ON TOP OF ME AN[redacted] WAS WITH HIS PART IN -- INTO ME. AND BECAUSE I WAS MOVING A LOT, THE GUN WAS SLIDING. I ALWAYS TRY TO FIGHT. I -- I ALWAYS -- WHEN -- WHEN THE GUN WAS HERE, I -- I -- I FEELING KIND OF MORE STRONG, MORE -- WHEN -- WHEN THE GUN WAS ON MY FACE, I -- I THOUGHT HE COULD KILL ME ANY TIME. BUT WHEN THE GUN

WAS HERE, I -- I -- I WAS ABLE TO FIGHT BETTER, YOU KNOW. I REMEMBER THAT I PUT ONE HAND HERE TRYING TO NOT LET HIM GO THROUGH. AND I TRIED TO PUT HIS PART -- I REMEMBER AT SOME TIME I TRIED TO PULL HIS -- HIS -- HIS FINGERS AND -- AND I JUST TRIED TO DEFEND MYSELF. AND WITH THIS HAND I PUT HIS FACE FROM MY FACE. AND IN -- IN O[redacted]MOMENT I -- HE JUST -- MY FINGERS GO IN HIS MOUTH AND HE BITE ME SO HARD THAT I COULDN'T FIGHT ANY MORE. HE BITE ME SO HARD. AND -- AND -- AND I -- I -- I TOLD HIM, PLEASE DON'T HURT ME. I'M PREGNANT. I WAS NOT PREGNANT, BUT I HAVE NO IDEA WHAT ELSE -- WHAT ELSE.

Q WHY DID YOU TELL HIM THAT YOU WERE PREGNANT AND THAT YOUR MAN WAS A JEALOUS MAN AND WOULD KILL YOU?

A JUST -- IT WAS SOMETHING TO MAKE HIM FEEL SCARED MAYBE. AND TO LEAVE. I -- I -- I WAS -- I WAS VERY SCARED. I JUST TRIED TO SAY SOMETHING TO MAKE HIM GO. AND I TOLD HIM I WAS PREGNANT. I WAS NOT, BUT I THOUGHT MAYBE HE'S GOING TO FEEL SOMETHING AND JUST STOP DOING THAT. AND FOR SOME MOMENT HE TOOK HIS PART OUT AND -- AND PULLED HIS FINGER INTO MY VAGINA. I KNOW -- I DON'T KNOW WHY, MAYBE TO FIND OUT IF I WAS PREGNANT. I DON'T KNOW. I DON'T KNOW. I -- I -- WHEN -- WHEN -- WHEN WE WERE FIGHTING, WHEN I TRIED TO PUT HIS FACE FAR FROM MY FACE AND WHEN HE BITE ME SO HARD, I -- I START TO MOVE IT. BUT I -- I REMEMBER THAT I ALWAYS TRY TO TAKE THE GUN [redacted]CAUSE WHEN HE

WAS POINTING AT ME, I -- I -- I FELT LIKE I CAN DO ANYTHING BECAUSE HE GOING TO KILL ME. AND WHEN THE GUN WAS HERE, I TRIED TO TAKE THE GUN. I JUST TRIED TO DO SOMETHING AND STOP HURT ME -- BUT I COULDN'T. IN ONE MOMENT HE JUST PULLED ME DOWN AND TOLD ME AGAIN ---

Q [redacted] WHERE WERE YOU WHEN THIS HAPPENED?

A WE WERE HERE. AND -- AND WHEN I COULDN'T TAKE THE GUN, HE -- HE -- AT THIS TIME HE TRIED TO TAKE THE GUN HIMSELF BECAUSE THE GUN WAS SLIDING AND HE COULDN'T TAKE OFF HIS PANTS. SO WE STILL HERE. AND HE THREW ME AGAINST THIS FURNITURE. AND I JUST WALK ON MY KNEES AGAIN TO TRY TO FIGHT FOR THE GUN. BUT FINALLY HE -- HE -- HE GOT THE GUN AGAIN. AND I JUST WANT MY KIDS -- HE'S GOING TO KILL ME -- KILL ME. HE WAS RIGHT HERE.

Q WAS THERE A TELEPHONE IN YOUR BEDROOM?

A YES, BUT HE WAS HERE AND PULLED THE PHONE -- THE KITCHEN PHONE, HE JUST PULLED IT. AND -- AND -- AND I -- I WAS ON MY KNEES HERE AND HE PULLED THE PHONE IN THE BACK. AND I THOUGHT HE JUST CAME BACK AND SHOOT ME. I STILL ON MY KNEES HERE. AND -- AND HE SAID SOMETHING THAT I -- I -- I -- I CAN'T REMEMBER. AND HE WALKED HERE. AND THEN HE OPENED TWO DRAWERS LOOKING FOR -- I DON'T KNOW, SOMETHING. AND ANOTHER PHONE WAS HERE, AND HE JUST PULLED THE OTHER PHONE RIGHT HERE.

Q [redacted]

A YES.

Q WOULD YOU LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 4. DO YOU RECOGNIZE THAT?

A YES, IT'S ---

THE COURT: HAVE HER STAND AWAY AGAIN. OKAY. IF YOU'LL COME OVER HERE, MS. MILLICAN, MAYBE SHE'LL STAY AWAY FROM THE DIAGRAM, UNLESS YOU NEED THE DIAGRAM.

WITNESS: SORRY.

MS. MILLICAN: YOU CAN STAY THERE. I'M GOING TO STAND OVER HERE BESIDE YOU.

THE COURT: I NEED WHERE THE REPORTER CAN SEE HER. THERE YOU GO. OKAY. YOU CAN USE THE DIAGRAM, BUT JUST DON'T STAND IN FRONT OF IT, BETWEEN YOU AN[redacted]E REPORTER.

A IT'S THE DRAWER THAT HE OPENED. I DON'T KNOW WHAT HE WAS LOOKING FOR.

MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH STATE'S EXHIBIT NO. 4 FOR THE JURY?

THE COURT: YES. LADIES AND GENTLEMEN OF THE JURY, LET ME TELL YOU WHAT THAT MEANS. WHEN COUNSEL ASKS PERMISSION TO PUBLISH SOMETHING TO THE JURY, THAT SIMPLY MEANS TO SHOW. THAT'S JUST A LEGALISTIC TERM MEANING SHOW TO THE JURY. AND SHE IS GOING TO PUBLISH THAT OR SHOW YOU THAT BY USING THE EQUIPMENT HERE.

BUT I TELL YOU THAT ANYTHING THAT HAS BEEN INTRODUCED INTO EVIDENCE WILL GO WITH YOU TO THE JURY ROOM WHEN YOU

RETIRE TO DELIBERATE YOUR VERDICT. SO YOU WILL BE ABLE TO TAKE ANY EXHIBIT TO THE JURY ROOM WHEN YOU GO TO RETIRE TO DELIBERATE YOUR VERDICT. BUT YOU ALSO HAVE THE RIGHT TO VIEW IT NOW. BUT DO NOT BE CONCERNED IF YOU DO NOT HAVE AS LONG TO LOOK AT IT NOW AS YOU MIGHT LIKE TO, BECAUSE YOU WILL BE ABLE TO TAKE THAT EXHIBIT TO THE JURY ROOM WITH YOU WHEN THE PROPER TIME COMES.

ALL RIGHT. MS. MILLICAN. MR. STONE. ALL RIGHT.

(PAUSE.)

THE COURT: FOR YOUR EDIFICATION, LADIES AND GENTLEMEN OF THE JURY, THIS GENTLEMAN IS MR. DUFFY STONE, WHO IS THE SOLICITOR FOR THE FOURTEENTH CIRCUIT.

Q [redacted] WHAT IS THAT?

MR. STONE: ALSO A TECHNICAL PERSON AS WELL, YOUR HONOR. EXCUSE ME.

THE COURT: GO AHEAD, MS. MILLICAN.

MS. MILLICAN: THANK YOU.

A THAT WAS THE DRAWERS THAT HE WAS -- HE WAS KIND OF GOING IN. AND THE PHONE WAS ON THE TOP OF HERE. HE JUST PULLED THE PHONE.

Q WHERE WAS THIS PIECE OF FURNITURE LOCATED ON THIS DIAGRAM?

A RIGHT HERE.

Q WHAT'S THIS IN FRONT OF THAT RIGHT THERE? WHAT IS THAT RIGHT HERE?

A THERE IS ANOTHER -- BECAUSE OF MY KIDS ALWAYS -- THEY HAVE -- THEY ALWAYS HAVE TO GO TO MOMMY'S ROOM, IT'S A MATTRESS -- A SMALL MATTRESS THAT I JUST PUT DOWN THERE IN ORDER TO PUT THE BABIES IN MY OWN ROOM.

Q WHAT HAPPENED NEXT AFTER HE PULLED THE PHONE?

A HE -- HE PULLED THE PHONE, AND -- AND I WAS ABOUT HERE. I'M SORRY.

THE COURT: THAT'S ALL RIGHT. YOU'RE FINE.

A I -- I WAS HERE. AND HE DID SOMETHING LIKE THIS IN THIS DRAWER AND PULLED THE PHONE. AND THANK GOD, FOR SOME REASON HE -- HE WALKED BACK HERE. AT THIS MOMENT I PULLED THE PANTS ON AND I RUN AND I WENT TO -- TO THIS BACK DOOR. AND I -- I WENT TO -- I NEVER STOPPED RUNNING. I NEVER TURN MY BACK. I RUN RIGHT HERE. AND -- AND -- AND I PRAYED. MAYBE, I DON'T KNOW. I JUST TRIED TO GO FAR, FAR, FAR AWAY RUNNING, RUNNING HERE. AND ---

Q [redacted], WERE YOUR PANTS ON WHEN YOU WERE RUNNING?

A I -- I -- I -- I JUST PULLED THE PANTS AND -- AND -- AND I WAS WITH MY PANTS [redacted]NNING RIGHT HERE. YES, I WAS RUNNING MY -- MY -- MY PANTS.

Q WHY DID YOU SAY YOU DIDN'T LOOK BACK?

A I WAS RUNNING HERE. THERE IS ONLY WOODS AND THIS IS THE BACK OF MY NEIGHBOR'S HOUSE. I -- I WAS RUNNING HERE. THERE IS A TREE HERE. AND -- AND I WAS RUNNING HERE. AND I SAW THE WHITE TRUCK THAT BEFORE ALL THIS HAPPENED, THE

WHITE TRUCK WAS ABOUT HERE. BUT AFTER ALL THIS HAPPENED, THE WHITE TRUCK WAS -- WAS -- WAS FAR FROM -- FROM THE HOUSE. AND -- AND -- AND I -- I -- I -- I STOP A LITTLE BIT. MY FIRST THOUGHT WAS, BROKE A WINDOW AND IS GOING TO MAKE THE POLICE COME AND HELP ME. I -- I -- WAS MY FIRST THOUGHT. BUT WHEN I SAW THE WHITE TRUCK, I -- I -- I -- I STOP FOR A MINUTE AND -- AND -- AND I TRY TO SEE THE PEOPLE BECAUSE THEY MIGHT -- ONE OF THEM. BUT WHEN I SAW THE TWO WHITE GUYS WERE HERE, I KEPT RUNNING AND ASKED FOR HELP.

THANK GOD THEY -- THEY HELP ME. THEY CALLED THE POLICE. ONE OF THEM WAS WITH ME. AND THEN START TO WALK WITH ME BACK TO MY HOUSE. AND -- AND WHEN WE WENT WALKING BACK TO MY HOUSE, MY HUSBAND WAS DRIVING IN HIS CAR. AND WHO -- WHO WAS WITH ME WALKING A LITTLE AND TALK TO MY HUSBAND ABOUT WHAT HAPPENED. HE TOLD -- HE TOLD HIM SOMEBODY BROKE ---

MS. SMART: OBJECTION, YOUR HONOR. [redacted]

THE COURT: ALL RIGHT. YOU WOULD NOT HAVE ANY WAY OF KNOWING THIS, [redacted]. BUT YOU CANNOT TESTIFY AS TO WHAT ANYBODY TOLD YOU; THAT'S A RULE IN THE COURT. SO YOU CAN'T TESTIFY AS TO WHAT ANYBODY SAID TO YOU OR TOLD YOU EXCEPT THIS DEFENDANT. OKAY?

WITNESS: YES.

THE COURT: ALL RIGHT. THANK YOU. YOU WOULD NOT HAVE ANY WAY OF KNOWING THAT; THAT'S PERFECTLY ALL RIGHT.

Q WHEN DID YOUR HUSBAND SHOW UP?
A WHEN -- WHEN I WAS IN THE WAY BACK TO MY HOUSE WITH ONE OF -- OF THESE WHITE GUYS WHO -- I DON'T KNOW WHERE HE -- THE COMPANY FOR THE -- I JUST -- I JUST KNOW THAT THERE WERE TWO WHITE GUYS IN THE WHITE TRUCK THAT I SAW A FEW MINUTES -- FEW TIME BEFORE WORKING IN FRONT OF MY HOUSE. AT THIS TIME THEY WERE WORKING ANOTHER PART. ONE OF THEM CALL THE POLICE, THE OTHER ONE WAS WALKING WITH ME BACK TO MY HOUSE. IN THE WAY WHEN I WAS WALKING BACK, MY HUSBAND WAS ARRIVING IN HIS CAR.
Q DID HE NORMALLY COME HOME AT THAT TIME FOR LUNCH?
A NO. HE NORMALLY HAVE LUNCH AT 12:00. [redacted] THIS DAY HE WAS IN KIND OF A MEETING, TRAINING MEETING IN HIS JOB. AND IN THIS TIME THEY GET LUNCH IN HIS JOB. I HAVE NO IDEA WHY, BUT HE CAME -- CAME -- HE JUST CAME. I HAVE NO IDEA WHY, HE JUST CAME.
Q [redacted] PLEASE LOOK AT STATE'S EXHIBIT NO. 9. DO YOU RECOGNIZE THAT PICTURE?
A YES. YES.
MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH NO. 9 TO THE JURY?
THE COURT: YES, MA'AM.
(PAUSE.)
Q WOULD YOU PLEASE SHOW THE JURY WHAT THIS IS A PICTURE OF?

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A THIS IS MY HOUSE. THIS IS MY NEIGHBOR'S HOUSE. I WAS THIS FAR. I RUN ALL THE WAY BACK HERE AND BACK HERE. AND I WAS HERE. AND I SAW THE WHITE TRUCK A LITTLE FARTHER. AND -- AND -- AND BECAUSE THE NEW HOUSE IS JUST IN FRONT OF HERE, MY FIRST THOUGHT WAS USE A STONE OR BRICK OR SOMETHING, BREAK THE WINDOW AND PRAY FOR THE POLICE. BUT WHEN I WAS HERE, I SAW THE WHITE TRUCK A LITTLE FARTHER. AND I JUST STOPPED AND TRIED TO BE SURE THAT THEY MIGHT BE HERE ONE OF THEM. AND WHEN I REALIZE THAT THEY WERE WHITE GUYS, I JUST -- I JUST ASKED FOR HELP. THANK GOD, THEY HELP ME. THEY HELP ME.

Q [redacted], DO YOU RECOGNIZE NO. 5 AND NO. 6?

A THIS IS MY HOUSE. THIS IS MY HOUSE.

MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH 5 AND 6 TO THE JURY?

THE COURT: YES, MA'AM.

(PAUSE.)

Q [redacted], WILL YOU PLEASE SHOW THE JURY WHERE YOUR FRONT DOOR IS?

A RIGHT HERE.

Q AND WHERE ABOUT WAS THE OTHER HOUSE YOU WERE -- YOU WENT AROUND AND YOU WERE TRYING TO RUN TO?

A WHERE ABOUT -- DID YOU ASK ME TO SHOW WHERE ---

Q YES.

A AS I TOLD BEFORE, I RUN BACK THERE. THE NEWER HOUSE

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IS ABOUT HERE. IN FRONT OF THESE TWO HOUSES.
Q IS THIS YOUR FRONT DOOR?
A YES. I SAW THIS GUY FROM THE WINDOW. AND I THOUGHT HE WAS NEED HELP.
Q DO YOU RECOGNIZE STATE'S EXHIBIT NO. 8?
A IT'S THE STREET. THE STREET.
THE COURT: KEEP YOUR VOICE UP.
A MY HOUSE.
THE COURT: KEEP YOUR VOICE UP.
A IT'S CUFFY STREET WHERE I USED TO LIVE.
Q WHAT IS THAT?
A IT'S MY HOUSE.
MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH STATE'S 8?
THE COURT: YES, MA'AM.
(PAUSE.)
Q OKAY. WHAT IS THAT A VIEW OF?
A IT'S -- IT'S A STREET -- CUFFY IS THIS. AND THIS SIDE IS -- THERE IS A SIGN HERE. AND THIS IS CUFFY. HERE'S A STREET, IT'S CUFFY ROAD. I LIVE HE[redacted]
Q WHERE WAS THE WORKERS THAT YOU RAN TO? WHERE WERE THE WORKERS THAT YOU RAN TO?
A WELL, MAYBE I CAN USE THIS. THEY WERE I BELIEVE KIND OF HERE. I WAS -- I WAS HERE. AND I WAS -- WHEN I SAW THE WORKERS, I SAW THE WHITE TRUCK AND I STOPPED. AND WHEN I

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SAW THEY WERE WHITE GUYS, I -- I -- I FELT COMFORTABLE, AND I ASKED FOR HELP. IT'S NOT BECAUSE OF THEY -- THEY ARE WHITE OR BLACK. I ---

MS. SMART: OBJECTION, YOUR HONOR. SHE'S NARRATING. IT'S NOT SUPPOSED TO BE WHITE OR BLACK. IT'S NOT RELEVANT.

THE COURT: ALL RIGHT. I'M NOT SURE WHAT THE OBJECTION IS. IS YOUR OBJECTION ON THE BASIS OF RELEVANCE OR WHAT?

MS. SMART: SHE'S NARRATING AGAIN. SHE DIDN'T EVEN ANSWER THE SPECIFIC QUESTION. I DON'T EVEN KNOW IF A QUESTION WAS ASKED. SHE'S TELLING A STORY.

MS. MILLICAN: YOUR HONOR, I ASKED THE VICTIM EXACTLY WHERE THE WORKERS WERE IN RELATION TO HER AND TO SHOW THE JURY BASED ON THE PHOTO AND THE DIAGRAM.

THE COURT: OBJECTION IS OVERRULED. SHE'S ENTITLED TO TELL WHAT HAPPENED IN HER OWN WORDS.

MS. MILLICAN: THANK YOU, YOUR HONOR.

A THE PEOPLE WERE WORKING HERE. THE PEOPLE WAS WORKING HERE. AND I JUST RUN ASKING FOR HELP, AND THEY HELP ME.

Q OKAY. [redacted] CAN YOU TELL THE JURY WHAT THIS PICTURE IS OF?

A IT'S MY HOUSE. THIS IS THE DOOR THAT I USE.

Q WHICH DOOR?

A THIS DOOR.

Q IS THAT A BACK DOOR OR FRONT DOOR?

A BACK DOOR. THE FRONT DOOR IS THIS SIDE.

Q *WHICH DOOR DID YOU RUN OUT OF?*

A THIS DOOR. I RUN, RUN, RUN. I NEVER TURN MY FACE BACK.

Q [redacted], LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 1, NO. 2 AND NO. 3.

A THE ---

REPORTER: I'M SORRY. I'M HAVING TROUBLE HEARING HER.

THE COURT: ALL RIGHT. KEEP YOUR VOICE UP. AND THAT'S WHAT I WANT YOU TO TELL ME, MS. RUTLEDGE. ANY TIME YOU HAVE ANY TROUBLE HEARING HER, LET ME KNOW.

A THE PICTURES ARE MY FINGER SHOWING THE BITE THAT HE MADE ON MY FINGERS.

MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH 1 THROUGH 3 TO THE JURY?

THE COURT: YOU MAY.

(PAUSE.)

THE COURT: [redacted], LET ME TELL YOU. WHEN YOU GO OVER TOWARD THE SET OVER HERE, KEEP YOUR VOICE UP BECAUSE THIS LADY HAS TO TAKE DOWN EVERYTHING THAT IS SAID. OKAY?

Q COULD YOU PLEASE TELL THE JURY WHERE THIS PICTURE WAS TAKEN?

A I WAS IN MY HOUSE IN MY KITCHEN. THIS IS -- THIS IS ALL MY KITCHEN.

Q WHERE WAS YOUR TELEPHONE?
A IT WAS ABOUT HERE. AND THIS IS THE PAPER AND PENCIL THAT I -- THAT WAS HERE. IT WAS HERE. AND MY -- MY PAPER AND PENCIL WAS HERE. WHEN I JUST -- WHEN I JUST TURNED MY BACK ON HIM, TRYING TO REACH PAPER AND PEN[redacted] TO TAKE HIS MESSAGE, WHEN I TURN MY FACE TO HIM AGAIN, HE COCK THE GUN AND PUT THE GUN IN FRONT OF MY FACE.
Q WHAT ARE YOU SHOWING THE PHOTOGRAPHER IN THIS PICTURE?
A MY FINGER WHEN WE WERE FIGHTING, HE BITE MY FINGER. AND I WAS SHOWING MY -- MY -- THE BITE ON MY FINGER.
Q CAN YOU SHOW ON THIS PICTURE -- THE FOCUS ISN'T GOOD. BUT CAN YOU SHOW ON THIS PICTURE WHERE THE BITE WAS -- THE BITE MARK WAS?
A YES, WHEN I -- YES, IT'S HERE. WHEN -- WHEN I TRIED TO PUT HIS FACE FAR AWAY FROM MY FACE, HE -- HE CAUGHT MY FINGER IN HIS MOUTH AND BITE ME VERY HARD IN ORDER TO SUBMIT MYSELF.
Q WHAT IS THAT A [redacted]
A AGAIN, THE BITE -- WHERE HE BITE.
Q OKAY. IF YOU'D TAKE THE STAND BACK.
(THE WITNESS RETURNS TO THE WITNESS STAND.)
Q ANA, DID THE DEFENDANT HAVE YOUR PERMISSION TO COME INTO YOUR HOUSE AND TO STAY AS LONG AS HE WANTED?
A NO.
Q DID THE DEFENDANT HAVE PERMISSION TO COME IN YOUR

HOUSE AND GO WHEREVER HE WANTED TO INSIDE YOUR HOUSE?

A NO.

Q DID THE DEFENDANT HAVE YOUR PERMISSION TO GO BACK INTO YOUR BEDROOM?

A NO.

Q DID YOU WANT TO HAVE SEX WITH THE DEFENDANT?

A NO.

Q DID HE PUT HIS PENIS INTO YOUR VAGINA?

A YES.

Q DID HE PUT HIS FINGERS IN YOUR VAGINA?

A YES.

Q AND DID HE HAVE PERMISSION TO DO THAT?

A NO.

MS. MILLICAN: NOTHING FURTHER FROM THE STATE OF THIS WITNESS AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

LADIES AND GENTLEMEN AND MS. SMART, I THINK BEFORE GOING TO CROSS EXAMINATION, IT WOULD BE A GOOD IDEA TO TAKE OUR MORNING RECESS AT THIS TIME. AND SO WE ARE GOING TO DO THAT.

LET ME JUST MENTION A COUPLE OF THINGS TO YOU. AS I TOLD YOU EARLIER, YOU MAY TAKE NOTES TO HELP YOU REMEMBER WHAT THE WITNESS SAID. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF. THESE NOTES ARE FOR YOUR OWN PERSONAL USE AND ARE NOT TO BE SHARED WITH OTHER MEMBERS OF THE

Case# [redacted]

JURY.

WHILE YOU MAY USE THEM TO REFRESH YOUR MEMORY DURING DELIBERATIONS, PLEASE REMEMBER THAT ANY DISPUTE AMONG THE JURORS AS TO WHAT A WITNESS SAID SHOULD BE RESOLVED BY ASKING THE COURT REPORTER TO PLAY BACK THE PARTICULAR PORTION OF THE TESTIMONY FOR THE BENEFIT OF THE JURY.

BUT I WILL ALSO TELL YOU THAT THERE IS NO TRIAL TRANSCRIPT AVAILABLE FOR YOUR USE OF THE EVIDENCE THAT HAS BEEN PRESENTED, AND YOU WILL NOT HAVE A WRITTEN TRANSCRIPT OF THE TRIAL TO CONSULT. AND IT IS DIFFICULT AND TIME CONSUMING FOR THE COURT REPORTER TO READ BACK OR PLAY LENGTH TESTIMONY.

SO I URGE YOU TO PAY CLOSE ATTENTION TO THE TESTIMONY AS IT IS GIVEN.

BUT WITH REGARD TO THE NOTES, I WOULD FURTHER TELL YOU THAT WHEN YOU LEAVE AT NIGHT -- AND THIS CASE WILL RUN OVER THE EVENING RECESS -- YOUR NOTES SHOULD BE LEFT IN THE JURY ROOM, AND I WOULD INSTRUCT YOU THAT THE JUROR'S NOTES SHOULD NOT BE GIVEN ANY GREATER WEIGHT THAN THE RECOLLECTION OR JUDGMENT OF ANY OTHER JURORS. IT IS ESSENTIAL THAT THE RECOLLECTION OF INDIVIDUAL JURORS BE CONSIDERED AS RELIABLE AS THE NOTES RECORDED BY ANY OTHER JUROR.

NOW WHAT I'M GOING TO ASK YOU TO DO NOW -- OF COURSE, YOU'RE NOT SUPPOSED TO DO ANY DELIBERATIONS NOW. I'M GOING

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TO ASK YOU TO TAKE YOUR NOTE PADS. AND IF YOU WILL, TURN THEM OVER AND PUT YOUR JUROR NUMBER ON THE BACK AND SIMPLY LEAVE THEM IN YOUR SEATS WHILE WE TAKE THIS RECESS, AND THEN PICK THEM BACK UP WHEN WE COME BACK IN. AND THEN WE WILL FOLLOW THAT PROCEDURE DURING THE DAY. BUT IF IT'S A [redacted], I WILL HAVE THE COURT BAILIFFS COLLECT THE NOTES AND GIVE THEM BACK TO YOU.

AND I WILL ASSURE YOU THAT NO ONE WILL SEE YOUR NOTES, INCLUDING THE BAILIFFS, DEFENSE COUNSEL, NOR ME. THESE ARE STRICTLY CONFIDENTIAL, STRICTLY FOR YOUR USE IN RECALLING THE TESTIMONY OF THIS CASE AS WE GO THROUGHOUT THE TRIAL.

BUT FOR THIS RECESS IF YOU'LL JUST PUT YOUR NUMBER -- YOU DON'T EVEN NEED TO PUT YOUR NAME. BUT IF YOU'LL JUST PUT YOUR NUMBER ON THE BACK OF THE PAD, LEAVE THEM IN YOUR SEATS, AND THEN PICK THEM BACK UP WHEN YOU COME BACK IN.

WITH THAT THEN, I AM GOING TO TAKE A MORNING RECESS AT THIS TIME FOR ABOUT 10 MINUTES. JUST RELAX. YOU CAN TALK ABOUT ANYTHING YOU WANT TO TALK ABOUT, BUT DON'T TALK ABOUT THIS CASE. OF COURSE, ANY DISCUSSION OF THIS MATTER IS PREMATURE ON YOUR PART.

THANK YOU. YOU MAY GO WITH THE BAILIFF TO THE JURY ROOM.

(THE JURY RETIRES TO THE JURY ROOM AT 10:55 A.M.)

THE COURT: ANY OBJECTION TO MY INSTRUCTIONS WITH REGARD TO THE NOTE TAKING ON BEHALF OF THE STATE, MS.

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MILLICAN?

MS. MILLICAN: NO, YOUR HONOR.

THE COURT: ON BEHALF OF DEFENSE, MS. SMART?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. WE WILL TAKE A RECESS AT THIS TIME AND I WOULD TELL THE STATE AND [redacted] THAT DURING THE RECESS YOU SHOULD NOT DISCUSS THIS CASE WITH YOUR LAWYERS AT ALL OR SHOULD NOT DISCUSS YOUR TESTIMONY AT ALL. JUST RELAX FOR A FEW MINUTES, BUT DON'T TALK ABOUT THIS CASE FOR THE NEXT 15 MINUTES.

MS. SMART HAS THE RIGHT TO CROSS EXAMINE YOU, SO YOU SHOULD NOT DISCUSS YOUR TESTIMONY WITH ANYONE OVER THE NEXT 15 MINUTES. ALL RIGHT. THANK YOU, YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: ALL RIGHT. IT IS 5 MINUTES UNTIL 11:00. LET'S BE READY TO RESUME PLEASE AT 10 MINUTES AFTER 11:00. THANK YOU.

(A RECESS WAS TAKEN.)

THE COURT: LET'S GET MR. JOHNSON BACK IN THE COURTROOM PLEASE, AND LET ME SEE COUNSEL AT SIDE BAR.

(A SIDE BAR CONFERENCE WAS HELD OFF THE RECORD.)

(THE DEFENDANT ENTERS THE COURTROOM.)

THE COURT: LET THE RECORD REFLECT WE'RE BACK ON THE RECORD WITH REGARD TO STATE VERSUS JOHNSON. I DISCUSSED A MATTER WITH COUNSEL AT THE SIDE BAR, AND WE WANT TO TAKE UP

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THE MATTER THAT JUROR NO. 112 BROUGHT TO OUR ATTENTION AND I WANT TO DO IT ON THE RECORD, BUT I'M NOT GOING TO DO IT IN OPEN COURT. IT'S GOING TO BE LIKE AN IN CHAMBERS HEARING, BUT WE WILL DO IT WITH MS. RUTLEDGE TAKING THIS DOWN.

IF YOU WILL BRING JUROR NO. 112 IN PLEASE.

(THE JUROR ENTERS THE COURTROOM.)

THE COURT: THE BAILIFF BROUGHT TO MY ATTENTION THAT YOU INDICATED THAT YOU RECOGNIZED THE VICTIM WHEN SHE TESTIFIED?

JUROR: YES.

THE COURT: JUST TELL ME.

JUROR: I'M SORRY TO TAKE UP YOUR HONOR'S TIME.

THE COURT: THAT'S EXACTLY WHAT WE WANT YOU TO DO.

JUROR: I WORK AT THE MENTAL HEALTH CENTER IN RIDGELAND, JASPER COUNTY ---

REPORTER: I'M SORRY.

JUROR: I SEE A LOT OF PEOPLE. AND SHE LOOKS FAMILIAR TO ME, BUT I CAN'T PLACE HER. I WANTED TO LET YOU KNOW THAT SHE MAY HAVE BEEN A CLIENT OF OURS OR MAYBE NOT.

THE COURT: THAT'S GOOD. THAT'S EXACTLY THE KIND OF THING WE WANT TO KNOW. I APPRECIATE YOU BRINGING THAT TO OUR ATTENTION. FROM WHAT I GATHER YOU'VE TOLD ME, YOU DON'T KNOW HER PERSONALLY OR HAVE ANY ---

JUROR: NO.

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THE COURT: --- PERSONAL CONTACT WITH HER, BUT SHE COULD HAVE BEEN A CLIENT THERE.

JUROR: MAY BE A CLIENT.

THE COURT: WOULD THIS IN ANY WAY PREVENT YOU FROM BEING OBJECTIVE IN THIS CASE?

JUROR: NO.

THE COURT: WOULD YOU BE ABLE TO PUT THAT ASIDE AND DECIDE THIS CASE FAIRLY AND OBJECTIVELY?

JUROR: YES.

THE COURT: OKAY. AND YOU DON'T SEE THAT AS ANY KIND OF A CONFLICT?

JUROR: I DON'T, NOT AT THIS POINT.

THE COURT: THANK YOU, SIR, THAT'S WHAT WE WANT YOU TO DO BY BRINGING THAT TO OUR ATTENTION. IF YOU COULD JUST GO OUT AND HAVE A SEAT IN THE JURY ROOM.

JUROR: OKAY.

THE COURT: THANK YOU.

(THE JUROR EXITS THE COURTROOM.)

THE COURT: ANY MOTIONS BY THE STATE REGARDING THIS JUROR?

MS. MILLICAN: THE STATE IS VERY CONCERNED THAT HE THINKS THAT SHE WAS A MENTAL HEALTH PATIENT, BEING A JUROR THAT HE THINKS SHE MAY HAVE MENTAL ISSUES.

THE COURT: ANY MOTIONS?

MS. MILLICAN: THE STATE WOULD MOVE, I GUESS, TO HAVE

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THIS JUROR EXCUSED.

THE COURT: WHAT'S THE DEFENSE POSITION?

MS. SMART: YOUR HONOR, HE SAID THAT HE DOESN'T -- HE MAY RECOGNIZE HER, HE MAY NOT HAVE RECOGNIZED HER. AND HE SAID THAT HE CAN BE FAIR AND IMPARTIAL, SO I HAVE NO PROBLEMS WITH THIS JUROR, AND I WOULD OBJECT TO HIM BEING REMOVED.

THE COURT: I'M GOING TO DE[redacted] I THINK THAT HE DOESN'T EVEN KNOW IF SHE'S EVER BEEN A CLIENT THERE. HE JUST KNOWS THAT PEOPLE IN THIS SITUATION MAY BE CLIENTS, BUT HE DOESN'T EVEN KNOW SHE'S EVER BEEN THERE. HE JUST SAID THAT SHE COULD HAVE BEEN BECAUSE OF HER LOCATION. AND I DON'T THINK THAT THERE IS ANY CONFLICT WHATSOEVER. AND SO I'M GOING TO DENY THE MOTION AND CONTINUE HIM ON THE JURY.

MS. MILLICAN: THANK YOU, JUDGE.

(PAUSE.)

THE COURT: ALL RIGHT. THE MATTER OF THE JUROR'S COMMUNICATION WITH THE BAILIFF HAS BEEN TAKEN UP ON THE RECORD AND HAS BEEN HANDLED BY THE COURT WITH COUNSEL PARTICIPATING IN THE HEARING, AND THE JUROR FOR THE REASONS PUT ON THE RECORD -- THE JUROR WILL BE CONTINUED ON THE CASE AS A JUROR -- AS ONE OF THE PRINCIPLE JURORS.

ALL MOTIONS ARE NOTED AND THAT'S WHY I WANTED TO DO IT ON THE RECORD.

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ALL RIGHT. ANYTHING BEFORE WE BRING THE JURY IN ON BEHALF OF THE STATE, MS. MILLICAN? ANYTHING BEFORE WE BRING THE JURY IN?

MS. MILLICAN: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. DEFENSE?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE. HAVE [redacted] COME BACK AROUND PLEASE.

(THE WITNESS RETURNS TO THE WITNESS STAND.)

THE COURT: WHEN THE JURY COMES BACK, THE STATE HAS ASKED ALL THE QUESTIONS THAT THEY'RE GOING TO ASK OF YOU AT THIS TIME. AND NOW MS. SMART WILL HAVE THE RIGHT TO ASK ANY QUESTIONS THAT SHE WISHES TO ASK. OKAY.

MS. SMART: YOUR HONOR, BEFORE THE JURY COMES IN. IF ONE OF THE BAILIFFS BRING THE DIAGRAM.

THE COURT: YOU WANT IT BACK IN FRONT OF THE JURY, WE'LL PUT IT BACK UP WHEN THEY GET BACK IN.

(THE JURY RETURNS TO THE COURTROOM AT 11:18 A.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. LADIES AND GENTLEMEN, WE ARE NOW READY TO RESUME. WE DID HAVE ONE MATTER THAT WE NEEDED TO ATTEND TO AND THAT HAS BEEN TAKEN CARE, AND WE'RE READY TO RESUME.

THE STATE HAS FINISHED AND COMPLETED THEIR DIRECT EXAMINATION OF THIS WITNESS, AND NOW THE DEFENSE WILL HAVE

[redacted] – CROSS BY MS. SMART [redacted]

THE RIGHT TO CROSS EXAMINE. MS. SMART.

MS. SMART: THANK YOU, YOUR HONOR.

CROSS EXAMINATION BY MS. SMART:

Q [redacted], DO YOU REMEMBER SPEAKING WITH OFFICERS FROM THE BEAUFORT COUNTY SHERIFF'S OFFICE, IN PARTICULAR OFFICER MERRILL AND INVESTIGATOR CHAPMAN?

A YES.

Q AND DO YOU ALSO REMEMBER SPEAKING WITH THE TWO GENTLEMEN THAT WERE OUTSIDE THE ROAD, MR. FRANK DILSAVER AND MR. ROBERT PATE?

A YES.

Q AND YOU ALSO REMEMBER GIVING A STATEMENT TO NURSE CLEGG [redacted]HE HOSPITAL WHEN YOU WERE AT THE HOSPITAL?

A YES.

Q AND IN THE REPORT THAT I HAVE, I HAVE THREE DIFFERENT STATEMENTS THAT YOU GAVE TO LAW ENFORCEMENT. DO YOU REMEMBER GIVING THREE DIFFERENT STATEMENTS TO LAW ENFORCEMENT? WRITTEN STATEMENTS?

A NO.

Q [redacted]MENTS DID YOU PROVIDE TO LAW ENFORCEMENT?

A ONE.

Q YOU PROVIDED ONE WRITTEN STATEMENT. AND DID YOU SEE COPIES OF TRANSLATED STATEMENTS?

A I MADE IN SPANISH.

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Q YOU DID ONE STATEMENT IN SPANISH?
A YES.
Q AND YOU SUBMITTED A STATEMENT TO OFFICER MERRILL, AND THAT WAS A SPANISH STATEMENT? [redacted]
A I MADE IN SPANISH AND THEY HAVE SOMEBODY TO TRANSLATE.
Q AND WHEN INVESTIGATOR CHAPMAN CAME TO SEE YOU, HE ASKED YOU FOR ANOTHER STATEMENT, DIDN'T HE?
A I REMEMBER HAVING STATEMENT IN MY HOME AND HAVE ANOTHER IN HOSPITAL.
Q OKAY. SO YOUR RECOLLECTION YOU HAVE ONE WRITTEN STATEMENT THAT YOU WROTE IN SPANISH?
A YES.
Q AND ISN'T IT TRUE THAT YOUR SISTER, [redacted], TRANSLATED A STATEMENT TO LAW ENFORCEMENT FOR YOU?
A I HAVE TWO SISTERS WHO GAVE ME SUPPORT -- THIS THING. I -- I REMEMBER I WAS ONE OF THEM WHO WERE WITH ME THIS DAY.
Q OKAY. SO YOU DON'T RECALL THEN ON FEBRUARY THE 7TH, 2006 ONE STATEMENT BEING GIVEN TO CORPORAL MERRILL AND THEN ANOTHER STATEMENT TRANSLATED BY [redacted] AND THEN ANOTHER STATEMENT?
A I REMEMBER THAT WHEN I WAS THERE AND OVER TO -- TO A TRANSLATION IN THIS PARTICULAR MOMENT.
Q OKAY. I WANT TO ASK YOU ABOUT THE DIFFERENT STATEMENTS THAT I HAVE IN THE PACKET GIVEN TO ME BY LAW

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ENFORCEMENT. AND I'M GOING TO ASK YOU A SERIES OF QUESTIONS, SO IF YOU'LL JUST BE PATIENT WITH ME.

DO YOU REMEMBER GIVING A STATEMENT TO INVESTIGATOR MERRILL WITH REGARD TO WHAT HAPPENED? HE WAS THE FIRST INVESTIGATOR ON THE SCENE. DO YOU REMEMBER WHAT YOU TOLD HIM?

A HIM, HE ASKED ME ---

Q JUST DO YOU REMEMBER WHAT YOU TOLD HIM?

A YES.

Q NOW, THE FIRST THING I WANT TO TALK TO YOU ABOUT IS WHAT YOU TOLD OFFICER MERRILL. ISN'T IT TRUE THAT YOU TOLD OFFICER MERRILL THAT WHEN SOMEONE KNOCKED ON THE DOOR, YOU LOOKED THROUGH THE WINDOW, YOU SAW A MAN. BUT BEFORE YOU SAW THAT MAN, YOU SAW TWO PEOPLE WORKING ON THE SIDE OF THE ROAD?

A YES.

Q AND ISN'T IT ALSO TRUE THAT WHEN YOU SPOKE TO INVESTIGATOR CHAPMAN, YOU TOLD INVESTIGATOR CHAPMAN THAT WHEN SOMEONE KNOCKED ON YOUR DOOR, YOU DIDN'T SEE TWO PEOPLE WORKING?

A THIS WAS -- IS FALSE. I -- I TOLD HIM THE SAME.

Q YOU TOLD INVESTIGATOR CHAPMAN THE SAME THING?

A (NODS HEAD.)

Q SO YOUR TESTIMONY TODAY IS THAT WHEN YOU GAVE YOUR STATEMENT TO INVESTIGATOR CHAPMAN, INVESTIGATOR CHAPMAN IS

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THE SECOND POLICE OFFICER THAT CAME AND TALKED TO YOU, THAT YOU TOLD HIM THAT YOU SAW THE TWO WHITE MEN BEFORE YOU OPENED THE DOOR TO ALLOW THIS PERSON IN?

A YES.

Q OKAY. WHEN YOU WERE AT THE HOSPITAL, YOU TOLD A NURSE WHAT HAPPENED AND YOU GAVE A DESCRIPTION TO THE NURSE ABOUT YOUR ASSAILANT. DO YOU REMEMBER WHAT YOU TOLD THE NURSE?

A YES.

Q DO YOU REMEMBER TELLING THE NURSE THAT THERE WAS A LIGHT SKINNED AFRICAN AMERICAN MAN THAT CAME TO YOUR DOOR?

A THERE WAS WHAT?

Q A LIGHT SKINNED AFRICAN AMERICAN MAN CAME TO YOUR DOOR?

A NO.

Q YOU DIDN'T -- YOU DON'T RECALL TELLING THE NURSE THAT?

A NO.

Q NOW, OFFICER MERRILL ASKED YOU TO DESCRIBE THE SUSPECT TO HIM. AND DO YOU REMEMBER TELLING OFFICER MERRILL THAT THERE WAS A MEDIUM COMPLEXION BLACK MAN COMING TO YOUR DOOR?

A I REMEMBER I DESCRIBE THE MAN, AND I REMEMBER -- COULD YOU ASK ME AGAIN.

Q DO YOU REMEMBER TELLING OFFICER MERRILL IN YOUR DESCRIPTION OF THE SUSPECT, YOU SAID THAT HE WAS A MEDIUM COMPLEXION BLACK MAN?

A NO.
Q HOW DID YOU DESCRIBE THE SUSPECT TO OFFICER MERRILL?
A KIND OF TALL, STRONG.
Q WHAT OTHER PHYSICAL DESCRIPTION DID YOU GIVE?
A I TOLD HIM WHAT HE WAS WEARING. I TOLD HIM THAT WAS A BLACK MAN, BUT NO REALLY BLACK. I TOLD HIM THE MAN WAS VERY STRONG, BUT WAS NO FAT MAN.
Q DO YOU REMEMBER BEING GIVEN A PHOTO LINE-UP BY INVESTIGATOR CHAPMAN?
A I DID.
Q AND IN THAT PHOTO LINE-UP WERE YOU TOLD THAT THE ASSAILANT MIGHT HAVE BEEN IN THERE?
A GO AGAIN?
Q WHEN THEY SHOWED YOU THE PICTURES ---
A YES.
Q --- DID THEY TELL YOU THAT YOUR ATTACKER WAS IN THAT PICTURE?
A COULD YOU PLEASE ASK TO TRANSLATE -- SOMEONE TO TRANSLATE FOR ME.
THE COURT: ALL RIGHT. HERE'S YOUR TRANSLATOR RIGHT HERE. SHE CAN TRANSLATE IT.
INTERPRETER: THE TRANSLATOR ASKS FOR A REPETITION OF THE QUESTION.
THE COURT: ASK THE QUESTION AGAIN PLEASE, MS. SMART.
Q DID INVESTIGATOR CHAPMAN TELL YOU THAT THE PERSON WHO

ATTACKED YOU -- PICTURE WAS IN THE SET OF PICTURES THAT YOU LOOKED AT?

A YES, HE -- HE SHOWED ME A BOOK OF PICTURES.

(THE TRANSLATOR SPEAKS WITH WITNESS.)

INTERPRETER: NO.

A NO.

Q NOW, THIS MORNING YOU POINTED OVER THERE TO MR. JOHNSON SEVERAL TIMES.

A YES.

Q DOES HE LOOK THE SAME WAY TODAY THAT HE DID IN FEBRUARY OF LAST YEAR?

A HE JUST LOOKS -- HE -- HE'S BIGGER NOW. HE'S FAT.

Q HE'S FATTER NOW. BUT HE LOOKS -- HIS FACE LOOKS THE EXACT SAME WAY TODAY THAT IT DID THEN?

A HE WAS NO WEARING MUSTACHE AND HE WAS NO WEARING THE BEARD. HIS FACE WAS VERY BRIGHT, VERY CLEAN.

Q AND WHEN YOU SAW HIM TODAY, YOU IMMEDIATELY KNEW WHO HE WAS?

A YES.

Q YOU DIDN'T HESITATE AT ALL, YOU KNEW ---

A I KNOW.

Q --- THAT HE WAS THE PERSON?

A I KNOW. I KNOW.

Q AND WHEN YOU WERE SHOWN A PHOTO LINE-UP BY INVESTIGATOR CHAPMAN THE DAY THAT THIS INCIDENT OCCURRED,

YOU WEREN'T ABLE TO PICK MR. JOHNSON OUT OF THAT PHOTO LINE-UP, WERE YOU?

A TRUE.

Q IS IT THAT YOU DIDN'T RECOGNIZE HIM?

A IT WAS LOOKS FAT. AND WHEN HE ASSAULT ME WAS NOT AS FAT AS IN THE PICTURE, THE EXAMPLE.

Q SO THE PICTURE THAT YOU SAW OF MR. JOHNSON, THE PICTURES THAT YOU WERE SHOWN BY INVESTIGATOR CHAPMAN THE DAY OF THE INCIDENT, IS YOUR TESTIMONY TODAY THAT NONE OF THOSE PICTURES RESEMBLED MR. JOHNSON?

A LOOKS DIFFERENT -- IF I COULD COMPARE REAL PERSON WITH PICTURE.

Q YOU WERE JUST NOT ABLE TO PICK HIM OUT OF THAT PHOTO LINE-UP ON THAT DAY?

A NO.

MS. MILLICAN: OBJECTION, YOUR HONOR.

THE COURT: WHAT'S YOUR OBJECTION?

MS. MILLICAN: TO RELEVANCE. THIS WITNESS HAS NO KNOWLEDGE WHETHER OR NOT THE DEFENDANT'S PHOTO WAS IN THE LINE-UP TO BEGIN WITH. SO WHETHER OR NOT SHE COULD IDENTIFY THE DEFENDANT NOT KNOWING IF HE WAS IN IT HAS NO RELEVANCE.

THE COURT: THE OBJECTION IS OVERRULED. THIS IS CROSS EXAMINATION AS TO WHAT SHE CAN FIND FROM THE PHOTO LINE-UP. OBJECTION IS OVERRULED.

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Q LET'S MOVE ONTO YOUR -- WHEN YOU TESTIFIED ON DIRECT EXAMINATION YOU TOLD A STORY ABOUT WHAT HAPPENED, SO I'M GOING TO ASK YOU SPECIFIC QUESTIONS NOW ABOUT WHAT HAPPENED. THE FIRST QUESTION I WANT TO ASK YOU -- IT MAY SEEM AS THOUGH I'M BEING PETTY, BUT I JUST NEED TO ASK YOU LITTLE QUESTIONS.

NOW, WHEN YOU SPOKE TO INVESTIGATOR MERRILL, YOU INDICATED THAT YOU DIDN'T HESITATE TO OPEN THE DOOR BECAUSE YOU SAW THESE OTHER PEOPLE WORKING?

A TRUE.

Q YOU FELT LIKE IT WAS OKAY?

A TRUE.

Q DO YOU RECALL WHAT YOU TOLD THE NURSE AT THE HOSPITAL ABOUT OPENING THE DOOR FOR THE SUSPECT?

A I DON'T REMEMBER. I DON'T REMEMBER.

Q DO YOU RECALL TELLING THE NURSE THAT YOU ASKED THE SUSPECT FROM THE WINDOW WHAT HE WANTED, AND HE TOLD YOU THAT HE WANTED TO USE THE PHONE, AND ONLY AFTER HE TOLD YOU THAT HE WANTED TO USE THE PHONE THAT YOU OPENED THE DOOR FOR HIM. DO YOU RECALL TELLING THAT TO THE NURSE?

A I DON'T REMEMBER THAT.

Q YOU DON'T REMEMBER THAT. DO YOU RECALL TELLING THE NURSE THAT THIS PERSON THAT CAME TO YOUR HOUSE SIMPLY ASKED YOU FOR A PEN AND PAPER?

A GO AGAIN.

Q THE PERSON THAT KNOCKED ON THE DOOR ASKED YOU FOR A PEN AND PAPER. DO YOU RECALL TELLING THE NURSE AT THE HOSPITAL THAT AT ALL?

A I DON'T REMEMBER. I DON'T REMEMBER THAT.

Q LET'S TALK ABOUT THE PHONE. SO THIS MAN KNOCKS ON YOUR DOOR. EITHER YOU LET HIM IN -- AND NOW THERE'S THE ISSUE OF THE TELEPHONE. HE WANTS TO USE THE TELEPHONE. DO YOU RECALL TELLING OFFICER MERRILL THAT YOU GAVE THE SUSPECT THE TELEPHONE, THAT HE ASKED YOU TO USE THE TELEPHONE?

A NO.

Q WHAT DO YOU RECALL TELLING OFFICER MERRILL? OFFICER MERRILL WAS THE FIRST OFFICER THAT INTERVIEWED YOU.

A I -- I TOLD HIM THAT HE ASKED FOR THE PHONE. I SHOW HIM WHERE THE PHONE WAS. HE TOOK THE PHONE AND DIAL.

Q OKAY. NOW, DO YOU REMEMBER WHAT YOU TOLD INVESTIGATOR CHAPMAN WITH REGARD TO THE TELEPHONE?

A I DON'T KNOW. CAN I SAY SOMETHING?

Q SURE.

A I JUST CAN TELL YOU FOR SURE WHAT HAPPENED.

Q BUT YOU CAN'T RECALL WHAT YOU TOLD WHAT OFFICER ON THE DATE OF THE INCIDENT?

A I CAN'T TELL YOU FOR SURE THAT WHAT EXACTLY MY WORDS WERE.

Q OKAY. I'LL MOVE ONTO ANOTHER QUESTION. IN YOUR

WRITTEN STATEMENT, DO YOU RECALL -- HOW MANY TIMES DID MR. JOHNSON ATTEMPT TO USE YOUR TELEPHONE?

A HE DIALED TWICE.

Q AND LET'S TALK ABOUT MR. GREEN. YOU SAID THAT -- IN YOUR DIRECT TESTIMONY YOU SAID THAT HE ASKED YOU, DID YOU KNOW MR. GREEN; IS THAT CORRECT?

A YES.

Q AND YOU SAID THAT YOU DIDN'T KNOW MR. GREEN; IS THAT CORRECT?

A CORRECT.

Q NOW, IN YOUR DIRECT TESTIMONY YOU SAID THAT THE HOUSE ACROSS THE STREET WAS BEING BUILT; ISN'T THAT CORRECT?

A WAS BRAND NEW, BUT THE NEW NEIGHBOR WAS LIVING THERE.

Q THE NEW NEIGHBOR WAS LIVING THERE?

A YES.

Q BUT YOU DIDN'T KNOW THAT NEW NEIGHBOR'S NAME?

A NO.

Q OKAY. YOU DIDN'T KNOW THAT NEW NEIGHBOR'S NAME. BUT DO YOU RECALL TELLING OFFICER CHAPMAN THAT YOU TOLD YOUR ATTACKER THAT YOU WOULD TAKE A MESSAGE FOR MR. GREEN?

A I OFFER TO TAKE THE MESSAGE WAS WHEN THE TIME I TOOK PAPER AND -- AND -- AND PEN.

Q SO IT'S YOUR TESTIMONY THAT ALTHOUGH YOU DIDN'T KNOW WHO LIVED IN THE HOUSE NEXT DOOR AND YOU DIDN'T KNOW MR. GREEN AND THE PERSON THAT ASKED TO USE YOUR TELEPHONE

WANTED TO LEAVE A MESSAGE FOR MR. GREEN, YOU VOLUNTEERED TO TAKE THAT MESSAGE FOR MR. GREEN?

A SEE, HE DIAL TWICE AND NOBODY ANSWERED TO HIM, I OFFERED TO TAKE THE MESSAGE.

Q AND YOU INDICATED THAT WHEN HE DIALED, THERE WAS NO ANSWER. DO YOU RECALL TELLING OFFICER MERRILL THAT THERE WAS NO ANSWER?

A BECAUSE THERE WAS A MACHINE.

Q SO YOU TOLD OFFICER MERRILL THAT THERE WAS AN ANSWERING MACHINE?

A LIKE I TOLD YOU BEFORE, I CAN'T TELL YOU FOR SURE THE EXACTLY THE WORDS THAT I USED TO SAY.

Q OKAY. SO THIS ASSAILANT COMES TO YOUR HOUSE, USES THE TELEPHONE, THERE'S AN ANSWERING MACHINES BUT HE CHOOSES NOT TO LEAVE A MESSAGE ON THE ANSWER MACHINE, AND YOU OFFER TO TAKE A WRITTEN MESSAGE FOR MR. GREEN?

A YES, MA'AM.

Q NOW, LET'S TALK ABOUT YOU TURNING AROUND TO GET THIS PEN AND PAPER.

A YES, MA'AM.

Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL HOSPITAL, NURSE CLEGG I BELIEVE HER NAME IS, THAT THE SUSPECT ASKED YOU FOR A PIECE OF PAPER AND A PEN?

A NO.

Q YOU DON'T RECALL TELLING HER THAT?

A NO.
Q WHAT ABOUT OFFICER MERRILL, DO YOU RECALL TELLING OFFICER MERRILL THAT YOU VOLUNTEERED TO WRITE DOWN A NOTE FOR HIM IN CASE THE NEIGHBOR ACROSS THE STREET WHOSE NAME YOU WERE NOT SURE OF TURNED OUT TO BE MR. GREEN -- YOU VOLUNTEERED TO TAKE THIS MESSAGE?
A WELL, YES, MA'AM.
Q AND DO YOU RECALL TELLING IN YOUR WRITTEN STATEMENT YOU JUST WROTE, I TURNED TO GET A PEN AND PAPER?
A YES, MA'AM.
Q NOW, YOU TALKED TO LAW ENFORCEMENT ABOUT THIS ALLEGED GUN. DO YOU REMEMBER HOW YOU DESCRIBED THE GUN TO LAW ENFORCEMENT?
A YES.
Q WHAT DID YOU SAY THE GUN LOOKED LIKE?
A I TOLD HIM THAT IT WAS KIND OF -- THIS -- THIS FLAT -- FLAT GUN THAT MY ONE THING WAS SHOWING IT LOOKS LIKE GRAY. NOW I DON'T KNOW IT WAS BECAUSE OF THE TIME OR I DON'T KNOW. BUT IT WAS FLAT AND -- AND -- AND THIS KIND OF YOU COCK ON TOP.
Q I'M SORRY, I DIDN'T UNDERSTAND YOU. DID YOU SAY GRAY?
A DARK. I SAID DARK.
Q YOU SAID DARK. DO YOU REMEMBER WHETHER OR NOT YOU SAID IT WAS A REVOLVER?
A I JUST -- I JUST -- I BELIEVE I JUST SAID GUN, FLAT

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AND DARK.

Q YOU SAID YOU TOLD LAW ENFORCEMENT THAT THE GUN WAS FLAT?

A WHEN I TRIED TO DESCRIBE, I BELIEVE SO.

Q WHEN OFFICER MERRILL ASKED YOU ABOUT THIS INCIDENT, DO YOU REMEMBER TELLING HIM THAT HE PRODUCED THE PISTOL FROM BEHIND HIS BACK?

A I TOLD HIM THAT WHEN I TURN MY BACK TO PICK PENCIL AND PEN -- WHEN I JUST TURN MY FACE TO HIM AGAIN, HE COCK THE GUN AND POINTED IN MY FACE.

Q SO TODAY YOU'RE TELLING THIS COURT THAT YOU DIDN'T TELL OFFICER MERRILL THAT YOU SAW THE ASSAILANT TAKE THE GUN FROM HIS BACK AND POINT IT AT YOU?

A I -- I JUST REMEMBER TURN MY BACK TO PICK PENCIL AND PEN. AND WHEN I FACE HIM AGAIN, HE JUST COCK AND POINT AT ME.

Q OKAY.

MS. SMART: CAN I GET THE DIAGRAM PLEASE.

THE COURT: BRING THE DIAGRAM BACK IN FRONT OF THE JURY PLEASE.

(PAUSE.)

THE COURT: WOULD YOU LIKE THE WITNESS TO STEP DOWN, MS. SMART?

MS. SMART: YES, SIR.

THE COURT: ALL RIGHT. STEP DOWN, [redacted].

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

Q I'M GOING TO GIVE YOU THESE LITTLE ---

THE COURT: KEEP YOUR VOICE UP.

Q WHAT I'D LIKE YOU TO DO IS STICK THESE ON EVERY LOCATION I ASK YOU ABOUT.

A YES, MA'AM.

Q IF YOU WILL, PLACE THE FIRST STICKY TAG WHERE YOU WERE WHEN THE SUSPECT KNOCKED ON YOUR DOOR?

A (COMPLIED.) IN THE -- IN THE KITCHEN.

Q AND WHERE DID YOU FIRST SEE THE SUSPECT? WHERE WAS HE LOCATED WHEN YOU SAW HIM?

A (COMPLIED.)

Q AND COULD YOU JUST TELL THE JURY WHERE YOU PLACED THIS?

A SOMEBODY KNOCK THE DOOR. I WAS IN THE KITCHEN. I WALK HERE. I SAW THROUGH THE WINDOW. AND I WAS HERE, JUST IN FRONT OF THE DOOR.

Q AND WHEN HE CAME IN THE HOUSE, WHERE DID HE GO?

A I SHOW HIM WHERE THE PHONE WAS AND HE WALKED RIGHT HERE.

Q AND THAT WAS BY THE TABLE?

A YES.

Q AND YOUR TESTIMONY WAS THAT HE TOOK YOU TO THE BEDROOM. WHERE IS THE BEDROOM THAT HE TOOK YOU TO?

[redacted] I OFFERED TO TAKE MESSAGE AND TURNED MY BACK ON

HIM TO PICK PENCIL AND PEN, AND WHEN I TURN AGAIN, HE WAS THERE POINTING AT ME. SO HE ASKED ME TO GO TO THE BEDROOM. THIS WAY.

Q AND WHERE DID YOU GO IN THE BEDROOM?

A HE JUST --WHEN HE JUST ASKED ME TO MOVE, I -- I WENT FOR HIM AND HIS GUN.

Q WHERE DID YOU GO IN THE BEDROOM?

A I WENT HERE.

Q IS THERE A DOOR RIGHT HERE?

A YES, BUT IT'S OPEN.

Q OPEN. AND THIS IS YOUR BED. WHERE EXACTLY WERE YOU LAYING ON YOUR BED?

A RIGHT HERE.

Q SO YOU WERE ON THIS PART OF THE BED?

A YES.

Q AND YOU SAID THAT YOU STRUGGLED WITH THIS ASSAILANT. HOW FORCEFUL WAS THAT STRUGGLE?

A WITH THE GUN IN THE FACE.

Q YOU DIDN'T MOVE, YOU JUST STAYED IN THAT ONE SPOT?

A I ALWAYS WAS BEGGING HIM TO ---

Q BUT DID YOU MOVE OR DID YOU STAY IN ONE SPOT ---

A I WAS ---

Q --- ON THE BED?

A I WAS STANDING UP HERE, AND HE ASKED ME TO TAKE MY PANTS DOWN WHEN I WAS HERE.

Q AND YOU SAID THAT HE ASKED YOU TO LAY ON THE BED. WHERE ON THE BED DID YOU LAY?

A RIGHT HERE.

THE COURT: CAN YOU HEAR HER, MS. RUTLEDGE?

REPORTER: YES, SIR.

THE COURT: OKAY.

Q AND DURING THE COURSE OF THIS ENTIRE INCIDENT, YOU REMAINED IN THIS ONE SPOT?

A YES, AND HE WAS HERE WHERE I WAS -- WHEN I WAS HERE, HE WAS HERE.

Q SO WERE YOUR LEGS HANGING OFF THE BED OR WAS YOUR ENTIRE BODY ON THE BED?

A MY LEGS WERE ON THE -- ON THE FLOOR, AND I JUST SIT.

Q SO WHEN YOU LAID BACK, YOUR LEGS WERE ACTUALLY HANGING OFF THE SIDE OF YOUR BED; IS THAT CORRECT?

A YES, I JUST WAS -- MY FEET WERE ON THE FLOOR AND MY BACK ON THE -- ON THE BED.

Q AT ANY TIME DID HE LAY ON YOUR BED?

A HE WAS ON THE TOP OF ME RIGHT HERE. MY LEGS WERE HERE. HIS LEGS WERE AGAINST MY LEGS HERE.

Q SO YOU'RE SAYING THAT HE WAS ON THE BED UP HERE OR HE WAS DOWN HERE?

A I -- I WAS HERE AND HE WAS STANDING UP IN FRONT OF ME. HIS LEGS AGAINST MY LEGS. AND -- AND I LAID DOWN ON THE BACK AND HE WAS ON ME HERE.

Q SO IT'S YOUR TESTIMONY THAT EVERYTHING THAT OCCURRED, OCCURRED IN THIS SECTION OF THE BED?
A YES, MA'AM.
Q IS THAT CORRECT?
A (NODS HEAD.)
Q YOU CAN TAKE THE WITNESS STAND.
(THE WITNESS RETURNS TO THE WITNESS STAND.)
THE COURT: MOVE THE DIAGRAM SO IT WON'T BE BETWEEN THE WITNESS AND THE JURY.
Q NOW I'M GOING TO TALK ABOUT WHAT HAPPENED ONCE YOU WERE IN THE BEDROOM. DO YOU RECALL TELLING OFFICER MERRILL THAT ONCE YOU WERE IN THE BEDROOM YOU ONLY PULLED YOUR PANTS DOWN TO YOUR THIGH; IS THAT CORRECT?
A YES, AT FIRST. YES.
Q AT FIRST?
A YES.
Q AND YOU INDICATED TO OFFICER MERRILL THAT HE CONTINUED TO TRY TO INSERT HIS PENIS INTO YOUR VAGINA?
A TRUE.
Q AND THIS BACK AND FORTH BETWEEN THE TWO OF YOU LASTED FOR ABOUT HOW LONG?
A IT WAS VERY FAST. I ALWAYS TOLD HIM ABOUT MY HUSBAND IS ABOUT TO COME.
Q YOU ALWAYS -- YOU ALWAYS TOLD THE SUSPECT ---
A I WAS TELLING HIM.

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Q NOW, DID YOU TELL OFFICER MERRILL THAT YOU TOLD THE SUSPECT THAT YOUR HUSBAND WAS ABOUT TO COME HOME?
A WHEN -- LIKE I TOLD BEFORE ---
Q YOU DON'T REMEMBER?
A --- I CAN'T TELL FOR SURE ---
Q BUT YOU ---
A --- WHAT ---
THE COURT: WAIT A MINUTE. LET HER ANSWER. LET HER ANSWER. GO AHEAD.
A I CAN'T TELL YOU FOR SURE WHICH MY WORDS WERE WHEN THE OFFICERS WERE DOING THEIR REPORT.
Q WHEN YOU TOLD THE SUSPECT THAT YOUR HUSBAND COMING, DO YOU RECALL TELLING OFFICER MERRILL THAT THE SUSPECT LEFT THE ROOM WHEN YOU TOLD HIM THAT YOUR HUSBAND WAS COMING?
A NO.
Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL HOSPITAL THAT WHEN YOU TOLD THE SUSPECT YOUR SPOUSE WAS COMING THAT HE RAN?
A THAT -- THAT HE WHAT?
Q THAT THE SUSPECT RAN OUT OF THE HOUSE?
A NO, HE NEVER. NO.
Q HE NEVER RAN. BUT YOU NEVER TOLD THE NURSE AT BEAUFORT MEMORIAL HOSPITAL THAT?
A I DON'T -- I DON'T -- I DON'T THINK I -- I COULD TELL THAT. HE NEVER RUN.

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Q NOW, YOU'VE INDICATED THAT HE -- THE SUSPECT INSERTED HIS FINGERS INTO YOUR VAGINA?
A TRUE.
Q DO YOU RECALL SAYING THAT HE INSERTED HIS WHOLE HAND IN YOUR VAGINA?
A NO. FINGERS. I TOLD THEM HE USED THE FINGERS -- PUT HIS FINGERS.
Q DO YOU RECALL TELLING IN YOUR WRITTEN STATEMENT SAYING THAT HE USED GREAT FORCE INSERTING HIS HAND IN MY VAGINA AS IF HE WERE SEARCHING FOR SOMETHING?
A TRUE.
Q YOUR DESCRIPTION OF THE SUSPECT WAS THAT HE WAS STOCKY, CORRECT?
A HE WAS WHAT?
Q STOCKY. BIG?
A TRUE.
Q AND DID HE HAVE LARGE HANDS?
A IT DEPENDS.
Q BIG HANDS? DO YOU BRUISE EASILY?
A I WHAT?
Q DO YOU BRUISE EASILY?
A I CAN'T TELL YOU FOR SURE THAT. THIS DAY, THIS PARTICULAR TIME?
Q NO. IN GENERAL, DO YOU BRUISE EASILY? IF YOU BUMP YOUR LEG ON A TABLE WITH FORCE, WILL YOU GET A BRUISE?

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A I DON'T THINK SO.

Q YOU DON'T THINK SO. SO THERE'S ANY TRAUMA TO YOUR BODY, THERE WON'T BE BRUISING?

MS. MILLICAN: OBJECTION, YOUR HONOR. GENERALIZATION. AND I'M NOT EXACTLY SURE WHAT THE RELEVANCE IS.

THE COURT: ALL RIGHT. I'M GOING TO ALLOW IT, BUT IT'S NOT GOING ANY FURTHER. I'LL ALLOW THIS QUESTION. YOU MAY ANSWER THE QUESTION IF YOU CAN. IF YOU DON'T KNOW, YOU CAN ALSO ANSWER YOU DON'T KNOW.

A NO.

Q DID YOU HAVE ANY BRUISES ON YOUR BODY THIS PARTICULAR DAY?

A NO.

Q BUT IT IS YOUR TESTIMONY THAT THIS LARGE SUSPECT WITH LARGE HANDS HELD YOU DOWN ON THE BED, FORCED YOU TO HAVE SEX WITH HIM, BUT YOU WERE NOT BRUISED AT ALL?

A MA'AM, HE WAS ---

Q WERE YOU BRUISED AT ALL?

A NO, MA'AM.

Q THE ONLY INJURY THAT YOU COMPLAINED OF AT THE HOSPITAL WAS A BITTEN -- A BITE MARK ON YOUR FINGER?

A AND MY FEET WHERE HE -- IN MY FEET ALSO.

Q AND YOUR TOES; IS THAT CORRECT?

A YES.

Q BUT YOU DIDN'T HAVE ANY COMPLAINT ABOUT SORENESS OR

PAIN OR ANYTHING ---
A NO, MA'AM.
Q --- IN YOUR THIGH AREA?
A NO, MA'AM.
Q OR YOUR VAGINA AREA?
A NO, MA'AM.
Q AND THE DOCTOR DIDN'T TELL YOU THAT YOU HAD ANY TRAUMA TO YOUR VAGINA, DID THEY?
A NO, MA'AM.
Q AND IN FACT, THEY TOLD YOU THAT THERE WAS NO TRAUMA?
A TRUE.
Q NOW, DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL HOSPITAL THAT YOU WERE FORCED TO REMOVE YOUR PANTS AND YOUR UNDERWEAR?
A YES, MA'AM.
Q BUT YOU DON'T RECALL TELLING THE POLICE OFFICERS THAT YOU ONLY PULLED YOUR PANTS DOWN TO YOUR THIGHS, THAT YOU DID NOT REMOVE YOUR PANTS ALL THE WAY?
A CAN I SAY SOMETHING? I DID THAT AT FIRST, BUT I COULDN'T DEFEND MYSELF. I COULDN'T MOVE. WHEN THIS WAS HAPPENING, I DID MYSELF MOVE ALL MY PANTS DOWN IN ORDER TO FIGHT.
Q SO NOW YOUR TESTIMONY TODAY IS THAT YOU ACTUALLY PULLED YOUR PANTS ALL THE WAY DOWN?
A LIKE I TOLD YOU BEFORE, AT FIRST WHEN HE ASKED ME TO

PULL MY PANTS DOWN, WAS NOT COMPLETELY DOWN. BUT AT THE SAME TIME THAT WAS -- THAT HE WAS RAPING ME, I -- I -- I COULDN'T MOVE MYSELF IN ORDER TO DEFEND MYSELF, SO I PULLED ALL THE PANTS DOWN AND TRIED TO FIGHT.

Q YOU PULLED THEM ALL THE WAY OFF?

A YES, BECAUSE -- YES.

Q NOW, LET'S TALK ABOUT THE SUSPECT'S PANTS. YOU SAID THAT THEY HAD AN ELASTIC WAISTBAND?

A I SAID THAT HE WAS WEARING SPORT CLOTHES.

Q AND HE PLACED THE GUN IN THE BACK OF HIS PANTS?

A YES, MA'AM.

Q NOW, YOU INDICATED THAT HE NEVER REMOVED HIS PANTS; ISN'T THAT CORRECT?

A TRUE.

Q TELL THIS JURY HOW HE WAS ABLE TO PICK HIS PENIS OUT -- IN WHAT MANNER DID HE TAKE HIS PENIS OUT?

A HE PUT THE GUN BACK HERE AND TAKE HIS PART OUT.

Q SO HE JUST REACHED IN AND PULLED IT OUT?

A TRUE.

Q AND DO YOU RECALL WHETHER OR NOT THE SUSPECT EJACULATED?

A I TOLD THEM NO.

Q YOU TOLD THEM NO. WHO DID YOU TELL THEM NO?

A TO THE POLICE AND TO THE NURSE.

Q IS IT YOUR TESTIMONY TODAY THAT HE EJACULATED OR HE

DID NOT?
A HE DID NOT.
Q HE DID NOT EJACULATE?
A (SHAKES HEAD.)
Q NOW, YOU INDICATED DURING YOUR TESTIMONY THAT AT SOME POINT IN THE STRUGGLE THE SUSPECT LEFT THE BEDROOM?
A TRUE.
Q IS THAT CORRECT? AND WHEN HE LEFT THE BEDROOM, YOU TOLD OFFICER MERRILL THAT HE -- I'M SORRY, IN YOUR WRITTEN STATEMENT YOU SAID HE WALKED TOWARD THE KITCHEN AND HE SNATCHED THE PHONE CORD OFF THE WALL?
A TRUE.
Q DO YOU RECALL THAT?
A YES.
Q YOU TOLD OFFICER MERRILL THAT WHEN HE LEFT THE BEDROOM, HE WENT TO THE LIVING ROOM. DO YOU RECALL THAT?
A I DON'T REMEMBER THAT.
Q BUT YOU DIDN'T TELL OFFICER MERRILL ANYTHING ABOUT HIM SNATCHING THE PHONE CORD OUT OF THE WALL IN THE KITCHEN, DID YOU?
A I TOLD HIM THAT HE WENT TO THE KITCHEN AND PULLED THE PHONE DOWN.
Q YOU TOLD OFFICER MERRILL THAT?
A YES.
Q THEN YOU SAID THAT WHEN HE RETURNED TO THE BEDROOM, HE

WAS ONLY GONE FOR A SHORT PERIOD OF TIME; IS THAT CORRECT?

A HE GOT BACK AND I THOUGHT HE GO BACK TO SHOOT ME.

Q BUT HE WAS ONLY JUST GONE FOR A SHORT PERIOD OF TIME?

A ENOUGH TO SMASH THE -- THE DRAWERS AND ---

Q SMASH THE WHAT?

A TWO DRAWERS. HE OPENED TWO DRAWERS.

Q OH, HE OPENED TWO DRAWERS. YOU TOLD OFFICER MERRILL THAT WHEN HE CAME BACK TO THE BEDROOM, HE YANKED THE CORD OUT OF THE -- HE YANKED THE PHONE CORD FROM THE BEDROOM WALL AS WELL?

A YES.

Q SO YOU INDICATED THEN THAT THERE WERE TWO PHONES THAT WERE YANKED FROM THE WALL; IS THAT CORRECT?

A TRUE.

Q AND THAT THERE WERE TWO DRESSER DRAWERS THAT WERE OPENED; IS THAT CORRECT?

A TRUE.

Q DID YOU CLOSE ANY OF THE DRAWERS?

A NO.

Q SO UPON THE ARRIVAL OF LAW ENFORCEMENT, THEY WOULD HAVE NOTICED THAT TWO DRESSER DRAWERS WERE OPENED; IS THAT CORRECT?

A TRUE.

Q NOW, YOU INDICATED WITH REGARD TO THE DRESSER DRAWERS THAT HE RUMBLED THROUGH THE DRAWERS OR HE PUSHED HIS HANDS

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THROUGH THE DRAWERS AS IF HE WAS LOOKING FOR SOMETHING; IS THAT CORRECT?

A TRUE.

Q AND THE STATE GAVE YOU STATE'S EXHIBIT NO. 4, AND YOU INDICATED TO THE JURY THAT THIS WAS THE PICTURE OF THE DRAWER THAT WAS OPENED; IS THAT CORRECT?

A TRUE.

Q AND THIS IS THE DRAWER THAT WAS RUMPLED THROUGH AS IF HE WERE LOOKING FOR SOMETHING?

A THE FIRST TWO.

Q OKAY. AND THIS IS THE SAME DRESSER THAT TWO DRAWERS WERE OPENED?

A TRUE.

Q AND YOU DID NOT CLOSE ANY OF THE DRAWERS?

A I DID NOT TOUCH ANYTHING.

Q SO IT IS YOUR TESTIMONY TODAY THAT TWO DRAWERS WERE OPENED DURING THE COURSE OF THIS STRUGGLE?

A YES, MA'AM.

Q IN THIS PICTURE. AND THIS WOULD BE STATE'S EXHIBIT 4 WHICH HAS ALREADY BEEN PUBLISHED TO THE JURY.

NOW, DO YOU RECALL TELLING OFFICER MERRILL THAT -- BEFORE I ASK YOU THAT, LET'S TALK ABOUT YOUR HOUSE. YOU LIVE IN A SINGLE WIDE MOBILE HOME?

A YES.

Q AND YOU INDICATED THAT THE SUSPECT LEFT THE ROOM A

SECOND TIME, AND DURING THE TIME IN WHICH HE WAS GONE, YOU RAN OUT OF THE BACK DOOR; IS THAT CORRECT?

A TRUE.

Q AND YOU INDICATED THAT YOU DIDN'T KNOW WHERE THE SUSPECT WAS WHEN YOU RAN OUT OF THE DOOR?

A I NEVER TURN MY FACE BACK. I JUST ---

Q YOU NEVER TURNED YOUR FACE BACK.

A --- ESCAPE.

Q NOW, WHEN YOU LEFT THE HOUSE, WHOSE PANTS DID YOU HAVE ON?

A I HAD MY HUSBAND'S.

Q YOUR HUSBAND'S.

A HE WEARS VERY COMFORTABLE PANTS.

Q OKAY. SO JUST FOR CLARITY, THE PANTS THAT YOU INITIALLY HAD ON, YOUR TESTIMONY TODAY IS THAT YOU TOOK THOSE PANTS OFF?

A YES.

Q WHERE DID YOU PUT THEM WHEN YOU TOOK THEM OFF?

A I LEFT THE PANTS IN THE -- THE -- IN THE SAME PLACE WHEN -- WHEN HE ASSAULT ME.

Q SO THE PANTS ARE STILL IN THE BEDROOM?

A YES.

Q YOUR PANTS ---

A YES.

Q --- THAT YOU HAD ON WHEN THIS ALLEGED ATTACK OCCURRED

WERE LEFT IN THE BEDROOM?
A YES.
Q AND THEN YOU PUT YOUR HUSBAND'S PANTS ON?
A MY HUSBAND PANTS WERE ON THE FLOOR.
Q AND YOU PUT HIS PANTS ON AND YOU RAN OUT?
A THEY WERE ON THE FLOOR WHEN I WAS ON MY KNEES. WHEN HE COME BACK TO THE KITCHEN, I JUST PUT THE PANTS AND RUN AWAY.
Q DID YOU SEE HIM WHEN HE LEFT?
A NO. THE SECOND TIME WHEN HE GO BACK TO THE KITCHEN, I JUST ESCAPE. I NEVER TURN MY FACE. I THOUGHT HE WAS GOING TO SHOOT ME. I JUST RUN, RUN, RUN.
Q YOU DON'T KNOW WHEN HE LEFT YOUR HOUSE OR IF HE EVEN LEFT YOUR HOUSE, YOU DON'T KNOW THAT, DO YOU?
A NO. WHEN HE GO BACK, I ESCAPE.
Q SO YOU WERE IN YOUR BEDROOM. THE SUSPECT WAS SOME PLACE IN THE KITCHEN AREA, THE LIVING ROOM AREA, AND YOU WERE ABLE -- DO YOU KNOW WHETHER OR NOT HE WAS IN THE KITCHEN OR THE LIVING ROOM WHEN YOU RAN OUT OF THE HOUSE?
A I KNOW WHEN HE TURN HIS BACK ON ME ---
Q YOU LEFT?
A --- I JUST ESCAPE.
Q OKAY. NOW, LET'S TALK ABOUT HIM GETTING AWAY. DO YOU RECALL TELLING INVESTIGATOR CHAPMAN THAT YOU SAW THE SUSPECT LEAVE YOUR HOUSE ON A BICYCLE HEADING TOWARDS SCOTT

HILL ROAD?

A NO.

Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL HOSPITAL THAT THE MAN FLED ON A BIKE?

A CAN I SAY SOMETHING? I KNEW THAT HE LEFT.

Q YOU KNEW THAT HE LEFT?

A (NODS HEAD.)

Q TODAY YOUR TESTIMONY IS THAT YOU KNOW THAT HE LEFT YOUR HOUSE. BUT AT THE DATE OF THE INCIDENT, YOU RECALL TELLING THE NURSE THAT HE LEFT ON THE BIKE, TELLING OFFICER CHAPMAN THAT HE LEFT ON THE BIKE, BUT IN YOUR WRITTEN STATEMENT YOU SAID YOU DON'T KNOW HOW HE LEFT. YOU DON'T KNOW WHEN HE LEFT?

A TRUE.

Q DID YOU SEE HIM APPROACH YOUR HOUSE ON A BIKE?

A NO.

Q BUT YOU JUST KNOW THAT HE LEFT ON A BIKE?

A YES.

Q BUT YOU DIDN'T SEE HIM WHEN HE LEFT?

A NO.

Q DO YOU RECALL WHEN YOU WERE TALKING TO THE TWO MEN OUTSIDE, YOU TOLD THEM THAT THIS PERSON LEFT ON A BIKE?

A THE TWO GUYS WHO HELP ME, THE ONES WHO TOLD ME THAT THEY SAW HIM WHEN HE WAS LEAVING MY HOUSE ON A BIKE.

Q SO YOUR TESTIMONY IS THAT YOU DID OR DID NOT SEE HIM

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LEAVE YOUR HOUSE?
A NO.
Q YOU DID NOT SEE HIM?
A I DID NOT.
Q SO THE INFORMATION YOU PROVIDED TO LAW ENFORCEMENT THEN WAS THAT YOU DID SEE HIM LEAVE, THAT YOU SAW HIM LEAVE ON A BICYCLE, AND YOU SAW HIM GO TOWARD SCOTT HILL ROAD; IS THAT WHAT YOU SAID?
A THE -- I -- I -- I CAN'T TELL YOU FOR SURE WHAT EXACTLY I TOLD THE POLICE.
Q BUT YOU DIDN'T TELL THEM THAT?
A I CAN TELL YOU NOW, I DIDN'T SEE HIM WHEN HE LEFT MY HOUSE. I KNEW THAT BECAUSE THE PEOPLE WHO HELP ME TOLD ME SO.
Q OKAY. LET'S TALK ABOUT SCOTTS HILL ROAD PARK, THAT'S WHERE YOU INDICATED IN YOUR TESTIMONY ON DIRECT EXAM THAT YOU SAW THIS STRANGER WHO APPROACHED YOU AND SAID THAT YOU WERE PRETTY AND HAD THIS CONVERSATION WHILE YOU WERE AT THE PARK WITH YOUR CHILDREN; IS THAT CORRECT?
A TRUE.
Q SO THE FIRST TIME YOU ENCOUNTERED THIS PERSON WAS AT SCOTT HILL PARK; IS THAT CORRECT?
A TRUE.
Q AND IS THIS MONTHS AGO? MONTHS PRIOR TO THIS INCIDENT?

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A I HAVE NO IDEA WHEN.
Q AND I'M NOT EXACTLY SURE WHAT YOU SAID ON DIRECT, BUT THE PERSON THAT YOU SAW PREVIOUSLY AT SCOTT HILL PARK, WAS THAT THE PERSON THAT WAS AT YOUR HOUSE ON THE DATE OF THIS INCIDENT?
A I TOLD BEFORE, I CAN TELL YOU AGAIN, I PAY NO ATTENTION. I WAS PAYING ATTENTION ON MY KIDS.
Q BUT THEY LOOKED SIMILAR?
A BECAUSE OF THE KIND OF CLOTHES THAT WAS WEARING, BECAUSE WAS RIDING A BICYCLE, BECAUSE IT WAS A BLACK MAN.
Q YOU DON'T RECALL TELLING OFFICER CHAPMAN THAT THE MAN THAT YOU SAW AT SCOTT HILL PARK WAS VERY SIMILAR TO THE MAN THAT WAS AT YOUR HOUSE THAT DAY?
A I TOLD HIM WHAT I TELL YOU NOW.
Q LET'S TALK ABOUT YOUR BED. IS THIS A PICTURE OF YOUR BED?
A YES, MA'AM.
Q IS THAT THE WAY YOUR BED LOOKED THE DAY THE INCIDENT OCCURRED?
A YES, MA'AM.
Q AND WAS THAT PICTURE TAKEN BY THE SHERIFF'S DEPARTMENT?
A YES, MA'AM.
Q AND WAS THAT PICTURE TAKEN ON THE DATE OF THE INCIDENT?

A YES, MA'AM.
Q WAS IT TAKEN AFTER THE INCIDENT OCCURRED?
A YES.
Q AND IT'S A TRUE AND ACCURATE DEPICTION OF YOUR BEDROOM AT THE TIME OF THE INCIDENT?
A YES.

MS. SMART: YOUR HONOR, I WOULD LIKE TO PUBLISH THIS TO THE JURY, A PICTURE THE ---

THE COURT: WHAT EXHIBIT IS IT?

MS. SMART: IT WILL BE DEFENSE EXHIBIT 1.

THE COURT: ALL RIGHT. YES, YOU MAY DO SO. IN OTHER WORDS, YOU'RE JUST NOW OFFERING IT? I THOUGHT YOU MEANT IT WAS ALREADY IN EVIDENCE. OKAY. ANY OBJECTION?

MS. MILLICAN: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. WILL BE ADMITTED INTO EVIDENCE AS DEFENSE EXHIBIT NO. 1.

(LARGE COLOR PHOTO MARKED IN EVIDENCE AS DEFENDANT'S EXHIBIT NO. 1.)

Q IF YOU DON'T MIND, CAN YOU STEP DOWN.

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

Q OKAY. COULD YOU SHOW THE JURY ON THIS PICTURE WHERE YOU WERE?
A RIGHT HERE.
Q AND WHERE WAS THE DEFENDANT?
A AGAINST ME RIGHT HERE.

THE COURT: KEEP YOUR VOICE UP PLEASE.

A I WAS HERE AND HE WAS AGAINST ME.

Q SO ONLY THIS AREA?

A YES, MA'AM.

Q AND THIS IS WHERE THE STRUGGLE OCCURRED?

A YES, MA'AM.

Q AND IS THIS HOW YOUR BED LOOKED WHEN LAW ENFORCEMENT CAME?

THE COURT: ALL RIGHT. SHE CAN'T SEE YOU -- YES, OKAY. YOU ALL MOVE BACK FROM THE JURY A LITTLE BIT. MS. SMART, MOVE BACK THIS WAY SO EVERYBODY CAN SEE. THERE YOU GO. ALL RIGHT.

Q POINT FOR THE JURY WHERE YOU WERE ON YOUR BED?

A I WAS ON -- RIGHT HERE. AND THE GUY WAS RIGHT HERE.

Q AND YOUR STRUGGLE OCCURRED RIGHT HERE?

A YES, MA'AM.

Q WERE THESE ITEMS ON THE BED DURING THE STRUGGLE?

A I SUPPOSE SO.

Q YOU DIDN'T PUT ANYTHING ON THE BED AFTER IT HAPPENED?

A NO.

Q YOU DIDN'T TAKE ANYTHING OFF THE BED AFTER IT HAPPENED?

A NO.

Q YOU STRUGGLED RIGHT HERE?

A YES.

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Q WITH THE SUSPECT?
A YES.
Q AND YOU FOUGHT HIM RIGHT HERE?
A YES.
Q AND HE THREW YOU FROM THE FLOOR FROM RIGHT HERE?
A I WAS HERE AND ANOTHER FURNITURE RIGHT HERE. WHEN -- IN -- IN THE MOMENT HE PULLED ME AND THREW ME AGAINST THE FURNITURE.
Q BUT ALL THAT OCCURRED RIGHT HERE?
A YES, MA'AM.
Q AND YOU DIDN'T TIDY UP THE BED, YOU DIDN'T RE-MAKE THE BED?
A NO.
Q YOU DIDN'T DO ANYTHING TO THE BED AFTER THIS OCCURRED?
A YOU HAVE TO KEEP IN MIND, YOU KNOW, THAT HE WAS POINTING A GUN ON MY FACE.
Q BUT YOU FOUGHT HIM? YOUR TESTIMONY TO THE COURT WAS THAT YOU FOUGHT HIM DURING THIS INCIDENT?
A YES.
Q YOU CAN RETAKE YOUR SEAT.
(THE WITNESS RETURNS TO THE WITNESS STAND.)
Q IS YOUR HUSBAND PRESENT IN THE COURT TODAY?
A YES.
Q WHAT TYPE OF RELATIONSHIP DO YOU HAVE WITH YOUR HUSBAND? IS HE JEALOUS?

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MS. MILLICAN: OBJECTION, YOUR HONOR. RELEVANCE.

THE COURT: ALL RIGHT. COME FORWARD PLEASE.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: OBJECTION IS SUSTAINED AS ASKED. NEXT QUESTION.

Q YOUR TESTIMONY WAS THAT YOUR HUSBAND WAS A JEALOUS MAN; IS THAT CORRECT?

A TRUE.

Q AND ON THIS PARTICULAR DAY YOU INDICATED THAT YOUR HUSBAND WAS ABOUT TO COME HOME?

A TRUE.

Q AND YOU KNEW THIS BECAUSE YOU WOULD BE HOME FROM 12:00 TO 3:00 PREPARING FOR YOUR HUSBAND TO COME HOME?

A TRUE.

Q DO YOU RECALL WHAT TIME THIS INCIDENT OCCURRED?

A IT WAS AROUND MAYBE 3:00 O'CLOCK. I CAN'T TELL YOU FOR SURE THE HOUR.

Q IT WAS BETWEEN 1:00 AND 3:00?

A YES, MA'AM.

Q DOES ABOUT 2:40 SOUND CORRECT?

A YES, MA'AM.

Q AND YOUR HUSBAND WAS ABOUT TO COME HOME AT 3:00 O'CLOCK?

A I JUST WAS TRYING TO DEFEND MYSELF.

Q BUT YOUR HUSBAND WAS ABOUT TO COME HOME AT 3:00 O'CLOCK?
A NO.
Q WHAT TIME -- WHAT TIME DID YOUR HUSBAND COME HOME?
A 5:00 O'CLOCK.
Q 5:00 O'CLOCK?
A YES, MA'AM.
Q 5:00 O'CLOCK?
A YES.
Q WHAT TIME DID THE ASSAILANT LEAVE YOUR HOUSE, ABOUT?
A EVERY SINGLE DAY?
Q NO. ON THE DATE THAT THIS INCIDENT OCCURRED, WHAT TIME DID THE SUSPECT LEAVE YOUR HOUSE?
A I DON'T KNOW. IT WAS -- EVERYTHING HAPPENED VERY FAST.
Q IT WAS ALMOST 5:00 O'CLOCK?
A OH, NO.
Q NOW, WASN'T ALMOST 5:00 O'CLOCK. BUT YOUR TESTIMONY IS THAT YOUR HUSBAND CAME HOME AT 5:00 O'CLOCK?
A NO. MY HUSBAND CAME ABOUT 2:45.
Q ABOUT 2:45?
A AND HE NORMALLY ---
Q BUT HE CAME HOME THAT DAY AT 2:45?
A YES, MA'AM.
Q OKAY. AND THE SUSPECT HAD JUST LEFT ---

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A YES.
Q --- WHEN YOUR HUSBAND CAME HOME?
A YES.
Q WAS THERE A LOT OF TIME SPENT IN THAT BEDROOM DURING THE COURSE OF THIS INCIDENT?
A NO. MAYBE 5 MORE MINUTES.
Q DID HE VIOLENTLY THROW YOU TO THE FLOOR OR DID YOU JUST FALL TO THE FLOOR?
A NO. HE THREW ME.
Q HE THREW YOU TO THE FLOOR?
A HE THREW ME AND THREW ME AGAINST THE FURNITURE.
Q OKAY. WERE YOU ABLE TO IDENTIFY YOUR ATTACKER PRIOR TO TODAY?
A YES.
Q SO PRIOR TO TODAY YOU KNEW WHO HE WAS?
A NO.
Q SO DURING THE COURSE OF THIS ENTIRE INCIDENT OVER THE PAST YEAR, YOU WERE NEVER ABLE TO IDENTIFY HIM?
A NO.
Q YOU NEVER TOLD LAW ENFORCEMENT WHO HE WAS?
A NO.
Q YOU WERE ABLE TO -- YOU TOLD OFFICER CHAPMAN -- DO YOU RECALL TELLING OFFICER CHAPMAN THAT HIS PICTURE -- HIS FACE WAS IN YOUR MIND?
A YES.

Q AND YOU WERE ABLE TO GIVE A DESCRIPTION OF HIM TO OFFICER CHAPMAN?
A YES.
Q AND THAT HE SUGGESTED THAT YOU DESCRIBE HIM TO A SKETCH ARTIST?
A YES.
Q AND YOU DID THAT, DIDN'T YOU?
A YES.
Q AND THIS WAS TWO DAYS AFTER THE INCIDENT OCCURRED?
A YES.
Q SO JUST FOR CLARITY, THE DAY AFTER THE INCIDENT OCCURRED, YOU WERE SHOWED A PHOTO LINE-UP THAT YOU DID NOT PICK THE SUSPECT OUT OF. THE NEXT DAY YOU GAVE A DESCRIPTION TO A SKETCH ARTIST WHO DREW A PICTURE OF THE SUSPECT; IS THAT CORRECT?
A TRUE.
Q AND THAT PICTURE ACCURATELY DESCRIBED THE WAY THE SUSPECT LOOKED?
A YES.
Q AND DID THAT PICTURE RESEMBLE MR. JOHNSON?
A YES.
Q VERY MUCH SO?
A THE -- THE ONLY DIFFERENCE IS NOW HE LOOKS FAT AND WITH MUSTACHE AND THE BEARD.
Q WAS ANY MONEY STOLEN?

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A THE MONEY THAT MY HUSBAND GAVE ME.
Q OKAY. WHERE WAS IT STOLEN FROM?
A THE -- THE -- THE -- REMEMBER WHEN I PICK PENCIL -- PENCIL AND PAPER, IT'S KIND OF NOTEBOOK. AND THE MONEY, CASH, WAS JUST THERE.
Q IT WAS GONE. BUT DID YOU SEE ANYBODY TAKE IT?
A NO, MA'AM.
Q SO YOU DON'T KNOW WHETHER OR NOT THE SUSPECT TOOK MONEY FROM YOUR NOTEBOOK?
A NO, MA'AM.
Q BUT YOU TOLD LAW ENFORCEMENT THAT HE DID?
A YES, MA'AM.
Q NOW, LET'S TALK ABOUT THE SUSPECT'S DEMEANOR WHILE HE WAS AT YOUR HOUSE. DO YOU REMEMBER TELLING INVESTIGATOR CHAPMAN THAT HE REMAINED CALM THE ENTIRE TIME?
A HE WAS CALM WHEN HE KNOCK THE DOOR, WHEN HE DIAL THE PHONE, WHEN I TURN MY BACK TO PICK PENCIL AND PAPER AND HE POINT MY FACE WITH THE GUN. HE CHANGE VERY -- HE CHANGE COMPLETELY.
Q OH, HE CHANGED?
A YES, HE WAS NERVOUS, IN A BIG HURRY. HE WAS SHAKING. HE CHANGE LIKE THIS.
Q BUT YOU DON'T RECALL TELLING OFFICER CHAPMAN THAT HE REMAINED CALM AND HE DID NOT SEEM TO PANIC?
A NO.

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Q I'M SORRY TO KEEP GOING BACK AND FORTH, BUT AT SCOTT HILL PARK YOU TOLD OFFICER CHAPMAN THAT THIS BLACK MALE LOOKED SIMILAR TO YOUR ATTACKER -- APPROACHED YOU WHILE YOU WERE WITH YOUR KIDS AND STARTED BRAGGING ABOUT HOW HE COULD TAKE CARE OF YOU. DO YOU REMEMBER TELLING HIM THAT?

A NO.

Q AND THAT HE HAD LOTS OF MONEY AND HE RETIRED EARLY?

A YES.

Q AND THAT HE KNEW YOUR SISTER AND THAT YOUR SISTER WAS PRETTY?

A TRUE.

Q AND YOU SAID THAT THAT MAN LOOKED VERY SIMILAR TO THE MAN THAT WAS AT YOUR HOUSE THAT DAY? THAT'S TRUE?

A LIKE I TOLD YOU BEFORE, I -- I JUST TOLD HIM THAT BLACK AND THE SAME COMPLEXION. BUT I -- I -- I PAID NO ATTENTION IN HIS FACE AT THAT PARTICULAR TIME. I WAS KEEPING ALL OF MY ATTENTION ON -- ON MY KIDS. AND WHEN HE START TELLING ME ABOUT YOU ARE PRETTY, AND I JUST ---

MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. REDIRECT, MS. MILLICAN?

MS. MILLICAN: THANK YOU, YOUR HONOR.

<u>REDIRECT EXAMINATION BY MS. MILLICAN:</u>

Q HOW MANY STATEMENTS DO YOU RECALL ACTUALLY WRITING DOWN YOURSELF?

A ONE. TWICE. ONE IN -- IN MY HOUSE WHEN THE POLICE CAME AND ANOTHER IN THE HOSPITAL.

Q HOW MANY TIMES SINCE THIS HAPPENED HAVE YOU TOLD THE STORY TO POLICE?

A MANY TIMES.

Q DESCRIBE WHAT EVERYONE IN THE PHOTO THAT THE POLICE SHOWED YOU THAT DAY -- WHAT THEY LOOKED LIKE, IN THE LINE-UP THE DEFENSE ATTORNEY WAS REFERRING TO? CAN YOU DESCRIBE WHAT THEY LOOKED LIKE?

A YOU ASKING ME TO DESCRIBE THE MAN WHO HURT ME OR -- I MISUNDERSTOOD.

Q OKAY. THE DEFENSE ATTORNEY WAS ASKING YOU QUESTIONS ABOUT PHOTO LINE-UPS ---

A YES.

Q --- AND THAT YOU COULDN'T PICK OUT THE MAN WHO ATTACKED YOU FROM ALL THOSE PICTURES THEY SHOWED YOU?

A UH-HUH.

Q WHAT DID EVERY ONE OF THOSE PICTURES LOOK LIKE GENERALLY AS YOU RECALL?

A I DON'T KNOW. THE SAME, I THINK. I -- I -- EVERYONE -- EVERYONE WAS WEARING THE SAME CLOTHES, SAME -- I DON'T KNOW ---

Q WERE THERE ---

A --- HOW TO -- HOW TO IDENTIFY.

Q DID THEY ALL HAVE THE SAME FACIAL HAIR?

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A ALL OF THEM HAD -- LIKE I TOLD BEFORE -- THE SAME CLOTHES AND -- AND -- AND BAD FACE KIND OF.

Q WERE THEY ALL THE SAME RACE?

A YES.

Q WERE THEY ALL THE SAME GENDER?

A YES.

Q DID THEY ALL HAVE THE SAME HAIR STYLE?

A YES.

Q DO YOU KNOW ABOUT HOW MANY PHOTOS YOU LOOKED AT?

A I -- I JUST REMEMBER TWO BOOKS, BIG BOOKS.

Q BUT COULD YOU REMEMBER WHAT THE MAN THAT ATTACKED YOU LOOKED LIKE?

A YES, IT'S -- IT'S -- IT'S SOMETHING THAT I NEVER -- I NEVER COME TO FORGOT. THE DIFFERENCE IS WHEN YOU CAN SEE THE PERSON IN FRONT OF YOU, IF YOU COMPARE WITH THE PICTURES, THERE'S NO -- THERE'S NO WAY TO IDENTIFY A PICTURE BECAUSE LOOKS VERY DIFFERENT THAN THE PERSON LOOKS VERY FAT, LOOKS DIFFERENT. I KNOW WHO IS.

Q WHAT DAY DID THEY SHOW YOU ALL THESE PICTURES, DO YOU REMEMBER?

A NO.

Q WAS IT THE SAME DAY OF THE INCIDENT OR WAS IT SEVERAL DAYS LATER?

A NO. LATER.

Q DO YOU REMEMBER WHEN YOU FIRST -- WHEN INVESTIGATOR

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CHAPMAN FIRST CAME OUT TO SEE YOU AT YOUR HOUSE?
A YES.
Q DID HE HAVE ANYTHING WITH HIM WHEN HE CAME TO SEE YOU THAT DAY? DO YOU RECALL?
A NO.
Q OKAY. THE BOOKS AND PHOTOS THAT WE TALKED ABOUT THAT YOU SAID YOU LOOKED AT, DID ALL THE PHOTOS OF ALL THE PEOPLE THAT LOOKED SIMILAR THAT YOU SPOKE OF -- WHAT DAY DID YOU LOOK AT THOSE?
A I DON'T REMEMBER.
Q OKAY. DO YOU KNOW IF THE DEFENDANT REALLY DIALED THE TELEPHONE OR IS IT POSSIBLE THAT HE ACTED LIKE HE DIALED IT AND MAYBE YOU HEARD THE OPERATOR?
A HE -- I JUST -- HE DIAL. HE DIAL.
Q DO YOU KNOW IF HE WAS ACTUALLY CALLING A NUMBER THAT HAD A VOICE MAIL?
A I HAVE NO IDEA. I JUST SAW THAT HE DIAL TWICE.
Q DID YOU ACTUALLY HEAR THE OTHER END OF THE PHONE? DID YOU HAVE IT TO YOUR EAR?
A NO. HE -- HE WAS WITH THE PHONE HERE AND I JUST KIND OF HEAR KIND OF SOMETHING, BUT I CAN'T TELL YOU FOR SURE. I DON'T HEAR BOTH SIDES. I CAN'T TELL FOR SURE. I JUST COULD HEAR SOMETHING, AND HE JUST TOLD ME IT'S NOBODY IN -- IN THE HOME. SO WHEN HE DIAL THE SECOND TIME, I JUST TOLD HIM, WELL, IF YOU WANT ME TO TAKE A MESSAGE WHEN MR. GREEN

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-- I THOUGHT MR. GREEN WAS THE NEW NEIGHBOR IN FRONT OF MY HOUSE.

Q [redacted], DID YOU GROW UP AR[redacted] GUNS AT ALL?

MS. SMART: OBJECTION, YOUR HONOR, IT EXCEEDS CROSS.

MS. MILLICAN: YOUR HONOR, THE DEFENSE ASKED ON CROSS EXAMINATION TO GO INTO GREAT DETAIL ON THE DESCRIPTION OF THE GUN SHE SAW.

THE COURT: OBJECTION OVERRULED. IT WAS ASKED ON CROSS EXAMINATION. SHE WAS ASKED ON CROSS EXAMINATION THE GUN AND THE TYPE GUN AND SO FORTH, AND I THINK IT IS IN RESPONSE. AND THIS IS WITHIN THE SCOPE OF REDIRECT. OBJECTION OVERRULED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q [redacted], I'LL JUST ASK YOU THE QUESTION AGAIN. DID YOU GROW UP AROUND GUNS? ARE YOU FAMILIAR WITH GUNS?

A WELL, YES. MY -- MY BROTHERS LOVE TO HUNT, SO I CAN -- I CAN RECOGNIZE GUNS. I CAN KNOW THE DIFFERENCE BETWEEN A REAL GUN AND -- AND A B.B. GUN OR -- AND THIS IS WHY I WAS VERY STRESSED, VERY SHOCKED BECAUSE HE -- HE COCK GUN AND POINT IN MY FACE AND I THOUGHT HE'S GOING TO KILL ME. THEN HE TOLD ME, THE BED LOOKS FINE. WHY YOU FIGHT? I -- I -- I FIGHT -- I THOUGHT HE WOULD KILL ME.

MS. SMART: OBJECTION, YOUR HONOR, THAT DOESN'T HAVE ANYTHING TO DO WITH THE GUN.

THE COURT: I'LL SUSTAIN THE OBJECTION. MOVE ONTO

SOMETHING ELSE.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q ON THE BED, [redacted] THE DEFENSE ATTORNEY [redacted]KED YOU ON CROSS EXAMINATION IF YOU MOVED OR IF YOU STAYED IN ONE SPOT. IS IT POSSIBLE THAT YOU COULD HAVE MOVED AND STAYED IN ONE SPOT? MOVED AROUND?

MS. SMART: OBJECTION, YOUR HONOR, CALLS FOR SPECULATION.

THE COURT: ON THAT GROUNDS IT IS OVERRULED.

MS. MILLICAN: I'LL REPHRASE, YOUR HONOR.

THE COURT: OKAY.

Q DID YOU MOVE WHILE YOU WERE IN ONE SPOT? DID YOU MOVE AROUND IN ONE SPOT?

A I WAS IN JUST ONE SPOT. [redacted]

Q DID YOU WIGGLE OR DID YOU MOVE OR DID YOU LAY YOUR HANDS DOWN AT YOUR SIDE PERFECTLY STILL? WHAT DID YOU DO IN THAT POSITION?

A I -- I -- I WAS -- WHEN -- WHEN ONE HAND WOULD TRY TO COVER MY VAGINA IN ORDER TO DON'T LET HIM -- HIS PENIS GET INTO. WITH THE OTHER HAND I WAS TRYING TO PUT HIS FACE FAR AWAY. BUT I ALWAYS WAS VERY SCARED THAT HE -- HE HAD A GUN, AND I WAS VERY SCARED THAT HE IS GOING TO KILL ME. HE -- HE -- HE SAID SO.

Q THE DEFENSE ATTORNEY KEPT GOING OVER THE TIME FRAME AGAIN ON THE AFTERNOON. BETWEEN TELLING THE DEFENDANT THAT

YOUR HUSBAND WAS COMING HOME AND THE GUN SLIPPING DOWN AND HIM GOING OUT THE DOOR, WHAT EXACTLY WAS THE TIME FRAME ONE MORE TIME JUST GOING THROUGH THAT, ANA, TO CLARIFY?

A WAS VERY -- EVERYTHING PASS VERY, VERY FAST. WHEN -- WHEN HE -- WHEN HE -- WHEN HE WAS AGAINST ME AND -- AND -- AND I ALWAYS WAS MOVING AROUND, AND IN ORDER TO RAPE ME, HE PUT THE GUN HERE AND -- AND TOOK THE -- THE -- HIS BODY PART AND HE WAS ON TOP OF ME AND HE PUT HIS PENIS INTO MY VAGINA AND -- AND I JUST TAKE HIS PART OUT OF ME AND -- AND I PUT HIS FACE FAR FROM ME, AND HE CAUGHT MY -- MY -- MY FINGER AND HE BITE ME SO HARD, SO I -- I -- I -- I WAS STILL IN -- IN -- IN THIS MOMENT. THE GUN SLIDE AND -- AND I TRIED TO -- TO TAKE THE GUN BECAUSE I -- I -- I -- I JUST TRIED TO FIGHT FOR THE GUN. I THOUGHT HE -- HE IS GOING TO KILL ME AND -- AND -- AND I HAVE TO FIGHT FOR THE GUN. SO WE -- WE TRIED TO FIGHT FOR GET THE GUN, AND THE GUN SLIDE AND HE COULDN'T REACH THE GUN, SO HE PULLED ME AND THREW ME AWAY, AND HE TRIED TO TAKE THE GUN OUT AND -- AND -- AND ---

MS. SMART: OBJECTION, YOUR HONOR.

THE COURT: WHAT'S YOUR OBJECTION?

MS. SMART: SHE IS NARRATING. SHE IS TELLING A STORY.

THE COURT: YES, MA'AM, SHE CERTAINLY HAS THAT RIGHT. OBJECTION OVERRULED. GO AHEAD.

A AND I -- I WALK ON MY KNEES, AGAIN, TRYING TO STILL

FIGHT FOR THE GUN. BUT EVERYTHING PASS VERY, VERY FAST. AND FINALLY HE -- HE TOOK THE GUN AGAIN AND I WAS ON MY KNEES THERE. AND I THOUGHT HE'S GOING TO SHOOT. HE DIDN'T. HE WALKED TO THE KITCHEN. HE PULLED THE PHONE. HE COME BACK.

THE COURT: OKAY. LET'S DON'T REPEAT THE TESTIMONY. JUST ASK HER SPECIFIC QUESTIONS.

MS. MILLICAN: OKAY, YOUR HONOR.

Q AT WHAT POINT DID THE DEFENDANT GIVE YOU AN OPPORTUNITY TO ESCAPE?

A THE SECOND TIME THAT HE WALK TO THE KITCHEN.

Q DID HE WALK TO THE KITCHEN BECAUSE HE THOUGHT YOUR HUSBAND WAS COMING HOME? DID HE WALK TO THE KITCHEN BECAUSE YOU INDICATED YOUR HUSBAND WAS COMING HOME?

A I ALWAYS -- YES, I THINK SO. I ALWAYS WAS TELLING HIM MY HUSBAND IS -- IS -- IS VERY VIOLENT, HE'S GOING TO KILL US. PLEASE JUST GO. PLEASE. MY HUSBAND IS VERY SWAYED (PHONETIC). BUT I -- I WAS TRYING TO SAY SOMETHING THAT JUST FORCING HIM -- FORCING HIM TO GO. AND -- AND -- AND -- AND THE SECOND TIME THAT HE GO BACK TO THE KITCHEN, HE TURNED HIS BACK AND I JUST ESCAPE.

Q WHY DID YOU THINK THE DEFENDANT HAD A BICYCLE?

A I HAVE NO IDEA.

Q DID YOU SEE HIM RIDING A BICYCLE TO YOUR HOUSE?

A NO, MA'AM.

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Q DID YOU SEE HIM RIDE A BICYCLE FROM YOUR HOUSE?
A NO.
Q IS IT POSSIBLE MAYBE YOU HEARD SOMEBO[redacted]ELSE SAID THEY SAW SOMEBODY THAT LOOKED LIKE THE DEFENDANT RIDING A BICYCLE?
A THE ONLY REASON BECAUSE I KNOW THAT HE WAS ON BICYCLE WAS BECAUSE THE PEOPLE THAT HELP ME SAW HIM.
Q WAS THE BICYCLE AT YOUR HOUSE WHEN YOU AND THE MEN WALKED BACK FROM DOWN THE ROAD TO THE HOUSE WAITING ON POLICE?
A NO.
Q THERE'S NO BICYCLE AT YOUR HOUSE THEN[redacted]
A NO.
Q DO YOU ASSUME FROM THAT HE MUST HAVE LEFT WITH A BICYCLE?
A AGAIN, I -- I -- I JUST ESCAPE AND I NEVER TURN MY FACE BACK. I NEVER KNEW IF HE WAS THERE OR IF HE JUST LEFT. I KNEW THAT HE LEFT BECAUSE OF THE PEOPLE WHO HELP ME TOLD ME.
Q [redacted], EXPLAIN WHAT WAS GOING THROUGH YOUR MIND WHEN YOU LEFT AND YOU WOULDN'T LOOK BACK?
A I -- I THOUGHT HE -- HE -- HE WILL SHOT ME IN MY BACK. BUT WAS THE ONLY THING THAT I TRIED. I JUST TRIED TO ESCAPE. I -- I -- I -- I JUST WAS THE ONLY -- ONLY CHANCE THAT I -- I -- I -- I HAD. HE -- HE -- HE TURNED HIS BACK

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AND WALKED AGAIN TO THE KITCHEN, AND I -- I -- I JUST TRIED TO ESCAPE.

Q [redacted], DO YOU KNOW WHAT TRAUMA MEANS FROM YOUR MEDICAL RECORD? WHAT DOES TRAUMA MEAN?

A IT'S SOMETHING HURT SOMETHING, BROKE SOMETHING.

Q DO YOU KNOW WHAT -- WHAT DOES EJACULATE MEAN? WHAT DO YOU THINK EJACULATE MEANS?

A WHEN THE SEMEN GOES OUT TO THE PENIS.

Q WHEN DOES THAT USUALLY HAPPEN?

A WHEN -- WHEN THE MALE IS VERY EXCITED AND FINISHED HIS ---

Q [redacted], DO YOU BELIEVE THAT THE DEFENDANT DID NOT EJACULATE BECAUSE HE DIDN'T FINISH?

A I THINK THAT HE DID NOT BECAUSE OF THE HURRY, BECAUSE OF HE WAS VERY NERVOUS BECAUSE I ALWAYS WAS TELLING HIM MY HUSBAND IS VERY VIOLENT, HE'S GOING TO COME IN AND KILL US. PLEASE JUST GO -- GO PLEASE. SO I BELIEVE IT WAS BECAUSE HE -- HE -- HE WAS KIND OF INTIMIDATED BY MY WORDS -- BY -- BY -- BY -- BECAUSE I ALWAYS WAS TELLING HIM HOW BAD MY HUSBAND IS. I DON'T KNOW. HE WAS VERY NER[redacted]S. EVERYTHING HAPPENED SO FAST. HE WAS WITH THE POWER BECAUSE OF THE GUN, BUT I BELIEVE -- WELL, JUST BECAUSE OF THE GUN.

Q IF YOU DID HAVE BRUISING DOWN AROUND YOUR VAGINA, HOW WOULD YOU SEE IT?

A I WAS NOT ABLE TO.

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Q SO DO YOU REALLY KNOW WHETHER OR NOT THERE WAS BRUISING OR TRAUMA TO YOUR VAGINA ACCORDING TO THE MEDICAL PERSONNEL?

A NO.

Q DID YOU KNOW YOUR HUSBAND WAS COMING HOME WHEN HE SHOWED UP?

A I DIDN'T. I DIDN'T KNOW. HE WAS IN -- EVERY YEAR HE HAS MEETINGS, TWO WEEKS. AND WAS ONE OF THESE WEEKS THAT MEETING TIMES. AND AFTER THAT HE NORMALLY IS AT HOME AT 12:00, BUT NOT IN THESE MEETING WEEKS. I -- I HAD AN IDEA THAT HE -- HE WAS ABOUT TO COME. AND I JUST TOLD THAT GUY JUST TO TRY TO FORCE HIM -- FORCING HIM TO JUST GO AWAY AND -- AND -- BUT I NEVER KNEW THAT MY HUSBAND WAS COMING. THANK GOD HE WAS.

Q WHAT DID YOUR HUSBAND DO ONCE HE GOT HOME?

A WHEN HE CAME, HE -- ONE OF THE GOOD GUYS WHO HELP ME TOLD HIM THAT SOMEBODY BROKE INTO MY HOUSE. HE ASKED ME IF I WAS OKAY.

MS. SMART: YOUR HONOR.

THE COURT: ALL RIGHT.

MS. SMART: IT EXCEEDS SCOPE, AND SHE'S SAYING WHAT ONE OF THE GOOD GUYS SAID TO HER HUSBAND.

THE COURT: I THOUGHT SHE WAS TESTIFYING AS TO WHAT HER HUSBAND SAID. YOU CONTEND THAT IT'S NOT HEARSAY?

MS. MILLICAN: WELL, AS FAR AS WHAT HER HUSBAND SAID,

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I WOULD SUBMIT THAT IT PROBABLY WOULD BE. I'LL JUST RE-ASK THE QUESTION.

THE COURT: REPHRASE THE QUESTION.

Q OKAY. WITHOUT STATING EXACTLY WHAT ANYONE SAID, WHAT DID YOUR HUSBAND DO WHEN HE GOT HOME?

A HE JUST WALKED AND ASKED ME IF I WAS OKAY. AND I TOLD HIM, YES, I'M FINE. THE POLICE IS COMING.

Q THEN WHAT DID HE DO?

A HE GO BACK. HE -- ON THE SAME WAY HE JUST CAME, HE GET INTO HIS CAR AND -- AND -- AND -- AND GO TRY TO CATCH THE GUY WHO BROKE INTO MY HOUSE.

Q HOW DID YOU TRY TO IDENTIFY THE DEFENDANT BEFORE TODAY TO POLICE?

A HOW?

Q HOW?

A THE ONLY -- THE ONLY THING WAS THEY SHOWED ME PICTURES, TWO BOOKS OF PICTURES. AND SADLY, I -- I -- I COULDN'T IDENTIFY SEEING THE PICTURES.

Q DID YOU DESCRIBE HIM TO ANYONE?

A I DESCRIBE TO THE FIRST OFFICER WHO CAME TO MY HOUSE -- I DESCRIBE TO INSPECTOR CHAPMAN AND TO A ARTIST WHO MADE ME THE PICTURE.

Q DID THE PICTURE THE ARTIST MADE BASED ON YOUR DESCRIPTION -- DID THAT LOOK TO YOU LIKE THE DEFENDANT?

A YES, IT'S HIM.

Q OKAY.
A YES.
MS. MILLICAN: NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.
THE COURT: RECROSS?
RECROSS EXAMINATION BY MS. SMART:
Q [redacted], IF THE SUSPECT HAD EJACULATED ON THE DATE OF THIS INCIDENT, WOULD YOU HAVE KNOWN IT?
A I BELIEVE, YES.
Q AND IT IS YOUR TESTIMONY THAT WHEN THIS INCIDENT OCCURRED HE DID NOT EJACULATE?
A TRUE.
Q AND YOU TALKED ON DIRECT, CROSS, REDIRECT ABOUT YOUR HUSBAND -- ABOUT TELLING THE SUSPECT THAT YOUR HUSBAND WAS A VIOLENT MAN, THAT HE WAS COMING HOME, THAT HE WOULD, YOU KNOW -- HE WAS JUST A VIOLENT MAN, AND THAT THE SUSPECT SHOULD RUN BECAUSE HE WOULD KILL BOTH OF YOU. IS THAT NOT TRUE?
A I TOLD HIM THAT MY HUSBAND WAS GOING TO COME. I TOLD HIM THAT HE WAS A VIOLENT MAN.
Q AND THAT HE WOULD KILL BOTH OF YOU ---
A TRUE.
Q --- IF HE CAME HOME AND HE CAUGHT HIM THERE; IS THAT NOT CORRECT?
A YES.

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Q DURING THE COURSE OF THIS WHOLE INCIDENT YOU NEVER SCREAMED, YOU NEVER HOLLERED, AND HE NEVER EJACULATED THAT DAY?

A TRUE.

MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.

THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: ALL RIGHT. COUNSEL, APPROACH JUST A MINUTE PLEASE.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THE STATE CALLS FRANK DILSAVER.

FRANK DILSAVER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS FRANK DILSAVER. IT'S D-I-L-S-A-V-E-R.

<u>DIRECT EXAMINATION BY MS. MILLICAN:</u>

Q MR. DILSAVER, HOW OLD ARE YOU?

A 48.

Q WHAT'S YOUR OCCUPATION?

A LAND SURVEYOR.
Q WHO DO YOU WORK FOR?
A DAVID GASQUE.
Q ON FEBRUARY THE 7TH, 2006 WERE YOU WORKING NEAR 94 CUFFY ROAD ON ST. HELENA?
A YES, MA'AM, I WAS.
Q WHO WAS WORKING WITH YOU THAT AFTERNOON?
A BRIAN PATE.
Q DID YOU SEE ANYONE FITTING THE DEFENDANT'S DESCRIPTION OUT AND ABOUT AROUND CUFFY ROAD THAT AFTERNOON?
A I SEEN A GENTLEMAN, BUT I COULDN'T IDENTIFY HIM IN ANY WAY. BUT I SEEN SOMEONE GO BY THERE. THERE WASN'T MANY PEOPLE ON THE ROAD AT ALL. THERE WAS ONLY ONE PERSON WE SEEN GO BY, AND HE WAS RIDING A BICYCLE.
Q TO THE BEST OF YOUR ABILITY WHAT DO YOU RECALL AT ALL IF ANYTHING, FROM ANY GENERALIZATION, OF THIS PARTICULAR PERSON?
A HE WAS A BLACK GENTLEMAN. I COULDN'T -- LIKE I SAY, I COULDN'T PICK HIM OUT. THAT DAY I COULDN'T HAVE PICKED HIM OUT THAT AFTERNOON.
Q DID YOU SPEAK TO HIM AT ALL?
A I SAID SOMETHING TO HIM BECAUSE THERE WAS A DOG IN A YARD THAT WAS BARKING, AND I TOLD HIM THAT THE DOG DIDN'T SEEM TO BE TOO BAD. HE GOT OFF THE SIDE OF THE BICYCLE LIKE HE WAS AFRAID OF THE DOG. AND I SAID, THE DOG ISN'T

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THAT BAD. AND I JUST CARRIED ON WITH WHAT I WAS DOING.

Q WHERE DID YOU SEE HIM GOING? AND IF I MAY ---

MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN FOR ---

THE COURT: YES, MA'AM.

MS. MILLICAN: --- THE ILLUSTRATION?

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

Q COULD YOU SHOW THE JURORS ABOUT WHERE YOU AND MR. PATE WERE WORKING AND WHERE YOU SAW SOMEONE RIDE BY ON A BICYCLE?

A WELL, WHEN I SEEN THE GENTLEMAN ON THE BICYCLE, I WAS RIGHT ABOUT HERE.

THE COURT: STEP BACK FROM THE BOARD AND USE THE POINTER. THE JURY IS HAVING A LITTLE TROUBLE SEEING.

A I WAS PROBABLY STANDING ABOUT RIGHT HERE ON THE SIDE OF THE ROAD. AND HE COME RIDING UP ON THE BICYCLE. AND I BELIEVE THE DOG WAS RIGHT IN HERE BARKING. AND HE GOT OFF THE BICYCLE. AND I SAID WHAT I SAID TO HIM ABOUT THE DOG, AND I JUST WALKED ON DOWN THE ROAD TO WHERE BRIAN WAS AT.

Q DO YOU HAVE ANY IDEA WHERE HE WENT AFTER THAT ENCOUNTER?

A I DIDN'T SEE HIM. I PAID NO ATTENTION TO HIM AFTER THAT.

Q OKAY. WHAT ELSE HAPPENED LATER THAT DAY?

A WELL, WITHIN ABOUT 15 OR 20 MINUTES THE LADY COME

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RUNNING DOWN THE ROAD REALLY UPSET.
Q CAN YOU TELL ME WHO THE LADY WAS? DO YOU SEE HER PRESENT IN THE COURTROOM?
A I BELIEVE THAT'S HER.
Q OKAY. WHAT DID YOU SEE?
A WELL, SHE WAS EXTREMELY UPSET. SHE WAS HOLDING HER PANTS, AND SHE CAME UP AND SAID SOMEBODY HAD ROBBED HER AND RAPED HER.
Q WAS SHE RUNNING?
A YES.
Q WAS SHE CRYING?
A YES, VERY UPSET.
Q WHAT DID YOU DO?
A WE CALLED THE LAW. AND WE LOOKED AROUND BECAUSE WE KNEW THAT THE GUY ON THE BICYCLE WAS THE ONLY PERSON THAT HAD BEEN THERE.
Q HOW ISOLATED IS THIS AREA?
A WELL, THE ONLY CARS THAT WE SEEN AT THE TIME WAS SOMEONE THAT WAS IN HER YARD HAD LEFT. AND RIGHT AFTER THEY LEFT, THAT'S WHEN THE GUY ON THE BICYCLE SHOWED UP. BUT OTHER -- THAT WAS THE ONLY PERSON THAT WAS AROUND. SO WE FIGURED THAT'S ---
Q DID YOU SEE HIM LEAVE HER HOUSE?
A NO, I DID NOT.
Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT

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NO. 7. DO YOU RECOGNIZE THAT PHOTO?
A YES, I DO.
MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH STATE'S 7 TO THE JURY?
THE COURT: YES.
Q IS IT THAT PHOTO?
A YES.
Q COULD YOU PLEASE EXPLAIN TO THE JURY WHERE YOU SAW THIS FEMALE RUNNING AND WHERE YOU WERE?
A I WAS DOWN HERE SOMEWHERE. SHE WAS COMING UP THIS WAY TOWARD US.
Q OKAY. SO ABOUT HOW FAR WAS IT THAT SHE MUST HAVE RUN FROM THE POINT YOU SAW HER UNTIL SHE REACHED YOU?
A 300 FEET.
Q OKAY. YOU CAN TAKE THE STAND BACK. THANK YOU, MR. DILSAVER.
(THE WITNESS RETURNS TO THE WITNESS STAND.)
MS. MILLICAN: I HAVE NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME. PLEASE ANSWER ANY QUESTIONS FOR THE DEFENSE.
THE COURT: CROSS EXAMINATION, MS. SMART.

CROSS EXAMINATION BY MS. SMART:

Q MR. DILSAVER, DO YOU RECALL GIVING A WRITTEN STATEMENT TO LAW ENFORCEMENT?
A YES.

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Q AND DO YOU RECALL IN THAT WRITTEN STATEMENT STATING THAT A SMALL HISPANIC FEMALE APPROACHED MYSELF AND BRIAN PATE STATING THAT A BLACK MAN LEFT HER HOUSE ON A BICYCLE?

A YES.

Q SHE SAID HE ASSAULTED HER AND TRIED TO RAPE HER?

A YES, I BELIEVE THAT'S WHAT SHE SAID.

Q DO YOU RECALL TELLING THE LADY THAT THE MAN LEFT HER HOUSE ON THE BICYCLE OR DID SHE TELL YOU THAT THE MAN LEFT HER HOUSE ON A BICYCLE?

A SHE MUST HAVE TOLD ME BECAUSE I DIDN'T SEE HIM LEAVE.

Q AND YOU WERE PRESENT WHEN THE HUSBAND CAME HOME?

A YEAH, I BELIEVE I WAS THERE WHEN HE PULLED UP. I WAS OFF AT A DISTANCE.

Q DID YOU GET A CHANCE TO SPEAK TO HIM?

A NO. WELL, YES, I DID SAY SOMETHING TO HIM. I SAID, IF THE GUY ON THE BICYCLE DID IT, YOU MUST HAVE JUST PASSED HIM IF HE WENT DOWN THAT ROAD. THAT'S HOW QUICK IT WAS AFTER HE PULLED UP. IF HE WENT DOWN THAT ROAD ON A BICYCLE, HE HAD TO GO RIGHT BY HIM. BUT, OBVIOUSLY, HE DIDN'T.

Q SO THE SUSPECT LEFT AND THE HUSBAND SHOWED UP?

A YEAH.

Q DID THE HUSBAND SEEM ANGRY TO YOU?

A HE DIDN'T SHOW TOO MUCH EMOTION, BUT HE DID LEAVE AND RIDE DOWN THE ROAD TO SEE IF HE SEEN SOMEONE ON A BICYCLE I

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BELIEVE.
Q WERE YOU THE ONE THAT TOLD THE HUSBAND THAT SOMETHING OCCURRED?
A I MIGHT HAVE.
Q JUST FOR CLARITY, YOUR RECOLLECTION IS THAT A SMALL [redacted] FEMALE APPROACHED YOU AND SAID THAT THE SUSPECT LEFT HER HOUSE ON A BICYCLE?
A I DON'T KNOW IF SHE SAID THAT OR NOT, BUT SHE SAID THAT SOMEBODY HAD BEEN IN HER HOUSE AND WAS -- HAD TRIED TO ---
Q COULD YOU READ -- IS THIS YOUR STATEMENT THAT YOU GAVE TO LAW ENFORCEMENT MINUS THE HIGHLIGHTS?
A A BLACK MAN HAD LEFT HER HOUSE ON A BICYCLE, SHE SAID. WELL, MAYBE SHE DID SAY THAT.
Q AND IS THAT THE STATEMENT THAT YOU GAVE TO LAW ENFORCEMENT?
A YES.
Q AND IT'S A VOLUNTARY STATEMENT AND IT'S IN YOUR HANDWRITING?
A YES.
Q COULD YOU READ ALOUD THAT PARTICULAR PART OF THE STATEMENT?
A A BLACK MAN LEFT HER HOUSE ON A BICYCLE, SHE SAID. AND HE HAD ASSAULTED HER AND TRIED TO RAPE HER.
Q AND YOUR WRITTEN STATEMENT IS THAT HE TRIED TO RAPE

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HER?

A YEAH, I BELIEVE THAT'S WHAT SHE SAID.

MS. SMART: THANK YOU, I DON'T HAVE ANY OTHER QUESTIONS. OH, I'M SORRY.

Q YOU DIDN'T HEAR ANY SCREAMING OR HOLLERING PRIOR TO HER RUNNING OUT OF THE HOUSE?

A NEVER HEARD ANYTHING.

Q OKAY. AND YOU WERE CLOSE ENOUGH TO THE HOUSE THAT ---

A WELL, I WAS ABOUT 300 FEET DOWN THE ROAD.

MS. SMART: THANK YOU.

THE COURT: REDIRECT?

MS. MILLICAN: JUST ONE QUESTION, YOUR HONOR.

REDIRECT EXAMINATION BY MS. MILLICAN:

Q IF [redacted] HAD BEEN SCREAMING IN HER HOME OR YELLING FOR HELP, HOW LIKELY IS IT THAT YOU WOULD HAVE HEARD HER FROM WHERE YOU WERE?

A I DON'T KNOW. 300 FEET AWAY INSIDE A TRAILER, I MIGHT PROBABLY WOULDN'T HAVE HEARD HER.

MS. MILLICAN: NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: RECROSS?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN.

[redacted]MILLICAN: YOUR HONOR, MAY WE APPROACH?

THE COURT: YES.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS BRIAN PATE.

BRIAN PATE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: ROBERT BRIAN PATE.

DIRECT EXAMINATION BY MS. MILLICAN:

Q MR. PATE, HOW OLD ARE YOU? [redacted]

A 30 YEARS OLD.

Q WHAT DO YOU DO FOR A LIVING?

A I'M A LAND SURVEYOR.

Q FOR WHAT COMPANY?

A GASQUE AND ASSOCIATES.

Q WERE YOU WORKING ON FEBRUARY THE 7TH, 2006 AROUND CUFFY ROAD?

A YES, I WAS.

Q DO YOU RECALL WHO YOU WERE WORKING WITH THAT DAY?

A YES, I WAS WORKING WITH FRANK DILSAVER.

Q CAN YOU RECALL THAT DAY MEETING AN [redacted] WOMAN?

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A YES.
Q COULD YOU PLEASE DESCRIBE FOR THE JURY THE CIRCUMSTANCES SURROUNDING THAT?
A YEAH, WE WERE WORKING DOWN THE ROAD FROM HER HOUSE AND WAS PUTTING EQUIPMENT AWAY AT OUR TRUCK, AND SHE CAME RUNNING DOWN THE ROAD TOWARD US. AND SHE WAS HOLDING HER PANTS UP AND SHE WAS BARE FOOT AND WAS CRYING AND SAID SHE WANTED HELP.
Q DID SHE SAY WHY?
A YEAH, SHE SAID THAT SHE HAD BEEN ROBBED AND A MAN TRIED TO RAPE HER.
Q I'M SORRY. GO AHEAD.
A AND WE JUST ASKED HER IF SHE WANTED US TO CALL THE POLICE, AND SHE SAID, YEAH.
Q SO WHO CALLED THE POLICE?
A WE HAD A TWO-WAY RADIO. WE DIDN'T HAVE CELL PHONES, AND SO I CALLED THE OFFICE AND ASKED OUR OFFICE MANAGER TO CALL 9-1-1.
Q DID YOUR OFFICE MANAGER DO THAT?
A YES.
MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS FOR THIS WITNESS AT THIS TIME.
THE COURT: CROSS EXAMINATION, MS. SMART.
CROSS EXAMINATION BY MS. SMART:
Q YOU WERE IN THAT AREA FOR QUITE SOME TIME WORKING

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PRIOR TO SEEING HER APPROACH YOU OR PRIOR TO HER APPROACHING YOU?

A THAT'S CORRECT.

Q AND YOU WORK IN A WHITE TRUCK?

A YES.

Q AND YOUR TRUCK WAS LOCATED IN FRONT OF HER HOUSE?

A YEAH, EARLIER IN THE DAY IT WAS AND THEN WHEN SHE APPROACHED US, WE WERE DOWN THE ROAD ABOUT 600 FEET.

Q NOW, DID YOU SEE ANYONE?

A NO, I DID NOT.

Q SO YOU DIDN'T SEE ANYONE?

A NO, I DID NOT.

Q AND DID SHE TELL YOU ANYTHING ABOUT THE PERSON WHO RAPED HER?

A SHE JUST SAID IT WAS A BLACK MAN.

Q AND DID SHE SAY THAT SHE SAW HIM LEAVE HER HOUSE?

A I THINK -- I THINK SHE SAID HE WAS ON A BICYCLE AND LEFT ON A BICYCLE.

Q DO YOU RECALL TELLING HER THAT YOU SAW HIM ON A BICYCLE?

A I DID NOT. MY CO-WORKER DID.

Q BUT YOUR RECOLLECTION OF WHAT SHE TOLD YOU THAT DAY WAS THAT A BLACK MAN LEFT HER HOUSE ON A BICYCLE?

A YES.

Q AND HE ROBBED HER AND HE TRIED TO RAPE HER?

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A THAT'S CORRECT.
Q BUT SHE DIDN'T INDICATE THAT HE HAD IN FACT RAPED HER?
A NO, SHE DID NOT.
Q DID YOU HEAR ANY SCREAMING OR ANYTHING OUT OF THE ORDINARY WHILE YOU WERE WORKING?
A NO.
Q DID YOU SEE HER HUSBAND WHEN HE ARRIVED AT HOME?
A YES, I DID.
Q DID YOU SPEAK WITH HIM?
A I DID NOT.
Q DID YOU HAVE A CHANCE TO OBSERVE HIS DEMEANOR?
A THE HUSBAND'S DEMEANOR?
Q YES.
A YEAH, HE LOOKED -- LOOKED LIKE HE WAS UPSET.
Q SO YOU DIDN'T SEE ANYBODY LEAVE THE HOUSE?
A NO, I DID NOT.

MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.

THE COURT: REDIRECT?

MS. MILLICAN: JUST VERY BRIEFLY.

REDIRECT EXAMINATION BY MS. MILLICAN:

Q WHEN YOU SAW THE HUSBAND, YOU TESTIFIED THAT HE LOOKED UPSET. DID HE CHECK ON [redacted]?
A YEAH.
Q DO YOU RECALL?
A YEAH, WE HAD -- HE WAS PULLING INTO THE YARD AND WE

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WENT BACK UP TOWARD THE YARD. AND I THINK THAT'S WHEN MR. DILSAVER TOLD HIM WHAT HAPPENED AND ASKED HIM IF HE'D SEEN ANYBODY ON THE ROAD. AND THEN HE -- YEAH, HE HAD CHECKED ON HER.

Q HOW MUCH CLOTHES -- WAS FRANK CLOSER TO THE HOUSE THAN YOU WERE OR FURTHER AWAY FROM THE HOUSE THAN YOU WERE?

A HE WAS CLOSER. HE WAS GIVING ME A BACK SITE WHEN YOU'RE SURVEYING -- I WAS RUNNING THE INSTRUMENT. AND HE WAS HOLDING THE ROD. AND THE BACK SITE POSITION WAS CLOSER TOWARD THE HOUSE.

Q SO ABOUT HOW MANY FEET AWAY DID YOU SAY YOU WERE FROM THE HOUSE?

A I WAS ABOUT 600 FEET.

Q ABOUT HOW MANY FEET MAYBE WAS HE FROM THE HOUSE?

A HE WAS RIGHT ACROSS THE ROAD. PROBABLY 75, 80 FEET, MAYBE 100.

Q AT THE POINT IN TIME WHEN SHE CAME RUNNING DOWN THE ROAD?

A I CAN'T REMEMBER. I THINK HE WAS AT THE TRUCK WITH ME.

MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS.

THE COURT: RECROSS[redacted]

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, SIR, YOU MAY STEP DOWN.

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(THE WITNESS LEAVES THE WITNESS STAND.)

MS. MILLICAN: THE STATE WOULD ASK THAT THE WITNESSES THAT HAVE BEEN CALLED SO FAR COULD BE EXCUSED.

THE COURT: ANY OBJECTION TO THE TWO WITNESSES WHO HAVE BEEN CALLED BY THE STATE BEING EXCUSED?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. THEY ARE EXCUSED. THANK YOU FOR COMING.

ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, WE HAVE REACHED THE LUNCH HOUR, AND I THINK THAT IT IS APPROPRIATE THAT WE RECESS FOR LUNCH AT THIS TIME.

THERE ARE A COUPLE THINGS THAT I'M GOING TO DO, AND I WANT TO TELL YOU. FIRST OF ALL, SINCE WE ARE GOING TO BE AWAY FROM THE COURTROOM AND I DO NOT WANT YOU TO LEAVE YOUR NOTE PADS IN THE COURTROOM BECAUSE I'M NOT SURE THAT THEY WILL BE ABSOLUTELY SECURE. IN FACT, WHAT I'M GOING TO ASK YOU THAT YOU DO IS TURN THEM OVER TO THE BAILIFFS. THE BAILIFFS WILL TAKE CHARGE OF THEM. JUST TURN THEM OVER ON THE FACE. THE BAILIFFS WILL TAKE CHARGE OF THEM. AND I CAN ASSURE YOU THAT NO ONE WILL SEE THEM INCLUDING THE BAILIFFS AND INCLUDING ME. AND THEN WE WILL GIVE YOU YOUR NOTES BACK WHEN WE RESUME TESTIMONY.

MR. BAILIFF, I'LL ASK YOU TO TAKE CHARGE OF THE NOTE PADS AND SECURE THEM DURING THE LUNCH RECESS. THEY ARE CONFIDENTIAL AND NO ONE SHOULD SEE THEM WITH EXCEPTION OF

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THE PERSON WHO MADE THE NOTES. AND ONLY THEN WHEN THEY GET THEM BACK WHEN WE COME INTO THE COURTROOM.

THE NEXT THING IS I HAD TOLD YOU THAT I WAS GOING TO APPOINT OR NAME A FOREPERSON OF THIS JURY. I HAVE DECIDED THAT I AM GOING TO ALLOW YOU TO SELECT YOUR OWN FOREPERSON. SO WHEN YOU COME BACK FROM LUNCH, IF THE 12 OF YOU WILL SELECT 1 OF THE 12 TO BE THE FOREPERSON OF THE JURY AND ADVISE ME OF WHO THAT PERSON THAT HAS BEEN ELECTED WHEN YOU RETURN TO THE COURTROOM, AND I WILL PROCEED FROM THERE.

SO WITH THOSE TWO ADMONITIONS, THEN THE OTHER THINGS I'M GOING TO REMIND YOU OF THE ADMONITIONS THAT I GAVE YOU BEFOREHAND. DO NOT DISCUSS THE CASE WITH ANYONE WHILE YOU'RE AWAY FROM THE COURTHOUSE. DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. AND DO NOT DISCUSS IT AMONG YOURSELVES WHEN YOU'RE REASSEMBLING IN THE JURY ROOM. IT WOULD CERTAINLY BE PREMATURE FOR YOU TO BE IN ANY DISCUSSION OF THIS CASE AT THIS TIME.

SO WHEN YOU'RE REASSEMBLING IN THE JURY ROOM IF YOU WOULD SIMPLY TALK ABOUT ANYTHING THAT YOU WANT TO TALK ABOUT, WEATHER, SPORTS, CHILDREN, GRANDCHILDREN, BUT DON'T TALK ABOUT THIS CASE. AND THEN WE WILL RESUME PROMPTLY AT -- AND IT IS NOW 1:00 O'CLOCK. WILL AN HOUR AND 15 MINUTES -- I'D LIKE TO START BACK AT 2:15. WILL THAT GIVE EVERYONE SUFFICIENT TIME TO GET LUNCH? IF SO, IF YOU'LL BE BACK IN YOUR JURY ROOM PLEASE AT 2:15, WE'LL BE READY TO BEGIN AT

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THAT TIME.

AND IF YOU'LL GIVE THE NOTE PADS TO THE BAILIFF AS YOU LEAVE. THANK YOU VERY MUCH. I'LL SEE YOU AT 2:15. COME BACK TO YOUR JURY ROOM AT 2:15.

(THE JURY EXITS THE COURTROOM AT 1:00 P.M.)

THE COURT: ANY EXCEPTIONS TO THE METHOD OF HANDLING THE MATTER WITH THE JURY AS FAR AS THE NOTE TAKING IS CONCERNED ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NO EXCEPTION, YOUR HONOR.

THE COURT: MS. SMART?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. COUNSEL, LET'S TALK A MINUTE ABOUT THE INTERPRETERS. [redacted] DID VERY WELL FROM THE STANDPOINT OF BEING ABLE TO SPEAK ENGLISH. THERE WERE ONLY A FEW THINGS THAT SHE HAD NEEDED A LITTLE BIT OF HELP ON. HOWEVER, I DO THINK THAT IT IS IMPORTANT THAT WE MAINTAIN THE INTERPRETER HERE DURING THE OTHER TESTIMONY IN CASE SHE NEEDS TO TRANSLATE ANY OF THE OTHER TESTIMONY TO THE VICTIM IN THIS CASE.

FROM A DEFENSE STANDPOINT, DO YOU THINK IT'S NECESSARY FOR YOU TO MAINTAIN THE INTERPRETER ANY MORE, MS. SMART?

MS. SMART: YOUR HONOR, I WOULD LIKE MR. MARTINEZ TO STAY WITH ME SO THAT HE CAN TELL ME WHAT IS BEING TRANSLATED AND I CAN BE SURE THAT WHAT THE TRANSLATOR IS SAYING TO [redacted] IS ACTUALLY CORRECT.

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THE COURT: WELL, SHE'S BEEN SWORN TO DO THAT, AND I REALLY AM NOT SURE THAT IT'S NECESSARY TO MAINTAIN STATE'S EXPENSE FOR THIS INTERPRETER UNLESS DEFENSE COUNSELOR IS WILLING TO PAY FOR THIS INTERPRETER.

MS. SMART: OUR INTERPRETER?

THE COURT: YES, ARE YOU PAYING HIM?

MS. SMART: WE PAY OUR INTERPRETER.

THE COURT: OKAY. WELL, YOU CAN KEEP HIM THEN JUST AS LONG AS YOU'RE NOT DOING IT AT THE EXPENSE OF THE STATE. THAT WILL BE FINE. OKAY.

WE'LL BE IN RECESS THEN UNTIL 2:15. SEE YOU AT THAT TIME.

(COURT [redacted] OR LUNCH.)

THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO PRESENT REPRESENTED BY COUNSEL.

ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE.

THE COURT: MS. SMART?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. I'VE BEEN ADVISED THAT THE JURY HAS ELECTED A FOREMAN AND I'M GOING TO RECOGNIZE HIM WHEN HE COMES IN. BUT THEY HAVE ELECTED JUROR NO. 103, MR. JOHNSON, AS THE FOREPERSON [redacted]

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ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 2:20 P.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: THANK YOU VERY MUCH. AND THANK YOU, LADIES AND GENTLEMEN, FOR YOUR PROMPTNESS IN BEING BACK HERE. AND I HAVE BEEN ADVISED THAT THE JURY HAS SELECTED MR. JOHNSON AS THE FOREPERSON OF THE JURY. AND I SEE HE IS SEATED IN THE FOREPERSON'S SEAT.

MR. JOHNSON, THAT WILL BE YOUR SEAT THROUGHOUT THE REMAINDER OF THIS TRIAL.

OF COURSE, THE ALTERNATE WILL ALWAYS SIT BACK ON THE BACK ROW.

THE REST OF YOU CAN SIT IN ANY OF THE SEATS IN THE JURY BOX AS YOU HAVE BEEN DOING.

I SEE ALSO THAT THE BAILIFFS HAVE DISTRIBUTED TO YOU YOUR NOTE PADS, AND WE ARE NOW READY TO RESUME.

ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS DEPUTY MERRILL.

JEFFERY MERRILL, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS JEFFERY MERRILL. J-E-F-F-E-R-Y.

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MERRILL, M-E-R-R-I-L-L.

DIRECT EXAMINATION BY MS. MILLICAN:

Q DEPUTY MERRILL, WHERE ARE YOU EMPLOYED?

A BEAUFORT COUNTY SHERIFF'S OFFICE.

Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A 10 ½ YEARS.

Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S OFFICE?

A CURRENTLY I SERVE WITH THE WARRANTS DIVISION. I SERVE WARRANTS.

Q WHAT WERE YOUR DUTIES ON FEBRUARY OF 2006?

A I WAS A ROAD PATROL OFFICER RESPONDING TO CALLS.

Q WERE YOU ON DUTY OF FEBRUARY THE 7TH, 2006?

A YES, I WAS.

Q WERE YOU DISPATCHED TO CUFFY ROAD ON ST. HELENA ISLAND ON THAT DAY?

A YES, I WAS.

Q IS THAT BEAUFORT COUNTY?

A BEAUFORT COUNTY AND ST. HELENA.

Q WHO WAS ON THE SCENE WHEN YOU ARRIVED AT THAT ADDRESS?

A THERE WERE NO OTHER OFFICERS ON THE SCENE WHEN I RESPONDED TO THE ADDRESS, AND I CAME TO CUFFY ROAD FROM SEASIDE. AND WHEN I ARRIVED AT THE SCENE, THE VICTIM WAS THERE, [redacted]

Q DID YOU SECURE THE CRIME SCENE?

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A YES, I DID.
Q WHAT DID YOU SEE WHEN YOU ARRIVED?
A JUST PRIOR TO MY ARRIVAL, I DID SEE THE SURVEYORS. IT WOULD HAVE BEEN ON THE EAST SIDE OF THE HOUSE IN A FIELD. AND I STOPPED AND THEY GAVE ME DIRECTIONS TO THE HOUSE. WHEN I WENT TO THE HOUSE, I REMEMBER THE TRAILER BEING THERE. I BELIEVE THERE WAS A VEHICLE IN THE YARD. AND GOING UP TO THE YARD, I REMEMBER A DOG BEING ON THE OUTSIDE OF THE TRAILER. THE FRONT DOOR WAS STILL AJAR -- WAS AJAR, I BELIEVE.
Q WAS THERE ANYONE INSIDE THE RESIDENCE?
A [redacted].
Q DID YOU SPEAK TO [redacted]?
A YES, I DID.
Q DID SHE SPEAK ENGLISH TO YOU?
A I BELIEVE, YES. I HAVE TO QUALIFY WITH BELIEVE, BECAUSE AS I WAS THERE, I SPENT A LOT OF TIME ALSO TALKING TO ANOTHER LADY WHO WAS AT THE RESIDENCE. AND OVER THE TIME I REMEMBER SPEAKING TO HER AND AT THE FIRST MOMENT OF ARRIVAL, I BELIEVE MS. RODRIGUEZ GREETED ME.
Q DO YOU RECALL WHO THE OTHER LADY WAS WHO WAS THERE?
A I BELIEVE IT WAS HER SISTER, FRIEND, SISTER.
Q DID YOU TAKE A WRITTEN STATEMENT FROM [redacted]
A YES. I DIDN'T -- I INITIATED IT. SHE WAS THERE. AND THEY WERE WRITING IT. TO SAY TAKE IT, I BELIEVE THAT THE

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DETECTIVE TOOK IT TOWARD THE END OF THE MEETING, BUT IT WAS STARTED THROUGH HER -- THROUGH ME.

Q WHEN YOU STATED THEY WERE WRITING IT, WHO ARE YOU REFERRING TO, THEY?

A SHE AND HER SISTER. I BELIEVE HER SISTER WAS HELPING HER WITH SOME OF THE ENGLISH OF IT.

Q WAS HER SISTER CONTRIBUTING TO THE CONTENT OF IT OR DID IT SEEM THAT SHE WAS JUST TRANSLATING IT?

A TRANSLATING.

Q WHO ELSE ARRIVED ON THE SCENE AFTER YOU ARRIVED?

A OFFICER RUNYON ARRIVED AFTER I DID.

Q AND WHAT DID YOU OBSERVE HIM [redacted] THERE?

A PRIMARILY, [redacted] OFFICER THAT CHECKED THE OUTSIDE AREA. I RESPONDED TO THE SCENE, LOCATED IT, MADE SURE IT WAS SECURE, SPOKE TO THE VICTIM. HE WAS ON THE OUTSIDE. HE LOOKED FOR THE SUSPECT AND SPOKE TO THE SURVEYORS WHO WERE OUTSIDE THE RESIDENCE.

Q ALL RIGHT. WHO ELSE ARRIVED AFTER DEPUTY RUNYON?

A I WANT TO BELIEVE THAT RUNYON HAD SOMEBODY RIDING WITH HIM. AND OTHER THAN THAT, JUST THE DETECTIVE.

Q AND WHICH DETECTIVE ARE YOU REFERRING TO?

A DETECTIVE CHAPMAN.

[redacted] HE TAKE OVER THE INVESTIGATION AT THE POINT HE ARRIVED?

A YES, HE DID.

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MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

THE COURT: CROSS EXAMINATION, MS. SMART?

MS. SMART: MAY IT PLEASE THE COURT.

THE COURT: YES, MA'AM.

CROSS EXAMINATION BY MS. SMART:

Q CORPORAL MERRILL, DID YOU WRITE A SUPPLEMENTAL REPORT?

A I WROTE THE ORIGINAL REPORT.

Q YOU WROTE THE ORIGINAL REPORT. AND DID YOU INTERVIEW [redacted]?

A YES.

Q AND SHE GAVE YOU AN ORAL STATEMENT?

A YES.

Q WERE YOU ABLE TO UNDERSTAND HER?

A ONCE AGAIN, WHEN I GOT THERE, IF I WAS WITH [redacted] LONG -- I MEAN, THERE, IT WASN'T LONG. SO HER SISTER WAS THERE ALSO AND I HAD TO WAIT FOR A WHILE FOR OFFICER CHAPMAN TO COME OUT, SO I DID SPEAK FOR A WHILE WITH HER AND HER SISTER. AND SO TO SAY I SPOKE DIRECTLY WITH [redacted] AT THIS TIME A YEAR LATER, IT'S SOMEWHAT HARD TO SAY HOW MUCH I GOT FROM HER AND HOW MUCH I GOT FROM HER SISTER.

Q DO YOU HAVE YOUR POLICE REPORT WITH YOU?

A YES, I DO.

Q I'M GOING TO ASK YOU A NUMBER OF QUESTIONS THAT YOU

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MAY NEED TO REFER TO YOUR POLICE REPORT, SPECIFICALLY, ABOUT WHAT SHE TOLD YOU OCCURRED. NOW, ISN'T IT TRUE THAT SHE INDICATED TO YOU THAT SHE SAW THE SUSPECT THROUGH THE WINDOW AND HE TOLD HER THAT HE WANTED TO USE HER PHONE?

A YES.

Q AND SHE STATED THAT SHE OBSERVED PEOPLE WORKING ON THE STREET AND SHE THOUGHT IT WOULD BE SAFE TO LET HIM IN?

A YES.

Q SHE ALLOWED HIM TO ENTER THE RESIDENCE, AND SHE GAVE HIM THE TELEPHONE?

A I'LL HAVE TO REFER BACK TO THIS ON THE -- WHETHER SHE GAVE IT TO HIM OR SHOWED HIM WHERE IT WAS AT IS THE ONLY THING I JUST HAVE TO QUESTION. BUT THERE'S NOT MUCH DIFFERENCE, HE USED THE PHONE.

Q CAN YOU TELL ME WHAT YOUR REPORT SAYS?

MS. MILLICAN: YOUR HONOR, THE STATE OBJECT TO THE FACT THE OFFICER IS TESTIFYING TO WHAT SHE ASKED. FOR HIM TO QUOTE THE REPORT WITHOUT THE REPORT BEING IN EVIDENCE IS ---

THE COURT: WELL, SHE HAS NO INTO EVIDENCE. I'M NOT SURE IF SHE CAN. BUT BE THAT AS IT MAY, HE HAS THE RIGHT TO LOOK AT THE REPORT TO REFRESH HIS RECOLLECTION AND AFTER HE'S LOOKED AT IT, HE CAN TESTIFY IF THAT REFRESHES HIS RECOLLECTION.

MS. MILLICAN: BUT, YOUR HONOR, THE STATE'S OBJECTION

WOULD ONLY BE THAT HE HAS TO READ FROM IT.

THE COURT: DON'T READ FROM THE REPORT. READ THE REPORT. SEE IF THAT REFRESHES YOUR RECOLLECTION, AND THEN ANSWER MS. SMART'S QUESTION.

MS. MILLICAN: THANK YOU, YOUR HONOR.

A YES. THE ANSWER WOULD BE, YES.

Q OKAY. AND DID SHE TALK TO YOU ABOUT A PERSON NAMED GREEN?

A YES.

Q DID SHE INDICATE ANYTHING TO YOU ABOUT GREEN? FROM YOUR RECOLLECTION, SHE INDICATED THAT THERE WAS A DIALOGUE BETWEEN SHE AND THE SUSPECT, AND THE SUSPECT WANTED TO KNOW WHETHER OR NOT SHE KNEW GREEN, AND SHE SAID SHE DID NOT. IS THAT CORRECT?

A YES.

Q THEN SHE SAID THAT THIS DIALOGUE CONTINUED AND THEN HE MADE ANOTHER PHONE CALL; IS THAT CORRECT?

A THAT SOUNDS CORRECT.

Q AND SHE INDICATED TO YOU THAT SHE OFFERED TO WRITE A NOTE FOR THIS SUSPECT IN CASE THE NEIGHBOR ACROSS THE STREET WHOSE NAME SHE WAS NOT SURE OF TURNED OUT TO BE GREEN ---

A YES.

Q --- IS THAT CORRECT? AND NOW LET'S TALK ABOUT THE GUN. WAS SHE ABLE TO DESCRIBE THE GUN TO YOU?

A SHE SAID IT WASN'T A REVOLVER, THAT IT WAS A BLACK OR DARK GRAY IN COLOR PISTOL.

Q AND DID SHE TELL YOU WHERE -- ISN'T IT TRUE SHE TOLD YOU THAT THE SUSPECT PRODUCED THE PISTOL FROM BEHIND HIS BACK?

A THAT'S WHAT I RECALL AND THAT'S WHAT I WROTE ON THIS REPORT.

Q NOW WITH REGARD TO THE SEQUENCE OF EVENTS THAT OCCURRED ONCE SHE AND THE SUSPECT WERE IN THE BEDROOM, ISN'T IT TRUE THAT SHE TOLD YOU THAT SHE TOOK HER PANTS OFF BUT ONLY TO HER THIGHS?

A YES.

Q AND SHE SAID THAT SHE DIDN'T TAKE HER PANTS ALL OF THE WAY OFF?

A YES.

Q AND SHE SAID THAT THE SUBJECT FORCED HIS FINGER INSIDE HER VAGINA?

A YES.

Q AND THEY STRUGGLED?

A YES.

Q AND HE THREW HER ON THE FLOOR?

A DURING THE STRUGGLE, I'M SURE THAT THERE WAS, YOU KNOW, QUITE A LOT OF MOVEMENT.

Q AND SHE TOLD HIM THAT SHE WAS EXPECTING HER HUSBAND ANY MINUTE?

A YES.
Q NOW, IN DETAILING YOUR OBSERVATIONS OF THE CRIME SCENE, IF YOU HAD NOTICED THAT THE ROOM APPEARED AS IF A STRUGGLE HAD OCCURRED WITHIN, WOULD YOU HAVE INCLUDED THAT WITHIN YOUR REPORT -- OF YOUR OBSERVATION?
A IT'S ONE OF THOSE THINGS THAT I WOULD LIKE TO SAY YES TO, BUT IT DEPENDS ON WHAT I'M TYPING, WHAT I'M REMEMBERING, WHAT I'M WRITING. SO I'D LIKE TO SAY THAT, YES, I ALWAYS HIT ALL THE POINTS. BUT I'M JUST AN OFFICER TRYING TO DO THE JOB AND WHEN I'M TYPING I MIGHT NOT INDICATE SOMETHING OF THAT NATURE. I CAN DO THE BEST I CAN FROM MEMORY FOR YOU THOUGH.
Q NOW, AS THE BEST YOU CAN RECALL, DID IT APPEAR THAT THE STRUGGLE OCCURRED IN THE BEDROOM?
A THE SHEETS WERE DISTURBED AND I BELIEVE THE PHONE HAD BEEN TAMPERED WITH AS I RECALL.
Q DID SHE TELL YOU -- ISN'T IT TRUE THAT SHE ONLY INDICATED TO YOU THAT ONE PHONE WAS YANKED FROM THE WALL?
A IN PARTICULAR I REMEMBERED THE KITCHEN PHONE AREA, BECAUSE I DEALT MORE TIME WITH IT PROBABLY -- IN THE KITCHEN AREA.
Q WITH REGARD TO THE DRESSER IN THE BEDROOM, ISN'T IT TRUE THAT SHE TOLD YOU THAT HE FUMBLED THROUGH THE DRESSER, THAT HE HAD OPENED TWO DRESSER DRAWERS AND THAT HE RUMBLED THROUGH THE DRESSER ---

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A YES.
Q --- AS IF HE WAS LOOKING FOR SOMETHING?
A YES.
Q DID SHE INDICATE TO YOU HOW THE SUSPECT LEFT HER HOUSE?
A SEEMS TO ME THAT SHE INDICATED THROUGH THE BACK DOOR -- NOT READING THIS, BUT SEEMS TO BE.
Q DID SHE INDICATE TO YOU WHETHER OR NOT SHE SAW THE SUSPECT LEAVE HER HOUSE?
A NO.
Q NOW, DID YOU DUST FOR ANY FINGERPRINTS WHILE YOU WERE THERE?
A YES, I DID.
Q AND DO YOU RECALL WHAT YOU DUSTED FOR PRINTS?
A THE DRESSER, SOME PHONES -- I BELIEVE BOTH PHONES.
Q AND WERE YOU ABLE TO DETERMINE IF THOSE FINGERPRINTS HAD ANY VALUE -- AN EVIDENTIARY VALUE?
A IT WAS DETERMINED THAT THERE WAS NO EVIDENTIARY VALUE TO THE FINGERPRINTS I WAS ABLE TO LOCATE.
Q AND DID YOU OBSERVE ANY TIRE TRACKS OR SHOE IMPRESSIONS AROUND THE EXTERIOR OF THE MOBILE HOME?
A I DID NOT OBSERVE ANY -- THERE WERE SHOE IMPRESSIONS OUT BY THE FRONT, BUT THEY WERE FOUND -- IDENTIFIED AS THE SURVEYORS' SHOE IMPRESSIONS.
Q AND YOU WERE THE ONE THAT SEIZED THE PANTS THAT MS.

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RODRIGUEZ WAS WEARING; IS THAT CORRECT?
A YES.
Q AND THOSE PANTS WERE LOCATED?
A IN THE BEDROOM.
Q IN THE BEDROOM. AND YOU COLLECTED THOSE PANTS AND SUBMITTED THEM TO EVIDENCE?
A YES, MA'AM.
Q WHEN YOU ARRIVED, WHAT TYPE OF PANTS DID MS. RODRIGUEZ HAVE ON?
A I REMEMBER THEY WERE BAGGIER THAN NORMAL, MORE LIKE THEY WERE JUST TOO BIG FOR HER. I DON'T RECALL THEM BEING JEANS. I THINK THEY WERE DARK, AS I RECALL.
Q AND DID SHE INDICATE TO YOU AT ALL THAT SHE HAD CHANGED CLOTHES?
A INTO THOSE -- INTO THOSE PANTS.
Q BUT IN HER STATEMENT SHE INDICATED THAT SHE DIDN'T TAKE HER PANTS OFF DURING THE ALLEGED INCIDENT, THAT SHE ONLY DROPPED THEM TO HER THIGHS?
A SHE ORIGINALLY DID THAT, BUT SHE HAD -- DURING HER STATEMENT THAT WAS WHEN SHE WAS BEING FORCED INTO A SEX ACT, THAT SHE SAID SHE'D ONLY TAKEN THEM DOWN THERE.
Q NOW, YOU HAD HER WRITE A WRITTEN STATEMENT; IS THAT CORRECT?
A YES, SHE WAS WRITING ---
Q A VOLUNTARY STATEMENT?

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A YES.
Q BUT YOU NEVER RECEIVED IT FROM HER?
A AS I RECALL, IT'S NOT -- I DON'T SEE THAT IT WAS ATTACHED TO MY REPORT. I SEE THAT I OBTAINED THE -- HAD THE STATEMENTS FROM THE WITNESSES, SURVEYORS, ON MINE. BUT I BELIEVE THAT HERS WAS TURNED OVER TO THE DETECTIVE BECAUSE HE'D ARRIVED AT THE SCENE AND SHE TOOK A WHILE, AND IT TOOK A WHILE TO GET THE STATEMENT WRITTEN.
Q AND DID YOU -- YOU DIDN'T INTERVIEW THE SURVEYORS ABOUT WHAT HAPPENED, DID YOU?
A OFFICER RUNYON WAS THE OFFICER WHO WAS OUTSIDE THE TRAILER, HE OBTAINED THEIR STATEMENTS FROM THEM.
Q YOU DIDN'T NOTE ANY DAMAGE TO THE RESIDENCE?
A NO, I DIDN'T NOTE ANY DAMAGE TO THE DOORS OR FORCED ENTRY-TYPE INCIDENT LIKE THAT OTHER THAN THE PHONES.
Q WHAT TYPE OF CLOTHING DID MS. RODRIGUEZ HAVE ON WHEN YOU ARRIVED?
A I REMEMBER THE PANTS IN PARTICULAR, BECAUSE I DON'T RECALL THEM FITTING HER QUITE RIGHT. AND THE SHIRT, I CAN'T HONESTLY BRING BACK. I WANT TO SAY IT WAS DARK IN COLOR TOO.
Q YOU DIDN'T NOTE ANY BRUISING OR SWELLING OR INJURIES TO HER BODY OTHER THAN HER FINGER, DID YOU?
A PRIMARILY, IN MY MIND NOW I REMEMBER THE FINGER.
Q AND DID SHE COMPLAIN TO YOU OF ANY TYPE OF INJURIES OR

BEING IN PAIN OR ANYTHING LIKE THAT?

A I DON'T REMEMBER HER COMPLAINING OF BEING -- AS HAVING A SUBSTANTIAL INJURY THAT SHE WAS COMPLAINING OF.

MS. SMART: THANK YOU, I DON'T HAVE ANY OTHER QUESTIONS.

THE COURT: REDIRECT?

REDIRECT EXAMINATION BY MS. MILLICAN:

Q DEPUTY MERRILL, ALTHOUGH [redacted] CAN SPEAK ENGLISH AND HER SISTER WAS PRESENT TO TRANSLATE, IS IT FAIR TO SAY THAT THERE IS STILL SOMETHING OF A LANGUAGE BARRIER IN GETTING THE EXACT DETAILS OF WHAT SHE SAID WHEN YOU TOOK HER STATEMENT?

A YES.

Q IS IT ALSO FAIR TO SAY THAT THIS INCIDENT HAPPENED OVER A YEAR AGO AND YOUR RECOLLECTION OF THE DETAILS MAY NOT BE AS SHARP?

A YES.

Q WHEN YOU ARRIVED ON THE SCENE, DID THE VICTIM STILL APPEAR TO YOU TO BE IN SOME KIND OF SHOCK -- OR WHAT KIND OF STATE WAS SHE IN?

A SHE OBVIOUSLY HAD BEEN THROUGH A TRAUMATIC INCIDENT TO ME. HAVING SPEAKING WITH HER, SHE WAS ABLE TO HANDLE THE STRESS OF THE MOMENT, BUT SHE CLEARLY HAD BEEN THROUGH SOMETHING BUT SHE WAS ABLE TO CONTROL HER EMOTIONS. SHE DIDN'T -- TO ME -- IT WAS IMPORTANT TO ME THAT SHE WAS THE

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WAY SHE WAS BECAUSE SHE HAVING BEEN UPSET BUT SHE COULD STILL DEAL AND MAINTAIN CONTROL OF HERSELF BUT ALSO GIVE ME THE INFORMATION SHE NEEDED AND NOT JUST BE TOTALLY OVERWHELMED BY THE INCIDENT.

MS. MILLICAN: I HAVE NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.

THE COURT: RECROSS?

MS. SMART: N[redacted]ING, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU MAY STEP DOWN.

MS. MILLICAN: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

THE COURT: ANY OBJECTION?

MS. SMART: NO OBJECTION.

THE COURT: THE WITNESS IS EXCUSED. THANK YOU, SIR.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: ALL RIGHT. MS. MILLICAN, CALL YOUR NEXT WITNESS.

THE COURT: THE STATE CALLS INVESTIGATOR BRIAN CHAPMAN.

BRIAN CHAPMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: LANCE CORPORAL BRIAN CHAPMAN, B-R-I-A-N

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C-H-A-P-M-A-N.

DIRECT EXAMINATION BY MS. MILLICAN:

Q INVESTIGATOR CHAPMAN, WHERE ARE YOU EMPLOYED?

A BEAUFORT COUNTY SHERIFF'S OFFICE.

Q HOW LONG HAVE YOU BEEN AT THE BEAUFORT COUNTY SHERIFF'S OFFICE?

A I'VE BEEN EMPLOYED SINCE NOVEMBER OF 2002.

Q HOW MANY YEARS HAVE YOU BEEN IN LAW ENFORCEMENT IN TOTAL THOUGH?

A 4 YEARS. A LITTLE OVER 4 YEARS.

Q WHAT WERE YOUR GENERAL DUTIES IN FEBRUARY OF 2006?

A GENERAL ASSIGNMENT, CRIMINAL INVESTIGATOR.

Q WERE YOU ON DUTY ON FEBRUARY THE 7TH, 2006?

A I WAS.

Q DID YOU GET INVOLVED IN A RAPE CASE ON THAT DAY?

A I DID.

Q HOW DID YOUR INVOLVEMENT WITH THE CASE BEGIN?

A INVESTIGATION DIVISION RECEIVED A CALL FOR ASSISTANCE FROM THE ROAD PATROL. THEY ADVISED THEY HAD AN ASSAULT AT [redacted] ON ST. HELENA, BEAUFORT COUNTY, SOUTH CAROLINA. ALSO RECEIVED INFORMATION FROM THE OFFICERS THAT THEY HAD MADE CONTACT WITH AN INDIVIDUAL THAT MATCHED THE DESCRIPTION THAT WAS GIVEN BY THE VICTIM BY THE NAME OF NATHANIEL JOHNSON. AND I ALONG WITH SERGEANT CHRIS WILSON CREATED A PHOTO LINE-UP.

Q DO YOU RECALL HOW MANY PHOTOS WERE INVOLVED IN THIS PHOTO LINE-UP OR PHOTO ARRAY?
A I BELIEVE IT WAS A TOTAL OF 12 INDIVIDUAL PICTURES.
Q WHAT DID -- WHAT DID THE PHOTOS IN THOSE PICTURES -- WHAT DID THEY LOOK LIKE?
A THEY WERE ALL AFRICAN AMERICAN MALES WITH CLOSE SHAVED HAIRCUTS OR NO HAIR AT ALL, CLEAN CUT FACIAL FEATURES, AND THEY WERE ALL WEARING ORANGE JUMP SUITS.
Q DID THEY ALL LOOK ABOUT ALIKE?
A THEY ALL LOOKED SIMILAR, YES.
Q IS THAT THE INTENTION IN A PHOTO ARRAY LIKE THAT?
A YES, IT IS.
Q WHY?
A SO THAT THERE ARE VARIOUS PEOPLE THAT LOOK SIMILAR, TO SEE IF A VICTIM CAN IDENTIFY A PERSON THAT MAY BE THEIR ATTACKER OR INVOLVED IN A CRIMINAL INCIDENT.
Q IN YOUR EXPERIENCE IS IT UNCOMMON FOR A VICTIM TO HAVE DIFFICULTY PICKING SOMEONE OUT OF A PHOTO LINE-UP?
A IT'S VERY COMMON.
Q IT'S VERY COMMON FOR THEM TO HAVE DIFFICULTY?
A YES.
Q WHEN DID YOU PRESENT THESE PHOTOS OF ALL THESE VARIOUS PEOPLE THAT LOOKED SIMILAR TO THE VICTIM?
A SHORTLY AFTER I ARRIVED ON THE SCENE.
Q DID SHE STILL APPEAR TO YOU TO BE IN SOME SORT OF

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SHOCK OR HAVING BEEN INVOLVED IN ANY KIND OF TRAUMA AT THAT POINT?

A ABSOLUTELY. SHE WAS VISIBLY SHAKEN. BUT WHEN I BEGAN SPEAKING TO HER, SHE WAS -- PRESENTED HERSELF VERY WELL AND WAS ABLE TO PROVIDE INFORMATION.

Q SO WHAT DID YOU DO ONCE YOU ARRIVED AT THE CRIME SCENE?

A FIRST I GOT AN UPDATE ON THE SITUATION FROM CORPORAL MERRILL AND OFFICER RUNYON TO GET AN IDEA OF WHAT THEY'VE ALREADY DONE ON THE SCENE, AND THEN I BEGAN SPEAKING WITH MS. RODRIGUEZ AND SHOWED HER THE LINE-UPS.

Q DID YOU TAKE ANY PHOTOGRAPHS OF THE SCENE?

A I DID WITH A DIGITAL CAMERA.

Q DID YOU TAKE THE PHOTOGRAPH OF THE VICTIM AND HER BITE MARKS?

A YES, I DID.

Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 1. IS THAT THE MANNER IN WHICH THE VICTIM WAS DRESSED AND THE STATE THAT HER KITCHEN WAS IN WHEN YOU SHOWED UP ON THE SCENE?

A YES, IT WAS.

Q DID YOU TAKE HER COMPLETE STATEMENT OR DID DEPUTY MERRILL TAKE THE COMPLETE STATEMENT?

A WHEN I ARRIVED, SHE WAS ALREADY IN THE BEGINNING STAGES OF A WRITTEN STATEMENT THAT WAS INITIATED BY

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CORPORAL MERRILL.

Q AFTER TAKING HER COMPLETE STATEMENT, SHOWING HER THE PHOTO LINE-UPS, AND TAKING PHOTOGRAPHS, WHAT DID YOU DO NEXT?

A I ASKED HER IF SHE HAD WASHED HER HANDS. SHE INDICATED SHE HAD A BITE MARK ON HER FINGER. I THEN COLLECTED COTTON SWABS OF THAT WOUND FOR POTENTIAL DNA EVIDENCE.

Q COULD YOU DESCRIBE FOR THE JURY EXACTLY HOW YOU GO ABOUT DOING THAT?

A TAKE A STERILE COTTON SWAB AND THEN SOME SALINE SOLUTION, PUT 1 OR 2 DROPS ON THE SWAB, AND THEN SWAB THE AREA IN A MOTION AROUND THE BITE WOUND THAT SHE HAD.

Q AND WHAT'S THE POINT OF THE SALINE?

A THE SALINE IS TO KEEP IT CLEAN, SO IT'S GOT SOMETHING -- IF THERE'S ANYTHING ON HER BITE WOUND, IT HAS SOMETHING TO ATTACH TO.

Q WHAT DO YOU DO AFTER YOU'VE TAKEN THE SWAB OF THE WOUND AREA?

A I PUT IT ON A DRYING RACK THAT I HAD AND THEN I SECURED IT.

Q IS THE DRYING RACK A PART OF THE KIT THAT COMES WITH THE SWABS OR WHAT IS IT EXACTLY?

A IT'S A -- IT'S A PIECE OF WOOD THAT'S MARKED, I BELIEVE 1 THROUGH 12, THAT WAS GIVEN TO ME -- THAT WAS

ISSUED FROM THE SHERIFF'S OFFICE.
Q WHILE THIS IS SITTING IN THE DRYING RACK, HOW LONG DID IT SIT THERE AND WHAT DID YOU DO WITH IT?
A IT WAS SITTING THERE UNTIL I COMPLETED MY INVESTIGATION, ON-SCENE INVESTIGATION. AND THEN I TOOK IT ALONG WITH OTHER EVIDENCE I'D COLLECTED WITH ME. AND THE VICTIM WAS ESCORTED TO BEAUFORT MEMORIAL HOSPITAL FOR A CRIMINAL SEXUAL CONDUCT KIT. AND THEN AFTER THAT I SECURED IT IN MY OFFICE.
Q DID YOU COLLECT ANYTHING ELSE FROM HER HOUSE?
A I DID. I COLLECTED A BEDDING SHEET THAT WAS ON THE BED.
(BOX WITH PANTS AND SHEET MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 11.)
Q WOULD YOU PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 11 FOR PURPOSES OF IDENTIFICATION?
A THIS IS A BOX MARKED FROM SLED, STATE LAW ENFORCEMENT DIVISION. INSIDE THERE'S A BIO HAZARD BAG. THEN THERE IS A BROWN PAPER EVIDENCE BAG FROM THE SHERIFF'S OFFICE, WHICH I FILLED OUT AND IT'S MARKED ONE BED SHEET COLLECTED FROM THE VICTIM'S BED.
Q NOW, THIS IS THE BED SHEET THAT YOU COLLECTED FROM THE VICTIM'S RESIDENCE ON THIS DAY?
A YES, MA'AM. INSIDE THAT, THERE'S A WHITE PAPER BAG. AND THEN THERE IS -- WHAT APPEARS A FITTED BEDDING SHEET.

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Q THE SWABS THAT YOU TOOK WITH THE BITE MARK, WERE THEY SEPARATE FROM THE RAPE KIT?

A YES, THEY WERE. I BELIEVE SWABS WERE ALSO CONDUCTED IN THE ASSAULT KIT, BUT I CONDUCTED SOME SEPARATELY PRIOR TO TAKING HER TO THE HOSPITAL.

Q OKAY. WHAT DID YOU DO WITH ALL THESE ITEMS THAT YOU COLLECTED, THE BEDDING SHEET, THE SWABS FROM HER HAND?

A WHEN I COMPLETED THE AT-SCENE INVESTIGATION AND COMPLETED THE STUFF AT THE HOSPITAL, THE EVIDENCE DIVISION AT THE SHERIFF'S OFFICE WAS ALREADY CLOSED FOR THE DAY, SO I HAD TO SECURE THEM IN MY OFFICE INSIDE THE SHERIFF'S OFFICE.

Q AND WHEN DID YOU PERSONALLY -- DID YOU PERSONALLY TAKE THOSE ITEMS TO EVIDENCE AT SOME POINT?

A I DID.

Q WHEN DID YOU DO THAT?

A IF YOU'LL INDULGE ME FOR A SECOND, I CAN LOOK BACK AT MY EVIDENCE SHEET AND I CAN TELL YOU EXACTLY WHEN. (PAUSE.) THE BEDDING SHEET AND THE SWABS THAT I COLLECTED ALONG WITH THE CD OF THE DIGITAL PICTURES, WERE SUBMITTED ON FEBRUARY 8TH AT 08:30.

Q IS THERE ANYTHING ELSE LOCATED IN THAT BOX RIGHT THERE IN FRONT OF YOU?

A THERE'S ANOTHER EVIDENCE BAG UNDERNEATH THIS ONE HERE. THIS IS A BROWN PAPER EVIDENCE BAG FROM CORPORAL MERRILL

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LABELED ONE PAIR OF PANTS FROM THE LOCATION INSIDE THE VICTIM'S BEDROOM.

Q IS THERE AN ITEM NO. 3 IN THAT BOX THAT WAS SENT TO SLED?

A CAN YOU ADVISE ME WHICH ITEM IT WAS? (PAUSE.)

(SWABS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 12.)

Q ACTUALLY HAVE IT RIGHT HERE.

A OKAY.

Q WOULD YOU PLEASE TAKE A LOOK AT WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NO. 12? DO YOU RECOGNIZE IT?

A YES, I DO. THIS IS AN EVIDENCE BAG CONTAINING 2 Q-TIP SWABS TAKEN FROM THE VICTIM'S BITE WOUND, WHICH I COLLECTED.

Q HOW DO YOU RECOGNIZE IT? DO YOU HAVE ANY SORT OF ---

A IT'S MARKED WITH THE SHERIFF'S OFFICE CASE NUMBER. IF I CAN OPEN THIS UP, THE STUFF'S INSIDE THAT I'D BE ABLE TO IDENTIFY.

Q DID YOU INITIAL ---

A NOT ON THIS PART. THIS OUTER PART IS FROM STATE LAW ENFORCEMENT DIVISION. (PAUSE.) THIS IS A CLEAR PLASTIC EVIDENCE BAG CONTAINING TWO MANILA ENVELOPES LABELED SWAB 1 AND SWAB NO. 2. THESE ARE THE COTTON SWABS THAT I COLLECTED, AND IT IS MY HANDWRITING.

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Q THANK YOU, INVESTIGATOR CHAPMAN. DID YOU COLLECT [redacted] VOLUNTARY WRITTEN STATEMENT OR DID DEPUTY MERRILL COLLECT THAT?

A HE INITIATED THE STATEMENT ON THE SCENE PRIOR TO MY ARRIVAL, AND THEN I COLLECTED IT PRIOR TO LEAVING FOR BEAUFORT MEMORIAL.

Q DID YOU ADVISE ANA TO DO ANYTHING FURTHER AT THAT POINT?

A WHEN WE GOT TO BEAUFORT MEMORIAL I ASKED HER TO GO AHEAD AND COMPLETE ANOTHER STATEMENT.

Q AT THE HOSPITAL?

A AT THE HOSPITAL, YES.

Q DID YOU ESCORT HER TO THE HOSPITAL?

A I DID. SHE FOLLOWED BEHIND ME IN ANOTHER VEHICLE. SEEING HOW SHE HAD JUST STATED SHE HAD BEEN ASSAULTED BY A BLACK MALE AND BEING SEXUALLY ASSAULTED, I DIDN'T FEEL IT WOULD BE COMFORTABLE FOR HER TO RIDE WITH ME TO THE HOSPITAL. SO SHE RODE WITH HER SISTER AND THEY FOLLOWED BEHIND ME.

Q WAS SHE COOPERATIVE WITH YOUR INVESTIGATION?

A YES, SHE WAS.

Q WAS THE TRANSLATOR PRESENT WHEN YOU TOOK THE SECOND STATEMENT AT THE HOSPITAL?

A HER SISTER WAS THERE, YES.

Q WHY DID YOU TAKE ANOTHER STATEMENT FROM HER?

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A COMMONLY DO THAT TO MAKE SURE EVERYTHING IS CONSISTENT.
Q WELL, IN YOUR OPINION WAS SHE CONSISTENT WITH HER PREVIOUS STATEMENT?
A YES, SHE WAS.
Q DURING THE INTERVIEW WAS ANA ABLE TO DESCRIBE HER ATTACKER IN DETAIL?
A SHE WAS.
Q DID YOU ARRANGE FOR HER TO MEET WITH A SKETCH ARTIST?
A I DID, I ARRANGED FOR HER TO MEET WITH A STATE LAW ENFORCEMENT DIVISION FORENSIC SKETCH ARTIST.
Q WAS A COMPOSITE SKETCH OF HER ATTACKER COMPLETED?
A IT WAS.
Q WHAT DATE WAS THAT DONE?
A I BELIEVE THAT WAS DONE ON THE 9TH.
Q AND WHO ACTUALLY COMPLETED THAT?
A THAT WOULD BE SLED AGENT MIKE LYNCH.
Q WHAT WAS DONE WITH THE SKETCH AFTER IT WAS COMPLETED?
A THE SKETCH WAS TAKEN AND THEN DISTRIBUTED TO THE LOCAL MEDIA OUTLETS, TV AND NEWSPAPER.
Q DID YOU CONDUCT ANY NEIGHBORHOOD CANVASES?
A I DID. I WALKED THE AREA OF CUFFY ROAD, AND ALSO OF SCOTT HILL AREA.
Q AS A RESULT OF THE PUBLICATION OF THAT SKETCH TO THE COMMUNITY AND A CANVAS OF THE AREA, DID YOU RECEIVE

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INFORMATION FROM COMMUNITY MEMBERS THAT HELPED YOU DEVELOP A POSSIBLE SUSPECT IN THIS CASE?

A I DID.

Q WHO WAS THE POSSIBLE SUSPECT THAT WAS DEVELOPED?

A REPEATED TIMES THE NAME OF NATHANIEL JOHNSON, JR.

Q DID YOU DETERMINE WHERE NATHANIEL JOHNSON, JR. WAS LIVING?

A I DID.

Q WHAT WAS HIS ADDRESS?

A 160-B STORYTELLER ROAD, ST. HELENA, BEAUFORT COUNTY SOUTH CAROLINA.

Q APPROXIMATELY HOW FAR IS THAT ADDRESS FROM THE VICTIM'S ADDRESS 94 CUFFY ROAD?

A IT'S APPROXIMATELY 2 ½ TO 3 MILES.

Q WAS A SEARCH WARRANT EXECUTED AT THAT ADDRESS?

A IT WAS.

Q WAS THE DEFENDANT PRESENT?

A HE WAS. INITIALLY HE WAS -- THE REASON WE SERVED THE SEARCH WARRANT, HE WAS ARRESTED FOR UNRELATED CHARGES, AND THEN THE SEARCH WARRANT WAS SERVED AFTER HIS ARREST.

Q DID YOU ADVISE THE DEFENDANT OF HIS MIRANDA RIGHTS?

A I DID.

MS. SMART: OBJECTION, YOUR HONOR. SIDE BAR.

THE COURT: ALL RIGHT.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE

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PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: MS. RUTLEDGE, IF YOU'LL MAKE A NOTE ON YOUR TAPE WHERE YOU ARE RIGHT NOW FOR MY BENEFIT PLEASE.

ALL RIGHT. YOU MAY PROCEED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q DID YOU ADVISE THE DEFENDANT OF HIS MIRANDA RIGHTS?

A YES, I DID.

(MIRANDA FORM MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 13.)

Q WOULD YOU PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 13. DO YOU RECOGNIZE IT?

A YES, I DO.

Q WHAT IS IT?

A IT'S A BEAUFORT COUNTY SHERIFF'S OFFICE MIRANDA FORM.

Q HOW DO YOU RECOGNIZE IT?

A MY SIGNATURE IS THE FIRST SIGNATURE ON HERE AS WITNESS.

MS. MILLICAN: YOUR HONOR, THE STATE MOVES TO ADMIT STATE'S EXHIBIT NO. 13 INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. STATE'S EXHIBIT NO. 13 WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION. IS IT MARKED FOR IDENTIFICATION AT THIS POINT, MS. MILLICAN?

MS. MILLICAN: YES, YOUR HONOR, STATE'S NO. 13.

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THE COURT: GIVE IT BACK TO THE COURT REPORTER, LET HER TAKE THE I.D. MARKING OFF OF IT.

(PAUSE.)

(STATE'S EXHIBIT NO. 13 RECEIVED IN EVIDENCE.)

MS. MILLICAN: THANK YOU.

Q WOULD YOU PLEASE DEMONSTRATE THE MANNER IN WHICH YOU ADVISED THE DEFENDANT OF HIS MIRANDA RIGHTS USING THIS FORM?

A THIS IS THE STANDARD WAY I DO IT. (READING.) THIS IS A STATEMENT OF YOUR MIRANDA RIGHTS. BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND WHAT YOUR RIGHTS ARE. YOU HAVE THE RIGHT TO REMAIN SILENT. DO YOU UNDERSTAND THAT?

ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. DO YOU UNDERSTAND THAT?

YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS. DO YOU UNDERSTAND THAT?

IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. DO YOU UNDERSTAND THAT?

IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT AN ATTORNEY, YOU STILL HAVE THE RIGHT TO STOP ANSWERING ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING ANY TIME UNTIL YOU TALK TO AN ATTORNEY. DO YOU UNDERSTAND THAT?

THIS NEXT PART IS CALLED A WAIVER OF RIGHTS, AND I'M GOING TO READ THIS TO YOU.

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THE FIRST ONE SAYS, I HAVE READ THE STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. DO YOU UNDERSTAND THAT? DO YOU UNDERSTAND THAT?

THE SECOND PART SAYS, I CANNOT READ THE STATEMENT AND THE STATEMENT HAS BEEN READ TO ME SUFFICIENTLY SO I UNDERSTAND WHAT MY RIGHTS ARE. DO YOU UNDERSTAND THAT?

I'M WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS TIME. I UNDERSTAND AND KNOW WHAT I'M DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME. DO YOU UNDERSTAND THAT?

NORMALLY AFTER I'VE COMPLETED THAT, I'LL ASK IF THEY UNDERSTAND THAT AND AGREE WITH IT, PLEASE INITIAL IN THE PARENTHESES THAT ARE LISTED ON THE SIDE HERE. AND I ASK THEM IF THEY AGREE WITH ALL THAT, PLEASE SIGN, PUT THE AMOUNT OF EDUCATION THEY'VE COMPLETED IN THE MARKED BOX AND THEN SIGN IT AND DATE IT.

Q DID THE DEFENDANT SIGN THIS PARTICULAR WAIVER FORM?

A NO, HE DID NOT. HE WAS HANDCUFFED.

Q DID HE INDICATE WHETHER OR NOT HE UNDERSTOOD AS YOU WENT THROUGH THE VARIOUS RIGHTS?

A HE DID. HE GAVE VERBAL ACKNOWLEDGMENT FOR EACH ONE.

Q DESCRIBE THE DEFENDANT'S PHYSICAL APPEARANCE AT THE TIME YOU GAVE HIM HIS MIRANDA RIGHTS?

A AT THE TIME HIS APPEARANCE APPEARED TO BE CLEAN CUT,

WELL KEPT. HIS HAIR WAS VERY CLOSE, APPEARED TO BE VERY CLOSE SHAVEN.

Q HAVE YOU EVER DEALT WITH PEOPLE IN YOUR WORK WHO ARE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

A YES, MA'AM.

Q DID THE DEFENDANT APPEAR TO YOU TO BE UNDER THE INFLUENCE OF EITHER ALCOHOL OR DRUGS AT THE TIME YOU ADVISED HIM OF HIS RIGHTS?

A NO, HE DID NOT.

Q DID THE DEFENDANT APPEAR TO UNDERSTAND YOUR QUESTIONS?

A YES, MA'AM.

Q WAS HIS SPEECH COHERENT?

A YES, MA'AM.

Q DID HE RESPOND WHEN ASKED IF HE WANTED AN ATTORNEY?

A HE SAID NO.

Q DID THE DEFENDANT INVOKE HIS RIGHT TO REMAIN SILENT?

A NO.

Q DID THE DEFENDANT AGREE TO ANSWER YOUR QUESTIONS WITHOUT AN ATTORNEY BEING PRESENT?

A YES, HE DID.

Q DID YOU PROMISE THE DEFENDANT ANYTHING IN EXCHANGE FOR HIS STATEMENT?

A NO, I DID NOT.

Q DID YOU COERCE THE DEFENDANT IN MAKING A STATEMENT WITH THREATS OR ACTIONS?

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A NO, I DID NOT.
Q TO THE BEST OF YOUR KNOWLEDGE, WAS THE DEFENDANT'S STATEMENT FREELY AND VOLUNTARILY GIVEN TO YOU?
A YES, MA'AM.
Q DID THE DEFENDANT MAKE A STATEMENT IN RESPONSE TO YOUR QUESTIONS REGARDING [redacted] CASE?
A YES, HE DID.
Q DID THE DEFENDANT EVER REFUSE TO ANSWER FURTHER [redacted] QUESTIONS OR REFUSE TO DO SO WITHOUT AN ATTORNEY BEING PRESENT? [redacted]
A HE ANSWERED THE MAJORITY OF THE QUESTIONS TOWARD THE END OF THE INTERVIEW.
Q AT THE POINT THAT HE EITHER REFUSED TO ANSWER QUESTIONS OR WANTED HIS ATTORNEY TO BE PRESENT, DID YOUR QUESTIONS STOP?
A AFTER HE REQUESTED AN ATTORNEY TO BE PRESENT, THEN WE STOPPED THE INTERVIEW.
Q WHERE DID THE DEFENDA[redacted]E WAS -- WHERE DID HE STATE HE WAS ON FEBRUARY THE 7TH, 2006?
A HE STATED HE WAS WORKING AT SUCCESSION GOLF COURSE ON LADY'S ISLAND.
Q WERE YOU LATER ABLE TO VERI[redacted]S EMPLOYMENT AT SUCCESSION ON THAT DAY?
A YES, I WAS ABLE TO VERIFY THAT INFORMATION.
Q WHAT DID YOU LEARN FROM YOUR INVESTIGATION WITH REGARD

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TO THAT?

A THAT HE WAS EMPLOYED FOR A PERIOD IN THE YEAR 2005, WAS NOT EMPLOYED AT SUCCESSION GOLF COURSE AT THE TIME.

Q DID HIS EMPLOYMENT AT SUCCESSION END IN 2005?

A I BELIEVE SO. I HAVE A RECORD HERE, I CAN REFER BACK TO. [redacted]

Q IF THAT WOULD HELP YOU REFRESH YOUR RECOLLECTION.

(PAUSE.)

A TO VERIFY NATHANIEL JOHNSON SOCIAL SECURITY NO. [redacted] [redacted] WAS EMPLOYED FROM MARCH 29TH, 2005 TO APRIL 23RD, 2005.

Q WHEN DID THIS INCIDENT HAPPEN AGAIN?

A THIS HAPPENED IN FEBRUARY OF 2006.

Q DID THE DEFENDANT MENTION HIS PREFERRED MEANS OF TRANSPORTATION?

A HE SAID HE PREFER TO EITHER WALK OR RIDE A BICYCLE.

Q DID THE DEFENDANT INDICATE WHETHER HE KNEW ABOUT THE ATTACK ON [redacted]

A YES, HE INDICATED HE'D HEARD ABOUT IT ON THE NEWS AND IN THE NEWSPAPER.

Q DID YOU SHOW THE DEFENDANT THE SKETCH THAT MIKE LYNCH HAD MADE WITH [redacted] DESCRIPTION?

A YES, MA'AM.

Q WHAT WAS THE DEFENDANT'S REACTION TO THE SKETCH?

A HE STATED IT LOOKED LIKE HIM, BUT HE DIDN'T KNOW

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ANYTHING ABOUT IT AND IT WAS NOT HIM IN THE PICTURE.
Q DID YOU REQUEST ANY OF THE EVIDENCE YOU HAD COLLECTED AT THIS POINT BE SENT TO SLED FOR ANALYSIS?
A YES, MA'AM.
Q WHAT PIECES OF EVIDENCE DID YOU REQUEST BE SENT TO SLED?
A I REQUESTED THE SEXUAL ASSAULT KIT, THE FITTED BED SHEET, AND THE SWABS I HAD COLLECTED AT THE SCENE.
Q WAS THERE ANY CLOTHING THAT WENT?
A I BELIEVE THERE WAS A PAIR OF PANTS THAT WAS SENT AS WELL THAT WAS COLLECTED BY CORPORAL MERRILL.
Q WERE YOU ABLE TO OBTAIN AN INITIAL DNA SAMPLE FROM THE DEFENDANT FOR COMPARISON TO THE RAPE KIT THAT [redacted] SUBMITTED TO AT THE HOSPITAL?
A NOT AT FIRST.
Q WERE YOU EVER ABLE TO?
A YES, I WAS.
Q HOW?
A HE WAS IN THE BEAUFORT COUNTY DETENTION CENTER ---
MS. SMART: OBJECTION, YOUR HONOR.
THE COURT: ALL RIGHT. THE JURY WILL DISREGARD WHERE HE WAS, JUST TELL HOW YOU CAME TO GET THE SAMPLE. THE FIRST PART OF THAT STATEMENT WILL BE STRICKEN.
MS. MILLICAN: YOUR HONOR, MAY WE APPROACH JUST BRIEFLY?

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THE COURT: YES.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THERE IS AN EVIDENTIARY MATTER THAT I NOW NEED TO TAKE UP WITH THE ATTORNEYS, AND I NEED TO DO THAT ON THE RECORD AND OUTSIDE OF YOUR PRESENCE. SO I'M GOING TO ASK IF YOU WOULD, GO TO YOUR JURY ROOM FOR A FEW MINUTES PLEASE WHILE WE TAKE CARE OF THAT. JUST LEAVE YOUR NOTE PADS IN YOUR CHAIR. DO NOT DISCUSS THE CASE AMONG YOURSELVES WHILE YOU'RE IN THE JURY ROOM. WE'LL SEND FOR YOU VERY SHORTLY.

(THE JURY RETIRES TO THE JURY ROOM AT 3:05 P.M.)

THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY PROFFER THE TESTIMONY KEEPING IN MIND THE PROHIBITIONS UNDER RULE 608 SPECIFIC INSTANCES OF CONDUCT. BUT I'LL HEAR FROM YOU. YOU MAY GO AHEAD AND ASK THE QUESTIONS AS TO THE SECURING OF THE EVIDENCE THAT YOU THINK IS NECESSARY TO LAY THE PROPER FOUNDATION.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q INVESTIGATOR CHAPMAN, HOW DID YOU GET A DNA SAMPLE FROM THE DEFENDANT?

A I GOT THE SAMPLE BY GOING INTO THE WING CONTROL OF BRAVO 3, WHICH IS AN ADMINISTRATIVE SEGREGATION UNIT AT BEAUFORT COUNTY DETENTION CENTER. I WATCHED MR. JOHNSON IN HIS CELL IN A CLOSED DOOR. I WATCHED HIM THROUGH A PAIR OF

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BINOCULARS IN WING CONTROL. I WATCHED HIM EAT HIS MEAL WITH A PLASTIC UTENSIL. HE THEN DISCARDED THAT UTENSIL OUT OF THE FOOD TRAY SLOT AND OUT INTO THE OPEN COMMON AREA. HIS DOOR WAS STILL CLOSED. THAT UTENSIL AND A NAPKIN WAS COLLECTED BY A MEMBER OF THE BEAUFORT COUNTY DETENTION CENTER PERSONNEL.

Q AND THEN WHAT DID THAT PERSON DO WITH THE SPOON AND THE NAPKIN?

A IT WAS BROUGHT TO ME AND IT WAS PLACED IN AN EVIDENCE BAG.

Q WHAT DID YOU DO WITH THOSE ITEMS AT THAT POINT IN TIME?

A I COLLECTED THOSE AND I BROUGHT IT BACK TO THE BEAUFORT COUNTY SHERIFF'S OFFICE AND SUBMITTED IT AS EVIDENCE. AND IT WAS LATER SENT TO STATE LAW ENFORCEMENT DIVISION FOR COMPARISON TO THE EVIDENCE THAT I'D ALREADY SUBMITTED.

MS. MILLICAN: YOUR HONOR, THAT IS THE EXTENT.

THE COURT: WHY WAS HE IN BEAUFORT COUNTY DETENTION CENTER?

WITNESS: HE WAS ARRESTED FOR UNRELATED CHARGES TO THIS INCIDENT, YOUR HONOR.

THE COURT: MS. SMART, ANY QUESTIONS ON THIS ISSUE?

MS. SMART: NO, YOUR HONOR, I DON'T HAVE ANY QUESTIONS ON THIS ISSUE.

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THE COURT: ALL RIGHT. WHAT'S YOUR POSITION WITH REGARD TO THE PROFFER AS MADE BY MS. MILLICAN -- NOT THE QUESTIONS I ASKED, BECAUSE I ASKED HIM AND THAT'S WHEN HE SAID THE UNRELATED CHARGES, WHICH I DON'T THINK IS ADMISSIBLE. BUT GO AHEAD WITH WHATEVER ARGUMENTS YOU MIGHT HAVE.

MS. SMART: YOUR HONOR, CLEARLY, PRIOR BAD ACTS ARE INADMISSIBLE. AND WHEN ---

THE COURT: WILL YOU STIPULATE THAT THE OFFICER OBTAINED A SAMPLE OF HIS DNA?

MS. SMART: YES. THEY HAVE TWO SAMPLES.

THE COURT: I MEAN, THIS SAMPLE, THE ONE THAT HE'S TALKING ABOUT. WILL YOU STIPULATE ---

MS. SMART: I'LL STIPULATE ---

THE COURT: --- THAT THE OFFICER RECEIVED A -- WHAT WAS IT, A SPOON?

MS. MILLICAN: A PLASTIC SPOON.

THE COURT: A SAMPLE OF HIS DNA ON A PLASTIC SPOON?

MS. SMART: I WILL STIPULATE THAT ---

THE COURT: WRITE OUT THE STIPULATION. THAT'S WHAT THE RULE REQUIRES. YOU ALL GET TOGETHER RIGHT NOW. WRITE IT OUT.

(PAUSE.)

MR. HOOD: JUDGE, MR. JOHNSON WOULD LIKE TO USE THE RESTROOM WHILE WE'RE DOING THIS. DO YOU HAVE A PROBLEM

WITH THAT?

THE COURT: NO, SIR, THAT WILL BE FINE.

(THE DEFENDANT EXITS THE COURTROOM.)

(PAUSE.)

THE COURT: IS THE PROPOSED STIPULATION AGREEABLE, MS. SMART?

MS. SMART: YES, YOUR HONOR.

THE COURT: ALL RIGHT. BOTH OF YOU WILL SIGN THAT AND HAND IT UP PLEASE.

MS. MILLICAN: YOUR HONOR, THE STATE HAS SIGNED IT.

(PAUSE.)

MS. SMART: YOUR HONOR, THERE IS ANOTHER ISSUE WITH REGARD TO THE SECOND DNA SAMPLE.

THE COURT: ALL RIGHT. LET'S TAKE ONE THING AT A TIME. LET ME SEE THAT ONE FIRST.

(PAUSE.)

(SLED EVIDENCE BAG WITH PLASTIC SPOON MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 14.)

THE COURT: ALL RIGHT. WITH REGARD TO THIS PARTICULAR PART OF THE TESTIMONY, MY RECOLLECTION IS THAT THIS DEFENDANT HAS NOT TESTIFIED IN THE PRESENCE OF THE JURY OR MAYBE HE DID. I'M NOT SURE.

(THE DEFENDANT RETURNS TO THE COURTROOM.)

THE COURT: BUT I WILL TELL THEM IT DOESN'T MATTER. BUT THE STIPULATION WHICH I WILL PUBLISH TO THE JURY IS

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COURT'S EXHIBIT NO. 2?

REPORTER: YES, SIR.

THE COURT: OKAY. IS THE STATE RECEIVED A DNA SALIVA EVIDENCE BELONGING TO DEFENDANT NATHANIEL JOHNSON, JR. BOTH PARTIES AGREEING THAT STATE'S EXHIBIT NO. 14 IS A DISCARDED SPOON CONTAINING THE DEFENDANT'S DNA.

I WILL PUBLISH THAT AND ADVISE THE JURY THAT THEY ARE TO DISREGARD ANY TESTIMONY REGARDING THE CIRCUMSTANCES UNDER WHICH THIS EVIDENCE WAS OBTAINED.

ANY OBJECTION TO THAT?

MS. MILLICAN: NONE BY THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT. ANY OBJECTION TO THAT?

MS. SMART: NONE BY THE DEFENSE, YOUR HONOR. HOWEVER, I WOULD HAVE TO RENEW MY OBJECTION FOR THE RECORD -- I'M SORRY. RENEW MY MOTION. I DON'T THINK I MADE MY MOTION.

THE COURT: ALL RIGHT. LET'S TAKE ONE THING AT A TIME, MS. SMART. I'M COMING TO THAT, BUT I WANT TO KEEP THE RECORD CLEAR AS TO WHAT WE'RE TALKING ABOUT. RIGHT NOW WE'RE TALKING ONLY ABOUT THE DNA ON THE SPOON, AND THAT'S TAKEN CARE OF.

I'M GOING TO GIVE THIS TO THE COURT REPORTER AND HAVE HER MARK IT AS COURT'S EXHIBIT NO. 2 AND GIVE IT BACK TO ME SO THAT I CAN PUBLISH IT TO THE JURY.

(STIPULATION REGARDING STATE'S EXHIBIT NO. 14 MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 2.)

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(STATE'S EXHIBIT NO. 14 RECEIVED IN EVIDENCE.)

THE COURT: NOW, PRIOR TO THAT THE WITNESS DID TESTIFY AS I RECALL THAT HE WAS ARRESTED FOR AN UNRELATED CHARGE. AND THEN AFTER THAT ANSWER WAS GIVEN, THE NEXT QUESTION WAS ASKED ABOUT HIS MIRANDA RIGHTS AT WHICH POINT THE DEFENDANT OBJECTED -- NOT TO THE MIRANDA RIGHTS QUESTION, WHICH I THOUGHT IS WHAT THE OBJECTION WAS GOING TO BE -- BUT TO THE PREVIOUS QUESTION AND ANSWER WHICH HAD ALREADY BEEN GIVEN. AND THAT WAS THE OBJECTION THAT WAS INTERPOSED AT THAT TIME, AND THAT'S THE TIMING OF IT AS I RECALL. AT WHICH TIME MS. SMART REQUESTED A SIDE BAR AND WE HAD A SIDE BAR, AND SHE INDICATED THAT SHE OBJECTED TO THE TESTIMONY ABOUT BEING ARRESTED FOR UNRELATED CHARGES AND HAD A MOTION IN CONNECTION WITH THAT.

I TOLD HER THAT I WOULD MARK IT AS MOTION BEING TIMELY MADE AT THAT POINT. AND I'LL BE GLAD TO HEAR FROM YOU WITH REGARD TO YOUR MOTION, MS. SMART.

MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. CLEARLY, THE RULES OF EVIDENCE INDICATE THAT PRIOR BAD ACTS ARE INADMISSIBLE UNLESS, OF COURSE, THE DEFENDANT WERE TO TAKE THE STAND AND THE STATE WOULD HAVE THE OPPORTUNITY TO CROSS EXAMINE HIM WITH REGARD TO ANY PRIOR CONVICTION.

THERE ARE SEVERAL CASES ON POINT THAT SAYS THAT ARREST ARE INADMISSIBLE.

THE COURT: THAT SAYS WHAT?

MS. SMART: ARRESTS -- ARRESTS -- CROSS EXAMINATION BASED ON ARRESTS.

THE COURT: AREN'T THEY SPECIFIC THOUGH?

MS. SMART: THEY ARE, YOUR HONOR, BUT THIS JURY HAS HEARD THAT MR. JOHNSON HAS BEEN -- HAS HAD A PRIOR CRIMINAL HISTORY. THEY'VE HEARD IT TWICE NOW.

THE COURT: NO, I DON'T THINK SO. I BELIEVE THEY'VE HEARD IT ONCE.

MS. SMART: THEY HEARD IT AFTER MY OBJECTION, AND THEN THEY HEARD IT AGAIN MOST RECENTLY WITH REGARD TO THE SPOON INCIDENT WHEN THEY SAID THAT HE WAS AT THE BEAUFORT COUNTY DETENTION CENTER.

THE COURT: WELL, I DON'T THINK THAT NECESSARILY IMPLIES AN ARREST THOUGH.

MS. SMART: IT WAS AN UNRELATED CHARGE, SO NOW THE JURY KNOWS THAT HE WAS ARRESTED ON SOME OTHER UNRELATED CHARGE, WHICH I BELIEVE IS UNDULY PREJUDICIAL TO MY CLIENT.

THE COURT: HOW SO?

MS. SMART: THE JURY KNOW THAT HE HAS A PRIOR CRIMINAL ARREST. THEY DON'T KNOW WHAT FOR, BUT THEY KNOW THAT HE WAS ARRESTED AND THAT AT THE TIME HE WAS BEING QUESTIONED FOR THIS INCIDENT, HE WAS AT THE BEAUFORT COUNTY DETENTION CENTER, AND THAT IS CLEARLY PRIOR BAD ACT.

MS. MILLICAN: YOUR HONOR ---

THE COURT: I DON'T QUITE AGREE WITH YOU. I THINK

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CLEARLY IT IS A LITTLE STRONG STATEMENT, BUT GO AHEAD.
YES, MA'AM.
MS. MILLICAN: THE STATE WOULD JUST RESPOND THAT THIS PARTICULAR PIECE OF EVIDENCE IS CERTAINLY THAN MORE PROBATIVE THAN PREJUDICIAL TO THE DEEENDANT IN THIS CASE, AND THAT ---
THE COURT: WELL, THAT'S NOT THE ARGUMENT -- SHE'S NOT ARGUING THE DNA. SHE'S ARGUING -- THAT'S ALREADY BEEN STIPULATED TO. SHE'S ARGUING THE FACT THAT THIS WITNESS TESTIFIED THAT HE WAS -- EVEN BEFORE WE GOT TO THE DNA QUESTION, THAT HE WAS ARRESTED FOR A PRIOR UNRELATED -- ARRESTED FOR AN UNRELATED CHARGE AND THAT'S HER OBJECTION. SHE SAYS THAT IS VOLATIVE OF 608.
WHAT'S YOUR ---
MS. MILLICAN: THE STATE JUST HAD NO OTHER MEANS OF ESTABLISHING A CHAIN IN THIS PARTICULAR SITUATION FOR THIS PARTICULAR PIECE OF EVIDENCE WITHOUT GOING IN TO HOW IT WAS RETRIEVED -- WHERE IT WAS RETRIEVED.
AND I BELIEVE THE GENERALIZATION THAT, YOU KNOW, ARE LEFT ARE JUST VERY MINOR IN THAT IT WAS JUST UNRELATED CHARGES, THAT HE WAS SIMPLY ARRESTED, NOT THAT HE'D BEEN CONVICTED OF ANYTHING OR THAT HE WAS SERVING TIME IN THE DEPARTMENT OF CORRECTIONS OR ANYTHING OF THAT NATURE. IT WASN'T AS THOUGH THIS WAS DNA TAKEN FROM THE DEPARTMENT OF CORRECTIONS THAT THEY TAKE WHEN THEY HAVE INMATES GO

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THROUGH INTAKE. IT COULD HAVE BEEN A FAMILY COURT BENCH WARRANT. IT COULD HAVE BEEN ---

THE COURT: ALL RIGHT. MS. SMART, WAS YOUR OBJECTION AND YOUR MOTION BASED ON 608?

MS. SMART: YES, SIR, YOUR HONOR. AND NOT ONLY THAT, YOUR HONOR -- AND I JUST ---

MS. MILLICAN: AND, YOUR HONOR, THIS WAS NOT ---

THE COURT: WAIT A MINUTE. WAIT A MINUTE. GO AHEAD, MS. SMART.

MS. SMART: AND I JUST WANT TO PUT THIS ON THE RECORD AND I NEED TO OBJECT TO IT DURING -- DURING THE TIME THAT THIS WAS SAID. BUT IN LIGHT OF -- IF WE LOOK AT THIS IN A CUMULATIVE SENSE, INVESTIGATOR CHAPMAN INDICATED THAT ALL THE PHOTOS HAD ORANGE JUMP SUITS ON THEM.

THE COURT: HAD WHAT?

MS. SMART: ALL THE PICTURES -- ALL THE PICTURES THAT WERE SHOWN TO THE VICTIM, ALL THE SUSPECTS HAD ORANGE JUMP SUITS. AND INDEPENDENTLY, THAT IS NOT AN ISSUE. BUT IF WE LOOK AT THE TOTALITY OF CIRCUMSTANCES, THE ---

THE COURT: WELL, I CAN'T GO BACK AND CLOSE THAT DOOR, MS. SMART. YOU DIDN'T MAKE THAT OBJECTION AT THE TIME. YOU KNOW, I CAN'T GO BACK AND ---

MS. SMART: WELL, I THINK INDEPENDENTLY IT WAS IRRELEVANT, BECAUSE THE JURY MAY NOT KNOW WHAT AN ORANGE JUMP SUIT IS.

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THE COURT: YOU KNOW, YOU MUST HAVE THOUGHT IT WAS IRRELEVANT, AND I CAN'T GO BACK AND CLOSE THAT DOOR AFTER IT'S LONG BEEN TESTIFIED TO AND THERE WERE NO QUESTIONS ASKED ABOUT IT, THERE WAS NO OBJECTION MADE AT THE TIME. I MEAN, I OBVIOUSLY CAN'T DO ANYTHING ABOUT THE FACT THAT THE LINE-UP MAY HAVE HAD PICTURES IN IT WITH JUMP SUITS BECAUSE NO OBJECTION WAS MADE TO THAT.

MS. MILLICAN: YOUR HONOR, ALSO UNDER RULE 608-B, IT DOES STATE THAT THE SPECIFIC INSTANCES OF CONDUCT OF A WITNESS -- REFERRING -- IT'S REFERRING TO THE PURPOSE OF ATTACKING OR SUPPORTING A WITNESS' CREDIBILITY AND WHETHER OR NOT THE DEFENDANT WAS IN JAIL FOR WHATEVER GENERAL ARREST HE MAY HAVE BEEN IN JAIL FOR DOES NOT GO TO HIS -- I DON'T BELIEVE IT'S AN ATTACK ON HIS CREDIBILITY, IT'S SIMPLY PART OF A CHAIN IS ALL WE'RE TRYING TO ESTABLISH WITH THAT EVIDENCE.

(PAUSE.)

THE COURT: ALL RIGHT. WITH REGARDS TO THE MOTION FOR A MISTRIAL, THE COURT HAS REVIEWED VERY CAREFULLY THE NOTES THAT I HAD AND THE CONTEXT IN WHICH THE TESTIMONY WAS GIVEN. SPECIFICALLY, THE TESTIMONY WAS ONLY SAID THAT HE HAD BEEN ARRESTED FOR UNRELATED CHARGES. IT IS NOT EVIDENCE OF A SPECIFIC BAD ACT, AND THERE IS NO EVIDENCE OF ANY SPECIFIC BAD ACT.

IN MY VIEW, FURTHER, 608 IS NOT APPLICABLE IN THIS

SITUATION BECAUSE IT DOES NOT GO TO THE CREDIBILITY OF THE WITNESS, BUT TO SHOW THE CIRCUMSTANCES UNDER WHICH THE EVIDENCE WAS OBTAINED.

FURTHERMORE, THE PURPOSE OF THE PROFFER WAS TO SHOW THE CHAIN OF EVIDENCE. MY RECOLLECTION IS THAT BEFORE THE CASE STARTED, DEFENSE COUNSEL WAS SPECIFICALLY ASKED AT SIDE BAR IF THE CIRCUMSTANCES OF THE CHAIN OF THE EVIDENCE COULD BE STIPULATED TO, AND SHE INDICATED THAT IT COULD NOT, AND THE STATE WAS SIMPLY TRYING TO SHOW THE CHAIN OF EVIDENCE OF THIS PARTICULAR PIECE OF EVIDENCE SHOWN IN STATE'S EXHIBIT NO. 14.

THIS COULD HAVE BEEN AVOIDED VERY EASILY BY STIPULATING IN ADVANCE THE STIPULATION THAT THE PARTIES HAVE NOW ENTERED IN TO.

THUS, I DON'T THINK FIRST OF ALL THAT THE OBJECTION IS PRESERVED BY NOT BEING TIMELY. IT WAS AFTER THE QUESTION WAS ASKED AND ANSWERED AND ANOTHER QUESTION WAS ASKED BEFORE THE OBJECTION WAS MADE.

SECONDLY, IT COULD HAVE BEEN AVOIDED BY THE STIPULATION THAT THE PARTIES HAVE ENTERED IN TO, AND THE PARTIES WERE GIVEN AN OPPORTUNITY TO ENTER. THE DEFENSE WAS GIVEN AN OPPORTUNITY TO ENTER THAT STIPULATION.

AND, FINALLY, IN MY VIEW THE PROBATIVE VALUE OUTWEIGHS ANY PREJUDICIAL EFFECT, ESPECIALLY IF -- ALTHOUGH I DON'T THINK IT'S NECESSARY, BUT I'LL BE GLAD TO CONSIDER A

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CURATIVE INSTRUCTION, MS. SMART. BUT IT'S MY VIEW THAT UNDER THE CIRCUMSTANCES OF THE PROFFER OF THIS TESTIMONY AND ALL OF THE CIRCUMSTANCES SURROUNDING WHICH IT CAME IN, THE MOTION WILL BE DENIED. THE JURY WILL BE INSTRUCTED TO DISREGARD ANY TESTIMONY IN THE RECORD WHATSOEVER OF ANY -- WITHOUT SAYING ANY MORE, JUST SAYING ANY PRIOR ARREST -- I WON'T EVEN SAY PRIOR -- OF ANY ARREST OF THIS DEFENDANT.

IF YOU WOULD LIKE THAT -- ANY MORE THAN THAT BY WAY OF CURATIVE INSTRUCTION, I'LL BE GLAD TO HEAR FROM YOU.

MS. SMART: YOUR HONOR, THAT'S SUFFICIENT.

THE COURT: OKAY.

MS. MILLICAN: YOUR HONOR, JUST BEFORE WE BRING THE JURY IN -- SO I CAN BE CLEAR WITH MY WITNESS AND WE DON'T SAY SOMETHING WRONG IN FRONT OF THE JURY WHEN WE BRING THEM IN. I WOULD JUST ASK THE WITNESS HOW ---

THE COURT: THE FIRST THING IS I'M GOING TO PUBLISH THIS STIPULATION.

MS. MILLICAN: OKAY.

THE COURT: OKAY? THAT THE PARTIES RECEIVED A DISCARDED SPOON CONTAINING THE DEFENDANT'S DNA.

YOU MAY ASK THE WITNESS, DID YOU OBTAIN THAT DISCARDED SPOON AND DID YOU TURN IT IN TO EVIDENCE AND GO FROM THERE.

MS. MILLICAN: OKAY. THANK YOU.

THE COURT: THAT'S ALL YOU NEED TO DO IS ASK IF HE OBTAINED THAT DISCARDED SPOON.

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MS. MILLICAN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. ANYTHING ELSE BEFORE WE BRING THE JURY IN? THIS MIGHT BE A GOOD TIME SINCE WE'VE GOT THEM OUT SO WE WON'T HAVE TO SEND THEM OUT AGAIN, FOR US TO TAKE OUR AFTERNOON RECESS FOR ABOUT 10 MINUTES. AND THEN LET'S PLAN TO BE READY TO START BACK, SAY, AT 20 UNTIL 4:00, THEN WE WON'T HAVE TO STOP AGAIN THIS AFTERNOON. ALL RIGHT. THANK YOU.

(A RECESS WAS TAKEN.)

THE COURT: PLEASE GET THE DEFENDANT BACK.

(THE WITNESS RETURNS TO THE WITNESS STAND.)

(THE DEFENDANT RETURNS TO THE COURTROOM.)

THE COURT: BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS JOHNSON. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO PRESENT. I AM PREPARED TO BRING THE JURY BACK IN AND PUBLISH THE STIPULATION AND ADVISE THEM THAT THEY ARE TO DISREGARD ANY TESTIMONY IN THE RECORD WHATSOEVER WITH REGARD TO THE DEFENDANT HAVING BEEN ARRESTED FOR ANY CHARGES AT ALL.

ANY OBJECTION TO THAT, MS. SMART?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 3:40 P.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: ALL RIGHT. THANK YOU. AND THANK YOU FOR

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YOUR PATIENCE, LADIES AND GENTLEMEN. THAT TOOK A LITTLE LONGER THAN I HAD EXPECTED, BUT WE HAVE RESOLVED THE MATTER, AND IN ADDITION WE THOUGHT THAT IT WAS A GOOD TIME FOR THE COURT PERSONNEL TO TAKE THEIR AFTERNOON BREAK SO THAT WHEN WE BROUGHT YOU BACK IN, WE WOULD NOT HAVE TO HOPEFULLY SEND YOU OUT AGAIN WHILE WE CONTINUE WITH THE TESTIMONY.

I WILL TELL YOU THAT THE PARTIES HAVE ENTERED THE FOLLOWING STIPULATION. AND YOU ARE TO ACCEPT THIS STIPULATION AS A FACT IN THIS CASE.

THE STATE RECEIVED A DNA SALIVA EVIDENCE BELONGING TO THE DEFENDANT, NATHANIEL JOHNSON, JR., AND BOTH PARTIES AGREE THAT STATE'S EXHIBIT NO. 14 IS A DISCARDED SPOON CONTAINING THE DEFENDANT'S DNA.

YOU ARE TO DISREGARD FROM YOUR MIND AND DISABUSE FROM YOUR MIND ANY TESTIMONY REGARDING THE CIRCUMSTANCES UNDER WHICH THAT MAY HAVE BEEN OBTAINED OR WHETHER -- AND YOU SHOULD ALSO DISREGARD ANY TESTIMONY IN THE RECORD WHATSOEVER WITH REGARD TO WHETHER THE DEFENDANT HAD BEEN OR WAS UNDER ARREST FOR ANY CHARGES IN CONNECTION WITH ANYTHING AND DISREGARD ALL OF THAT TESTIMONY AND ACCEPT THE STIPULATION AS A FACT TO COVER THE CHAIN OF CUSTODY REGARDING THE DEFENDANT'S DNA SALIVA ON THIS DISCARDED SPOON.

ALL RIGHT. MS. MILLICAN, YOU MAY PROCEED.

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MS. MILLICAN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION CONTINUED BY MS. MILLICAN:

Q PLEASE LOOK AT WHAT'S BEEN MARKED AND ADMITTED AS STATE'S EXHIBIT NO. 14. DO YOU RECOGNIZE IT?

A YES, THIS IS A SLED EVIDENCE BAG SAID TO CONTAIN -- 1 BROWN PAPER EVIDENCE BAG CONTAINING A USED PLASTIC SPOON FROM NATHANIEL JOHNSON, JR.

Q DID YOU TURN THAT SPOON IN TO EVIDENCE?

A YES, I DID.

Q AND WAS IT SENT TO SLED FOR ANALYSIS?

A YES, MA'AM, IT WAS.

MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT. MS. SMART.

CROSS EXAMINATION BY MS. SMART:

Q INVESTIGATOR CHAPMAN, THERE WAS A WRITTEN STATEMENT IN YOUR REPORT, WERE THERE NOT?

A YES, MA'AM, THERE WAS.

Q SEVERAL WRITTEN STATEMENTS?

A YES, MA'AM.

Q TO BE CORRECT, THERE'S ONE WRITTEN STATEMENT THAT WAS WRITTEN COMPLETELY [redacted]?

A YES, MA'AM.

Q AND THERE'S A SUBSEQUENT WRITTEN STATEMENT THAT CONSISTS OF 5 PAGES THAT I BELIEVE THE TESTIMONY WAS

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TRANSLATED BY THE VICTIM'S SISTER?
A YES.
Q AND THEN THERE ARE TWO OTHER STATEMENTS THAT I BELIEVE ARE ALSO IN THE RECORD; IS THAT CORRECT?
[redacted]'S ONE FROM THE TWO WITNESSES.
Q STATEMENTS OF [redacted]?
A I BELIEVE THERE WAS ONLY ONE OTHER ONE THAT I COLLECTED.
Q WOULD ONE OF THEM BE 2 PAGES?
A BEAR WITH ME JUST A SECOND. THE ONE I HAVE I BELIEVE [redacted] 1 PAGE.
Q FOR CLARITY, THE STATEMENT THAT I'M REFERRING TO HAS CASE NO. 2006-02-07359 AND IT SAYS DETAILED REPORT AND THEN THERE'S ANOTHER PAGE DATED 2-7-06 AS WELL. IT SAYS PAGE NO. 1. THE FIRST STATEMENT ON THE BOTTOM -- IT'S CUT OFF, BUT IT SAYS TRANSLATED BY [redacted]. AND PART 2 OF THAT DOES NOT HAVE ANYTHING REGARDING ANY TRANSLATION. DO YOU HAVE COPIES OF BOTH OF THOSE?
A I BELIEVE I ONLY HAVE -- LOOKS LIKE I ONLY HAVE THE LAST PART OF THAT, BUT I BELIEVE THAT IS THE ONE THAT WAS TRANSLATED BY HER SISTER.
Q DO YOU HAVE THE STATEMENT THAT'S 5 PAGES?
A WAS THAT WRITTEN IN [redacted] OR [redacted]?
Q IT'S WRITTEN IN ENGLISH AND IT SAYS THE STATEMENT OF [redacted] AND IT HAS HER ADDRESS AND DATE OF BIRTH?

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A YES, I DO.
Q AND THEN YOU HAVE THE OTHER STATEMENT THAT'S ACTUALLY WRITTEN ON I BELIEVE YOUR VOLUNTARY STATEMENT FORM?
A YES.
Q NOW, YOU HAD A CHANCE TO INTERVIEW [redacted] UPON YOUR ARRIVAL AT TH[redacted]IS THAT CORRECT?
A YES, MA'AM.
Q AND ON THE DATE OF THE INCIDENT YOU ARRIVED WITH PHOTO LINE-UPS, DID YOU NOT?
A YES, I DID.
Q AND THOSE PHOTO LINE-UPS WERE GIVEN TO [redacted] IS THAT CORRECT?
A CORRECT.
Q AND THERE ARE TWO SEPARATE ENVELOPES. EACH ENVELOPE CONTAINS SIX PICTURES AND BOTH ENVELOPES WERE GIVEN TO HER AND ASKED [redacted] TO IDENTIFY HER ASSAILANT. SHE WAS ASKED IF SHE WAS ABLE TO IDENTIFY HER ASSAILANT; IS THAT NOT CORRECT?
A CORRECT.
Q AND DID YOU TELL HER THAT HER ASSAILANT MIGHT HAVE BEEN -- HER ASSAILANT'S PICTURE MIGHT HAVE BEEN INCLUDED IN EITHER OF THOSE PHOTOS?
A I [redacted]ER IF SHE COULD IDENTIFY ANYONE IN THESE PICTURES THAT LOOKED FAMILIAR TO HER THAT MAY BE HER ATTACKER.

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Q AND THIS OCCURRED APPROXIMATELY HOW LONG AFTER THIS ALLEGED ATTACK OCCURRED?

A I WOUL[redacted]LY AN HOUR TO AN HOUR AND A HALF.

Q AN HOUR TO AN HOUR AND A HALF. AND WAS MR. JOHNSON'S PICTURE INCLUDED IN ANY ONE OF THE PHOTO LINE-UPS?

A YES, HE WAS.

Q AND WAS SHE ABLE TO IDENTIFY HIM?

A NO, SHE WAS NOT.

Q SO SHE DID NOT INDICATE TO YOU THAT HER -- THAT THE PERSON WHO ALLEGEDLY ATTACKED HER -- THAT HIS PHOTOGRAPH WAS INCLUDED IN ANY OF THE PHOTOGRAPHS THAT YOU HAD GIVEN TO HER?

A SHE SAID SHE COULDN'T IDENTIFY ANYONE.

Q NOW, THERE'S BEEN [redacted]OUT THE BITE WOUND. WAS THAT THE ONLY PHYSICAL INJURY THAT YOU OBSERVED ON [redacted].

A THAT'S THE ONLY ONE THAT I CAN RECALL, THE BITE WOUND.

Q AND THAT'S THE ONLY ONE THAT YOU TOOK A PICTURE OF?

A YES, MA'AM.

Q AND HAD YOU OBSERVED ANY BRUISING ABOUT HER PERSON, YOU WOULD HAVE TAKEN A PICTURE OF THAT AS WELL?

A CORRECT.

Q AND YOU WERE THE PERSON THAT TOOK THE PICTURE OF THE BEDROOM?

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A YES, MA'AM.
Q NOW, LET'S TALK ABOUT YOUR REPORT. IN YOUR SYNOPSIS YOU HAVE STATEMENT OF [redacted] NOW, WOULD THAT BE BECAUSE IT'S IN YOUR REPORT -- WOULD THAT BE AN ORAL STATEMENT THAT SHE GAVE TO YOU?
A YES.
Q OR -- SO YOU DIDN'T -- IN COMING UP WITH WHAT'S INCLUDED IN THAT PORTION OF YOUR SUPPLEMENTAL REPORT, YOU WOULDN'T HAVE READ THE DIFFERENT STATEMENTS AND THEN CONCLUDED ---
A NO.
Q --- AND PUT IT IN YOUR REPORT?
A NO.
Q SO EVERYTHING THAT'S WRITTEN IN YOUR REPORT THAT SAYS STATEMENT OF [redacted] IS WHAT SHE TOLD YOU THE DAY THAT YOU INTERVIEWED HER?
A YES, THAT'S MY RECOLLECTION. [redacted]
Q AND SHE INDICATED TO YOU THAT WHEN SHE OPENED THE DOOR FOR THE SUSPECT, SHE DIDN'T SEE ANYONE ELSE OUTSIDE; IS THAT NOT CORRECT?
A SHE SAID SHE DID NOT SEE ANYONE ELSE OUTSIDE, SHE COULD NOT SEE THE WORKERS THAT EVENTUALLY HELPED HER.
Q SO UPON THE SUSPECT'S ARRIVAL, SHE DIDN'T SEE THE WORKERS; THAT'S WHAT SHE TOLD YOU?
A AT THAT TIME, YES.

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Q AND SHE SAID THAT -- SHE ALSO T[redacted] AFTER THE SUSPECT LEFT HER HOUSE, THAT'S THE FIRST TIME SHE SAW THE TWO MEN IN THE WHITE TRUCK?

A LET ME REVIEW MY REPORT. SHE SAID SHE SAW THE MEN DOWN EARLIER, BUT SHE DIDN'T SEE THEM AT THE TIME THE PERSON CAME TO HER HOUSE.

Q NOW, ALSO IN YOUR SYNOPSIS YOU INDICATED THAT THE SUSPECT LEFT ON A BICYCLE HEADING TOWARDS SCOTT HILL ROAD. HOW DID YOU OBTAIN THAT INFORMATION?

A ONE OF THE WITNESSES SAID THAT THEY OBSERVED HIM LEAVING IN THAT DIRECTION, A MALE MATCHING THAT DESCRIPTION.

Q SO [redacted] DIDN'T TELL YOU THAT SHE OBSERVED THE SUSPECT LEAVING HER HOUSE ON A BICYCLE?

A I DON'T RECALL HER TELLING ME THAT DIRECTLY.

Q DID YOU READ THE WRITTEN STATEMENTS THAT WERE PROVIDED TO YOU?

A I WAS ONLY ABLE TO READ THE ONE THAT WAS IN ENGLISH.

Q NOW, THE TRANSLATED STATEMENT, WERE YOU ABLE TO VERIFY THAT THE STATEMENT THAT WAS TRANSLATED -- THE STATEMENTS, BECAUSE THERE ARE TWO STATEMENTS THAT WERE TRANSLATED BY [redacted] SISTER. WERE YOU ABLE TO VERIFY THAT THOSE TRANSLATIONS WERE ACCURATE FROM WHAT SHE WROTE IN SPANISH?

A I COULDN'T SAY FOR SURE THAT WHAT SHE WAS WRITING WAS WHAT [redacted] WAS TELLING US BECAUSE I DON'T SPEAK

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[redacted] AND I WOULDN'T KNOW THAT.

Q AND DID YOU NOTE ANY INCONSISTENCIES IN THE WRITTEN STATEMENTS VERSUS WHAT SHE TOLD YOU?

A I DON'T RECALL ANY INCONSISTENCIES.

Q JUST TO REFRESH YOUR MEMORY, IF YOU DON'T MIND IF YOU WOULD LOOK AT THE STATEMENT WITH THE HEADING, STATEMENT OF ANA B. RODRIGUEZ WITH HER ADDRESS.

A THE ONE IN ENGLISH?

Q THAT'S THE ONE IN ENGLISH. THE ONLY ONE I WILL BE ASKING YOU TO LOOK AT WOULD BE THE ONE IN ENGLISH.

A OKAY.

Q OKAY. NOW -- AND YOU'VE READ THIS STATEMENT, BUT I'LL GIVE YOU THE OPPORTUNITY TO R[redacted]EMORY TO WHAT WAS INCLUDED IN THE STATEMENT. BUT YOUR TESTIMONY A MOMENT AGO WAS THAT SHE SAID THAT SHE DIDN'T SEE THE MEN PRIOR TO OPENING THE DOOR AND ALLOWING THE SUSPECT IN. BUT ISN'T IT TRUE THAT ON THIS WRITTEN STATEMENT SHE INDICATED THAT BEFORE SHE SAW -- SHE SAW THE MAN ON THE BICYCLE, BUT MOMENTS BEFORE SHE SAW THE MAN ON THE BICYCLE SHE SAW THE PEOPLE WORKING OUTSIDE, AND THEN SHE OPENED THE DOOR?

A I'LL HAVE TO READ IT. (PAUSE.) CAN YOU TELL ME WHICH PAGE? [redacted]

Q FIRST PAGE.

A FIRST PAGE?

Q YES. [redacted]

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A SHE SAYS MOMENTS BEFORE, AND I COULDN'T TELL YOU WHAT HER INTERPRETATION OF MOMENTS IS. BUT SHE SAYS MOMENTS BEFORE SHE SAW PEOPLE WORKING OUTSIDE.

Q AND THIS IS IMPORTANT BECAUSE WE DO HAVE ---

THE COURT: NO, MA'AM. NO, MA'AM. JUST ASK THE QUESTION.

Q ISN'T IT IMPORTANT THAT THE TRANSLATIONS THAT WE PRESENT IN COURT ARE ACCURATE?

A YES.

Q AND AS WE HAVE IT TODAY, IT APPEARS AS IF THERE ARE INCONSISTENCIES BASED ON JUST THAT ONE STATEMENT THAT YOU WROTE ---

MS. MILLICAN: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

MS. MILLICAN: COUNSEL IS ---

THE COURT: OBJECTION IS SUSTAINED.

Q IT IS TRUE THAT THERE IS AN INCONSISTENT -- THAT IN THE WRITTEN STATEMENT SHE INDICATED THAT SHE SAW PEOPLE WORKING OUTSIDE.

THE COURT: ALL RIGHT. COUNSEL, COME AROUND PLEASE.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: OBJECTION IS SUSTAINED.

Q INVESTIGATOR CHAPMAN, DID YOU -- THE SHEETS THAT WERE RECOVERED FROM THE BEDROOM, DID YOU HAVE AN OPPORTUNITY TO

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EXAMINE THOSE?
A JUST MY INITIAL OBSERVATION OF IT BEING ON THE BEDDING.
Q YOU WERE THE ONE THAT RECOVERED THEM?
A YES, MA'AM.
MS. SMART: ARE THOSE SHEETS STILL HERE?
(PAUSE.)
Q COULD YOU TAKE THE SHEET OUT OF THE BAG PLEASE?
A YES, MA'AM. (COMPLIED.)
MS. MILLICAN: OBJECTION, YOUR HONOR. IS THE DEFENSE MOVING TO PUT THIS PARTICULAR PIECE OF EVIDENCE INTO EVIDENCE OR IS SHE JUST PUBLISHING EVIDENCE?
THE COURT: IS IT IN EVIDENCE?
MS. MILLICAN: NO.
THE COURT: IT'S JUST FOR EXHIBIT ONLY AT THIS TIME.
MS. SMART: HE HAS TO ESTABLISH THAT THAT IS THE SHEET THAT HE RECOVERED, AND I ---
MS. MILLICAN: IT'S NOT ---
MS. SMART: --- HAVEN'T GOT TO THAT YET.
THE COURT: WAIT JUST A MINUTE. ONE AT A TIME PLEASE. IT'S NOT IN EVIDENCE YET, MS. SMART. IT'S JUST BEEN MARKED FOR IDENTIFICATION AND THE STATE HAS NOT OFFERED IT INTO EVIDENCE AT THIS POINT, SO IT CANNOT BE DISPLAYED.
Q FROM THE CONDITION OF THAT SHEET, CAN YOU TELL WHETHER OR NOT THAT WAS THE SHEET THAT YOU RECOVERED THAT DAY --

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THE WAY IT IS RIGHT NOW, CAN YOU TELL WHETHER OR NOT THAT IS THE SHEET THAT YOU RECOVERED?

A IT LOOKS SIMILAR TO THE ONE I COLLECTED.

MS. MILLICAN: OBJECTION, YOUR HONOR. SAME OBJECTION.

THE COURT: THAT'S SIMPLY AN IDENTIFICATION QUESTION AND HE HAS TESTIFIED THAT IT IS THE SAME SHEET, AND I'M GOING TO ALLOW THAT QUESTION BUT I'M NOT GOING TO ALLOW IT TO GO ANY FURTHER ---

MS. MILLICAN: THANK YOU, YOUR HONOR.

THE COURT: UNLESS AND UNTIL IT IS OFFERED INTO EVIDENCE.

Q YOU HAVEN'T ALTERED THAT SHEET IN ANY WAY, HAVE YOU?

A NO, MA'AM. I COLLECT EVIDENCE, I PUT IT DIRECTLY IN THE BAG.

MS. SMART: I WOULD LIKE TO INTRODUCE THIS SHEET INTO EVIDENCE AT THIS TIME, YOUR HONOR, AND IT BE PUBLISHED TO THE JURY.

THE COURT: ANY OBJECTION?

MS. MILLICAN: THE STATE HAS NO OBJECTION TO THAT. THE STATE HAS NO OBJECTION TO THAT.

THE COURT: ALL RIGHT. IT WILL BE MARKED AS DEFENSE EXHIBIT NO. 2. IS THERE ANYTHING ELSE -- THAT BOX WAS IDENTIFIED BUT IT CONTAINED MORE THAN ONE THING, DID IT NOT?

MS. MILLICAN: THE BOX CONTAINED THREE ITEMS FROM

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SLED.

THE COURT: ALL RIGHT. SO WE'LL MAKE THIS A SEPARATE EXHIBIT AS -- THE SHEET IS ADMITTED INTO EVIDENCE AS DEFENSE EXHIBIT NO. 2 WITHOUT OBJECTION. I'M NOT SURE, MS. RUTLEDGE, HOW YOU WANT TO MARK THAT SEPARATELY, BUT THAT NEEDS TO BE SHOWN AS DEFENSE EXHIBIT NO. 2 ADMITTED WITHOUT OBJECTION, THE SHEET ONLY.

(SHEET MARKED IN EVIDENCE AS DEFENDANT'S EXHIBIT NO. 2.)

THE COURT: ALL RIGHT. MS. SMART, YOU MAY PROCEED.

Q CAN YOU HOLD THAT SHEET UP?

A (COMPLIED.)

Q AND DID YOU ALTER THIS SHEET IN ANY WAY?

A NO, MA'AM.

Q I NOTICE THAT THERE'S SEPARATE -- THERE ARE HOLES IN THE SHEET. DID YOU DO THAT?

A NO, MA'AM.

Q YOU DID NOT. SO THIS SHEET WAS SENT TO SLED ---

A INTACT.

Q IT WAS INTACT WHEN YOU SENT IT TO SLED. OKAY. I DON'T HAVE ANY QUESTIONS WITH REGARD TO THAT SHEET. BUT THAT IS THE SHEET THAT WAS TAKEN OFF THE BED?

A YES, MA'AM.

Q NOW, WHEN YOU COLLECTED THAT SHEET, YOU COLLECTED IT FOR EVIDENTIARY PURPOSES, DID YOU NOT?

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A YES, MA'AM.
Q AND WE TALKED ABOUT DNA. SO YOU HAD A SAMPLE OF MR. JOHNSON'S DNA AND YOU NEEDED THAT DNA FOR COMPARATIVE PURPOSES -- COMPARATIVE REASONS; IS THAT NOT CORRECT?
A CORRECT.
Q YOU BELIEVE THAT THERE WAS EVIDENCE ON THAT SHEET THAT COULD HAVE POSSIBLY BEEN OF EVIDENTIARY VALUE AND THAT'S WHY YOU COLLECTED BOTH THIS SHEET AND THE DNA FROM MR. JOHNSON?
A CORRECT.
Q AND THAT INFORMATION WAS SENT TO SLED?
A YES.
Q AND AS A RESULT OF THAT INFORMATION DID YOU HAVE INFORMATION TO BELIEVE THAT MR. JOHNSON'S DNA WAS ON THAT SHEET?
A ACCORDING TO THE STATE LAW ENFORCEMENT DIVISION RECORDS IT SHOWS THAT.
Q AND BASED ON THAT, YOU CONCLUDED THAT THAT INFORMATION WOULD CORROBORATE WHAT MS. RODRIGUEZ SAID?
A IT WOULD CORROBORATE EVERYTHING THAT I'VE INVESTIGATED.
Q NOW, THE SKETCH THAT -- THE SKETCH ARTIST WAS BROUGHT IN ACTUALLY TWO DAYS AFTER THE INCIDENT OCCURRED; IS THAT CORRECT?
A CORRECT.

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Q AND SHE WAS ABLE TO GIVE A VERY GOOD DESCRIPTION OF HER ASSAILANT AT THAT TIME, WAS SHE NOT?
A YES.
Q SO MUCH SO THAT A PICTURE WAS DRAWN FROM HER DESCRIPTION AND THAT PICTURE WAS SUBMITTED TO THE MEDIA OUTLET?
A RIGHT.
Q AND THIS WAS THE DAY AFTER -- TWO DAYS AFTER THE ALLEGED INCIDENT OCCURRED?
A CORRECT, TWO DAYS.
Q BUT THE DAY PRIOR AND THE DAY OF SHE WOULD NOT IDENTIFY HIM IN A PHOTO LINE-UP; IS THAT CORRECT?
A SHE WAS ONLY SHOWN THE LINE-UP ON THE INITIAL DAY.
Q OKAY. SO SHE WAS SHOWN A PHOTO LINE-UP. SHE DIDN'T IDENTIFY HIM, BUT SHE DESCRIBED HIM TO A SKETCH ARTIST WHO MADE A COMPOSITE SKETCH AND SUBMITTED THAT SKETCH TO THE MEDIA OUTLET?
A CORRECT.
Q AND AS A RESULT OF THAT SKETCH, YOU RECEIVED A PHONE CALL THAT SAID, THIS IS NATHANIEL JOHNSON?
A YES.
Q NOW, WHEN SHE TALKED TO YOU ABOUT MR. -- THE ASSAILANT LEAVING HER HOUSE, SHE DID OR DID NOT INDICATE TO YOU THAT SHE SAW HOW HE LEFT?
A I BELIEVE SHE TOLD ME SHE DID NOT SEE HIM LEAVE.

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Q SHE DID NOT SEE HIM LEAVE.

MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.

THE COURT: REDIRECT, MS. MILLICAN?

MS. MILLICAN: YES, SIR.

REDIRECT EXAMINATION BY MS. MILLICAN:

Q INVESTIGATOR CHAPMAN, WOULD YOU STATE THAT ALL THE STATEMENTS THAT YOU TOOK FROM [redacted] AND THE STATEMENTS YOU'VE HEARD TODAY THEY ARE MATERIALLY CONSISTENT?

A YES.

MS. MILLICAN: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: CALL YOUR NEXT WITNESS.

MS. MILLICAN: STATE CALLS MIKE LYNCH FROM SLED.

MICHAEL LYNCH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

THE COURT: BEFORE YOU GET STARTED, LET ME SEE COUNSEL AT SIDE BAR PLEASE.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: ALL RIGHT. YOU MAY PROCEED.

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MS. MILLICAN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION BY MS. MILLICAN:

Q PLEASE STATE YOUR NAME AND SPELL IT FOR THE RECORD?

A MICHAEL LYNCH. M-I-C-H-A-E-L L-Y-N-C-H.

Q WHERE ARE YOU EMPLOYED?

A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q HOW LONG HAVE YOU BEEN WITH SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

A A YEAR AND A HALF.

Q WHERE IS YOUR OFFICE LOCATED?

A IT'S LOCATED IN COLUMBIA.

Q HOW MANY YEARS TOTAL HAVE YOU WORKED IN LAW ENFORCEMENT?

A 7 YEARS.

Q WHAT ARE YOUR GENERAL DUTIES WITH SLED?

A I'M EMPLOYED THERE AS A FORENSIC ARTIST SPECIAL AGENT.

Q WHAT'S YOUR EDUCATIONAL BACKGROUND?

A I HAVE A BACHELOR OF SCIENCE FROM THE CITADEL IN BUSINESS ADMINISTRATION. I ALSO HAVE TRAINING FROM THE FBI ACADEMY IN QUANTICO, VIRGINIA FOR FORENSIC FACIAL IMAGING OR FORENSIC ARTIST MORE COMMONLY KNOWN.

Q APPROXIMATELY HOW MANY SKETCH COMPOSITES HAVE YOU COMPLETED IN YOUR CAREER?

A ANYWHERE BETWEEN 100, 125.

Q GENERALLY SPEAKING, HOW DO YOU CREATE A COMPOSITE

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SKETCH OF SOMEONE YOU'VE NEVER SEEN?
A I GENERALLY WILL SIT DOWN WITH THE WITNESS AND ME ASKING THEM QUESTI[redacted] EVENTS THAT TOOK PLACE AND THE UNKNOWN SUBJECT. AND WE'LL ALSO HAVE REFERENCE MATERIAL AVAILABLE FOR THEIR USE. AND IT'S A STEP-BY-STEP PROCESS. IT MAY BE ANYWHERE 1 TO 3 HOURS GENERALLY. AND GENERALLY WE ASK OPEN-ENDED QUESTIONS. AND THROUGH A PROCESS WE'LL SHOW THEM -- KEEP SHOWING THEM THE DRAWING AS IT PROGRESSES. AND I'LL HAVE THEM MAKE CHANGES AS THEY SEE FIT UNTIL THEY'RE SATISFIED WITH THE DRAWING.
Q DID YOU HAVE OCCASION TO PARTICIPATE IN THE INVESTIGATION IN THE STATE'S CASE AGAINST NATHANIEL JOHNSON, JR.?
A I DID.
Q WHEN DID YOU GET INVOLVED IN THE CASE?
A I WAS CONTACTED IN FEBRUARY OF 2006, I BELIEVE FEBRUARY 9TH -- FEBRUARY 8TH, AND I RESPONDED ON FEBRUARY 9TH, 2006.
Q WHERE DID YOU GO TO ASSIST IN THE INVESTIGATION?
A BEAUFORT COUNTY SHERIFF'S OFFICE.
Q DID YOU MEET [redacted] IN PERSON?
A I DID.
Q DID YOU CREATE A COMPOSITE SKETCH BASED ON ANA'S DESCRIPTIONS?
A YES, I DID.

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Q WHAT WAS THE PROCESS FOR CREATING THAT PARTICULAR SKETCH?

A SAT DOWN WITH [redacted] AND I ASKED HER ABOUT HER OPPORTUNITY TO SEE THE INDIVIDUAL AND ABOUT THE EVENTS THAT TOOK PLACE TO GET A BETTER IDEA OF WHAT WE'RE DEALING WITH. AND WE SAT DOWN. I INTRODUCED REFERENCE MATERIAL TO HER SO THAT SHE'D HAVE A BETTER IDEA OF HOW TO DESCRIBE DIFFERENT FEATURES TO ME. AND THROUGHOUT THE PROCESS, AGAIN, I WOULD SHOW HER THE COMPOSITE AS I WENT ALONG. AND IF SHE SAW FIT TO MAKE A CHANGE, I WOULD MAKE THAT CHANGE. AND WE WERE NOT COMPLETED UNTIL SHE WAS SATISFIED WITH THE COMPOSITE DRAWING.

Q DO YOU HAVE IN YOUR POSSESSION TODAY THE ORIGINAL SKETCH YOU CREATED?

A I DO.

MS. MILLICAN: QUICKLY, LET'S MARK THE SKETCH AS STATE'S EXHIBIT -- I BELIEVE IT'S 15 OR IS IT 16. 16.

(SKETCH MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 16.)

Q HAVE YOU HAD CUSTODY AND CONTROL OF THIS ORIGINAL SKETCH SINCE YOU CR[redacted]

A I HAVE.

Q WOULD YOU PLEASE REMOVE IT FROM THE ENVELOPE?

A (COMPLIED.)

Q IS IT REASONABLY IN THE SAME CONDITION IT WAS WHEN YOU

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RENDERED THE DRAWING?

A IT IS.

MS. MILLICAN: THE STATE WOULD MOVE AT THIS TIME TO ADMIT STATE'S EXHIBIT NO. 16 INTO EVIDENCE.

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NONE.

THE COURT: ALL RIGHT. IT WILL BE ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NO. 16 WITHOUT OBJECTION. THE ENVELOPE -- WAS AN I.D. NUMBER PUT ON IT, OR WAS IT AN EXHIBIT NUMBER?

MS. MILLICAN: IT WAS AN EXHIBIT NUMBER.

THE COURT: OKAY. IT'S ADMITTED INTO EVIDENCE AS STATE'S NO. 16 WITHOUT OBJECTION.

(STATE'S NO. 16 RECEIVED IN EVIDENCE.)

MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH THE DRAWING TO THE JURY?

THE COURT: YES, MA'AM.

(PAUSE.)

THE COURT: LADIES AND GENTLEMEN, YOU WILL RECALL THAT I TOLD YOU THAT ANYTHING THAT IS INTRODUCED INTO EVIDENCE YOU WILL BE ABLE TO TAKE WITH YOU BACK TO THE JURY ROOM WHEN YOU RETIRE TO DELIBERATE YOUR VERDICT.

Q DID [redacted] INDICATE TO YOU WHETHER THIS LOOKED LIKE THE ATTACKER WHEN YOU COMPLETED IT?

A SHE DID.

MS. MILLICAN: YOUR HONOR, THE STATE HAS NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME.

THE COURT: CROSS EXAMINATION, MS. SMART?

MS. SMART: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS.

THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN. GIVE THE EXHIBIT TO THE COURT REPORTER.

MS. MILLICAN: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

THE COURT: ANY OBJECTION?

MS. SMART: NONE.

THE COURT: THE WITNESS IS EXCUSED. THANK YOU FOR COMING.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THE STATE CALLS KIMBERLY CLEGG.

KIMBERLY CLEGG, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS KIMBERLY CLEGG. K-I-M-B-E-R-L-Y C-L-E-G-G.

DIRECT EXAMINATION BY MS. MILLICAN:

Q MS. CLEGG, WHERE ARE YOU EMPLOYED?

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A AT BEAUFORT MEMORIAL EMERGENCY ROOM.
Q AND EXACTLY WHAT ARE YOUR DUTIES AT BEAUFORT MEMORIAL?
A I AM THE NIGHT CHARGE NURSE IN THE EMERGENCY ROOM, AND I ALSO PARTAKE IN SEXUAL ASSAULT KITS THAT COME THROUGH THE EMERGENCY ROOM.
Q HOW LONG HAVE YOU BEEN EMPLOYED AT BEAUFORT MEMORIAL HOSPITAL?
A APPROXIMATELY 3 ½ YEARS.
Q HOW LONG HAVE YOU BEEN A REGISTERED NURSE?
A SINCE DECEMBER OF 2000.
Q WHERE DID YOU ATTEND NURSING SCHOOL?
A AT JEFFERSON DAVIS COLLEGE ON THE MISSISSIPPI GULF COAST.
Q IS THERE A PROTOCOL REQUIRING NURSES TO UNDERGO ANY SPECIAL TRAINING TO BE QUALIFIED TO COLLECT EVIDENCE FOR RAPE KITS OR SEXUAL ASSAULT KITS?
A NO, THERE'S NOT. I HAVE TAKEN A SANE COURSE, WHICH IS A SEXUAL ASSAULT NURSE EXAMINER'S COURSE THAT I TOOK IN OCTOBER OF THIS LAST YEAR. BUT OTHER THAN THAT, YOU DO NOT HAVE TO BE CERTIFIED TO DO A SEXUAL ASSAULT EXAMINATION ON A PATIENT.
Q HOW MANY NURSES AT BEAUFORT MEMORIAL HOSPITAL HAVE TAKEN THE TRAINING COURSE, THE SANE COURSE, THAT YOU'RE REFERRING TO?
A AS OF RIGHT NOW THERE ARE NO CERTIFIED SANE NURSES AT

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BEAUFORT MEMORIAL EMERGENCY ROOM. WHEN I WENT TO THE COURSE IN OCTOBER, THERE WAS APPROXIMATELY THREE EMERGENCY ROOM NURSES THAT WENT WITH ME, AND THERE'S TWO OTHER NURSES WITHIN THE HOSPITAL THAT ALSO WENT TO THE COURSE.

Q SO HOW FAR HAVE YOU COMPLETED THE TRAINING AT THIS POINT?

A AS OF RIGHT NOW I'VE GONE THROUGH THE BOOK WORK AND I'VE PASSED THE WRITTEN EXAMINATION TO PROCEED WITH CLINICAL TRIALS.

Q AND HAVE YOU BEEN INVOLVED IN CLINICAL TRIALS AT THIS POINT?

A YES, I HAVE. I HAVE TO COMPLETE 40 PELVIC EXAMS. I HAVE TO DO 6 RAPES, TURN THEM IN TO AN INSTRUCTOR IN COLUMBIA. I ALSO HAVE TO RIDE ALONG WITH A POLICE OFFICER, A DETECTIVE, AND I ALSO NEED TO SIT IN ON AN EXPERT TESTIMONY.

Q APPROXIMATELY HOW MANY RAPE KITS DO YOU COMPLETE IN A YEAR?

A APPROXIMATELY 10.

Q APPROXIMATELY HOW MANY RAPE KITS HAVE YOU PERFORMED IN YOUR CAREER?

A APPROXIMATELY 20 -- LESS THAN A HUNDRED.

Q IS YOUR WORK DEVELOPED ENTIRELY TO EMERGENCY CARE, INCLUDING RAPE KITS, THAT SORT OF THING?

A ALSO I TAKE CARE OF TRAUMA, ANYTHING THAT WALKS

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THRO[redacted]HEART ATTACKS, STROKE VICTIMS, NBC'S, MINOR EAR ACHES, SORE THROATS, BUT ALSO WITH SEXUAL ASSAULTS, YES.

Q WERE YOU WORKING ON FEBRUARY THE 7TH, 2006?

A THAT IS CORRECT.

Q DID YOU HAVE A PATIENT ON THAT DATE PRESENT AS A RAPE VICTIM?

A YES, I DID.

Q DO YOU RECALL HER NAME?

A YES. MAY I LOOK AT MY NOTES PLEASE?

Q IF THAT WOULD REFRESH YOUR RECOLLECTION.

A YES. HER NAME IS [redacted].

Q WHO IS THE DOCTOR THAT TOOK HER HISTORY AND PHYSICAL?

A DR. AFOLABI OGUNTOYINBO.

Q WHAT ELSE DID YOU OBSERVE -- WHAT DID YOU OBSERVE THE DOCTOR DO WITH REGARD TO TREATING ANA?

A BASICALLY THE PHYSICIAN COMES IN AND DOES A HISTORY AND PHYSICAL. I ACTUALLY DO THE RAPE EXAM FOR THE SLED KIT. AFTE[redacted] COMPLETE THAT, THE DOCTOR WILL COME IN AND DO A SPECULUM EXAM WITH AN RN CHAPERON.

Q WHO COLLECTED ALL THE EVIDENCE FROM THIS PATIENT FOR THE RAPE KIT IN THIS CASE?

A I DID.

Q WOULD YOU PLEASE EXPLAIN TO THE JURY HOW YOU FOLLOWED HOSPITAL AND SANE PROTOCOL AND PROCEDURES AS YOU DESCRIBE

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HOW YOU COLLECTED EVIDENCE FROM [redacted] IN THIS CASE?

A YES, MA'AM. FIRST OF ALL, WE HAVE TO GET WRITTEN CONSENT FROM THE VICTIM OR THE PATIENT BEFORE WE CAN EVEN PROCEED. WE ALSO HAVE TO HAVE A CASE NUMBER FROM THE AGENCY THAT IS REQUESTING THE SLED KIT FROM US. THEN AFTER WE HAVE THE WRITTEN DOCUMENTATION FROM THE PATIENT AND WE HAVE SIGNED IT, WE WILL PROCEED WITH A RAPE KIT.

THE RAPE KIT -- THE SLED KIT IS BROUGHT INTO THE ROOM. IT NEVER LEAVES MY SIGHT UNTIL IT IS TURNED OVER TO THE AGENCY THAT HAS ASKED FOR THE SANE KIT. THEN WE PROCEED WITH -- IT'S BROKEN DOWN IN DIFFERENT CATEGORIES OF WHAT AREAS O[redacted]ULD NEED.

WE ALSO INTERVIEW THE PATIENT AT THAT TIME. AND THROUGHOUT THE -- WITHIN THE COURSE OF THE COLLECTING OF EVIDENCE WE CAN ALSO ASK THE PATIENT, BECAUSE SOME TIMES IT CAN REFRESH THEIR MEMORY WHEN THEY ARE GOING THROUGH THE SANE KIT.

Q COULD YOU PLEASE GO THROUGH THE PROCEDURE AND EACH PIECE OF EVIDENCE THAT YOU TOOK FROM [redacted] IN THIS CASE FOR THE JURY?

A SURE. MAY I REFRESH WITH MY NOTES?

Q YES.

A OKAY. THERE WAS NO CLOTHES THAT WERE OBTAINED. AND FROM MY NOTES THAT THE OFFICERS HAD TAKEN THE BED SHEETS AND HER CLOTHES. SO SHE HAD CHANGED CLOTHES PRIOR TO

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COMING TO THE EMERGENCY ROOM.

THERE WAS A BITE MARK THAT WAS NOTED ON HER RIGHT MIDDLE FINGER, AND THAT WAS COLLECTED. WE USE WHAT WE CALL A DOUBLE SWAB TECHNIQUE WHERE YOU TAKE -- I HAVE ON GLOVES. AND I TAKE A SWAB WHICH IS WET WITH STERILE WATER, AND THAT IS RAN ACROSS THE FINGER. THIS IS A STERILE SWAB, AND IT'S [redacted] ACROSS THE FINGER. AND THEN YOU TAKE ANOTHER DRY SWAB, AND THAT IS ALSO RAN ACROSS THE FINGER. THOSE TWO ARE PLACED INTO A DRYER. AND THEN AFTER IT IS DRIED, IT GOES INTO THE EVIDENCE COLLECTION ENVELOPE THAT IS PROVIDED. THAT IS HOW YOU COLLECT FOR THE FINGERNAIL -- FOR A BITE MARK.

Q NOW, YOU MENTIONED THE FINGERNAIL. IS THAT SEPARATE THAN THE SWAB FROM THE BITE MARK?

A YES, IT IS.

Q HOW IS THAT DONE?

A FINGERNAIL SWABS ARE ALSO -- THERE IS AN ENVELOPE. THERE [redacted] PAPER. IT'S DESIGNATED LEFT AND RIGHT HAND. THE PATIENT OR THE VICTIM'S HAND IS PLACED ON THE PIECE OF PAPER FROM THE ENVELOPE. THERE IS A PLASTIC TOOTHPICK-LOOKING DEVICE THAT IS INSERTED INTO THE ENVELOPE. AND THAT GOES -- EACH INDIVIDUAL FINGER IS SCRAPED. AND THEN I GO TO THE NEXT HAND THAT IS LABELED. IF I STARTED WITH THE LEFT HAND, I WOULD GO TO THE RIGHT HAND. AND THAT IS ALSO DONE IN THE SAME PROCEDURE.

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Q WHAT'S THE PURPOSE OF SCRAPING UNDER THE FINGERNAILS OF A RAPE PATIENT?

A THE PURPOSE OF IT IS TO -- IN CASE THE VICTIM HAD SCRAPED OR SCRATCHED THE ASSAILANT. AND YOU CAN ALSO GET DNA FROM THAT AND YOU CAN GET THE PATIENT AND THE ASSAILANT'S DNA FROM THAT EVIDENCE.

Q WHAT OTHER EVIDENCE DID YOU COLLECT FROM [redacted] DURING HER RAPE KIT?

A OKAY. I ALSO HAD SOME MISCELLANEOUS MATERIALS. LET'S SEE, MISCELLANEOUS BODY FLUIDS. THAT IS COLLECTED BY -- WE TURN OFF THE LIGHTS IN THE ROOM THAT THE VICTIM IS IN AND WE GO OVER THE BODY HEAD TO TOE WITH WHAT IS CALLED A WOODS LAMP. A WOODS LAMP IS A BLACK LIGHT, AND THAT ILLUMINATES -- IT STARTS FROM THE HEAD AND WE GO ALL THE WAY DOWN THE BODY TO SEE IF WE SEE ANYTHING THAT ILLUMINATES THAT IS SUSPICIOUS TO US.

BASICALLY, SEMEN WILL BE ILLUMINATED.

AT THE TIME WHEN I DID [redacted] SLED KIT, I DID FIND A POSITIVE WOODS LAMP AROUND THE EXTERNAL AND INTERNAL MEATUS.

Q COULD YOU EXPLAIN EXACTLY WHERE THAT IS?

A RIGHT. THAT IS IN THE OPENING OF THE VAGINA. THAT IS THE OUTER AND INNER LIPS OF THE VAGINA.

Q WAS THERE ANY OTHER SPECIMEN FOUND ANYWHERE ELSE ON HER BODY WITH THE WOODS LAMP?

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A NO, THERE WAS NOT.
Q NOW, HOW WOULD YOU GO ABOUT COLLECTING A SPECIMEN LIKE THAT? YOU STATED THAT YOU FOUND ---
A RIGHT.
Q WOULD IT BE SEMEN OUTSIDE OF HER VAGINA?
A IT CAN BE SEMEN. WE DON'T KNOW EXACTLY IF IT IS SEMEN, BUT WE KNOW THAT IT IS A FOREIGN BODY THAT IS NOT PART OF THE PATIENT THAT WAS ILLUMINATED. SO WHAT WE DO IS WE ALSO DO THE DOUBLE SWAB TECHNIQUE WHERE WE TAKE -- I WOULD PUT UP -- EVERY TIME THAT I COLLECT EVIDENCE ON A PATIENT, I CHANGE MY GLOVES EVERY SINGLE TIME WITH EACH COLLECTION.
Q SO IF YOU DID THE FINGERNAILS AND HAD ONE KIND OF GLOVE ON, YOU WOULD ---
A I WOULD TAKE ---
Q --- CHANGE GLOVES?
A THAT'S CORRECT. I CHANGE GLOVES EVERY SINGLE TIME. AND BEFORE I EVEN START A SLED KIT, I ALWAYS CLEAN MY HANDS WITH ANTIBACTERIAL SOAP AND MAKE SURE THAT MY ROOM IS CLEAN AND THE BED HAS BEEN CLEANED BEFORE WE EVEN PROCEED WITH A SLED KIT.
Q WHAT OTHER EVIDENCE DID YOU TAKE TO SLED?
A I ALSO GOT ORAL SWABS AND A SMEAR, WHICH IS WHERE I TAKE STERILE SWABS AND IT IS INSERTED INTO THE MOUTH. AND WE GO AROUND THE BUCCAL SITE. THE BUCCAL SITE IS RIGHT

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HERE IN THE CHEEK AREA. AND THAT IS ALSO PUT ON A SLIDE, AND THOSE ARE ALSO PUT INTO A DRYER. AND THEN AFTER THEY HAVE BEEN DRIED, THEY ARE THEN SEALED INTO THE EVIDENCE CASE, THE ENVELOPE.

I ALSO DID PUBIC HAIR COMBINGS. PUBIC HAIR COMBINGS -- AGAIN, I WOULD HAVE CHANGED MY GLOVES. AND INSIDE THE PUBIC HAIR COMBING KIT THERE IS A PIECE OF PAPER THAT THE PATIENT'S VAGINA AND BUTTOCKS IS PLACED ON. THERE IS A STERILE BLACK COMB THAT IS INSIDE THERE. AND WHAT WE DO IS WE ACTUALLY COMB THE PATIENT'S PUBIC HAIRS TO SEE IF HER PUBIC HAIRS FALL OFF OR IF WE CAN ALSO FIND SOME ADDITIONAL PUBIC HAIRS THAT MAY NOT BE RELATED TO THE PATIENT.

Q WHAT OTHER SMEARS DO YOU TAKE?

A WE ALSO DID VAGINAL SWAB SMEARS ON THIS PATIENT, WHICH IS WHEN I OPEN THE LABIAL MAJORA AND MINORA; THAT IS THE OPENING OF THE VAGINA. AND, AGAIN, I CHANGE GLOVES, AND TWO STERILE SWABS ARE INSERTED INTO THE VAGINA AND LEFT FOR APPROXIMATELY 10 SECONDS. AND THEN AFTER THAT, THOSE ARE ALSO PLACED IN THE DRYER.

Q WAS ANY BLOOD TAKEN FROM THE PATIENT?

A YES, THERE WAS BLOOD TAKEN FROM THE PATIENT. I ACTUALLY DREW THE BLOOD FROM THE PATIENT. AGAIN, I CHANGED MY GLOVES AT THIS TIME. A TOURNIQUET IS PLACED AND I HAVE FOUND A VEIN THAT I CAN DRAW BLOOD FROM. THEN THE SKIN IS ALSO CLEANED WITH BETADINE. WE NEVER USE ALCOHOL, BECAUSE

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ALCOHOL CAN DESTROY EVIDENCE. AND THEN I DREW THE BLOOD AND THEN PLACED IT INTO THE APPROPRIATE TUBES THAT WERE DESIGNATED IN THE SLED KIT.

Q YOU HAD MENTIONED THAT YOU COMB THE PUBIC HAIR.

A RIGHT.

Q COLLECT ANY FOREIGN HAIR.

A RIGHT.

Q DO YOU TAKE ANY OTHER HAIR FROM THE VICTIM?

A YES, WE DO. WE ALSO HAVE TO PLUCK SEVERAL HAIRS OUT OF THE PATIENT'S VAGINA, PUBIC AREA. WE HAVE TO GET MAYBE 10 TO 15 WHERE WE ACTUALLY LITERALLY HAVE TO PLUCK IT FROM THE VAGINA AND AROUND THE AREA.

AND THEN ALSO WE ALSO HAVE TO PLUCK HAIR FROM THE VICTIM'S HAIR. I START -- YOU HAVE TO DO IT IN THE FRONT OF THE HEAD, THE TOP, THE LEFT, THE RIGHT, AND THE BACK OF THE HEAD. AND THAT IS ALSO PUT INTO AN ENVELOPE.

Q AFTER YOU COLLECTED ALL THIS EVIDENCE THAT YOU JUST DESCRIBED, WHERE DO YOU PLACE THE SPECIMENS? WHAT DO YOU DO NEXT WITH IT?

A AFTER THE SPECIMENS HAVE BEEN DRIED, I THEN CHANGE GLOVES AGAIN AND INSERT THEM INTO THE APPROPRIATE ENVELOPE THAT IS DESIGNATED IN THE SLED KIT. AND THEN THAT IS SEALED WITH RED EVIDENCE TAPE, AND THEN THAT IS IN MY PRESENCE UNTIL IT IS TURNED OVER TO THE AGENCY THAT HAS REQUESTED THAT TO BE PERFORMED.

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(SLED BOX MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 17.)

Q PLEASE LOOK AT WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AT THIS POINT AS STATE'S EXHIBIT NO. 17. DO YOU RECOGNIZE THAT ITEM?

A YES, I DO.

Q WHAT IS IT?

A THAT IS A SLED KIT.

Q HOW DO YOU RECOGNIZE IT?

A BECAUSE IT IS THE SEXUAL ASSAULT EXAMINING COLLECTION KIT. THAT IS THE STATE PROTOCOL, THIS IS.

Q HOW DO YOU KNOW THAT PARTICULAR KIT IS INVOLVED IN THIS CASE?

A BECAUSE IT HAS MY PATIENT'S NAME ON IT, AND IT ALSO HAS MY NAME ON IT, AND THE AGENCY WHERE I WORK, WHICH IS BEAUFORT MEMORIAL EMERGENCY ROOM.

Q DID YOU INITIAL OR SIGN ANYWHERE ON THAT BOX?

A YES, I DO. EVERY TIME THAT A COLLECTION -- IF YOU CAN SEE ON THE RED, EVERYTHING ON THE RED HAS TO BE INITIALED AND ALSO MY NAME HAS TO BE PRINTED AND SIGNED ON THE BACK. AND ALSO WHOEVER I TURN IT OVER TO HAS TO PRINT AND SIGN THEIR NAME.

Q WHY DO YOUR INITIALS HAVE TO BE SIGNED ON THE RED TAPE?

A BECAUSE THAT MEANS THAT I HAD -- THIS HAS NOT LEFT MY

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SIGHT AND I AM THE ONE WHO SEALED THIS KIT.
Q YOU COLLECTED ALL THIS EVIDENCE FROM ANA, YOU PUT IT IN THAT BOX, AND YOU SEALED THE KIT?
A THAT IS CORRECT.
Q THEN WHAT DID YOU DO WITH IT?
A I HELD IT IN MY POSSESSION UNTIL IT WAS TURNED OVER AT [redacted]:12 TO MATT METRINKO, M-E-T-R-I-N-K-O.
MS. MILLICAN: THANK YOU. I HAVE NO [redacted] QUESTIONS FOR THIS WITNESS AT THIS TIME.
THE COURT: CROSS EXAMINATION, MS. SMART.
CROSS EXAMINATION BY MS. SMART:
Q MS. CLEGG, DURING YOUR EXAMINATION OF [redacted] DID YOU HAVE THE OPPORTUNITY TO SPEAK TO HER ABOUT WHAT HAPPENED?
A YES, MA'AM, I DID.
Q AND DID SHE TELL YOU WHAT OCCURRED?
A YES, MA'AM, SHE DID.
Q AND I SUPPOSE IN YOUR ORDINARY COURSE OF BUSINESS YOU HAVE TO MAKE NOTES ---
A THAT IS CORRECT.
Q --- AS TO WHAT YOU WERE TOLD BY THE PATIENT?
A THAT IS CORRECT.
Q AND DID YOU MAKE NOTES IN THIS PARTICULAR CASE?
A YES, MA'AM, I DID.
Q AND THE NOTES THAT YOU MADE, WOULD THEY BE NOTES THAT

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YOU DREW A CONCLUSION OR WERE YOU SPECIFICALLY TOLD THINGS BY THE PATIENT?

A NO, MA'AM. ACTUALLY, SOME TIMES WE ASK THE PATIENT IF THEY REMEMBER ANYTHING THAT HAPPENED DURING THE ASSAULT, AND THAT'S WHAT WE GO BY.

Q AND IN THIS PARTICULAR CASE, ISN'T IT TRUE THAT YOU ASKED -- OR ISN'T IT TRUE THAT YOU WERE TOLD BY [redacted] THAT A LIGHT SKINNED AFRICAN AMERICAN MAN CAME TO HER DOOR AND ASKED TO USE THE PHONE?

A YES, MA'AM, IT IS.

Q AND THAT THIS MAN ASKED FOR A PEN AND PAPER AT THE [redacted] PULLED OUT A LONG, FLAT, DARK COLORED GUN?

A YES, MA'AM, IN MY NOTES THAT'S WHAT IT SAYS.

Q AND THAT SHE ALSO TOLD YOU THAT SHE BELIEVED THE MAN FLED ON A BIKE?

A THAT IS CORRECT.

Q AND SHE ALSO TOLD YOU THAT SHE WAS FORCED TO REMOVE HER PANTS AND HER UNDERWEAR?

A THAT IS CORRECT.

Q AND THAT SHE WAS PUSHED ON THE BED BY HER ASSAILANT?

A THAT IS CORRECT.

Q AND THAT HE FORCEFULLY JAMMED HIS FINGERS INTO HER VAGINA?

A THAT IS CORRECT.

Q AND SHE ALSO TOLD YOU THAT SHE TOLD HER ATTACKER THAT

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HER SPOUSE WAS COMING HOME AND HE FLED?
A THAT IS CORRECT.
Q AND YOU ALSO NOTED IN YOUR REPORT THAT THERE WAS NO ACTIVE BLEEDING?
A THAT IS CORRECT.
Q DID YOU ALSO PERFORM THE SEXUAL ASSAULT EXAMINATION PROTOCOL, THE WRITTEN REPORT?
A YES, MA'AM, I DID.
Q AND IF YOU HAD NOTED ANY PHYSICAL INJURIES TO THE PATIENT, WOULD THOSE NOTES -- WOULD THOSE INJURIES BE INCLUDED IN YOUR REPORT?
A YES, MA'AM, THEY WOULD BE. SOMETIMES THAT YOU WILL NOT SEE SWELLING OR FIND TEARS OR ANYTHING. YOU CAN SEE IT UP TO 24 HOURS AFTER THE VICTIM COMES IN -- BECAUSE YOU HAVE TO REALIZE, WE'RE SEEING THEM AT AN ACUTE STAGE.
Q NOW, IN YOUR REPORT ON PAGE 2, AND JUST TO REFRESH YOUR MEMORY WITH REGARD TO YOUR PELVIC EXAM, YOU DID NOTE ON YOUR REPORT THAT THERE WAS NO OBVIOUS TRAUMA?
A THAT IS CORRECT.
Q AND THAT WAS TO THE VULVA?
A THAT IS CORRECT. THERE WAS NO OBVIOUS TRAUMA TO THE VULVA, THE INTROITS, THE HYMEN, THE VAGINA, OR THE ANUS.
Q AND COULD YOU EXPLAIN TO THIS JURY IN LAYMAN'S TERMS WHAT THE ---
A BODY PARTS?

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Q THOSE BODY PARTS?
A YES. THE VULVA IS ACTUALLY THE OUTER AREA OF THE VAGINA. THE INTROITS IS ACTUALLY THE INTER PART OF YOUR VAGINA NEAR YOUR CERVIX. THE HYMEN IS A THIN LAYER OF MATERIAL. SOMETIMES IF YOU'VE HAD CHILDREN, YOU MAY NOT HAVE A HYMEN THAT IS PRESENT. THE VAGINA ACTUALLY ITSELF IS THE WHOLE ENCASING OF THE VAGINA IN THE PELVIC AREA. AND THEN, OF COURSE, THE ANUS IS THE RECTUM.
Q AND ON PAGE 4 OF YOUR ANATOMICAL DRAWING ---
A THAT IS CORRECT.
Q --- YOU DID NOTE, ISN'T IT CORRECT, THAT WHAT IS DESCRIBED AS SIGNS OF PHYSICAL OF TRAUMA, THE ONLY THING YOU WROTE THERE WAS BRUISING AND MINIMAL EDEMA NOTED AT THE RIGHT MIDDLE FINGER?
A THAT IS CORRECT.
Q AND NO VAGINA TRAUMA?
A THAT IS CORRECT.
MS. SMART: I HAVE NO FURTHER QUESTIONS.
THE COURT: REDIRECT?
MS. MILLICAN: NOTHING FURTHER FOR THIS WITNESS, YOUR HONOR.
THE COURT: THANK YOU.
MS. MILLICAN: MAY SHE BE EXCUSED?
THE COURT: YOU MAY STEP DOWN.
(THE WITNESS LEAVES THE WITNESS STAND.)

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THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: YOUR HONOR, MAY WE APPROACH?

THE COURT: YES.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, IT IS GOING TO BE NECESSARY THAT WE GO AHEAD ADJOURN FOR THE AFTERNOON. THE STATE WAS JUST EXPLAINING TO ME THE SLIGHT WITNESS PROBLEM THAT SHE HAD PLANNED TO PUT UP TODAY, BUT THE WITNESS COULD NOT GET HERE TODAY BUT WILL BE HERE IN THE MORNING; THAT IS WHAT SHE HAD PLANNED TO DO, AND WE WOULD HAVE QUIT ABOUT 5:00 ANYHOW.

SO I THINK IT IS APPROPRIATE THAT WE RECESS NOW FOR THE AFTERNOON. IF IT DOES NOT CAUSE ANYONE ANY PROBLEMS, I WOULD LIKE TO MAKE UP THIS HALF AN HOUR IN THE MORNING AT 9:00 O'CLOCK. WOULD IT SUIT EVERYBODY TO BE HERE AT 9:00 IN THE MORNING? IF THAT WOULD CAUSE ANYBODY A REAL HARDSHIP, LET ME KNOW. OTHERWISE, WE ARE GOING TO ADJOURN FOR THE AFTERNOON.

I'M GOING TO ASK AGAIN THE BAILIFFS TO COLLECT YOUR NOTE PADS. AND, AGAIN, THEY'LL BE KEPT IN THE SECURITY OF THE BAILIFFS OVER THE EVENING RECESS. AND I'M GOING TO EXCUSE YOU TO GO ABOUT YOUR BUSINESS FOR THE REST OF THE DAY.

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AND, AGAIN, I WOULD TELL YOU THAT OVER THE EVENING RECESS DO NOT DISCUSS THE CASE WITH ANYONE, DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. AND WHEN YOU ARE REASSEMBLING IN THE JURY ROOM TOMORROW MORNING, DO NOT DISCUSS IT AMONG YOURSELVES. IT IS STILL PREMATURE FOR YOU TO BEGIN ANY DISCUSSION ABOUT THIS CASE.

BUT IF YOU WOULD BE BACK TOMORROW MORNING AT 9:00 O'CLOCK, WE'LL TRY TO START PROMPTLY AT THAT TIME SO THAT WE CAN MOVE ALONG.

HAVE A PLEASANT EVENING AND I'LL SEE YOU TOMORROW. THANK YOU.

(THE JURY EXITS THE COURTROOM AT 4:33 P.M.)

THE COURT: ALL RIGHT. I WANT TO GO BACK -- LET THE RECORD REFLECT THE JURY IS NOW OUT OF THE ROOM. I JUST WANT TO GO BACK AND PLACE ON THE RECORD THE REASON FOR ONE OF MY RULINGS.

THERE WAS AN OBJECTION BY THE STATE REGARDING INCONSISTENCIES OR ALLEGED INCONSISTENCIES IN THE VICTIM'S STATEMENT. THE WITNESS THAT WAS ON THE STAND AT THE TIME I BELIEVE WAS THE POLICE OFFICER, MR. CHAPMAN.

AND THE REASON FOR SUSTAINING OF THE OBJECTION WAS THAT THE WITNESS WAS ASKED IF THERE WERE INCONSISTENCIES. IN MY VIEW, THAT IS A MATTER FOR THE JURY TO DETERMINE FROM THE CROSS EXAMINATION OF THE PERSON GIVING THE STATEMENT.

MS. SMART CERTAINLY HAD THE RIGHT AND DID ASK THE

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VICTIM IN THIS CASE, WHO WAS THE PERSON GIVING THE STATEMENT, ABOUT THINGS THAT SHE MAY HAVE SAID IN ONE STATEMENT AS OPPOSED TO ANOTHER STATEMENT. AND IT IS FOR THE JURY TO DETERMINE WHETHER OR NOT THOSE ARE INCONSISTENT OR NOT, NOT WHETHER THE WITNESS, MR. CHAPMAN, THINKS THAT THEY'RE INCONSISTENT. AND THAT WAS THE REASON FOR SUSTAINING THAT OBJECTION.

ALL RIGHT. IS THERE ANYTHING ELSE, MS. MILLICAN, THAT YOU THINK THAT WE NEED TO DO OR THAT WOULD INTERFERE WITH US GOING FORWARD TOMORROW MORNING PROMPTLY?

MS. MILLICAN: I BELIEVE WE CAN START PROMPTLY AT 9:00, YOUR HONOR.

THE COURT: ALL RIGHT. DO YOU KNOW OF ANYTHING, MS. SMART, THAT NEEDS TO BE TAKEN UP?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. WE WILL BE IN RECESS THEN UNTIL 9:00 O'CLOCK TOMORROW MORNING. LET'S DO TRY TO START PROMPTLY WITH THE JURY AT THAT TIME. THANK YOU. GOOD NIGHT.

(COURT IS IN RECESS.)

(WEDNESDAY, MARCH 14, 2007.)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS PRESENT AND REPRESENTED BY

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COUNSEL, MS. MILLICAN AND MS. LOVELL.

ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MS. SMART: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 9:05 A.M.)

THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN. THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE. AND WE ARE NOW READY TO PROCEED.

BEFORE I HAVE THE STATE CALL THEIR FIRST WITNESS, I NEED TO INQUIRE OF THE JURY IF ANYONE HAS TRIED TO TALK WITH YOU OR MAKE ANY CONTACT WITH YOU ABOUT THIS CASE OVER THE EVENING RECESS, I WOULD NEED TO KNOW ABOUT IT NOW.

(NO RESPONSE.)

THE COURT: WITH NO RESPONSE, I ASSUME THAT THAT IS A NEGATIVE RESPONSE. I WOULD ALSO NEED TO ASK YOU IF ANYBODY HAS READ ANYTHING OR SEEN ANYTHING IN THE NEWS MEDIA REGARDING THIS CASE OVER THE EVENING RECESS? I WOULD ALSO NEED TO KNOW ABOUT THAT NOW.

(NO RESPONSE.)

THE COURT: AGAIN, NO RESPONSE. I WILL ASSUME THAT THAT IS A NEGATIVE RESPONSE, AND WE ARE READY TO GO FORWARD.

ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR FIRST

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WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR, THE STATE CALLS DEPUTY METRINKO.

MATTHEW METRINKO, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS PATROLMAN FIRST CLASS MATTHEW METRINKO. METRINKO, M-E-T-R-I-N-K-O.

DIRECT EXAMINATION BY MS. MILLICAN:

Q DEPUTY METRINKO, WHERE ARE YOU EMPLOYED?

A BEAUFORT COUNTY SHERIFF'S OFFICE, MA'AM.

Q HOW LONG HAVE YOU BEEN EMPLOYED AT THE SHERIFF'S OFFICE?

A ALMOST 3 YEARS NOW.

Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S OFFICE?

A I'M A PATROL OFFICER, TRAFFIC ENFORCEMENT, RESPONSE TO CALLS. I'M ALSO ON THE SWAT TEAM.

Q WERE YOU ON DUTY ON FEBRUARY THE 7TH, 2006?

A YES, MA'AM.

Q DID YOU GET INVOLVED IN THE INVESTIGATION OF A RAPE CASE ON THAT DAY?

A YES, MA'AM.

Q HOW DID YOUR INVOLVEMENT BEGIN?

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A I RETRIEVED THE CSC KIT FROM THE HOSPITAL, TURNED IT IN TO THE EVIDENCE DIVISION.

Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 17. DO YOU RECOGNIZE IT?

A I DO, MA'AM.

Q HOW DO YOU RECOGNIZE IT?

A MY NAME AND INITIALS APPEAR ON IT.

Q WHAT IS IT?

A IT'S A CSC KIT.

Q WHAT DID YOU DO WITH THIS RAPE KIT AFTER YOU TOOK CUSTODY AND CONTROL OF IT?

A I SIMPLY TURNED IT IN TO THE EVIDENCE DIVISION.

Q DID YOU EVER BREAK THE SEAL OF THE RAPE KIT WHILE IT WAS UNDER YOUR CUSTODY OR CONTROL?

A NO, MA'AM, I DID NOT.

MS. MILLICAN: THANK YOU. I HAVE NO MORE QUESTIONS OF THIS WITNESS, YOUR HONOR.

THE COURT: CROSS EXAMINATION, MS. SMART?

MS. SMART: I HAVE NO QUESTIONS OF THIS WITNESS.

THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN. IF YOU'LL GIVE THE EXHIBIT BACK TO THE COURT REPORTER.

(THE WITNESS LEAVES THE WITNESS STAND.)

MS. MILLICAN: THE STATE CALLS RAMONA COOPER.

RAMONA COOPER, BEING FIRST

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DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS CORPORAL RAMONA SUE COOPER. I WORK FOR THE BEAUFORT COUNTY SHERIFF'S OFFICE AS AN EVIDENCE TECHNICIAN.

DIRECT EXAMINATION BY MS. MILLICAN:

Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE BEAUFORT COUNTY SHERIFF'S OFFICE?

A I'VE BEEN EMPLOYED BY THEM SINCE 1999 BUT BECAME A CERTIFIED OFFICER IN 2000.

Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S OFFICE?

A CURRENTLY MY DUTIES ARE AS AN EVIDENCE TECHNICIAN WHERE MY RESPONSIBILITIES INVOLVE TAKING IN, MAINTAINING, AND CATALOGING THE EVIDENCE THAT IS BROUGHT IN BY OUR OFFICERS.

Q PLEASE LOOK AT STATE'S EXHIBIT NO. 17. DO YOU RECOGNIZE IT?

A YES, MA'AM, I DO.

Q HOW DO YOU RECOGNIZE IT?

A IT IS A CRIMINAL SEXUAL ASSAULT EVIDENCE COLLECTION KIT, AND I RECOGNIZE IT BECAUSE ONE OF MY FELLOW CO-WORKERS, MS. EILEEN RIOS, WHO IS ANOTHER EVIDENCE TECHNICIAN, HER SIGNATURE IS ON THE BOX.

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Q PLEASE ALSO LOOK AT STATE'S EXHIBIT NO. 12. DO YOU RECOGNIZE THIS ITEM?
A YES, MA'AM, I DO.
Q HOW DO YOU RECOGNIZE IT?
A IT HAS MY SIGNATURE ON IT FROM WHERE I SUBMITTED IT TO SLED FOR ANALYZING FOR WHATEVER REQUEST WAS MADE BY THE INVESTIGATOR.
Q NOW, DID THE BEAUFORT COUNTY SHERIFF'S OFFICE EVIDENCE ALSO TAKE IN A BLOOD STANDARD FROM THE DEFENDANT, NATHANIEL JOHNSON?
A I DO BELIEVE A BIOLOGICAL SPECIMEN WAS TAKEN IN BY MS. RIOS FROM THAT INDIVIDUAL ON JANUARY THE 19TH.
Q COULD YOU PLEASE EXPLAIN WHO MS. RIOS IS?
A MS. RIOS IS ANOTHER EVIDENCE TECHNICIAN IN OUR DEPARTMENT WHO IS A CIVILIAN EMPLOYEE.
Q NOW, IS SHE ALSO LIKE YOU, MAINTAIN CUSTODY AND CONTROL OF ALL THE ITEMS IN EVIDENCE?
A YES, MA'AM, SHE DOES. WE HAVE THE SAME RESPONSIBILITIES.
Q NOW, WHO DELIVERED THE BLOOD STANDARD FROM THE DEFENDANT TO EVIDENCE ON JANUARY 19?
A I'M THE ONLY ONE CURRENTLY IN THE EVIDENCE DIVISION THAT TAKES THINGS TO AND FROM SLED.
Q WHO BROUGHT IT TO EVIDENCE THOUGH?
A TO EVIDENCE, THE BLOOD STANDARD, IT WAS BROUGHT TO US

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BY STAFF SERGEANT PURDY.

Q AND DID YOU SAY YOU TOOK ALL OF THESE PIECES OF EVIDENCE, STATE'S EXHIBIT 17 AND 12 AND THE DEFENDANT'S BLOOD STANDARD TO SLED?

A YES, MA'AM, I DID.

Q WHAT'S THE PROCEDURE FOR SUBMITTING EVIDENCE TO SLED?

A A REQUEST IS MADE BY THE INVESTIGATING OFFICER AND THEY ARE GIVEN TO ME, AND THEN I WILL COLLECT THOSE ITEMS FROM WHERE WE HAVE THEM STORED AND TRANSPORT THEM TO SLED MYSELF AND SUBMIT THEM.

Q AFTER ALL THESE ITEMS ARE ANALYZED AT SLED, WHO RETRIEVES THEM FROM SLED -- FROM COLUMBIA?

A WHEN I GO TO SLED ON MY NEXT VISIT, THEY HAVE IT HOUSED IN THEIR EVIDENCE CONTROL, AND THEY GIVE ME THE ITEMS THAT ARE AVAILABLE FOR ME TO BRING BACK.

Q WHAT DID YOU DO WITH THE ITEMS AFTER YOU BROUGHT THEM BACK?

A I STORED THEM WITH THE REST OF THE EVIDENCE IN OUR HOLDING FACILITY.

Q HAVE ALL OF THESE ITEMS REMAINED IN YOUR CUSTODY AND CONTROL SINCE THE POINT IN TIME WHEN YOU BROUGHT THEM BACK TO BEAUFORT COUNTY SHERIFF'S OFFICE FROM SLED?

A YES.

MS. MILLICAN: THANK YOU. I HAVE NO FURTHER QUESTIONS FROM THIS WITNESS AT THIS TIME, YOUR HONOR.

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THE COURT: CROSS EXAMINATION, MS. SMART?

MS. SMART: YES, YOUR HONOR.

CROSS EXAMINATION BY MS. SMART:

Q MA'AM, DO YOU RECOGNIZE THIS ITEM?

A YES, MA'AM, I DO. IT HAS MY SIGNATURE ON IT WHERE I RECEIVED IT FROM INVESTIGATOR CHAPMAN.

Q AND HOW ARE YOU FAMILIAR WITH THAT? IS THAT SOMETHING THAT YOU HANDLE IN THE COURSE OF YOUR DUTIES AS AN EVIDENCE COLLECTION CUSTODIAN?

A YES. WHEN ANY OFFICER, INVESTIGATOR, OR ROAD OFFICER SUBMITS ANYTHING IN TO EVIDENCE, I TAKE IT IN, I CATALOGUE IT, AND I SIGN THE DOCUMENT.

MS. SMART: I'D LIKE TO HAVE THIS MARKED AS DEFENSE EXHIBIT FOR IDENTIFICATION.

THE COURT: NO. 3, ISN'T IT?

REPORTER: YES.

THE COURT: ALL RIGHT. DEFENSE NO. 3 FOR IDENTIFICATION.

(TWO PHOTO LINE-UPS MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT NO. 3.)

Q I'M SORRY, I DON'T REMEMBER WHETHER I ASKED YOU THIS QUESTION. BUT DID YOU TELL ME WHAT THAT WAS IN THE BAG?

A INSIDE IT, IT SAYS THERE ARE TWO PHOTO LINE-UPS CONTAINING A -- CONTAINING NATHANIEL JOHNSON, JR.

Q AND IT WAS GIVEN TO YOU BY INVESTIGATOR CHAPMAN?

A YES, MA'AM.

MS. SMART: I'D LIKE FOR THIS TO BE ADMITTED INTO EVIDENCE AND BE PUBLISHED TO THE JURY, YOUR HONOR.

THE COURT: ANY OBJECTION, MS. MILLICAN?

MS. MILLICAN: ALTHOUGH NO PROPER CHAIN HAS BEEN ESTABLISHED, THE STATE WON'T HAVE ANY OBJECTION TO THAT BEING ADMITTED INTO EVIDENCE.

THE COURT: ALL RIGHT. ADMITTED INTO EVIDENCE AS DEFENDANT'S NO. 3. GIVE IT BACK TO THE COURT REPORTER AND LET HER TAKE THE I.D. MARKING OFF OF IT PLEASE.

(DEFENDANT'S EXHIBIT NO. 3 RECEIVED IN EVIDENCE.)

THE COURT: AGAIN, LADIES AND GENTLEMEN, THE LAWYERS DO HAVE THE RIGHT TO PUBLISH THE EXHIBITS TO YOU AT THIS TIME. AND, AGAIN, DO NOT BE CONCERNED IF YOU DO NOT HAVE AS LONG TO LOOK AT THEM AS YOU MIGHT LIKE TO, BECAUSE YOU WILL BE ABLE TO TAKE THESE EXHIBITS TO THE JURY ROOM WITH YOU WHEN YOU RETIRE TO DELIBERATE YOUR VERDICT.

MS. SMART: YOUR HONOR, I DON'T HAVE ANY OTHER QUESTIONS FOR THIS WITNESS.

THE COURT: REDIRECT?

MS. MILLICAN: THE STATE HAS NO FURTHER QUESTIONS. YOUR HONOR, MAY MS. COOPER AND DEPUTY METRINKO BE EXCUSED?

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: ALL RIGHT. YES. THANK YOU FOR COMING.

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YOU ARE EXCUSED, BOTH OF YOU.

MS. MILLICAN: THANK YOU, YOUR HONOR.

(THE WITNESS LEAVES THE WITNESS STAND.)

MS. MILLICAN: THE STATE CALLS KIMBERLY HAHN.

(PAUSE.)

MS. MILLICAN: WE'LL GO AHEAD AND CALL A WITNESS OUT OF ORDER, JEFF PURDY.

THE COURT: ALL RIGHT. YOU CAN WAIT JUST A MINUTE UNTIL THE JURY HAS FINISHED PASSING THAT AROUND. GO AHEAD AND CALL HIM, LET HIM BE COMING UP.

MS. MILLICAN: JEFF PURDY.

JEFF PURDY, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: JEFF PURDY. J-E-F-F P-U-R-D-Y.

THE COURT: JUST WAIT JUST A MINUTE, MS. MILLICAN, UNTIL THE JURY HAS REVIEWED THE EXHIBIT, THEN THE BAILIFF GIVE THEM BACK TO THE COURT REPORTER.

(PAUSE.)

THE COURT: ALL RIGHT. YOU MAY PROCEED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION BY MS. MILLICAN:

Q SERGEANT PURDY, WHERE ARE YOU EMPLOYED?

A THE BEAUFORT COUNTY SHERIFF'S OFFICE.

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Q HOW LONG HAVE YOU BEEN EMPLOYED AT THE SHERIFF'S OFFICE?
A A LITTLE OVER 13 YEARS.
Q WHAT ARE YOUR GENERAL DUTIES AT THE SHERIFF'S OFFICE?
A CURRENTLY I'M RESPONSIBLE FOR ALL INVESTIGATIONS -- ALL THE CASES THAT ARE INVESTIGATED NORTH OF BROAD RIVER, WHICH IS BURTON, SEA BROOK, ST. HELENA, LADY'S ISLAND, EVERYTHING OFF OF THE BROAD RIVER THAT'S BEAUFORT COUNTY.
Q SERGEANT PURDY, WERE YOU AT BEAUFORT MEMORIAL HOSPITAL WHEN THE DEFENDANT, NATHANIEL JOHNSON, JR., SUBMITTED TO THE TAKING OF A BLOOD SAMPLE?
A YES, THAT WAS JANUARY 19TH OF THIS YEAR.
Q AFTER THE DEFENDANT'S BLOOD WAS TAKEN, THE NURSE SEALED THE BLOOD STANDARD. DID YOU TAKE CUSTODY AND CONTROL OF IT?
A YES, I WATCHED HIM DRAW THE BLOOD, I WATCHED HIM PACKAGING IN THE BIO BOX, AND HE TURNED IT OVER TO ME.
Q WHAT DID YOU DO WITH IT AT THAT POINT?
A I IMMEDIATELY CARRIED IT TO THE SHERIFF'S OFFICE AND TURNED IT IN TO EVIDENCE.
Q WAS THE DEFENDANT'S BLOOD STANDARD SENT TO SLED FOR DNA COMPARISON TO ITEMS ALREADY ANALYZED IN THIS CASE?
A IT WAS. HOWEVER, I WASN'T THE PERSON THAT DID THE SENDING.
MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS,

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YOUR HONOR.

THE COURT: CROSS EXAMINATION, MS. SMART.

MS. SMART: NO QUESTIONS FOR THIS WITNESS.

THE COURT: ALL RIGHT. SERGEANT PURDY, THANK YOU. YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MS. MILLICAN: THE STATE CALLS KIMBERLY HAHN.

KIMBERLY HAHN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS KIMBERLY HAHN; THAT'S H-A-H-N.

DIRECT EXAMINATION BY MS. MILLICAN:

Q MS. HAHN, WHAT'S YOUR OCCUPATION?

A I'M A SCIENTIST.

Q MORE SPECIFICALLY, WHAT SORT OF SCIENCE DO YOU STUDY?

A I'M A SCIENTIST IN QUALITY CONTROL DEVELOPMENT. I DO TROUBLE SHOOTING ON GENETIC KITS FOR THE COMPANY I WORK FOR.

Q WHO DID YOU WORK FOR IN FEBRUARY OF 2006?

A I WORKED FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q HOW LONG WERE YOU EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION OR SLED?

A I WAS EMPLOYED FOR 2 ½ YEARS.

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Q WHAT WERE YOUR DUTIES WITH SLED?
A I WAS A FORENSIC DNA ANALYST.
Q COULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND?
A I HAVE A BACHELOR OF SCIENCE IN BIOLOGY FROM OLD DOMINION UNIVERSITY IN NORFOLK, VIRGINIA. AND I ALSO HAVE A MASTERS OF SCIENCE DEGREE IN MICRO BIOLOGY FROM OLD DOMINION UNIVERSITY IN NORFOLK, VIRGINIA.
Q DID YOUR FORMAL EDUCATION INCLUDE THE STUDY OF DNA?
A YES, IT DID.
Q DID YOUR EDUCATION INCLUDE HANDS-ON WORK WITH DNA TESTING TECHNIQUE?
A YES, IT DID.
Q HAVE YOU PERFORMED RESEARCH IN THE AREA OF DNA OR DNA TESTING?
A YES, I HAVE.
Q DO YOU BELONG TO ANY PROFESSIONAL SOCIETIES OR ORGANIZATIONS IN THE SCIENCE OF DNA?
A NO, I DO NOT.
Q HAVE YOU WRITTEN ANY PAPERS OR ARTICLES WITH REGARD TO DNA?
A YES, I'VE HAD TWO PAPERS PUBLISHED, ONE IN THE JOURNAL OF PEDIATRICS AND ONE IN THE AMERICAN JOURNAL OF HUMAN GENETICS.
Q HAVE YOU TESTIFIED BEFORE TODAY AS AN EXPERT IN DNA TESTING?

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A YES, I HAVE.
Q APPROXIMATELY HOW MANY TIMES?
A I'VE BEEN QUALIFIED 3 TIMES.
MS. MILLICAN: YOUR HONOR, THE STATE MOVES THAT KIMBERLY HAHN BE DECLARED AS AN EXPERT IN THE FIELD OF FORENSIC DNA ANALYSIS.
THE COURT: CROSS EXAMINATION WITH REGARD TO VOIR DIRE -- WITH REGARD TO QUALIFICATIONS, MS. SMART?
MS. SMART: NOTHING FOR THIS WITNESS, YOUR HONOR.
THE COURT: ALL RIGHT. THE COURT WOULD FIND THAT THE UNDERLYING SCIENCE IS RELIABLE UNDER THE JONES FACTORS THAT THE WITNESS IS QUALIFIED BY TRAINING, EXPERIENCE, EDUCATION, OR OTHERWISE, AND THAT THE TESTIMONY WILL ASSIST THE TRIER OF FACT IN DETERMINING A FACT IN ISSUE. AND THE WITNESS WILL BE QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC DNA ANALYSIS.
LADIES AND GENTLEMEN OF THE JURY, LET ME TELL YOU WHAT THAT MEANS. ORDINARILY, A WITNESS WHO IS NOT AN EXPERT AND IS TESTIFYING TO MATTERS IN COURT IS LIMITED TO TESTIFYING TO THOSE THINGS THAT ARE WITHIN THE WITNESS' PERCEPTION, SUCH AS THINGS THEY CAN SEE, HEAR, TOUCH, SMELL -- THOSE ARE THE THINGS THAT ORDINARILY A WITNESS IS LIMITED TO.
HOWEVER, IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF FACT -- AND THAT'S YOU IN THIS CASE -- TO UNDERSTAND THE EVIDENCE OR TO

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DETERMINE A FACT AT ISSUE, A WITNESS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY TESTIFY IN THE FORM OF AN OPINION.

SO BASICALLY THE DIFFERENCE BETWEEN A WITNESS WHO IS QUALIFIED AS AN EXPERT AND A NON-EXPERT WITNESS IS THAT AN EXPERT WITNESS IS ALLOWED TO GIVE AN OPINION, WHEREAS A NON-EXPERT WITNESS IS NOT.

AND I HAVE QUALIFIED THIS WITNESS AS AN EXPERT IN THE FIELD OF FORENSIC DNA ANALYSIS.

ALL RIGHT. YOU MAY PROCEED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q MS. HAHN, WHAT IS DNA?

A DNA STANDS FOR DEOXYRIBONUCLEIC ACID. IT'S A COMPLEX MOLECULE FOUND IN ALMOST EVERY CELL IN YOUR BODY. ALL HUMANS HAVE 46 CHROMOSOMES, AND THIS IS WHERE YOUR DNA IS FOUND. 23 OF THESE YOU GET FROM YOUR MOTHER AND THE OTHER 23 YOU GET FROM YOUR FATHER. SO 99.95 PERCENT OF THAT DNA IS THE SAME FROM PERSON TO PERSON. AND THIS IS WHAT CODES FOR THINGS SUCH AS TWO EYES, ONE NOSE, ONE MOUTH, TEN FINGERS, AND TEN TOES.

THE OTHER .05 PERCENT OF YOUR DNA IS DIFFERENT FROM PERSON TO PERSON, AND THIS IS WHAT WE LOOK AT TO DEVELOP A DNA PROFILE.

Q DID YOU RECEIVE EVIDENCE IN THE CASE OF STATE VERSUS NATHANIEL JOHNSON, JR.?

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A YES, I DID.
Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT 17 IN FRONT OF YOU. THIS BOX. DO YOU RECOGNIZE IT?
A WHEN WE GET THE EVIDENCE IN THE EVIDENCE -- UPSTAIRS IN THE DNA LABORATORY, IT DOESN'T COME IN THE ACTUAL BOX. WE GET -- IT COMES IN A POUCH LIKE THIS. IS THERE A POUCH INSIDE? SHOULD I ---
Q YOU CAN OPEN IT.
A OKAY. (PAUSE.) YES, THIS IS -- THIS HAS MY INITIALS AND THE DATE ON IT. THIS IS WHAT I WOULD HAVE RECEIVED UPSTAIRS IN THE LABORATORY.
Q WHEN DID YOU RECEIVE THIS RAPE KIT?
A I DON'T HAVE THE CHAIN OF CUSTODY WITH ME. I THINK IT WAS ON 2/28/07. I DIDN'T BRING MY CHAIN OF CUSTODY WITH ME.
Q WOULD YOU LIKE TO REFER TO THE CHAIN OF CUSTODY TO REFRESH YOUR RECOLLECTION?
A YES, PLEASE. (PAUSE.) YES, ON 2/28/07 IS WHEN I RECEIVED THE RAPE KIT.
Q FROM THE TIME THAT RAMONA COOPER WITH BEAUFORT COUNTY SHERIFF'S OFFICE TURNED THAT EVIDENCE IN TO SLED IN COLUMBIA, WHO ALL HANDLED IT BEFORE IT GOT TO YOU?
A DENISE EARGLE DOWN IN THE LOG-IN CHECKED THE EVIDENCE IN. AND THAT WAS ON 2/17/06. AND THEN SHE WOULD HAVE PUT IT IN THE DNA EVIDENCE INTAKE STORAGE, IT'S A SECURE

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REFRIGERATOR DOWNSTAIRS.

AND THEN MARSHA LEITZEL, WHICH IS A DNA TECHNICIAN -- THEY GO DOWNSTAIRS AND COLLECT THE EVIDENCE AND BRING IT UPSTAIRS TO US.

AND FROM THERE IT WAS IN MARSHA'S CUSTODY, THE TECHNICIAN. AND THEN SHE PUT IT IN ONE OF OUR DNA REFRIGERATORS, WHICH IS A SECURE REFRIGERATOR. FROM THERE SHE MOVED IT FROM THAT REFRIGERATOR TO ANOTHER DNA REFRIGERATOR LOCATED WITHIN THE FOURTH FLOOR, WHERE THE DNA LABORATORY IS.

AND FROM THERE I WOULD HAVE TAKEN IT [redacted] MY CUSTODY.

Q WHO IF ANY OF THOSE PEOPLE YOU MENTIONED WOULD HAVE BROKEN THE EVIDENCE SEAL BEFORE YOU RECEIVED IT?

A THE ONLY PERSON THAT WOULD HAVE BROKEN THE EVIDENCE SEAL WOULD HAVE BEEN MARSHA LEITZEL, WHICH IS THE DNA TECHNICIAN. NORMALLY, THEY OPEN THE PACKAGE UP AND POUR THE LIQUID BLOOD ONTO PAPER. IT'S CALLED BOTMAN (PHONETIC) PAPER. AND THIS IS HOW WE PRESERVE THE SAMPLE AS A DRIED SAMPLE OF THE BLOOD.

Q IN WHAT CONDITION DID YOU RECEIVE THE EVIDENCE OF THE RAPE KIT? HOW WAS IT PACKAGED?

A IT WAS IN A SECURE SLED EVIDENCE BAG.

Q DID YOU TEST SLED SAMPLES -- IT WOULD BE STATE'S EXHIBIT NO. 17, INSIDE THAT YOU HAD MULTIPLE SAMPLES AND

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SLED ASSIGNED DIFFERENT NUMBERS TO THOSE SAMPLES; IS THAT CORRECT?

A WHEN I GET THE RAPE KIT, IT'S ASSIGNED -- LIKE HERE IT WAS ASSIGNED ITEM 1. AND MARSHA OPENED IT UP AND TOOK THE BLOOD SAMPLES OUT AND ASSIGNED THEM ITEM 1.1 AND 1.2. AND THEN SHE WOULD SEAL THIS BACK UP. AND EVERYTHING ELSE I WOULD GIVE THE ITEM NUMBER TO EACH INDIVIDUAL ITEM WITHIN THIS PACKAGE.

Q COULD YOU PLEASE TELL THE JURY WHAT ITEM 1.2 IS?

A ITEM 1.2 IS THE BLOOD STANDARD FROM THE VICTIM, [redacted].

Q AND 1.7?

A 1.7 IS MISCELLANEOUS BODY FLUIDS.

Q AND WHAT GENERALLY WOULD THAT BE?

A IT'S USUALLY ANYTHING FOUND ON THE BODY, THEY COLLECT IT AND LABEL IT AS MISCELLANEOUS BODY FLUIDS AND SEAL IT UP AND SEND IT TO US SO WE CAN DETERMINE WHAT IT IS.

Q IS THAT OFTEN BODY FLUIDS THAT MIGHT BE FOUND USING A WOODS LAMP?

A YES, IT COULD BE.

Q WHAT ABOUT ITEM 1.8?

A ITEM 1.8 WAS FINGERNAIL SCRAPINGS.

Q AND ITEM 1.9?

A ITEM 1.9 WAS BITE MARK SWABS.

Q DID YOU TEST ALL OF THESE SAMPLES THAT WE JUST WENT

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THROUGH?
A YES, I DID.
Q PLEASE LOOK AT WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NO. 2. DO YOU RECOGNIZE THE PACKAGING OF THIS?
A I WOULD NOT HAVE RECEIVED THIS. THIS WOULD HAVE GONE DOWN TO EVIDENCE PROCESSING DOWNSTAIRS. THEY GET ALL THE BULK PIECES OF ITEMS, YOU KNOW, CLOTHING AND EVERYTHING, AND THEN THEY MAKE CUTTINGS. AND THE CUTTINGS ARE ACTUALLY GIVEN TO US. SO I WOULD HAVE NEVER SEEN THIS.
Q WOULD THE CUTTINGS HAVE BEEN SOMETHING THAT BEAUFORT COUNTY SHERIFF'S OFFICE WOULD HAVE BROUGHT BACK OR DO THEY TEND TO JUST PICK UP -- DO YOU ALL SEND BACK THE CUTTINGS THAT ARE TAKEN FROM A BULK SAMPLE OR DO YOU JUST SEND BACK THE BULK SAMPLE?
A WE SEND BACK THE CUTTINGS ALSO.
MS. MILLICAN: OKAY. BEG THE COURT'S INDULGENCE.
(PAUSE.)
(SHEET CUTTINGS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 15.)
Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT 15. DO YOU RECOGNIZE IT?
A YES, I DO.
Q HOW DO YOU RECOGNIZE IT?
A MY NAME AND MY INITIALS ARE MARKED ACROSS IT.
Q WHAT EXACTLY IS THAT? WHAT'S INSIDE THAT PACKAGE?

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A I CAN SEE ONE IS ITEM 4.1.1, WHICH WAS CUTTINGS FROM A PAIR OF PANTS. THERE IS ALSO ---

Q MS. HAHN, IF YOU NEED TO OPEN THAT TO SEE WHAT THE OTHERS SAY, GO AHEAD.

A DO YOU HAVE A PAIR OF SCISSORS?

THE COURT: ARE THERE SOME SCISSORS DOWN THERE?

A THANK YOU. (PAUSE.) THIS IS ITEM 4.1.1, WHICH IS CUTTINGS FROM A PAIR OF PANTS.

I'VE GOT ITEM 2.1 WHICH IS CUTTINGS FROM A FITTED SHEET. THESE ARE DNA EXTRACTS. THEY'RE ACTUALLY THE DNA THAT I EXTRACTED OUT OF THESE SAMPLES. WE DRIED THEM DOWN AND JUST PUT THE TUBES BACK IN. EVERYTHING WE DO -- ALL THE EVIDENCE IS SENT STRAIGHT BACK TO THE AGENCY.

THIS IS ITEM 2.4, WHICH IS ALSO CUTTINGS FROM A FITTED SHEET.

2.3 IS CUTTINGS FROM A FITTED SHEET.

2.5 AND 2.2 ARE ALSO CUTTINGS FROM A FITTED SHEET.

AND THEN ITEM 2.6 IS TRACE EVIDENCE. ANYTHING THAT MIGHT HAVE BRUSHED OFF THE FITTED SHEET LIKE HAIR OR ANY KIND OF SKIN CELLS OR ANYTHING, THEY BRUSH IT DOWN AND THEY SAVE IT IN AN ENVELOPE.

MS. MILLICAN: YOUR HONOR, FOR PURPOSES OF THE RECORD, THE STATE WOULD SEEK TO JUST HAVE NO. 15, THE STATE'S NUMBER, ASSIGNED TO ITEMS 2.1, 2.3, AND 2.4, WHICH ARE THE THREE CUTTINGS OF THE SHEET AS A GROUP.

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THE COURT: YOU DON'T WANT TO HAVE THE WHOLE THING?

MS. MILLICAN: JUST THOSE THREE ITEMS. THEY'RE ALL JUST PACKAGED IN ONE SLED ENVELOPE.

THE COURT: ALL RIGHT. TAKE THE TWO BACK THAT YOU DON'T NEED AND TAKE THE THREE THAT YOU WANT AND PUT IT IN THE ENVELOPE, AND THEN I'LL SEE IF MS. SMART HAS ANY OBJECTION TO IT.

(COMPLIED.)

THE COURT: ALL RIGHT. SHOW TO MS. SMART THE ONES THAT YOU PROPOSE TO INTRODUCE AS STATE'S NO. 15.

(PAUSE.)

THE COURT: PUT THOSE BACK IN THE ENVELOPE. AND THE REST OF THEM, IF YOU'LL TAKE THOSE BACK.

ANY OBJECTION TO THE THREE SMALL MANILA ENVELOPES; IS THAT RIGHT, MS. MILLICAN?

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. ANY OBJECTION TO THE INTRODUCTION OF THOSE AS STATE'S EXHIBITS NO. 15?

MS. SMART: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. WILL BE SO ADMITTED. THEY ALREADY HAVE THE NUMBERS OR IS IT I.D. NUMBER? IT'S GOT A NUMBER. ALL RIGHT. STATE'S NO. 15.

(STATE'S EXHIBIT NO. 15 RECEIVED IN EVIDENCE.)

THE COURT: YOU MAY PROCEED.

MS. MILLICAN: THANK YOU, YOUR HONOR.

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Q NOW, PLEASE LOOK AT WHAT'S NOW BEEN MARKED AS STATE'S EXHIBIT NO. 15 FOR PURPOSES OF IDENTIFICATION ---

THE COURT: NO. IT'S IN. IT'S NOT FOR IDENTIFICATION. OH, YOU'RE TALKING ABOUT FOR HER IDENTIFYING. IT'S IN EVIDENCE. IT'S NOT STATE'S FOR IDENTIFICATION. IT IS STATE'S 15 IN EVIDENCE.

Q PLEASE LOOK AT THESE ITEMS AND EXPLAIN EXACTLY WHAT THEY ARE?

A ITEMS 2.1, 2.3, AND 2.4 ARE CUTTINGS FROM THE FITTED SHEET. THEY WOULD HAVE -- DOWN IN EVIDENCE PROCESSING, THEY WOULD GO OVER THE WHOLE ENTIRE SHEET. AND ANYTHING THEY THINK I SHOULD LOOK AT, THEY MAKE A CUTTING FROM AND SEND IT TO ME.

Q HOW DO THEY DETERMINE WHAT TO CUT, WHERE TO CUT ON A SHEET?

A THEY'LL EITHER LOOK AT IT VISUALLY OR SOME TIMES THEY USE A LAMP THAT ANYTHING -- ANY KIND OF LIKE, SALIVA, SEMEN, OR ANYTHING LIKE THAT, IT GLOWS, SO THEY MAKE A CUTTING.

Q NOW, MS. HAHN, THE JURY SAW THE SHEET, SAW THE CUTS IN THE SHEET. WOULD THOSE HAVE BEEN MADE BY THE EVIDENCE TECHNICIAN THAT MADE THOSE PIECES FOR YOU TO STUDY?

A YES, THAT WOULD HAVE BEEN BY -- I THINK JAN WAS THE ONE DOWN IN EVIDENCE -- YEAH, EVIDENCE PROCESSING THAT DID THE CUTTINGS.

Q NOW, PLEASE ALSO LOOK AT WHAT'S BEEN MARKED AS STATE'S

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EXHIBIT 12. DO YOU RECOGNIZE IT?
A YES, I DO.
Q HOW DO YOU RECOGNIZE IT?
A IT'S GOT MY NAME AND MY INITIALS ACROSS IT.
Q WHAT IS IT?
A IT IS -- ITEM 3 IS SWABS.
Q WHEN DID YOU RECEIVE THE BITE SWABS?
A I RECEIVED THE BITE SWABS ON 2/28/06.
Q FROM THE TIME THAT RAMONA COOPER OF THE BEAUFORT COUNTY SHERIFF'S OFFICE TURNED THAT PIECE OF EVIDENCE IN TO SLED IN COLUMBIA, WHAT ARE THE IDENTITIES OF EVERYONE WHO HANDLED IT BEFORE YOU RECEIVED IT?
A IT WAS BROUGHT IN ON 2/17/06 WHERE DENISE EARGLE, A FORENSIC TECHNICIAN DOWNSTAIRS IN LOG-IN, TOOK CUSTODY OF IT.

FROM THERE DENISE WOULD HAVE PUT IT IN THE DNA EVIDENCE INTAKE STORAGE, WHICH IS A SECURE REFRIGERATOR DOWNSTAIRS OR A SECURE AREA.

ON 2/21/06 MARSHA LEITZEL, OUR DNA TECHNICIAN WENT DOWNSTAIRS AND RETRIEVED THIS EVIDENCE AND HAD IT IN HER CUSTODY.

FROM THERE MARSHA PUT IT INTO A DNA REFRIGERATOR, WHICH IS A SECURE REFRIGERATOR.

AND THEN ON 2/27/06 MARSHA MOVED IT FROM THAT SECURE DNA REFRIGERATOR UPSTAIRS TO THE FOURTH FLOOR DNA SECURE

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REFRIGERATOR.

AND FROM THERE I RETRIEVED IT OUT OF THERE AND TOOK IT INTO MY CUSTODY.

Q WHO IF ANY OF THOSE PEOPLE YOU JUST DESCRIBED WOULD HAVE BROKEN THE SEAL BEFORE YOU RECEIVED IT?

A NO ONE WOULD HAVE BROKEN THIS SEAL. THE ONLY THING THAT DNA TECHNICIANS OPEN IT FOR IS TO DO BLOOD SAMPLES, AND THIS WAS NOT A BLOOD SAMPLE.

MS. MILLICAN: YOUR HONOR, THE STATE WOULD MOVE AT THIS TIME THEN TO ADMIT STATE'S EXHIBIT NO. 12 INTO EVIDENCE.

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. BE ADMITTED INTO EVIDENCE AS STATE'S NO. 12 WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 12 RECEIVED IN EVIDENCE.)

Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 14. DO YOU RECOGNIZE IT?

A YES, I DO.

Q HOW DO YOU RECOGNIZE IT?

A IT'S GOT MY DATE AND INITIALS ACROSS IT.

Q WHAT IS IT?

A ITEM 14 IS -- OH, YOUR ITEM 14. THAT IS ITEM 5 AND ITEM 6, WHICH IS -- NUMBER -- ITEM 5 IS A PLASTIC SPOON SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON, JR. AND ITEM

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6 IS A NAPKIN SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON, JR.

Q NOW, DID YOU TEST ALL OF THESE ITEMS, STATE'S EXHIBIT NO. 17, STATE'S EXHIBIT NO. 15, STATE'S EXHIBIT NO. 12, STATE'S EXHIBIT NO. 14 FOR DNA?

A YES, I DID.

Q PLEASE EXPLAIN TO THE JURY HOW YOU TESTED THESE ITEMS?

A EACH ITEM IS BROUGHT TO ME IN A SECURE SLED EVIDENCE BAG. AND FROM THERE I FIRST DO SEROLOGICAL TESTING, WHICH IS JUST TESTING TO DETERMINE WHAT TYPE OF BIOLOGICAL FLUID I'M LOOKING AT SUCH AS BLOOD, SEMEN, SALIVA, OR URINE.

ONCE I DETERMINE THIS, I DO A DNA EXTRACTION TO GET THE DNA OUT OF WHATEVER MATERIAL IT'S ON, SUCH AS CLOTH OR SWABS OR ANYTHING.

ONCE I HAVE THIS DNA, I QUANTITATE IT, WHICH IS JUST TELLING ME HOW MUCH DNA I HAVE PRESENT. AND THEN FROM THERE I DO ANOTHER TEST, WHICH IS CALLED PALMARIS (PHONETIC) CHAIN REACTION. IT SIMPLY IS TAKING THE DNA THAT'S ALREADY PRESENT AND MAKING MULTIPLE COPIES OF IT. AND IT ONLY MAKES MULTIPLE COPIES OF WHAT'S ALREADY THERE. IT CAN'T MAKE DNA. IT'S LIKE A XEROX MACHINE.

AND ONCE I'VE DONE THIS, I PUT IT ON AN INSTRUMENT CALLED A CAPILLARY ELECTROPHORESIS MACHINE, WHICH JUST TELLS ME THE SIZE OF THE DNA FRAGMENTS. AND THIS -- I TAKE THIS INFORMATION AND THIS IS HOW I DETERMIN[redacted] DNA

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PROFILE.

Q SO WERE RESULTS OBTAINED FROM YOUR ANALYSIS OF THOSE ITEMS?

A FOR ITEM 6.0, WHICH IS THE NAPKIN SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON, JR., THE AMOUNT OF DNA PRESENT WAS TOO LOW TO DETERMINE A DNA PROFILE.

BUT I DID GET A PROFILE FROM ---

Q WHICH STATE'S EXHIBIT WOULD THAT BE?

A THAT'S STATE'S EXHIBIT 14.

I DID GET A DNA PROFILE FROM THE CUTTINGS FROM THE SHEETS AND THE SWABS, AND THEN THE PLASTIC SPOON.

Q NOW, DID YOU ALSO TEST -- FOR WHAT PURPOSE DID YOU TEST STATE'S EXHIBIT NO. 17, SLED NO. 1.2 -- THAT SHOULD BE THE VICTIM'S BLOOD STANDARD. FOR WHAT PURPOSE WOULD YOU TEST THE VICTIM'S BLOOD STANDARD?

A YOU NEED TO KNOW THE VICTIM'S BLOOD STANDARD IN ORDER TO COMPARE TO THE EVIDENCE. YOU ALWAYS LOOK AT THE VICTIM'S BLOOD STANDARD AS WELL AS THE SUSPECT'S BLOOD STANDARD OR ANY -- YOU KNOW, A KNOWN STANDARD. IT COULD EVEN BE A SALIVA STANDARD OUT OF THE MOUTH, JUST SOMETHING OF A KNOWN DNA SAMPLE FROM THAT PERSON.

YOU COMPARE THESE TO THE EVIDENCE TO SEE IF THERE'S A MATCH BETWEEN THEM.

Q DID YOU HAPPEN TO HAVE A MATCH ON ANY OF THOSE ITEMS TO [redacted] BLOOD STANDARD?

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A YES, THERE WAS -- WELL, IF YOU LOOK THROUGH THE DNA PROFILES, YOU CAN SEE THAT HER DNA IS PRESENT IN THE PROFILES.

Q IN ALL OF THESE ITEMS?

A THE FEMALE PORTION OF THE MISCELLANEOUS BODY FLUIDS WAS [redacted]. THE FINGERNAIL SCRAPINGS HAD A -- IT'S HARD TO -- THERE -- THERE ARE A LOT OF NUMBERS, SO IT'S HARD TO EXPLAIN.

THE FINGERNAILS SCRAPINGS ALSO SHOWED A PROFILE WITH DNA FRAGMENTS THAT WERE [redacted].

THE CUTTINGS FROM THE SHEET -- THERE WERE A SMALL AMOUNT OF DNA FRAGMENTS THAT WERE FROM -- MATCHED THE DNA PROFILE [redacted].

WHEN WE LOOK AT THE CUTTINGS -- LIKE THE CUTTINGS FROM THE SHEET AND STUFF, WE DO SOMETHING CALLED A DIFFERENTIAL EXTRACTION WHICH SEPARATES THE MALE AND THE FEMALE DNA SO WE CAN -- WE BROKE IT UP INTO TWO SAMPLES SO WE CAN LOOK AT THE FEMALE PART AND THE MALE PART. AND ACTUALLY, THE FEMALE AND THE MALE PART, IT LOOKS LIKE THERE'S MORE MALE PART THAN FEMALE PART. SO A SMALL AMOUNT OF DNA FRAGMENTS ARE THERE THAT LOOKS AS IF THEY'RE CONSISTENT WITH [redacted] PROFILE. BUT MOST OF THE DNA SHOWING UP THERE IS CONSISTENT WITH THE UNIDENTIFIED MALE PRESENT IN MOST OF THESE SAMPLES.

Q SO YOU WERE ABLE TO DEVELOP AN UNKNOWN PROFILE,

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SOMEBODY'S DNA THAT YOU KNOW IS MALE, BUT BEYOND THAT, FROM THOSE ITEMS ALONE YOU DIDN'T HAVE ANY KIND OF IDENTIFIER; IS THAT CORRECT?

A YES. I DID NOT KNOW WHO THE UNIDENTIFIED MALE PROFILE WAS.

Q WHEN YOU RECEIVED STATE'S EXH[redacted]'S EXHIBIT NO. 5, STATE'S EXHIBIT NO. 14, THE SPOON IN PARTICULAR, DID YOU HAVE A KNOWN SUSPECT'S DNA TO COMPARE TO THIS UNKNOWN MALE DNA ON THE OTHER ITEMS?

A NO, I DI[redacted]

Q OKAY. ALL RIGHT. THE SPOON ITSELF, NO. 5 -- IT WILL BE STATE'S 14, SLED NO. 5.

A YES. [redacted]

Q THIS PARTICULAR ITEM YOU DESCRIBED AS RECOGNIZING A SPOON THAT THE DEFENDANT HAD USED. HOW MUCH DNA WOULD YOU HAVE FOUND ON SOMETHING LIKE A SPOON WITH ONLY SALIVA ON IT? IS THAT A STRONG SAMPLE? WHAT KIND OF SAMPLE IS THAT?

A I GOT -- I HAVE A DNA PROFILE FROM IT. I MEAN, IT JUST ALL DEPENDS ON HOW MUCH SALIVA IS THERE. WE DON'T REALLY HAVE A WAY TO MEASURE.

Q THE DNA PROFILE THAT -- ALL RIGHT. IS DNA THAT YOU MIGHT GET FROM SALIVA AS COMPLETE AS DNA [redacted] WOULD GET FROM, SAY, BLOOD FROM SOMEBODY? WOULD YOU HAVE AS GOOD A COMPARISON BASE WITH SALIVA AS YOU WOULD WITH BLOOD?

A THAT WOULD DEPEND -- IT WOULD DEPEND ON HOW MUCH OF

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THE SAMPLE IS THERE. I MEAN, I COULD HAVE A BLOOD SAMPLE THAT WAS DEGRADED, AND IT WOULD BE JUST AS -- IT COULD BE WEAKER THAN WHAT I GET FROM A SALIVA STAIN. YOU CAN'T COMPARE.

Q LOOKING AT ITEM 1.7 OF SLED'S NUMBERS FOR EVIDENCE, WHICH WOULD BE STATE'S NO. 17, IN COMPARING THAT TO SLED'S NO. 5, STATE'S NO. 14, THE SPOON, WAS THERE ANY KIND OF A PROFILE DEVELOPED THAT WAS CONSISTENT AT ALL TO 1.7?

A YES, THE DNA PROFILE DEVELOPED FROM THE UNIDENTIFIED MALE ON THE BED SHOWING ITEM 5.0, WHICH WAS FROM THE PLASTIC SPOON SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON WAS CONSISTENT [redacted] PROFILE DEVELOPED FROM THE SEMEN POSITION FROM ITEM 1.7, WHICH WAS THE MISCELLANEOUS BODY FLUIDS. MEANING, THESE TWO PROFILES WERE CONSISTENT WITH EACH OTHER. IF I [redacted] MPARED, YOU COULD SEE THAT -- I COULD SEE THE SAME DNA FRAGMENTS IN EACH OF THEM.

Q SO THE DNA THAT YOU SAW FROM THE SPOON APPEARED TO BE CONSISTENT WITH THE DNA THAT YOU SAW IN SEMEN THAT CAME OFF [redacted] BODY?

A YES.

Q DID ANY OF THE OTHER ITEMS APPEAR TO BE CONSISTENT WITH DNA FOUND ON THE SPOON, KNOWN TO BE NATHANIEL JOHNSON?

A YES. ITEM 1.7 OR THE DNA PROFILE DEVELOPED FROM THE SEMEN ON ITEM 1.7 WHICH WAS THE MISCELLANEOUS BODY FLUIDS, ITEM 2.1 WHICH IS CUTTING FROM A SHEET, ITEM 2.3 WHICH IS

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ALSO A CUTTING FROM A SHEET, AND ITEM 2.4 WHICH IS ANOTHER CUTTING FROM THE SHEET HAD THE UNIDENTIFIED MALE INDIVIDUAL. AND ITEM 5.0 WAS CONSISTENT WITH THE DNA PROFILE FROM THESE ITEMS.

Q WHAT ABOUT SLED'S NUMBERS 3.1 AND 3.2, WHICH WOULD BE STATE'S NO. 12?

A THAT WOULD BE THE SWABS -- THEY WERE MARKED SWABS FROM A BITE WOUND. WHEN I GOT THEM IN, IT WAS JUST LABELED SWABS, AND I BROKE THEM UP INTO TWO DIFFERENT SWABS WHICH ARE MY ITEMS 3.1 AND 3.2. AND THIS WAS A MIXTURE. AND FROM THIS MIXTURE ALL OF THE DNA FRAGMENTS THAT SHOWED UP WERE CONSISTENT -- OR [redacted] AND THE UNIDENTIFIED MALE COULD NOT BE EXCLUDED AS BEING CONTRIBUTORS. MEANING, THE DNA ALLELES THAT I SAW IN THESE SAMPLES LOOKED AS IF THEY CAME FROM [redacted] AND THE IDENTIFIED MALE.

Q WHAT WOULD BE THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL WHO COULD HAVE CONTRIBUTED TO THIS MIXTURE?

A IT WOULD HAVE BEEN 1 IN 330,000. MEANIN[redacted]LY 1 PERSON OUT OF 330,000 WOULD HAVE HAD DNA FRAGMENTS THAT WOULD HAVE BEEN FOUND IN EACH OF THESE 13 DIFFERENT LOCATIONS.

MS. MILLICAN: THANK YOU. I HAVE NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME.

THE COURT: CROSS EXAMINATION, MS. SMART?

CROSS EXAMINATION BY MS. SMART:

Q AND FOR CLARITY, ITEM 2.1, 2.3, AND 2.4 ARE CUTS FROM THE SHEET THAT'S ALREADY MARKED INTO EVIDENCE?

A YES.

Q AND YOU ANALYZED THE DNA THAT WAS EXTRACTED FROM THESE CUTTINGS THAT WAS TAKEN FROM THAT SHEET ---

A YES.

Q --- IS THAT CORRECT? AND ISN'T IT TRUE THAT YOU FOUND SEMEN ON EACH OF THOSE CUTTINGS, 2.1, 2.3, AND 2.4?

A YES, IT IS.

Q AND WERE YOU ABLE TO IDENTIFY WHERE THAT SEMEN CAME FROM?

A NO.

Q DID THAT SEMEN MATCH THE DNA PROFILE OF MR. JOHNSON?

A I DID NOT TEST -- I DIDN'T TEST THE STANDARD FROM MR. JOHNSON.

Q BUT THERE WAS SEMEN ON THE THREE CUTTINGS THAT WERE TAKEN FROM THE SHEET?

A YES, THE TESTING I DID CAME UP POSITIVE.

Q FINGERNAIL SCRAPINGS 1.8, I BELIEVE?

A THAT WOULD HAVE BEEN IN THE KIT HERE.

Q DID YOU TEST THAT?

A YES, I DID.

Q YOU DID. AND THESE SCRAPINGS WERE TAKEN FROM [redacted] FINGERNAILS?

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A YES.
Q AND ISN'T IT TRUE THAT YOU DIDN'T NOTE ANY SEROLOGICAL EVIDENTIARY VALUE AT ALL FROM ---
A WELL, THEY SEPARATE THE RIGHT FROM THE LEFT, EACH ONE IS IN A SEPARATE PAPER. SO I LOOKED AT EACH ONE. YOU OPEN IT UP AND LOOK AT IT VISUALLY, AND YOU CAN SWAB IT. YOU TAKE A -- LIKE A COTTON SWAB AND RUB THE END OVER IT TO SEE IF THERE'S ANYTHING THERE. ON THE RIGHT-HAND SCRAPING I DID GET A LITTLE BIT OF -- IT LOOKS KIND OF LIKE DIRT OR ANYTHING UP UNDER THE FINGERNAIL CAN BE SKIN CELLS OR ANYTHING.

AND THEN ON THE LEFT FINGERNAIL SCRAPING, I LOOKED AT THE SAME THING, AND THERE WAS NOTHING THERE THAT I COULD SEE VISUALLY THAT LOOKED LIKE I COULD USE.

Q AND 4.1.1?
A 4.1.1 WAS CUTTINGS FROM A PAIR OF PANTS.
Q AND DID YOU FIND ANYTHING ON THE CUTTINGS FROM -- DID YOU FIND HUMAN DNA?
A NO, I DID NOT.

MS. SMART: THANK YOU.

THE COURT: REDIRECT?

MS. MILLICAN: THE STATE HAS NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR. MAY SHE BE EXCUSED?

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NO, YOUR HONOR.

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THE COURT: YES, MS. HAHN, YOU ARE EXCUSED. THANK YOU FOR COMING.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: MS. MILLICAN, LET'S GET THESE EXHIBITS TOGETHER AND MAKE SURE THEY'RE BACK TO THE COURT REPORTER SO WE KEEP THEM ALL TOGETHER.

(PAUSE.)

THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THE STATE CALLS DON BODIKER.

(PAUSE.)

MS. MILLICAN: HE'S TO BE HERE AT 10:00 O'CLOCK, AND IT'S 5 UNTIL.

THE COURT: HAVE YOU GOT SOMEBODY THAT YOU CAN GO ---

MS. MILLICAN: OUT OF ORDER WITH? NOT THAT'S PRESENT, YOUR HONOR. MY OTHER -- MY LAST WITNESS FOR TODAY IS ACTUALLY ALSO SUBPOENAED IN ORANGEBURG FOR THIS MORNING. AND SHE'S COMING HERE AS SOON AS SHE FINISHES HER TESTIMONY THERE.

THE COURT: OKAY.

MS. MILLICAN: SHE'S JUST ANOTHER SLED FORENSIC TECHNICIAN IN THE CHAIN.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL TAKE A BREAK UNTIL WE CAN MAKE SURE THE WITNESS IS HERE. WE'LL TAKE ABOUT 10 MINUTES OR AS SOON AS THE WITNESS GETS

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HERE, WE'LL BE READY TO GO. SO IF YOU'LL GO TO YOUR JURY ROOM, JUST RELAX. JUST LEAVE YOUR PADS IN YOUR CHAIRS. I'M GOING TO MAKE SURE THAT A BAILIFF STAYS HERE IN THE COURTROOM TO MAKE SURE THAT YOUR NOTES ARE SECURE AND THAT NO ONE TAMPERS WITH THOSE.

JUST RELAX FOR A FEW MINUTES, AND WE'LL RETURN YOU TO THE COURTROOM JUST AS SOON AS WE CAN. THANK YOU.

(THE JURY RETIRES TO THE JURY ROOM AT 9:55 A.M.)

THE COURT: WE WILL BE IN RECESS. LET ME KNOW, MS. MILLICAN, AS SOON AS YOUR WITNESS GETS HERE, AND LET ME TALK TO COUNSEL AT SIDE BAR JUST A MINUTE ABOUT SCHEDULING.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

(A RECESS WAS TAKEN.)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO PRESENT REPRESENTED BY COUNSEL.

WE'VE BEEN TALKING ABOUT THE SCHEDULING SITUATION. AND MY UNDERSTANDING IS, MS. MILLICAN, THAT YOU HAVE A WITNESS THAT IS HERE TO TESTIFY THAT WILL BE PRETTY SHORT AND PERHAPS A STIPULATION THAT NEEDS TO BE PUBLISHED; IS THAT CORRECT?

MS. MILLICAN: THAT'S CORRECT, YOUR HONOR.

THE COURT: OKAY. AND THEN THE STATE ANTICIPATES ONE ADDITIONAL WITNESS WHO IS IN ROUTE FROM COLUMBIA; IS THAT

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CORRECT?

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: OKAY. THAT BEING THE CASE, THEN I WOULD EXPECT -- FROM WHAT I UNDERSTAND, THE WITNESS MAY BE HERE BY 12:30, BUT IN ORDER TO ENSURE THAT WE HAVE PLENTY OF TIME, I THINK IT WOULD BE BETTER TO GIVE HER UNTIL 1:00 O'CLOCK. WE COULD PROBABLY FINISH THE TESTIMONY OF THE STATE BY 1:30. AND THEN DEPENDING ON THE DEFENDANT'S SITUATION, CAN ARGUE AND CHARGE THIS AFTERNOON EARLY. SO I THINK THAT WE WILL TRY TO WORK WITH THAT.

MY PLAN THEN WOULD BE TO HANDLE THE WITNESS THAT WE'VE GOT NOW, THE STIPULATION THAT WE'VE GOT NOW, AND THEN TO EXCUSE THE JURY UNTIL 1:00 O'CLOCK AND ALLOW THEM TO GET LUNCH BEFORE THEY COME BACK.

ANY OBJECTION TO THAT PROCEDURE, MS. MILLICAN?

MS. MILLICAN: NOT BY THE STATE, YOUR HONOR.

THE COURT: MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THAT BEING THE CASE, LET'S GO AHEAD AND GET YOUR STIPULATION WRITTEN OUT SO I CAN PUBLISH THAT AFTER WE BRING THE JURY IN.

IN THE MEANTIME, WHILE SHE'S WRITING DOWN THAT STIPULATION, I'M GOING TO STEP DOWN THE HALL. I'VE GOT SOMETHING I WOULD LIKE TO GO OVER WITH MS. TANNER. I'VE GOT IT ON MY DESK. LET ME GET IT. I'LL BE RIGHT BACK.

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(PAUSE.)

THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD TO THE MATTER OF STATE VERSUS NATHANIEL JOHNSON. THE PARTIES HAVE HANDED TO ME A STIPULATION, IT WILL BE THE SECOND STIPULATION THAT HAS BEEN ENTERED IN THIS CASE, IT HAS BEEN SIGNED BY BOTH THE ASSISTANT SOLICITOR AND THE ATTORNEY FOR THE DEFENDANT.

MS. MILLICAN, PRONOUNCE LEITZEL?

MS. MILLICAN: YOUR HONOR, THAT'S CORRECT.

THE COURT: OKAY. ALL RIGHT. AS SOON AS THE JURY COMES BACK, I WILL PUBLISH THIS TESTIMONY -- THIS STIPULATION, AND THEN I'LL ALLOW YOU TO CALL THE NEXT WITNESS THAT YOU'VE GOT. AND THEN I'M GOING TO ADVISE THE JURY THAT BECAUSE OF THE STIPULATIONS THAT HAVE BEEN ENTERED, IT HAS SHORTENED THE CASE CONSIDERABLY, AND THAT'S THE REASON THAT WE ARE GOING TO HAVE A GAP BEFORE THE WITNESS GETS HERE FROM COLUMBIA, SO THAT IT'S NOT REALLY ANYBODY'S FAULT. BUT THESE STIPULATIONS HAVE MADE IT EASIER FOR THE PRESENTATION OF THE TESTIMONY. AND THEN WE WILL ADJOURN UNTIL 1:00 O'CLOCK, ALLOW THE JURY AND EVERYBODY TO GET THEIR LUNCH AND BE READY TO GO AT 1:00 O'CLOCK AND GO STRAIGHT THROUGH AND FINISH UP.

MS. MILLICAN: YOUR HONOR, THE STATE DOES HAVE A MOTION TO ADMIT CERTAIN PIECES OF EVIDENCE THAT MS. LEITZEL WOULD BE THE LAST LINK IN THE CHAIN FOR. SHOULD I GO AHEAD

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AND DO THAT NOW OR WAIT UNTIL AFTER THE ---

THE COURT: WE'LL DO EVERYTHING WE CAN EXCEPT FOR THE WITNESS THAT YOU'VE GOT COMING FROM COLUMBIA. IN OTHER WORDS, I'LL PUBLISH THIS, YOU CALL YOUR WITNESS. THEN YOU GO AHEAD AND MOVE FOR THE ADMISSION OF THOSE THINGS, AND I'LL CONSIDER THAT AND DO ALL THAT. AND THEN WHEN EVERYTHING IS DONE EXCEPT FOR THAT WITNESS FROM COLUMBIA, WE CAN EXCUSE THE JURY UNTIL 1:00 O'CLOCK.

MS. MILLICAN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. ANY PROBLEMS WITH THAT PROCEDURE, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU. BRING THE JURY IN PLEASE.

(STIPULATION OF TESTIMONY OF MARSHA LEITZEL AND STATE'S EXHIBIT NO. 17 MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 3.)

(THE JURY RETURNS TO THE COURTROOM AT 10:40 A.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES AND GENTLEMEN. AND THANK YOU FOR YOUR PATIENCE, AND I APOLOGIZE FOR KEEPING YOU WAITING IN THE JURY ROOM. SOMETIMES COORDINATION IS AS MUCH OF A PROBLEM WITH GETTING TRIALS DONE AS ANYTHING ELSE, ESPECIALLY WHEN YOU HAVE WITNESSES COMING FROM VARIOUS LOCATIONS, WHICH IS WHAT THE

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CASE IS HERE. WE'VE STILL GOT ONE PROBLEM THAT WE'RE GOING TO HAVE ON THAT.

BUT ONE OF THE REASONS THAT THERE'S BEEN A LITTLE BIT OF A GAP IN SOME OF THESE MATTERS ALSO IS BECAUSE THE PARTIES HAVE ENTERED INTO A COUPLE OF STIPULATIONS, ONE OF WHICH I PUBLISHED TO YOU YESTERDAY. AND, OF COURSE, THAT SAVED SOME TESTIMONY. YOU WILL RECALL THAT STIPULATION.

AND THE PARTIES HAVE NOW ENTERED INTO ANOTHER STIPULATION THAT'S GOING TO ALLEVIATE THE NECESSITY OF CALLING A WITNESS.

THAT STIPULATION IS AS FOLLOWS: THE DEFENSE FOR NATHANIEL JOHNSON, JR. STIPULATES TO THE TESTIMONY OF MARSHA LEITZEL, L-E-I-T-Z-E-L, DNA FORENSIC TECHNICIAN FOR SLED, WHO OPENED THE CSC/RAPE KIT, STATE'S NO. 17, WILL PROVE THAT THE CUSTODY AND CONTROL OF STATE'S NO. 17 IS PART OF THE UNBROKEN CHAIN OF CUSTODY AND THAT MARSHA LEITZEL HANDLED THE EVIDENCE IN THE MANNER WITNESS KIMBERLY HAHN TESTIFIED TO ON THE RECORD.

AND THIS STIPULATION IS AGREED TO BY BOTH PARTIES AND YOU SHOULD TREAT IT AS AN ACCEPTED FACT IN THIS CASE.

ALL RIGHT. MS. RUTLEDGE, THIS IS THE COURT'S EXHIBIT.

ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS DON BODIKER.

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DON BODIKER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: (NO RESPONSE.)

DIRECT EXAMINATION BY MS. MILLICAN:

Q PLEASE STATE YOUR NAME FOR THE RECORD AND SPELL IT FOR THE COURT REPORTER.

A MY NAME IS DON BODIKER. LAST NAME IS SPELLED B-O-D-I-K-E-R.

Q WHAT'S YOUR OCCUPATION, MR. BODIKER?

A I'M A REGISTERED NURSE WITH BEAUFORT MEMORIAL HOSPITAL.

Q HOW LONG HAVE YOU BEEN A REGISTERED NURSE?

A ABOUT 14 YEARS.

Q WERE YOU WORKING ON JANUARY 19TH OF 2007?

A YES, I WAS.

Q DID YOU DRAW BLOOD PURSUANT TO A COURT ORDER ON THAT DATE?

A YES, I DID.

Q WHO DID YOU DRAW BLOOD FROM?

A NATHANIEL JOHNSON.

Q HOW MUCH BLOOD DID YOU TAKE FROM THE DEFENDANT?

A ABOUT 2 C.C.'S.

Q HOW WAS THE DEFENDANT'S BLOOD CONTAINED AFTER YOU DREW

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IT?
A IT WAS SET UP IN A EVIDENCE RECEIVING KIT THAT WE HAVE TO USE.
Q WHAT DOES IT LOOK LIKE? DOES IT COME IN A TUBE? DO YOU ---
A IT'S IN A SMALL BOX THAT WE GET, AND WHAT WE DO IS WE GATHER THE EQUIPMENT THAT WE NEED, SUCH AS OUR GLOVES, OUR VACUCONTAINER (PHONETIC), OUR NEEDLE, AND OUR TUBE THAT WE USE TO COLLECT THAT BLOOD WITH. WE THEN GO ABOUT PUTTING A TOURNIQUET ON TO THE PATIENT, ALLOWING THE VEIN TO FILL, AND THEN SWABBING THE AREA WITH ALCOHOL AND USING THE VACUCONTAINER AND TUBE TOGETHER TO PULL THAT BLOOD.
Q DID YOU SEAL THE VILE OF BLOOD THAT YOU TOOK?
A YES, I DID.
Q DID YOU INITIAL OR SIGN OR SEAL A SEAL OR WRITE ANYTHING ON THAT VILE?
A YES, I DID.
Q WHAT DID YOU DO WITH THE BLOOD SAMPLE OR BLOOD STANDARD AFTER YOU DREW IT FROM THE DEFENDANT AND SEALED IT?
A ONCE THAT WAS ALL SEALED AND EVERYTHING, I HANDED IT OVER TO THE INVESTIGATING OFFICER THAT WAS THERE AT THE TIME.
Q UNTIL YOU GAVE THAT SAMPLE TO SERGEANT JEFF PURDY WITH THE BEAUFORT COUNTY SHERIFF'S OFFICE, DID THE SAMPLE EVER

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LEAVE YOUR CUSTODY OR CONTROL?

A NO.

MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS, YOUR HONOR.

THE COURT: MS. SMART.

MS. SMART: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, MR. BODIKER. YOU MAY STEP DOWN.

MS. MILLICAN: MAY THIS WITNESS BE EXCUSED?

THE COURT: ANY OBJECTION?

MS. SMART: WITHOUT OBJECTION.

THE COURT: ALL RIGHT. THE WITNESS IS EXCUSED.

(THE WITNESS LEAVES THE WITNESS STAND.)

MS. MILLICAN: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. MS. MILLICAN, ARE THERE MATTERS OF EVIDENCE THAT YOU WISH TO ADDRESS AT THIS TIME?

MS. MILLICAN: YES, YOUR HONOR. BASED ON THE DEFENSE'S STIPULATION TO MS. LEITZEL'S TESTIMONY, THE STATE MOVES AT THIS TIME TO ADMIT STATE'S EXHIBIT NO. 17, STATE'S EXHIBIT NO. 15, AND STATE'S EXHIBIT NO. 12 INTO EVIDENCE.

THE COURT: ALL RIGHT. IDENTIFY THOSE FOR ME. TELL ME WHAT EACH ONE IS.

MS. MILLICAN: STATE'S EXHIBIT NO. 17 IS THE CSC KIT, THE RAPE KIT.

THE COURT: OKAY.

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MS. MILLICAN: IT INCLUDES ALL THE SLED NOS. 1.1 THROUGH 1.10.

STATE'S EXHIBIT NO. 15 ARE THE THREE CUTTINGS FROM THE FITTED SHEET.

AND STATE'S EXHIBIT NO. 12, WHICH ARE THE SWABS FROM THE VICTIM'S BITE WOUND.

THE COURT: ALL RIGHT. MS. SMART, ANY OBJECTION TO THE ADMISSION OF STATE'S NO. 12, STATE'S 15, AND STATE'S NO. 17?

MS. SMART: NO OBJECTION.

THE COURT: ALL RIGHT. THEY WILL BE ADMITTED INTO EVIDENCE WITHOUT OBJECTION. I DON'T KNOW, MS. RUTLEDGE, IF THEY HAVE I.D. MARKINGS ON THEM OR IF THEY'RE ALREADY MARKED. THEY ARE IN EVIDENCE.

MS. MILLICAN: THANK YOU, YOUR HONOR.

(STATE'S EXHIBIT NOS. 12, 15, AND 17 RECEIVED IN EVIDENCE.)

THE COURT: ALL RIGHT. TELL ME WHERE THE STATE STANDS AT THIS POINT, HOW MANY WITNESSES YOU ANTICIPATE?

MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE ANTICIPATES ONE LAST WITNESS, AND SHE IS ON HER WAY FROM COLUMBIA AS WE SPEAK.

THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN, SOMETIMES IT IS -- AS I SAY, THE COORDINATION IS SOMEWHAT DIFFICULT. AND, OF COURSE, THIS MATTER HAS MOVED ALONG

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QUICKER THAN BOTH COUNSEL HAVE EXPECTED BECAUSE OF THE STIPULATIONS THAT HAVE BEEN ENTERED IN TO. AND I'M NOT GOING TO KEEP YOU WAITING IN YOUR JURY ROOM BACK THERE WHILE WE WAIT ON THIS WITNESS TO GET HERE FROM COLUMBIA. I DON'T THINK THAT'S FAIR TO YOU.

I THINK THE BEST THING FOR US TO DO IS TO GO AHEAD AND TAKE A RATHER LONG AND EXTENDED LUNCH RECESS AND MAKE SURE THAT SHE IS HERE. WE WERE ADVISED BASED AS TO WHAT TIME SHE WAS LEAVING COLUMBIA AND WOULD ANTICIPATE THAT SHE WOULD BE HERE BY 12:30, BUT I'M GOING TO MAKE SURE THAT SHE'S GOING TO BE HERE BY 1:00.

SO I'M GOING TO RECESS AT THIS TIME UNTIL 1:00 O'CLOCK, ALLOW YOU TO GET YOUR LUNCH AND ASK YOU TO COME BACK TO YOUR JURY ROOM AT 1:00 O'CLOCK.

AGAIN, PLEASE TURN YOUR PADS OVER TO THE BAILIFFS. THEY WILL TAKE CHARGE OF THEM UNTIL WE COME BACK AT 1:00 O'CLOCK, AND WE WILL HAVE THIS ONE ADDITIONAL STATE'S WITNESS AT THAT TIME. AND THEN WE WILL PROCEED WITH THE REMAINDER OF THE THINGS THAT WE NEED TO DO THEN.

AGAIN, WHILE YOU ARE AWAY FROM THE COURTHOUSE OVER THIS COUPLE OF HOURS, DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. AND WHEN YOU'RE REASSEMBLING IN THE JURY ROOM, DO NOT DISCUSS IT AMONG YOURSELVES. IT'S STILL PREMATURE FOR YOU TO BE IN ANY DISCUSSION OF THIS CASE. YOU HAVE NOT HEARD ALL THE

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EVIDENCE NOR THE TESTIMONY OF COUNSEL AND THE INSTRUCTIONS ON THE LAW BY THE COURT. AND ANY DISCUSSION WOULD BE PREMATURE AT THIS TIME.

WITH THOSE ADMONITIONS THEN, I'M GOING TO EXCUSE YOU, ASK YOU TO TURN YOUR NOTE PADS OVER TO THE BAILIFFS. AND PLEASE BE BACK IN YOUR JURY ROOM AT 1:00 O'CLOCK. THANK YOU VERY MUCH FOR YOUR PATIENCE.

(THE JURY EXITS THE COURTROOM AT 10:50 A.M.)

THE COURT: WHILE WE HAVE A LITTLE TIME, MS. SMART, I WOULD LIKE TO GO AHEAD AND ADVISE THE DEFENDANT OF HIS FIFTH AMENDMENT RIGHT WITHOUT REQUIRING A DECISION ON HIS PART AT THIS TIME.

LET THE RECORD REFLECT THAT MR. JOHNSON IS STANDING.

MR. JOHNSON, I NOW WANT TO ADDRESS YOU. YOU MAY BE CALLED AS A WITNESS TO TESTIFY IN YOUR OWN BEHALF. I NOW ADVISE YOU THAT YOU HAVE THE RIGHT TO INVOKE THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND A SIMILAR COUNTERPART PROVISION OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROVIDES IN PART THAT NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF.

THIS PROVISION ON CONSTITUTIONAL LAW MEANS THAT YOU CANNOT BE COMPELLED OR REQUIRED TO TESTIFY IN THIS CASE.

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THIS IS A RIGHT AND A PRIVILEGE WHICH THE LAW EXTENDS TO YOU. IT IS A PERSONAL PRIVILEGE AND NO ONE CAN WAIVE THIS RIGHT EXCEPT YOU.

YOU HAVE THE RIGHT NOT TO TESTIFY, BUT YOU ALSO HAVE THE RIGHT TO TESTIFY.

THE COURT WILL GRANT YOU THE RIGHT TO CONSULT WITH YOUR LAWYER BEFORE YOU MAKE A DECISION.

IF YOU ELECT NOT TO TESTIFY, YOUR FAILURE TO TESTIFY CANNOT BE USED BY THE STATE AS AN INFERENCE OF YOUR GUILT, AND YOUR FAILURE TO TESTIFY CANNOT BE CONSIDERED BY THE JURY IN ITS DELIBERATIONS.

AND I WOULD INSTRUCT THE JURY THAT THEY ARE NOT TO CONSIDER YOUR ELECTION NOT TO TESTIFY IN ANY WAY WHATSOEVER.

HOWEVER, IF YOU ELECT TO TESTIFY AND WAIVE THE PRIVILEGE EXTENDED TO YOU BY THE CONSTITUTION, I ADVISE YOU THAT YOU WOULD THEN ASSUME THE ROLE OF A WITNESS IN THIS CASE, AND YOU WOULD WAIVE OR GIVE UP YOUR CONSTITUTIONAL PRIVILEGE AGAINST SELF INCRIMINATION.

THIS MEANS THAT IF YOU VOLUNTARILY TAKE THE WITNESS STAND AND TESTIFY, YOU THEN SUBJECT YOURSELF TO THE SAME RULES THAT GOVERN OTHER WITNESSES AND YOU MAY BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE, AND YOU MAY BE IMPEACHED TO THE SAME EXTENT AS ANY OTHER WITNESS, ALL OF WHICH ARE SUBJECT TO THE RULES OF LAW AND

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THE RULES OF EVIDENCE.

I FURTHER ADVISE YOU THAT IF YOU ELECT TO TAKE THE WITNESS STAND AND TESTIFY, THAT THIS DECISION ON YOUR PART MUST BE MADE FREELY, VOLUNTARILY, INTELLIGENTLY, AND WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE CONSTITUTION AND WITH KNOWLEDGE OF THE CONSEQUENCES OF YOUR ELECTION TO TESTIFY.

DO YOU UNDERSTAND WHAT I HAVE DISCUSSED WITH YOU?

MR. JOHNSON: YES, YOUR HONOR.

THE COURT: DO YOU HAVE ANY QUESTIONS OF ME REGARDING YOUR FIFTH AMENDMENT RIGHTS?

MR. JOHNSON: NO QUESTIONS.

THE COURT: ALL RIGHT. I WILL GIVE YOU AN OPPORTUNITY TO CONSULT WITH YOUR LAWYER. I WILL NOT REQUIRE THAT YOU GIVE ME AN ANSWER AT THIS POINT. IN FACT, IT WOULD NOT BE APPROPRIATE UNTIL AFTER THE STATE HAS RESTED. BUT BETWEEN NOW AND THE TIME THAT I AM GOING TO REQUIRE AN ANSWER FROM YOU AS TO WHETHER YOU DO OR DO NOT WISH TO TESTIFY, WHICH WILL BE ABOUT 2 OR 3 HOURS FROM NOW, I WANT YOU TO MAKE SURE THAT YOU UNDERSTAND YOUR RIGHTS WITH YOUR LAWYER AND BE PREPARED TO GIVE ME AN ANSWER AS TO WHETHER YOU DO OR DO NOT WISH TO TESTIFY LATER ON TODAY.

DO YOU UNDERSTAND?

MR. JOHNSON: YES, SIR.

THE COURT: ALL RIGHT. YOU MAY BE SEATED.

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(COMPLIED.)

THE COURT: ALL RIGHT. ANYTHING ON BEHALF OF THE STATE BEFORE WE RECESS UNTIL 1:00 O'CLOCK?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT. FROM THE DEFENSE?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS THEN UNTIL 1:00 O'CLOCK.

COUNSEL, I DO HAVE COPIES OF THE VERDICT FORMS IF YOU ALL WOULD LIKE TO REVIEW THOSE. I'M NOT PRECLUDING YOU FROM YOUR DIRECTED VERDICT MOTIONS, MS. SMART. BUT IF YOU WANT TO LOOK AT THEM, I'VE PREPARED SOME PROPOSED VERDICT FORMS FOR YOUR REVIEW.

(COURT IS IN RECESS FOR LUNCH.)

(INTERNET PRINTOUT MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 18.)

THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO PRESENT REPRESENTED BY COUNSEL.

I UNDERSTAND ALL THE JURORS HAVE RETURNED FROM THEIR LUNCH RECESS, AND I ALSO UNDERSTAND, MS. MILLICAN, THAT YOUR WITNESS IS HERE; IS THAT CORRECT?

MS. MILLICAN: YES, YOUR HONOR, SHE IS.

THE COURT: ALL RIGHT. READY TO GO FORWARD?

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MS. MILLICAN: I AM, YOUR HONOR.

THE COURT: ANYTHING FURTHER BEFORE WE BRING THE JURY IN, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 1:04 P.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: THANK YOU VERY MUCH. AND THANK YOU FOR YOUR PROMPTNESS, LADIES AND GENTLEMEN, IN BEING BACK HERE. WE ARE NOW READY TO PROCEED.

MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS SLED AGENT ROBIN TAYLOR.

ROBIN TAYLOR, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND SPELL IT FOR THE COURT.

WITNESS: MY NAME IS ROBIN TAYLOR. T-A-Y-L-O-R.

DIRECT EXAMINATION BY MS. MILLICAN:

Q MS. TAYLOR, WHERE DO YOU WORK?

A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q WHAT'S YOUR OCCUPATION?

A I AM A FORENSIC DNA ANALYST.

Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SOUTH

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CAROLINA LAW ENFORCEMENT DIVISION?

A THIS MONTH WILL BE 17 YEARS.

Q WHAT DO YOUR DUTIES ENTAIL?

A MAINLY WE RECEIVE EVIDENCE IN FROM CRIME SCENES OR FROM CRIMES -- FROM OUTSIDE AGENCIES, AND KNOWN BLOOD STANDARDS ALSO FROM PEOPLE INVOLVED IN THOSE CRIMES, AND MAKE DNA COMPARISONS.

MS. MILLICAN: YOUR HONOR, THE STATE MOVES AT THIS TIME THAT ROBIN TAYLOR BE DECLARED AN EXPERT IN FORENSIC DNA ANALYSIS.

THE COURT: ANY VOIR DIRE WITH REGARD TO QUALIFICATIONS OR WILL THE DEFENSE STIPULATE TO HER QUALIFICATIONS?

MS. SMART: YOUR HONOR, WE'LL STIPULATE TO HER QUALIFICATIONS.

THE COURT: ALL RIGHT. THE COURT THEN WOULD FIND MS. TAYLOR AS AN EXPERT IN THE FIELD OF DNA ANALYSIS.

AND AGAIN, LADIES AND GENTLEMEN, LET ME REMIND YOU WHAT THAT MEANS. ORDINARILY A WITNESS WHO IS NOT AN EXPERT CAN ONLY TESTIFY TO THOSE MATTERS WITHIN THEIR PERCEPTION. HOWEVER, IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST YOU IN REACHING A DECISION ON SOME ISSUE IN THIS CASE, THEN A WITNESS WHO IS QUALIFIED AS AN EXPERT MAY GIVE AN OPINION. AND I'VE QUALIFIED THIS WITNESS AS AN EXPERT WHICH ENTITLES HER TO GIVE HER OPINION

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ON THE MATTERS WITHIN HER EXPERTISE.

ALL RIGHT.

MS. MILLICAN: THANK YOU, YOUR HONOR.

Q MS. TAYLOR, DID YOU RECEIVE EVIDENCE IN THE CASE OF STATE VERSUS NATHANIEL JOHNSON, JR.?

A YES, I DID.

Q WHEN DID YOU RECEIVE THE DEFENDANT'S EVIDENCE?

A I RECEIVED A BLOOD STANDARD FROM NATHANIEL JOHNSON, JR. ON JANUARY 24.

Q FROM THE TIME THAT RAMONA COOPER WITH BEAUFORT COUNTY SHERIFF'S OFFICE TURNED THAT EVIDENCE IN TO SLED IN COLUMBIA, WHO ALL HANDLED IT BEFORE YOU RECEIVED IT FOR ANALYSIS?

MS. TAYLOR: YOUR HONOR, MAY I REFER TO MY NOTES TO REFRESH MY MEMORY?

THE COURT: YES, MA'AM.

A (PAUSE.) THIS ITEM IS ITEM NO. 7. IT WAS RECEIVED AT SLED ON JANUARY 24TH, 2007, LOGGED IN TO OUR COMPUTER SYSTEM BY FORENSIC TECHNICIAN NIKKI PERRY. IT WAS THEN TRANS -- OR PLACED IN DNA INTAKE EVIDENCE STORAGE BY ANOTHER FORENSIC TECHNICIAN, AMY STEPHENS. THEN A TECHNICIAN FROM THE DNA LABORATORY MOVED IT FROM THE EVIDENCE AREA UP TO A SECURE REFRIGERATOR IN MY ACTUAL DEPARTMENT THAT'S DESIGNATED FOR MY EVIDENCE.

ALL OF THIS HAPPENED ON THE SAME DAY, ON JANUARY 24.

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AND I ALSO TOOK THIS EVIDENCE -- OR THIS BLOOD STANDARD IN TO MY POSSESSION ON JANUARY 24. IT HAS SINCE BEEN RETURNED DOWN TO THE EVIDENCE AREA.

Q WHO IF ANY OF THOSE PEOPLE BROKE THE EVIDENCE SEAL BEFORE YOU RECEIVED IT?

A THE SEAL ON THE EVIDENCE WAS INTACT WHEN I RECEIVED IT.

Q IN WHAT CONDITION DID YOU RECEIVE THE DEFENDANT'S BLOOD STANDARD? HOW WAS IT PACKAGED?

A IT WAS PACKAGED IN A PLASTIC HEAT-SEALED POUCH. IT'S SEALED WITH A HEAT APPLIANCE AND INITIALED AND DATED BY THE PERSON WHO SUBMITTED THE EVIDENCE. AND THERE WERE NO OTHER BREAKS IN THAT SEAL PRIOR TO MY RECEIVING IT.

Q DID YOU ANALYZE SLED SPECIMEN NO. 7 FOR DNA?

A YES, I DID.

Q AND THAT'S THE DEFENDANT'S BLOOD STANDARD?

A YES, IT IS.

Q PLEASE EXPLAIN TO THE JURY THE PROCEDURE YOU FOLLOWED BEFORE YOUR DNA ANALYSIS OF THAT BLOOD?

A WELL, THE FIRST THING I'M GOING TO DO WITH A LIQUID BLOOD STANDARD IS TO DRY IT. I PLACED IT ON A PIECE OF FILTER PAPER THAT WAS PROPERLY LABELED WITH THE LABORATORY CASE NUMBER AND THE NAME OF THE DEFENDANT. I ALLOWED IT TO DRY, AND THEN PROCEEDED TO TAKE A VERY SMALL CUTTING FROM THAT. APPLIED SOME LIQUID REAGENTS TO RELEASE THAT DNA

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FROM THE FILTER PAPER THAT IT HAD BEEN DEPOSITED ON.

I USED A MACHINE TO PURIFY AND CLEAN UP THE DNA, AND THEN USED YET ANOTHER PROCEDURE TO FIND OUT HOW MUCH I HAD -- HOW MUCH DNA I HAD IN THAT SMALL CUTTING.

AND AT THAT POINT I LOADED A PARTICULAR AMOUNT INTO A MACHINE CALLED A THERMAL CYCLER. AND WHAT THAT DOES IS JUST TAKE A VERY SMALL AMOUNT OF DNA AND COPY IT OVER AND OVER AND OVER AGAIN SO THAT I GET A TARGETED AMOUNT TO LOAD ONTO THE FINAL MACHINE THAT WE USE. AND WHEN THE RESULTS CAME OFF OF THAT, I USED OUR COMPUTER PROGRAMS AND ANALYZED THE SAMPLE AGAINST THE EVIDENCE THAT HAD ALREADY BEEN RUN.

Q DID YOU DEVELOP A DNA PROFILE USING THAT BLOOD STANDARD PROVIDED BY THE DEFENDANT?

A YES, I DID.

Q DID YOU COMPARE THAT PROFILE TO THE PROFILES KIMBERLY HAHN HAD DEVELOPED USING STATE'S EVIDENCE NO. 17 WHICH WOULD BE SLED'S 1.7, 1.8, AND 1.9; STATE'S EXHIBIT 12 WHICH IS SLED'S NO. 3.1, 3.2; AND DEFENSE EXHIBIT NO. 2 WHICH WOULD BE SLED 2.1; AND STATE'S 15, 2.3 AND 2.4 SLED NUMBERS?

A YES, I COMPARED THE DNA PROFILE THAT I DEVELOPED FROM NATHANIEL JOHNSON TO ALL OF THE DNA PROFILES THAT KIMBERLY HAHN HAD DEVELOPED BEFORE SHE LEFT SLED.

Q WHAT WERE THE RESULTS OF YOUR COMPARISON?

A THE DNA PROFILE DEVELOPED FROM THE SEMEN ON ITEMS 1.7,

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2.1, 2.3, AND 2.4 WHICH 1.7 IS MISCELLANEOUS BODY FLUID SWABS FROM THE SEXUAL ASSAULT KIT; 2.1 IS A CUTTING FROM A FITTED SHEET; 2.3 IS ALSO A CUTTING FROM A FITTED SHEET; AND 2.4, AGAIN, ANOTHER CUTTING FROM THE FITTED SHEET. THE DNA PROFILE DEVELOPED ON THE SEMEN ON THOSE ITEMS MATCHED THE DNA PROFILE OF NATHANIEL JOHNSON.

AND THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL WHO WOULD HAVE THAT SAME PROFILE AS THE SEMEN ON THOSE ITEMS IS 1 IN 76 QUADRILLION.

Q MS. TAYLOR, WOULD YOU PLEASE TAKE A LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 18. WHAT IS THAT GENERALLY?

A THIS APPEARS TO BE A PRINTOUT FROM THE INTERNET AT THE CITE CENSUS DOT GOV, AND IT'S WORLD POPULATION INFORMATION.

MS. MILLICAN: YOUR HONOR, THE STATE MOVES THAT THE COURT TAKE JUDICIAL NOTICE OF THE CENSUS FACTS REPORTED IN THE U.S. WORLD POPULATION CENSUS AND ADMIT STATE'S EXHIBIT NO. 18 BASED ON IT BEING A RELIABLE STATISTIC GENERATED BY AN ACCURATE, WELL-KNOWN SOURCE, WHICH WOULD NOT BE REASONABLY QUESTIONED.

THE COURT: ANY OBJECTION TO JUDICIAL NOTICE OF THIS FACT, MS. SMART?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. IT WILL BE SO ADMITTED. DO YOU WANT TO MARK IT?

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MS. MILLICAN: IT'S BEEN MARKED, YOUR HONOR.

THE COURT: ALL RIGHT. IT'S STATE'S WHAT?

MS. MILLICAN: STATE'S 18, YOUR HONOR.

THE COURT: STATE'S NO. 18. ALL RIGHT. ADMITTED AS STATE'S 18 WITHOUT OBJECTION.

(STATE'S EXHIBIT NO. 18 RECEIVED IN EVIDENCE.)

Q MS. TAYLOR, WHAT DID THE U.S. CENSUS BUREAU REPORT THE WORLD POPULATION IS TODAY, MARCH 14?

A 6 BILLION 582 MILLION 196 THOUSAND 843.

MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN FOR JUST A MOMENT TO WRITE THIS NUMBER OUT?

THE COURT: YES. PLEASE STEP DOWN.

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

A (COMPLIED.)

THE COURT: WHAT ARE YOU ASKING HER TO DO, MS. MILLICAN?

MS. MILLICAN: I ASKED MS. TAYLOR IF SHE COULD PLEASE WRITE THAT FIGURE ON THE BOARD FOR THE JURY TO SEE.

THE COURT: WHICH FIGURE?

MS. MILLICAN: THE FIGURE OF THE POPULATION IN THE WORLD AS OF TODAY.

THE COURT: ALL RIGHT.

A (COMPLIED.)

Q AND, MS. TAYLOR, COULD YOU WRITE THE FIGURE -- THE PROBABILITY NUMBER, THE 76 QUADRILLION NUMBER BELOW THAT

FOR THE JURY.

A I HAVE TO START FROM THIS END. (COMPLIED.) I RAN OUT OF ROOM.

Q JUST WRAP IT AROUND.

A (COMPLIED.) 76 QUADRILLION. THAT IS 76 WITH 15 ZEROS BEHIND IT.

Q THANK YOU, MS. TAYLOR. IS THERE ANY OTHER PERSON LIVING IN THE WORLD TODAY THAT COULD HAVE CONTRIBUTED TO THE SEMEN IN THESE ITEMS THAT YOU TESTED?

A NO. IN MY OPINION IT'S UNIQUE TO THIS INDIVIDUAL.

MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE HAS NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME.

THE COURT: ALL RIGHT. HAVE A SEAT BACK UP HERE PLEASE, MA'AM.

(THE WITNESS RETURNS TO THE WITNESS STAND.)

THE COURT: CROSS EXAMINATION, MS. SMART.

MS. SMART: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU. MS. TAYLOR, YOU MAY STEP DOWN. WOULD YOU LIKE TO HAVE THE WITNESS EXCUSED?

MS. MILLICAN: YES, YOUR HONOR, PLEASE. THANK YOU.

THE COURT: ANY OBJECTION?

MS. SMART: NO OBJECTION, YOUR HONOR.

THE COURT: YOU ARE EXCUSED. THANK YOU FOR COMING.

(THE WITNESS LEAVES THE WITNESS STAND.)

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THE COURT: ALL RIGHT. MS. MILLICAN.

MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE WOULD JUST LIKE TO IN AN ABUNDANCE OF CAUTION GO OVER ALL THE EVIDENCE THE STATE HAD INTRODUCED TO ADMIT.

THE COURT: ALL RIGHT. GO AHEAD AND MAKE SURE WHAT YOU THINK HAS BEEN INTRODUCED AND THEN MAKE SURE THAT IT HAS. LET'S CHECK IT WITH THE COURT REPORTER. GO AHEAD.

MS. MILLICAN: OKAY. STATE'S NO. 17. STATE'S NO. 15. STATE'S NO. 12. STATE'S NO. 14. STATE'S NO. 1 THROUGH 3. STATE'S NO. 16. STATE'S NO. 13. STATE'S NOS. 4 THROUGH 10. AND STATE'S NO. 18.

THE COURT: ALL RIGHT. IT APPEARS ALL OF THOSE HAVE BEEN INTRODUCED INTO EVIDENCE.

MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE WOULD REST.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE HEARD THE ASSISTANT SOLICITOR ANNOUNCE THAT THE STATE HAS RESTED, WHICH MEANS THAT THEY HAVE PRESENTED ALL OF THE TESTIMONY OR EVIDENCE THAT THEY WILL PRESENT TO YOU AT THIS TIME.

THERE ARE CERTAIN MATTERS OF LAW WHICH I NOW NEED TO TAKE UP WITH THE ATTORNEYS. THIS WILL NOT TAKE US LONG, BUT AFTER WE HAVE COMPLETED THOSE, THEN WE WILL BE READY TO GO FORWARD.

BUT I DO NEED TO DO THESE ON THE RECORD AND OUTSIDE OF

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YOUR PRESENCE. SO FOR JUST A FEW MINUTES I'M GOING TO ASK THAT YOU GO TO YOUR JURY ROOM AND DO NOT DISCUSS THE CASE AMONG YOURSELVES. IF YOU'LL JUST LEAVE YOUR PADS IN YOUR SEATS, WE'LL BRING YOU BACK IN THE COURTROOM VERY SHORTLY.

THANK YOU. YOU MAY GO WITH THE BAILIFF.

(THE JURY RETIRES TO THE JURY ROOM AT 1:17 P.M.)

THE COURT: ALL RIGHT. MS. SMART, ANY MOTIONS ON BEHALF OF THE DEFENDANT?

MS. SMART: YOUR HONOR, I MOVE FOR A DIRECTED VERDICT. THE STATE HAS NOT MET EACH AND EVERY ELEMENT FOR EACH -- FOR THE CRIMINAL SEXUAL CONDUCT, THE KIDNAPING, THE POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

THE COURT: WELL, LET'S ADDRESS EACH ONE OF THEM. TELL ME WHAT -- YOU MOVE FOR A DIRECTED VERDICT ON THE BASIS OF THE CSC. WHAT HAS THE STATE NOT PROVEN? AND KEEPING IN MIND THAT UNDER RULE 19 MY JOB IS NOT TO WEIGH THE -- NOT THE WEIGHT OF THE EVIDENCE, BUT THE EXISTENCE OF THE EVIDENCE AT A MOTION OF DIRECTED VERDICT. THE QUESTION OF HOW MUCH WEIGHT TO GIVE TO THE EVIDENCE IS FOR THE JURY'S DETERMINATION. THE COURT LOOKS ONLY AT WHETHER OR NOT THERE IS EVIDENCE IN THE RECORD.

BUT LET'S ADDRESS EACH ONE OF THEM ON AN INDIVIDUAL BASIS. IF YOU'RE GOING TO MOVE WITH REGARD TO CSC, WHAT DO YOU THINK THE STATE HAS FAILED TO PROVE IN THE CSC?

MS. SMART: YOUR HONOR, WE WOULD SUBMIT THAT THE STATE

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PROVED AN ATTEMPT AND NOT THE ACT.

THE VICTIM TESTIFIED THAT HE ATTEMPTED TO RAPE HER, THAT HE FOUGHT -- SHE FOUGHT HIM OFF. SHE PUT HER HAND DOWN THERE TO KEEP HIS PENIS FROM GOING INTO HER VAGINA. WE WOULD SUBMIT TO THE COURT THAT THAT WOULD BE AN ATTEMPT AND NOT A COMPLETED ACT.

THE COURT: ALL RIGHT. WHAT SAY YOU, MS. MILLICAN?

MS. MILLICAN: YOUR HONOR, THE VICTIM TESTIFIED THAT THE DEFENDANT'S PENIS WENT INTO HER VAGINA AS PLAINLY AS I JUST SAID IT. SHE TESTIFIED THAT HIS FINGERS ALSO WERE INSIDE HER VAGINA.

THE COURT: OKAY. THAT'S MY RECOLLECTION OF THE TESTIMONY AS WELL. THE COURT WOULD THEREFORE -- SINCE THERE IS EVIDENCE IN THE RECORD BY WHICH THE JURY COULD DETERMINE THAT ELEMENT HAS BEEN MET, THE COURT WILL RESPECTFULLY DENY THE MOTION FOR A DIRECTED VERDICT.

NEXT?

MS. SMART: WITH REGARD TO THE KIDNAPING, YOUR HONOR, THE VICTIM CONSTANTLY TESTIFIED THAT THE DEFENDANT ASKED HER TO GO TO THE BEDROOM OR ASKED HER TO LAY DOWN OR ASKED HER TO DO THOSE THINGS. ALTHOUGH HER TESTIMONY WAS THAT HE HAD A WEAPON, BUT BASICALLY SHE SAID THAT HE ASKED HER TO DO THESE THINGS AND SHE COMPLIED.

SO BASED ON THAT, WE WOULD SUBMIT THAT SHE HAD THE OPPORTUNITY TO LEAVE.

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THE COURT: MS. MILLICAN?

MS. MILLICAN: YOUR HONOR, THE STATE WOULD SUBMIT THAT THE USE OF A WEAPON WOULD BE A MEANS OF FORCE BY MOVING A PERSON. HE MADE HER DO IT FROM ONE PLACE TO ANOTHER AGAINST HER WILL. SHE WAS NOT ALLOWED TO ESCAPE. SHE WAS CONFINED TO THE BEDROOM. SHE ACTUALLY TESTIFIED THAT SHE FINALLY ESCAPED -- THAT WAS THE WORD SHE USED. IT'S A DETERMINATION FOR THE JURY FROM THE STATE'S PERSPECTIVE.

THE COURT: ALL RIGHT. THE ELEMENTS OF KIDNAPING ARE THE UNLAWFUL SEIZURE, CONFINING, INVEIGLING, DECOYING, ABDUCTING, OR CARRYING AWAY OF A PERSON BY ANY MEANS WITHOUT AUTHORITY OF LAW.

IT WOULD SEEM LIKE TO ME THAT IT WOULDN'T EVEN HAVE TO BE IN THE BEDROOM. THE CONFINING OF THE -- THERE'S NO QUESTION ABOUT THE TESTIMONY HERE, THE CONFINING OF THE VICTIM IN THIS CASE TO HER HOME WITHOUT NECESSARILY EVEN MAKING HER GO TO ANOTHER ROOM WITHIN THE HOME I THINK IS EVIDENCE OF KIDNAPING BY WHICH THE JURY COULD CONCLUDE THAT THE ELEMENTS HAVE BEEN MET.

AGAIN, MY JOB IS TO DETERMINE THE EXISTENCE AND NOT THE WEIGHT TO BE GIVEN TO THE EVIDENCE.

AND SO I WOULD RESPECTFULLY DENY THAT MOTION AS WELL.

ALL RIGHT. YES, MA'AM.

MS. SMART: WITH REGARD TO THE BURGLARY, YOUR HONOR, THE VICTIM TESTIFIED THAT SHE ALLOWED THE VICTIM (SIC) IN

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HER HOME -- I'M SORRY, THE SUSPECT IN HER HOME. SHE OPENED THE DOOR. SO HE ENTERED THE DWELLING WITH THE CONSENT OF THE VICTIM.

THE COURT: ALL RIGHT. MS. MILLICAN.

MS. MILLICAN: YOUR HONOR, THE ENTERING OF A DWELLING WITHOUT CONSENT CAN BE BY USE OF DECEPTION, TRICK, OR MISREPRESENTATION TO GET THAT CONSENT. AND I BELIEVE I ACTUALLY HAVE CASE LAW ON THIS POINT.

THE COURT: ALL RIGHT. THIS ONE I WAS EXPECTING, AND I WAS HOPING YOU WOULD HAVE THE CASES.

MS. MILLICAN: I DO HAVE THE CASES.

THE COURT: ALL RIGHT.

MS. MILLICAN: AND I BELIEVE --

THE COURT: I THINK THE TESTIMONY IS CLEAR THAT SHE OPENED THE DOOR, THAT THERE WAS NO BREAKING. SO WE'VE GOT TO DECIDE IF IT MEETS THE ELEMENTS OF KIDNAPING OTHER THAN THAT -- I MEAN, OF BURGLARY OTHER THAN THAT.

MS. MILLICAN: YOUR HONOR, THE STATE WOULD POINT OUT TWO CASES. THE STATE VERSUS DIXON, STATE VERSUS JOHNSON, AND STATE VERSUS TYSON MACK, WHICH I BELIEVE YOUR HONOR'S FAMILIAR WITH. I HAVE COPIES OF THESE CASES IF YOU'D LIKE FOR ME TO HAND THEM UP.

THE COURT: YES, IF YOU WOULD. AND I AM FAMILIAR WITH THE TYSON MACK CASE.

(PAUSE.)

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THE COURT: ALL RIGHT. OF COURSE, I AM FAMILIAR WITH THE TYSON MACK CASE IN THAT IT WAS A CASE THAT I HEARD IN SUMTER. THAT REALLY IS A QUESTION OF WHETHER OR NOT THERE WAS SUFFICIENT EVIDENCE -- CIRCUMSTANTIAL EVIDENCE TO SHOW THE ENTRY OF THE DEFENDANT INTO THE BUSINESS.

IT IS NOT REALLY THE FACTUAL SITUATION THAT WE HAVE HERE, NEITHER IS THE JOHNSON CASE, WHICH IS A CASE OF A DEFENDANT LAWFULLY IN A BUSINESS, REMAINING IN THE BUSINESS AFTER THE BUSINESS CLOSED -- AS TO WHETHER THAT COULD BE BURGLARY.

IN BOTH OF THOSE INSTANCES, OF COURSE, THEY WERE AFFIRMED THAT BURGLARY WAS PRESENT.

HOWEVER, IT WOULD APPEAR TO THE COURT THAT THE DIXON CASE IS CONTROLLING. THAT CASE STATES VERY CLEARLY THAT EVEN THOUGH THE VICTIM VOLUNTARILY LET THE DEFENDANT INTO THE BUILDING -- I.E., THE VICTIM'S HOME -- THE DEFENDANT GAINED ENTRANCE THROUGH DECEIT, TRICKERY, ARTIFICE, OR MISREPRESENTATION.

AND IT WOULD APPEAR THAT THERE IS EVIDENCE IN THE RECORD IN THIS CASE BY WHICH THE JURY COULD CONCLUDE THAT THAT WAS THE WAY THAT THE DEFENDANT GAINED ENTRY INTO THIS VICTIM'S HOME. IT WOULD BE A FACT DETERMINATION FOR THE JURY -- A FACTUAL MATTER FOR THE JURY'S DETERMINATION. BUT I BELIEVE THAT SINCE BURGLARY CAN BE PREDICATED UPON ENTRY BEING OBTAINED BY TRICKERY OR MISREPRESENTATION, THEN THAT

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WOULD BE A FACTUAL DETERMINATION AND I WOULD RESPECTFULLY DENY THE MOTION FOR A DIRECTED VERDICT ON THAT QUESTION AS WELL.

MS. SMART: YOUR HONOR, IF I MAY JUST FOR THE RECORD, I WOULD SUBMIT TO THE COURT THAT THE DEFENDANT -- THAT THE VICTIM TESTIFIED THAT THE DEFENDANT WANTED TO COME INTO HER HOME TO USE THE TELEPHONE, AND HE DID IN FACT USE THE TELEPHONE. NOT ONLY DID HE USE THE TELEPHONE ONCE, BUT HE USED THE TELEPHONE TWICE.

I WOULD SUBMIT TO THE COURT THAT HE DID NOT -- IT WAS NOT DECEIT, TRICKERY, ARTIFICE, OR MISREPRESENTATION. HE DID DO EXACTLY WHAT HE ASKED HER TO DO.

THE COURT: WELL, I THINK IT'S A WONDERFUL POINT TO ARGUE, MS. SMART. BUT I THINK IT IS CIRCUMSTANTIAL EVIDENCE WHEN THIS DEVELOPED -- WHAT HAPPENED. IF THE JURY BELIEVES WHAT HAPPENED WHILE HE WAS IN THE HOME AND WHAT THE VICTIM SAYS HAPPENED TO HER WHILE HE WAS THERE, THE JURY COULD ALSO CONCLUDE THAT THE TELEPHONE WAS ALL A RUSE, WHICH WOULD BE TRICKERY. AND, THEREFORE, I THINK THAT'S A JURY DETERMINATION. BUT I UNDERSTAND YOUR POSITION. AND IF I'M WRONG, THAT'S WHY WE HAVE A COURT OF APPEALS.

ALL RIGHT. I WILL RESPECTFULLY DENY THAT MOTION. AND THE OTHER THING, OF COURSE, WOULD YOU HAVE ANY MOTION WITH REGARD TO THE POSSESSION OF A WEAPON? IT'S CONTINGENT

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UPON, OF COURSE, A CONVICTION OF ONE OF THE OTHER THREE.

MS. SMART: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. AND I WOULD SO CHARGE THE JURY THAT THEY COULD NOT FIND HIM GUILTY OF THE POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME UNLESS THEY FIND HIM GUILTY OF ONE OF THE THREE PRINCIPLE CRIMES.

YOU WOULD AGREE, WOULD YOU NOT, MS. SMART, THAT ANY ONE OF THE THREE IS A VIOLENT CRIME WITHIN THE MEANING OF THE STATUTE?

MS. SMART: YES, SIR.

THE COURT: OKAY. ALL RIGHT.

MR. JOHNSON, IF YOU WOULD STAND FOR A MINUTE. LET ME TALK TO YOU.

MR. JOHNSON: (COMPLIED.)

THE COURT: BEFORE WE TOOK OUR LUNCH RECESS, I ADVISED YOU OF YOUR RIGHTS UNDER THE FIFTH AMENDMENT OF THE CONSTITUTION AND YOUR PRIVILEGE AGAINST SELF INCRIMINATION, INVITED YOU TO DISCUSS THE MATTER WITH YOUR ATTORNEY. AND I WANT TO GO BACK TO THAT. HAVE YOU HAD A CHANCE TO TALK WITH YOUR LAWYER ABOUT YOUR CONSTITUTIONAL RIGHTS?

MR. JOHNSON: YES, I HAVE.

THE COURT: AND YOU UNDERSTOOD WHAT I TOLD YOU ABOUT YOUR CONSTITUTIONAL RIGHT AND YOUR PRIVILEGE AGAINST SELF INCRIMINATION; IS THAT CORRECT?

MR. JOHNSON: YES, SIR.

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THE COURT: YOU ALSO UNDERSTAND WHAT MS. SMART TOLD YOU ABOUT THAT, ABOUT YOUR CONSTITUTIONAL RIGHTS?

MR. JOHNSON: YES, SIR.

THE COURT: OKAY. DO YOU HAVE ANY QUESTIONS OF EITHER HER OR ME WITH REGARD TO YOUR PRIVILEGE AGAINST SELF INCRIMINATION?

MR. JOHNSON: NO, SIR.

THE COURT: HAVE YOU MADE A DECISION AS TO WHETHER YOU DO OR DO NOT WISH TO TESTIFY IN THIS CASE?

MR. JOHNSON: I DO NOT WISH TO TESTIFY.

THE COURT: OKAY. AND SO YOU HAVE MADE A DECISION AND THAT DECISION IS THAT YOU DO NOT WISH TO TESTIFY?

MR. JOHNSON: YES, SIR.

THE COURT: IS THIS DECISION ON YOUR PART FREELY AND VOLUNTARILY MADE?

MR. JOHNSON: YES, SIR.

THE COURT: HAS ANYONE FORCED YOU TO MAKE THIS DECISION?

MR. JOHNSON: NO, SIR.

THE COURT: ALL RIGHT. THE COURT THEN BASED UPON THE ADVICE OF HIS COUNSEL AS WELL AS THE INSTRUCTION GIVEN HIM BY THE COURT REGARDING HIS PRIVILEGE AGAINST SELF INCRIMINATION HAS MADE A FREE, VOLUNTARY, KNOWING, AND INTELLIGENT DECISION TO EXERCISE THAT CONSTITUTIONAL RIGHT AND HAS ELECTED NOT TO TESTIFY IN THIS MATTER, AND I FIND

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THAT SUCH A DECISION IS FREE AND VOLUNTARILY MADE ON HIS PART.

THANK YOU, SIR, YOU MAY BE SEATED.

MR. JOHNSON: (COMPLIED.)

THE COURT: MS. SMART, DOES THE DEFENSE ANTICIPATE ANY FURTHER EVIDENCE OTHER THAN THAT?

MS. SMART: WITH THAT, SIR, THE DEFENSE WOULD REST.

THE COURT: THE DEFENSE WOULD REST. ALL RIGHT.

THAT BRINGS US TO THE ISSUE OF CLOSING ARGUMENTS. WHAT'S THE STATE'S POSITION WITH REGARD TO CLOSING ARGUMENTS AND WHO HAS THE LAST ARGUMENT TO THE JURY?

MS. MILLICAN: THE STATE WILL WAIVE INITIAL CLOSING, BUT WOULD CERTAINLY SEEK TO CLOSE LAST SEEING THAT THE DEFENSE DID SUBMIT EVIDENCE.

THE COURT: OKAY. DO YOU AGREE WITH THAT, MS. SMART?

MS. SMART: YES, SIR.

THE COURT: ALL RIGHT. SO THE STATE WILL OPEN -- I MEAN, THE STATE IS GOING TO WAIVE OPENING. THE DEFENSE WILL OPEN AND THEN THE STATE WILL CLOSE.

HOW MUCH TIME DO YOU THINK YOU NEED, MS. SMART? I'M NOT GOING TO MAKE YOU ARGUE AGAINST THE CLOCK, BUT ---

MS. SMART: I THINK NO LONGER THAN 45 MINUTES IF THAT LONG.

THE COURT: HOW LONG?

MS. SMART: IF 45 MINUTES -- I DOUBT THAT VERY

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SERIOUSLY.

THE COURT: WELL, I'M NOT SURE I'M GOING TO GIVE YOU THAT LONG. ONE TIME I MADE THE MISTAKE EARLY ON IN MY CAREER ON THE BENCH I MADE THE MISTAKE OF NOT ASKING THE LAWYERS HOW LONG THEY NEEDED TO ARGUE. IT WAS A LITTLE WRECK CASE THAT I THOUGHT COULD HAVE BEEN ARGUED IN 15 MINUTES. AND 55 MINUTES LATER THE LAWYER WAS STILL GOING STRONG.

SO HOW LONG DO YOU THINK YOU NEED, MS. MILLICAN?

MS. MILLICAN: YOUR HONOR, I TRY TO MAKE A POLICY NOT TO EXTEND PAST 25 MINUTES.

THE COURT: WELL, I TELL YOU BOTH LIKE I TELL MY PREACHER, ANYTHING BEYOND 20 MINUTES IS LOST ANYHOW.

MS. MILLICAN: SO THE EXTRA 5 IS EXTRA.

THE COURT: I THINK LET'S TRY TO HOLD IT TO 30 MINUTES ON EACH SIDE. I THINK 30 MINUTES OUGHT TO BE SUFFICIENT TIME. LET'S TRY TO HOLD IT TO 30 MINUTES ON EACH SIDE.

ANY SPECIAL REQUEST TO CHARGE ON BEHALF OF THE STATE?

MS. MILLICAN: THE STATE WOULD DEFER TO THE COURT, YOUR HONOR.

THE COURT: FROM DEFENSE?

MS. SMART: NONE, YOUR HONOR.

THE COURT: I'LL TELL YOU WHAT I'M GOING TO CHARGE. IN ADDITION TO THE GENERAL FELONY CHARGE THAT INCLUDES PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF AND THOSE

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THINGS, I WILL CHARGE, OF COURSE, REASONABLE DOUBT, CIRCUMSTANTIAL EVIDENCE. I USE THE GRIPPON CIRCUMSTANTIAL EVIDENCE CHARGE.

I WILL CHARGE THE EXERCISE THE DEFENDANT'S RIGHT NOT TO TESTIFY IS NOT TO BE HELD AGAINST HIM.

I'M GOING TO GIVE A CHARGE ON EXPERT WITNESSES SINCE THERE ARE EXPERT WITNESSES IN THIS CASE.

AND THEN, OF COURSE, THE ELEMENTS OF THE FOUR CRIMES THAT ARE INVOLVED HERE.

I THINK THAT WILL COVER EVERYTHING. ALL RIGHT. WITH THAT THEN WE WILL GO FORWARD WITH THE CLOSING ARGUMENTS AT THIS TIME.

BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 1:35 P.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES AND GENTLEMEN. WE HAVE FINISHED THOSE MATTERS, AND WE ARE NOW READY TO PROCEED.

THE STATE HAS PRESENTED THEIR CASE AND NOW THE DEFENSE HAS THE RIGHT TO PRESENT ANYTHING TO YOU THAT THEY WISH TO PRESENT. MS. SMART.

MS. SMART: YOUR HONOR, THE DEFENSE RESTS.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE HEARD THAT THE DEFENSE IN THIS CASE HAS RESTED; THAT MEANS NOW THAT YOU HAVE HEARD ALL OF THE TESTIMONY THAT YOU WILL

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HEAR IN CONNECTION WITH THIS CASE.

THERE ARE ONLY TWO THINGS THAT REMAIN TO BE DONE; THOSE ARE THE ARGUMENTS OF COUNSEL AND THE INSTRUCTIONS ON THE LAW BY THE COURT.

I WILL TELL YOU NOW AS I DID AT THE BEGINNING OF THIS TRIAL THAT THE ARGUMENTS OF COUNSEL ARE NOT EVIDENCE IN THIS CASE. THEY ARE SIMPLY THE LAWYERS' VIEWS OF WHAT THEY THINK THE EVIDENCE SHOWS.

YOU WILL DECIDE THIS CASE BASED UPON THE EVIDENCE THAT YOU HEARD FROM THIS WITNESS STAND, AS WELL AS FROM ANY EXHIBITS THAT HAVE BEEN INTRODUCED INTO EVIDENCE.

BUT THE LAWYERS DO HAVE THE RIGHT AND NOT ONLY THE RIGHT BUT THE DUTY ON BEHALF OF THEIR CLIENTS TO ADDRESS YOU NOW AND TO GIVE YOU THEIR VIEWS OF WHAT THEY THINK THE EVIDENCE SHOWS.

WHEN THEY HAVE CONCLUDED THAT, I WILL THEN INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA AS IT APPLIES TO THE FACTS IN THIS CASE AS YOU MAY FIND THOSE FACTS TO BE, AND THEN YOU WILL BE ALLOWED TO GO TO YOUR JURY ROOM TO DELIBERATE YOUR VERDICT.

YOU WILL HEAR FIRST FROM MS. SMART ON BEHALF OF THE DEFENDANT, AND THEN FROM MS. MILLICAN ON BEHALF OF THE STATE. AND AFTER THAT I WILL GIVE YOU THE CLOSING CHARGE WITH REGARD TO THE INSTRUCTIONS ON THE LAW.

MS. SMART.

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MS. SMART: MAY IT PLEASE THE COURT.

THE COURT: YES, MA'AM.

CLOSING ARGUMENTS BY MS. SMART ON BEHALF OF THE DEFENDANT:

LADIES AND GENTLEMEN OF THE JURY, WE'VE COME A LONG WAY. YOU'VE HEARD A LOT OF TESTIMONY. BUT MR. JOHNSON HOPES BY NOW THAT YOU HAVE CONCLUDED THAT HE WAS HAVING AN AFFAIR WITH [redacted] AND AS AWFUL AS THAT MAY SOUND, AS IMMORAL AS THAT MAY SOUND, WE HOPE THAT THE EVIDENCE PRESENTED BY THE STATE HAS LED YOU TO THAT CONCLUSION.

AND THEN YOU MAY ASK, WELL, HOW WOULD WE HAVE GOTTEN THERE? AND THAT'S MY JOB TO TELL YOU. WHAT EVIDENCE WOULD LEAD YOU TO BELIEVE THAT THERE WAS AN AFFAIR?

LET'S START WITH WHAT I THOUGHT WAS VERY, VERY SIGNIFICANT. [redacted] CONTINUED TO SAY, I TOLD HIM MY HUSBAND WAS ABOUT TO COME HOME. AND IF HE FOUND US THERE, HE WOULD KILL US BOTH.

SHE TOLD HIM HOW VIOLENT HE WAS. BUT SHE WAS CONCERNED ABOUT HER HUSBAND COMING HOME AND FINDING THEM AND THEN KILLING THEM AS A RESULT OF SEEING THEM IN THEIR MARITAL HOME.

SO IF YOU'VE CONCLUDED THEN THAT THEY WERE HAVING AN AFFAIR, YOU WOULD ALSO HAVE TO CONCLUDE THAT SHE WASN'T A CREDIBLE WITNESS BECAUSE SHE NEVER ADMITTED THAT THERE WAS AN AFFAIR. SHE SAID SHE DIDN'T KNOW HIM. SHE SAID THAT SHE DIDN'T INVITE HIM INTO THE HOUSE.

SO LET'S TALK ABOUT HER LYING TO YOU. LET'S TALK ABOUT HER LYING TO LAW ENFORCEMENT, AND WE'LL START FROM THE BEGINNING.

SHE TOLD YOU THAT SHE OPENED THE DOOR FOR A STRANGER. SHE SAID SHE DID THIS BECAUSE -- SHE GAVE SEVERAL REASONS WHY IT WAS OKAY FOR A WOMAN OF HER STATURE TO OPEN THE DOOR FOR A STRANGER. SHE SAI[redacted]BEING BUILT ACROSS THE STREET. SHE SAID AS A RESULT OF THE HOUSE BEING BUILT, THERE WERE A LOT OF PEOPLE IN THE AREA. THERE WERE A LOT OF PEOPLE WORKING. AND IT WASN'T UNCOMMON THAT SOMEONE WOULD COME TO HER HOUSE.

AND SHE SAID, AS A RESULT OF THAT, SHE FELT SAFE. SHE FELT LIKE IT WAS OKAY.

BUT THEN SHE SAID, [redacted]E DOOR FOR THE STRANGER BECAUSE SHE ASKED HIM WHAT HE WANTED, AND HE TOLD HER HE WANTED TO USE THE TELEPHONE.

AND THEN SHE SAID SHE OPENED THE DOOR FOR THE STRANGER BECAUSE SHE SAW TWO MEN WORKING AND SHE FELT SAFE.

SO WHY IS THAT IMPORTANT? SHE OPENED THE DOOR FOR THE STRANGER. THE STRANGER CAME IN. AND THE STRANGER -- ACCORDING TO HER -- ATTEMPTED TO RAPE HER. SHE FELT SAFE BECAUSE THERE WERE TWO MEN WORKING, BUT THERE'S NO INDICATION THAT SHE YELLED. THERE'S NO INDICATION THAT SHE SCREAMED. THERE WAS NO INDICATION THAT SHE ATTEMPTED TO GET ANY HELP FROM THOSE TWO PEOPLE WHO SHE FELT SAFE

OPENING THE DOOR FOR.

MAYBE SHE LIED. MAYBE SHE DIDN'T. BUT THAT'S YOUR DECISION TO MAKE. YOU HAVE TO DETERMINE HOW CREDIBLE THOSE STATEMENTS WERE.

NEXT, SHE TELLS YOU THAT SHE FELT SAFE. SHE LOOKED OUT THE WINDOW AND SHE SAW THAT MAN. AND SHE FELT SAFE.

SHE TOLD YOU ABOUT THESE PHONE CALLS. SHE SAID HE CAME AND HE ASKED TO USE THE PHONE AND HE MADE A PHONE CALL.

SHE TOLD ONE OF THE OFFICERS, THERE WASN'T AN ANSWER. SHE TOLD THE OTHER OFFICER THERE WAS AN ANSWERING MACHINE. WHY IS THAT SIGNIFICANT? SHE SAID THIS STRANGER MADE ANOTHER PHONE CALL AND THERE WAS ANOTHER ANSWERING MACHINE. BUT HE DIDN'T LEAVE A MESSAGE ON THE ANSWERING MACHINE.

THIS STRANGER COMES TO YOUR HOUSE, USES YOUR TELEPHONE, TELLS YOU THAT HE GOT AN ANSWERING MACHINE BUT DOESN'T LEAVE A MESSAGE. AND THEN HE [redacted] YOU KNOW MR. GREEN?

NO, I DON'T KNOW MR. GREEN. BUT I WILL TAKE A MESSAGE FOR MR. GREEN, BECAUSE I DON'T KNOW MY NEIGHBOR WHO LIVES ACROSS THE STREET.

SO EARLIER SHE SAID SHE FELT SAFE BECAUSE THIS HOUSE WAS BEING BUILT AND BECAUSE THIS HOUSE WAS BEING BUILT, THERE WAS A LOT OF PEOPLE THERE.

NOW SHE'S SAYING THERE'S SOMEONE WHO LIVES IN THE

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HOUSE ACROSS THE STREET AND HE MAY OR MAY NOT BE MR. GREEN. BUT JUST IN CASE HE IS MR. GREEN, I'LL TAKE A MESSAGE FOR HIM. SHE'S TAKING A MESSAGE FROM A STRANGER TO GIVE TO A STRANGER WHEN THAT STRANGER HAD AN ANSWERING MACHINE. HE COULD HAVE LEFT THE MESSAGE. HE WOULD HAVE LEFT THE MESSAGE IF IN FACT THAT WERE THE CASE.

BUT SHE VOLUNTEERED TO TAKE A MESSAGE FROM A STRANGER TO GIVE TO A STRANGER.

AND SO THE SURVEYORS -- THE SURVEYORS SAID, WELL, I NOTICED THIS GENTLEMAN BECAUSE WE WERE IN AN ISOLATED AREA. WE WERE IN AN AREA AND THE ENTIRE TIME WE WERE WORKING I ONLY SAW ONE CAR; THAT ONE CAR LEFT HER HOUSE AND THE NEXT PERSON I SAW WAS THE PERSON ON THE BICYCLE.

SO THE SURVEYORS THEN PAINTED ANOTHER PICTURE. THE AREA WASN'T THAT BUSY. THERE WEREN'T VERY MANY PEOPLE. WERE THE SURVEYORS INCORRECT ABOUT HOW MANY PEOPLE OR WAS [redacted] INCORRECT ABOUT HOW BUSY THE AREA WAS THAT GAVE HER THE SAFETY NET TO OPEN THE DOOR FOR THIS STRANGER?

THEN SHE TOLD YOU ABOUT ONCE THIS STRANGER ENTERED THE HOUSE, SHE MADE THE STATEMENT THAT SHE WAITED FOR HIM TO GO TO THE BEDROOM. AND SO I ASKED HER TO SHOW YOU WHERE SHE WAS ON THE DIAGRAM IN THE HOUSE.

SHE SAID THAT THIS STRANGER POINTED TO HER BEDROOM. BUT HE WAS ONLY IN THE KITCHEN AREA AND HER BEDROOM WAS A COUPLE OF ROOMS AWAY. SO IF THIS STRANGER HAD NOT BEEN TO

HER HOUSE BEFORE, HOW THEN DID HE KNOW WHICH DIRECTION WAS HER BEDROOM AND HOW OR WHY WOULD SHE EXPECT HIM TO LEAD THE WAY? BUT SHE DID. SHE SAID, WHEN HE POINTED -- IN HER STATEMENT, WHEN HE POINTED THE GUN AT HER, SHE THOUGHT HE WOULD GO FIRST BUT HE THEN DIRECTED HER IN THE DIRECTION OF HER BEDROOM.

BUT, YET, HE WAS A STRANGER, AND SHE ONLY LET HIM IN TO USE THE TELEPHONE.

SO IF YOU'VE DRAWN THE CONCLUSION THAT THEY WERE IN A RELATIONSHIP, NOW YOU'RE ASKING YOURSELF, WHEN? HOW LONG? WHERE?

WELL, SHE TOLD YOU THAT. SHE TOLD INVESTIGATOR CHAPMAN THAT. SHE SAID, YOU KNOW WHAT, HE LOOKED VERY SIMILAR TO A MAN THAT I MET AT SCOTT HILL PARK. THIS MAN CAME UP TO ME AND HE TOLD ME THAT I WAS PRETTY. HE TOLD ME THAT HE HAD MONEY. HE TOLD ME THAT HE RETIRED EARLIER. AND THAT PARK IS JUST DOWN THE STREET FROM MY HOUSE. MY CHILDREN WERE WITH ME. I RAN. I LEFT. BUT I MET HIM AT SCOTT HILL PARK.

AND I'M NOT SAYING FOR CERTAIN THAT THAT'S THE SAME MAN, BUT THEY WERE VERY SIMILAR. THEY LOOKED VERY SIMILAR.

AND THEN LET'S TALK ABOUT HOW MUCH SHE COOPERATED WITH LAW ENFORCEMENT. SHE WAS JUST RAPED. INVESTIGATOR -- DEPUTY MERRILL ASKED HER OR INQUIRED OF HER, DID SHE KNOW WHICH DIRECTION HER ASSAILANT LEFT?

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HER RESPONSE TO DEPUTY MERRILL WAS, I LEFT HIM IN THE HOUSE. I DON'T KNOW WHICH DIRECTION HE LEFT. I WAS SO AFRAID I RAN OUT OF THE BACK DOOR. I DIDN'T SEE HIM LEAVE.

ON CROSS EXAMINATION I ASKED HER, DID SHE TELL THE SURVEYORS WHICH DIRECTION THIS ASSAILANT LEFT?

SHE SAID, NO, NO. I DIDN'T SEE HIM LEAVE. I DON'T KNOW WHICH DIRECTION HE LEFT. THEY TOLD ME THAT HE LEFT ON A BICYCLE AND HE LEFT IN THIS DIRECTION.

SO WE SEQUESTERED OUR WITNESSES, SO THE SURVEYORS WEREN'T IN HERE. THEY DIDN'T KNOW WHAT SHE HAD TESTIFIED TO AND THEY CAME IN SEPARATELY. BUT EACH OF THEM TOLD YOU THAT SHE CAME OUT OF THE HOUSE AND TOLD THEM THAT A MAN LEFT HER HOUSE AFTER HE ROBBED HER AND ATTEMPTED TO RAPE HER. BUT THAT MAN LEFT HER HOUSE ON A BICYCLE. SHE TOLD BOTH OF THEM THAT TWO SEPARATE TIMES.

AND I THINK IT WAS INTERESTING THAT THE FIRST THING SHE TOLD THE SURVEYORS HE DID WAS HE ROBBED HER, AND HE ATTEMPTED TO RAPE HER.

SO, OF COURSE, THE SURVEYOR'S RESPONSE WAS TO CALL LAW ENFORCEMENT. AND THEY TOLD LAW ENFORCEMENT THAT HE LEFT AND WENT TOWARD SCOTT HILL ROAD OR SCOTT HILL PARK.

BUT SHE SAID WHEN THE LAW ENFORCEMENT OFFICERS ASKED HER, WHERE DID HE GO? I DIDN'T SEE HIM LEAVE. WHY WOULDN'T SHE TELL THEM? WHY WOULDN'T SHE TELL THEM? THEY ARRIVED MINUTES AFTER HE LEFT. AND IF THEY KNEW WHICH

DIRECTION HE WAS GOING, THEY COULD HAVE CAPTURED HIM.

SO THEN SHE'S ASKED TO DESCRIBE. SHE GIVES A DESCRIPTION OF HIM. HOURS LATER THE MAN WHO HELD HER DOWN ON THE BED, SHE LOOKED IN HIS FACE, SHE WAS ABLE TO GET A FINGER IN HIS MOUTH AND HE BIT HER. HE'S ON TOP OF HER. HE'S IN HER FACE. WITHIN HOURS SHE'S GIVEN A PHOTO LINE-UP BY INVESTIGATOR CHAPMAN. SHE DOESN'T PICK HIM OUT. SHE DOESN'T PICK HIM OUT, BUT SHE TELLS YOU HE LOOKS THE SAME WAY. HE LOOKS THE SAME WAY, HE'S JUST FATTER NOW. BUT SHE COULD CERTAINLY PICK HIM OUT YESTERDAY, A YEAR LATER. BUT HOURS AFTER HE LEFT HER HOUSE AND HE RAPED HER, SHE REFUSED TO PICK HIM OUT OF A PHOTO LINE-UP. HE WOULD HAVE BEEN ARRESTED IMMEDIATELY. THEY WOULD HAVE BEEN ABLE TO IDENTIFY HIM.

BUT SHE DIDN'T COOPERATE. SHE WOULD NOT PICK HIM OUT OF THE PHOTO LINE-UP. SHE WOULD NOT TELL THEM WHICH DIRECTION HE LEFT. AND SHE DID NOT TELL LAW ENFORCEMENT THAT HE LEFT ON A BICYCLE. BUT SHE TOLD A NURSE AT BEAUFORT MEMORIAL HOSPITAL HE FLED ON A BICYCLE.

BUT WHEN I ASKED HER DID SHE TELL THE NURSE THAT HE FLED ON A BICYCLE, SHE SAID, NO, I DIDN'T TELL THE NURSE THAT.

THE NURSE WASN'T HERE FOR HER TESTIMONY. SO WHEN NURSE CLEGG CAME IN, I ASKED HER, DID SHE TELL YOU THAT THE ASSAILANT LEFT ON THE BICYCLE?

SHE SAID, YES, HE LEFT ON THE BICYCLE. THE PATIENT TOLD ME THAT HE FLED ON THE BICYCLE.

AND SO WHAT ELSE DOES SHE SAY? SHE TOLD ALL THE WITNESSES, MY HUSBAND'S A VIOLENT MAN. I KEPT TELLING HIM IF HE CAUGHT US, HE WOULD KILL US. IF HE CAUGHT US, HE WOULD KILL US.

SO SHE SAID SHE HAD A ROUTINE GOING THAT EVERY DAY SHE WOULD BE HOME BECAUSE SHE WAS PREPARING FOR HER HUSBAND TO COME HOME. AND HER HUSBAND USUALLY CAME HOME ABOUT 5:00 O'CLOCK, BUT THIS TIME HE WAS IN TRAINING SO HIS SCHEDULE CHANGED. SO THIS WAS OUT OF THEIR ROUTINE. HE WASN'T COMING HOME AT THE SAME TIME. SHE KNEW HE WOULD BE HOME EARLIER THAN HE TYPICALLY COMES HOME.

SO WHEN MR. JOHNSON COMES OVER, YOU'VE GOT TO GET OUT OF HERE, MY HUSBAND'S COMING HOME. MY HUSBAND'S COMING HOME AND HE'S A VIOLENT MAN. AND IF HE CATCHES US, HE'S GOING TO KILL US.

SHE DIDN'T SAY IF HE CATCHES YOU RAPING ME, HE'S GOING TO KILL YOU. SHE SAID, IF HE CATCHES US -- IF HE FOUND US HERE, HE WOULD KILL US.

SO THEN SHE TOLD YOU WE STRUGGLED ON THE BED. THIS MAN -- SHE FOUGHT HIM OFF. SHE VIOLENTLY -- SHE PUSHED HIM. SHE HELD HIM OFF WITH HER LEFT HAND WHILE SHE HELD HIM UP WITH HER RIGHT HAND, AND HE BIT HER ON THE RIGHT HAND AND SHE TRIED TO PULL HIS PENIS OUT WITH HIS LEFT HAND

-- WITH HER LEFT HAND, AND SHE TRIED TO COVER HERSELF UP WITH THE LEFT HAND.

BUT WHEN THEY SUBMITTED THE SCRAPINGS FROM HER LEFT HAND FOR DNA ANALYSIS, THERE WAS NOTHING. NOTHING. SHE HAD HER HAND DOWN HERE. NO SEMEN. NO DNA. NOTHING ON THE HAND THAT SHE HAD WHERE SHE WAS BEING RAPED.

BUT, OF COURSE, THERE WOULD BE DNA ON HER RIGHT HAND BECAUSE THAT WAS IN HIS FACE.

AND THEN I ASKED HER SPECIFICALLY, I SAID, IF HE HAD EJACULATED, WOULD YOU HAVE KNOWN? YES, I WOULD HAVE KNOWN. AND, NO, HE DID NOT EJACULATE.

THE STATE CAME BACK AND SAID, WELL, DO YOU KNOW WHAT EJACULATION IS? SHE SAID YES AND SHE TOLD YOU WHAT EJACULATION WAS AND SHE SAID THAT SEMEN WOULD COME OUT IF HE HAD EJACULATED.

BUT SHE TOLD YOU THAT HE DID NOT EJACULATE, AND I BELIEVE IT. I BELIEVE THAT BECAUSE SHE SAID SHE HAD HER PANTS ON, THAT HER PANTS WERE TO HER THIGHS.

THE STATE CUT -- THE DNA TECH CUT A PIECE OF HER PANTS, BUT THERE WAS NO DNA ON HER PANTS. THERE WAS NO SEMEN ON HER PANTS. SO, NO, HE DIDN'T EJACULATE.

BUT THE SHEETS OFF OF HER BED -- THREE CUTTINGS. THREE DNA'S. THREE OF MR. JOHNSON'S SEMEN.

SO IF HE DIDN'T EJACULATE THAT DAY, AND SHE KNOWS WHAT EJACULATION IS AND SHE KNOWS HE DIDN'T EJACULATE, WHERE DID

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THE SEMEN COME FROM? HOW DID THE SEMEN GET ON THE SHEETS?

SHE ALSO TOLD YOU THAT SHE WAS ON THE EDGE OF THE BED. SHE STOOD HERE, SHE SHOWED YOU THE PICTURE. SHE SAID, I WAS ON THE BED. HE WAS ON TOP OF ME, AND WE WERE IN THIS ONE SPOT. ALTHOUGH WE FOUGHT, ALTHOUGH WE STRUGGLED, WE WERE IN THIS SPOT.

WHEN YOU TAKE THAT SHEET BACK TO THE JURY ROOM AND YOU HOLD THAT SHEET UP AND YOU SEE WHERE MR. JOHNSON'S SEMEN WAS ON THAT SHEET, YOU ASK YOURSELF: HOW DID IT GET THERE? IF THEY WERE ONLY IN THIS SPOT AND SEMEN IS UP AND DOWN THE SHEET, WHERE DID IT COME FROM ESPECIALLY SINCE HE DIDN'T EJACULATE -- AT LEAST HE DIDN'T EJACULATE THAT DAY, BECAUSE THAT'S WHAT SHE TOLD YOU.

AND SHE SAID THEY STRUGGLED. I FOUGHT HIM. I FOUGHT HIM. I STRUGGLED. I STRUGGLED. I FOUGHT HIM.

BUT THE PICTURE TELLS A THOUSAND WORDS. THERE ARE THREE SETS OF SHEETS ON THE PICTURE RIGHT WHERE SHE SAID THEY STRUGGLED. THIS BIG MAN STRUGGLED WITH HER AND THE SHEETS WEREN'T DISTURBED, THEY WEREN'T EVEN PARTIALLY ON THE FLOOR. THERE WERE THREE SEPARATE SETS. DOES THAT INDICATE THAT A STRUGGLE OCCURRED?

SO SHE SAID HE YANKED THE PHONE OUT OF THE WALL. THE BED DIDN'T TUMBLE OVER. THE SHEETS DIDN'T FALL OFF. HE VIOLENTLY THREW HER TO THE FLOOR. THERE'S NO SIGNS OF A STRUGGLE. NONE WHATSOEVER.

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SHE FOUGHT HIM. NO DNA EVIDENCE ON THE HAND THAT SHE HELD HIM OFF.

THE STATE SHOWED YOU PICTURES OF A BITE MARK. HE BIT HER FINGER. HE BIT HER FINGER. HE BIT HER FINGER. HE BIT HER FINGER. IS THAT EVIDENCE OF RAPE? HE BIT HER FINGER.

I WASN'T CERTAIN ABOUT THIS SO I WANTED TO REFRESH MY MEMORY BEFORE I SAID THIS TO YOU. BUT I ASKED HER ON CROSS EXAMINATION, I SAID, WHAT TIME DID THE ASSAILANT LEAVE -- BECAUSE I WAS TRYING TO ESTABLISH A TIME LINE BECAUSE I WANTED TO KNOW WHAT TIME DID HE LEAVE, HOW MUCH TIME LAPSED BEFORE HER HUSBAND CAME HOME? BECAUSE SHE KEPT SAYING HER HUSBAND WAS ON THE WAY.

AND INTERESTINGLY ENOUGH, I NOTED ON THE TAPE HER RESPONSE TO MY QUESTION WHAT TIME THE ASSAILANT LEFT WAS: YOU MEAN EVERY DAY?

I SAID, LET'S PLAY THAT AGAIN. WHAT TIME DID THE ASSAILANT LEAVE? YOU MEAN EVERY DAY? OKAY. I WAS REALLY TALKING ABOUT THAT DAY. BUT HER RESPONSE WAS, YOU MEAN EVERY DAY?

THIS STRANGER LEFT HER HOUSE EVERY DAY. HER HUSBAND WAS IN TRAINING. HIS SCHEDULE WAS DIFFERENT. SOMEBODY FORGOT TO TELL MR. JOHNSON. HE CAME IN ON HIS BICYCLE AS HE TYPICALLY DOES, BUT HE HAD TO GET OUT OF THERE THAT DAY AND SHE HAD TO RUN HIM OFF BEFORE HER HUSBAND CAME HOME.

HER CLOTHING WASN'T TORN. THERE WAS NO EVIDENCE OF A

STRUGGLE ON HER BODY. AND THE MOST IMPORTANT THING I ASKED THE -- THE NURSE AGAIN WHEN WE TALK ABOUT TRAUMA -- TALK ABOUT TRAUMA TO THE VAGINA. SHE RAN DOWN A LIST OF THE BODY PARTS THAT I CAN'T REPEAT. THERE WAS NO TRAUMA. THERE WAS NO TRAUMA TO HER VAGINA. SHE WAS VIOLENTLY RAPED BUT THERE WAS NO TRAUMA. THERE WAS NO BRUISING.

THE ONLY BRUISING ON THE RAPE KIT WAS THE BITE TO HER FINGER. WE'RE NOT TALKING ABOUT A MAN OF MY STATURE. WE'RE TALKING ABOUT THAT MAN, THAT MAN. BUT THERE WAS NO TRAUMA TO HER LEGS. SHE WASN'T BRUISED. BUT SHE WAS -- SHE WAS HELD DOWN BY THAT MAN. SHE WAS THROWN TO THE FLOOR BY THAT MAN. BUT SHE WASN'T BRUISED.

SO THE LACK OF EVIDENCE OF THE STRUGGLE, THE LACK OF EVIDENCE OF THE RAPE, THE INCONSISTENT STATEMENTS. SHE DID NOT IDENTIFY HER ASSAILANT.

AND YOU HAVE THE PICTURES. YOU HAVE THE PICTURES FROM THE PHOTO LINE-UP THAT SHE WAS GIVEN 2 HOURS -- APPROXIMATELY 2 HOURS AFTER HE LEFT, AND YOU HAVE THE SKETCH THAT WAS DRAWN BY THE STATE'S SKETCH ARTIST.

WHEN INVESTIGATOR CHAPMAN WENT BACK, SHE SAYS, HIS PICTURE IS ETCHED IN MY FACE, SO I CAN GIVE A DESCRIPTION OF HIM TO THE SKETCH ARTIST. AND SHE DOES THAT. SHE DOES THAT, SHE DESCRIBES HIM. THE SKETCH ARTIST DRAWS HIM, AND THEN THE COMMUNITY CALLS AND SAYS, THAT'S NATHANIEL, THAT'S NATHANIEL.

BUT SHE COULDN'T PICK HIM OUT OF THE PHOTO LINE-UP?

YOU LOOK AT THE PICTURES. YOU LOOK AT HIM. YOU DIDN'T HAVE THE INTIMATE, CLOSE, PHYSICAL -- THE DISTANCE BETWEEN THE TWO OF YOU ARE DIFFERENT. BUT YOU USING YOUR EVERY DAY EXPERIENCES, YOU LOOK AT THAT PHOTO LINE-UP AND YOU LOOK AT HIM, AND YOU DECIDE SHOULD SHE HAVE PICKED HIM OUT OF THE PHOTO LINE-UP?

DOES THAT GO TOWARDS HER CREDIBILITY? ABSOLUTELY. ABSOLUTELY, BECAUSE WHY WOULDN'T SHE? SHE NEVER TOLD LAW ENFORCEMENT WHO HE WAS. NEVER. SHE DID NOT IDENTIFY HIM UNTIL YESTERDAY. THAT WAS THE FIRST TIME SHE IDENTIFIED HIM, YESTERDAY. AND SHE KEPT SAYING, I CAN SAY FOR CERTAIN. I CAN SAY FOR CERTAIN. IT WAS A YEAR AGO. BUT YESTERDAY SHE COULD SAY FOR CERTAIN THAT IT WAS HIM. YESTERDAY IT WAS HIM.

WITHIN HOURS AFTERWARDS, WHEN SHE HAS A PICTURE IN FRONT OF HER OF HIM, SHE COULDN'T IDENTIFY HIM. SHE WOULDN'T IDENTIFY HIM.

TAKING ALL OF THAT INTO CONSIDERATION, ALL OF THE INCONSISTENCIES, ALL THE PHYSICAL EVIDENCE -- INITIALLY I WOULD WANT YOU TO THINK THAT WASN'T MY CLIENT'S DNA. I WOULD HAVE ATTACKED THE DNA EVIDENCE. BUT IN LIGHT OF THE FACT THAT SHE TOLD YOU THAT HE DIDN'T EJACULATE, I WANTED YOU TO KNOW THAT THAT WAS HIS SEMEN. I WANTED YOU TO KNOW THAT THAT WAS HIS SEMEN ALL OVER HER SHEETS.

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AND THAT'S WHY IT'S INTRODUCED INTO EVIDENCE SO YOU WOULD HAVE THE OPPORTUNITY TO TAKE THE PICTURE BACK WITH YOU, TO TAKE THE SHEETS BACK WITH YOU, AND YOU CAN HEAR HER TESTIMONY AGAIN IF YOU'D LIKE. AND TAKE ALL OF THAT INTO CONSIDERATION.

YOU TAKING NOTES, IF YOU NEED TO HEAR ANY OF THE TESTIMONY, THE JUDGE WILL ALLOW YOU TO DO THAT.

BUT RIGHT NOW WE SUBMIT TO YOU THAT THE ONLY THING THAT WAS PROVEN FROM THIS TESTIMONY -- FROM THAT TESTIMONY IS THAT THEY WERE HAVING AN AFFAIR AND THEY WERE ABOUT TO GET CAUGHT. AND DESPERATE WOMEN DO DESPERATE THINGS.

HER HUSBAND ARRIVED WITHIN MINUTES AFTER MR. JOHNSON LEFT, SO MUCH SO THAT THE SURVEYOR SAID, YOU HAD TO HAVE SEEN HIM. IF YOU CAME FROM THAT WAY, HE JUST LEFT. AND SHE KNEW THAT HE WAS ABOUT TO COME HOME AND SHE KNEW THAT HE WAS A VIOLENT MAN AND SHE KNEW THAT HE WOULD KILL THEM BOTH.

THANK YOU.

THE COURT: ALL RIGHT. MS. MILLICAN.

MS. MILLICAN: THANK YOU, YOUR HONOR.

CLOSING ARGUMENTS BY MS. MILLICAN ON BEHALF OF THE STATE:

LADIES AND GENTLEMEN, I ASK YOU TO COME TO THIS TRIAL WITH YOUR LIFETIME EXPERIENCES IN YOUR POCKET, YOUR COMMON SENSE, AND TO TAKE IN ALL THIS EVIDENCE -- ALL THE TESTIMONY YOU HEARD, ALL THE EVIDENCE YOU SAW, AND TO WEIGH

THE CREDIBILITY OF THAT EVIDENCE BASED ON YOUR EXPERIENCE AND YOUR COMMON SENSE. AND I APPRECIATE THE FACT THAT YOU HAVE PAID SUCH GOOD ATTENTION TAKING NOTES AND WATCHING VERY CLOSELY.

AND I KNOW BASED ON ALL OF THOSE THINGS THAT YOU ALL HAVE GOT IN YOUR MIND A GOOD UNDERSTANDING OF WHAT HAS HAPPENED IN THIS CASE.

STATE'S EXHIBIT NO. 1, PICTURE OF [redacted] STANDING IN HER KITCHEN. YOU'VE NEVER BEEN IN THIS VICTIM'S HOUSE, I'M ASSUMING. BUT LOOKING AT THIS PICTURE, CAN YOU TELL WHERE HER BEDROOM IS? CAN YOU TELL WHERE HER BEDROOM IS? DID YOU HAVE TO GO TO HER BEDROOM TO KNOW WHERE IT IS IF YOU'RE STANDING RIGHT THERE?

[redacted] COULD NOT DETERMINE THE DAY OF HER ATTACK, SEVERAL HOURS AFTER IT HAPPENED, WHICH ONE OF THESE MEN WAS THE ONE ON TOP OF HER. HOURS AFTER IT HAPPENED SHE WAS -- ACCORDING TO INVESTIGATOR CHAPMAN, APPEARED TO STILL BE IN SHOCK. ACCORDING TO THE NURSE AT THE HOSPITAL, SHE HAD A GOOD DESCRIPTION IN HER MIND, BUT SHE WAS CERTAINLY -- APPEARED TO BE SOMEONE WHO HAD BEEN TRAUMATIZED.

CAN YOU PICK HIM OUT? HE'S SITTING RIGHT THERE. CAN YOU LOOK AT THESE TWO LINE-UPS AND PICK HIM OUT?

DID [redacted] WANT TO SEND A MAN TO PRISON THAT SHE WASN'T SURE ABOUT? SHE DESCRIBED HIM TO SOMEBODY. DOES THAT LOOK LIKE HIM? DOES THAT LOOK LIKE THESE MEN IN THE PHOTO LINE-

UPS?

LADIES AND GENTLEMEN, THE DEFENSE WOULD HAVE YOU BELIEVE THAT THERE IS AN AFFAIR. AND, AGAIN, BACK TO THE COMMON SENSE AND LIFETIME EXPERIENCES -- I'M NOT GOING TO GO IN TO DEFENDING ALL OF THOSE THINGS BECAUSE I BELIEVE YOU ALL HAVE A GOOD IDEA OF WHAT HAPPENED THAT DAY AND YOU DON'T NEED ME TO GO OVER THE REASONS THAT THEY DID NOT HAVE AN AFFAIR.

YOU HAVE THE POWER AND CONTROL TODAY. FEBRUARY THE 7TH, 2006 THAT MAN DID; RIGHT THERE, HE DID. TODAY IT'S YOURS. TODAY YOU CAN BALANCE THE SCALES OF JUSTICE AND PUT THINGS SOMEWHAT BACK THE WAY THEY SHOULD BE. YOU HAVE THAT AWESOME RESPONSIBILITY.

[redacted] POINTED TO THE DEFENDANT AND SAID [redacted]HAT'S HIM. DEFINITELY THAT'S HIM. THAT IS HIM. I DON'T KNOW HOW MANY TIMES SHE POINTED AT HIM AND SAID, HIM. HIM. DESCRIBE THE COLOR OF HIS SHIRT? THAT IS HIM. THAT IS HIM.

SHE WAS ABLE TO GIVE ENOUGH DETAIL TO A SKETCH ARTIST TO RENDER A DRAWING THAT EVEN HE SAYS, THAT DOES LOOK LIKE ME. I DON'T KNOW ANYTHING ABOUT IT REALLY, THOUGH I HEARD SOMETHING ABOUT IT MAYBE.

TALKING ABOUT INCONSISTENCES, THE DEFENDANT TOLD POLICE THAT HE WAS WORKING AT SUCCESSIO[redacted]GOLF COURSE THAT DAY. NOT ONLY WAS HE NOT WORKING THERE THAT DAY, HE HADN'T WORKED THERE IN OVER A YEAR. WHERE ARE THE GLARING

INCONSISTENCIES IN THE EVIDENCE THAT HAS BEEN PRESENTED TO YOU?

IS IT WHETHER OR NOT HER PANTS WERE PULLED DOWN TO HERE OR DOWN TO HERE OR ALL THE WAY OFF? AND TELL ME, DOES IT MAKE A DIFFERENCE TO ANY OF YOU IF YOUR PANTS ARE DOWN FAR ENOUGH THAT SOMEONE COULD PUT A PENIS INTO YOUR BODY IF THEY'RE HALFWAY DOWN OR THREE-QUARTERS OF THE WAY DOWN OR ON THE FLOOR? DOES IT MATTER? DO YOU FEEL NAKED?

FRANK DILSAVER, THE SURVEYOR, TESTIFIED THAT THE AREA WAS VERY ISOLATED. HE ONLY SAW ONE MAN -- ONE BLACK MAN GO BY THAT AFTERNOON, THAT'S IT, ON A BIKE.

MIKE LYNCH DREW THE SKETCH. THE DEFENDANT EVEN SAID IT LOOKS LIKE HIM, LOOKS LIKE A BLACK AND WHITE PHOTOGRAPH OF HIM. PRETTY GOOD RENDERING.

BRIAN CHAPMAN SAID THE NAME, NATHANIEL JOHNSON, JR. CAME UP AGAIN AND AGAIN IN HIS INVESTIGATION.

KIMBERLY HAHN, THE DNA FORENSIC EXPERT, TESTIFIED THAT HIS SALIVA DNA FROM THE SPOON WAS CONSISTENT WITH MALE SEMEN DNA FOUND ON THE VICTIM, [redacted] BODY.

ROBIN TAYLOR, THE SECOND DNA EXPERT THAT YOU HEARD FROM TESTIFIED THAT THE PROBABILITY THE DEFENDANT WAS THE ONE WHO LEFT THE SPERM ON [redacted] BODY IS 1 IN 76 QUADRILLION. AND NOW WE HEAR, OH, IT WAS AN AFFAIR.

THE QUESTION IS NOT WHO DID IT. WE KNOW WHO DID IT. 1 IN 76 QUADRILLION. WHO DID IT? WE KNOW.

OUT OF THE NUMBER OF PEOPLE IN THIS WORLD TODAY, HIM, HE'S THE ONLY ONE; THAT IS IT. THERE'S NOBODY ELSE.

AN AFFAIR. WHY? WHY THEN IT'S NOT AN AFFAIR?

WELL, HE COULD. LOOK AT HIM. HE'S A MASSIVE MAN. LOOK AT HER. ENGLISH IS HER SECOND LANGUAGE, WHICH SHE DID, YOU KNOW, HER VERY BEST AND A GOOD JOB TESTIFYING SO THAT YOU COULD UNDERSTAND. DID YOU UNDERSTAND HER? COULD YOU UNDERSTAND HER? COULD YOU MAKE SENSE OF WHAT SHE HAD TO SAY, OF HER STORY? DID IT MAKE SENSE?

BECAUSE YOU ALL HAVE THE POWER -- YOU ALL HAVE THE CONTROL. AND WHAT EVIDENCE IS PRESENTED TO YOU CANNOT BE TOLD TO YOU BY ANY OF US. YOU KNOW WHAT YOU SAW AND WHAT YOU HEARD.

THERE'S NO WAY TO TWIST IT. THERE'S NO WAY TO CUT IT UP AND DICE IT AND THROW IT BACK AT YOU. YOU KNOW WHAT YOU HEARD. YOU KNOW WHAT YOU BELIEVE. AND YOU KNOW WHAT HAPPENED THAT DAY.

HE DID IT BECAUSE HE COULD. SHE LIVED IN ISOLATION. ALL HER NEIGHB[redacted]RE AT WORK THAT AFTERNOON. SHE OPENED THE DOOR. SHE ANSWERED THE DOOR.

DID SHE SEEM TO YOU TO KIND OF BEAT HERSELF UP ABOUT THE FACT THAT SHE O[redacted] THAT DOOR TO SOMEBODY SHE DIDN'T KNOW? DID SHE SEEM TO REGRET THAT IN A VERY DEEP WAY, THAT SHE MAYBE PERHAPS FELT FOOLISH ABOUT THAT? DO YOU THINK THAT MAYBE SHE FELT BAD ABOUT THAT?

THE DEFENDANT TOOK THE OPPORTUNITY BECAUSE IT WAS THERE. HE TOOK WHAT HE WANTED BECAUSE HE COULD.

I ALSO TOLD YOU IN MY OPENING STATEMENT THAT I WOULD GO OVER WITH YOU MORE FULLY OVER THE ELEMENTS OF THE CRIME THAT HE'S CHARGED WITH. I'M GOING TO DO THAT NOW. I'M GOING TO GO THROUGH IT. AND THE JUDGE WILL GO THROUGH THIS IN BETTER DETAIL, BUT I'M JUST GOING TO TOUCH THE MAIN POINTS THAT APPLY TO THE EVIDENCE YOU'VE SEEN SO FAR.

BURGLARY IN THE FIRST DEGREE IS THE FIRST CHARGE WE'RE GOING TO DISCUSS. ENTERING A DWELLING WITHOUT CONSENT.

NOW, GRANTED, WHEN HE KNOCKED ON THE DOOR, SHE LOOKED OUT THE WINDOW, THOUGHT -- TESTIFIED THAT SHE THOUGHT, NICE LOOKING MAN. THERE'S BEEN PEOPLE WORKING AROUND, PROBABLY OKAY. OPENED THE DOOR.

IF SOMEBODY ENTERS A BUILDING USING DECEPTION, TRICK, OR MISREPRESENTATION TO GET CONSENT IN, IT IS STILL NO CONSENT. IT IS STILL NO CONSENT.

DO WE KNOW IF THE DEFENDANT REALLY NEEDED TO MAKE A PHONE CALL? WHO IS MR. GREEN? WHO? WHO IS HE? DOES HE EXIST? WHAT DO YOU THINK? WHY WAS IT SO IMPORTANT FOR THE DEFENDANT TO CALL SOMEBODY AT HOME FROM ACROSS THE STREET? WHAT COULDN'T WAIT IF HE'S NOT HOME? DOES THAT MAKE ANY SENSE YOU WOULD CALL A HOUSE TWICE OR CALL A NUMBER -- CALL TWO NUMBERS EVEN -- WHATEVER IT WAS HE'S CLAIMING HE WAS DOING. DOES IT MAKE ANY SENSE? THE PERSON LIVED ACROSS

THE STREET ACCORDING TO HIM.

WHO WAS THIS PERSON? THERE WAS NOBODY.

SO WHY DID HE DO IT? HE WAS JUST SEEING -- WAS HE JUST SEEING IF ANY NEIGHBORS WERE HOME? IS THAT A GOOD REASON TO SAY YOU'RE CALLING A NEIGHBOR? ARE YOUR NEIGHBORS HOME?

THERE WERE TWO OTHER HOUSES BY [redacted]. DO YOU KNOW THE PEOPLE NEXT DOOR? YEAH, SHE SAID. SHE TESTIFIED THAT SHE KNOWS THOSE PEOPLE NEXT DOOR.

DO YOU KNOW THE PERSON ACROSS THE STREET? NO, I DON'T KNOW. NEW HOUSE. PEOPLE JUST MOVED IN, HAVEN'T MET THEM. IT LOOKS LIKE AN OPPORTUNITY AGAIN.

OH, I KNOW THAT GUY THEN. I NEED TO CALL HIM. I NEED TO USE YOUR PHONE. WAS IT A TRICK? DID HE REALLY NEED TO USE THE PHONE TO COME INTO HER HOUSE? DID HE HAVE ANOTHER PLAN FORMULATED IN HIS MIND WHEN HE KNOCKED ON THAT DOOR BEFORE HE STEPPED FOOT THROUGH HER THRESHOLD?

INTENT TO COMMIT A CRIME THEREIN WHEN ENTERING -- IT'S ANOTHER PART OF BURGLARY FIRST. DID HE FORMULATE THE PLAN TO ROB OR KIDNAP THAT WOMAN WHEN HE KNOCKED ON THE DOOR AND WAS STANDING ON HER PORCH WITH A GUN ON HIS BODY HIDDEN AWAY SOMEWHERE?

WHY WOULD A PERSON GO KNOCK ON ANOTHER PERSON'S DOOR AND GO IN THEIR HOME WITH A WEAPON WITH NO ILL-INTENT IN MIND -- WITH NO ILL-INTENT IN MIND AND THEN TO FOLLOW IT UP

WITH DOING WHAT THIS MAN DID TO THIS WOMAN? DOES THAT MAKE SENSE? DO YOU UNDERSTAND? DO YOU HAVE A GOOD UNDERSTANDING OF WHAT YOU THINK HAPPENED? [redacted]

HOW MUCH TIME DID THE DEFENDANT WASTE ONCE HE WAS IN THAT DOOR TO PULL OUT THAT GUN AND USE IT ON HER? SHE TURNS AROUND AND LOOKS UP. HOW MUCH TIME WAS THAT? DID HE HANG OUT? DID HE HAVE TEA? HE DIDN'T WASTE A LOT OF TIME FROM THE TIME HE WALKED IN THAT DOOR UNTIL HE EXECUTED. WHAT WAS HIS INTENT BEFORE HE CAME IN THAT DOOR?

ENTERING A DWELLING WITHOUT CONSENT, INTENT TO COMMIT A CRIME THEREIN WHEN ENTERING. FOUR POSSIBILITIES. POSSIBILITIES NO. 1 -- IT COULD BE ANY ONE OF THESE. THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON. ACCORDING TO HER TESTIMONY, HE HAD A DEADLY WEAPON.

OR THE DEFENDANT CAUSED PHYSICAL INJURY TO SOMEONE NOT PARTICIPATING IN THE CRIME. IT WAS HER HOUSE. SHE WAS TRYING TO HELP SOMEONE. WAS SHE PHYSICALLY INJURED? IS RAPE PHYSICAL INJURY? SHE WAS BITTEN. SHE WAS RAPED.

THE DEFENDANT -- OR THE DEFENDANT USED OR THREATENED TO USE A DANGEROUS OBJECT, OR THE DEFENDANT DISPLAYED WHAT APPEARED TO BE A DEADLY WEAPON. SO THAT LAST ONE WOULD BE EVEN IF IT WASN'T A GUN AND SHE BELIEVED IT WAS, IT APPEARED TO BE. DO YOU BELIEVE THE DEFENDANT POINTED A GUN AT [redacted]?

SHE TESTIFIED THAT SHE SAW IT, THAT SHE HEARD IT RACK.

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CAN YOU SEE IT FROM HER DESCRIPTION? CAN YOU HEAR IT RACK IN YOUR MIND?

[redacted] TESTIFIED AND THE NURSE, KIMBERLY CLEGG, ALSO TESTIFIED THAT SHE DID HAVE PHYSICAL INJURY. HE DID INJURE HER PHYSICALLY. HE DID RAPE HER. THERE WAS EVIDENCE OF RAPE. AND SHE DID HAVE A BITE WOUND TO HER FINGER, WHICH FORENSIC EXPERTS CAME BACK AND SAID IT MATCHED HIM AS WELL.

SHE HAD FINGERNAIL SCRAPINGS DONE UNDER ONE HAND. HE ALSO CAME BACK -- IS THAT DEFENSIVE TO SCRATCH SOMEBODY, GET BITTEN TRYING TO PUSH HIM OFF? CAN YOU PICTURE IT?

WHAT WAS SHE DOING WITH HER HANDS? SHE SAID SHE HAD ONE HAND DOWN TRYING TO COVER HERSELF, TRYING TO KEEP HIM FROM PUTTING HIS PENIS INTO HER VAGINA AND THE OTHER HAND TRY TO FIGHT HIM OFF. WHAT ELSE CAN SHE DO? IF YOU'RE THAT PERSON, WHAT ELSE CAN YOU DO? CAN YOU PICTURE IT? DO YOU UNDERSTAND WHAT SHE WAS DESCRIBING?

KIMBERLY CLEGG, THE NURSE, ALSO TESTIFIED THAT TRAUMA IS NOT ALWAYS COMMON WITH RAPE VICTIMS. IT IS NOT UNCOMMON TO HAVE A RAPE VICTIM WHO DOES NOT SHOW TRAUMA. YOU HEARD THE EVIDENCE. YOU'VE SEEN THE EVIDENCE.

THE NEXT CHARGE, KIDNAPING. KIDNAPING IS TO REMOVE A PERSON AGAINST HIS WILL BY UNLAWFUL FORCE OR FRAUD OR TO CARRY AWAY OR TO REMOVE A PERSON. THE STATUTE IS 16-3-910, STATE SPECIFICALLY TO UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY ANY OTHER PERSON BY ANY

MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW.

DO WHAT I TELL YOU OR I'LL KILL YOU. MADE HER GO TO THE BEDROOM. HE MADE [redacted] TAKE HER PANTS DOWN WITH A GUN TO HER HEAD. YOU CAN DECIDE WHETHER OR NOT YOU FEEL MADE TO DO SOMETHING WITH A GUN TO YOUR HEAD.

SHE STATED, I FINALLY ESCAPED. IF [redacted] WAS NOT KIDNAPED, WHY WOULDN'T SHE JUST LEAVE SOONER? KIDNAPING DOESN'T HAVE TO BE SOMEBODY BEING BOUND AN[redacted]GED AND STUCK IN A TRUNK.

I READ TO T[redacted]TATUTE. YOU ALL UNDERSTAND.

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, RAPE, STATUTE NO. 16-3-652, THE DEFENDANT ENGA[redacted] IN SEXUAL BATTERY OF THE VICTIM AND ANY OF THE FOLLOWING APPLY: THE DEFENDANT USES AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL BATTERY; OR THE VICTIM SUBMITS TO SEXUAL BATTERY UNDER CIRCUMSTANCES WHERE THE VICTIM IS BEING FORCIBLY CONFINED, KIDNAPED, ROBBED, BURGLARIZED, OR ANY SIMILAR ACT.

NOW, AGGRAVATED FORCE IS THE PHYSICAL FORCE OR PHYSICAL VIOLENCE HIGH AND AGGRAVATED, OR THE THREAT OF USING A DEADLY WEAPON TO OVERCOME THE VICTIM.

A SEXUAL BATTERY IS SEXUAL INTERCOURSE OR ANY INTRUSION HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY OR OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY.

HE PUT A GUN TO HER HEAD. HE PUT HIS PENIS IN HER

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VAGINA. HE PUT HIS FINGERS IN HER VAGINA. HE BURGLARIZED HER HOME AND HE KIDNAPED HER IN HER OWN HOME.

DO YOU UNDERSTAND [redacted]S ENGLISH? DID YOU UNDERSTAND HER STORY? EVEN IF HER ENGLISH WASN'T PERFECT AND EVEN IF THERE ARE LITTLE TINY THINGS IN HER STORY THAT MAYBE WEREN'T [redacted]FECT, DID YOU UNDERSTAND IT? DID IT MAKE SENSE? DID IT MAKE SENSE TO YOU?

[redacted] SAID THE DEFENDANT LOOKED OKAY AND SHE OPENED THE DOOR. I OPENED THE DOOR. I OPENED THE DOOR. I COULD ARGUE THAT THE DEFENDANT USED [redacted] NAIVETY TO OVERCOME HER. HE JUST TOOK ADVANTAGE OF HER.

IS [redacted] A LIAR AS THE DEFENSE ATTORNEY SAID OR IS [redacted] A SWEET, NAIVE WOMAN WHO -- WHO THOUGHT, YOU KNOW, SHE OPENED THE DOOR TO HELP SOMEBODY SHE DIDN'T KNOW BUT THOUGHT MAYBE WHEN HE STUCK HIS FINGERS INTO HER VAGINA TO SEE IF SHE WAS PREGNANT, WHO THOUGHT BECAUSE HE DIDN'T FINISH THE SEX ACT WITH HER HE DIDN'T EJACULATE.

AGAIN, EJACULATION VERSUS PRE-EJACULATION. YOU ALL HAVE YOUR LIFETIME EXPERIENCES AND COMMON SENSE. I'LL LEAVE IT TO YOU ALL TO DETERMINE WHETHER OR NOT THERE WAS SEMEN ON HER VAGINA BECAUSE HE DID OR DID NOT EJACULATE.

SHE TOLD THE DEFENDANT, I'M PREGNANT, MY HUSBAND'S COMING HOME. YOU HAVE TO GO. WHAT WOULD YOU TELL AN ATTACKER IN YOUR HOME? WHAT WOULD YOU HAVE -- WHAT WOULD YOU DO -- WHAT WOULD YOU COME UP WITH? YOU'VE GOT THAT

FAST TO THINK ABOUT IT. WHAT ARE YOU GOING TO SAY?

HER HUSBAND WAS A JEALOUS MAN AND SHE WAS HAVING AN AFFAIR?

BRIAN PATE, THE OTHER SURVEYOR, WHY DID HE SEE HER RUN DOWN THE ROAD HOLDING HER PANTS UP BAREFOOT IN THE MIDDLE OF THE DAY?

THE DEFENDANT WAS ON HIS WAY OUT AS SHE WAS RUNNING HIM OFF, AND HE WAS ALREADY GOING. THE HUSBAND WASN'T HOME YET UNTIL THEY GOT BACK UP THE ROAD.

LET'S SEND THE WOMAN OUT INTO THE STREET IN BROAD DAYLIGHT WITH HER PANTS HALF DOWN BAREFOOT. HE DOES. THAT MAN. THAT MAN. 1 IN 76 QUADRILLION DOES.

[redacted] DIDN'T LOOK BACK. SHE RAN. SHE GRABBED THE PANTS SHE FOUND ON THE FLOOR THAT WEREN'T EVEN HERS, PULLED THEM UP AS FAR AS SHE COULD AND STARTED RUNNING, RAN AS FAST AS SHE COULD, WOULD NOT LOOK BACK, RAN AROUND THE OTHER TRAILER.

WHY DID SHE DO THAT? DO YOU HAVE ANY UNDERSTANDING OF WHY SHE MIGHT HAVE RUN AROUND THE OTHER TRAILER INSTEAD OF JUST CUT STRAIGHT TO THE ROAD? WHY WOULD SHE HAVE DONE THAT? WAS SHE CONCERNED THAT MAYBE IF SHE WAS ON THE OTHER SIDE OF THE TRAILER, HE WOULDN'T SHOOT HER? WAS SHE JUST TRYING TO GET SOMETHING BETWEEN HER AND THIS MAN? WHY WOULD SHE DO THAT?

LADIES AND GENTLEMEN, YOU'VE HEARD THE STORY. YOU'VE

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HEARD THE ARGUMENTS. YOU'VE SEEN THE EVIDENCE. YOU UNDERSTAND WHAT'S HAPPENED. YOU KNOW WHAT'S HAPPENED.

ON FEBRUARY THE 7TH, 2006 NATHANIEL JOHNSON, JR. BURGLARIZED, KIDNAPED, RAPED, AND USED A DEADLY WEAPON TO DO THESE THINGS TO ANA RODRIGUEZ. AND TODAY NOW YOU HAVE THE POWER AND CONTROL TO DO SOMETHING ABOUT IT, TO FIND JUSTICE.

LADIES AND GENTLEMEN, FIND NATHANIEL JOHNSON, JR. GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, BURGLARY IN THE FIRST DEGREE, KIDNAPING, AND USE OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

THANK YOU.

CHARGE OF THE COURT:

ALL RIGHT. MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE FOLLOWED VERY PATIENTLY AND LISTENED VERY ATTENTIVELY TO THE PRESENTATION OF THE EVIDENCE IN THIS CASE AND ALSO TO THE ABLE ARGUMENTS MADE BY THE SOLICITOR, MS. MILLICAN, ON BEHALF OF THE STATE, AND MS. SMART ON BEHALF OF THE DEFENDANT, AND I THANK YOU FOR THAT.

IT NOW BECOMES THE DUTY OF THE TRIAL JUDGE UNDER THE CONSTITUTION OF THIS STATE TO CHARGE AND INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT WILL NOW STATE IT TO YOU. AND AS JURORS IT IS YOUR EXCLUSIVE DUTY

TO DECIDE ALL OF THE ISSUES OF FACT IN THIS CASE, AND FOR THAT PURPOSE, TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE.

BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT YOU WILL CONSCIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND APPLY THE LAW OF THE CASE THERETO TO THE END THAT BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT WILL RECEIVE A FAIR AND IMPARTIAL TRIAL.

NOW, WHEN I USE THE WORD DEFENDANT, I REFER OF COURSE TO NATHANIEL JOHNSON, JR.

THE STATE OF SOUTH CAROLINA BY THE FOUR INDICTMENTS IN THIS CASE CHARGE THE DEFENDANT NATHANIEL JOHNSON, JR. WITH FOUR SEPARATE OFFENSES.

HE'S CHARGED WITH THE OFFENSE OF KIDNAPING, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, BURGLARY IN THE FIRST DEGREE, AND THE POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

TO THESE CHARGES AND TO THESE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THESE PLEAS OF NOT GUILTY BY THE DEFENDANT PLACE THE BURDEN OF PROOF ON THE STATE TO PROVE BY EVIDENCE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU THE JURY COULD FIND THE DEFENDANT GUILTY.

THE DEFENDANT, MR. JOHNSON, IS PRESUMED IN THE LAW INNOCENT OF THE CHARGES CONTAINED IN THE INDICTMENT. IT IS

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A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT A DEFENDANT IRRESPECTIVE OF THE ENORMITY OF THE CHARGES AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIMES FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

THIS PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY, IT IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY ACCUSED IS ENTITLED.

OUR SUPREME COURT HAS DECLARED THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS TO HIM THAT CLASS, THE INNOCENT, UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPED FROM HIS PERSON BY EVIDENCE SATISFYING YOU, THE JURY, OF HIS GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS ARRAIGNMENT AND APPEARANCE IN THIS COURT AND CONTINUES WITH THE DEFENDANT AFTER YOU RETIRE TO YOUR JURY ROOM TO DELIBERATE YOUR VERDICT.

THE PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL YOU, THE JURY, REACH THE CONCLUSION THAT THE STATE HAS PROVEN THE GUILT OF THE

DEFENDANT BEYOND A REASONABLE DOUBT.

NOW, THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF A DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT BEYOND A REASONABLE DOUBT.

WHAT IS A REASONABLE DOUBT? IT IS NOT AN IMAGINARY OR A FANCIFUL DOUBT OR A WEAK DOUBT. IT IS A SUBSTANTIAL DOUBT. IT IS A DOUBT WHICH THE WORDS IMPLY, A DOUBT FOR WHICH YOU CAN GIVE OR ASSIGN A REASON BASED ON THE TESTIMONY AND THE EVIDENCE IN THE CASE.

A REASONABLE DOUBT IS NOT ANY SORT OF A DOUBT. YOU AND I KNOW FROM EVERYDAY LIFE EXPERIENCES THAT YOU MAY HAVE A SORT OF A DOUBT ABOUT ANY MATTER THAT ARISES NO MATTER HOW TRIVIAL IT MAY BE OR HOW SERIOUS IT MAY BE.

A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIOUS JUROR IN SEARCH OF THE TRUTH HESITATE TO ACT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF WHICH LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

IF YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE OR ASSIGN A REASON AS TO THE GUILT OF THE DEFENDANT, THEN HE IS ENTITLED TO A VERDICT OF NOT GUILTY.

REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THE CASE OR FROM THE LACK OR ABSENCE OF EVIDENCE IN THE CASE.

YOU, THE JURY, MUST MAKE THE DETERMINATION OF WHETHER

OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT.

THE VERY FACT, HOWEVER, THAT A JURY ENGAGES IN A FULL AND FREE DISCUSSION OF THE ISSUE OF GUILT OR NON-GUILT IN A CASE WITH THE ORDINARY CONVERSATIONAL EBB AND FLOW ON THESE ISSUES DOES NOT AUTOMATICALLY MEAN THAT REASONABLE DOUBT EXISTS IN THIS CASE OR IN ANY OTHER CASE.

A REASONABLE DOUBT IS NOT A WEAK DOUBT OR A SLIGHT DOUBT, NOR IS IT A WHIMSICAL, FANCIFUL, OR IMAGINARY DOUBT, BUT IT IS A DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

I CHARGE YOU THAT THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE WHOLE CASE OR ARISING IN ANY FACT NECESSARY FOR CONVICTION.

IF UPON ANY ISSUE OF FACT ESSENTIAL TO CONVICTION AND A VERDICT OF GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT ISSUE IN FAVOR OF THE DEFENDANT.

A DEFENDANT, LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE HIS INNOCENCE, BUT THE STATE IS REQUIRED BY LAW TO PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSE CHARGED AGAINST THE DEFENDANT BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY.

IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT AS TO ANY CHARGE, HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY.

BUT ON THE OTHER HAND IF UPON THE WHOLE CASE ON ANY CHARGE YOU FIND THAT THE STATE HAS PROVEN BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCES IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE DEFENDANT AND FIND HIM GUILTY.

NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU THAT THE INDICTMENTS IN THIS CASE WHICH I HOLD IN MY HAND ARE NOT EVIDENCE AND CANNOT BE CONSIDERED BY THE JURY AS EVIDENCE IN THE CASE. THE INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES AGAINST THE DEFENDANT, AND THEY SERVE AS THE FORMAL DOCUMENTS BY WHICH THIS CASE IS BROUGHT TO TRIAL.

DURING THIS TRIAL YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF EVIDENCE OFFERED DURING THE PROGRESS OF THE TRIAL.

YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU, AND YOU ARE TO DISREGARD AND DISABUSE FROM YOUR MIND

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ANY EVIDENCE ORDERED STRICKEN FROM THE RECORD OF THIS CASE DURING THE PROGRESS OF THE TRIAL IF THERE BE ANY. AND YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THE WITNESS STAND, TOGETHER WITH ANY EXHIBITS WHICH HAVE BEEN INTRODUCED INTO THE RECORD OF THIS CASE AND ANY STIPULATIONS OF COUNSEL MADE INTO THE RECORD.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE APPLICABLE LAW IN THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW. AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS, YOU ARE OBLIGATED UNDER YOUR OATH TO ABANDON THIS PRECONCEPTION ON YOUR PART, BECAUSE YOU ARE SWORN TO ACCEPT THE LAW PRECISELY AS I NOW STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. YOU, THE JURY, ARE THE JUDGE OF THE FACTS IN THIS CASE.

THE COURT IS THE JUDGE OF THE LAW.

THE CONSTITUTION OF THIS STATE HAS DECLARED THAT THE TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS OF THE CASE.

YOU ARE NOT TO INFER FROM ANYTHING THAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL, IN RULING UPON THE

ITS ENTIRETY.

YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED ANY INTEREST, ANY BIAS, OR ANY PREJUDICE IN THE CASE.

AND YOU MAY CONSIDER THE DEMEANOR OF A WITNESS, THAT IS THE APPEARANCE OF A WITNESS FROM THE WITNESS STAND.

AND YOU MAY CONSIDER THE OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED.

THESE CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY BUT IF IN YOUR GOOD JUDGMENT THERE IS SOUND REASON IN THE RECORD FOR SO DOING, BECAUSE YOUR OBJECTIVE, LADIES AND GENTLEMEN, IS TO FIND THE TRUTH WHETHER IT COMES FROM ONE OR MORE WITNESSES.

AND IN DOING SO, IN EXERCISING YOUR MENTAL PROCESSES AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE, THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR SENSE OF LOGIC AND REASON, AND YOUR EXPERIENCES IN LIFE.

YOU THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE AND DETERMINE WHAT YOU CONSIDER TO BE THE TRUTHFUL EVIDENCE, AND TO THESE TRUE STATE OF FACTS AS DETERMINED BY YOU, THE JURY, YOU THEN TAKE AND APPLY THE LAW AS I NOW STATE IT TO YOU AND THUS ARRIVE AT A VERDICT IN THIS CASE.

NOW, AS I SAID, THE DEFENDANT IN THIS CASE IS CHARGED IN FOUR INDICTMENTS WITH FOUR SEPARATE CRIMES AND I AM GOING TO DEFINE EACH ONE OF THESE OFFENSES FOR YOU.

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ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING THAT I SAY TO YOU NOW DURING THE COURSE OF THIS CHARGE TO YOU THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE. I DO NOT. THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE.

AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE AS I HAVE STATED TO YOU THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THE COURSE OF THIS TRIAL.

NECESSARILY, THEN, YOU MUST ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM MEANING BELIEVABILITY. IT BECOMES YOUR DUTY THEN TO ANALYZE AND EVALUATE THE EVIDENCE AND TO DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

I CHARGE YOU THAT IN DETERMINING THE QUESTION OF CREDIBILITY OR BELIEVABILITY OF THE WITNESSES, YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES AS AGAINST ONE WITNESS.

YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS.

YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF A WITNESS IN

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SINCE I HAVE THEM IN THIS ORDER, I WILL JUST DEFINE THEM IN THIS ORDER. THE INDICTMENT NUMBERS MAY VARY A LITTLE BIT, BUT I AM GOING TO DEFINE FIRST FOR YOU THE CRIME OF CRIMINAL SEXUAL CONDUCT WHICH IS CONTAINED IN THE CHARGE IN INDICTMENT NO. 1641.

THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. THE FIRST ELEMENT WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM.

A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY OR OF AN OBJECT INTO THE GENITAL OR ANAL OPENINGS ON ANOTHER PERSON'S BODY EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

IF YOU FIND THE STATE HAS NOT SHOWN BEYOND A REASONABLE DOUBT THAT THE SEXUAL BATTERY OCCURRED, YOU WOULD STOP DELIBERATING AND YOUR VERDICT WOULD BE NOT GUILTY.

IF YOU FIND A SEXUAL BATTERY HAD OCCURRED, THEN YOU MUST DECIDE WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT USED AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL BATTERY. AGGRAVATED FORCE MEANS THE USE OF PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM. THIS

INCLUDES THE THREAT OF USING A DEADLY WEAPON.

SECONDLY, THAT THE VICTIM SUBMITTED TO SEXUAL BATTERY WHILE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE CONFINEMENT, KIDNAPING, ROBBERY, EXTORTION, BURGLARY, HOUSEBREAKING, OR ANY OTHER SIMILAR ACT OR OFFENSE.

AND THAT WOULD BE THE DEFINITION OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

THE CRIME THAT IS ALLEGED IN INDICTMENT NO. 1640 IS THAT OF KIDNAPING. AND I WOULD TELL YOU THAT SECTION 16-3-910 OF OUR CODE IS CAPTIONED KIDNAPING. AND IT READS IN PART: WHOEVER SHALL UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW SHALL BE GUILTY OF A FELONY.

THE WORD UNLAWFULLY APPLIES TO EACH OF THE SUBSEQUENT WORDS OF SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT, AND CARRY AWAY AND ALSO TO ANY OTHER PERSON.

ALSO EACH OF THE WORDS STARTING WITH SEIZE THROUGH CARRY AWAY RELATES TO AND INCLUDES ONLY ANY OTHER PERSON.

THE TERM UNLAWFULLY MEANS AGAINST THE LAW OR ILLEGAL, WITHOUT AUTHORITY OF LAW. IT MEANS WITHOUT AUTHORIZATION OF LAW OR WITHOUT THE LEGAL POWER UNDER THE LAW OR WITHOUT BASIS OR SANCTION IN THE LAW.

SEIZE MEANS TO TAKE AWAY OR TO TAKE HOLD OF FORCIBLY.

CONFINE MEANS TO IMPRISON OR SHUT UP OR RESTRAIN.

KIDNAPING IS A FORCIBLE TAKING AND REMOVAL OF THE PERSON FROM ONE PLACE TO ANOTHER AGAINST HIS WILL UNLAWFULLY AND WITHOUT AUTHORITY OF LAW.

ABDUCT MEANS TO TAKE A PERSON AWAY UNLAWFULLY BY FORCE OR TO KIDNAP WITHOUT CONSENT.

CARRYING AWAY MEANS MOVING FROM ONE PLACE TO ANOTHER UNLAWFULLY WITHOUT AUTHORITY OF LAW AND WITHOUT THE CONSENT OF THE PERSON BEING CARRIED AWAY.

THE CARRYING AWAY NEED NOT BE OF A SPECIFIC DISTANCE IF IT IS ONLY A SUFFICIENT LENGTH TO ESTABLISH THAT IT WAS UNLAWFULLY AND WITHOUT AUTHORITY OF LAW AND WITH THE PURPOSE TO VIOLATE THE LAW.

UNDER THE STATUTE THE STATE NEED NOT PROVE EACH OF THE TERMS, SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY AWAY. PROOF OF ANY ONE IS SUFFICIENT PROVIDED THE STATE PROVES THAT THIS WAS DONE, THAT IT WAS DONE UNLAWFULLY, AND WITHOUT AUTHORITY OF LAW, AND WITHOUT THE CONSENT OF THE VICTIM. THIS IS BECAUSE ALL OF THE TERMS UNDER THE STATUTE THAT I HAVE READ TO YOU ARE EMBRACED WITHIN THE CAPTION KIDNAPING.

EACH OF THE TERMS, HOWEVER, REQUIRES A TAKING AND CARRYING AWAY WITHOUT CONSENT, AND I HAVE CHARGED CONSENT ONCE GIVEN MAY BE WITHDRAWN.

SO AGAIN, JUST IN SHORT I WOULD TELL YOU THAT THE CRIME OF KIDNAPING IS THE DEPRIVATION OF FREEDOM AND THE

IMPOSITION OF CONFINEMENT AGAINST ANOTHER PERSON BY ANY MEANS WHATSOEVER.

NOW THE CRIME OF BURGLARY IS ALSO CHARGED AGAINST THE DEFENDANT. AND THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT. A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF BURGLARY.

BUT A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE TEMPORARILY ABSENT FROM THE BUILDING.

IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE BUILDING.

IF A PERSON ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A MISDEMEANOR, AT THE TIME OF ENTRY.

THE MERE ENTRY INTO THE DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT BURGLARY.

ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE TIME OF ENTRY, IT IS A BURGLARY EVEN IF THE

INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT WHEN ENTERING, WHILE IN THE DWELLING, OR WHILE FLEEING THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON OR EXPLOSIVE.

A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH LIKELY WOULD CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OR INSTRUMENTS WHICH MAY BE DEADLY WEAPONS. A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE OR SLINGSHOT, METAL KNUCKLES, RAZOR, LIGHTER FLUID.

A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.

THAT'S ONE OF THE CIRCUMSTANCES OF AGGRAVATION. OR YOU COULD ALSO DETERMINE THAT AN ELEMENT OF FIRST DEGREE BURGLARY -- NOT BOTH OF THESE DON'T HAVE TO BE PRESENT BUT AT LEAST ONE OF THEM DOES, THAT WHEN ENTERING OR WHILE IN THE DWELLING OR WHILE FLEEING THE DEFENDANT CAUSED PHYSICAL HARM TO ANYONE NOT PARTICIPATING IN THE CRIME.

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NOW, LADIES AND GENTLEMEN, THE FOURTH CHARGE IS ONE OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME OF VIOLENCE. AND I WOULD TELL YOU, YOU WOULD NOT EVEN REACH THIS CHARGE UNLESS YOU FIND THE DEFENDANT GUILTY OF AT LEAST ONE OF THE OTHER THREE. ALL THREE OF THE CHARGES OF KIDNAPING, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, AND BURGLARY ARE ALL CONSIDERED VIOLENT CRIMES. SO BEFORE YOU WOULD EVEN GO TO THIS LAST CHARGE, YOU WOULD HAVE TO FIND THE DEFENDANT GUILTY OF AT LEAST ONE OF THOSE VIOLENT CRIMES.

IF YOU FIND THE DEFENDANT NOT GUILTY OF ALL THREE OF THOSE, THEN YOU WOULD NOT EVEN REACH THIS CHARGE.

BUT I WOULD TELL YOU THAT THE DEFENDANT IS CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

I PREVIOUSLY TOLD YOU SOME DEFINITIONS OF A FIREARM. BUT A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR OTHER WEAPON WHICH IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A PROJECTILE.

IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME YOU MUST FIRST FIND THE DEFENDANT GUILTY OF COMMITTING THE VIOLENT

CRIME. AND AS I HAVE TOLD YOU, KIDNAPING, BURGLARY FIRST, AND CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE ARE ALL CONSIDERED VIOLENT CRIMES, SO YOU WOULD HAVE TO FIND THE DEFENDANT GUILTY OF AT LEAST ONE OF THOSE BEFORE YOU WOULD REACH THIS FOURTH CHARGE AGAINST THE DEFENDANT.

NOW, LADIES AND GENTLEMEN, JUST A FEW OTHERS MISCELLANEOUS MATTERS THAT I DO WANT TO INSTRUCT YOU ON. THERE ARE GENERALLY TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL; DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF THE CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN IS REQUIRED OF DIRECT EVIDENCE.

YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE, AND AFTER WEIGHING ALL OF THE EVIDENCE IF YOU ARE NOT CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU WOULD FIND THE DEFENDANT NOT GUILTY.

ON THE OTHER HAND AFTER WEIGHING ALL OF THE EVIDENCE

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IF YOU ARE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU WOULD FIND THE DEFENDANT GUILTY.

NOW, YOU ALSO RECALL THAT I HAVE ADMITTED AND THE COURT HAS ADMITTED TESTIMONY OF WITNESSES WHOM WE CONSIDER EXPERT WITNESSES. THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WHO ARE CALLED EXPERT WITNESSES.

A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO THE RELEVANT AND MATERIAL MATTER IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES.

IF YOU DECIDE THAT THE OPINION OF THE EXPERT IS NOT BASED ON SUFFICIENT EDUCATION OR EXPERIENCE OR YOU 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'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY BECAUSE THE WITNESS IS AN EXPERT.

AND, FINALLY, LADIES AND GENTLEMEN, I WANT TO TELL YOU

THIS. I TELL YOU NOW AND I EMPHASIZE TO YOU THAT THE ELECTION OF A DEFENDANT IN THE TRIAL OF A CRIMINAL CASE NOT TO TESTIFY ON HIS OWN BEHALF IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER AGAINST THE DEFENDANT OR MITIGATE AGAINST HIM IN ANY RESPECT WHATSOEVER.

A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF SUCH CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

UNDER YOUR OATH THEN, YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT A DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.

THE ELECTION OF THIS DEFENDANT NOT TO TESTIFY SHOULD NOT EVEN BE DISCUSSED IN YOUR JURY ROOM. THE BURDEN OF PROOF AS I HAVE STATED TO YOU IS UPON THE STATE. IT IS NOT INCUMBENT UPON THE ACCUSED TO PROVE HIS INNOCENCE.

THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT AND THE ELECTION OF A DEFENDANT NOT TO TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN DETERMINING THE GUILT OR INNOCENCE OF THE DEFENDANT.

NOW, LADIES AND GENTLEMEN, AS YOU WELL KNOW DURING

THIS TRIAL I HAVE PERMITTED THOSE JURORS WHO WANTED TO, TO TAKE NOTES. YOU MAY TAKE THESE NOTES WITH YOU TO YOUR JURY ROOM AND USE THEM DURING YOUR DELIBERATIONS IF YOU WISH. AS I TOLD YOU AT THE BEGINNING OF THE TRIAL, YOUR NOTES ONLY ARE INTENDED TO BE AN AID TO YOUR MEMORY AND SHOULD NOT TAKE PRECEDENCE OVER YOUR INDEPENDENT RECOLLECTION. THOSE JURORS WHO HAVE NOT TAKEN NOTES SHOULD RELY ON THEIR OWN MEMORY OF THE EVIDENCE AND SHOULD NOT BE INFLUENCED BY THE FACT THAT ANOTHER JUROR HAS TAKEN NOTES, SINCE THE NOTES ARE ONLY FOR THE NOTE TAKER'S OWN PERSONAL USE IN ASSISTING HIS OR HER MEMORY OF THE EVIDENCE.

AT THE END OF YOUR DELIBERATIONS, PLEASE TEAR OUT FROM YOUR NOTEBOOKS ANY NOTES YOU HAVE MADE AND GIVE THEM TO YOUR FOREPERSON. THE BAILIFF WILL COLLECT THE NOTEBOOKS AND PENCILS WHEN YOU RETURN TO THE COURTROOM, AND I WILL ASK THE FOREPERSON TO GIVE THE BAILIFF YOUR NOTES WHEN YOUR VERDICT IS RETURNED. I WILL DESTROY YOUR NOTES IMMEDIATELY AFTER THE TRIAL AND NO ONE INCLUDING MYSELF WILL LOOK AT THEM.

AGAIN, THOUGH, I WILL TELL YOU AS I DID AT THE BEGINNING, THAT YOU WILL NOT HAVE A WRITTEN TRANSCRIPT OF THE TRIAL TO CONSULT, AND IT IS DIFFICULT AND TIME CONSUMING FOR THE COURT REPORTER TO READ BACK OR PLAY BACK THE LENGTHY TESTIMONY. I NOTICE THAT YOU HAVE GIVEN CLOSE ATTENTION TO THE TESTIMONY, AND I THINK YOU WILL BE ABLE TO

RECALL THE MATTERS THAT YOU NEED TO RECALL TO REACH A VERDICT IN THIS CASE.

NOW, LADIES AND GENTLEMEN, I HAVE JUST ABOUT FINISHED MY INSTRUCTIONS TO YOU, BUT I WANT TO TELL YOU THAT IT HAS BEEN SAID THAT WHEN YOU SERVE ON A JURY, YOU ARE NOT PARTISANS OR ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR FOR THIS DEFENDANT. OBVIOUSLY, SUCH A PERVERTED SYSTEM OF JUSTICE WOULD BE INTOLERABLE.

YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING TO THE DEFENDANT THE BENEFIT OF EACH REASONABLE DOUBT ON EACH AND EVERY ISSUE, AND THEN TO THE FACTS WHICH YOU DETERMINE TO BE TRUE, YOU THEN TAKE AND APPLY THE LAW WHICH THE COURT HAS GIVEN TO YOU, AND ARRIVE AT A VERDICT WHICH DOES SPEAK THE TRUTH, BECAUSE THE WORD VERDICT, LADIES AND GENTLEMEN, COMES FROM THE LATIN PHRASE VEREDICTO, MEANING TO SPEAK THE TRUTH. AND WHEN YOU HAVE DONE THAT, YOU WILL HAVE SATISFIED YOUR OATH AS JURORS AND YOU WILL HAVE DISCHARGED YOUR DUTY TO THIS COURT.

NOW, LADIES AND GENTLEMEN, I WANT TO INSTRUCT YOU ON THE FORMS OF VERDICT IN THIS CASE, AND ON EACH CHARGE THERE ARE TWO POSSIBLE VERDICTS: YOU WILL CONSIDER EACH CHARGE SEPARATELY. AND IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT

AS TO ANY CHARGE, YOUR VERDICT WOULD BE TWO WORDS, NOT GUILTY.

IF THE STATE HAS PROVEN THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE ONE WORD, GUILTY.

THE VERDICT THAT YOU RENDER IN THIS CASE MUST BE THE VERDICT OF EACH AND EVERY JUROR. IT MUST BE YOUR UNANIMOUS VERDICT. ALL 12 MUST AGREE ON THE VERDICT WHICH YOU AUTHORIZE YOUR FOREMAN TO WRITE.

NOW, MR. FOREMAN, I HAVE PREPARED ON SEPARATE SHEETS OF PAPER -- AND I'M GOING TO TALK FIRST JUST ABOUT THE THREE VERDICT FORMS ON THE BURGLARY, THE CRIMINAL SEXUAL CONDUCT, AND THE KIDNAPING CHARGES. I HAVE PREPARED THREE SEPARATE VERDICT FORMS FOR YOUR USE, AND I WOULD TELL YOU FIRST OF ALL THAT THE ORDER IN WHICH I HAVE PUT YOUR POSSIBLE VERDICTS ON THESE VERDICT FORMS HAS NO SIGNIFICANCE WHATSOEVER.

YOU SHOULD NOT INFER FROM THE ORDER IN WHICH I HAVE PUT THE POSSIBLE VERDICTS ON HERE THAT I HAVE ANY OPINION AS TO WHAT YOUR VERDICT SHOULD BE. I DO NOT. BUT OBVIOUSLY IN PUTTING SOMETHING DOWN ON A PIECE OF PAPER, I HAD TO PUT SOMETHING FIRST AND PUT SOMETHING SECOND.

BUT ACROSS THE TOP ON ALL THREE PAGES ARE THE STATE AND THE FORMALITIES OF THE CASE, THE CASE NUMBER, AND THE NAME, AND RIGHT HERE IS VERDICT. AND EACH ONE OF THEM

SAYS: WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF -- AND ONE IS BURGLARY FIRST, ONE IS CRIMINAL SEXUAL CONDUCT FIRST, AND ONE IS KIDNAPING -- FIND THE DEFENDANT, NATHANIEL JOHNSON, EITHER GUILTY OR NOT GUILTY AND YOU WOULD SIMPLY MAKE AN "X" OR A CHECK ON EACH SEPARATE VERDICT FORM AND SIGN YOUR NAME HERE.

AND THEN IF AND ONLY IF YOU FIND THE DEFENDANT GUILTY OF ONE -- NOT ALL, BUT ONE OF THOSE THREE, YOU CAN THEN GO AND CONSIDER THE POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WHICH IS THIS LAST VERDICT FORM.

AND IT SAYS: IF YOU FIND THE DEFENDANT GUILTY OF BURGLARY FIRST OR CRIMINAL SEXUAL CONDUCT FIRST DEGREE OR KIDNAPING, YOU MAY CONSIDER THIS INDICTMENT FOR POSSESSING A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

IF YOU FIND HIM NOT GUILTY ON EACH OF THESE KINDS, DO NOT CONSIDER THIS CHARGE.

AND THEN YOU WOULD FIND ON THE CHARGE OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WE FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY.

NOW, LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO YOUR JURY ROOM, GOING TO ASK THAT YOU NOT BEGIN YOUR DELIBERATIONS JUST YET. THE LAW REQUIRES THAT I TAKE UP CERTAIN MATTERS OF LAW WITH THE ATTORNEYS IN THIS CASE. AND IF IT IS NOT NECESSARY FOR ME TO BRING YOU BACK INTO

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THE COURTROOM FOR ADDITIONAL INSTRUCTIONS, THE BAILIFFS WILL BRING YOU THE VERDICT FORMS, THEY WILL BRING YOU THE EXHIBITS, AND TELL YOU TO BEGIN YOUR DELIBERATIONS.

AND THEN AS SOON AS YOU HAVE REACHED A VERDICT, KNOCK ON THE DOOR, AND WE WILL RETURN YOU TO THE COURTROOM AS SOON AS POSSIBLE.

SO IF YOU WOULD, GO TO YOUR JURY ROOM AND YOU MAY TAKE YOUR NOTES BUT DO NOT BEGIN YOUR DELIBERATIONS JUST YET. THANK YOU VERY MUCH.

(THE JURY RETIRES TO THE JURY ROOM AT 2:51 P.M.)

THE COURT: ARE THERE ANY ADDITIONS OR EXCEPTIONS ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ON BEHALF OF THE DEFENDANT, MS. SMART?

MS. SMART: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. COUNSEL, WITH REGARD TO THE ALTERNATE, I PROPOSE TO EXCUSE THE ALTERNATE. EVERYONE SEEMS TO HAVE REMAINED HEALTHY AND WE'VE GOT EVERYBODY HERE. ANY OBJECTION TO THAT PROCEDURE?

MS. MILLICAN: NOT FROM THE STATE, YOUR HONOR.

THE COURT: MS. SMART, ANY OBJECTION TO EXCUSING THE ALTERNATE AT THIS POINT?

MS. SMART: NO, SIR.

THE COURT: OKAY. ALL RIGHT. IF YOU WOULD GET THE EXHIBITS TOGETHER. MR. BAILIFF, HERE ARE THE VERDICT

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FORMS. ASK THE ALTERNATE TO COME BACK IN HERE. AND GIVE THOSE TO THE JURY AND TELL THEM THAT THEY MAY BEGIN THEIR DELIBERATIONS.

(PAUSE.)

THE COURT: YES, MA'AM.

MS. SMART: I'D LIKE TO RENEW ALL MY PREVIOUS MOTIONS FOR THE SAME REASONS.

THE COURT: ALL RIGHT. I DON'T THINK THAT'S NECESSARY, BUT THAT'S NOTED.

(PAUSE.)

THE COURT: ALL RIGHT. TAKE THE EXHIBITS AND THE VERDICT FORMS AND TELL THE JURY TO BEGIN THEIR DELIBERATION.

MS. MILLICAN: OH, YOUR HONOR, FOR THE SHEET, THE BIG PIECE OF SHEET ---

THE COURT: THE WHAT?

MS. MILLICAN: SEND BACK SOME GLOVES FOR THE JURORS ON THAT IF THEY DECIDE TO TAKE THAT OUT OF THAT PACKAGING, IT'S JUST A ---

OFFICER: IT'S IN A BIO-HAZARD BAG.

THE COURT: DO YOU ALL HAVE SOME GLOVES?

(PAUSE.)

MS. MILLICAN: WE CAN PROBABLY FIND SOME.

THE COURT: ALL RIGHT.

MS. MILLICAN: HERE WE GO. I FIGURED WE COULD TRACK

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SOME DOWN. THANKS.

THE COURT: ALL RIGHT. WE'LL LET THEM TAKE THOSE BACK THERE.

(THE EXHIBITS AND VERDICT FORMS WERE SENT TO THE JURY TO BEGIN DELIBERATIONS AT 2:55 P.M.)

(THE ALTERNATE IS EXCUSED.)

THE COURT: ALL RIGHT. ANY OBJECTION TO THAT METHOD OF HANDLING THE ALTERNATE?

MS. MILLICAN: NOT FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT. I DON'T KNOW WHERE MS. SMART WENT, BUT I ASSUME IT'S OKAY. SHE ALREADY TOLD ME SHE DIDN'T HAVE ANY OBJECTION.

ANYTHING ELSE FROM THE STATE THIS AFTERNOON?

(PAUSE.)

THE COURT: WE'LL BE AT EASE UNTIL WE HEAR FROM THE JURY.

(THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. MR. JOHNSON IS PRESENT IN COURT WITH HIS ATTORNEY. THE STATE'S COUNSEL IS ALSO HERE.

TO BRING EVERYBODY UP TO DATE AND PUT ON THE RECORD WHAT HAS TRANSPIRED. THE BAILIFF CAME TO ME ABOUT HALF AN HOUR AGO AND INDICATED THAT THE FOREMAN HAD COME TO THE DOOR AND ASKED OR SAID THAT THEY'RE NOT CLOSE TO A DECISION

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AND DO THEY NEED TO MAKE A DECISION TODAY?

I TOLD THE BAILIFF TO HAVE THE FOREMAN PUT THE QUESTION IN WRITING AND SUBMIT IT, AND HE DID. AND I HAVE THAT IN WRITING. AND THAT IS THE QUESTION. WE ARE NOT CLOSE TO A DECISION. DO WE HAVE TO MAKE A DECISION TODAY? SIGNED RAYMOND JOHNSON, SR., FOREMAN.

I'M GOING TO GIVE THE NOTE TO THE COURT REPORTER, HAVE HER MARK IT AS COURT'S EXHIBIT NO. 4 AND MAKE IT A PART OF THE RECORD.

(NOTE FROM JURY MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 4.)

THE COURT: UPON RECEIVING THAT NOTE I HAD BOTH COUNSEL COME TO CHAMBERS AND WE DISCUSSED IT AND CONCLUDED THAT WE WOULD LEAVE IT UP TO THE JURY. AND IF THEY WANTED TO CONTINUE WORKING, THEY COULD DO SO. OR IF THEY WOULD LIKE TO GO HOME AND COME BACK AND START FRESH TOMORROW, THEY COULD DO THAT AS WELL.

I THEN ASKED THE BAILIFF TO HAVE THE FOREMAN COME TO MY CHAMBERS WITH COUNSEL PRESENT, AND I ASKED HIM TO GET A CONSENSUS FROM THE JURY AS TO WHETHER THEY WANTED TO GO HOME AND COME BACK.

AFTER A SUFFICIENT AMOUNT OF TIME HE HAD NOT LET US KNOW ANYTHING, SO I HAD HIM COME BACK. HE ADVISED IN THE PRESENCE OF COUNSEL THAT THEY WISHED TO CONTINUE WORKING FOR A WHILE TONIGHT TO SEE IF THEY COULD RESOLVE THE ISSUE.

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I TOLD HIM AT THAT TIME THAT THAT WAS PERFECTLY ALL RIGHT. OR IF THEY DECIDED AT ANY TIME IF THEY WANTED TO GO HOME, TO LET US KNOW. AND ALSO IF I COULD BE OF ANY HELP TO THEM ON THE LAW, I WOULD BE GLAD TO DO THAT BUT THAT I OBVIOUSLY COULD NOT SAY ANYTHING ABOUT THE FACTS.

AND WITH THAT HE WENT BACK TO THE JURY, AND THEY HAVE RESUMED THEIR DELIBERATIONS. IS THAT AN ACCURATE RECITATION OF WHERE WE STOOD FROM YOUR STANDPOINT, MS. MILLICAN?

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: MS. SMART?

MS. SMART: YES, YOUR HONOR.

THE COURT: AND ANY OBJECTION TO THAT PROCEDURE?

MS. MILLICAN: NOT FROM THE STATE.

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THAT BEING THE CASE, THE JURY HAS DECIDED TO WORK FOR A WHILE LONGER SO WE WILL BE AT EASE UNTIL WE HEAR FROM THE JURY.

(THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

(NOTE FROM JURY MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 5.)

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. MS. MILLICAN

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IS HERE ON BEHALF OF THE STATE.

BEFORE I COULD GET BACK TO THE OFFICE, WE HAD ANOTHER NOTE FROM THE JURY WHICH HAS BEEN MARKED AS COURT'S EXHIBIT NO. 5. THIS NOTE SAYS, YOUR HONOR, WE WOULD LIKE TO REQUEST THE DIAGRAM OF THE TWO TRAILERS, ROAD, AND SURROUNDING AREA. AND IT'S SIGNED BY THE FOREMAN.

MY PROPOSAL WOULD BE IF AGREEABLE TO THE PARTIES -- OR I'LL LISTEN TO WHATEVER YOU WOULD LIKE TO SAY -- WOULD BE TO SIMPLY RATHER THAN MARCH THE WHOLE JURY IN HERE TO TELL THEM THIS, WOULD BE JUST TO BRING THE FOREMAN IN AND LET ME TELL HIM THAT THOSE ITEMS WERE NOT INTRODUCED INTO EVIDENCE AND THEREFORE CANNOT GO TO THE JURY ROOM.

ANY OBJECTION TO THAT?

MS. MILLICAN: NO OBJECTION, YOUR HONOR.

THE COURT: ANY OBJECTION TO THAT?

MS. SMART: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. BRING ME THE FOREMAN ONLY PLEASE. THE REST OF THEM QUIT DELIBERATING WHILE HE'S OUT OF THE ROOM.

(THE FOREMAN ENTERS THE COURTROOM AT 5:20 P.M.)

THE COURT: YOU CAN JUST STAND RIGHT THERE, MR. FOREMAN. I HAVE YOUR SECOND NOTE. AND, OF COURSE, THE NOTE WAS: WE WOULD LIKE TO REQUEST THE DIAGRAM OF THE TWO TRAILERS, ROAD, AND SURROUNDING AREA.

ALL I CAN TELL YOU IS THAT THOSE ITEMS WERE NOT

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OFFERED OR ADMITTED INTO EVIDENCE AND THEREFORE THEY CANNOT BE TAKEN TO THE JURY ROOM WITH YOU, AND SO I CANNOT LET YOU HAVE THOSE. ALL RIGHT?

FOREMAN: YES, SIR.

THE COURT: THANK YOU, SIR.

(THE FOREMAN RETURNS TO THE JURY ROOM AT 5:21 P.M.)

THE COURT: ANY OBJECTION TO THAT PROCEEDING ON BEHALF OF THE STATE, MS. MILLICAN?

MS. MILLICAN: NO, YOUR HONOR.

THE COURT: ON BEHALF OF THE DEFENSE?

MS. SMART: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. BE AT EASE AGAIN. THANK YOU.

(THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO PRESENT WITH MS. MILLICAN.

COUNSEL, I HAVE NOT HEARD ANYTHING FROM THE JURY. WHAT I WOULD PROPOSE -- IT'S BEEN ABOUT AN HOUR SINCE THEY SAID THEY WOULD CONTINUE TO WORK FOR A WHILE -- ACTUALLY ABOUT 45 MINUTES, I GUESS. BUT WHAT I THOUGHT I WOULD DO IF IT'S AGREEABLE WITH COUNSEL IS BRING THE FOREMAN IN AND TELL HIM THAT THEY ARE WELCOME TO WORK AS LONG AS THEY WANT TO, WE'RE NOT TRYING TO STARVE THEM TO DEATH THOUGH. IF THEY WANT TO HAVE DINNER BROUGHT IN, WE WOULD BRING DINNER

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IN. IT WILL TAKE US ABOUT AN HOUR OR, AGAIN, GIVE THEM THE OPTION OF COMING BACK TOMORROW AND SEE WHAT THEY WANT TO DO, KIND OF LEAVE IT UP TO THE JURY.

ANY OBJECTION TO THAT?

MS. MILLICAN: NOT FROM THE STATE.

THE COURT: ANY OBJECTION, MS. SMART?

MS. SMART: NO, YOUR HONOR.

THE COURT: OKAY. I JUST THINK THAT IT IS AFTER 6:00 AND IT WILL TAKE US 45 MINUTES OR AN HOUR TO GET SOMETHING HERE IF THEY WANT TO CONTINUE TO DELIBERATE, SO I THINK WE NEED TO OFFER TO GET FOOD FOR THEM.

IF IT'S ALL RIGHT WITH YOU, AGAIN, RATHER THAN BRING EVERYBODY IN AND LET THEM ALL MARCH BACK OUT AND DECIDE WHAT TO DO, I THINK I WILL JUST BRING THE FOREMAN IN AND EXPLAIN THE OPTIONS TO HIM AND LET HIM GO TALK TO THE JURORS.

BRING THE FOREMAN PLEASE, SIR.

(THE FOREMAN ENTERS THE COURTROOM AT 6:10 P.M.)

THE COURT: ALL RIGHT. MR. JOHNSON, I JUST WANTED TO EXPLAIN TO YOU WHERE WE ARE AND WHAT YOUR OPTIONS ARE. I WANT YOU TO KNOW THAT WE'RE NOT TRYING TO STARVE YOU TO DEATH. AND WE HAVE SEVERAL OPTIONS. WE CAN BRING DINNER IN AND YOU ALL CAN CONTINUE TO DELIBERATE. IT WILL TAKE US ABOUT AN HOUR TO GET DINNER ORDERED AND GET IT HERE. IN THE MEANTIME YOU CAN KEEP WORKING, AND WE WOULD HAVE

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SOMETHING FOR YOU TO EAT IN PROBABLY ABOUT AN HOUR, I'D SAY BY 7:00 OR 7:10. THAT WOULD BE THE FIRST OPTION.

THE SECOND OPTION WOULD BE NOT TO ORDER DINNER AND ALLOW YOU JUST TO CONTINUE WORKING IF YOU THINK THAT YOU WOULD LIKE TO DO THAT.

AND THE THIRD OPTION WOULD BE TO EXCUSE YOU FOR THE EVENING AND LET YOU GO HOME AND COME BACK TOMORROW.

SO THOSE ARE THE THREE OPTIONS. IF YOU WOULD LIKE TO DISCUSS IT WITH THE JURORS ---

FOREMAN: WE PICK ONE.

THE COURT: YOU WANT TO GO AHEAD AND BRING DINNER IN?

FOREMAN: YES.

THE COURT: OKAY. ALL RIGHT. WE WILL ORDER DINNER FOR YOU. THANK YOU.

(THE FOREMAN RETURNS TO THE JURY ROOM AT 6:12 P.M.)

THE COURT: ALL RIGHT. MR. BAILIFF, IF YOU WILL TAKE CARE OF DINNER, WE'LL DO THAT. IT LOOKS LIKE WE'RE GOING TO BE HERE A WHILE, COUNSEL.

(THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT WE'RE BACK ON THE RECORD WITH REGARD TO STATE VERSUS NATHANIEL JOHNSON, JR. MR. JOHNSON IS PRESENT IN COURT WITH HIS ATTORNEY, MS. SMART. THE STATE IS REPRESENTED BY MS. MILLICAN, WHO IS ALSO PRESENT.

COUNSEL, I UNDERSTAND THE JURY HAS REACHED A VERDICT.

ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?

MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MS. SMART: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 7:58 P.M.)

BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. MR. FOREMAN, I UNDERSTAND THE JURY HAS REACHED A VERDICT; IS THAT CORRECT?

FOREMAN: YES, SIR, WE HAVE.

THE COURT: WOULD YOU HAND IT UP TO THE BAILIFF PLEASE.

(PAUSE.)

THE COURT: ALL RIGHT. FROM THE STANDPOINT OF FORM, THE VERDICTS APPEAR TO BE CORRECT. I'M GOING TO PUT THEM IN THEIR NUMERICAL ORDER.

MS. SMART, WOULD YOU AND YOUR CLIENT STAND PLEASE.

MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

VERDICT OF THE JURY:

CLERK: THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR. CASE NO. 06-GS-07-1640, WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF KIDNAPING FIND THE DEFENDANT NATHANIEL JOHNSON, JR., GUILTY. SIGNED BY THE FOREMAN, RAYMOND JOHNSON.

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THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR., 06-GS-07-1641, WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE FIND THE DEFENDANT, NATHANIEL JOHNSON, JR., GUILTY. SIGNED BY THE FOREMAN, RAYMOND JOHNSON, SR.

THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR., 06-GS-07-1642, WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF BURGLARY IN THE FIRST DEGREE FIND THE DEFENDANT, NATHANIEL JOHNSON, JR., NOT GUILTY. SIGNED BY THE FOREMAN, RAYMOND JOHNSON, SR.

THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR., 06-GS-07-1643, ON THE CHARGE OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WE FIND THE DEFENDANT NATHANIEL JOHNSON, JR., NOT GUILTY. SIGNED BY RAYMOND JOHNSON, SR., FOREMAN.

MR. FOREMAN, IS THIS YOUR VERDICT?

FOREMAN: YES, IT IS.

CLERK: IF ALL AGREE, PLEASE RAISE YOUR RIGHT HAND.

(ALL JURORS' RIGHT HANDS WERE RAISED.)

THE COURT: THANK YOU. MS. SMART, YOU MAY BE SEATED.

(COMPLIED.)

THE COURT: ANYTHING BEFORE THE JURY IS DISCHARGED?

MS. SMART: NOTHING FROM THE DEFENSE, YOUR HONOR.

(THE JURY WAS EXCUSED.)

THE COURT: ALL RIGHT. MS. SMART, MOTIONS ON BEHALF

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OF THE DEFENDANT.

MS. SMART: THE COURT'S INDULGENCE, YOUR HONOR.

(PAUSE.)

MS. SMART: YOUR HONOR, AT THIS TIME I MOVE FOR A NEW TRIAL, AND I BASE THAT MOTION ON THE BASIS FROM MY PREVIOUS MOTIONS.

THE COURT: ALL RIGHT. I WOULD RESPECTFULLY DENY THAT MOTION. IN MY VIEW THE PREVIOUSLY RULINGS OF THE COURT WERE CORRECT, INCLUDING THE RULING ON THE MISTRIAL MOTION, AS WELL AS THE RULINGS ON THE MOTIONS FOR A DIRECTED VERDICT.

I FEEL THAT THE JURY WAS VERY DILIGENT IN THEIR EFFORTS IN THIS CASE. AS YOU CAN SEE, THEY FOUND THE DEFENDANT GUILTY OF SOME OF THE CHARGES BUT NOT GUILTY ON OTHER CHARGES. SO IT OBVIOUSLY IS SOMETHING THAT THE JURY PAID A GREAT DEAL OF ATTENTION TO AND LISTENED VERY CLOSELY TO THE TESTIMONY AND WEIGHED OUT THE EVIDENCE IN THIS CASE.

IT'S FURTHER EVIDENCED BY THE FACT, OF COURSE, THAT ACCORDING TO MY NOTES, THE MATTER WENT TO THE JURY ABOUT 10 MINUTES TO 3:00, AND THEY RETURNED THE VERDICT ABOUT 7:53 OR ADVISED US THEY HAD A VERDICT ABOUT 7:53, SOME 5 HOURS LATER.

BUT I DO THINK THAT THE COURT'S EARLIER RULINGS ON ALL OF THE MOTIONS THAT WERE MADE AT THE TIME WERE CORRECT, AND I WOULD RESPECTFULLY DENY THE MOTION FOR A NEW TRIAL ON THE

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TWO CHARGES ON WHICH THE DEFENDANT WAS FOUND GUILTY.

ALL RIGHT. MS. MILLICAN, DO YOU HAVE THE SENTENCING SHEETS?

MS. MILLICAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. COME AROUND PLEASE.

(COMPLIED.)

THE COURT: ALL RIGHT. THE COURT NOW HAS COPIES OF THE SENTENCING SHEETS ON THE TWO CHARGES OF KIDNAPING AND CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. BEFORE I CALL ON DEFENSE COUNSEL FOR MITIGATION, LET ME FIND OUT OR ASK THE SOLICITOR PLEASE FOR PRIOR CRIMINAL RECORD.

MS. MILLICAN: THANK YOU, YOUR HONOR. IN 1986 THE DEFENDANT WAS CONVICTED OF ASSAULT AND BATTERY AND TAMPERING WITH A MOTOR VEHICLE.

IN 1992, DRIVING UNDER THE INFLUENCE AND FRAUDULENT CHECK.

IN 1993, DISORDERLY CONDUCT AND ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, RECEIVING STOLEN GOODS.

IN 1997, THE DEFENDANT WAS CONVICTED OF BURGLARY IN THE THIRD DEGREE, USE OF VEHICLE WITHOUT PERMISSION, PETIT LARCENY, AND SIMPLE ASSAULT AND BATTERY. ALSO 1997 A PAROLE REVOCATION.

1998, THE DEFENDANT WAS CONVICTED OF CRIMINAL DOMESTIC VIOLENCE.

IN 2000, TRESPASSING.

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IN 2005, DRIVING UNDER SUSPENSION.

YOUR HONOR, THE DEFENDANT HAS A CONVICTION FROM FLORIDA FROM 1990 FROM DRINKING INTOXICATING LIQUORS IN PUBLIC; THAT'S THE EXTENT OF THE DEFENDANT'S RECORD, YOUR HONOR.

THE COURT: ALL RIGHT. I'LL ADDRESS THE PROSECUTION AND ALSO [redacted], AS THE VICTIM IN THIS CASE, YOU OF COURSE HAVE THE RIGHT TO BE PRESENT THROUGHOUT THE CASE, AND YOU HAVE BEEN. YOU ALSO HAVE THE RIGHT TO ADDRESS THE COURT. SO IF THERE IS ANYTHING YOU WOULD LIKE TO TELL ME, COME ON UP, AND I'LL BE GLAD TO HEAR FROM YOU.

VICTIM: I AM KIND OF SAD, DISAPPOINTED. I KNOW THAT GOD EXIST. I KNOW THAT IF IN THIS MOMENT HE IS NOT GOING TO HAVE WHAT HE REALLY HAVE TO HAVE BECAUSE OF HE TRIED TO KILL ME, HE RAPED ME. HE PUT MY LIFE UPSIDE DOWN. MY FAMILY, MYSELF, WE -- WE ALL HAD A AWFUL EXPERIENCE. AND IT'S PRETTY SAD. IT'S PRETTY SAD THAT WE ARE NO ABLE TO SHOW THE JURY IN THE RIGHT WAY TO -- TO LET THEM KNOW HOW AWFUL, HOW HARD, HOW BAD WAS EVERYTHING. THE ONLY THING THAT ---

THE COURT: LET ME MAKE SURE YOU UNDERSTAND, [redacted]. [redacted]. AND I THINK YOU DO, BUT I WANT TO MAKE SURE YOU UNDERSTAND. THE JURY FOUND THE DEFENDANT GUILTY OF BOTH THE KIDNAPING AND THE SEXUAL ASSAULT ON YOU. YOU

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UNDERSTAND THAT?

VICTIM: YES, SIR.

THE COURT: OKAY. WHAT THEY FOUND HIM NOT GUILTY OF WAS THE BURGLARY AND THE WEAPONS CHARGES.

VICTIM: I UNDERSTAND THAT.

THE COURT: OKAY. ALL RIGHT. GO AHEAD.

VICTIM: [redacted] A [redacted]D. I KNOW THAT. HE KNOW THAT. SADLY WE -- WE -- WE COULDN'T SHOW THE JURY THAT. SADLY, I WAS NO ABLE TO TELL THEM THE TRUE ABOUT WHAT REALLY HAPPENED THIS DAY. I --I COULDN'T TELL THEM HOW TERRIFY I WAS. I ALWAYS THINKING THAT HE WILL COME BACK AND KILL ME. HE WILL COME BACK AND KILL MY BABIES. SADLY, WE COULDN'T SAY THAT. BUT GOD KNOWS.

THE COURT: THANK YOU, MA'AM.

ALL RIGHT. MS. MILLICAN, ANYTHING ELSE ON BEHALF OF THE STATE?

MS. MILLICAN: THE ONLY THING FURTHER, YOUR HONOR, JUST THE STATE ASKS FOR A MAXIMUM SENTENCE ON BOTH OF THESE TO RUN CONSECUTIVE.

THE COURT: ALL RIGHT. BEFORE I CALL ON YOU, MS. SMART, LET ME MAKE SURE THE DEFENDANT DOES UNDERSTAND THE [redacted]XTENT OF THE PUNISHMENT THAT HE IS FACING.

MR. JOHNSON, ON THE CRIME OF BURGLARY[redacted]FIRST DEGREE, THE JURY FOUND YOU NOT GUILTY ON THAT. ON THAT CHARGE YOU COULD HAVE RECEIVED A MINIMUM OF 15 YEARS AND A

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MAXIMUM OF LIFE IMPRISONMENT. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: AND ON THE CRIME OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, YOU COULD RECEIVE UP TO 30 YEARS IN PRISON. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: AND ON THE CRIME OF KIDNAPING, YOU COULD RECEIVE UP TO 30 YEARS IN PRISON. DO YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: AND, OF COURSE, ON THE USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, THAT IS A SEPARATE CRIME FOR WHICH YOU COULD RECEIVE AN ADDITIONAL 5 YEARS, BUT THE JURY FOUND YOU NOT GUILTY OF THAT. DO YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: AND YOU UNDERSTAND THAT THESE TWO CRIMES OF WHICH THE JURY DID FIND YOU GUILTY ARE CONSIDERED VIOLENT CRIMES UNDER OUR LAW. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: HAS YOUR ATTORNEY EXPLAINED TO YOU WHAT IS MEANT BY A VIOLENT CRIME AND THE EFFECT THAT IT WILL HAVE ON YOUR ELIGIBILITY FOR PAROLE?

MR. JOHNSON: NO, SIR.

THE COURT: HAVE YOU EXPLAINED IT TO HIM?

MS. SMART: NO, SIR.

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THE COURT: ALL RIGHT. I WANT YOU TO DO THAT. ALSO, DO YOU UNDERSTAND -- AND BEFORE WE COME TO THAT, DO YOU UNDERSTAND THIS IS CONSIDERED -- BOTH OF THESE ARE CONSIDERED MOST SERIOUS CRIMES, AND THAT IF YOU WERE TO NOW HAVE ANOTHER MOST SERIOUS CRIME WHEN YOU GET OUT OF PRISON, THAT YOU WOULD BE FACING LIFE IN PRISON WHETHER IT'S A CRIME THAT CARRIES LIFE OR NOT. IF YOU HAVE TWO MOST SERIOUS OR THREE SERIOUS OFFENSES OR CONVICTIONS UNDER OUR LAW, UNDER OUR TWO STRIKES, THREE STRIKES LAW, YOU WOULD BE FACING LIFE IN PRISON. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: YOU ALSO UNDERSTAND THAT WHEN YOU ARE RELEASED FROM PRISON, THAT YOU WILL HAVE TO REGISTER AS A SEX OFFENDER. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: ALL RIGHT. AND YOU UNDERSTAND THAT THESE ARE ALSO CONSIDERED NO-PAROLE OFFENSES. SO WHATEVER I SENTENCE YOU TO MEANS THAT YOU WILL HAVE TO SERVE 85 PERCENT OF WHATEVER SENTENCE I SENTENCE YOU TO BEFORE YOU WILL BE RELEASED TO ANY KIND OF COMMUNITY SUPERVISION. YOU UNDERSTAND THAT?

MR. JOHNSON: YES, SIR.

THE COURT: ALL RIGHT. I BELIEVE HE UNDERSTANDS THE CONSEQUENCES OF THE VARIOUS SENTENCES WITH THE EXCEPTION PERHAPS OF VIOLENT. TAKE A MINUTE AND EXPLAIN TO HIM WHAT

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IS MEANT BY A VIOLENT CRIME.

(PAUSE.)

MS. MILLICAN: YOUR HONOR, THE STATE HAS -- I DON'T BELIEVE THAT I MARKED THE BOX MOST SERIOUS ON EACH OF THOSE TWO SENTENCING SHEETS.

THE COURT: OKAY.

(PAUSE.)

THE COURT: ALL RIGHT. YOU UNDERSTAND NOW WHAT IS MEANT AS FAR AS VIOLENT IS CONCERNED AND ITS EFFECT ON YOUR PAROLE ELIGIBILITY?

MR. JOHNSON: YES, SIR.

THE COURT: OKAY. ALL RIGHT. MS. SMART, I'LL BE GLAD TO HEAR FROM YOU WITH REGARD TO ANYTHING YOU'D LIKE TO TELL ME IN WAY OF MITIGATION.

MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. MR. JOHNSON IS FROM BEAUFORT COUNTY, HAS LIVED HERE HIS ENTIRE LIFE. HIS FAMILY IS HERE. AND WE WOULD SUBMIT TO THE COURT THAT IN LIGHT OF THE FACT THAT HE DOES HAVE SOME CRIMINAL CHARGES, THAT THIS IS THE FIRST VIOLENT EVENT THAT HE HAS BEEN CONVICTED OF. WE'D LIKE THE COURT TO TAKE THAT INTO CONSIDERATION WHEN THE COURT IS FASHIONING ITS SENTENCE.

WE APPRECIATE THAT THERE IS NO MANDATORY MINIMUM SENTENCE ON THIS, AND WE'D ASK THAT THE COURT TO CONSIDER A CONCURRENT SENTENCE. I KNOW THAT THE STATE HAS RECOMMENDED

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A CONSECUTIVE SENTENCE. BUT WE'D ASK THAT THE COURT CONSIDER CONCURRENT SENTENCE, AND ALSO TAKE INTO CONSIDERATION THE AMOUNT OF TIME THAT MR. JOHNSON HAS ALREADY BEEN INCARCERATED AT THE BEAUFORT COUNTY DETENTION CENTER.

THE COURT: AND HOW LONG IS THAT? WHEN WAS HE INCARCERATED? FROM THE TIME OF THE ARREST ON THIS CHARGE, SHORTLY AFTER FEBRUARY THE 7TH?

MS. SMART: HE SAYS IT WAS FEBRUARY 13TH OF 2006.

THE COURT: FEBRUARY 13TH OF 2006.

ALL RIGHT. MS. SMART, I'D BE GLAD TO HEAR FROM THE DEFENDANT. BUT TELL HIM, OF COURSE, I DON'T KNOW WHAT HIS INTENTIONS ARE. BUT ANYTHING THAT HE TELLS ME IS ON THE RECORD AND IT COULD HAVE SOME EFFECT ON HIS APPEALS. SO IF HE WANTS TO TELL ME ANYTHING, I'D BE GLAD TO HEAR FROM HIM. BUT CAUTION HIM NOT TO COMPROMISE HIS APPEAL POSITION.

MS. SMART: YOUR HONOR, HE WOULD NOT LIKE TO ADDRESS THE COURT AT THIS TIME.

THE COURT: OKAY.

SENTENCE OF THE COURT:

ALL RIGHT. MR. JOHNSON, I THINK THIS WAS A VIOLENT CRIME AND ONE THAT DESERVES A VERY STIFF SENTENCE. THE SENTENCE OF THE COURT ON BOTH CHARGES, KIDNAPING AND CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IS THE DEFENDANT IS COMMITTED TO THE STATE DEPARTMENT OF

CORRECTIONS FOR A TERM OF 30 YEARS. THEY ARE TO RUN CONCURRENT. HE WILL BE GIVEN CREDIT FOR JAIL TIME SINCE FEBRUARY 13TH, 2006.

I'M NOT RUNNING THEM CONSECUTIVE, BUT THEY ARE 30 YEAR SENTENCE TO RUN CONCURRENT WITH CREDIT FOR JAIL TIME.

GOOD LUCK TO YOU, SIR.

MR. JOHNSON: THANK YOU.

MS. SMART: THANK YOU, YOUR HONOR.

MS. MILLICAN: THANK YOU, YOUR HONOR.

--- END OF TRANSCRIPT OF RECORD ---

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I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE 12TH, 13TH, AND 14TH DAYS OF MARCH 2007.

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

AUGUST 6, 2007

Dianne A. Rutledge

COURT REPORTER

C... #2018001079

Office of the Clerk of Court
RANDOM STRIKE SHEET

JUDGE NAME : King, Howard P.
TRIAL TYPE : Criminal
PANEL ID : 2006GS0701640
COURTROOM CTR

DESCRIPTION : State vs. Nathaniel Johnson

Sorted by: Random Nbr
Trial

	NAME	JUROR NBR	RACE	SEX	STATE/PLAINTIFF Chal	DEFENDANT Strk	Court	REMARKS
1	Durant, Debra W	56	W	F	( )	( )	( )	✓
2	Rodgers, Delores J	167	W	F	( )	( )	( )	✓
3	Johnson, Raymond foreman	103	B	M	( )	( )	( )	✓
4	Miller, Earl C III	141	W	M	( )	( )	( )	✓
5	Flanagan-Wurtz, Janet	62	W	F	( )	D1	( )	
6	Lorris, Paul S	125	W	M	( )	D2	( )	
7	Falciglia, Patrick P	60	W	M	( )	D3	( )	
8	Stokes, Isabel L	194	W	F	( )	D1	( )	
9	Shaw, Louise J	179	W	F	( )	( )	( )	✓
10	Major, Daniel	127	B	M	( )	D2	( )	
11	Wingo, David L	225	W	M	( )	( )	( )	✓
12	Buckenroth, Barbara R	27	W	F	( )	( )	( )	✓
13	Callaway, Ray J	32	W	M	( )	( )	( )	✓
14	Burns, Kathleen G	234	W	F	( )	( )	( )	✓
15	Aiello, Rebecca G	3	W	F	( )	D4	( )	
16	Haworth, James J	85	W	M	( )	( )	( )	✓
17	Trice, Austin	205	W	M	( )	D5	( )	
18	Hagedorn, William E	80	W	M	( )	D6	( )	
19	Salazar, Randolph C	172	H	M	( )	D7	( )	
20	Hipp, Barbara A	91	B	F	( )	D3	( )	
21	Marks, Joyce E	130	W	F	( )	( )	( )	✓
22	Kovalanchik, Henry P	112	W	M	( )	( )	( )	✓
23	VanKeuren, Dean E	207	W	M	( )	( )	( )	✓
24	Olson, Jane L	155	W	F	( )	( )	( )	

Case # 2019-001079

Office of the Clerk of Court
RANDOM STRIKE SHEET

JUDGE NAME : King, Howard P. — Sorted by: Random Nbr
TR[illegible] TYPE : Criminal
PA[illegible] ID : 2006GS0701640 — DESCRIPTION : State vs. Nathaniel Johnson — Trial
COURTROOM CTR

	NAME	JURORNBR	RACE	SEX	STATE/ PLAINTIFF Chal	DEFENDANT Strk	Court	REMARKS
25	Taylor, Lillian L	198	W	F	( )	( )	( )	
26	Middleton, Michael W	140	W	M	( )	( )	( )	
27	Grant, Sara L	74	B	F	( )	( )	( )	
28	Jones, Gevrey D	105	W	F	( )	( )	( )	
29	Magruder, Carol A	236	W	F	( )	( )	( )	
30	Kelly, Anna P	109	W	F	( )	( )	( )	
31	Stevenson, William D III	193	W	M	( )	( )	( )	
32	Maurer, Gary S	134	W	M	( )	( )	( )	
33	Bailey, Ronald C	11	W	M	( )	( )	( )	
[illegible]	Spann, Gaynelle M	191	W	F	( )	( )	( )	
35	Purcell, William J	163	W	M	( )	( )	( )	

Total Number of Jurors: 35

** END OF REPORT **

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL JOHNSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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Case # 2019-001079

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to grant the mistrial motion when the evidence of a prior bad act was not admissible?

Case #2012-001079

STATEMENT OF THE CASE

On September 21, 2006, the Beaufort County Grand Jury indicted Nathaniel Johnson, Jr. on the charges of criminal sexual conduct first degree (CSC), kidnapping, burglary first degree, and possession of a firearm during the commission of a violent crime. On March 12-14, 2007, Johnson proceeded to trial before the Honorable Howard P. King and a jury. He was represented by Stephanie Smart, Esquire. The jury returned a verdict of guilty on the CSC first degree and the kidnapping charge and a verdict of not guilty on the burglary first degree and possession of a firearm during the commission of a violent crime. Judge King sentenced Johnson to thirty years on the CSC conviction and to thirty years on the kidnapping to run concurrently.

Johnson's attorney filed a notice of appeal on March 2[redacted] This appeal follows.

[redacted]

Case# 2019-001079

ARGUMENT

The trial court erred in failing to grant the mistrial motion when the evidence of a prior bad act was not admissible.

On February 7, 2006, [redacted], a married mother with three children, was at home during the early afternoon. A man whom she later identified as Johnson knocked on her door. She consented for him to come in and use the telephone. After using the phone, the man pulled a gun and forced her to the bedroom where he did rape her after an intense fight. [redacted]en ran from the home and found some workmen in the area who helped her. ROA p. 1, lines 3 – 20, p. 12, lines 11 – 22, p. 18, line 11 – p. 19, line 10.

Johnson did not testify but through his attorney in her closing statement maintained that he and [redacted] were having an affair. The evidence of this, according to his attorney, was her statement that her husband would kill them both if he came home and found them; that workmen were in the area and she never yelled for help; that she did not pick him out of two photo lineups; and there was no sign of a struggle in the home. ROA p. 98, lines 4 – 22, p. 99, lines 21 – 25, p. 100, lines 2 – 16, p. 101, lines 14 – 25.

During the direct testimony of Brian Chapman, an investigator with the Beaufort County Sheriff's Department, he testified that a sketch was completed from the description provided by [redacted]. This sketch was circulated throughout the community and Johnson was identified as a suspect. ROA p. 79, lines 3-4, p. 80, line 6 – p. 81, line 5. He learned Johnson's address and went to serve a search warrant there. ROA p. 81, lines 6 – 16. When asked if the defendant was present, Chapman testified:

> **A:** He was. Initially he was ---the reason we served the search warrant, he was arrested for unrelated charges, and then the search warrant was served after his arrest.

Seizure then a search after detained?

Case# 2019-001079

Q: Did you advise the defendant of his Miranda rights?

A: I did.

Ms. Smart: Objection, Your Honor. Side bar.

The Court: All right.

(A bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)

The Court: Ms. Rutledge, if you'll make a note on your tape where you are right now for my benefit, please. All right. You may proceed.

Ms. Milligan: Thank you, Your Honor.

ROA p. 81, lines 17 – p. 82, line 5.

The State continued with the direct questioning of Chapman. Later, after numerous questions and still during his direct testimony, when asked by the State if he were able to obtain a DNA sample from the defendant Johnson, Chapman replied:

A. He was in the Beaufort County Detention Center...

Ms. Smart: Objection, your honor.

The Court: All right. The jury will disregard where he was, just tell how you came to get the sample. The first part of that statement will be stricken.

ROA p. 83, lines 12 – 23.

The judge then excused the jury and allowed the State to proffer the testimony regarding the circumstances of how the DNA was obtained. The judge said:

The Court: All right. Ms. Milligan, you may proffer the testimony keeping in mind the prohibitions under Rule 608 specific instances of conduct. But I'll hear from you.

ROA p. 84, lines 4 – 15.

Case # 2012-001078

During the proffer, the judge asked investigator Chapman why Johnson was in the Beaufort County Detention Center, and Chapman replied that he was arrested for unrelated charges to this incident. ROA p. 85, lines 18 – 22. Then the judge asked the defense, Ms. Smart, what her position was regarding the proffer by the State.

> **The Court**: All right. What's your position with regard to the proffer as made by Ms. Milligan---not the questions I asked, because I asked him and that's when he said the unrelated charges, which I don't think is admissible. But go ahead with whatever arguments you might have.
>
> **Ms. Smart:** Your Honor, clearly, prior bad acts are inadmissible. And when---
>
> **The Court:** Will you stipulate that the officer obtained a sample of his DNA?
>
> **Ms. Smart:** Yes. They have two samples.

ROA p. 86, lines 1 – 11.

The court directed the State and defense to get together and write the stipulation concerning the obtaining of the DNA from Johnson. ROA p. 86, lines 20-22. After the stipulation was agreed to, the judge said:

> **The Court**: With regard to this particular part of the testimony, my recollection is that this defendant has not testified in the presence of the jury or maybe he did. I'm not sure.

ROA p. 87, lines 19 – 22.

After explaining that he was going to publish the stipulation to the jury, the judge asked the defense if she had any objection to that. The defense attorney, Ms. Smart, replied:

> **Ms. Smart**: None by the defense, Your Honor. However, I would have to renew my objection for the record—I'm sorry. Renew my motion. I don't think I made my motion.

ROA p. 88, lines 3 – 15.

The judge then stated what he believed the process had been regarding the defense's objection and motion.

> **The Court**: Now, prior to that the witness did testify as I recall that he (Johnson) was arrested for unrelated charges. And after the answer was given, the next question, which I thought is what the objection was going to be—but to the previous question and answer which had already been given. And that was the objection that was interposed at that time, and that's the timing of it as I recall. Ay which time, Ms. Smart requested a side bar and we had a side bar, and she indicated that she objected to the testimony about being arrested for unrelated charges and had a motion in connection with that. I told her that I would mark it as a motion being timely made at that point. And I 'll be glad to hear from you with regard to your motion, Ms. Smart.

ROA p. 89, lines 2 – 17.

The defense argued that the rules of evidence indicate that prior bad acts are inadmissible unless the defendant were to take the stand. She said there is case law saying that arrests are not admissible. ROA p. 89, lines 18 – 22. The judge asked if her objection and motion were based on Rule 608 and she said yes. ROA p. 92, lines 3 – 6.

She continued to argue that Johnson had not testified and that the jury had heard twice that he has a prior criminal history for unrelated charges and that that was prejudicial to her client, Johnson. The judge disagreed saying that the jury has heard it only once. The defense pointed out the two times which were after the search warrant testimony and the DNA testimony. The judge said that Johnson being at the detention did not necessarily imply an arrest. The defense attorney said that the jury then knew that when he was being questioned about this incident, he was at the Beaufort County Detention Center on unrelated

charges and that was clearly a bad act. The judge said: "I don't quite agree with you." ROA p. 90, lines 1 – 25.

The State argued that this was just a minor thing that he was arrested on unrelated charges as it was just an arrest and not a conviction. The State's argument focused on the taking of the DNA and establishing the chain. The State continued to argue this even after the judge explained that the concern was the testimony regarding his arrest for unrelated charges before they even got to the DNA. ROA p. 91, lines 1 – 25. Regarding Rule 608, the State said that the testimony was not offered to attack Johnson's credibility but that it was part of establishing a chain of evidence. ROA p. 93, lines 8 – 16.

The judge denied the defense's motion for a mistrial. ROA p. 93, lines 18-19. He stated that the testimony only said he had been arrested for unrelated charges which the judge said was not evidence of a specific bad act. However, the judge had previously said that the testimony by Investigator Chapman regarding Johnson's arrests for unrelated charges was not admissible. ROA p. 86, lines 1 – 5. Even with saying this, the judge did not offer a ruling on the first objection nor did he issue a curative instruction when the testimony was first admitted. ROA p. 81, line 18 – p. 82, line 5. He found that Rule 608 was not applicable because it did not go to the credibility of the witness and that the probative value outweighed any prejudicial effect. ROA p. 93, line 25 – p. 94, line 3, p. 94, lines 23 -25. However, the judge had clearly thought Rule 608 may be a problem as he warned the State to be mindful of it. ROA p. 84, lines 13 – 18. The judge stated on the record that prior to trial, the defense counsel was asked if she would stipulate to the chain of evidence and she said no. The judge then said: "This could have been avoided very easily by stipulating in advance the stipulation that the parties have now entered into". ROA p. 94, lines 4 – 14.

The judge then told the defense that he did not think a curative instruction was necessary but he would instruct the jury to disregard any testimony of any arrest. The defense said that was sufficient. ROA p. 94, line 24 – p. 95, line 11.

The decision to grant or deny a motion for a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. Id. A trial court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2007). In Johnson's case, the trial judge abused his discretion based on an error of law which was extremely prejudicial to Appellant Johnson. The judge denied the defense' motion for a mistrial in error.

Rule 608 (b) of the South Carolina Rules of Evidence stares:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined had testified.

Rule 608, SCRE.

Although Rule 608 may not be totally applicable since the witness was testifying on direct and not on cross-examination, Investigator Chapman's testimony at the first instance when he stated that he served the search warrant because Johnson had been arrested on unrelated charges certainly impacted the character of Appellant Johnson not only for truthfulness but also for any other bad acts. Prior bad acts which are independent and unconnected to crime for which accused is on trial, are inadmissible for purposes of proving that accused possesses criminal character or has propensity to commit crime. State v. Diddlemeyer, 296 S.C. 235, 371 S.E.2d 793 (1988).

The State's argument that the testimony was not introduced to attack the credibility of Johnson but was necessary to prove the chain of evidence does not apply to the first instance regarding the arrest for unrelated charges because the DNA evidence had not even been discussed at that point. At the second instance when Chapman said Johnson was in the detention center was introduced under the guise of being necessary to prove the chain of evidence but was again only a "back door " way of the State making sure that the jury knew Johnson had a criminal history. The State did not offer any argument as to why the first testimony about the arrests should be admitted.

In the case of State v. Hartfield, 272 S.C. 407, at 411, 252 S.E.2d 139 at 141 (1979), the court said:

> It is common knowledge that a substantial portion of the population...look with disdain upon homosexuals. When used for any other purpose than to prove or disprove some fact in issue, evidence of homosexual relationship tends to become an attack upon the character of the defendant.

The same analysis applies to a person who is incarcerated in jail or prison. It is common knowledge that a substantial portion of the population look with disdain upon

people who are sent to jail. Therefore, the testimony that Johnson had been arrested for unrelated charges was more prejudicial than probative.

Evidence of other crimes is never admissible unless necessary to establish material fact or element of crime charged, and even if evidence of other crimes is deemed relevant and admissible, evidence may still excluded if its probative value is substantially outweighed by danger of undue prejudice or misleading jury. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In Johnson's case, the evidence that he had been arrested on unrelated charges was not necessary to prove a fact or element of the crime. It was more prejudicial than probative.

The South Carolina Court of Appeals held in State v. Primus , 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000) that the defendant was not required to request curative instruction, mistrial or new trial in order to preserve issue for review because the objection had been overruled. If the objection had been sustained, then the mistrial motion and curative instruction would have been necessary to preserve the issue for appeal. Id. In Johnson's case, the judge did not rule on the first objection immediately but proceeded with the trial for quite some time. The judge stopped to hear the defense's motion only after the second time the testimony was offered. The defense did make the objection to the testimony about the arrests on unrelated charges. The actions of the court in proceeding without ruling on the objection and not offering an immediate curative instruction indicate that the judge had overruled the defense objection to the first testimony by Chapman concerning the unrelated arrests. ROA p. 81, line 18 – p. 82, line 5.

When objection is timely made to improper remarks of counsel, judge should rule on objection, give curative charge to jury and instruct counsel to desist from improper remarks.

Case #2019-001079

McElveen v. Ferre, 299 S.C. 377, 385 S.E.2d 39 (Ct. App. 1989). In State v. Primus, *supra*, the Court ruled that because the solicitor's argument was improper, the trial court erred in allowing it, but that the court should have sustained defense counsel's objection and immediately issued a curative instruction. In Johnson's trial, the judge did not immediately rule on the objection and did not immediately issue a curative instruction.

Defense counsel knew from the judge's demeanor during the trial, that it was futile to object to the curative instruction. In State v. Covert, *supra*, Justice Anderson wrote in his concurring opinion that our courts have adopted the doctrine of futility which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused. Johnson's counsel was being punished or coerced by the court into stipulating to the chain of evidence. The judge interrupted her when she initially tried to explain her objection by asking her if she would stipulate to the chain. The judge said in his ruling that defense counsel had the opportunity before trial to stipulate to the chain. Defense counsel did not want her client to suffer any further consequences.

The mistrial should have been granted because the prejudice clearly outweighed the probative value. The jury was told twice that Johnson was in jail and once that he had other charges. Johnson did not even testify and the jury still heard the criminal history. This in itself was unfair and prejudicial. No curative instruction can remove from the minds of the jury what is already before it and especially when it was placed before it twice.

For the above reasons, the conviction should be vacated.

Case #2019-001079

CONCLUSION

Based on the foregoing reasons, the conviction should be vacated.

Respectfully submitted,

X _____

LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2008.

Case# 2019-001079

CERTIFICATE OF COUNSEL

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

April 7, 2008

X _____

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Attorney for Appellant

Case # 2019-001079

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL JOHNSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of April, 2008.

LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2008.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017 .

Case # 2019-001079

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2009CP0701050

STATE OF SOUTH CAROLINA)
) In the Court of Common Pleas
County of Beaufort)

2009 MAR -9 PM 2:18

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Mr. Nathaniel Johnson #211578
Full name and prison number, if any, of applicant.)

v.)

The State)
Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Beaufort County Detention Center

2. Name and location of Court which imposed sentence Court of General Sessions Beaufort, South Carolina

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 06-GS-07-1640, 1641, 1642, 1643
   (b)
   (c)

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) March 12th-14th 2007 30yrs.
   (b)
   (c)

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5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty The jury returned a verdict of guilty

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. SC. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Unpublished Opinion No. 2008-UP-690

ii. We decide this case without oral argument pursuant

iii. to Rule 215, SCACR.

(c) the date of each such result:

i. Submitted December 1st 2008 - Filed December 11th 2008

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. This opinion has no precedential value. It should not be cited

ii. or relied on as precedent in any proceeding except as provided

iii. By Rule 239(d)(2) SCACR.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Prosecutorial misconduct

(b) Violations of my Sixth, Fifth, and Fourteenth Amendments that

(c) guarantee of due process of law: Ineffective Counsel.

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10. State concisely and in the same order the facts which support each of the grounds set out in (9).

(a) Prosecutorial misconduct - where the prosecutors may conceal evidence or misrepresent it or influence juries by impugning the character of witness

(b) Guarantee of due process of law - which includes, preindictment lineups, 2) booking procedures, 3) Grand Jury investigations 4) Appeal beyond the first review, 5) Disciplinary proceedings in correctional institutions, 6) pathbreaker revocation hearings.

(c) Ineffective counsel - whereas my attorney did not object in a timely matter nor da attorney represent in the best interest of client.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

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(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Prosecutorial misconduct. Courts have been more concerned prosecutors who use their

(b) due process of law. lack of discretion in a vindictive manner to punish defendants for their understanding.

(c) Ineffective Counsel. Lame to the law. Defendant exercised his Miranda rights.

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No Representation Relief of Counsel Mr. Bell

(b) your trial, if any? yes Mrs. Stephanie Smart

(c) your sentencing? yes 30yrs.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

yes. Direct Appeal

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

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15). Prosecutorial misconduct vindictive behaviors used by prosecutors on defendants who excercise their legal rights

a) Ineffective Counsel - in the pretrial services I've been appointed Mr. Bell as attorney. Defendant excercised his legal rights in request for relief of counsel which was granted. They appointed Mrs. Stephanie Smart from the same office which was bias and prejudice. Therefore, defendant could not be properly represented with guarantee due process of law.

Defendant excercised his miranda rights

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Mr. Bell Beaufort, SC. Public Defender Office

ii. Miss. Stephanie Smart Beaufort, SC. Public Defender Office

iii. Ms. La Nelle Durant 1330 Lady Street, Suite 40 Columbia, SC. 29201

(b) the proceedings at which each such attorney represented you:

i. Pretrial Services Request for Relief of Counsel.

ii. Jury trial Courts Trial attorney Miss Stephanie Smart

iii. SC. Courts of Appeal Appellate attorney Ms. La Nelle Durant

18. State clearly the relief you seek in filing this application.

Judicial reprieve, or Intermediate sanctions, or a Residential Community Corrections, or Community treatment program

19. Are you now under sentence from any other court that you have not challenged?

No

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STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF Beaufort)

I, Nathaniel Johnson #, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Nathaniel Johnson

Sworn to and subscribed before me
This 5 day of March, 2019.

Debra Sims L.S.
Notary Public for South Carolina
My Commission Expires 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Nathaniel Johnson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Nathaniel Johnson
Applicant

Sworn to and subscribed before me
This 5 day of March, 2019

Debra Sims L.S.
Notary Public for South Carolina
My Commission Expires: 11-4-2015

Case# 2019-001079

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson, #211574, Applicant, v. State of South Carolina, Respondent.	2009-CP-07-1050 **RETURN**

2009 JUL 16 PM 12:47
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

In response to the post-conviction relief application filed on March 9, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct – 1st degree (2006-GS-07-1641), burglary – 1st degree (2006-GS-07-1642), and use of a firearm during commission of a violent crime (2006-GS-07-1643). Stephanie Smart, Esquire, represented the Applicant. On March 12-14, 2007, the Applicant proceeded to trial, after which a jury found him guilty of kidnapping and criminal sexual conduct and not guilty of burglary – 1st degree and use of a firearm during commission of a violent crime. The Honorable Howard P. King sentenced the Applicant to confinement for thirty (30) years for kidnapping and thirty (30) years for criminal sexual conduct. The sentences were to run concurrently.

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A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by the parties, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2008-UP-690 (S.C. Ct. App. filed December 11, 2008). The Remittitur was issued on December 30, 2008.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

Attached and incorporated herein by reference are the records of the Beaufort County Clerk of Court, the records of the South Carolina Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' Opinion affirming the conviction, and the Remittitur dated December 30, 2008.

III.

In the Applicant's first claim, he alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds

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for relief. Moreover, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

IV.

The Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Finally, the Applicant alleges that his counsel was ineffective. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial

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process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Matt J. Fr
Attorneys for the Respondents

July 14, 2009.

Case # 2019-001079

State of South Carolina)	In the Court of Common Pleas
)	Fourteenth Judicial Circuit
County of Beaufort)	2009-CP-07-01050

Nathaniel Johnson,

Applicant,

Vs.

State of South Carolina,

Defendant.

Transcript of Record

August 30, 2011
Beaufort, South Carolina

B e f o r e:

The Honorable D. Craig Brown, Judge

A p p e a r a n c e s:

Timothy M. Wogan, Esquire
Attorney for the Applicant

Matthew J. Friedman, Esquire
Attorney for the Defendant

Bonnie H. Kelly
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION					PAGE NO.
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STEPHANIE SMART-GITTINGS					
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E X H I B I T S

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A-3	SLED Report, 06/20/2006	57
A-4	Beaufort County Sheriff's Department Documents	57
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THE COURT: Mr. Wogan, you ready to proceed, sir?

MR. WOGAN: Yes, Your Honor.

THE COURT: Mr. Johnson, if you'd come around, please, sir.

(Mr. Johnson complies.)

THE COURT: State ready to proceed

MR. FRIEDMAN: Yes, Your Honor.

THE COURT: All right. All right. Mr. Wogan, you may proceed.

MR. WOGAN: Your Honor, I'd like to call my first witness, Stephanie Smart-Gittings.

THE COURT: Ms. Gittings, if you'd come around and be sworn.

(The witness complies.)

THE COURT: How are you doing today?

THE WITNESS: I'm doing well, Judge.

STEPHANIE SMART-GITTINGS, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WOGAN:

Q Stephanie, how are you doing today?

A I'm doing well. Thank you.

Q Good. Why don't you go ahead and state your full name for the court reporter.

A Stephanie Smart, S-m-a-r-t; Gittings, G-i-t-t-i-n-g-s.

Q Do you mind if I call you "Stephanie"?

A Of course not.
Q I've known you for a number of years. How long have you been practicing?
A Since 1999.
Q Okay. And that entire time has it been with the Public Defender's Office?
A Yes.
Q Okay. And that has been entirely, obviously, the -- the defense of criminally accused?
A Yes.
Q Okay. And how did you get to the point where you represented Mr. Nathaniel Johnson?
A Mr. Bell, in the Beaufort Public Defender's Office, had been appointed the case. I believe Mr. Johnson made a motion to have Mr. Bell relieved, and Judge King appointed me to represent him.
Q And what were those -- what were you representing him for? What charges?
A Burglary first, criminal sexual conduct, kidnapping, and arm robbery.
Q Okay. And at what point into the process did you become involved in the case?
A Within months of the trial notice, I believe. Maybe three months at the most.
Q Was there a preliminary hearing in this case?

A I don't recall.
Q You -- you don't recall attending one?
A Mr. Bell had represented him, I think up until the trial notice.
Q Okay. Do you recall when the -- the incident -- this incident -- underlying incident took place?
A I don't.
Q February of 2006. Would that ---
A Probably ---
Q --- be generally ---
A --- about that time, yeah.
Q How long -- and you may have already answered this and I apologize. How long had Mr. Johnson been arrested on these charges at the time you got involved in the case?
A I don't know.
Q Would you -- do you have a copy of your file?
A I don't have my -- I sent the file back to the office. I don't have the file.
Q And you -- since 1999, how many "D" -- DNA cases have you handled?
A This is my first.
Q This was your first DNA case?
A Yes.
Q Did you file a Rule 5 and a *Brady* motion in this case?
A Mr. Bell did.

Q Mr. Bell did. Okay. And did you review the file before today's hearing?
A Yes.
Q Okay. Do you recall seeing that Rule 5 and that *Brady*?
A The discovery? The motion that was filed or the -- the ---
Q The motion ---
A --- discovery that ---
Q --- that was filed.
A I can't recall.
Q Do you recall receiving documents from the Solicitor's Office based on that Rule 5 and the *Brady*?
A Absolutely.
Q Okay. Do you believe that you were involved in the case when the first production of documents from the Solicitor's Office and the Police Department took place?
A I was not.
Q Mr. Bell was?
A Yes.
Q Okay. And did Mr. Bell turn the entire file over to you when you took over the case?
A Yes.
Q Okay. But you do remember receiving documents from the Solicitor's Office and from the Police Department?

A Yes.

Q What is your general process in working criminal cases? Just give me -- give us an idea of what you generally do, your standard practice is once you've been appointed to a case?

A Back then, when the receptionist would open the file, our investigator, either Mr. Chapman or Mr. Young, would go to the jail, interview the client, and then give the file to the attorney.

If the client was in jail, then we would do -- I -- I would do a subsequent jail visit, conduct any interviews if they give me names of witnesses. Mr. Chapman and -- or Mr. Young and myself would go out interview witnesses. And then we'll meet with the client and proceed thereafter, whether or not the case was a -- would proceed as a trial or as a guilty plea.

Q And that is not the Mr. Chapman who's the police officer, Mr. Chapman in this case?

A Rick Chapman.

Q What's that?

A Rick Chapman.

Q Okay. All right. Do you recall going to the jail and meeting with Mr. Johnson?

A Yes. We were appointed -- I was appointed to the case during a term of court. And I think the subsequent term of

court was when we were ordered to try the case. I was in pre-term labor, so I was surprised that Judge King ordered me to try the case. But I did subsequently meet with Mr. Johnson, I believe several times, and discussed the case thereafter.

Q Let me ask you this question: What was the period of time between the time you were appointed and the time you were ordered to trial?

A Maybe two months, if I recall.

Q And at that point, you were in pre-term labor?

A Uh-huh. Yes.

Q Did you file a motion to have the case continued?

A I asked Judge King why he appointed me the case, and he said, "Ms. Smart, do the case." So I didn't file any subsequent motions. No.

Q And that would include a motion for continuance?

A No, I didn't file a motion for continuance.

Q Did you feel that you could properly prepare this case within that period of time, given the fact that you had health conditions?

A I did. I didn't take my bed rest. I went out to the scene with Mr. Chapman. I interviewed -- there were two witnesses, two eyewitnesses, I -- I think maybe worked for the electrical company or -- or something. But there were two witnesses that I interviewed.

Met with Mr. Johnson on several occasions to discuss the defense of the case. I had retained a DNA expert and I worked with him. And when I talked to Mr. Johnson about a DNA issue, he just changed my defense on me.

Q Okay. The two witnesses that you went out to talk to, were they -- were they the construction workers that were by the house ---

A Yes.

Q --- when the event ---

A Yes.

Q --- took place?

All right. And you believe that it was a period of months between being appointed and trying this case?

A Yes.

Q When you say "period of months," would it be one month? two months? three months?

A Two months at the most.

Q Is there a reason why you did not file for a continuance?

A Mr. Hood didn't like us to file for continuances. So when I talked to him about it and he said you can do it, and you know, I -- I just did it.

Q So you -- you -- so your decision on whether to file a motion for a continuance was based on your conversation with Mr. Hood?

A And the fact that I knew that I had done the -- the ground work when it was trial time. So I was very well prepared to try the case.

I didn't think that I needed any further time. I had spoken to all the witnesses, spent quality time with Mr. Johnson, so I was very well prepared to go forward.

Q How many times do you believe that you met with Mr. Johnson prior to trial?

A Probably about two to three times. And I think the night before the trial, when we went over DNA evidence and then he -- he changed his story and told me that -- initially he had said that he didn't rape the lady, that it was a misidentification case. And that's why we retained the DNA expert, so that we could challenge the DNA evidence.

And I believe on the eve of the trial, maybe two nights before the trial, he told me that he had had a relationship with the lady -- with the victim in the case, and that he didn't want me to vigorously cross-examine the victim, because he was in love with her. And so that completely changed my defense strategy.

Q Do you recognize the name "Ronald Ostrowski"?

A Yes.

Q Who is Ronald Ostrowski?

A He's the DNA expert.

Q Is he the expert that you consulted with?
A Yes.
MR. WOGAN: Your Honor, may I approach?
THE COURT: Yes, sir.
Q Stephanie, you have graciously allowed me to review your entire file. And in -- in that file -- since you don't have it today -- in that file was information related to Dr. Ostrowski.

Can you tell me when your first thought or concern to hire an expert -- when you developed that concern and -- and said to yourself, I need to get an expert?
A The date of this letter is February the 28th.
Q Okay. And do you believe that would have been the first day that you would have spoken to Dr. Ostrowski?
A We'd spoken on the phone prior to this. And then I submitted the letter to him, so that I could obtain funding.
Q Do you recall how you got to Dr. Ostrowski?
A Wallace Avis from the Aiken Public Defender's Office had used her -- used him -- I'm sorry -- and suggested that we use him.
Q And did -- were you required to get an order to retain this expert?
A Yes.
Q Okay. And prior to the trial, how many conversations

do you think you had with Dr. Ostrowski?

A I looked at his bill prior to coming here. So I know there were at least six conversations with him.

Q Okay. And I believe in this compilation of documents may be Dr. Ostrowski's bill. Would that help -- reviewing that, would that help refresh your memory how many conversations you had with the DNA -- or the expert prior to trial?

(Brief pause while witness reviews document.)

A From his bill, looks like I only had one conversation with him.

Q Okay. And do you recall receiving this February 28, 2007 letter back from Dr. Ostrowski?

A It's a fax. So I'm not sure if he faxed this back to me, or we faxed it to him.

Q But clearly that letter was addressed to you.

A Yes.

Q And it's signed by him.

A Yes.

Q Okay. And attached to that letter, is there a list of documents that he felt were necessary -- or that he had mentioned were necessary for you to try to obtain?

A Yes.

Q Okay. And the first one would be -- according to his letter, would be hard copies of all electropherograms?

A Yes.
Q Correct?
A Yes.
THE COURT REPORTER: I'm sorry?
MR. WOGAN: E-l-e-c-t-r-o-p-h-e-r-o-g-r-a-m-s.
Q Did you obtain those prior to trial?
A I honestly don't recall.
Q If ---
A It's not in this packet that you gave me, so I don't recall.
Q And that packet that I gave you would be your file?
A No.
Q Okay. This is important. If we need to, I'll ask the Judge so we can go back and get your file to find out whether any of those documents, that the expert was requesting you obtain, are in your file.
A If necessary, I could ask Mr. Chapman to bring that over here. But I think to relevancy, when Mr. Johnson told me that he had ha[redacted]sex with the victim and I abandoned the DNA defense, I don't think it's relevant.
Q Okay. So you -- you do not believe that obtaining that information would be relevant to the DNA defense?
A If I had called him to testify, it would have been.
* But when -- when we reviewed the results of the DNA -- and if I recall, there was a sheet, a bedsheet. The testimony

from the victim was that the incident had occurred at the -- - the foot of the bed.

And so we -- we were analyzing the DNA to compare it to Mr. Johnson, because there were different specimens of DNA. And Mr. Johnson's DNA was all over the bedsheet.

And when I discussed that with him, that's when he admitted that they had had consensual sex and they had this relationship -- ongoing relationship. And when I discussed that with Mr. Johnson and he said that the DNA wasn't an issue anymore, because it was his DNA -- he admitted that it was his DNA -- then I didn't think that the DNA analysis was an issue.

Q Let's go ahead and -- and since we're talking about the DNA, let's go ahead and see if we can get some -- some clarification on the DNA.

I'm gonna show you what appear to be some documents from the Beaufort County Sheriff's Office related to this case. The first document I'm looking at is -- it says "CSC Kit" with name [redacted]."

Based on your many years at the Public Defender's Office, have you seen a document like this before?

A Yes.

Q And what is this document?

A Evidence Submittal Form.

Q Okay. And that -- could it be -- could we -- can we

believe this is Evidence Submittal Form for a criminal sexual conduct kit for Anna Rodriguez.

A Yes.

Q Okay. And then the second one is -- mine has (as read): "No. 1, bedsheet collected from victim's bed; No. 2, two Q-Tip swabs from victim's bite wound; No. 3, one Memorex CDR/pictures of victim's injuries."

Is that what your document shows?

A Yes.

Q Would this be an evidence submittal that the -- that someone from the Sheriff's Department is submitting this type of evidence into the Sheriff's department?

A Yes.

Q No. 3, mine is (as read): "One evidence bag containing one pair of pants."

A That's correct.

Q And again, that would be evidence submittal from a deputy to the Sheriff's Department Evidence Department with -- for a pair of pants.

A Yes.

Q All right. Next one is a (as read): "Paper bag with one black and yellow jacket, with cap "XL," and one pocket label."

A That's correct.

Q Same thing that -- the deputy would be submitting that

into evidence at -- into the Evidence Department of the Sheriff's Department.

A Yes. Correct.

Q Okay. Next one is a (as read): "Plastic spoon from Nathaniel Johnson, and a napkin from Nathaniel Johnson." Evidence Submittal Form to the Sheriff's Department?

A Yes.

Q And then the last one I've got is a (as read): "Daisy BB gun and a Crossman Airgun BB pistol."

A Yes.

Q Okay. Based on your recollection of this case, was there any other physical evidence that was submitted to the Sheriff's Department other than what we've just gone through?

A No.

Q What is a criminal sexual conduct kit?

A A rape kit.

Q And when you said the -- the sheet you were talking earlier -- is that on page No. 2 that they're talking about the bedsheet collected from victim's bed, is that the bedsheet you were talking about?

A Yes.

Q And you -- did you feel that that was an important piece of evidence?

A Yes.

Q Did you think that DNA on that piece of evidence was -- was -- would have been important one way or the other for the jury?

A Yes.

Q Okay. And -- and so DNA in this case and DNA being on that bedsheet was an important piece of evidence that the jury was going to hear.

A Yes.

Q Okay. And that important piece of evidence could help sway the jury towards a guilty conviction; did you believe that?

A Actually, I was hoping that it would sway the jury to a not guilty, because as I stated earlier, she had indicated that the incident had taken place at the foot of the bed. And the evidence was contrary to what her testimony was, that he had not -- the only part of the bed that he had been on was the foot of the bed. And she also testified that he did not ejaculate.

And so my argument was that they had -- they were, in fact, lovers. And the evidence showed that they were lovers, because the DNA -- his semen was covered -- covering the bedsheet.

And so because he had told me that they had this consensual relationship, I used all the DNA evidence to his advantage to say it can't possibly have occurred the way

she tells you that it occurred, because his semen is all over this bed, which would corroborate our defense that this was a consensual relationship.

Q Did you explain that to the jury in your opening statements?

A I can't recall, but I have the transcript. But I do recall maybe using it in my closing, because I read it either in the advance sheet or in the transcript.

Q So your ---

A And I also remember holding the sheet up and showing where the semen was all over the sheet.

Q So your thought was the DNA was gonna be helpful for Mr. Nathaniel Johnson.

A Because he told me that he had had sex with her on numerous occasions.

Q If -- if you had your choice, would you have wanted to keep that DNA evidence out?

A If he had -- if he had not told me that they had had consensual sex and that they were in a relationship, then I would have tried. And that's the only reason why we retained the expert, because he had initially said that it was a case of mistaken identity.

And she had not identify him in a photo line-up, and I -- I capitalized on that to show that they had had an existing relationship, because she didn't identify him in a

photo line-up. The picture that she described for the sketch artist wasn't exactly like him. And my argument to the jury was she was trying to protect him by not identifying him.

And also, the facts were that her husband came up as he was leaving on a bicycle. And I argued to the jury that the reason why she screamed "rape" was because her husband showed up.

Q Would it be your belief that the only thing based on the bad -- what you believe to be a bad identification, the only thing connecting him to the scene of this incident was the DNA?

A Right.

Q All right. Did you consider at all filing a pre-trial motion to exclude the DNA?

A I did not.

Q Did you file a pre-trial motion to attempt to exclude the DNA?

A I did not. And again, that's based on the fact that he told me he had a consensual relationship.

Q Irrespective of what your client told you at that point, you agree that the only thing connecting him to the scene of this incident was DNA evidence.

A Right. Because there was no -- I don't believe that there was a pre-trial identification.

Q And -- and you entered into evidence this bedsheet.
A I didn't enter it. The State entered it into evidence. But of course, I tried to use it to my advantage.
Q If your -- did you say you have the transcript up there?
A Uh-huh.
Q Would you turn to page 202?
(The witness complies.)
A I -- correction. I entered it into evidence.
Q So you entered this sheet that you said had the client DNA all over it into evidence?
A Yes.
Q And if I remember correctly, the -- somebody from SLED took out five samples of this sheet; is that correct?
A That's correct.
Q Is that your recollection?
A Yes.
Q Okay. And of those five samples that were taken off of this sheet, how many of those samples tested positive for -- were consistent with my client's DNA?
A I can't recall.
Q Okay.
A If you could direct me to it.
Q Well, let me -- let me -- let me lay the foundation

here for the -- for this positive and negative stuff.

Do you recall the -- the pieces of evidence that were sent to SLED for testing? Do you remember -- recall what they were?

A From the evidence of the submittal sheet, yes, I do.

Q Okay. Have you ever seen any document similar to what I just handed you?

A Yes.

Q Okay. And what would you -- how would you identify that document?

A This is a -- a SLED evidence report. Evidence was submitted for analysis and -- there was a fitted sheet and pants from [redacted] who was the victim in this case, and the results of that analysis.

And this particular -- there was -- there was hair -- there was evidence found on the sheet, but no hair found on the pants. And the evidence that was collected from the sheet was sent to the DNA department.

Q So that would be the evidence slip or document from SLED for the fitted sheet that we're talking about ---

A Yes.

Q --- and a pair of pants that were taken from the victim.

A Yes.

Q All right. And that's the fitted sheet that you

entered into evidence.

A Yes.

Q And that's the fitted sheet that had -- according to your testimony, had my client's DNA all over it.

A Yes.

Q And if you -- if you would refer back to the Sheriff's Department documents that I just gave you, who turned -- who turned that sheet into the Sheriff's Department evidence?

A Lance Corporal Chapman.

Q And Lance Corporal Chapman was a witness at the trial of this case; was he not?

A Yes.

Q Okay. And who received that sheet from the Sheriff's Department?

A Aileen Rios.

Q Was Ms. Rios a witness at this trial?

A I can't recall.

Q Okay. I'll refer you to the trial transcript.

A Okay.

Q In the first couple of pages it lists the witnesses, and see if you can review that.

(The witness complies.)

A She was -- I don't believe she was.

Q Okay. And if you'll look at the SLED statement

regarding the fitted sheet and the pants, who was the forensic technician who dealt with the fitted sheet and the pants?

A Emily Rhinehart.

Q Okay.

A Or Janice Bryson.

Q Was Janice Bryson a -- a witness at this -- this trial?

A She was not.

Q Okay. And her lieutenant is Emily Rhinehart. Is Emily -- was Emily Rhinehart a witness at this trial?

A She was not.

Q Okay. If you could turn to the trial transcript on page 246.

(The witness complies.)

A Okay.

Q Okay. Down at line 22. If you'll read line 22 through 25.

A (As read) "Your Honor, for purposes of the record, the State would seek to just have No. 15, the State's number, assigned to items 2.1, 2.3, and 2.4, which are three cuttings of the sheet as a group."

Q Okay. And would that indicate to you that the State had three cuttings out of the sheet that were important enough to them that they're identifying it?

A That's correct.

Q Okay. And then on page 247, line 9, the Court addresses you and -- or apparently the solicitor, and says (as read): "All right. Show him, Ms. Smart, the ones that he proposed to introduce as State's No. 15."

Would that indicate to you that they're attempting to introduce those three cuttings into evidence as State's No. 15?

A That's correct.

Q Okay. And if you'll look at page 247, line 19. Did you have any objection to them introducing those three cuttings?

A No objection.

Q Okay. Given what we spoke about, were you concerned at all regarding the chain of custody of the sheet?

A I was not.

Q Okay. At that point in the trial, given the fact that Ms. Rios, Ms. Bryson, and/or Ms. Rhinehart were not witnesses in the trial, do you believe you had a proper chain of custody for that sheet?

A I did not -- I don't know if I stipulated to the chain of custody or not, but I certainly didn't challenge it.

Q Did you consider the DNA evidence so unimportant in this case that you would stipulate to a chain of custody?

A In this, like I said, because he had said that he --

it was his DNA, then I -- I felt like I could stipulate to it.

Q Did you explain to him how -- would you consider this DNA evidence in front of the jury to be -- be damning to his case, given the fact that it's the only piece of evidence you said that places him at the scene of the incident?

A Initially, for my initial defense that it was not him, yes.

Q Did you explain that to him?

A I did.

Q Okay. Did you explain to him that -- that it was so important that you needed to try to exclude it before trial?

A I didn't -- I don't know if I explained that to him. I can't recall. I do remember just being frustrated with him that he changed the defense prior to trial, right before trial. And I explained to him that I literally stayed up nights for weeks trying to get ready. And then at the last minute he tells me that he has a relationship with this lady, and he doesn't want me to attack her.

And I explained to him -- I remember telling him, "Well, she doesn't love you, because she's coming forward with this trial. And you're telling me that you love her and you don't want to testify and you don't want me to

attack her."

So I remember the frustration that I felt when he told me that he had a relationship with her and he didn't want me to attack her.

Q Not attacking -- by challenging the DNA evidence and chain of custody, you would not be attacking her, would you?

A Well, I wanted it to be his DNA, because it was contrary to the facts. It was contrary to what her testimony was. Her testimony, again, was it only happened at the foot of the bed. And the evidence, obviously, showed that it happened more than what she testified that it happened to. And then I was hoping that the jury would believe that it was consensual sex.

Q And in fact, you were excited about the DNA evidence, right?

A I don't know if I was excited about it. When I told him that the -- and I don't recall whether Mr. Bell had ever discussed the case with him. So when I discussed the case with him, and I told him that it in -- in fact, had come back as his DNA and he said that it wasn't, that's when we hired the expert to challenge the DNA.

And then, like I said, when he changed his story, and said that it was a consensual relationship, then the whole -- the entire defense strategy had to change.

Q Do you believe you have an obligation that if you, as a lawyer, do not believe that there's proper chain of custody, you have to -- you should challenge that in the court?

A I had no reason to believe there wasn't proper chain of custody. I had already -- I had been to the evidence locker to see the evidence; I had spoken to Aileen Rios several times; I'd spoken to Mr. Chapman about the evidence. So I -- there was no question in my mind that the evidence had been tampered with or that it hadn't been secured. I wasn't concerned about that at all.

Q Don't you owe it to your client to bring Ms. Rios into this courtroom and place her under oath and challenge that chain of custody, given the fact that that's the only evidence placing Mr. Johnson at the scene of this incident? Don't you believe you have an obligation to him for that?

A If the defense would have been miss -- you know, mistaken identity, then yes, absolutely I did.

Q Do you think you should have brought her in here and placed her under oath?

A No, I don't.

Q You believe it's sufficient for a lawyer to just assure themselves that there's proper chain of custody and stipulate ---

MR. FRIEDMAN: Objection, Your Honor. That's asked

and answered.

THE COURT: Let him finish his question first, okay, Mr. Friedman ---

MR. FRIEDMAN: I'm sorry.

THE COURT: --- and I'll hear your objection.

Q I don't know if I remember it, Your Honor, at this point. I think: Do you believe it's sufficient that it's proper for you as a lawyer, just in your mind, to make up the -- come up with the opinion the chain of custody has been met; and that you're -- you should not bring them into the courtroom under examination/cross-examination and under oath, to challenge that, given the importance of this evidence?

A Do I believe that the chain of custody is important? Absolutely. And -- and that is why I -- I didn't rely on our investigators to go to the Sheriff's Office to look at the evidence. I went myself. And I made sure that the seals were in order.

I had talked to the -- Mr. Chapman, I talked to Ms. Rios, and viewed the evidence the way it was prior to coming into trial.

Q I'll just ---

A If I had believed that the evidence -- evidence had been tampered with; or if it had not been under lock; or had the chain of custody been tampered with, then I must

certainly would have challenged the chain. But I had no reason to believe that the evidence had been tampered with.

Q Tell me how the sheet was handled once it got to SLED to cut out these samples.

A I don't have my file with me.

Q Well, you need -- we might need to get it.

A Do you -- do you have a copy?

Q Let me see if I -- let me see if I can get you to a place in the transcript very quickly. How bout on page 245, line 5 -- I'm sorry, line 3. And this is direct by the solicitor.

The question is (as read): "Please look at what's been marked as Defense Exhibit No. 2," which if you look at the transcript, is the sheet that you entered into evidence that apparently had my client's DNA all over it.

And the answer from Ms. Hahn, who's with SLED -- forensic expert at SLED, said (as read): "I would not have received this. This would have gone down to evidence processing downstairs. They get all the -- all pieces of items, you know, clothing and everything. And they would make the cuttings, and the cuttings are actually given to us. So I would have never seen this."

Do you believe, based on that, that there is a proper chain of custody for this sheet or for these cuttings that were entered into evidence; the sheet being entered into

evidence by you, and the cuttings being entered into evidence by the State?

A Do I believe it was a proper chain of custody?

Q Yes, ma'am.

A I do.

Q Based on what?

A Based on the fact that the -- the way the evidence was -- from my looking at the evidence, the evidence was packaged properly in the brown bag.

The DNA department or -- they cut the piecings out to send it to the DNA -- the cuttings out to send to DNA for analysis. They didn't send the entire sheet, they just sent the cuttings up. And the cuttings were analyzed. They prepared the separate report, and that report was sent to us.

Q And you've used the word "they" numerous times. Who are "they"?

A I believe I testified to that earlier. "They" being -- who -- when you say "they" being who analyzed it?

Q Well, you said "they" cut the pieces out, "they" took the sheet ---

A SLED did.

Q --- "they" sent it upstairs. But who at SLED? Do we know?

A I -- I don't have that. I can't recall who at SLED

did it -- did the analysis or did the cuttings.

Q Can you point to anything in the record to show that you did anything to try to figure that out?

A I did not.

(Mr. Wogan hands a document to the witness.)

Q I just handed you the -- the document. Have you ever seen a document like this before?

A I have. This is my handwriting to the right.

Q Okay. And what is this document?

A It's a serology analysis.

Q And the date on it over on the top right-hand side? Right under DNA analysis.

A (As read) "August 11, 2006."

(Mr. Wogan hands a document to the witness.)

Q Does this look like a similar document?

A This is.

Q Okay. And what is the date of this document?

A (As read) "February 14, 2007."

Q So tell me what your recollection is of -- we spoke about the sheet and the cuttings. Tell me what your recollection is regarding -- let me see -- the August 11, 2006 SLED DNA analysis that I gave you. Tell me what your recollection is why we have two DNA analysis.

A I honestly can't recall. Let me look at this and see.

(The witness reviews the document.)

A One is a serology, and one is a DNA. So the August 11, 2006 is serology, and the February 14, 2007 was a DNA supplemental. And it looks like --

Q Might -- if -- I might be able to help. If you'll look at the Sheriff's Department evidence slip for the criminal sexual conduct kit, and the August 11, 2006 SLED DNA report. Would it be -- would it be -- would it be your recollection that the Sheriff's Department had this rape kit, the CSC kit, and sent it up to SLED for testing, but at that point did not have any sample or standard from Mr. Johnson? Does that refresh your memory at all?

A I wasn't involved with the -- the *Schmerber* motion, if there was one?

Perjury See Exhibit U

Q And -- and all -- I'm not talking about Mr. Johnson's blood yet. That would be the February 2007.

A Okay.

Q Okay. I'm talking about the criminal sexual conduct kit. Did you review that SLED DNA analysis for the rape kit?

A I did -- I -- the August 11th I reviewed it, because this is hand -- my handwriting all over this document.

Q Okay.

A And notes that I made.

Q Do you remember reviewing the February 14, 2007 SLED DNA report?

A I do, because my handwriting is on this document as well.

Q And do you have -- you mentioned the *Schmerber* motion. Is it your recollection that they -- somebody had filed a motion to obtain a blood sample from Mr. Johnson?

A I can't recall. But obviously they had to, because they had to have something to compare it with.

Q Do you ---

A But I can't recall whether or not it was Mr. -- whether Mr. James represented -- Mr. Bell represented him at that time or I did.

Q Do you remember if there was any commotion related to -- to obtaining Mr. Johnson's blood? And when I say "commotion," I mean was a second order necessary in order to obtain the blood by force if necessary?

A (No audible response.)

Q Does that refresh your memory at all?

A It must have been if you ask this question.

Q I -- I don't know. I don't know if it refreshes your memory or not.

A Honestly, I don't remember.

Q Let's go back to the criminal sexual conduct kit, the evidence document from the Sheriff's Department. Who delivered -- based on that document, who delivered the kit to -- to evidence at the Sheriff's Department?

A Matrinko.
Q And ---
A It looks like he submitted it in February of '06.
Q To ...?
A It was received by Ms. -- Officer Rios.
Q Okay. And again, Ms. Rios was not a witness at the trial.
A No.
Q Okay. Did you ask -- when -- Officer Matrinko was, correct?
A I believe he was.
Q Okay. And you had an opportunity to cross-examine Mr. Matrinko, to find out who he gave that to and how he gave it to them, the criminal sexual conduct kit, correct?
(Brief pause as witness reviews documents.)
Q If I can help you, page 230, line 19.
A Court's indulgence, Your Honor.
(Brief pause as witness continues to review documents.)
A Yes. I had no questions for him.
Q So you asked him no questions regarding the -- any -- any chain of custody questions.
A I did not.
Q Okay. And then, I believe, Ms. Cooper from the Sheriff's Department was a witness in this case, correct?

A Yes.
Q And she -- and would it be -- would it -- would it comport with your recollection that she is the lady from the Sheriff's Department that runs all this evidence up to SLED?
A Yes.
Q And you asked Ms. Cooper some questions at trial regarding that, correct?
A I did.
Q Do you recall -- I know you don't recall the *Schmerber* motion or being present at the *Schmerber* motion. Do you recall asking Ms. Cooper about the sample of blood that was taken from my client?
(Brief pause as the witness reviews documents.)
A It doesn't look as if I did.
Q You asked Ms. Cooper no questions regarding chain of custody about my client's blood?
A I believe I only asked her about photo line-ups.
Q So we don't know how the blood got up to SLED.
A Not from cross-examination, no.
(Brief pause as the witness reviews documents.)
A Actually -- I'm sorry. On direct examination, it looks like Ms. Cooper said that she had taken the blood -- the blood standard to SLED.
Q Okay. All right. So Officer Cooper. or Ms. Cooper

from the Sheriff's Department, is taking all of this -- all of the -- the blood up -- up to SLED along with the other evidence.

A Yes.

Q Okay. Do you remember a Ms. Hahn from SLED?

A Yes.

Q And she was a witness at this trial, correct?

A She was.

Q Okay. Do remember a Marsha Leitzel, L-e-i-t-z-e-l?

A Yes.

Q Okay. And who is -- who is Ms. Marsha Leitzel?

A The DNA forensic technician for SLED who opened the rape kit.

Q Was she -- she opened the rape kit?

A Yes.

Q Was she a witness at this trial?

A No, I stipulated.

Q Okay. Why did you stipulate on such an important matter?

A My defense was that it was consensual sex.

Q Would you agree that all these issues could have been dealt with before the trial of this matter? All -- when I say that, I mean all of these -- the admissibility of DNA. All of these issues regarding chain of custody and the admissibility of DNA could have been dealt with before the

actual trial.

A If they were an issue, then, yes.

Q Okay. And had that -- had that hearing been ruled in your favor, would you still want the DNA to be introduced into evidence?

A Meaning had it not been Mr. Johnson's DNA?

Q No. Had all of this information been presented to the Court on a motion -- a pretrial motion dealing with the admissibility of this DNA evidence; the sheet; the sheet cuttings; what we went through to get his blood; and all this other stuff; Ms. Leitzel; Hahn; Rios -- had all that been dealt with before the hearing, and that hearing been decided in your favor to exclude all of that DNA evidence, would you still consent or stipulate that the DNA should be admitted to the jury?

MR. FRIEDMAN: Objection, Your Honor. Speculation.

THE COURT: Overruled. I'll allow it. Go ahead and answer the question, if you know the answer.

A I can't -- I don't know how I would have thought back then. I don't know. I think now, if his defense was it was consensual sex, I still probably would have done it to show the jury that, again, him -- apparently they had had sex more than this witness has testified to, and basically to show that the witness wasn't credible. And she's the only eyewitness to the rape. And the evidence was contrary

to what her testimony was.

Q Let me ask you this question: If you weren't concerned about the DNA enough that you probably would have still -- even if you'd won the motion, you probably still would have brought it in front of the jury, why did you hire an expert?

A Because initially he said that it wasn't him, that it was a case of misidentification. And so my defense, based on the fact that it wasn't him, was I need to challenge this DNA.

And when I discussed that with him and he changed his story and said that it was him and that they had in fact been seeing each other, then it completely changed my defense strategy.

And now the DNA becomes to me more helpful than hurtful, because it contradicts her statement.

Q If you would look at Dr. -- if you'll look at the Dr. -- Dr. Ostrowski's bill. Even two days before trial -- based on your review of that bill, even two days before trial, he was composing and sending you cross-examination questions for the DNA.

A Right. Because that is what he was retained to do.

Q And so is it your testimony that a day or two ---

A Yes.

Q --- before trial, Nathaniel Johnson changed his

position and instructed -- did he instruct you?

A Yes.

Q He instructed you to go forward -- to -- to go forward with the DNA evidence and that this was an affair?

A Yes. I was -- I was very upset with Mr. Johnson when he did that, simply because of all the time and effort and the money that we had put in to retaining the expert, for him to change his mind at literally the last minute. I was very upset with him when he did that. And I was upset with him when he didn't want me to -- to cross-examine Ms. Rodriguez.

The difficulty -- because it's -- I mean I -- I explained to him I had been up for hours, you know, not sleeping at night because I'm working on your case, and now you're telling me that everything that I had done, I did for nothing. And now you want me to completely change the strategy, which meant that I literally had to go back out to the scene again to look at -- to look at it from a different perspective.

Q Based on the fact that you were so upset about this, did you make any notes to memorialize his change of opinion that changed your trial strategy three days before trial?

A I don't know if I made any notes, but I -- I remember, because Mr. Chapman had to go back out there with me. And he wasn't happy about having to go back out there.

Q Why was he not happy about going back out there?

A Because I came to him at the last minute and said, you know, we're gonna have to go back out there. And he says, "Well, we've already been there. Why do we have to go back?"

And then I explained to him that -- what he had said and why I needed to go back. And I remember that, because at that time they wouldn't let me go anyplace by myself because I was pregnant. So I had to -- to take someone back out there with me.

Q If you'll look at page 276, line 17.

A I'm sorry. Line what?

Q Line 17.

A Okay.

Q If you'll just take a moment just to -- you can read that to yourself, and I just want to ask you a couple of questions.

(The witness complies.)

THE COURT: What page is that again, sir?

MR. WOGAN: I'm sorry, Your Honor. 276, line 17.

Q Okay. Did -- does that portion of the transcript state that it was logged in by Nicky Perry at SLED?

A Yes.

Q And when I say "it", I'll represent to you that No. 7 is ---

A No. 7.
Q --- is the defendant's blood sample.
A Yes.
Q Okay. Was Nicky Perry a witness at this trial?
A She was not.
Q Okay. And then it states it was placed into the evidence area by Amy -- Amy Stevens, correct?
A Yes.
Q Was she a witness at this trial?
A She was not.
Q Okay. And then it states something about it being moved to the evidence area -- from the evidence area "up to Taylor's Department."
A Yes.
Q And does Ms. Taylor, in her testimony, know even who moved that from the evidence department up to her department based on her testimony?
A She just said a technician from the DNA lab.
Q Okay. Did you cross-examine her at all regarding that?
A I did not.
Q Do you think those are important questions to have answered?
A If DNA was an issue, yes, it would have been.
Q So all of this hinges on the fact that you do not

believe that my client's DNA was all over that sheet ---

A I ---

Q --- was issue in this trial at all?

A I believe that it was an issue that goes to, again, the credibility of the witness -- from the victim, Ms. [redacted]

Q The trial transcript has you repeatedly asking Ms. [redacted] about inconsistencies in her statement, correct -- --

A Yes.

Q --- in her statements? Her numerous statements?

A Yes.

Q So if you wanted to highlight inconsistencies, you clearly could highlight inconsistencies in other state -- in statements that were made by her, in written statements to the police department and to the hospital; and you really didn't need to highlight the inconsistency with the DNA; would you agree with that?

A Can you repeat that a little slower?

THE COURT: Please rephrase your question.

MR. WOGAN: I -- I apologize.

Q That you believed that the DNA was important and could be used to highlight an inconsistency of [redacted].

A Yes.

Q Okay. And do you believe that's the most compelling

reason why you would not challenge the DNA evidence?

A Well, in order for it to be important for the defense, it would have had to have been his DNA. If my argument was you're having sex with this man during -- while your husband's at work, and this particular day you knew your husband was coming home and that's why you screamed rape.

Q And you thought the DNA was important to -- for inconsistencies.

A But if the DNA evidence was not his, then that argument would not have been any good. And so it would have been counterintuitive to challenge the DNA to say that it's not his, if my argument to the jury was gonna be: "This witness is not believable, because she said, No. 1, he did not ejaculate, and that's inconsistent, because there's semen -- his semen all over this bedsheet. And she said that the incident only occurred at the foot of the bed, when that's inconsistent, because his semen is the top of the sheet, the middle of the sheet, the sides of the sheet, and -- and also at the foot of the sheet.

So in order for my defense to be "this was a consensual relationship," then I couldn't have challenged his DNA, because now I have nothing to show that there's a consensual relationship.

Because he wasn't gonna testify, and he didn't want me to ask her about the relationship. I believe he was

concerned, because the victim's husband had come to court, but he didn't remain in the courtroom. He left. And I believe I -- I might have said that.

Q My question was that you thought the DNA was important to highlight any inconsistency.

A Yes.

Q And would you agree that you had other things in the record, including very inconsistent written statements, that you could have used to highlight that inconsistency?

A I think I did use her inconsistent statements.

Q Now, there was -- there was an issue -- do you recall, was there a photo line-up in this case?

A Yes.

Q Okay. Was there -- was there a sketch in this case?

A Yes.

Q And was the sketch done by a SLED agent?

A I can't recall who it was done by. I can't remember who actually did the -- the sketch -- who drew the sketch.

Q Does Mr. Lynch ring a bell as a -- as SLED forensic artist?

A I can't recall.

Q But you do recall that there was -- and I -- I apologize. You do recall that there was a sketch?

A There was a ---

Q And you also recall -- I -- I'm sorry I didn't mean to

interrupt.

A There was a sketch.

Q Okay. And you also recall that there was a line-up?

A Yes.

Q Okay. Do you recall whether [redacted] was able to identify Mr. Johnson in the line-up?

A She did not.

Q Okay. And let me turn your attention to page No. 22 of the transcript, line 21.

(The witness reviews the document.)

A Yes.

Q And after reading that, does -- do you -- does it refresh your recollection that you had two pretrial motions -- I'm sorry -- one pretrial motion before the trial started related to the sketch and the line-ups and in-court identification?

A From this line, it looks like there was a pretrial motion with regard to identification.

Q And what was your concern for that pretrial motion?

A That the interpreters weren't here. It was a -- it had to do with in-court identification. But the victim was Hispanic, and the interpreters weren't here -- weren't there.

Q Okay. And did you ultimately withdraw -- withdraw the motion? And I'll direct you -- your attention to page 27.

(Brief pause as the witness reviews the document.)

A I did.

Q And you also withdrew it to the point that you waived Mr. Johnson's right to appeal on that issue; is that correct? Specifically waived that right.

A Yes.

Q Why did you do that?

A I -- I don't recall. Because we took a recess, and I don't know if something happened during the recess that made me withdraw the motion. I can't recall.

Q If -- have you often withdrawn motions and specifically all -- and specifically said you also waive the right to appeal on that issue?

A I don't recall.

Q Do -- I guess my question is: Do you often do that? Do you recall doing that in the past other than this case?

A No.

Q Then you would agree with me that that means that that issue is gone forever, that he can't appeal it? If the judge was wrong in that case, he can't appeal that to the Court of Appeals or the Supreme Court.

A Right.

Q One last area, and I'll be very brief, Your Honor. I appreciate your patience.

Is this -- Officer Chapman was a witness in this case,

correct? The police officer.

A Yes.

Q Okay. And do you recall an issue when Officer Chapman was testifying regarding a statement he made about my client and your client, Mr. Johnson, being in jail at the time they obtained a DNA sample?

A Yes.

Q And do you recall Officer Chapman saying that he was in jail on a unrelated offense?

A Yes.

Q Okay. And did you timely object to that?

A I did not.

Q Do you believe that was objectionable testimony?

A Yes.

Q And your testimony today is that you did not timely object to that.

A I did not.

Q Okay. Are you aware that Mr. Johnson appealed that exact issue to the Court of Appeals?

A Yes.

Q And what was the outcome of the Court of Appeals case?

A I believe -- let me look at the case.

(Brief pause.)

MR. WOGAN: Your Honor, I have a copy. It's very ---

THE COURT: I've got a copy. (Indicates) Is this what

you're talking about?

MR. WOGAN: Yes. Yes, Your Honor.

THE COURT: Here you go.

MR. WOGAN: Thank you.

THE COURT: Ms. Gittings.

THE WITNESS: Oh, I'm sorry.

THE COURT: Let the record reflect that I've handed Ms. Gittings a copy of the Court of Appeals opinion that Mr. Wogan has questioned her about.

DIRECT EXAMINATION BY MR. WOGAN (Continues):

A That the issue hadn't been preserved, because I didn't contemporaneously object to the curative instruction.

MR. WOGAN: I have nothing further, Your Honor.

THE COURT: Mr. Friedman.

MR. FRIEDMAN: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. FRIEDMAN:

Q Ms. Smart-Gittings, do you recall discussing the elements of the charges and what the State was required to prove with the applicant?

A Yes.

Q Do you recall discussing potential defenses with him?

A Yes.

Q And I believe you testified that his initial defense was misidentification; is that right?

A Yes.

Case # 2019-001079

Q And I believe you also testified that he eventually changed his -- his theory of the defense; is that right?
A Yes.
Q What -- what was his new theory?
A It was consensual sex.
Q And when did he tell you about that? How long before the trial?
A Right before the trial.
Q I believe you testified that you had retained a -- a DNA expert before he told you about his new theory?
A We did.
Q Did you think you needed that DNA expert after he changed his defense?
A I didn't.
Q Did you think you had enough time to prepare for trial?
A I'm sorry?
Q Did you have enough time to prepare for trial?
A I did.
Q Were you able to discuss the DNA evidence with the applicant?
A Yes.
Q Now, if -- if his DNA was found on the bedsheet, would that have been consistent with his new defense?
A I'm sorry?

Q If his DNA was found on the bedsheet, was that consistent with his new defense?

A Yes.

Q Did you see any basis to move to suppress the DNA evidence?

A No.

Q Did you see any basis to challenge the chain of custody?

A No.

Q And you were asked about Officer Chapman's testimony, about he brought up an unrelated charge?

A Yes.

Q Do you recall if he -- if he specified what the unrelated charge was?

A He did not.

Q Do you recall whether or not the Court gave a curative instruction?

A He did.

MR. FRIEDMAN: I have nothing further, Your Honor.

THE COURT: Mr. Wogan, anything else?

MR. WOGAN: Nothing further from me, Your Honor.

THE COURT: All right. Ms. Gittings, you may step down.

(The witness complies.)

THE COURT: Call your next witness, please.

MR. WOGAN: Your Honor, I call Nathaniel Johnson.

THE COURT: All right. Mr. Johnson, you come around, be sworn, please, sir.

NATHANIEL JOHNSON, having been first duly sworn, testifies as follows:

THE COURT: Mr. Wogan, you may proceed.

DIRECT EXAMINATION BY MR. WOGAN:

Q Okay. Nathaniel, would you state your full name for the record, please?

A Yes. Nathaniel Johnson, Junior.

Q And where are you currently incarcerated?

A I'm currently incarcerated at Leiber Correctional Institution.

Q Okay. And on what charges, what offense?

A Criminal sexual conduct in the first degree, and kidnapping.

Q And what was your sentence?

A Thirty years on CSC, first; 30 years on kidnapping, ran concurrent.

Q And what happened to the other -- the charge of the firearm and the burglary?

A I was found not -- not guilty.

Q And I met you up at Leiber one day. Do you recall that?

A Yes, sir.

Q Okay. And you and I have had a telephone conversation yesterday?

A Yes, sir.

Q Okay. And we discussed the possibility, if you are granted a new trial, that you could be facing both those charges again; and that you could be sentenced -- if found guilty, you could be sentenced on both those charges to run consecutively.

A Yes, sir.

Q And you understand that.

A Yes, sir.

Q Okay. And you informed me that you still wish to proceed and go forward today with your PCR.

A Yes, sir, I still wish to proceed.

Q Okay. Let's talk a little bit about -- how many times prior to trial did Ms. -- Ms. Gittings meet with you?

A Two times to be exact.

Q Do you recall how closely related those two times were to the trial?

A Yes. I'd been incarcerated for -- at the Beaufort County Detention Center for about seven months. And at that time, Mr. James Bell was my pretrial attorney.

And I -- there was some issues between me and Mr. Bell, and -- and we could not come to an understanding between the -- the client and the lawyer privilege. So I

asked him to be relieved. And ---

Q If I could stop you real quick. How many -- if you can just tell me, was it within a month, was it within two months, was it in three months that Ms. Smart-Gittings came to see you?

A It had to have been maybe two months afterwards.

Q And do you recall during those visits discussing the DNA evidence?

A Never.

Q Do you recall discussing with her the theory of the case?

A She told me the seriousness of the crime, but not the theory of the case.

Q Did you ever tell -- say to Ms. Smart, "I want you to be easy on [redacted]"

A No, sir.

Q Did you ever say to Ms. Smart, "I want you to only go forward on the theory of affair?"

A No, sir. Never told her that I was in love with her either.

Q Did you know the DNA evidence existed before your trial?

A No, sir.

Q Had you known that there was DNA evidence, your DNA evidence at the scene of this incident, would you have

asked Ms. Gittings to try to find a way to keep that out of the court?

A No, sir.

Q Okay. Were you ever -- did she ever speak to you about any pleas that may have been a possibility?

A No, sir.

Q Did you instruct her to go forward with the trial?

A Yes, sir.

Q And just so I'm clear, there was never any discussion over the DNA evidence or whether it should be used at trial or not used at the trial?

A No, sir. There was no discussion.

Q Are you asking the Court to grant you a new trial today?

A Yes, sir. [redacted]

Q And do you believe that -- that you will -- strike that.

MR. WOGAN: I have no further questions, Your Honor.

THE COURT: Mr. Friedman?

MR. FRIEDMAN: I have no questions, Your Honor.

THE COURT: All right, sir. You may step down. Thank you.

THE WITNESS: Thank you.

(The witness complies.)

MR. WOGAN: Nothing further, Your Honor.

THE COURT: Anything, Mr. Friedman?

MR. FRIEDMAN: No witnesses, Your Honor.

MR. WOGAN: The only thing I would like to do is just mark -- mark those.

THE COURT: All right. If you all will come forward, Mr. Friedman, Mr. Wogan, and make sure that whatever exhibits -- any objections, Mr. Friedman?

MR. FRIEDMAN: No, I don't think so, Your Honor. Pretty much ---

THE COURT: Look at exhibits. If there are multiple pages to exhibits, make sure you state for the record the number of pages in those exhibits, so it's clear on the record.

THE COURT REPORTER: How many do you have?

MR. WOGAN: Five total.

THE COURT REPORTER: Okay. So Applicant's 1 is...

MR. WOGAN: No. 1 is going to be February 14, 2007 SLED Forensic Report.

THE COURT REPORTER: How many pages?

MR. WOGAN: Five pages.

(Marked Applicant's Exhibit No. 1, SLED forensic report dated 2/14/07; 5 pages.)

THE COURT REPORTER: Okay. Go ahead, please.

MR. WOGAN: Yes, ma'am. No. 2 is going to be August 11, 2006 SLED Forensic Report, six pages.

(Marked Applicant's Exhibit No. 2, SLED forensic report dated 8/11/06; 6 pages.)

THE COURT REPORTER: Okay.

MR. WOGAN: Applicant's No. 3 is June 20, 2006.

THE COURT REPORTER: 20th?

MR. WOGAN: June 20, 2006. Yes, ma'am. SLED Forensic Report, two pages.

(Marked Applicant's Exhibit No. 3, SLED forensic report dated 6/20/06; 2 pages.)

THE COURT REPORTER: Uh-huh.

MR. WOGAN: The next one is a compilation of Beaufort County Sheriff's Office evidence slips; six.

(Marked Applicant's Exhibit No. 4, Beaufort County Sheriff's Office documents, 6 pages.)

MR. WOGAN: Your Honor, if I might. This last exhibit here -- I don't know if you're gonna -- I don't know what I was doing, but this was a little sticky -- stick-it -- sticky note in her file. And I wrote this information down here on it.

It's just a fax telephone number, it says "scan and e-mail"; and then it's the doctor's e-mail address. That is my writing, from "fax" down.

THE COURT: Okay.

MR. WOGAN: (To the court reporter) This will be compilation of expert documents. Eight -- eight pages.

(Marked Applicant's Exhibit No. 5, compilation of expert documents; 8 pages.)

THE COURT: Let me go ahead and put this on the record. Just -- gonna go ahead and rule on a couple of things here.

There were three issues raised in applicant's post-conviction relief application: One being prosecutory misconduct along with some other -- (as read): "And the prosecutors may conceal evidence or misrepresent or influence juries by impuning the character of witnesses."

No testimony with regards to any of that today; and therefore, my ruling on that one is a dismissal of those -- those allegations.

Violation of due process of the law: Heard nothing with regards to anything on either of those issues. I did not give you all an opportunity to argue. Anything you want to add, Mr. Wogan?

MR. WOGAN: No, Your Honor.

THE COURT: Mr. Friedman?

MR. FRIEDMAN: No, Your Honor.

THE COURT: All right. So the only remaining issue is the ineffective assistance of counsel. And I will let you know on that.

Also, this is not to anybody in particular, but it is right now, just get the word out. Because when I was in

private practice -- this can be frustrating for someone such as Mr. Wogan to be cross-examining someone such as you, Ms. Gittings, who represented a defendant, and for you not to have your file.

And that happened when I was in Mr. Wogan's shoes on a number of occasions. And it -- it can be frustrating when you can't get a response.

So I would just encourage you to come with your file and be prepared to go forward on these hearings, okay?

MR. WOGAN: Thank you, Your Honor.

THE COURT: All right. Anything further ---

MR. FRIEDMAN: Nothing further.

THE COURT: --- on this matter? All right.

(Off the record at 2:57 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

Case # 2019-001079

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 30th day of August, 2011.

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

Bonnie H. Kelly

Bonnie H. Kelly,
Court Reporter

Columbia, South Carolina
February 5, 2012

Case# 2019-001079

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

LCPL Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
February 14, 2007
SLED LAB: L06-2390
Your Case No: 200602070359
Incident Date: 2/7/2006
[redacted]
[S] Nathaniel Johnson, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

7 Blood standard from Nathaniel Johnson, Jr. (All other items were previously analyzed. Refer to report dated August 11, 2006 signed by Kimberly A. Hahn)

EXAMINATIONS

DNA analysis was performed on the item 7 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1.

RESULTS Sheet

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion.

The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr.

PLAINTIFF'S EXHIBIT NO. 1 FOR IDENTIFICATION DATE 8/30/11 RPTR: BL

Case# 2019-001079

The partial DNA profile developed from the male contributor to items 1.8R and 1.9 is consistent with Nathaniel Johnson, Jr.

The DNA profiles developed from items 3.1 and 3.2 are mixtures of [redacted] and Nathaniel Johnson, Jr. cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

Table 1 – Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5818	D13S317	D7S820	Amelo-genin
[redacted] 1.2	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	28,(31.2)	12,13	8,(11), 13	(9),11, (12),13	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12,13)	(9,11), (12,13)	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	14,15	(28),30, 31.2	11,(13), 16	(8),11, 12,(13)	9,12 (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	28	(11),12, 13,(16)	8,(11) 13	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	28,(30)	(11),12, 13	8,(11), 13	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	11,12, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	15,17, (18)	(22),24, 25	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Case # 2019-001079

Table 2 - Cofiler

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelogenin
[redacted] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, 8	9	10,11	11,12, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11)12, 13	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), 8	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	11,12, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,15, 16	12,13	6,7, 8	8,9, (11)	10,11	11,12, 13	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

Case# 2019-001079

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Robin Taylor
Forensic Scientist

cc: Beaufort County Solicitor's Office

Case# 2019-001079

SLED LAB No. L06-02390
February 14, 2007

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
7 Johnson	14,15	28	11,12	10,11	16	6,8	11,13	12,13	19,25	13.2,16	15,18	9	12,13	8,13	22,24	XY

Case # 2019-001079

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

2006-0207-359 459

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

RECEIVED

AUG 16 2006

Beaufort County Sheriff's Office

ROBERT M. STEWART
Chief

LCPL. Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29902

SCANNED

I certify this is a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

DNA ANALYSIS
August 11, 2006
SLED LAB: L06-02390
Your Case No: 20060207-359
Incident Date: 02/07/2006
[redacted]
(S) Nathaniel Johnson

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:		Results of Examinations:	
1.0	Sexual Assault Evidence Collection Kit from [redacted]		
1.2	Blood standard	1.2	See DNA analysis.
1.4	Smears (vaginal and oral)	1.4	No analysis performed.
1.5	Vaginal swabs	1.5	No semen identified.
1.6	Oral swabs	1.6	No semen identified.
1.7	Miscellaneous body fluids		Semen identified. See DNA analysis.
1.8 R	Fingernail scrapings (Right)	1.8 R	See DNA analysis.

Semen on vs body

No Semen inside her or on her but on bed. Collected from where?

PLAINTIFF'S EXHIBIT NO. 2 FOR IDENTIFICATION DATE: 8/30/11 APTR: BK

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SCANNED08/16/2006

Case# 2019-001079

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Items Submitted:		Results of Examinations:	
1.8 L	Fingernail scrapings (Left)	1.8 L	Nothing of apparent serological evidentiary value found.
1.9	Bite mark swabs	1.9	See DNA analysis.
1.10	Known head hairs	1.10	No analysis performed.
2.1	Cutting from fitted sheet [redacted]	2.1	Semen identified. See DNA analysis.
2.2	Cutting from fitted sheet	2.2	No analysis performed.
2.3	Cutting from fitted sheet	2.3	Semen identified. See DNA analysis.
2.4	Cutting from fitted sheet	2.4	Semen identified. See DNA analysis.
2.5	Cutting from fitted sheet	2.5	No analysis performed.
2.6	Trace evidence collected from fitted sheet	2.6	No analysis performed.
3.0	Swabs		
3.1	Swab one taken from bite wound	3.1	See DNA analysis.
3.2	Swab two taken from bite wound	3.2	See DNA analysis.
4.1.1	Cutting from pants	4.1.1	See D[redacted]
5.0	Plastic spoon said to have been used by Nathaniel Johnson, Jr.	5.0	See DNA analysis.
6.0	Napkin said to have been used by Nathaniel Johnson, Jr.	6.0	See DNA analysis.

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED 08/15/2005

Case # 2019-001079

DNA ANALYSIS

ITEMS ANALYZED:

1.2	Blood standard from [redacted]
1.7	Miscellaneous body fluids from chair
1.8	Fingernail scrapings from right hand
1.9	Bite mark swabs
2.1	Cutting from fitted sheet
2.3	Cutting from fitted sheet
2.4	Cutting from fitted sheet
3.1	Swab one taken from bite wound
3.2	Swab two taken from bite wound
4.1.1	Cutting from pants
5.0	Plastic spoon said to have been used by Nathaniel Johnson, Jr.
6.0	Napkin said to have been used by Nathaniel Johnson, Jr.

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

EXAMINATIONS

DNA analysis was performed on items 1.2, 1.7, 1.8, 1.9, 2.1, 2.3, 2.4, 3.1, 3.2, 5.0, and 6.0 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS) for comparison purposes.

The partial DNA profile developed from the male contributor to items 1.8 R and 1.9 is consistent with the semen donor to item 1.7.

The partial DNA profile developed from item 5.0 is also consistent with the semen donor to item 1.7.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [redacted] and the unidentified male individual from item 1.7 cannot be excluded as ~~contributors to these~~ mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

The partial DNA profile developed from item 6.0 is too weak to reliably interpret.

No human DNA was extracted from item 4.1.1. Pants that she had on, only pulled to her waist NO DNA but DNA in bed

SCANNED 08/16/2006

Case #2019-001079

Table 1 – Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5818	D13S317	D7S820	Amelo-genin
[redacted] 1.2	15,16	15,17	24,25	14	30,31.2	[redacted]	11,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	28,(31.2)	12,13	8,(11), 13	(9),11, (12),13	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12,13)	(9,11), (12,13)	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	14,15	(28),30, 31.2	11,(13), 16	(8),11, 12,(13)	9,12 (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	28	(11),12, 13,(16)	8,(11) 13	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	28,(30)	(11),12, 13	8,(11), 13	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	11,12, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, / 25	14,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	15,17, (18)	(22),24, 25	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

( ) = alleles between 75 and 149 rfu - = no results **Bold = major contributor**

[redacted]

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED08/16/2006

Case #2019-001079

Table 2 - Cofiler

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelogenin
[redacted] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, 8	9	10,11	11,12, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11)12, 13	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), 8	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	11,12, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,15, 16	12,13	6,7, 8	8,9, (11)	10,11	11,12, 13	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

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with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

SCANNED 08/16/2006

Case #2019-001079

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Please submit the suspect's blood standard for comparison purposes.

Kimberly A. Hahn
Forensic Scientist

cc: Beaufort County Solicitor's Office

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

SCANNED08/16/2006

Case # 2019-001079

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

SCANNED

RECEIVED
JUN 30 2006
Beaufort County Sheriff's Office

ROBERT M. STEWART
Chief

Inv. Brian Chapman
Beaufort County Sheriff's Office
P. O. Box 1758
Beaufort, SC 29901

EVIDENCE PROCESSING
June 20, 2006
SLED LAB: L06-02390
Your Case No: 20060207359
Incident Date: 02/07/2006
[redacted]
(S) Nathaniel Johnson, Jr.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 2 Fitted sheet

RESULTS:

All potential evidence collected was sent to the DNA Department.

PLAINTIFF'S
EXHIBIT NO. 3
FOR IDENTIFICATION
DATE: 8/30/11 RPTR: BK
PENGAD 800-631-6989

Item: 4 Pants from [redacted]

RESULTS:

No hair found.

All potential evidence collected was sent to the DNA Department.

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED06/30/2006

Case* 2019-001079

Janice S Bryson

Janice S. Bryson
Forensic Technician

[redacted]

Emily B. Reinhart

Emily B. Reinhart, Lieutenant

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

[redacted]

Michael M. Hatfield

Chief Deputy Beaufort County Sheriff's Office

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED 06/30/2006

Case #2019-001079

SCANNED

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

PLAINTIFF'S EXHIBIT NO. 4 FOR IDENTIFICATION DATE: 8/30 RPTR: BK

Case Number: 20060070359
Victim (s): [redacted]
Suspect (s): Unknown
Incident Type: Criminal Sexual Conduct & Armed Robbery

Item Number	Description of Evidence
	paper bag containing CSC kit & forms with name [redacted]

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

M. Metrinko	2-8-06	M. [redacted]	2-8-06
Submitted by (Print)	Date	Submitted by (Sign)	Date
E Rios		Eileen Rios	0745 2/8/06
Received by (Print)	Date	Received by (Sign)	Date

SCANNED 02/18/2006

Case # 2019-001079

468

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number: 200600207-359
Victim (s): [redacted]
Suspect (s): Unknown
Incident Type: Criminal Sexual Conduct

Item Number	Description of Evidence
1	(1) bed sheet collected from victim's bed (Biohazard)
2	(2) Q-tip swabs [redacted] victim's bite wound. (labeled swab #1 and #2)
3	(1) Memorex CD-R of pictures of victim's injuries

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

LCpl. B. Chapman 2-8-06
Submitted by (Print) Date

LCpl. B. Chapman 2-8-06
Submitted by (Sign) Date

Eileen Rios 0830
Received by (Print) Date

Eileen Rios 2/8/06
Received by (Sign) Date

SCANNED03/07/2006

Case# 2019-001079

SCANNED

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number: 2006020735 9
Victim (s): [redacted]
Suspect (s): UNKNOWN
Incident Type: CRIMINAL SEXUAL CONDUCT

Item Number	Description of Evidence
5	ONE EVIDENCE BAG CONTAINING ONE PAIR OF PANTS

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

J. MERRILL — Submitted by (Print) — Date
J. Merrill — Submitted by (Sign) — 2/9/06 — Date

E. RIOS — Received by (Print) — Date
E. Rios — Received by (Sign) — 1:55 2/9/06 — Date

SCANNED02/10/2006

Case#2019-001079

470

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number: 20060207359
Victim (s): [redacted]
Suspect (s): WF BM
Incident Type: CSC 1ST

Item Number	Description of Evidence
	One paper Evidence Bag with One Black + Yellow Jacket w/ GAP XL in one pocket Label.

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

B Baird — Submitted by (Print) — Date
B Baird — Submitted by (Sign) — 2/14/06 Date

E R. Lo's — Received by (Print) — Date
Received by (Sign) — 12 AM 2/14/06 Date

SCANNED 03/07/2006

Case # 2019-001079

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number: 2006020207-359
Victim (s): [redacted]
Suspect (s): unknown
Incident Type: Criminal Sexual Conduct / Armed Robbery

Item Number	Description of Evidence
#9	(1) plastic spoon from Nathaniel Johnson
#10	(1) Napkin from Nathaniel Johnson *Note -> originally labeled plastic spoon in description by PFC. Teasdell and corrected by LCPL. Chapman

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.
Michael M Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

LCPL B. Chapman 04-21-06
Submitted by (Print) Date

LCPL. B. Chapman 04-21-06
Submitted by (Sign) Date

E R.O.'S
Received by (Print) Date

Eileen 1230 4/21/06
Received by (Sign) Date

SCANNED 04/25/2006

Case* 2019-001079

472

OFFICE OF SHERIFF
BEAUFORT COUNTY
P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
FAX #	470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number: 20060207359
Victim (s): [redacted]
Suspect (s): Unknown
Incident Type: Armed Robbery & Criminal Sexual Conduct

Item Number	Description of Evidence
1	(1) Daisy Proline B.B. pistol model 92 CO_2 Serial # KE08359
2	(1) Crossman Airgun B.B. pistol Serial # 480211531

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

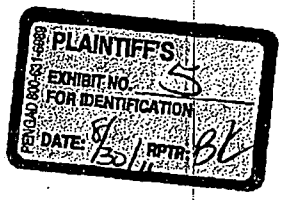
LCPL. B. Chapman	02-15-06	LCPL. B. Chapman	02-15-06
Submitted by (Print)	Date	Submitted by (Sign)	Date
R.K. Cooper	2/15/06	R.K. Cooper	2/15/06
Received by (Print)	Date	Received by (Sign)	Date

1310

SCANNED 03/07/2006

Case # 2019-001079

473



Dr. Ronald Ostrowski
828.461 8346 (c)
704-483-5375 ←
Robin Taylor Case No.
L 062390
NJ 803-896-7321

6948 Shade Tree Lane
S Cherrills Ford, NC 28673

FAX 704 483-5375

SCAN + Email

→ [Ronalds@Bellsouth.net]

Case # 2019-001079

474

FAX

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER
Human Resources Building•1905 Duke Street•Room 210
P O Box 525
Beaufort, SC 29901-0525

Phone: (843) 470-4525 Fax: (843) 470-4533

DATE: 3/9/07

PLEASE DELIVER THE FOLLOWING TO:

NAME: Dr. Ostrowska

AGENCY:

FAX PHONE #: 704-483-5375

FROM: Stephanie Smart Gittings

NOTES: Trial can not be continued. Testimony begins Tues. 3/13/07.

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of the telecopy is strictly prohibited. If you have received this telecopy in error, then please immediately notify us by telephone (collect-if long distance), and return the original message to us at the address above via the United States Postal Service. We will gladly reimburse you for any reasonable costs incurred in complying with this request. Thank you.

THIS DOCUMENT CONSISTS OF ____ PAGES, INCLUDING THIS PAGE.

Case# 2019-001079

1 of 3 sheets (including this sheet)

February 28, 2007

Stephanie Smart Gittings, Esq.
Office of Public Defender
P.O. Box 525
Beaufort, SC 29901

Dear Ms. Gittings:

As per our conversation today, I did receive the SLED laboratory report. Please be aware that this is not evidence. I have included two pages of discovery items that need to be requested.

My hourly rate is $185. I anticipate a total billing of approximately $2,500. This amount is based on my experience in 400 forensic DNA cases. Please send me a copy of the Court Order approving my consulting fee.

I will provide for you the following:

- reading and analyzing DNA reports
- preparing discovery items
- a layman's lecture relative to DNA for you
- telephone conversations, fax, etc.
- preparation of cross-examination questions

If you should need my assistance in the court room, this endeavor would add an additional $2,500 to my fee.

I look forward to assisting you in the SC v. N. Johnson case. If you have any questions at this time, please do not hesitate to contact me.

Sincerely,

Ronald S. Ostrowski, Ph.D.

Case# 2019-001079

Discovery Items

- Hard copies of all electropherograms. These results must be of the same quality and resolution as those possessed by the State.

- Software: A list of all commercial software programs used in the DNA testing in this case, including name of the software program, manufacturer and version used in this case.

- Electronic data for all analyzed DNA results.

- STR Frequency Tables: Copies of any allelic frequency tables relied upon in making statistical estimates in this case. If the laboratory relied upon published or publicly available data this request can be satisfied by providing a specific reference source.

- Case file: Complete copy of the case file, including all records made by the laboratory in connection with this case. If the file includes photographs, please include photographic quality copies.

- Chain of Custody and Current Disposition of Evidence: Copies of all records that document collection, treatment, and handling of biological evidence in this case, from the initial point of collection to the current disposition. This information should include documentation which indicates where and how materials were stored (temperature and type of container), the amount of evidence which was consumed in testing, the amount of material which remains, and where and how the remaining evidence is stored (temperature and type of container).

- Copy of the Unexpected Results Log.

- Instances of Unintended DNA Transfer or Sample Contamination: Copies of all records maintained in the laboratory that document instances of unintended transfer of DNA or sample contamination, such as instances of negative controls that demonstrated the presence of DNA or the detection of unexpected extra alleles in the control or reference samples, and any corrective measures taken.

Case # 2019-001079

- Copies of all work done toward internal laboratory validation of DNA testing and analysis. This should contain records and results including, but not limited, to acceptable heterozygous peak ratios, stutter frequency, mixed sample studies, etc.

- Accreditation: Copies of all licenses or other certificates of accreditation held by the DNA testing laboratory relative to capillary gel electrophoresis DNA analysis.

- Laboratory Personnel: Background information about each person involved in sample collection and conducting or reviewing DNA testing in this case, including
  - current resume
  - job description
  - a summary of proficiency test results

- Detailed proficiency testing results for all laboratory personnel involved in DNA testing through capillary gel electrophoresis.

If you have any questions, please do not hesitate to contact me.

Case# 2019-001079

CONTEMPORARY RECORD

SC v. Nathaniel Johnson

Feb. 28	5 min.	Initial conversation with Stephanie Smart (SS).
	20 min.	Read boilerplate report.
	20 min.	Prepared and faxed discovery memo and fee letter to SS.
Mar. 1	5 min.	Phone to SS; left message.
Mar. 9	5 min.	Received and read Court Order.
	5 min.	Phone to SS; left message.
	5 min.	Phone to SS; left message.
	3 hr., 15 min.	Received, read and analyzed DNA reports.
Mar. 10	2 hr., 20 min.	Prepared cross examination questions and faxed to SS.
Mar. 22	5 min.	Phone to SS; left message.
Apr. 10	5 min.	Phone to SS; left message.
Apr. 24	5 min.	Closure conversation with Maxine Haynes.
Apr. 30	15 min.	Bill preparation.

TOTAL TIME: 7.17 hr. x $185 per hr.

TOTAL BILLING: $1,326.45

Ronald S. Ostrowski, Ph.D.
SS# 334-32-1847

Case#2019-001079

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA,	)	INDICTMENT NOS. 2006GS07-1646 thru 1643
	)	
versus	)	MOTION AND ORDER
	)	
NATHANIEL JOHNSON,	)	
	)	
Defendant.	)	

2007 MAR -9 AM 11:36
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant, through counsel, Stephanie J. Smart, Beaufort County Assistant Public Defender, hereby moves this court for an order allowing for payment a DNA Expert, Ronald S. Owstraski, Ph.D.

The Defendant is charged Kidnapping, Criminal Sexual Conduct 1st Degree, Bruglary 1st Degree and Possession of a Weapon. He is indigent. It appears to the Court's satisfaction that the services of a DNA Expert are reasonably necessary to assist in the defense and representation of the Defendant. Pursuant to Section 17-3-80, Code of Laws of South Carolina, 1976, amended, due to the nature of the case, it appears that the relief requested is reasonable, necessary and proper.

NOW THEREFORE, for good cause shown,

IT IS ORDERED that the Beaufort County Public Defender's Office is authorized to retain the services of a DNA Expert, and

1 of 2

Case# 2019-001079

IT IS FURTHER ORDERED that counsel is authorized to incur reasonable fees therefore, not to exceed Twenty-Five Hundred Dollars ($2500), subject to the approval of the Court as authorized by law, without further order of the Court. Ms. Smart may apply to this Court for further relief if necessary, pursuant to Section 17-3-50(C), Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.

Howard P. King

PRESIDING JUDGE
FOURTEENTH JUDICIAL CIRCUIT

BEAUFORT, SOUTH CAROLINA

March 9, 2007

I SO MOVE:

STEPHANIE J. SMART
ASSISTANT PUBLIC DEFENDER

Case#2019-001079

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2009-CP-07-1050
	)	
Nathaniel Johnson, #211574,	)	
	)	
Applicant,	)	
v.	)	**ORDER DENYING POST-CONVICTION RELIEF**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

11 OCT 17 PM 3:47
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2009. The Respondent made its Return on July 14, 2009. An evidentiary hearing into the matter was convened on August 30, 2011, at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Timothy M. Wogan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Trial counsel, Stephanie Smart-Gittings, Esquire, testified at the hearing. This Court had before it the records of the Beaufort County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the Final Brief of Appellant, Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated December 30, 2008, the PCR application, Respondent's Return thereto, three SLED forensic reports dated February 14, 2007, June 20, 2006, and August 11, 2006, evidence submittal forms from the Beaufort County Sheriff's Office, and an invoice from DNA expert Dr. Ronald Ostrowski.

Case #2009-001079

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct – 1st degree (2006-GS-07-1641), burglary – 1st degree (2006-GS-07-1642), and use of a firearm during commission of a violent crime (2006-GS-07-1643). Stephanie Smart, Esquire, represented the Applicant. On March 12-14, 2007, the Applicant proceeded to trial, after which a jury found him guilty of kidnapping and criminal sexual conduct and not guilty of burglary – 1st degree and use of a firearm during commission of a violent crime. The Honorable Howard P. King sentenced the Applicant to confinement for thirty (30) years for kidnapping and thirty (30) years for criminal sexual conduct. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by the parties, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2008-UP-690 (S.C. Ct. App. filed December 11, 2008). The Remittitur was issued on December 30, 2008.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

Case # 2019-001079

At the hearing, Applicant only proceeded on the issue of ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified that he asked that Mr. Bell be relieved as his counsel. He testified that he did not recall discussing DNA evidence with his attorney. He asserted that he never told counsel that he was in love with the victim, and he did not tell counsel to only go forward on the theory that he was having an affair with the victim.

Trial counsel testified that she was appointed after James Bell, Esquire, was relieved as counsel, which was about three months before trial. She testified that she met with Applicant at the jail several times prior to trial. She asserted that she had adequate time to prepare for trial. Counsel testified that she spoke with the eyewitnesses from the electric company and retained a DNA expert. She testified that this matter was her first trial involving DNA evidence. She asserted that Applicant's original defense was misidentification, and then he changed his story the day before the trial and indicated that he knew the victim and was in a relationship with her. Trial counsel testified that Applicant told her he was in love with the victim and did not want counsel to vigorously cross-examine her at trial or question her about their relationship. Counsel testified that once Applicant changed his story and indicated that it was consensual sex then the

Case # 209-001079

DNA defense was not relevant. Counsel asserted that she discussed with Applicant that the DNA expert was not necessary with his new defense. She testified that she argued that the Applicant's DNA on the bed sheet corroborated Applicant's theory that the victim and Applicant were lovers. She testified that she used the DNA evidence to Applicant's advantage. Counsel contended that she would have tried to keep the DNA evidence out if Applicant's defense was misidentification. She testified that she had no basis to move to suppress the DNA evidence or challenge the chain of custody. She asserted that she had no reason to believe that there was not a proper chain of custody. Counsel testified that she went to look at the evidence herself and it was sealed and secured. She testified that she did not timely object when Officer Chapman testified at trial that Applicant was in jail on unrelated charges, although counsel did object after another question had been asked and answered.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this

Case #2019-001079

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Applicant's testimony was not credible while also finding that counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below

an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to move to suppress the DNA evidence or failing to call her DNA expert as a witness at trial. Counsel testified that she would have challenged the DNA evidence and called the expert witness at trial if Applicant's defense was misidentification. However, counsel asserted that Applicant changed his story on the eve of trial and told her that he and the victim were lovers and that it was consensual sex. She asserted that the DNA defense was not relevant under this new theory and she had no basis to move to suppress the DNA evidence. This Court finds that counsel's strategy was reasonable. In addition, counsel argued that the presence of Applicant's DNA on the bed sheet corroborated Applicant's theory, particularly in light of the fact that the victim testified that Applicant did not ejaculate on the day in question. Counsel used the DNA evidence to Applicant's advantage and argued that the victim's testimony was not credible.

This Court finds that counsel was adequately prepared for trial. Counsel retained a DNA expert, interviewed witnesses, discussed the case at length with Applicant, and reviewed the DNA evidence with Applicant. She was preparing for trial with a defense of misidentification until the day before trial when Applicant informed her of his new theory. This Court finds that counsel adequately presented Applicant's new defense at trial.

This Court finds that counsel was not ineffective for failing to challenge the chain of custody. Applicant has presented no indication that there was an improper chain of custody. Counsel testified that she looked at the evidence and it was sealed and secured so she had no basis to challenge the chain of custody. Applicant has failed to show that the outcome of the trial would have been different if counsel had challenged the chain of custody.

This Court finds that counsel was not ineffective for failing to timely object to Officer

Case# 2019-001079

Chapman's testimony regarding Applicant's unrelated charges. Counsel objected after another question was asked and answered. In addition, Officer Chapman did not specify what the unrelated charge was. The trial judge then gave a curative instruction for the jury to disregard any reference to Applicant's unrelated charges, which cured any alleged error. This Court finds that counsel's failure to timely object to Officer Chapman's testimony did not affect the outcome of the trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

Case #2019-001079

established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and,
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2011.

The Honorable D. Craig Brown
Presiding Judge
14th Judicial Circuit

Florence, South Carolina.

Case# 2019-001079

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)
STATE VS. Nathaniel Johnson, Jr.)
AKA:)
Race: B Sex: M Age: 40)
DOB: 12/6/66 SS#:)
Address:)
City, State, Zip:)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 06 GS 07 1640
A/W#: I-330912
Date of Offense: 2/7/06
S.C. Code §: 16-3-910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Kidnapping
In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant Initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since Feb 13 2006
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning
$ _____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Diane Lutz

PRESIDING JUDGE
Judge Code: 2106
Sentence Date: March 14, 2007

SCCA/217 (9/2006)

Case # 2019-001079

Case # 2019-001079

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330913

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: SEP 2 1 2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-07-01641

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr

Indictment for

CRIMINAL SEXUAL CONDUCT
1ST DEGREE

SC Code: **16-3-652**
CDR Code:**0160**
Class **FEL/A(V)**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plea guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT 2006-GS-07-01641

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

CRIMINAL SEXUAL CONDUCT 1ST DEGREE

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, engage in sexual battery, to wit: vaginal intercourse and/or digital penetration upon and with the body of [redacted] without her consent. Such sexual battery was accomplished by the use of force. All in violation of SC Code of Laws § 16-3-652..

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ISAAC M. STONE III, SOLICITOR

Case #2019-001079

Case # 2019-001079

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330912

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-07- 01640

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FELIA(Y)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plea guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT 2006-GS-07-01640

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

KIDNAPPING

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [redacted] by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ISAAC M. STONE III, SOLICITOR

Case#2019-001079

494

Case# 2019-001079

495

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort

IN THE COURT OF GENERAL SESSIONS

STATE VS Nathaniel Johnson, Jr.
AKA:
Race: B Sex: M Age: 40
DOB: [redacted] SS#:
Address: 160 Stony Tellea Rd
City, State, Zip: St Helena, SC 29920
DL# SID#

INDICTMENT/CASE#: 06 -GS- 07- 1641
A/W#: J-330913
Date of Offense: 2/7/06
S.C. Code §: 16-3-1652
CDR Code #: 0160

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Criminal Sexual Conduct 1st degree
In violation of § 16-3-1652 of the S.C. Code of Laws, bearing CDR Code # 0160
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ 30; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-GS-07-1041
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Feb 13, 2006
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $ _____ plus 20% fee: $
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:		
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§35.13 (Public Def/Proc)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in Installments)		$ 3.75
TOTAL		$ 128.75

PTUP
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning
$ _____ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires $500 be paid to Clerk during probation.

Deputy Clerk
Court Reporter: Dianne Ruff

PRESIDING JUDGE
Judge Code:
Sentence Date: March 14, 2007

SCCA/217 (9/2006)

Certified - A True Copy
Jerri Ann Rosenau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case# 2019-001079

496

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330912

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-07- 01640

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr.

Indictment for

KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C.C. PLS. AND G.S.

Case # 2019-001079

496

497

497

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT 2006-GS-07-01641

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

CRIMINAL SEXUAL CONDUCT 1ST DEGREE

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, engage in sexual battery, to wit: vaginal intercourse and/or digital penetration upon and with the body of [redacted] without her consent. Such sexual battery was accomplished by the use of force. All in violation of SC Code of Laws § 16-3-652.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ISAAC M. STONE III, SOLICITOR

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case#2019-001079

498

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF GENERAL SESSIONS FOURTEENTH JUDICIAL CIRCUIT C/A NO.: 2006-GS-07-01641
STATE OF SOUTH CAROLINA,)) Plaintiff,)) v.)) NATHANIEL JOHNSON, JR.,)) Defendant.)	VERDICT

We the Jury, by unanimous consent, on the charge of Criminal Sexual Conduct 1st Degree, find the Defendant, Nathaniel Johnson, Jr.:

X Guilty;

OR

____ Not Guilty.

Raymond Johnson, Jr.
FOREPERSON

Dated this 14th day of March, 2007,
at Beaufort, South Carolina.

When you have reached a unanimous verdict in the case, please knock on the door of your jury room and a bailiff will assist you.

Certified - A True Copy
Jean Ann Rosepleau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case# 2019-001079

499

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330913

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 11 2006

VERDICT

Foreperson of Petit Jury
Date:

499

DOCKET NO. 2006-GS-07-01641

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr

Indictment for

CRIMINAL SEXUAL CONDUCT
1ST DEGREE

SC Code: 16-3-652
CDR Code:0160
Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C.C. PLS. AND G.S.

Case # 2019-001079

500

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	C/A NO.: 2006-GS-07-01642
	J330914
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	VERDICT
)	
v.)	
)	
NATHANIEL JOHNSON, JR.,)	
)	
Defendant.)	
)	

We the Jury, by unanimous consent, on the charge of Burglary in the 1st Degree, find the Defendant, Nathaniel Johnson, Jr.:

____ Guilty;

OR

X Not Guilty.

Raymond Johnson, Sr
FOREPERSON

Dated this 14th day of March, 2007,
at Beaufort, South Carolina.

When you have reached a unanimous verdict in the case, please knock on the door of your jury room and a bailiff will assist you.

Certified - A True Copy
Jeni Ann Roseneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case#2019-001079

501

501

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2006-GS-07-01642

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, willfully and unlawfully enter the dwelling of [redacted] without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ISAAC M. STONE, III, SOLICITOR

Certified - A True Copy
Jerri Ann Rossneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case# 2019-001079

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J330914

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 21 2006

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-07-01642

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr.

Indictment for

BURGLARY/(AFTER 6/20/05)
1ST DEGREE

SC Code: 16-11-311
CDR Code: 079
Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

BLVIW-BIVE #2501

503

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J330915

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

403

DOCKET NO. 2006-GS-07-01643

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr.

Indictment for

USE OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME
SC Code: 16-23-0490
CDR Code: 0549
Class FEL/F

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Case # 2019-001079

505

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2006-GS-07-01643

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

USE OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Burglary 1st degree and/or Criminal Sexual Conduct 1st degree, in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ISAAC M. STONE, III, SOLICITOR

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case #2019-001079

5806

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT) STATE OF SOUTH CAROLINA,)) Plaintiff,)) v.)) NATHANIEL JOHNSON, JR.,)) Defendant.)	IN THE COURT OF GENERAL SESSIONS FOURTEENTH JUDICIAL CIRCUIT C/A NO.: 2006-GS-07-01643 VERDICT

If you find the Defendant guilty of Burglary 1st, or Criminal Sexual Conduct 1st Degree, or Kidnapping, you may consider this indictment for possessing a weapon during the commission of a violent crime. If you find him not guilty of each of these crimes, do not consider this charge.

On the charge for Possession of a weapon during the commission of a violet crime, we find the Defendant Nathaniel Johnson, Jr.:

____ Guilty;

OR

X Not Guilty.

Raymond Johnson, Sr.
FOREPERSON

Dated this 14th day of March, 2007,
at Beaufort, South Carolina.

When you have reached a unanimous verdict in the case, please knock on the door of your jury room and a bailiff will assist you.

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Kristy Taylor

Case#2019-001079

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 30, 2008

REMITTITUR

The Honorable Elizabeth M. Smith
102 Ribaut Road Rm 208
PO Box 1128
Beaufort, SC 29901-1128

Re: The State v. Johnson, Nathaniel Jr.
2006-GS-07-01640
2006-GS-07-01641

Dear Mrs. Smith:

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

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/lf

cc: Appellate Defender Lanelle C. Durant
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Julie M. Thames
I. McDuffie Stone, III, Esquire

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Nathaniel Johnson, Jr.,

Appellant.

Appeal From Beaufort County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2008-UP-690
Submitted December 1, 2008 – Filed December 11, 2008

AFFIRMED

Appellate Defender Lanelle C. Durant, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Julie M. Thames, all of Columbia; and I. McDuffie Stone III, of Beaufort, for Respondent.

Exhibit-S

509

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Indictment No. 06-GS-07-1640, 1641,
COUNTY OF BEAUFORT	)	1642, 1643
	)	
STATE OF SOUTH CAROLINA	)	1:15-CV-03611-RMG-SVH
	)	
V.	)	
	)	NOTICE OF MOTION AND MOTION
NATHANIEL JOHNSON	)	FOR BLOOD SAMPLES
	)	
DEFENDANT	)	

2006 DEC -7 PM 12:05
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

TO: THE ABOVE-NAMED DEFENDANT AND HIS ATTORNEY, JAMES BELL

PLEASE TAKE NOTICE that the undersigned, Gail Lovell, Assistant Solicitor for the Fourteenth Judicial Circuit, will move before the Honorable Carmen Tevis Mullen, for an Order requiring the Defendant to provide nontestimonial identification evidence in the form of blood samples in accordance with the directions given by officer(s) of the Beaufort Sheriffs Department or other law enforcement officer(s), for the purpose of comparing such samples to evidence relating to the above-titled investigation.

Such evidence is being requested pursuant to S.C. Code of Laws Section 17-13-140 (1976), as amended, and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

Said Motion is based upon the following:

1. That there is an ongoing investigation in a case wherein there is probable cause to believe that the above-named Defendant committed the crime of Criminal Sexual Conduct.

2. On February 7, 2006, Beaufort Sheriffs deputy responded to 94 Ccuffy Road, St. Helena, Beaufort county for report of a rape, burglary, kidnapping and possession of weapon during commission of a violent crime.

3. The victim was taken to the Hospital where a rape kit was completed. The kit was sent to SLED for DNA profiling.

4. That semen was recovered in a rape kit taken from the victim, that the State Law Enforcement Division has developed a DNA profile from the semen, of an unknown male. (see report dated March 8, 2006 from Agent Kimberly Hahn)

5. The victim and SLED produced a sketch of the assailant which was posted in the media along with a description of the jacket he was wearing.

Certified - A True Copy

Elizabeth M. Smith, Clerk of Court
Beaufort County, SC

Exhibit-5

6. Several calls were made to the police reporting that the defendant resembled the sketch and wore a similar jacket. A search warrant was issued for recovery this jacket and he was served with unrelated outstanding warrants.

7. While in the detention center, utensils that the defendant discarded were retrieved and sent to SLED for DNA comparison to the unknown male profile.

8. SLED reported that the DNA recovered from the saliva on the utensils of the defendant was consistent with the unknown male contributors to that provided to SLED for comparison. (see report dated August 11, 2006 from SLED Agent Ira Jeffcoat).

9. That the DNA profile is consistent with the DNA profile developed from Nathanial Johnson, Date of Birth July 26, 1966, and that in order to develop admissible evidence regarding the DNA profile, blood standard from the Defendant must be submitted to SLED.

10. That the taking of this identification evidence from the Defendant will reveal evidence material to his guilt or innocence;

11. That the methods used for obtaining, testing and storing this evidence are medically safe, reliable, and effective;

12. That based upon the serious nature of the crime, the importance of this forensic evidence to the investigation, and the unavailability of any less intrusive means of obtaining this identification evidence from the Defendant, the character of the requested search is appropriate; and

13. That the above action would not violate his rights against self-incrimination as provided by the United States Constitution and is not inconsistent with the South Carolina Constitution.

14. That Investigator Brian Chapman of the Beaufort Sheriffs Department will provide sworn testimony that there is probable cause to issue an order compelling the Defendant to provide blood samples.

Gail Lovell
Gail Lovell
ASSISTANT SOLICITOR

Beaufort, South Carolina
Dated: Dec 7, 2006

Certified - A True Copy
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit-T

511

J 20047

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)
) Indictment No. 06-GS-07-1640, 1641,
STATE OF SOUTH CAROLINA) 1642, 1643
)
V.) 1:15-CV-03611-RMG-SVH
)
NATHANIEL JOHNSON)
)
DEFENDANT)

2007 JAN 10 AM 11:58
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

ORDER FOR
BLOOD SA

Pursuant to Motion of the State, I find as follows:

1. That there is an ongoing investigation in a case wherein the State has shown by sworn testimony in open court that there is probable cause to believe that the above-named Defendant committed the crime of Criminal Sexual Conduct.

2. That semen was recovered in a rape kit taken from the victim, that the State Law Enforcement Division has developed a DNA profile from the semen, that the DNA profile matches the DNA profile developed from Nathaniel Johnson, Date of birth, July 26, 1966, and that in order to develop admissible evidence regarding the DNA profile, a blood standard from the Defendant must be submitted to SLED.

3. That certain items of evidence have been acquired by law enforcement officers during the course of their investigation and that samples from the Defendant are needed to compare with this evidence;

4. That the State has shown by the sworn testimony of Investigator Brian Chapman of the Beaufort County Sheriffs Department that the taking of certain identification evidence from the Defendant will reveal evidence material to his guilt or innocence;

5. That the methods used for obtaining, testing and storing this evidence are medically safe, reliable, and effective;

6. That after balancing the Fourth Amendment right of the Defendant to be free from bodily intrusion against the serious nature of the crime, the importance of this forensic evidence to the investigation, and the unavailability of any less intrusive means of obtaining this identification evidence from the Defendant, this Court concludes that the character of the requested search is appropriate;

7. That the above action would not violate the Defendant's rights against self-incrimination as provided by the United States Constitution and is not inconsistent with the South Carolina Constitution.

Certified - A True Copy

Therefore, it is ORDERED that within ten (10) days of this Order, the above-named Defendant must submit to the taking of blood samples by medically qualified personnel, in a medical environment, and in a medically acceptable manner.

IT IS FURTHER ORDERED that if the Defendant fails to comply with the State and/or law enforcement and/or medical personnel in providing the above-mentioned samples, this Court retains jurisdiction to ensure the Defendant's compliance with this Order.

AND IT IS SO ORDERED.

~~Hon. Judge Carmen T. Muller~~
Fourteenth Judicial Circuit
CURTIS L. COLTEAR2

Beaufort, South Carolina
~~December~~ January 10, 2006 7

Certified - A True Copy
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

CM# 2 of 2

Exhibit-U J330912

513

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

V.

NATHANIEL JOHNSON,

Defendant.

IN THE COURT OF GENERAL SESSIONS

NOTICE OF MOTION AND MOTION TO AMEND ORDER FOR BLOOD SAMPLE

Indictment No. 06-GS-07-1640, 1641, 1642, 1643.

TO: THE ABOVE-NAMED DEFENDANT AND HIS ATTORNEY, STEPHANIE SMART

PLEASE TAKE NOTICE that the undersigned, Melissa M. Millican, Assistant Solicitor for the Fourteenth Judicial Circuit, will move before a Circuit Court Judge during the January 16, 2007 term of General Sessions, for an Amendment to the Court's Order compelling above-named Defendant to submit to the taking of a blood sample by reasonable means, including by force if necessary, in accordance with the Court Order as granted under S.C. Code of Laws §17-13-140 (1976), as amended, and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

2007 JAN 16 AM 9:32
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Said Motion is based upon the following:

1. That on January 10, 2007, the State moved before the Honorable Special Circuit Court Judge Curtis L. Coltraine for an Order for Blood Samples to be taken from the above-named Defendant pursuant to S.C. Code of Laws §17-13-140 (1976), as amended, and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966).

2. That the State's Motion for Blood Samples was argued by the undersigned Assistant Solicitor and Defendant's attorney Stephanie Smart on the record, in the presence of the Defendant, and upon a formal and complete hearing of the evidence and the law, the State's Motion for Blood Samples was GRANTED.

3. That the Court's Order requires Defendant to submit to the taking of blood samples by medically qualified personnel in a medical environment and in a medically accepted manner. The Court Ordered specifications have been met by the State.

4. Defendant has failed to comply with the Court's Order and adamantly REFUSES to submit to the taking of his blood.

5. Subsequently, Judge Coltraine ordered the Defense attorney to advise Defendant to comply with the Court's Order and to submit to the taking of his blood sample.

6. After deliberating with his attorney, Defendant still refuses to comply with the Court's Order and adamantly REFUSES to submit to the taking of his blood by any means.

7. Further, that the Court's Order states that this Court maintains jurisdiction to ensure the Defendant's compliance with the Order if Defendant fails to comply with the State and/or law enforcement and/or medical personnel in providing the requisite blood samples.

Certified - A True Copy
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit-U 514

The State HEREBY MOVES TO AMEND the Court's Order to allow the State to obtain Defendant's Court Ordered blood samples within ten (10) days of the Amended Order, by medically qualified personnel, in a medical environment and in a medically acceptable manner, with the reasonable use of force if Defendant refuses to submit to the taking of his blood.

Melissa M. Millican
Assistant Solicitor

Beaufort, South Carolina
Date: January 16, 2007

Certified - A True Copy
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit-V

JJJU"12

515

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

V.

NATHANIEL JOHNSON,

Defendant.

AMENDED ORDER FOR BLOOD SAMPLE

Indictment No. 06-GS-07-1640, 1641, 1642, 1643.

BEAUFORT COUNTY CLERK OF COURT BEAUFORT, S.C.
2007 JAN 18 PM 2:51

Pursuant to the State's Motion to Amend Order for Blood Sample, I find as follows:

1. That on January 10, 2007, the Honorable Special Circuit Court Judge Curtis L. Coltraine GRANTED State's Motion for Blood Samples pursuant to S.C. Code of Laws §17-13-140 (1976), as amended, and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966) and upon a full and formal hearing of the evidence and argument of law by Assistant Solicitor Melissa M. Millican and Defendant's Attorney, Stephanie Smart, in the presence of the Defendant.

2. That on January 10, 2007, this Court ORDERED the Defendant to submit to the taking of blood samples within ten (10) days of the Order by medically qualified personnel, in a medical environment, and in a medically acceptable manner.

3. That the State has provided safe, reliable and effective methods for obtaining Defendant's blood sample in a medical environment by medically qualified personnel and in a medically acceptable manner.

4. That the Defendant has repeatedly refused to comply with and is in violation of this Court's Order for Blood Samples.

5. That due to the Defendant's refusal to submit to a blood sample, the State must restrain Defendant with necessary reasonable force for the purpose of taking a blood sample in compliance with the Court Order for Blood Samples.

6. That reasonably forced compliance with the Court Order does not violate the Defendant's Fourth Amendment right to be free from bodily intrusion, the Defendant's Fifth Amendment right against self-incrimination or the Defendant's Eighth Amentment right against cruel and unusual punishment.

The Court Order for Blood Samples is HEREBY AMENDED to provide that if Defendant refuses to submit to a blood sample, the State and/or law enforcement and/or medical personnel may restrain Defendant using necessary reasonable force to obtain a blood sample by medically qualified personnel, in a medical environment, and in a medically acceptable manner that is safe, reliable and effective.

Howard P. King
Honorable Circuit Court Judge

Beaufort, South Carolina
Date: Jan 18, 2007

Exhibit X

Inmate: #19149
Mr. Nathaniel [illegible]

Date: August 23rd 20[illegible]

1:15-CV-03611-RMG-SVH 516

Att: Ms. Elizabeth Smith

I am writing to inform the Courts of my rights to Preliminary hearing. Please respond back US Postal with copies of Preliminary hearing forms date received and notarize true bill ASAP.

Please be advised that I am also requesting an bond set by an Circuit court judge for the charges of Burglary First (I330914)

Thank You,

Nathaniel Johnson Jr

05 AUG 25 PM 3:27
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

State OF SOUTH CAROLINA
COUNTY / CITY BEAUFORT

Exhibit X

Ticket/Warrant's #

J330911 517
J330912
J330913
J330914
J330915

STATE OF SOUTH CAROLINA

VS

Nathaniel Johnson Jr

Defendant

Dismissal

Now comes the defendant Nathaniel Johnson Jr, on his own behalf. In pursant of South Carolina Criminal Laws of Rules and Procedures. Rule #2 Preliminary Hearings (A) Notice of Right, (B) Time for Hearing., and (C) Probable Cause (A) In all cases, the request for a preliminary hearing shall be made within ten days after notice. (B) If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. (C) If there be a lack of probable Cause, the defendant shall be discharged; but his discharge shall not prevent the State from instituting another prosecution for the same offense.

15 September 2006

My Commission Expires
02 September 2013

Certified - A True Copy

Elizabeth M Smith - Clerk of Court
Beaufort County, SC

Nathaniel Johnson Jr

Nathaniel Johnson Jr.
Defendant

We ask for motion of dismissal of these charges due to lack of probable cause. These allegations are also link to pending charges. We file this motion on the grounds of descrimonation, heresies, and prejudice. On the grounds spoken we demand a dismissal for all allegations. Petit Larceny section 16-13-030a Kidnapping section 16-03-0410, CSC 1st section 16-03-16 Burglary 1st section 16-11-0311, and Poss of WPN section 16-23-0490

There was a court hearing scheduled on 09/05/06 at 10:00Am an magistrate court for Petit Larceny and the sheriff asked for a countenuance. Approximately, 2:00pm on 09/05/06 an bond hearing was scheduled for the burglary 1st with the Honorable Judge Miller. Bond was placed along with other allegations with a 200,000.00 Two hundred thousand dollar bond, CSC 1st, Kidnapp and Poss of Weapon. We requested an preliminary hearing and didnot receive. The law states that a person is innocent until proven guilty. We feel that there were violations of my civil rights and therefore, the state's prosecution is liable by the South Carolina Criminal Law Rules and Procedures Act.

19 September 2006

Certified - A True Copy
My Commission Expires
02 September 2013
Elizabeth M. Smith Clerk of Court
Beaufort County, SC

Exhibit-X

519

Grounds for Dismissal

(1) Here are copies of my preliminary hearing forms dated and notarized August 23rd, 2006. Sent to Magistrate court. No record of date received on the box for court use only.

(2) I received information back from the magistrate court on a request for status made on the 15th of Sept 2006. The response was false information receive on Sept 19th, 2006 from Preliminary hearing clerk Marta Cherena.

(3) I wrote back to the magistrate court on a request for copies of preliminary hearing forms sent in and would like information for court use only, on date received. I received information and copies of preliminary hearing forms back in response, from the courts with no prove of date or record received and correspondent letter for request for preliminary hearing by Mr Steve Hood. Dated Sept 11th, 2006, stamped by the magistrate court on Sept 13th 2006 at 2:15pm.

Leonard E Barnes sui juris

Nathaniel Johnson

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit #D-1

520

NOTICE OF RIGHT TO PRELIMINARY HEARING

BEAUFORT COUNTY CLERK OF COURT BEAUFORT, S.C. 06 SEP 29 PM 3:03

STATE OF SOUTH CAROLINA)
)
COUNTY/CITY OF BEAUFORT)
)

IN THE SUMMARY COURT

WARRANT/TICKET NUMBERS	OFFENSES
J330912	Kidnapping / Kidnapping
J330913	CSC 1ST
J330915	POSS OF WEAPON DURING VIOLENT CRIME

I wish to be present at hearing.

Nathaniel Jr. Johnson, you are charged with the above named offense(s) and you may be entitled to a Preliminary Hearing. You must request a Preliminary Hearing within ten (10) days of this Notice or lose your right to such a Hearing. You may request a Preliminary Hearing by completing the lower left section of this notice and returning it to the Court listed below, either in person or by mailing it to the following address:

BEAUFORT MAGISTRATES COURT
104 RIBAUT ROAD
BEAUFORT, SC 29902
843-470-5203

I request a Preliminary Hearing:

Nathaniel Johnson Jr.
Signature of Defendant
Nathaniel Jr. Johnson

BCDC #19149 P.O. Drawer 1228
Address

Beaufort S.C 29901-1228

My Attorney is:
Public Defender

THIS NOTICE GIVEN BY:

[signature] - 8-22-06
Beaufort County/City
Beaufort County Bond Court

FOR COURT USE ONLY:

Date Request Received: _____

Clerk: _____

Certified - A True Copy

[signature]
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit-D-2

521

NOTICE OF RIGHT TO PRELIMINARY HEARING

STATE OF SOUTH CAROLINA)
)
COUNTY/CITY OF BEAUFORT)

IN THE SUMMARY COURT

1:15-cv-03611-RMG-SVH

BEAUFORT COUNTY CLERK OF COURT BEAUFORT, S.C. 06 SEP 29 PM 3:03

WARRANT/TICKET NUMBERS	OFFENSES
J330914	Burglary / Burglary (After June 20, 1985) - First degree

I wish to be present at hearing.

Nathaniel Jr. Johnson, you are charged with the above named offense(s) and you may be entitled to a Preliminary Hearing. You must request a Preliminary Hearing within ten (10) days of this Notice or lose your right to such a Hearing. You may request a Preliminary Hearing by completing the lower left section of this notice and returning it to the Court listed below, either in person or by mailing it to the following address:

BEAUFORT MAGISTRATES COURT
104 RIBAUT ROAD
BEAUFORT. SC 29902
843-470-5203

I request a Preliminary Hearing:

Nathaniel Jr. Johnson
Signature of Defendant

BCDC #19149 P.O. Drawer 1228
Address

Beaufort, SC. 29901-1228

My Attorney is:

Public Defender

THIS NOTICE GIVEN BY:

8-22-06

Beaufort County/City
Beaufort County Bond Court

FOR COURT USE ONLY:

Date Request Received: _____

Clerk: _____

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Exhibit #D-3

522

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER
Human Services Building • 1905 Duke Street (Room 210) • P.O. Box 525
Beaufort, South Carolina 29901-0525
Phone: (843) 470-4525 Fax: (843) 470-4533

September 11, 2006

Dear Judge McDomick/Judge Dudley:

Re: NATHANIEL JOHNSON

Kidnapping/Kidnapping	H330912
Sex/Criminal sexual conduct - First degree	J330913
Burglary/Burglary (After June 10, 1985) - First De	J330914
Weapons/Poss weapon during violent crime, if not a	J330915

I was appointed to represent NATHANIEL JOHNSON on the above charge(s).

Pursuant to Rule 9, South Carolina Rules of Criminal Practice, I request a preliminary hearing on these charges. Please contact me as to when a hearing in this matter may be held.

Sincerely,

Gene G. Hood

Gene G. Hood
Public Defender

2006 SEP 13 PM 12:15

Certified - A True Copy

Elizabeth M. Smith - Clerk
Beaufort County

Multigovernment Center, Arthur Horne Building
104 Ribaut Rd., P.O. Box 2207
Beaufort, South Carolina 29901-2207
Phone: (843) 470-5202/5204 • Fax (843) 470-5206

523

Exhibit - G - F2 523

1:15-cv-03611-RMG-SVH

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.
06 SEP 29 PM 3:03

September 19, 2006

Nathaniel Johnson, Jr #19149
BC Detention Center

RE: J330912 – Kidnapping
J330913 – CSC lst degree
J330914 – Burglary
J330915 – Poss. weapon during violent crime

Dear Mr. Johnson:

Please be advised that I am in receipt of your letter dated September 15, 2006 addressed to the clerk of Court regarding your Preliminary Request on the above captioned matter. Note that the Preliminary Hearing was held on September 15, 2006 Fri. and the Public Defender's Office was in court to represent you.

Your attorney is Thomas James Bell. If you have any questions or concerns, please direct them to Attorney Bell at the Public Defender's Office. With kind regards, I am

Very truly yours,

Marta Cherena
Jury Trial/Preliminary Hearing Clerk

/mc

Professionally we serve; Personally we care!

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County SC

BEAUFORT MAGISTRATE
Multigovernment Center, Arthur Horne Building
104 Ribaut Rd., P.O. Box 2207
Beaufort, South Carolina 29901-2207
Phone: (843) 470-5202/5204 • Fax (843) 470-5206

524

Exhibit-8D-4

September 21, 2006

Beaufort County Detention Ctr
Nathaniel Johnson Jr
19149 A-1 Rm 124

RE: J330911-915

Dear Mr. Johnson:

Please note that I am in receipt of your letter dated September 19, 2006. Per your request, attach please find copies of your request for a Preliminary Hearing and that of your attorney.

Sincerely

Marta

Marta Cherena
Jury Trial/Preliminary Hearing Clerk

Enclosure

/mc

Certified - A True Copy

Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

Professionally we serve; Personally we care!

525 Exhibit Exhibit Y

525

STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	) INDICTMENT NO 2006GS0701640, 1641, 1642, 1
STATE OF SOUTH CAROLINA	) 9:15-CV-03611-RMG-SVH
vs. Nathaniel Johnson Jr.	) Warrant #'s J330912 J330913 J330914 J330915

The Defendant filed a motion to dismiss the pending charges because (s)he did not receive a requested preliminary hearing under S.C. Rule of Criminal Procedure 2. However, it appears to this court that the Defendant has subsequently been indicted by the Beaufort County Grand Jury.

Every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial." Rule 2(a), SCRCrimP. If a defendant makes a timely request for a hearing, one should be held within ten days. Rule 2(a)-(b), SCRCrimP. However, the hearing "shall not be held ... if the defendant is indicted by a grand jury ... before the preliminary hearing is held." Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct.App.1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Furthermore, a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Therefore, although the Defendant may have timely requested a preliminary hearing, his/her right to have the hearing ended with the grand jury's indictment.

FALSE Info

Furthermore, a circuit court judge can not restore the right to a preliminary hearing by ordering a post-indictment preliminary hearing. The circuit court obtained jurisdiction over the Defendant by way of the grand jury's indictment. See S.C. Const. art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury...."). State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (Ct. App. 2001).

Therefore, the Defendant's motion to dismiss is denied.

Roger M. Young, Sr.
Circuit Court Judge

Beaufort, SC
10/16/06

Certified - A True Copy
525
Elizabeth [illegible] Clerk of Court
Beaufort County, SC

Exhibit

SCANNED

Space Reserved For Lab Receipt Barcode

526

SLED LABORATORY FORENSIC SERVICES REQUEST

1:15-CV-03611-RMG-SVH

SLED LAB No. L06-02390

Submission: 2 4/27/2006 9:56:29AM

Name of Investigating officer: Brian Chapman

Agency: Beaufort County Sheriff's Office **Phone No:** 843-525-7256

Fax No: _____ **Email:** _____

Mailing Address: PO Box 1758

City / State / Zip: Beaufort, SC 29901

CC: _____

ORI No: SC0070000

Agency Case No: 20060207359

Offense: SEXUAL ASSAULT

County: Beaufort

Offense Date: 02/07/2006

Officer Involved Shooting ☐ Yes

Rush: ☒ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number:

SLED ITEM NO. LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
5	9	Miscellaneous - Plastic spoon from Nathaniel Johnso	EVIDENCE PROCESSING
6	10	Miscellaneous - Napkin from Nathaniel Johnson, Jr	EVIDENCE PROCESSING

Subject(s)	Sex	Race	DOB	SSN
Nathaniel Johnson, Jr	M	B	07/26/1966	

Victim(s)	Sex	Race	DOB	SSN
[redacted]	F	W	10/28/1970	
[redacted]	F	W	10/28/1970	

Comments

Possible suspect Nathaniel Johnson, Jr is currently incarcerated at the Beaufort County Detention Center. Request rush to establish probable cause to keep him confined if his profile is developed on evidence related to this case.

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County

Michael W. Hogewood
Chief Deputy Beaufort County Sheriff's Office

JK

SCANNED 05-12-2006

gin sheet

Add'l

SLED LABORATORY FORENSIC SERVICES REQUEST

L06-02390
Sub# 2 Received (04/27/2006)
Beaufort County Sheriff's Office
Agency Case #: 20060207359

527

Name of Investigation Officer: Investigator Brian Chapman	**Agency ID/ORI No:** 070000
Agency: Beaufort County Sheriff's Office **Phone No:** 843-470-3469	**Case No:** 200602070359
Fax No: 843-470-3187 **Email:** bchapman@bcgov.net	**Case Type:** Criminal Sexual Conduct
Mailing Address: P.O. Box 1758	**Offense Date:** 02-07-2006
City: Beaufort **State:** South Carolina **Zip Code:** 29901	**County:** Beaufort
CC:	**Officer Involved Shooting** ☐ Yes

Has other evidence on this case been submitted to this lab? ☒ Yes ☐ No If yes, Lab Number: L06-02390	Is this evidence related to another lab number? ☒ Yes ☐ No If yes, Lab Number: L06-02390

For Toxicology Cases ONLY

Death:	☐ Yes ☒ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained	
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other	
Other Causes:	☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other	
DUI:	Felony ☐ Yes ☐ No (If felony resulted in death Victim's name required)	Breath test given: ☐ Yes ☐ No If yes, reading:
Drugs Suspected: ☐ Yes ☐ No If yes, list drugs		

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
	Johnson, Nathaniel Jr.	Male	Black	07-26-1966	[redacted]
	unknown	Male	Black		

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
[redacted]		Female	[redacted]		

10 KH

Login sheet

Addl Exhibit B

528

SLED Lab No: L06-2390

SLED items No LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
1	BCSO # 14	One sealed SLED Biological Specimen box	Request DNA profile be
		containing: One lavender top vial of	developed and compare to
		Nathaniel Johnson Jr.'s Blood and paperwork	previously submitted evidence
		from Don Bodiker, RN from Beaufort	related to this case.
		Memorial Hospital	

Comments

Beaufort County Case Number 200602070359.

Nathaniel Johnson Jr. who is currently incarcerated at the Beaufort County Detention Center requested a speedy trial. We request that a rush be placed on this evidence due to the fact that Johnson requested a speedy trial. Circuit Court Judge Howard King ordered this case be tried within 120 days or the defendant will be released from Beaufort County Detention Center.

R.K. Cooper

Print Name of Delivering Officer

R.K. Cooper

Signature of Delivering Officer

SLED Forensics Form # FSA 032, February 2006

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

529

MARK SANFORD
Governor

RECEIVED

AUG 16 2006

Beaufort County Sheriff's Office

ROBERT M. STEWART
Chief

Exhibit-N 1

LCPL. Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29902

SCANNED

I certify this is a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

DNA ANALYSIS
August 11, 2006
SLED LAB: L06-02390
Your Case No: 20060207-359
Incident Date: 02/07/2006
[redacted]
(S) Nathaniel Johnson

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:		Results of Examinations:	
1.0	Sexual Assault Evidence Collection Kit from [redacted]		
1.2	Blood standard	1.2	See DNA analysis.
1.4	Smears (vaginal and oral)	1.4	No analysis performed.
1.5	Vaginal swabs	1.5	No semen identified.
1.6	Oral swabs	1.6	No semen identified.
1.7	Miscellaneous body fluids		Semen identified. See DNA analysis.
1.8 R	Fingernail scrapings (Right)	1.8 R	See DNA analysis.

found on VS body

NO semen inside her on her but on bed collected from where?

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED08/16/2006

Exhibit - N 1

Items Submitted:		**Results of Examinations:**	
1.8 L	Fingernail scrapings (Left)	1.8 L	Nothing of apparent serological evidentiary value found.
1.9	Bite mark swabs	1.9	See DNA analysis. admitted.
1.10	Known head hairs	1.10	No analysis performed.
2.1	Cutting from fitted sheet	2.1	Semen identified. See DNA analysis.
2.2	Cutting from fitted sheet	2.2	No analysis performed.
2.3	Cutting from fitted sheet	2.3	Semen identified. See DNA analysis.
2.4	Cutting from fitted sheet	2.4	Semen identified. See DNA analysis.
2.5	Cutting from fitted sheet	2.5	No analysis performed.
2.6	Trace evidence collected from fitted sheet	2.6	No analysis performed.
3.0	Swabs		
3.1	Swab one taken from bite wound	3.1	See DNA analysis.
3.2	Swab two taken from bite wound	3.2	See DNA analysis.
4.1.1	Cutting from pants	4.1.1	See DNA analysis. No human DNA
5.0	Plastic spoon said to have been used by Nathaniel Johnson, Jr.	5.0	See DNA analysis. admitted
6.0	Napkin said to have been used by Nathaniel Johnson, Jr.	6.0	See DNA analysis. admitted

do u recognize this
how do u recognize
what is it
did u test this for
+ DNA

#15

Were results obtained

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Michael M. Hottell
Chief Deputy Beaufort County Sheriff's Office

SCANNED 08/15/2006

Exhibit - N1

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DNA ANALYSIS

ITEMS ANALYZED:

1.2	Blood standard from [redacted]
1.7	Miscellaneous body fluids from underwear
1.8	Fingernail scrapings from right hand
1.9	Bite mark swabs
2.1	Cutting from fitted sheet
2.3	Cutting from fitted sheet
2.4	Cutting from fitted sheet
3.1	Swab one taken from bite wound
3.2	Swab two taken from bite wound
4.1.1	Cutting from pants
5.0	Plastic spoon said to have been used by Nathaniel Johnson, Jr.
6.0	Napkin said to have been used by Nathaniel Johnson, Jr.

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Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

EXAMINATIONS

DNA analysis was performed on items 1.2, 1.7, 1.8, 1.9, 2.1, 2.3, 2.4, 3.1, 3.2, 5.0, and 6.0 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS) for comparison purposes.

The partial DNA profile developed from the male contributor to items 1.8 R and 1.9 is consistent with the semen donor to item 1.7.

The partial DNA profile developed from item 5.0 is also consistent with the semen donor to item 1.7.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [redacted] and the unidentified male individual from item 1.7 cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

The partial DNA profile developed from item 6.0 is too weak to reliably interpret.

No human DNA was extracted from item 4.1.1. Pants that she had on, only pulled to her waist NO DNA but DNA Recd

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Exhibit - N 1

532

Table 1 – Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5818	D13S317	D7S820	Amelo-genin
[redacted] 1.2	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	**28**,(31.2)	12,13	**8**,(11), **13**	(9),**11**, (12),**13**	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12,13)	(9,11), (12,13)	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	**14**,15	(28),**30**, **31.2**	**11**,(13), **16**	(8),**11**, **12**,(13)	**9,12** (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	**28**	(11),**12**, **13**,(16)	**8**,(11) **13**	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	**28**,(30)	(11),**12**, **13**	**8**,(11), **13**	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,**16**	**15**,17, **18**	**22,24**, 25	14,15	**28**,30, 31.2	11,12, 13,16	**8**,11, 12,**13**	9,**11**, 12,**13**	**11,12**, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, 25	**14**,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	**15**,**17**, (18)	(22),**24**, **25**	**14**,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

Exhibit - N 1

533

Table 2 - Cofiler

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelogenin
[redacted] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	**6**,7, **8**	9	10,11	**11,12**, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,**9**	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	**8**,9	10,11	(11)**12**, **13**	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), **8**	(8),**9**	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,**9**	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,**16**	12,13	6,7, 8	8,**9**	10,11	**11,12**, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,**15**, **16**	**12**,13	6,7, 8	**8**,9, (11)	10,11	11,**12**, **13**	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

Exhibit - N1

534

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Please submit the suspect's blood standard for comparison purposes.

Kimberly A. Hahn
Forensic Scientist

cc: Beaufort County Solicitor's Office

AGENCY I.D.
SCC 070000

535

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER 20060207359 NCIC INQ ENTE

SCANNED

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
MODIFIES ORIGINAL / CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 4 PAGES

Reference: (A) "Reportable" Exhibit - P-1

Case Number: 20060207359
Incident Type: Criminal Sexual Conduct / Armed Robbery
Incident Location: 94 Cuffy Road St. Helena, SC
Complainant: Same as Victim
[redacted]
Suspect: unknown
Reporting Officer: CPL. Merrill
Investigating Officer: LCPL. Chapman

Synopsis:

On 02-07-06, the victim reported that an unknown black male came to her house and asked to use the phone. Victim allowed the suspect to enter her home at which point he displayed a firearm and forced the victim into the bedroom where he committed Criminal Sexual Conduct by sexual and digital penetration. The unknown suspect then robbed the victim of approximately $472.00 in cash and left on a bicycle heading towards Scott Hill Road. As a result of the investigation, it was determine that Nathaniel Johnson Jr. is a person of interest as a possible suspect in this case.

Investigation:

On or about 03-14-06, this officer met with members of the 14th Judicial Circuit Solicitor's Office to discuss the facts regarding this case. This officer was advised that at this point, there was not enough probable cause for a Schmerber hearing to collect DNA from Nathaniel Johnson Jr. On or about 04-07-06 this officer met with Beaufort County Detention Center Director Phillip Foot. This officer advised Foot of the facts of the case and that BCSO needed to obtain a DNA sample from Johnson, but wanted to do it in a fashion as to not violate his legal rights. Foot advised that BCDC officers could either collect his discarded trash or his food tray after he had completed his meal. Foot advised me that he would contact this officer when he was able to accommodate BCSO's request.

On 04-18-06, Director Foot notified this officer that Johnson had been involved in an incident and he had been placed in isolation. Foot and arranged a meeting for 04-21-06 and it was agreed by both parties to view Johnson eat his lunch. After Johnson completed his lunch, the pod officer would collect his food tray and bring it to me (LCPL. Chapman) for evidence.

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Chief Deputy, Beaufort County Sheriff's Office

SUBJECT IDENTIFIED	SUBJECT LOCATED		
☐ YES NO ☒	☐ YES NO ☒	☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED ☐ ARRESTED 18 AND OVER	☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVIENILE-NOCUSOTDY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCPL. Chapman	04-21-06	C2188		4246	B896
			FOLLOW-UP INVESTIGATION ☐ YES NO ☒ OFFICER		

SCANNED AS PART OF

5536

AGENCY I.D.
SCO 070600

SUPPLEM. .NTAL INCIDENT REPORT

CASE NUMBER: 20060207359 | NCIC: INQ | ENTD

Exhibit-P-1

☐ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

On 04-21-06 this officer met with Lt. Allen of the Beaufort County Detention Center to observe inmate Nathaniel Johnson Jr. eat his lunch from wing control in pod B-3. This officer arrived in wing control at approximately 1138 and I was advised that Johnson was in cell 129. This officer notes that Officer Brown and Lt. Allen were in the control room. This officer, with a pair of binoculars, visually identified Johnson as being in cell 129. This officer notes that I have met Johnson in person and viewed his picture numerous times. I observed Johnson wearing a yellow in color, inmate issue uniform and eating his inmate issued lunch. This officer observed that the meal was served on a plastic tray. At approximately 1140 this officer observed Johnson insert his issued plastic utensil into his mouth in fashion consistent with eating food.

Johnson continued eating his meal and at approximately 1147 he walked to the door of his cell. This officer observed Johnson through his meal tray out of the food slot in the door and it landed on the floor in front of the door. When the tray landed, this officer observed an object land beside the tray on the floor. This officer observed the object to be a plastic food utensil, consistent with the one I observed Johnson put in his mouth earlier. I also observed a white in color object land to the left of the cell door (from my vantage point) and it appeared to be a napkin.

At approximately 1145, this officer observed PFC. Christopher Teasdell enter the pod to begin his normal collection of inmate food trays in the pod. At approximately 1149 I observed PFC. Teasdell walk to cell 129 which contained Nathaniel Johnson Jr.. I then observed Teasdell pick up the tray and the utensil was picked up with his left hand. This officer noted that Teasdell was wearing latex or plastic gloves on his hands for sanitary purposes. I then observed Teasdell walk to the pod entrance door and then he came back in view with out the tray. This officer observed the plastic utensil still in his left hand. Teasdell then collected the remainder of the trays and I maintained sual contact with the plastic utensil that he collected from Johnson. When all the trays were collected, Teasdell proceeded to the pod door and he only had the remaining trays he had collected and the plastic utensil from Johnson in his left hand. As this was happening, this officer observed that the napkin Johnson had discarded was still on the floor in front of his cell door.

At approximately 1152, Teasdell entered wing control and placed the utensil in a paper evidence bag. This officer noted that the utensil was a plastic spoon. This officer then requested that Teasdell retrieve the napkin Johnson had discarded. This officer notes that at approximately 1156 Teasdell picked up the napkin in front of Johnson's cell door. Teasdell then returned to wing control and placed the napkin in a paper evidence bag at approximately 1159. At that time, Teasdell signed the evidence bags over to me. This officer noted that Teasdell mislabeled the evidence bag that contained the napkin as a plastic spoon. This officer corrected the mistake and it is noted on the evidence bag and a BCSO Evidence Submittal form.

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SUBJECT IDENTIFIED	SUBJECT LOCATED			
☐ YES NO X	☐ YES NO X	X ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

Chief Deputy Beaufort County Sheriff's Office

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVIENILE-NOCUSOTDY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCPL. Chapman	04-21-06	C2188			
			FOLLOW-UP INVESTIGATION ☐ YES NO ☐ OFFICER		

SCANNED 04/25/2006

AGENCY I.D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER 537

Exhibit-P-1

20060207359 | INQ | E

☐ ORIGINAL REPORT
☒ SUPPLEMENTAL REPORT
☐ ADDITIONAL VICTIMS
☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL
☐ CASE STATUS CHANGE
☐ ADDITIONAL OFFENDERS
☐ ADDITIONAL RECOVERED PROPERTY

Upon my return to the LEC, the evidence was turned into the BCSO Evidence Division after an Evidence Submittal form was completed. This officer also submitted a SLED Laboratory Forensic Services Request form for the evidence to be compared to other evidence that had already been submitted to SLED on a previous date (ref. SLED Lab Number L06-02390). This officer met with PFC. Teasdell later in the day on 04-21-06 and he provided a written statement of what happened and it is attached to this report.

Case Status: This case is active.

Attachment:
Written statement from PFC. Christopher Teasdell
Evidence Submittal Form

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Michael M. Hobbell
Chief Deputy Beaufort County Sheriff's Office

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☐ YES ☒ NO	☐ YES ☒ NO	☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVIENILE-NOCUSOTDY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCPL. Chapman	04-21-06	C2188			
			FOLLOW-UP INVESTIGATION ☐ YES NO ☐ OFFICER		

SCANNED04/25/2006

AGENCY I.D. SCO 070000

SUPPLEMENTARY REPORT

CASE NUMBER 2 06 02 07 35 9 | NCIC INQ. | ENT.

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE 1 of 6 PAGES.

Exhibit - O 538

Reference: (A)

BCSO Incident Report #: 20060207359
Incident Type: Armed Robbery/Criminal Sexual Conduct
Incident Location: 94 Cuffy Road St. Helena, SC
Complainant: Baptiste, Tara
Victim: [redacted]
Suspect: Unknown
Reporting Officer: CPL. Merrill
Investigating Officer: LCPL. Chapman

"Reportable"

Synopsis:

On 02-07-06, the victim reported that an unknown black male came to her house and asked to use the phone. Victim allowed the suspect to enter her home at which point he displayed a firearm and forced the victim into the bedroom where he committed Criminal Sexual Conduct by sexual and digital penetration. The unknown suspect then robbed the victim of approximately $472.00 in cash and left on a bicycle heading towards Scott Hill Road.

Who susp. Obj.

Object to this statement Prior bad acts

Investigation:

CPL. Runnion and PFC. Capps earlier advised that they had made contact with a Nathaniel Johnson earlier in the week and he had been wearing a similar style jacket that the suspect may have been wearing. SGT. Wilson was able to locate two Nathaniel Johnsons that lived in the area and produced a separate photo lineup for each one of them. This officer responded with the line-ups and upon arrival CPL. Merrill briefed me on the situation. This officer then showed the victim the lineups, but she was unable to identify anyone at that time. This officer then exposed several digital pictures of the victim's bite wound and then collected two cotton swabs of the bite wound for possible DNA evidence. The swabs were then placed on a drying panel and secured in my patrol vehicle. This officer also collected the bedding sheet from the victim's bed for possible DNA evidence.

X Victim Couldn't ID from Photo lineup

At that time I conducted a secondary interview during which the victim reaffirmed her story. The victim further advised the suspect did make vaginal penetration with his penis. At that time I advised the victim that she needed to go to the hospital and have a sexual assault kit performed, to which the victim agreed. Prior to leaving, this officer collected voluntary statement from the victim that was written in [redacted] as well as a translated version in English.

LS

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SUBJECT IDENTIFIED	SUBJECT LOCATED				
☐ YES ☒ NO	☐ YES ☒ NO	☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCPL. Chapman	02-27-06	C2188	Chief Deputy Beaufort County Sheriff's Office	3-2-6	2882

FOLLOW-UP INVESTIGATION ☒ YES ☐ NO — OFFICER

ADMINISTRATIVE

SCANNED 03/07/2006

This officer then escorted the victim to the Emergency Room where a sexual assault kit was performed. After escorting the victim to the hospital, this officer arrived at the LEC and secured the evidence I had collected in my office for safe keeping until they could be turned into BCSO Evidence Division. 539

On 02-08-06, this officer transferred the digital pictures I had exposed onto a Memorex CD-R and placed it in an evidence bag. The dried Q-tip swabs were individually placed in envelopes, labeled Swab # 1 and # 2. The envelopes were then placed in an evidence bag and all evidence was submitted to BCSO Evidence Division. This officer met with the victim to conducted another interview and she again reaffirmed her story during which she provided another written statement. This officer notes that her sister, [redacted] translated the English versions of the victim's statement.

The victim advised that she had the suspect's face in her mind at which time I asked her if she met with a sketch artist, could she help him draw a picture to which she agreed to do. SLED Agent Mike Lynch (forensic sketch artist) was contacted and agreed to assist. This officer and Agent Lynch met with the victim on 02-09-06 and a sketch of the suspect was created. The sketch was then sent to the media outlets via PIO LCPL. Szpanka in an attempt to get the communities assistance in the case.

On 02-10-06 this officer submitted a SLED Laboratory Forensic Services Request to the BCSO Evidence Division for all evidence in the case to be examined for DNA. This officer then made contact with the residents on Cuffy Road in an attempt to see anyone had seen or knew the unknown suspect. All efforts met with negative results. This officer then made contact with the victim and again conducted an interview.

Statement of [redacted]:

Victim advised that when she opened the door for the suspect she did not see anyone else outside and could not see the workers that eventually helped her. Victim stated that in her attempt to get away, she ran out the back door and behind her brother-in-laws house (92 Cuffy Rd.) and out to the road. Victim advised that she did not look back to see if the suspect had followed her and when she reached the roadway, she saw the two white men approximately 100 to 150 yards past the left side of her house (facing the house). Victim stated she ran to them and asked for help. Victim advised that she did not see the suspect leave her house.

Inconsistent w/ Mem

Inconsistent

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SUBJECT IDENTIFIED ☐ YES ☒ NO | SUBJECT LOCATED ☐ YES ☒ NO | ☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCPL. Chapman	02-27-06	C2188			

FOLLOW-UP INVESTIGATION ☐ YES NO ☐ OFFICER

Chief Deputy Beaufort County Sheriff's Office

SCANNED 03/07/2006

540

Victim stated the suspect remained calm throughout the whole thing and did not seem to be in a panic. Victim advised that he was very well kept in appearance and was very strong. Victim stated he smelled like he had lotion on or had recently taken a shower. Victim advised he had short fingernails, a close haircut and had all of his teeth.

Victim stated that she recalled an incident that happened to several months ago near the Scott Hill park. Victim advised that a black male that looked similar to her attacker approached her while she was with her children. Victim stated that the man started talking to her and bragging how he could take care of her and he had lots of money because he retired early. Victim advised that she told the man to leave her alone and he told her that he knew she had a sister in the Orange Grove Community and she very pretty. Victim stated she did not know if it was the same man, but he did look similar.

Also on 02-10-06, this officer made contact with a clerk at Chaplin's Grocery Store on Storyteller Road and showed her the sketch of the suspect. The clerk advised that it looked like a man named Nate Johnson who lives in the area and he had been in the store about 10 to 15 minutes prior to my arrival. The clerk advised he was wearing a blue jean like outfit and was walking towards his house. LCPL. Williams and myself then checked the area for the suspect, but had negative contact. Later in the evening, this officer received a phone call from a female stating that he picture that was in the paper looked like Nathaniel Johnson Jr. and he gets around the area on a bicycle. The female advised that she had seen him wearing a jacket similar to the one described in the paper on several occasions. The caller advised that Nathaniel goes around to people's houses and looks in there windows and he has attacked women before. The female identified herself as Wendy Daise and to be Nathaniel Johnson's sister (838-5521).

Why would she do this?

On 02-13-06, this officer attempted to contact Wendy Daise via the phone number she provided, but instead spoke with an Allison Johnson. Allison also identified herself as being Nathaniel's sister. On 02-13-06, the Sheriff's Office received notice that Nathaniel was in the residence of 160B Storyteller Road. SGT. Baird obtained a search warrant for the residence to locate the jacket described by the victim. Nathaniel Johnson Jr. was taken into custody on two unrelated charges and transported to the LEC to be interviewed. SGT. Baird located a black and yellow jacket with a extra large cap in one pocket while executing the search warrant. Also during the execution of the search warrant, BCSO officers located what appeared to be 2 B.B. pistols in the suspect's residence, but they were not seized due to not being on the search warrant.

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Chief Deputy Beaufort County Sheriff's Office

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Upon arrival at the LEC, Nathaniel Johnson Jr. was read his Miranda Rights and he gave a verbal acknowledgment that he understood his rights. Nathaniel was unable to write his acknowledgement on the Miranda form due to being in handcuffs and SGT. C. Wilson signed the form as a witness. This officer then began the interview. This officer noted that Nathaniel appeared nervous and agitated.

Statement of Nathaniel Johnson Jr:

Johnson stated on 02-07-06 he was at work at Secession Golf from 0900 to 2300. Johnson advised that he caught a ride to and from work, and did not leave while he was there. Johnson stated he was a dishwasher and worked for a man named Mike, but he could not remember his last name. Johnson advised he clocked in and out of work on the computer. Johnson stated he was only on St. Helena when he woke up to go to work and when he came back from work.

Johnson advised that no one else was at home and he lives alone. Johnson stated he gets around the area by walking, but does ride bicycles occasionally. Johnson advised a man named Richard Simmons borrowed a bicycle from him on that Monday and then told him on Wednesday that a man named Bluejay had taken the bicycle. Johnson stated he does not know what Bluejay's real name is, but he hangs around Chaplin's Grocery.

Johnson advised that he had heard about the attack in the area on the news and in the newspaper. Johnson stated he does not go out much and has not seen anyone in the area that looks suspicious. Johnson advised the sketch looks similar to him, but he did not do it. Johnson stated he has never attacked anyone and does not have any enemies.

On 02-14-06 this officer obtained a search warrant from Magistrate Smith in reference to recovering the B.B. gun pistols in the home of Nathaniel Johnson Jr. at 160B Storyteller Road on St. Helena, SC.

On 02-15-06, this officer made contact with Cotrina Fergueson, Nathaniel Johnson's girlfriend, and conducted an interview. Fergueson was read her Miranda Rights and signed a BCSO Miranda Form. Fergueson advised that she has seen Nate off and on for several months. Fergueson stated they she had not been with him for several weeks, but he came and got her on 02-11-06 from her family's house on Possum Hill Road. Fergueson advised she asked him about the picture and article in the paper about a woman getting attacked on the Island, Nate looked at her funny, like he was confused or surprised.

Certified to be a true and correct copy of the original document on file in the Office of the Clerk of Court Beaufort County

542

Fergueson stated Nate has cut her with a knife on her neck and on her back several months ago when they got into an argument. Fergueson also advised that Nate gave her a black eye in another argument about a month ago. Fergueson stated when Nate attacks her, she tries to call the police, but her locks her in the house and keeps her from leaving. Fergueson advised that he has not forced her to have sex with him, but she heard word that he forced a woman named Ruby from "Capers" to have sex with him.

The search warrant obtained from Magistrate Smith was executed on 02-15-06 at 1136 with the assistance of SGT. Foskey and LCPL. Williams. Upon entry into the home, a Crossman Airgun's B.B. pistol was located on a ledge that separated the living room from the kitchen. LCPL. Williams then exposed several digital pictures of the item and its location. A second B.B. pistol, a Daisy Proline Model 92 CO2, was located on top of the refrigerator in the kitchen. LCPL. Williams exposed several digital pictures of the item. The B.B. pistol's were then taken as evidence and turned into BCSO Evidence Division upon my return to the LEC. Prior to leaving the scene, a copy of the search warrant was left on the premises on the kitchen table.

On 02-20-06, the search warrant return was filed with Magistrate Smith. This officer spoke with a member of Sprint Corporate Security in reference to obtaining phone records for the victim's telephone. Sprint representatives advised they would need a subpoena with a list of the information requested. On 02-21-06 a subpoena was obtained from the Clerk of Court and faxed to the Subpoena Compliance Department of Sprint. On 02-23-06 this officer received a fax from Sprint Corporate Security stating that the trace of the victim's phone number revealed that no calls were made or received for the time period that was requested.

Case Status:
This case is Active

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SCANNED 03/07/2006

AGENCY I.D.
SC0 070000

SUPPLEMENTARY REPORT

Exhibit-O

CASE NUMBER
2-060297359

NCIC INQ. | ENTD.

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 6 of 6 PAGES.

543

Attachments:

Statement from [redacted]
Statement from [redacted]
Statement from Cotrina Fergueson
Miranda form for Cotrina Fergueson
Miranda form for Nathaniel Johnson Jr.
Evidence submittal form (3)
Copy of Search Warrant (2)
Copy of Sketch Artist rendering of suspect
Copy of Subpoena and fax to Sprint Corporate Security
Copy of Authorization for phone trace to Sprint Corporate Security
Copy of phone trace results from Sprint Corporate Security

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☐ YES ☒ NO	☐ YES ☒ NO	☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
LCpl. Chapman	02-27-06	C2188			
			FOLLOW-UP INVESTIGATION ☐ YES NO ☐ OFFICER		

ADMINISTRA

SCANNED 03/07/2006

blished 1897 Tuesday, August 22nd, 2006 www.beaufortgazette.com

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in high-profile cases

St. Helena man arrested for February assault

By LORI OUNT
The Beaufot Gazette

A police sketchand more than six months of investigation led to Monday's arrst of a 40-year-old St. Helena Island man who police said brok into a woman's St. Helena home and sexually assaulted androbbed her at gunpoint.

Police arresed Nathaniel Johnson Jr. at 160 Storyteller Road at abou 3 a.m. Monday outside Pigtly Wiggly on Boundary Stree and charged him with first-legree sexual conduct, first-degree burglary, kidnapping, petit larceny and possession of a weapon during the commission of a violent crime, Beaufort County Sheriff's Office spokeswoman Debbie Szpanka said in a release.

According to arrest warrants, which were signed Aug. 15 by a Beaufort County magistrate, Johnson entered the St. Helena Island home of a 33-year-old woman the afternoon of Feb. 7 by asking to use the phone.

Once inside, he pulled out a gun, forced the woman into the bedroom, demanded she take her clothes off and sexually assaulted her, the warrants state.


JOHNSON

He took about $472 from the victim before he left, according to warrants, and ponce said at the time that the suspect left the home on a bicycle.

➤ ASSAULT, 7A

Assault Continued from 1A

A sketch based on the victim's description drawn by a State Law Enforcement Division artist and evidence from the crime scene led police to Johnson as the suspect, Szpanka said.

Johnson remained in the Beaufort County Detention Center as of Monday afternoon.

Contact Lori Yount at 986-5531 or lyount@beaufortgazette.com. To comment: beaufortgazette.com.

Exhibit #71
2019-001079

RECEIVED
JUL 30 2019
S.C. SUPREME COURT

Suspect relents, gives blood

A man suspected of sexual assaulting a St. Helena Island woman gave up a sample of his blood "without incident" Friday after refusing a court order to do so.

Nathaniel Johnson Jr., 40, who is in the Beaufort County Detention Center on criminal sexual conduct charges, refused to give a blood sample as ordered by a judge Jan. 10, causing a judge to order Thursday that Johnson's blood could be taken by "reasonable force," according to Beaufort County court records.

Prosecutors stated in court documents they needed a blood sample from Johnson to see if it matched a DNA sample from the assault victim.

Even after the Jan. 10 court order and consulting with his public defender, Johnson refused to have blood drawn, something Deputy Solicitor Angela McCall-Tanner said she hasn't seen in her almost nine years prosecuting criminal cases.

After Thursday's order, though, Johnson allowed his blood to be taken without being restrained when jail officials took him to Beaufort

545 AW 14

The Supreme Court of South Carolina

Nathaniel Johnson, Petitioner,

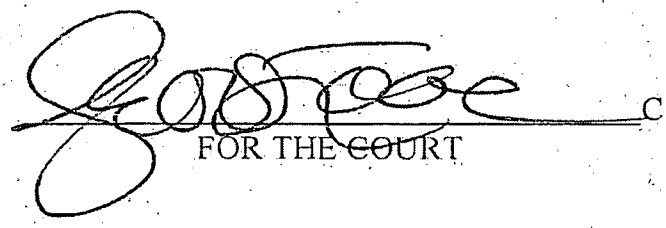
v.

State of South Carolina, Respondent.

Appellate Case No. 2011-202807

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition is denied.



C.J.

FOR THE COURT

Columbia, South Carolina

June 5, 2013

cc:
Robert M. Pachak, Esquire
Ashleigh Rayanna Wilson, Esquire

AW
14
546

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 21, 2013

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: Nathaniel Johnson v. The State
Lower Court Case No. 2009CP0701050
Appellate Case No. 2011-202807.

Dear Clerk of Court:

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

Very truly yours,

CLERK

cc: Robert M. Pachak, Esquire
Ashleigh Rayanna Wilson, Esquire

Exhibit #24

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FORM 5

STATE OF SOUTH CAROLINA)
County of Beaufort)
Nathaniel Johnson Jr.)
Full name and prison number (if any) of Applicant)
v.)
State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP 07-1650

13 JUN 25 PM 3:51

Amended

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence 14th Circuit Court in Beaufort, South Carolina

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2006-GS-07-01640

(b) 2006-GS-07-01641

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Sept. 21st 2006 Grand Jury Indict, and Mar. 12-14, 2007

(b) sentence imposed, 30 yrs.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals

ii. In the Court of Common Pleas

iii. Supreme Court

(b) the result in each such Court to which you appealed:

i. Denied

ii. Denied and dismissed with prejudice

iii. Denied

(c) the date of each such result:

i. Submitted DEC. 1st 2008 - Filed Dec. 11th 2008

ii. Filed MAR. 9th 2009 - Judgement Oct. 6th 2011

iii. June 5th 2013

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. We decide this case without oral arguement pursuant to Rule 215 SCA

ii. PCR Application for Post Conviction be denied and dismissed with prejudic

iii. This petition for Writ of certiorari is denied

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) ~~My~~ Court Appointed Attorney Stated

(b) that it is their decision to file motions, Raise issues and appeal any judgements.

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Insuffient evidence to convict.

(b) Elements of the crimes

(c) Ineffective Assistance of Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Matter of material facts / Improper Chain of Custody

(b) Not guilty as charge / false imprisonment

(c) Actual prejudice with no contemparous objections for issues to be preserved for Review.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes Federal Courts for Habeas Corpus

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Federal Courts Habeas Corpus # 2254 Application

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. United States District Court, District of SouthCarolina

ii. 901 Richland Street, Columbia, S.C. 29201

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective Assistance of Counsel

ii. Prosecutorial Misconduct

iii. Violations of Fourth, Fifth, Sixth, and Fourteenth Amendments of United States Constitution.

(b) the proceedings in which each ground was raised:

i. denied at Evidentary Hearing

ii. dismissed with prejudice No rulings Not on record

iii. dismissed with prejudice No rulings Not on record Attorney failed to file 59E motion SCrimRP

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Material facts and Improper Chain of Custody / Discovered after Reading Transcript.

(b) False imprisonment / Counsel's failure to Amend Application

(c) Ineffective Assistance and poor standards of counsel

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ms Stephanie Smart Giddings / Trial Attorney) and Sentencing. Bft. County Public defender P.O. Box 525 Bft, S.C. 29901

ii. Mr. Timothy M. Wogan (PCR Attorney) P.O. Box 22124, Hilton Head, S.C. 29925

iii. Mr. Robert Pachak Appellant Attorney petition for Writ certiorari 1330 Lady St. Suite 401 Columbia, SC. 29201-158

(b) the proceedings at which each such attorney represented you:

i. Ms. Stephanie Smart Giddings Trial Attorney and Sentencing

ii. Mr. Timothy Wogan (PCR) Post Conviction Relief Attorney

iii. Mr. Robert Pachak Petition for ~~W~~rit of Certiorari

19. State clearly the relief you seek in filing this application:

I seek to have my conviction ~~set~~aside petition for new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Beaufort)

I, Nathaniel Johnson Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Nathaniel Johnson Jr

SWORN to and subscribed before me this 21st day of June, 2013.

Lucrecia Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

Exhibit #25

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson, S.C.D.C. No. 211574, Applicant, v. State of South Carolina, Respondent.	2013-CP-07-1650 **CONDITIONAL ORDER OF DISMISSAL**

2015 JAN 13 PM 4:47

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Nathaniel Johnson (Applicant) on June 25, 2013. The State (Respondent) made its return, requesting the application be summarily dismissed.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted during the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct in the first degree (2006-GS-07-1641), burglary in the first degree (2006-GS-07-1642), and possession of a firearm during the commission of a violent crime (2006-GS-07-1643). Applicant proceeded to trial, and a jury found him guilty of kidnapping and criminal sexual conduct in the first degree and not guilty of burglary in the first degree and possession of a firearm during the commission of a violent crime. Stephanie Smart-Gittings, Esquire, represented Applicant. On March 14, 2007, the Honorable Howard P. King sentenced Applicant to concurrent terms of imprisonment of thirty years for kidnapping and thirty years for

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criminal sexual conduct in the first degree. Applicant appealed, and the South Carolina Court of Appeals affirmed his convictions. *State v. Johnson*, Op. No. 2008-UP-690 (S.C. Ct. App. filed Dec. 11, 2008). The remittitur was issued on December 30, 2008.

First PCR Application: 2009-CP-07-1050

Applicant filed his first PCR application on March 9, 2009, alleging the following grounds for relief:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

Respondent filed its return on July 14, 2009. Timothy M. Wogan, Esquire, represented Applicant. An evidentiary hearing was held at the Beaufort County Courthouse on August 30, 2011. By order filed October 17, 2011, the Honorable D. Craig Brown denied and dismissed the application with prejudice.

First Federal Habeas Corpus Petition: 1:13-1794

Applicant filed a pro se federal petition for a writ of habeas corpus on June 21, 2013, alleging the following grounds for relief:

1. False imprisonment, insufficient evidence to convict.
2. Improper chain of custody with DNA evidence and blood sample.
3. Actual prejudice of all court appointed attorneys. Failure to properly raise issues, contemporaneously object or preserve issue for review.
4. Prosecutorial misconduct, violations of Fourth, Fifth, Sixth, and Fourteenth Amendments. Lack of evidence to convict.

Respondent filed its return and motion for summary judgment on December 20, 2013. The Honorable Shiva H. Hodges, United States Magistrate Judge, issued a report on April 22,

2014, recommending Respondent's motion for summary judgment be granted. The Honorable Richard M. Gergel, United States District Judge, granted Respondent's motion for summary judgment and dismissed the petition with prejudice on May 12, 2014.

II.

Applicant filed his current application on June 25, 2013, alleging the following grounds for relief:

1. Insufficient evidence to convict.
    a. Matter of material facts, improper chain of custody.
2. Elements of the crimes.
    a. Not guilty as charged, false imprisonment.
3. Ineffective assistance of counsel.
    a. Actual prejudice with no contemporaneous objections for issues to be preserved for review.

Before this Court are the Beaufort County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, appellate records, and Applicant's previous and current PCR records.

III.

This Court finds this current PCR application must be summarily dismissed because it is successive to his previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the

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> basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing that he could not have previously raised the allegations. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in his previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous application.

IV.

This Court also finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

RECEIVED

Applicant was convicted of the offenses he challenges on March 14, 2007. The remittitur from his appeal was issued on December 30, 2008. Therefore, Applicant was required to file his PCR application on or before December 30, 2009. Applicant filed this application on June 25, 2013, **more than three years** after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period ends. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds this application must be summarily dismissed for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Beaufort County Clerk of Court and shall serve opposing counsel at the following address:

(Conclusion and signature on the following page)

LEGAL MAIL

558

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 12 day of Jan, 2015.

CARMEN ~~T. MULLEN~~
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Beaufort, South Carolina

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Exhibit #26

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Nathaniel Johnson Jr.#211574,	)	2013-CP-07-1650
Applicant,	)	
	)	
v.	)	Motion For Evidentiary Hearing
	)	In Response to Proposed
State of South Carolina,	)	Conditional Order of Dismissal
Respondent,	)	
	)	

2015 JAN 14 PM 2:24
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Comes now the Applicant to appear before this Court by way of an pro-se PCR application filed on June 25th.,2013. Applicant is hereby ordered to provide this Court with specific reasons why the application should not be dismissed in its entirety. In response to the Respondent's Motion to Dismiss. Applicant files this Motion for Evidentiary Hearing to resolve any issues that were not raised or heard in previous application. But, for the PCR counsel's ineffective performance the results would have been different. However, the statute of limitations defense does not apply in this case. See- Whitehead v. State, 352, S.C. 215, 574, S.E. 2d. 200 (2002).

The Applicant hereby responds to the Proposed Conditional Order of Dismissal. In light of my defense the Applicant is ordered to show sufficient reasons why this Court should not summarily dismiss Applicant's current PCR application.

Respondent's alleges that the application is sucessive and untimely to his previous PCR application. However, the Applicant is claiming ineffective assistance against his PCR counsel Timothy M. Wogan, Esquire. Therefore, it was impossible for these issues or grounds to be heard or raised in the first PCR application. See- Aice v. State, 305, S.C. 448, 450, 409, S.E. 2d. 392, 394, (1991). Which permits an Applicant to file an sucessive PCR application. According to S.C. Code Ann.§17-27-80 by this code, the counsel for the Applicant "must" make Motion to alter or amend the Judgment pursuant to Rule 59(e) SCRCP.

Counsel for the Applicant failed to do so, and thereby held liable for an claim of ineffective assistance of counsel. But, for the deficient performance of PCR counsel the results would have been different. See- Dennison v. State, 371, S.C. 221, 639, S.E. 2d. 35, (2006), It is appointed counsel's duty in PCR matters to serve and file the notice of appeal.

Respondent's stated that the Applicant's current PCR application should be summarily dismissed for failure to comply with the Uniform Post Conviction Procedure Act. Applicant denies such allegations to the fact of filing application more than three years after the statutory filing period expired.

The remittur was issued on December 30th., 2008. Applicant filed his first PCR application 2009-CP-07-1050, an evidentiary hearing was convened and the Applicant was represented by Timothy M. Wogan, Esquire. Applicant's appeal process of the one year tolled started after October 17th., 2011. Order by the Honorable D. Craig Brown, denied and dismissed with prejudice. Applicant proceeded with the assistance of Robert M. Pachak an assistant Appellate Defender to Petition for Writ of Certiorari to the S.C. Supreme Court and the appeal was perfected.

Applicant received an final judgment from the S.C. Supreme Court and then proceeded to pursue an Federal Habeas Corpus Petition 1:13-1794, on June 21st., 2013. Applicant met the requirements of filing before the deadline or statute of limitations.

Applicant filed an second PCR application for the purpose of amending the application with the previous application. Based solely on the grounds of ineffective assistance of counsels. This claim is against all representation appointed by the Courts. To include Trial counsel, PCR counsel, and Appellate counsel's.

In Pruett v. State, 1992, After a PCR judgment is filed the PCR counsel has an obligation to review the judgment and if the order does not set forth required findings and reasons for those findings Code 1976 17-27-80 the counsel "must" file an Motion to alter or amend Rule 59(e) to amend judgment. Rules of Civil Procedures 52(a), 59(e), Const. Amend.#6.

Under Martinez v. Ryan, and Aice v. State, the Applicant, may have established sufficient reasons why the Applicant's second PCR application should be amended and to give the State Courts an full opportunity to resolve any probable constitutional violations or issues by invoking the one complete round to fairly be heard and to establish, and to satisfy, the exhaustion doctrine and to present claims to either the Courts of Appeals, or the S.C. Supreme Court.

In Austin v. State, the Courts explained that every PCR Applicant is entitled to a full adjudication on the merits of the PCR application or the one bite of the apple, which is to include the right to appeal the judgment of denials and the right to effective assistance of counsel.

Applicant's first PCR hearing the Honorable D. Craig Brown decided to dismiss the issues of Prosecutorial Misconduct and the Violations of Due Process claim which are valid and have merit. But, Applicant did not file those claim or grounds under the umbrella of the ineffective assistance of counsel, they were denied and dismissed with prejudice. Applicant requested for the PCR counsel to alter or amend the application to preserve issues for review. Counsel stated that at this point his job was done. Applicant was contacted by Appellate counsel and he stated that PCR counsel did not file the Rule 59(e) Motion. Robert M. Pachak, also stated that he have never seen anyone win their PCR by filing an Rule 59(e) Motion. Applicant has Kept an copy of that letter from counsel as proof in writing.

After filing the Federal Habeas Corpus Applicant claimed constitutional violations of the fifth, sixth, and fourteenth amendment to the U.S. Constitution. All Court appointed counsel's violated the S.C. Appellate Court Rules #407 S.C. Rules of Professional Conduct of Lawyers Responsibilities. For the lack of effective assistance of counsel, Applicant was faced with issues being abandoned, defaulted, and considered waived. Applicant's defense is that his concerns about the issues, one must have knowingly, intelligently, or voluntarily waived their rights. The request for an new trial is based upon After-Discovered Evidence in Hayden v. State, 278 S.C. 610 611-12 299 S.E. 2d. 854, 855, (1983).

But, for the deficient ineffectiveness of counsels, Applicant would not be in default. In Austin v. State, 305, S.C. 453, 409, S.E. 2d. 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. In Aice v. State, S.C. 409, S.E. 2d. 392, (1991), Applicant should not be barred from filing a second PCR application to include additional grounds or Newly Discovered Evidence for Court review. The S.C. Supreme Court Rules 50(5) and 71.1(d), makes it mandatory that PCR counsels "must" make sure that all grounds or issues in the PCR application be raised during the PCR proceeding.

After filing the PCR application, usually the Courts will appoint counsel to represent the Applicant. Thereafter, the Applicant cannot file any further pleadings or amend their application while represented by counsel. Pleadings, Motions, and etc. "must" be made by counsels. Failure to do so are grounds for an claim of ineffective assistance of counsel. Applicant's are being subjected to issues of abuse of discretion, discrimination, and their constitutional rights being violated, and faced with discredit.

Applicant filed his Habeas Corpus application and the Respondent's alleged that technically, the Applicant has exhausted his State remedies. Later, stated that however, the Applicant did not properly exhausted his State remedies and as a result the Applicant was procedurally barred from an Federal Habeas Corpus Petition for review.

Finally, a sucessive PCR application may be permitted where the Courts refusal to hear the claims, it would constitute a gross miscarriage of justice, where the government interference or the reasonable unavailablity of the factual basis of the claim impeded counsel's ability to raise the issues or where some other circumstances were beyond the Applicant's control occurred. This shows the sufficiency of reasons why the Applicant's second PCR application should not be dismissed. Applicant rights to appeal was not waived knowingly, intelligently nor willingly. In Anderson v. State, 354, S.C. 431, 581, S.E. 2d. 834, (2003). When the claim of ineffective assistance of counsel is based upon a failure to raise viable issues, the Court "must" examine the record to determine whether Appellate counsel failed to present significate and obvious issues on appeal.

Newly discovered evidence defined by S.C. Code 17-27-45, and should invariably qualify as a sufficient reason for permitting a sucessive PCR application. Trial counsel was ineffective for failing to present a defense in challenging the DNA evidence. Ineffective for allowing and not objecting to the prosecutorial misconduct, and failing to perserve or raise issues on direct review. DNA testing of the semen taken from victim was reasonably necessary to support an procedurally barred claim of ineffective assistance of counsel. Based upon Newly discovered evidence, demonstrating factual innocence in proceedings under 28 U.S.C.§ 2254, where Applicant had made an claim of ineffective assistance of counsel that was denied and dismissed with prejudice.

DNA testing is necessary in all sexual assault cases because the testing could demonstrate either guilt or innocence, See- Cherri v. Braxton, (2001 ED VA) 131 F. Supp. 2d. 756 App. PCR counsel was ineffective for failing to seek DNA testing in light of Applicant's defense. Counsel also did not challenge the chain of custody issue that was presented in the initial PCR hearing.

Newly discovered evidence defined by "Due Diligence", under Rule 60(b) (2) (3), are rules governing relief from judgment. It also allow the Courts to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial. Due Diligence is reasonably expected from and ordinarily excercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. It also seeks not to what the litigant actually discovered, but, what he or she could have discovered. Applicant also asserts that his appointed counsels were ineffective for allowing the Courts to deny the Applicant the right to be heard. Due Process of law requires that a person "shall" have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal, before any binding decree, orders, or judgments can be made affecting his or her rights to life, liberty or property,

In S.C. App. 1993, For Good Cause Shown: as practical matters, factors, of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation or other misconduct of adverse party are relevant both under rule providing for relief from judgment and under Rule 55(c), 60(b) (2), (3). Pursuant to which a default may be set aside "For good cause shown". In New Hampshire Inc. Co. v. Bey Corp, 435, S.E. 2d. 377,312, S.C. 47 App. (1993).

In conclusion to the ineffectiveness of all Court appointed counsels, starting from pretrial and throughout all stages of the Applicant's appeals, there was an domino affect that followed Applicant's trial counsel that prejudiced applicant's case from the very start and was past on. This domino affect took a toll on the outcome of the Applicant's case thus far. Therefore, having Due Diligence of After Discovered Evidence, allows the Applicant to excercise and protect his constitutional rights.

In Lambert v. Blackwell, 387, F. 3d. 210, 247, (3rd. Cir. 2004), only allows an otherwise procedurally barred or an defaulted claim to be considered by this Court, if PCR trial counsel was ineffective in failing to raise that barred claim in the State's PCR action.

In light Applicant's defense pertaining to the PCR's Court action. Applicant was directed to take the witness stand and instructed by PCR counsel Timothy M. Wogan, to only answer the questions that are being asked. Counsel was ineffective for not allowing the Applicant an opportunity to be heard nor raise any issues that needed to be raised at the hearing.

After reviewing the final order and the PCR transcript, Applicant understood where the counsel was ineffective and how prejudice took place that resulted in default. Counsel was ineffective for failing to follow the Courts Order. Applicant was hereby ordered to file notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropiate procedure to follow after notice of intent to appeal has been timely served and filed. Counsel was deficient, and prejudice by abandoning his client. As a result of counsel's failure to file an appeal the Court's decision within thirty (30) days, issues are considered waived and abandoned. Applicant also understands that the Courts made an unreasonable determination of judgment based upon the full adjudication in which the Applicant is entitled too, the right to be heard. Counsel stated that at this point after the Courts judgment, his job is done.

After reviewing the District Court's Order and (R&R), Report and Recommendation, from the Honorable Magistrate Judge Shiva V. Hodges, and the District Judge the Honorable Richard M. Gergel. In their discussion the Court agrees with the Applicant's PCR claim of ineffective assistance of trial counsel. Counsel was ineffective for failing to object to the trial judge's curative instruction, after the Applicant's character was allegedly put into issue twice. The Court also agreed that the case of Martinez v. Ryan, was sufficient to have establish grounds for the cause of default. The Applicant's second and third grounds of ineffective assistance of counsel may also be sufficient under Martinez.

The End.

CONCLUSION

Wherefore, the Applicant moves to respectfully ask this Court not to grant the Respondent's Motion to summarily dismiss this application. The Applicant respectfully asks that this application be amended to prior application. The Applicant did not knowingly, intelligently, or willfully waived his rights to appeal, the PCR Court must make such a finding in the final order. Additionally, other PCR issues Applicant intends to raise on appeal should still be raised in this petition.

Where results of appeal would have been different had counsel not been deficient, the appropriate remedy is to grant a new trial. See- Ezell v. State, 345 S.C. 312, 548 S.E. 2d. 852 (2001).

Respectfully submitted,

BY: Nathaniel Johnson Jr.

Nathaniel Johnson Jr. #211574

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STATE OF SOUTH CAROLINA)

) **VERIFICATION**

County of Beaufort)

2015 JAN 14 PM 2:24
COUNTY CLERK'S BUREAU
BEAUFORT COUNTY, S.C.
COMMON PLEAS COURT

I, Nathaniel Johnson Jr, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Nathaniel Johnson Jr. #211574

SWORN to and subscribed before me this 12th day of Jan, 2015.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
Nathaniel Johnson Jr.#211574,	)	2013-CP-07-1650
Applicant,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE BY**
	)	**U.S. Mail**
State of South Carolina,	)	
Respondent,	)	
	)	

2015 JAN 14 PM 2:24
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1. Iam an pro-se Applicant currently at Lieber Correctional Inst. in Ridgeville, S.C..

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by U.S. mail.

3. I have this day served a copy of Motion For Evidentiary Hearing and Response to the Proposed Conditional Order of Dismissal, by deposting same in the U.S. mail postage.

Office of the Clerk of Court
Jerri Ann Roseneau
P.O. Box Drawer 1128
Beaufort, S.C. 29901-1128

Respectfully submitted,

Nathaniel Johnson Jr.

S.C.D.C.#211574

Pro-SE

By: Nathaniel Johnson Jr.

Ridgeville, S.C. 29472

January 12, 2015.

Exhibit #27

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson, #211574 Applicant, v. State of South Carolina, Respondent.	2013-CP-07-1650 **FINAL ORDER OF DISMISSAL**

2015 JUN 29 PM 3:23
JEANNETTE ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 25, 2013. The Respondent (the State) made its Return and Motion to Dismiss on December 29, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed January 13, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant made a timely response filed January 14, 2015.

In a document titled "Motion for Evidentiary Hearing in Response to Proposed Conditional Order of Dismissal," the Applicant argues his application is neither untimely nor successive Martinez v. Ryan, 132 S.Ct. 1309 (2012) allows him a full opportunity to exhaust all claims in a state PCR action. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

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The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394. Further, Kelly v. State explicitly states, "that the holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Therefore, the Applicant's contention that prior PCR counsel was ineffective is not properly before this Court.

As to the claim that Applicant's trial counsel was ineffective, this Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court also finds Applicant has shown no reason why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within

> one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The South Carolina Court of Appeals affirmed Applicant's conviction on December 11, 2008. The Remittitur was issued on December 30, 2008 Therefore, Applicant was required to file his PCR application on or before December 31, 2009. Applicant filed this application on June 25, 2013, well after the statutory filing period expired.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 17 day of June, 2015

Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.

Exhibit - 28

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THE STATE OF SOUTH CAROLINA

[In The Supreme Court]

1:15-cv-03611-RMG-SVH

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Chief Administrative Judge

Case No.2013-CP-07-1650

State of South Carolina,.....Respondent,

v.

Nathaniel Johnson,Jr.#211574,.....Appellant,

FINAL BRIEF OF APPELLANT

Nathaniel Johnson,Jr.#211574
LCI. Stono-B#50
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Appellant

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°[Alice v. State], 305, SC. 448, 450, 409, SE.2d. 392, 394, (1991).
°[Austin v. State], 305, S.C. 453 409, S.E.2d. 395 (1991).
°[Boyd v. U.S.], 116, U.S. 616, 6 S.Ct. 524, 29, L.E.d. 746(1966)
°[Counselman v. Hitchcock],142 U.S. 547,584-585, 12 S.Ct. 195 206, 35, L.E.d. 1110 8 Wigmore, Evidence 2252 (McNaughton rev.196).
°[Davis v. Alaska], 415, U.S. 308, (1974).
°[Donnelly v. DeChristoforo], 416 U.S. 637, 94, S.Ct. 1868 40 L.Ed. 2d. 431, (1974).
°[Dorsey v. Kelly], 112, F.2d. 50, (2nd.Cir.1997).
°[Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682, (2000).
°[Evitts v. Lucey], 469, U.S. 387, 105, S.Ct. 830, 83, L.Ed.2d. 821, (1985).
°[Florida v. Nixon], 543, U.S. 175, 125, S.Ct. 551, 160, L.Ed.2d. 565, (2004).
°[Goodwine v. Balcom], 684, F.2d. 794, (11th.Cir.1982).
°[Gouled v. U.S], 255 U.S. 298, 41, S.Ct. 261, 65, L.Ed. 647, (1966).
°[Gray v. Greer], 778, F.2d. 350, (CA7 1985).
°[Gray v. Lynn], 6, F.3d. 265, (5th.Cir. 1993).
°[Griswold v. State of Connecticut], 481, U.S. 479, 85, S.Ct. 1678 14, L.Ed.2d. 510
°[Keeble v. U.S.], 412, U.S. 205, (1973).
°[Kimmelman v. Morrison], 477, U.S. 365 (1986).
°[Lambert v. Blackwell], 387, F.3d. 210, 247, (3rd.Cir. 2004).
°[Leamon v. State], 363, S.C. 432, 434, 611, S.E.2d. 494-95, (2005).
°[Mapp v. Ohio], 367, U.S. 643, (1961).
°[Matrire v. Wainwright], 811, F.2d. 1430 (CA11 1987).
°[Mitchell v. State], 298, S.C. 186, 189, 379, S.E.2d. 123, 125, (1998).

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°[Murray v. Carrier], 477, U.S. 496, 91, L.Ed.2d. 397, 106, S.Ct. 2639 (1986).
°[Odom v. State], 337, S.C. 256, 523, S.E.2d. 753 (1999).
°[Pauling v. State], 503, S.C. 468, 331, S.E.2d. 606, (1998).
°[Schmerber v. California], 384, U.S. 757, 86, S.Ct. 1862, 16, L.Ed.2d. 908 (1966).
°[Sikes v. State], 323, S.C. 28, 448, S.E.2d. 560, (1994).
°[State v. McDaniel], 462, S.E.2d. 882, 884, (Ct.App. 1995).
°[State v. Reese], 359, S.C. 260, 271, 597, S.E.2d. 169, 175, (Ct.App. 2004).
°[U.S. v. Cronic], 466, U.S. 648, 80, L.Ed.2d. 657, 104, S.Ct. 2039 (1984).
°[U.S. v. Cronic], 839 F.2d. 1401 (CA10 1985).
°[U.S. v. Crutchfield], 26, F.3d. 1098 (11th.Cir. 1994).
°[U.S. v. Gaudin], 515, U.S. 506, (1995).
°[U.S. v. Tran Trong Cuong], 18, F.3d. 1132 (4th.Cir. 1994).
°[U.S v. Van Dyke], 14, F.2d. 968, (8th.Cir. 1994).
°[Von Dohlen v. State], 360, S.C. 598, 602, S.E.2d. 738, (2004).

Statutes

- S.C. Code Ann. § 17-27-45(a) Prohibitions against sucessive applications
- S.C. Code Ann § 17-27-80 Exceptions to statute of limitations
- S.C. Code Ann. § 17-19-90 Sufficiency of indictment (2003)
- S.C. Code Ann. § 17-28-110 Chapter #27 Title #17 DNA Testing

Rules

- SCRulEv. #608(a), (b), + (c).

ISSUES PRESENTED:

1). ° Whether the police were justified in requiring the Appellant to submit to the blood test against his will respected relevant Fourth and Fourteenth Amendment rights for standards of reasonableness?

2). ° Whether any intrusions made which are unjustified in the cicumstances made in an proper manner?

3). ° Compelling submission to physical examination, to compel a person to submit to testing by reasonable force in which an effort will be made to determine his guilt or innocence on the basis of physiological response whether willed or not, does this violates a person's Fifth Amendment rights to the privileges against self-incrimination?

4). ° Did the trial court abuse its discretion while denying the Appellant's motion for an mistrial twice?

5). ° Was the trial court in err by ordering that the Appellant's blood be taken by reasonable force if necessary?

6). ° Was the Appellant's Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights to the U.S. Constitution and State Constitution violated?

7). ° Did the trial court err denying the Appellant an mistrial twice when the evidence of prior bad acts are inadmissible?

8). ° Was the evidence legally obtained by investigator Brian Chapman from the Beaufort County Sheriff Department?

9). ° Did the PCR court err when Appellant was denied the rights to his Sixth Amendment right to effective assistant of counsel from all court appointed counsels to include trial, Appellate, and PCR Attorney?

ISSUES PRESENTED CONTINUED:

10). ° Did the PCR court err by failing to find the trial counsel to be ineffective?

11). ° Did the PCR court make an improper determination of judgment?

12). ° Whether or not trial counsel was ineffective in failing to properly object or raise the issue during direct appeal of trial court's curative instruction after the Appellant's character was put into issues twice because the instruction was not sufficient to cure the error?

13). ° Was the trial counsel ineffective for failing to challenge the DNA testing, or failing to properly raise the issue or a defense after retaining an DNA expert witness?

14). ° Did the PCR court abuse its discretion in refusing to hear the claims of prosecutorial misconduct, and the violations of due process?

15). ° Was the Appellant's due process rights violated by not having an preliminary hearing that the Appellant requested?

16). ° Did the lower court err in ruling, and refusing to quash the warrants, after Appellant filed an motion to dismiss by denying the motion holding that the Appellant was indicted before an preliminary hearing was held?

17). ° Did an preliminary hearing take place in Appellant's case?

18). ° Was trial counsel ineffective for failing to object to the prosecutorial misconduct, failed to raise issue during trial, or properly raise issues on direct appeal to properly preserve for appellate review?

ISSUES PRESENTED CONTINUED:

19). ° Whether the Appellant knowingly, intelligently, willingly, or voluntarily waived and abandoned his direct appeal issues?

20). ° Was the trial court in err for failing to instruct the jury on the charges of an lesser-included offenses?

21). ° Was the trial court in err for failing to meet each element of the crimes charged beyond reasonable doubt?

22). ° Was the Appellant prejudiced because of the improper jury instructions that may have confused the jurors and failed to instruct on charges of an lesser-included offenses?

23). ° Was the trial counsel's failure to object to the improper jury instructions based on a tactical decision or an inadvertent ignorance of law?

24). ° Did Appellant receive adequate legal assistance from trial counsel Stephanie Smart-Gittings, Esquire?

25). ° Did Appellant receive adequate legal assistance from both Appellate counsels, LaNelle C. Durant, direct appeal counsel for the Court of Appeals, and Robert M.Pachak, Appellate defender for the Petition for Writ of Certorari to the S.C. Supreme Court?

26). ° Did Appellate counsel Robert M.Pachak, offer erroneous advice that his client has exhausted his state remedies and is allowed to file federal habeas review?

ISSUED PRESENTED CONTINUED:

27). ° Was all court appointed counsel for Appellant in violation of the SCACR, Rule #407 Rules of Professional Conduct and Responsibilities?

28). ° Did Appellant receive adequate legal assistance from PCR counsel Timothy M. Wogan,Esquire?

29). ° Was PCR counsel Timothy M. Wogan, ineffective for failing to seek DNA testing when Appellant requested pursuant to Chapter #27 Title #17 Consent to testing S.C. Code Ann§17-28-110?

30). ° Does the statute of limitations for PCR applications, S.C. Code Ann § 17-27-45(A), applies to Appellants who alleges that he did not knowingly, intelligently, voluntarily, or willingly waived his Constitutional rights to a direct appeal from his conviction?

31). ° Did the PCR court erred by summarily dismissing Appellant's case based on his failure to file within the applicable statute of limitations as set forth in S.C. Code Ann § 17-27-45(A), when it was beyond the Appellant's control being represented by court appointed counsels?

32). ° Did the PCR court err by denying the Appellant the right to self-representation?

33). ° Did the PCR court abuse its discretion when it denied the Appellant's testimony during the evidentiary hearing and found that trial counsel's testimony was credible and Appellant's testimony was not credible?

"Statement of the Case"

On September 21st,2006, it was said that the Beaufort County Grand Jury indicted the Appellant, Nathaniel Johnson,Jr. on the charges of criminal sexual conduct first degree(CSC), kidnapping, burglary first degree, and possession of a firearm during the commission of a violent crime.

On March 12th-14th,2007, Appellant, Johnson, proceeded to trial before the Honorable Howard P. King and jury. He was represented by Stephanie Smart-Gittings, Esquire. The jury returned a verdict of guilty on the CSC first degree and the kidnapping charge and a verdict of not guilty on the burglary first degree and possession of a firearm during the commission of a violent crime. Judge King sentenced Appellant, Johnson, to thirty years (30) on the CSC conviction and to thirty (30) years on the kidnapping to run concurrently. Appellant, Johnson's trial attorney Stephanie Smart-Gittings, filed a notice of appeal that was perfected on March 22nd,2007.

After appealing his convictions and they were affirmed by the Court of Appeals on December 11th,2008. [State v. Johnson] Op.No.2008-UP-690.

Appellant, Johnson, filed an application for post-conviction relief on March 9th,2009. An evidentiary hearing was held on August 30th,2011, before the Honorable D. Craig Brown. Appellant was present and represented by appointed PCR counsel Timothy M. Wogan,Esquire. Respondent was represented by Matthew J. Friedman,Assistant Attorney General. Judge Brown decided to denied and dismiss the issues of "Prosecutory Misconduct", and "Violations of Due Process" at the begining of the hearing and however, there was no opportunity to address those issues of the application. Appellant requested that PCR Timothy Wogan, file an motion to alter or amend Rule #59(e). Attorney failed to do so.

"Statement of Case Continued":

Appellant, Johnson, and trial counsel testified at the hearing, knows that he did not receive the fair one bite of the apple, by being instructed by PCR counsel Timothy M. Wogan, to only answer the questions that are being asked.

On October 6th,2011, Judge Brown issued an order denying and dismissing the application for post-conviction relief.

Appellant proceeded in the S.C. Supreme Court, petitioning for "WRIT OF CERTIORARI", on May 4th,2012. Appellant was denied certiorari on June 5th,2013.

On June 21st,2013, Appellant, Johnson, filed an federal habeas petition that was considered procedurally barred from review because it was stated that Appellant, Johnson, did not properly exhaust his state remedies. Three (3) weeks expired before the Appellant filed this federal habeas petition on June 21st,2013, after the denial of his PCR action on June 5th,2013. As a result, Appellant was not in violation of the AEDPA one (1) year statute of limitations.

On May 12th,2014, the Honorable District Court Judge, Richard M. Gergel, ordered that Respondent's motions for summary judgment be granted, and denies the Appellant's motion for an evidentiary hearing. Appellant was also denied a certificate of appealability. This case is dismissed with prejudice. Federal Habeas Review was denied and dismissed with pursuant to the defenses of issues being waiver and abandoned.

On June 25th,2013, along with the Federal Habeas petition filed June 21st,2013, Appellant,Johnson, filed an 2nd PCR amended application in the Court of Common Pleas for Beaufort County.

On December 30th,2014, the Appellant received from the Respondent's a Return and Motion to Dismiss because this application is stated to be untimely and sucessive to Appellant's prior application. Also received on January 5th,2015, an proposed "Conditional Order of Dismissal in this matter 2013-CP-07-1650. Final Order of Dismissal received signed by Chief Administrative Judge, Carmen T. Mullen on June 17th,2015.

ARGUMENTS

1). The police were not justified in requiring the blood of the Appellant, with respect to the S.C. State's Constitution, or the U.S. Constitution relevant Fourth and Fourteenth Amendment rights under the standards of reasonableness. See Exhibit-P-1 The Supplemental incident report of Officer LCPL Brian Chapman, the investigator dated 04-21-06. According to the officer's report, he met with the 14th. Judicial Circuit Solicitor's office to discuss the facts of this case, Officer Brian Chapman, was advised that at this point, there was not enough probable cause for a Schmerber hearing to collect DNA blood from the defendant. The issue of whether probable cause to search exists must be determined on the basis of an independent judgment and not on facts of an unreasonable search and seizure. See-[Mapp v. Ohio], 367, U.S. 643, (1961). Fourth Amendment violation and S.C. State Constitutional violation of Article #1 §10. Police conduct was the product of the fruit of the poisonous tree doctrine and relevant Rules of Evidence #608(a),&(b), may apply to the credibility of Officers testimony or used to impeach. Tr.p 170-177 line 17-23, Tr.p 180 line 1-11, also See-Exhibits-5&6 comments.

ARGUMENTS

2). The intrusions were not justified based on the clear and convincing evidence stated by the Solicitor's office on 04-21-06. See-Exhibit-P-1 Supplemental incident report any unwarranted intrusions by the State is to be protected against, any arbitrary intrusions, the rights to personal privacy. Fourth Amendment violation. Tr. p. 203 line 2-17, p. 232 line 1;

ARGUMENTS

3). To compel a person to submit to testing by reasonable force violates the privilege of the Fifth Amendment rights, that no person may be required to testify against him/herself. Neither life, liberty nor property may be taken without due process of law. See-[Counselman v. Hitchcock], 142, U.S. 546, 562, 12, S.Ct. 195, 198. Appellant would also like to apply a denial of effective assistance of counsel. Sixth Amendment violation where trial counsel erroneously advised her client to submit to the testing. See-[Griswold v. State of Connecticut], 381 U.S. 479, 85, S.Ct. 1678 14, L.Ed.2d. 510. Thus the Fifth Amendment marks a zone of privacy which the Government may not force a person to surrender. Therefore, this Court should find that this case must be reversed or vacated. The privilege against self-incrimination. There is no clearer invasion of this right to privacy that can be imagined than a forcible bloodletting. See-Exhibits-T, U, & V. T- On Jan. 10th,2007, Circuit Court Judge Curtis L. Coltrane, ordered an blood sample for defendant. U-Amended Motion made by Assistant Solicitor Melissa M. Millican, and former trial counsel Stephanie Smart-Gittings,Esquire, dated Jan. 16th.2007. V-Circuit Court Judge Howard P. King, ordered on Jan. 18th,2007, an Amended Order for Blood Sample by reasonable force if necessary. Exhibit-Z PCR Tr.pages 426 line-12, Direct exam by PCR counsel Timothy M. Wogan and testimony of trial counsel Stephanie Smart-Gittings, her statement is to be examined by rules of evidence #608(a),and(b) truthfulness or untruthfulness and may be used to impeach. Refusal to consider this case would constitute an gross miscarriage of justice.
SEE [Gantt v State], 354, S.C. 183, 580, S.E.2d. 133 (2003).

ARGUMENTS

4). Trial court abused its discretion and erred in its ruling by denying the Appellant equal protection of the law under the 14th. Amendment guarantee due process. Circuit Court Judge Howard P. King, warned the State to be mindful of Rule #608(b),(c). See-Tr.p 178 lines 4-18, Tr.p 188 lines 4-14, Tr.p 170 lines 18, Tr.p 191, line 5. Sound discretion of the trial judge will not be overturned on appeal absent an abuse of discretion amounting to err of the law, which was extremely prejudice in Appellant's case by improperly applying law. The Appellant's right to an impartial jury included the rights to adequate legal assistance of counsel. Appellant's due process rights were violated from pre-trial detention when the jurors were exposed to potential prejudicial pre-trial publicity of an high profile case. Trial also abused its discretion by allowing extensive questioning of witnesses which tainted the process of the trial information the jurors may have heard and its possible effects. Due process allows the rights procedurally to 1).adequate notice, 2).adequate opportunity for a hearing, 3).the right to introduce evidence, and 4).the right to confront and cross examined witness against the accused. Fifth Amendment violation of the Due Process Clause.

ARGUMENTS

(5). Trial Court erred by ordering the Appellant to be compelled into submitting to blood test by reasonable force violated Appellant's Fifth Amendment. See- Exhibits- V and Exhibit-6 Circuit Court Judge Howard P. King ordering this case be tried within 120 days or defendant will be released. Exhibit-V , ordered the blood sample dated Jan.18th.2015. Also See- [Boyd v. U.S.] 116, U.S. 616, 6, S.Ct. 524, 29, L.Ed. 746 (1966).[Counselman v. Hitchcock], 142, U.S. 547 584-585, 12, S.Ct. 195, 206, 35, L.Ed. 1110 8 Wigmore, Evidence 2252 (McNaughton rev. 1961). [Schmerber v. California], 384, U.S. 757, 86, S.Ct. 1862 16, L.Ed.2d. 908 (1966).

ARGUMENTS

6). Appellant's State Constitution Article #1 section § 10 and the U.S. Constitutional Amendment rights were violated which consisted of : Fourth- the right to be protected from any unreasonable search and seizures. See-[Mapp v. Ohio], 367, U.S. 643, (1961).[Kimmelman v. Morrison], 477, U.S. 365 (1986). [Sikes v. State] 323, S.C. 28, 448, S.E.2d. 560, (1994). Fifth- the right to be protected against self-incrimination. See-[State v. Reese], 359, S.C. 260, 271, 597, S.E.2d. 169, 175, (Ct. App. 2004),[Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682, (2000).[State v. McDaniel], 462, S.E.2d. 882, 884, (Ct. App. 1995).
Sixth- the rights to adequate legal assistance of counsel. See-[Goodwine v. Balcom], 684, F.2d. 794, (11th. Cir. 1982). [U.S. v. Cronic], 466, 648, 104 S.Ct. 2039 (1984).[Gray v. Greer] 778, F.2d. 350 (CA7 1985).[Evitt v. Lucey], 469, U.S. 392, 105, S.Ct. 830, 83, L.Ed.2d. 821 (1985).[Lambert v. Blackwell], 387 F.3d. 210, 247, (3rd.Cir. 2004).[Matrire v. Wainwright], 811 F.2d. 1430 (CA11 1987).
Fourteenth- No State shall deprive a person of life, liberty, or property without proper due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

ARGUMENTS

7). Trial court erred for failing to grant mistrial twice because mentioning prior bad acts are inadmissible unless the defendant were to take the stand. See- Tr.p 183 lines 18-22. Trial counsel argued that her client Johnson, had not testified and that the jury had heard twice that the defendant Johnson, has prior criminal history for unrelated charges which shows prejudice and bias. See- Tr. p. 184 lines 1-25, also see Tr. p. 187 lines 18-19.

ARGUMENTS:

8). The evidence collected by investigator Brian Chapman, was illegally obtained in bad faith with no regards to the respect of the Appellant's Fourth Amendment rights to be protected against any unreasonable search and seizures. See-[Kimmelman v. Morrison], 477, U.S. 365, (1986). [Sikes v. State], 323, S.C. 28, 448, S.E.2d. 560 (1994).

9). The PCR court erred for failing to find the trial counsel's performance bellow the standards of adequate legal assistance. This claim of ineffective assistance of trial counsel also applies to Appellate counsel for failure to raise ineffective assistance of trial counsel. The courts judgment was based on an unreasonable determination of the facts in light of the evidence that were never raised or presented. The Appellant was denied the right to be heard. During the PCR hearing the Appellant did take the stand, but, was instructed by the PCR counsel to only answer the questions that are being asked. SEE [Ezell v. State], 345, SC 312, 548, SE2d. 852, (2001).

10). The PCR court made an unreasonable determination of judgment when the court found that trial counsel's testimony was credible and that counsel's performance was effective and did not fall below the professional standards of norm in criminal cases. SEE [Jackson v State], 355, SC, 568, 570, 586, SE.2d 562, 563 (2003).

ARGUMENTS:

11). The PCR court did make an improper determination by abusing its discretion, and prejudging the PCR application. Before the hearing ever got started the issues of prosecutorial misconduct, and the claim of due process violations were denied and dismissed with prejudice. There is clear and convincing evidence by the PCR counsel's failure to file a Rule #59(e), motion to make sure that all issues on the application be addressed and properly preserved for Appellate review. [Austin v. State], 305, S.C. 453, 409, S.E.2d. 395, (1991). [Leamon v. State], 363, S.C. 432, 434, 611, S.E.2d. 494, (2005). citing S.C. Code Ann.§ 17-27-80. [Lambert v. Blackwell], 387, F.3d. 210, 247 (3rd. Cir. 2004). [Aice v. State], 305, S.C. 409, S.E.2d. 392, (1991). The Supreme Court Rules #50(5), and 71.1(d), MAKES it mandatory that PCR counsels must make sure that all grounds or issues on the PCR application be raised during that proceeding. SEE [Case v State], 277, SC. 474, 289, SE.2d. 413 (1982).

12). Trial counsel was inadequate for failing to present an defense. Inadequate for not producing any exculapatory scientific evidence on the behalf of her client. See [Florida v. Nixon], 543, U.S. 175, 125, S.Ct. 551, 160, L.Ed.2d. 565 (2004). [Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682 (2000). [Sikes v. State], 323, S.C. 28, 448, S.E.2d. 560, (1994).
Counsel never sought DNA testing to challenge the State's evidence. Instead of challenging the State's evidence, the counsel helped bolster the case against her client. See [U.S. v. Trang Trong Cuong], 18 F.3d. 1132, (4th. Cir. 1994). [Pauling v. State], 503, S.C. 468, 331, S.E.2d. 606, (1998).[Davis v. Alaska], 415, U.S. 308, (1974).[Dorsey v. Kelly], 112, F.2d. 50 (2nd. Cir. 1997).

ARGUMENTS

13). Trial counsel's failure to challenge the DNA evidence, failure to challenge the improper chain of custody, failure to properly raise or properly preserve issues for Appellate review. Failure to retain an DNA expert for a witness to testifiy on the behalf of the Appellant. See-[U.S. v. Van Dyke], 14 F.3d. 415, (8th. Cir. 1994). [Goodwine v. Balcom], 684, F.2d. 794 (11th.Cir. 1982).[State v. Reese], 359, S.C. 260, 271, 597, S.E.2d. 169, 175, (Ct.App. 2004).[Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682, (2000).[Wilson v. State], 348, S.C. 215, 559, S.E.2d. 581, (2002).

A failure to file a motion to suppress that is based on counsel's lack of knowledge of the [state's rules] of evidence, due to counsel's misunderstanding ignorance of the law or failure to conduct adequate investigations, can satisfy Strickland's deficiency prong. Appellant's prejudice is that he was convicted and sentenced on two time-barred counts that would have been dismissed. Failure to suppress physical evidence stated that evidence was improperly seized at the time of his arrest and therefore, was not admissible at trial. Trial counsel was incompetent and inadequate.

14).The PCR court failed to address the issue of prosecutorial misconduct and violations of due process denied the Appellant the right to an full and fair hearing. Equitable tolling due to egregious attorney's conduct. See-[Howell v. Crosby] 415 F.3d. 1250, 1252, (11th. Cir. 2005). We have reasoned that equitable tolling may be warranted when a government official has misled a Appellant. Appellant reasonably relied on his PCR attorney's misrepresentation and paid for the counsel to go the extra mile by filing and preparing the 59(e) motion and this rationale is that attorney's negligence is not an extraordinary circumstance and the Appellant must "vigilantly oversee", and ultimately bear responsiblity for, their attorney's actions or failures.

ARGUMENTS

15). The Appellant's due process rights were violated when the courts refused the Appellant the right to an preliminary hearing. "The Confrontational Clause"! Appellant filed an motion to quash warrants for insufficient evidence to convict on August 23rd,2006. On Oct.10th,2006, the Honorable Roger M. Young,Sr., Circuit Court Judge, denied and dismissed the motion, holding that the Appellant is not entitled to an hearing, if the Appellant is indicted before an hearing is held. Appellant's argument in this case is that it is stated that the Appellant was indicted on Sept.21st,2006. While it is stated on the preliminary calendar that an preliminary hearing was held on Sept.15th,2006. Someone from the public defender's office was there to represent you. See-Exhibits-1-A, 1,2,&3. Appellant believe that the dates for either the preliminary hearing or the Grand jury indictments are inconsistent. See-Exhibit-P-1, the Supplement report where the investigator Brian Chapman talks with the Solicitor's office and it was stated that at this point there was not enough probable cause to keep the Appellant detained or to collect an Schemerber testing for DNA. Appellant believes that his due process were violated. The rights to the S.C. State's Const. Article #1 section §10 and the U.S. Const. Fourth Amendment the right to be protected against unreasonable search and seizures, Fifth Amend. No State shall compel a person to be a witness against himself or the right to remain silent. Sixth Amend, The Confrontational Clause,or the right to effective assistant of counsel. Fourteenth Amend., No State shall deprive a person of life, liberty, or property without due process of law.

16). The lower courts was in err when it denied the Appellant's motion to quash the warrants holding that the Appellant was indicted before an hearing was held in err.
SC. Code Ann. §17-19-90 (2003).

ARGUMENTS

17).An preliminary hearing did take place on Sept.15th,2006, in the absence of the Appellant according to the records of the preliminary hearing clerk Marta Cherena. See-Magistrates Exhibit-1 & 2.

18). Trial counsel was ineffective during trial for failing to properly raise the improper chain of custody and the handling of the DNA blood samples, failed to raise or object to the golden rule argument that was prejudicial. Counsel's failure to object to solicitor's inflammatory argument during closing. Counsel abandoned her client, therefore, Appellant was subjected to issues being abandoned and waived.
SEE[Bennett v State] 371 S.C. 198, 638, SE2d 673 (2006). Crim. Law 1178

19). The Appellant did not waive nor abandoned his rights to a direct appeal. Appellate counsel are telling their clients that it is their decision what issues to present to the courts. Appellant did waive his rights knowingly, intelligently, voluntarily, or willingly. Therefore, Appellant's issues that are considered waived and abandoned should be considered belated.
SEE[Bennett v State], 371, SC. 198, 638, SE2d. 673 (2006) Crim Law 1178

20).Trial court erred when it failed to instructed the jury on the lesser-included offenses. See[Kerrigan v State] 304, SC. 561, 406, SE.2d. (1991). [State v Braun], 609, SC 392, 360, SE2d. 581 (2004).

21).Trial court erred for failing to meet each element of the crimes charged. Please examined the trial transcript and the PCR transcript.See- trial transcript page 283 line 9 that of attorney arguing that the elements has not been met.
Tr. p. 306 lines 14-15

22).Trial counsel's decision not to object to the improper jury instruction was not an tactical decision that she can rely on, but indeed an decision made inadvertent to ignorance of law.

ARGUMENTS:

23).The services received from trial counsel was detrimental reliance at an very critical stage in the Appellant's appeal. Trial counsel Stephanie Smart-Gittings was inadequate and she also abandoned her client.

24).Both Appellate counsels LaNelle Durant for direct appeal, and Robert M. Pachak, for the petition in Writ of Certorari, were inadequate based upon the ineffective assistance received from his trial counsel which is considered the domino or ripple effect.

25).The Appellate defender Robert Pachak, did offer erroneous advice,direct his client to pursue federal habeas corpus alleging that the Appellant has exhausted his state remedies was in err.

26).All appointed counsels for the Appellant did violated the SCACR, Rule #407 Professional Conduct and Responsiblities. Counselors are responsible for reporting any misrepresentation or unethical conduct that falls below the standards of reasonableness.

27).PCR counsel Timothy M. Wogan, was inadequate for failing to seek DNA testing, failing to alter or amend the PCR application by failing to file an Rule #59(e) motion to make sure that all grounds or issues are addressed. Appellant did not receive adequate legal assistant from PCR counsel.

28).The ineffective assistance that the Appellant received from PCR counsel prejudiced his client, because the Appellant requested Consent to testing pursuant to S.C. Code Ann. §17-28-110. Also requested counsel to file the 59(e) motion. See-letter from Appellate defender Robert Pachak, in regards to him stating that he has never seen anyone win an PCR case by filing an Rule#59(e)..

ARGUMENTS:

29).The statute of limitation does not apply to an Austin PCR application under S.C. Code Ann. § 17-27-45(a) if the Appellant alleges that he did not knowingly, intelligently, voluntarily, or willingly waived his constitutional rights to a direct appeal. SEE [Odom v. State] 337, SC. 256, 523, SE.2d. 753, (1999).

30).The PCR courts made an improper decision by summarily dismissing the Appellant's amended application to include all grounds that were considered waived and abandoned. The Respondent's alleges that the application is sucessive and untimely by the statute of limitations. Appellant objects to such allegation. It was an extraordinary circumstance beyond the Appellant's control, especially when the counsels say to their client's it is my decision what issues to present or what to raise. SEE [Seamon v. State], 363, SC. 432, 434, 611, SE.2d. 494, 495, (2005). Citing SC. Code Ann. §17-27-80

31).On Aug.30th,2010, an PCR hearing was scheduled before the Honorable Perry M. Buckner, the hearing was set for an continuance, the Appellant was denied the right to self-representation and appointed Timothy Wogan as counsel. Based upon the case of Faretta v. California, the decision to deny the Appellant the right to represent himself was in err.

32).Trial counsel's testimony at the PCR hearing was not credible. See-Exhibit-Z PCR transcript pages 425-426, line 12, direct exam of PCR counsel Timothy Wogan and Trial counsel Stephanie Smart-Gittings, perjured her statment by saying that she had no involvement in the taking of Appellant's blood through an Schermerber motion. The judgment made by the PCR court was an abuse of discretion. Under rules of evidence #608(b),&(c), statments by counsel's truthfulness or untruthfulness may be used to impeach.

CONCLUSION

For the reasons stated, the Appellant's conviction and sentence should be vacated.

Aug. 9th, 2015.

Respectfully submitted,

/s/ Nathaniel Johnson Jr. #211574

Nathaniel Johnson,Jr.#211574
L.C.I. Stono-B#50
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Appellant

THE STATE OF SOUTH CAROLINA

[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Chief Administrative Judge

Case No.2013-CP-07-1650

State of South Carolina,.....Respondent,

v.

Nathaniel Johnson,Jr.#211574,.....Appellant,

CERTIFICATE OF APPELLANT

The Appellant certified that this Final Brief complies with Rule#211(b),SCACR.

Aug. 9th,2015.

/s/Nathaniel Johnson Jr. #211574

Nathaniel Johnson,Jr.
SCDC#211574
LCI. Stono-B#50
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Appellant

600

The Supreme Court of South Carolina

Nathaniel Johnson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001611

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

C.J.

FOR THE COURT

Columbia, South Carolina

August 20, 2015

cc:
James Rutledge Johnson, Esquire
Nathaniel Johnson, #211574

601

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
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1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1499
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September 8, 2015

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: Nathaniel Johnson v. State
Lower Court Case No. 2013CP0701650
Appellate Case No. 2015-001611

Dear Clerk of Court:

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

Very truly yours,

CLERK

cc: James Rutledge Johnson, Esquire
Nathaniel Johnson, #211574

602

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE 14th. JUDICIAL CIRCUIT
Nathaniel Johnson,Jr. #211574, Petitioner,	)	C/A No.2013-CP-07-1650
vs.	)	Rule #60(b) Motion to be Relieved from judgment.
State of South Carolina, Respondent,	)	

2016 JAN 28 PM 3:52
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Petitioner, Nathaniel Johnson,Jr.#211574, hereby files this motion as an pro-se litigant and moves this Court to respectfully grant motion to be relieved from judgment in pursuant to Rule #60(b) of SCRCP., for the following reasons:

1.) mistake, inadvertence, surprise, or excusable neglect;
2.) newly discovered evidence which by due diligence could not have been discovered in time to move for new trial under Rule#59(b);
3.) fraud, misrepresentation, or other misconduct of adverse party;
4.) the judgment is void;
5.) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

All reasons labled are relevant to Petitioner's case in question and therefore, Petitioner's motion should be granted.

DECLARATION

I, Nathaniel Johnson,Jr.#211574, hereby declare under the penalty of perjury that the forgoing information stated are true and correct to the best of my knowledge of Petitioner's case.

January 22nd, 2016.
Ridgeville, S.C.

Respectfully submitted,
/s/ Nathaniel Johnson Jr #211574
Nathaniel Johnson,Jr.#211574
LCI. Ashley B#06
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

604

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson, Jr., # 211574, Petitioner, v. State of South Carolina, Respondent.	)	2013-CP-07-1650 **ORDER DENYING APPLICANT'S MOTION UNDER 60(b), SCRCP**

2016 FEB 23 PM 3:22

This post-conviction relief matter comes before the Court by Petitioner's document titled "Rule #60(b) Motion to be Relieved from Judgment" filed on January 28, 2016. Petitioner alleges this Court should grant his motion for the reasons stated under the entirety of Rule 60(b), SCRCP.

Having carefully reviewed the entire record in this matter, this Court finds that no basis for granting a new PCR evidentiary hearing and/or a new trial. First, Petitioner had his full bite of the apple during his 2009 PCR evidentiary hearing and his 2011 PCR appeal. His first application for post-conviction relief was denied and dismissed by written Order dated October 6, 2011. The South Carolina Supreme Court then reviewed the denial of his PCR, issuing an Order denying his petition for writ of certiorari on June 5, 2013. The Remittitur was issued on June 21, 2013, more than *two and a half years* ago. Petitioner subsequently filed a second application for post-conviction relief, which was denied and dismissed by Order dated June 17, 2015. Additionally, Rule 60(b) states that the claims "shall be made within a reasonable time." This Court finds in the case that a "reasonable time" has long passed. Further, Petitioner fails to present any evidence that a new hearing should be held to litigate any other issues in his case. Therefore, this Court hereby denies the Petitioner's Motion in its entirety, and grants summary judgment to Respondent.

This Court notifies that if Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 60(b) Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 12 day of February, 2016.

C Mullen

Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

2013-CP-07-1650

606

FORM 5

STATE OF SOUTH CAROLINA)	2016-CP-07-979
)	IN THE COURT OF COMMON PLEAS
County of BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	
Full name and prison number (if any) of Applicant)	
)	
v.)	**APPLICATION FOR**
)	
State of South Carolina)	**POST-CONVICTION RELIEF**
Respondent,)	
)	

2016 APR 22 PM 3:03

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
   136 Wilborne Ave. P.O. Box 205, Ridgeville, S.C. 29472.
2. Name and location of Court which imposed sentence The Courts of General Sessions for the 14th. Judicial Circuit in Beaufort,
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 06-GS-07-1640, kidnapping.
   (b) 06-GS-07-1641, criminal sexual conduct 1st. degree.

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 12th.-14th.,2007 thirty(30)yrs. each ran 'Concurrent.

(b) 30yrs. kidnapping ran concurrent.

(c) 30yrs. for criminal sexual conduct 1st. ran concurrent.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty not guilty.

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals.

ii. Court of Common Pleas (PCR) Post-Conviction Relief.

iii. S.C. Supreme Court

(b) the result in each such Court to which you appealed:

i. Affirmed Unpublished Opinion.

ii. Denied Post-Conviction Relief.

iii. Denied Writ of Certiorari.

(c) the date of each such result:

i. December 11th.,2008.

ii. October 17th.,2011.

iii. August 30th.,2015.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2008-UP-690.

ii. Denied and Dismissed with prejudice.

iii. Denied.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) "Ineffective assistance of Trial counsel".

(b) "Ineffective assistance of Appellate counsels".

(c) "Ineffective assistance of PCR counsel".

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See attachments for supporting facts of each ground.

(b) same as above.

(c) same as above.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Trial counsel rendered inadequate assistance.

(b) Appellate counsels rendered inadequate assistance.

(c) (PCR) counsel rendered inadequate assistance.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Inadequate assistance.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Inadequate assistance.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Thomas James Bell was relieved before arraignment.

ii. Stephanie Smart-Giddings, Public Defender's Office at P.O. Box 506, Hampton, S.C. 29924.

iii. Both Appellate counsels at the Division of Indigent
LaNelle C. Durant and Robert M. Pachak
1330 Lady Street, Suite #401, Columbia, S.C. 29211-

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing Stephanie Smart-Giddings.
Direct Appeals LaNelle Durant

ii. (PCR) counsel Timothy M. Wogan Hilton Head S.C.
Appellate counsel Writ Certorari Robert M. Pachak

iii.

19. State clearly the relief you seek in filing this application:

Vacate the conviction and sentence of (CSC) 1st. degree and kidnapping. Proper jury instruction of lesser offense.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of BEAUFORT)

I, Nathaniel Johnson,Jr.#211574, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Nathaniel Johnson,Jr.#211574

Nathaniel Johnson,Jr.#211574

SWORN to and subscribed before me this 18th day of April, 2016.

Ludrecina Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

Exhibit # 612

14th Judicial Circuit In the Court of Common Pleas

CASE NO.# 2016-CP-07-0979

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Nathaniel Johnson Jr #211574, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Nathaniel Johnson Jr.
Applicant

SWORN or affirmed to and subscribed before me this 11 day of August, 2017.

Virginia Grubbs
Notary Public

My Commission Expires: 12/12/22

2017 AUG 17 AM 11:21
JERRI ANN ROSEBERG
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Revised 3/2003

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a). "Ineffective assistance of trial counsel"

1. Trial counsel was inadequate for failing to report, raise any issues of judicial misconduct or prosecutorial misconduct.

2. Counsel was ineffective for failing present a defense.

3. Counsel was ineffective for failing to move for competency hearing.

4. Counsel failed to suppress the issue of unreasonable search and seizure.

5. Counsel failed to raise any constitutional violations referring to the Applicant's Fourth, Fifth, Sixth, and Fourteenth Amend.

6. Counsel was ineffective for purging her statment during first (PCR) hearing which made her credibility unreliable.

7. Counsel was ineffective for failing to properly prepare for trial, investigate, or seek DNA Testing expert.

8. Counsel was ineffective for stipulating DNA evidence.

9. Counsel was ineffective for failing to raise all obvious and significant issues that are direct appeal issues that are considered waived and abandoned. Counsel is liable for default.

10. Trial counsel was ineffective for abandoning her client at trial during her opening and closing statments.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

(a). Continued Ineffective assistance of trial counsel.

11. Counsel failed to suppress any DNA evidence.

12. Counsel was ineffective for failing to raise issues of an Brady violation.

13. Counsel failed to raise the issue of Abuse of Discretion.

14. Counsel failed to challenge the chain of custody.

15. Counsel failed to raise the issue of Due process violation.

16. Counsel's testimony during (PCR) hearing was unreliable and according to Rules of Evidence #608, should be impeached.

17. Counsel failed to challenge the insufficiency of the indictment.

18. Counsel failed to render effective assistance violations of the Sixth Amendment.

19. Trial counsel failed to raise the issue of actual innocence.

20. Counsel's performance fell below the standards of reasonableness but for prejudical errors the results would have been different,

End of Trial Counsel!

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

(b). "Ineffective assistance of Appellate counsel.

1. Appellate counsel was ineffective for failing to raise the claim of ineffective assistance of trial counsel.

2. Appellate counsel was ineffective for failing to raise any constitutional violations that were obvious and significant at the most crucial stage in the appeal process, direct appeal

3. Appellate counsel was ineffective for failing to raise any issues of prosecutorial misconduct. Attention is directed towards the initial brief of Appellate and that of the Respondent which are different solicitor's in final briefs total misconduct.

4. Appellate counsel was inadequate for failing to raise the violation of clients fifth amendment rights on three important comments of the right to remain silent:
   1). The first of the testifying officer during trial.
   2). Comments made during trial that were improper by Officer.
   3). The prosecutor's closing arguments against the golden rule made that were improper which trial counsel failed object to nor raise.

5. Appellate counsel was ineffective for failing to raise the issue of abuse of discretion.

Appellate counsel failed to raise the issue of actual innocence.

7. Appellate counsel is the cause for Applicant's default.

8. Appellate counsel's deficient performance was prejudice.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

(b). Continued Ineffective assistance of Appellate counsel.

9. Appellate counsel was ineffective for failing to raise the violations of due process procedural and substantive.

10. Appellate failed to raise the Brady violation.

End of Appellate counsel!

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

(c) " Ineffective assistance of (PCR) counsel". Timothy M. Wogan, Attorney-at-Law

1. PCR counsel failed to render adequate service and was negligent, malpracticed, and ineffective for failing to seek DNA Testing.

2. PCR counsel failed to raise the issue of actual innocence.

3. PCR counsel was ineffective for failing to file an Rule#59(e) Motion when requested to do so.

4. PCR counsel failed to amend PCR application.

5. PCR counsel conspired along with all other counsels which were ineffective.

PCR counsel failed to raise the issue that PCR Court made an unreasonable determination of judgment that cannot be relied on.

7. PCR counsel was ineffective for failing to raise the issue that the PCR Judge erred in his decision of making an unreasonable determination of judgment by stating that it finds the testimony of the trial counsel reliable and the and the Applicant's unreliable.

8. PCR counsel's deficient performance fell below the standards of reasonableness and is held liable for petitioner's default.

End of PCR counsel!

618

STATE OF SOUTH CAROLINA)
) IN THE COURT OF (Select one)
COUNTY OF BEAUFORT) ☒ GENERAL SESSIONS
) ☐ FAMILY COURT
) JUDICIAL CIRCUIT
Petitioner's Exhibit #
)
Nathaniel Johnson,Jr.#211574) APPLICATION FOR
Name of applicant and Inmate number (if applicable)) FORENSIC DNA TESTING
)
OR)
) ORIGINAL INDICTMENT NO.
IN THE INTEREST OF JUSTICE)
) 06--GS-07-1641
)
Juvenile) ORIGINAL PETITION NO.
)
v.) -GS- -
)
State of South Carolina)
) Appellate Case No
Respondent,) 2018-000545

2016 APR 22 PM 3:05
BEAUFORT COUNTY, S.C.
CLERK OF COURT

INSTRUCTIONS – READ CAREFULLY

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

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

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

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated:

The Court of General Sessions for 14th., Judicial Circuit in Beaufort, S.C. for the charges of Criminal sexual Conduct 1st. degree. Trial by jury.

2. Give the date of the entry of the judgment and sentence:

March 12th-14th.,2007. 30yrs. for each charge ran concurrent.

and current place of incarceration: Lieber Correctional Institution.

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) PCR application ongoing asserting "Actual Innocence".

(b) Federal habeas corpus in pursuant to 28 USC.§2254.

(c) N/A

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: Blood, Semen, Hair and fingerprinting of Applicant.

Identify specific type of DNA testing being sought:
Serology Testing.

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:

Applicant was charged with criminal sexual conduct in the 1st. degree, Applicant has pled not guilty. Applicant claims actual innocence and according to the "Access to Justice Post-Conviction DNA Testing Reform Act", this application is in pursuant to Title#17-28-30(a). There is no statute of limitations.

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested

All Attorneys for the Applicant rendered inadequate service,

DNA test would provide a substantially more probative result:

The Applicant has been charged with criminal sexual conduct in the 1st. degree and the Applicant still maintain his claim of actual innocence. Therefore, DNA testing would produce exculpatory evidence that would make the results of Applicant's case would be different.

7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching:

Applicant has the right to redress and to present an defense. Applicant has preserved his constitutional rights and is entitled to DNA testing and Serologist expert for defense. DNA testing would produce exculpatory newly discovered evidence.

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

   (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;

   (b) The Court may assess the cost of any DNA testing against me;

   (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,

   (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Nathaniel Johnson,Jr.#211574
Print Applicant Name

Nathaniel Johnson
Signature of Applicant

621

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of BEAUFORT)

I Nathaniel Johnson,Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Nathaniel Johnson Jr. #211574
Signature of Applicant

SWORN to and subscribed before me this 13th day of January, 2016

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2016 JAN 19 PM 2:51
JERRI ANN RUSCHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

622
Exhibit-1

ALAN WILSON
ATTORNEY GENERAL

January 26, 2016

The Honorable Isaac McDuffie Stone, III
Solicitor, Fourteenth Judicial Circuit
PO Box 1880
Bluffton, South Carolina 29910

Re: Nathaniel Johnson #211574 v. State of South Carolina
2006-GS-07-1640

Dear Solicitor Stone:

Enclosed please find an **Application for Forensic DNA Testing** inadvertently sent to our office by the Beaufort County Clerk of Court. If you have any questions, please do not hesitate to contact me at (803) 734-3737.

Sincerely,

J. Rutledge Johnson
Assistant Deputy Attorney General

JRJ/em
Enclosure

cc: Nathaniel Johnson, #211574

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Exhibit-2

ALAN WILSON
ATTORNEY GENERAL

August 8, 2016

Nathaniel Johnson, Jr., #211574
Lieber Correctional Inst.-Wando-A#113
P.O. Box 205
Ridgeville, South Carolina 29472

RE: Nathaniel Johnson, Jr. v. The State
2016-CP-07-979

Dear Mr. Johnson:

I am in receipt of your letter inquiring the status of your applications in regards to the above listed matter. Be advised that all questions regarding your DNA Testing Application should be directed to the solicitor in the county where the application was filed.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

JBA/ab

Received Mon. Aug. 15th 2016

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

624

Exhibit-B

ALAN WILSON
ATTORNEY GENERAL

August 31, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
Post Office Box 1128
Beaufort, SC 29901-1128

Re: Nathaniel Johnson, Jr.
Beaufort County – 2006-GS-07-1641
"Application for Forensic DNA Testing" – DNA Application Act

Dear Ms. Rosenuea:

I am in receipt of a copy of a pro se "Application for Forensic DNA Testing" clocked April 22, 2016 concerning an application for DNA testing that Mr. Johnson filed along with an Application for Post-Conviction Relief. It appears that the DNA Application was filed along with the PCR Application.

Pursuant to § 17-28-50, the DNA Application matters are handled in the Court of General Sessions and this filing should not have been filed into the PCR case 2016-CP-07-0979. Because of this fact, our office does not intend to reply to the DNA Application unless otherwise directed to do so by the chief judge for administrative purposes.

Inasmuch as the Solicitor's Office handles these matters pursuant to §17-28-50, I am forwarding this application to Solicitor Stone's attention. If more information is necessary, please advise me.

Sincerely,

Ruston W. Neely
Assistant Attorney General

RWN/ah
Enclosure
cc: The Honorable Carmen T. Mullen, 14th Circuit Chief Judge for Administrative Purposes
The Honorable Isaac McDuffie Stone, III, 14th Circuit Solicitor
Nathaniel Johnson, Jr., #211574

Received Wed. Sept. 7th 2016.

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Exhibit-

ALAN WILSON
ATTORNEY GENERAL

October 20, 2016

Honorable Isaac McDuffie Stone, III
Fourteenth Circuit Solicitor
Post Office Box 1880
Bluffton, South Carolina 29910

Re: State v. Nathaniel Johnson, Jr.
Beaufort County – 2006-GS-07-1641
"Motion for Judgement by Default" – DNA Application Act

Dear Solicitor Stone:

I am in receipt of a copy of a *pro se* "Motion for Judgement by Default" dated October 3, 2016 concerning an application for DNA testing that Mr. Johnson asserts was filed on April 22, 2016. The original motion is attached.

Inasmuch as your office is handling these matters pursuant to § 17-28-50, I am referring this motion to your attention. If more information is necessary, please advise me.

Sincerely,

Ruston W. Neely
Assistant Attorney General

RWN/ah
Enclosure

cc: Nathaniel Johnson, Jr., #211574

Beaufort County Common Pleas

626

CASE HISTORY FOR CASE 2016CP0700979

Nathaniel Johnson Jr VS South Carolina State Of

FILED DATE: 4/22/2016 CASE TYPE: CP/Post Convict Rel 500 STATUS: Post Conviction Relief

ASSIGNED JUDGE:

Exhibit # M

CASE PARTIES:

Plaintiff Johnson, Nathaniel Jr
#211574 Lieber Corr. Inst. Wando A#113, Post Office Box 205, Ridgeville, SC 29472

Defendant South Carolina State Of

Defendant Attorney Johnson, James Rutledge
PO Box 11549, Columbia, SC 29211

Plaintiff Pro Se Johnson, Nathaniel Jr
#211574 Lieber Corr. Inst. Wando A#113, Post Office Box 205, Ridgeville, SC 29472

Defendant Attorney Neely, Ruston Wesley
PO Box 11549, Columbia, SC 29211

CASE HISTORY FOR CASE 2016CP0700979

South Carolina State Of Age: Unknown DOB: Unknown
DL#: SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Total:				

DATE	TIME	EVENT DESCRIPTION
9/6/2016	4:01 PM	Filing recorded: Letter From Atty R. Neely Re:DNA Application Matters Are
9/9/2016	12:00 AM	C07MKILBY recorded the following Case Note: Handled In the Court of General Sessions. **9/9/16- The Original DNA Application was pulled from this PCR case file and forwarded to the General Sessions Court to be filed under 2006-GS-07-1641. I also forwarded a filed copy of the DNA Application and this letter to the Solicitor's Office.MMK**

Print Date: 11/23/2016
Print Time: 11:19:52AM
Requested By: C07MKILBY

Beaufort County Common Pleas

627

CASE HISTORY FOR CASE 2016CP0700979

Nathaniel Johnson Jr VS South Carolina State Of

FILED DATE: 4/22/2016 | CASE TYPE: CP/Post Convict Rel 500 | STATUS: Post Conviction Relief

ASSIGNED JUDGE:

CASE PARTIES:

Plaintiff Johnson, Nathaniel Jr
#211574 Lieber Corr. Inst. Wando A#113, Post Office Box 205, Ridgeville, SC 29472

Defendant South Carolina State Of

Defendant Attorney Johnson, James Rutledge
PO Box 11549, Columbia, SC 29211

Plaintiff Pro Se Johnson, Nathaniel Jr
#211574 Lieber Corr. Inst. Wando A#113, Post Office Box 205, Ridgeville, SC 29472

CASE HISTORY FOR CASE 2016CP0700979

Johnson, Nathaniel Jr
#211574 Lieber Corr. Inst. Wando A#113
Post Office Box 205
Ridgeville, SC 29472

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
4/22/2016	11:19 AM	Filing recorded: Post Conviction Relief
4/22/2016	11:33 AM	Filing recorded: Application for Forensic DNA Testing
4/22/2016	12:00 AM	C07MJOHNSO recorded the following Case Note: mail copies to Pro Se Plaintiff and the Atty General office on 4/26/2016 along with Application for Forensic DNA Testing and attachments file on 4/22/2016 with the PCR Application
5/25/2016	3:57 PM	Filing recorded: Letter Re: $25.00 check
6/6/2016	10:16 AM	Filing recorded: Letter Requesting Copy of Court Calendar For Jan-June 2017
6/6/2016	10:45 AM	Filing recorded: Letter Regarding Returning the $25.00 Check #810143
7/29/2016	3:46 PM	Filing recorded: Letter Regarding DNA Testing Application06-GS-1641,16-CP-979

Print Date: 08/26/2016
Print Time: 11:17:14AM
Requested By: C07LGEREN

CASE HISTORY FOR CASE 2016CP0700979

8/10/2016	11:16 AM	Filing recorded: Letter regarding DNA testing application, case history, and
8/26/2016	12:00 AM	C07LGEREN recorded the following Case Note: request for court calendar for 2017

Exhibit #1

629

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA,	)	INDICTMENT:# 2006-GS-07-1641
Respondent,	)	
v.	)	**"MOTION FOR JUDGMENT BY DEFAULT"**
	)	
Nathaniel Johnson,Jr.,	)	
SCDC#211574, Defendant,	)	

2016 OCT 12 PM 3:20

"MOTION FOR JUDGMENT BY DEFAULT"

This matter comes by way of an Forensic DNA Testing Analysis Application filed on April 22nd.,2016. This also comes before the Court of General Sessions. The Defendant, hereby moves this Court with an "Motion for Judgment by Default". It appears that the Respondent, the Solicitor's Office, maybe liable for an judgment by default against the party for failure to give an answer within 90 days. This motion is in pursuant to the SCRCP. Rules#54(C) Demand for Judgment and Rule#55(B)(2). According to the South Carolina Code of Laws as amended eff. January 1st., 2009, the defaulting party maybe in violation of Section 17-28-50(B).

The Applicant asserts that he has complied with the Court rules citing the case of * **McCall v. IKON,** 363, S.C. 646, 611, S.Ed.2d. 315, (S.C. App. 2005), THe Respondent's has been given notice to respond within 10 days to acknowledge receipt of the Defendant's Forensic DNA Testing Application and his intent to file an motion for judgment by default if he did not get an response. The Respondent's must respond to the Application within 90 days in which has expired. The Applicant contends that he is entitled to demand for judgment by default against the Solicitor's Office, for failure to answer. The Applicant demands an hearing to resolve this matter as soon as possible. The Applicant also asserts that this case be dismissed for lack of subject matter and personal jurisdiction.

CONCLUSION:

Wherefore, the Applicant, **Nathaniel Johnson,Jr.#211574,** would respectfully asks the Courts to grant its motion for demand judgment and proceed with an hearing. Case be dismissed for lack of subject matter jurisdiction and lack of personal jurisdiction.

Respectfully submitted,

/s/ Nathaniel Johnson Jr. #211574

Nathaniel Johnson,Jr.#211574
LCI. Wando-A#113
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Applicant

2016 OCT 12 PM 3:20
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) **VERIFICATION**
14th. JUDICIAL CIRCUIT)

I, Nathaniel Johnson,Jr.#211574, the Applicant being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Application for Forensic DNA Testing Analysis; that I know the contents therein; that it includes every ground known to me for vacating, setting-aside, or correcting the conviction and sentence attacked in this Motion; and that this case be dismissed for lack of subject matter jurisdiction and lack of personal jurisdiction; and that all matters and allegations are true and correct to the best of knowledge.

/s/ Nathaniel Johnson Jr

SWORN to and subscribed before me this 3rd day of October ,2016.

Ludrecan Bryant (L.S.)
NOTARY PUBLIC

My Commission Expires: May 26, 2020.

633

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF GENERAL SESSIONS FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, Respondent,	)	INDICTMENT:# 2006-GS-07-1641
v.	)	"PROOF OF SERVICE"
Nathaniel Johnson,Jr., SCDC#211574, Defendant,	)	

2016 OCT 12 PM 3:20
JERRI ANN ROSENEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

"PROOF OF SERVICE"

I, the Applicant, Nathaniel Johnson,Jr.#211574, attest that on this 3rd day of October 2016, the original "Motion for Demand Judgment by Default", has been mailed U.S. postage prepaid services to the Clerk of Court, Jerri Ann Roseneau, at P.O. Drawer 1128, Beaufort, S.C. 29901, and a true copy of the same was sent out to the Solicitor's Office, to the Honorable Isaac McDuffie Stone, III. for the Fourteenth Judicial Circuit at P.O. Box 1880, Bluffton, S.C. 29910.

October 3rd, 2016.
Ridgeville, S.C.

Respectfully Submitted,
/s/ Nathaniel Johnson Jr. #211574
Nathaniel Johnson,Jr.#211574
LCI. Wando-A#113
P.O. Box 205
RIdgeville, S.C. 29472

Exhibit # J

634

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	CASE# 2006-GS-07-1641
Nathaniel Johnson,Jr.)	Exhibit #
SCDC#211574, Petitioner,)	
)	
v.)	"MOTION TO SUPPRESS
)	ILLEGALLY OBTAINED EVIDENCE"
STATE OF SOUTH CAROLINA,)	
Respondent,)	

2017 MAR -6 PM 12:47
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Comes now Nathaniel Johnson,Jr.#211574, the Petitioner and move to suppress illegally obtained evidence that was used during trial by jury on ~~February~~ March 12th-14th., 2007, before the Honorable Howard P. King, Circuit Court Judge. The Petitioner alleges that he was inadequately represented by the deficient poor performance of his trial counsel Stephanie Smart-Giddings. The State was represented by former Solicitors Gail Lovell and Millissa Milligan-Kirby who is currently working in the office of the Clerk of Court as an "Judgment Administrator", which maybe very prejudicial to the Petitioner. On April 22nd.,2016, the Petitioner filed an application seeking DNA Testing in pursuant to the "Access to Justice Post-Conviction DNA Testing Act," Section §17-28-30(a). The Solicitor's Office respond to the application on November 2nd.,2016. It was stated that if the Petitioner wants to test the DNA evidence, that he can obtain from the Clerk of Court. The Petitioner is requesting suppression of evidence by way of an unreasonable search and seizure that was in violation of the Petitioner's Fourth Amendment to the Const. of the U.S. and the State Const. Art.#1 §3 & §10.

CONCLUSION:

Wherefore, the Petitioner seeks justice and humbly asks that this Honorable Court grant his "MOTION TO SUPPRESS", when justice is so required as a matter of law as stated in the S.C. Code of laws Section §17-28-90(A).

Respectfully submitted,

/s/ Nathaniel Johnson, Jr.

Nathaniel Johnson, Jr. #211574
LCI. Wando-A#113
136 Wilborne Ave.
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

Exhibit - F - 1 663

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER
Human Services Building • 1905 Duke Street (Room 210) • P.O. Box 525
Beaufort, South Carolina 29901-0525
Phone: (843) 470-4525 Fax: (843) 470-4533

1:15-CV-03611-RMG-SVH

September 11, 2006

Dear Judge McDomick/Judge Dudley:

Re: NATHANIEL JOHNSON
Kidnapping/Kidnapping H330912
Sex/Criminal sexual conduct - First degree J330913
Burglary/Burglary (After June 10, 1985) - First DeJ330914
Weapons/Poss weapon during violent crime, if not aJ330915

I was appointed to represent NATHANIEL JOHNSON on the above charge(s).

Pursuant to Rule 9, South Carolina Rules of Criminal Practice, I request a preliminary hearing on these charges. Please contact me as to when a hearing in this matter may be held.

Sincerely,

Gene G. Hood
Public Defender

2006 SEP 13 PM 12:15

Certified - A True Copy

Elizabeth M. Smith - Clerk
Beaufort County

664

Exhibit-G

PRELIMINARY EXAMINATION RECORD

06 SEP 18 PM 12:06
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Defendant: Nathaniel Jr. Johnson

Officer/Complainant: B Chapman
Beaufort County Sheriff

Charge(s): 1:15-CV-03611-RMG-SVH

1. J330912 ✓		Kidnapping / Kidnapping
2. J330913 ✓		Sex/ Criminal sexual conduct - first degree
3. J330914 ~		Burglary/ Burglary (after June 20, 1985) - 1st degree
4. J330915 ✓		Weapons/ Poss weapon during violent crime, if not also sente

	Bound Over to General Sessions	Dismissed No Probable Cause	Dismissed by Complainant	Waived
1.	☒	☐	☐	☐
2.	☒	☐	☐	☐
3.	☒	☐	☐	☐
4.	☒	☐	☐	☐

THE ABOVE CAME TO BE HEARD FOR PRELIMINARY EXAMINATION
(REMARKS) _____

C L Smith
Examining Magistrate

September 15, 2006

Certified - A True Copy

Elizabeth [illegible]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	INDICTMENT NO.: 2006-GS-07-1641
COUNTY OF BEAUFORT	)	
	)	
NATHANIEL JOHNSON, JR.,	)	
	)	
Petitioner,	)	STATE'S RESPONSE TO PETITIONER'S APPLICATION FOR POST-CONVICTION DNA TESTING
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

COMES NOW Assistant Solicitor Mary Jordan Lempesis in response to Petitioner's application for post-conviction DNA Testing in the above-captioned case. Petitioner has moved before the Court for post-conviction forensic DNA testing of physical or biological material related to his conviction for Criminal Sexual Conduct, First Degree, pursuant to the Access to Justice Post-Conviction DNA Test Act (The Act), codified in Section 17-28-10 *et seq.* (South Carolina Code of Laws, as amended, 1976). In response to Petitioner's Application, the State submits the following to the Court.

FACTS

On February 7, 2006, at approximately 11:40 a.m., Petitioner, Nathaniel Johnson, Jr., approached victim [redacted] residence located at 94 Cuffy Road, Saint Helena Island, South Carolina. Petitioner requested to use the victim's telephone. [redacted] allowed Petitioner to use her phone because she had observed road surveyors working outside her home that morning and she believed Petitioner was a member of the work crew. Petitioner entered the victim's home and proceeded to place a telephone call. While inside the home, Petitioner pulled out a gun and pointed it at her. Petitioner then ordered the victim into the bedroom.

Once inside the bedroom, Petitioner ordered the victim to remove her clothing, threatening to shoot her if she didn't comply. Petitioner then sexually assaulted the victim. Petitioner penetrated the victim's vagina multiple times with his penis and his fingers. After the sexual assault, Petitioner stole $472.00 from victim and then left the house. The victim immediately ran out of the home and flagged down the road workers, who contacted law enforcement.

[redacted] provided multiple written statements of the assault and also consented to the hospital obtaining a sexual assault kit for potential forensic evidence. The results of the rape kit were submitted to SLED. A DNA profile was developed from items submitted in the rape kit. Through its investigation, the Beaufort County Sheriff's Office developed Petitioner as a potential suspect in the case. While Petitioner was incarcerated in Beaufort County Detention Center on an unrelated offense, investigators obtained Petitioner's eating utensil and napkin he discarded after a meal on April 21, 2006. These items were submitted for forensic testing to compare to the DNA profile developed from the rape kit. DNA analysis revealed that Petitioner's DNA profile was a match to the semen collected in the rape kit, fingernail scrapings from the victim's right hand, and swabs from the bite wound on the victim's hand inflicted during the assault. Petitioner's blood standard was then taken for comparison and submitted to SLED for comparison with the previously analyzed forensic evidence. The findings were summarized in a report stating, in pertinent part:

> The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion. The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr. The partial DNA profile developed

> The Applicant has been charged with criminal sexual conduct in the 1st. [sic] degree and the Applicant still maintain [sic] his claim of actual innocence. Therefore, DNA testing would produce exculpatory evidence that would make the results of Applicant's case would [sic] be different.

Petitioner fails to explain how the requested DNA testing would provide a substantially more probative result than the previous DNA testing. Petitioner repeatedly asserts his "actual innocence" as the reason for the court to order the additional testing. Petitioner's application fails to establish each of the factors required by a preponderance of the evidence. While the physical evidence or biological material is still available (it is in the possession of the Clerk of Court's office as it was submitted as evidence during trial), the Petitioner has failed to state in his application why the additional DNA testing, were it to produce exculpatory results, would change the result of the applicant's conviction or adjudication if a new trial is granted and would not be merely cumulative or impeaching.

SLED found Petitioner's DNA profile was a match to the DNA profile developed from the previously submitted rape kit. The report's findings were subsequently introduced as evidence during Petitioner's trial for consideration by the jury who ultimately found Petitioner guilty of Criminal Sexual Conduct, First Degree and Kidnapping. Petitioner fails to assert how the requested DNA testing would provide a substantially more probative result than the previous testing performed by SLED, and therefore fails to meets the requirements of the statute.

CONCLUSION

Petitioner's application for post-conviction DNA testing fails to meet the statutory requirements. The Petitioner fails to establish by a preponderance of the evidence each of the

factors required by the statute. Therefore, based on the law and facts stated herein, the State respectfully requests the Court deny Petitioner's application for post-conviction DNA testing.

Respectfully submitted,

Mary Jordan Lempesis
Assistant Solicitor
Fourteenth Circuit Solicitor's Office

Beaufort, South Carolina

Petitioner's Exhibit # H 669

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF GENERAL SESSIONS) FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson,Jr.#211574, Petitioner,	) INDICTMENT#2006-GS-07-1641) Appellate Case No: 2018-000545
v.	)
STATE OF SOUTH CAROLINA, Respondent,	)"REPLY IN OPPOSITION TO THE) STATE'S RESPONSE TO THE) PETITIONER"S APPLICATION FOR) FORENSIC DNA TESTING"

2016 NOV 16 PM 2:47 BEAUFORT COUNTY, S.C. CLERK OF COURT

PLEASE TAKE JUDICIAL NOTICE, the petitioner comes now and move this Honorable Court with an "Reply in Opposition to the State's response to the petitioner's DNA Testing Application file on April 22nd.,2016. The Respondent is requesting the Court to deny the application alleging that the petitioner failed to meet the requirements listed in section §17-28-40 of the S..C. Code of laws as amended(1976). The petitioner will submit to the Courts reasons why the application should not be denied, and proceed with an hearing to determined the merits on the matter of law. According to the S.C. Code of laws as amended (1976), Section §17-28-90, stated Hearing; factors to be proved; orders relating to DNA samples.(A) The application must be heard in, and before a judge of, the general sessions court or family court in which the conviction or adjudication took place. A record of the proceedings must be made and preserved. All rules and statutes applicable in criminal proceedings are available to the applicant and the solicitor or Attorney General as applicable.(B) The court shall order DNA testing of the DNA upon established factors by a preponderance of the evidence.

FORENSIC DNA ANALYSIS APPLICATION:

The petitioner submitted an Forensic DNA testing application to the Clerk of Court for the purpose of filing with the Court of General Sessions which is clearly written on the application prescribed by the S.C. Supreme Court. The application was supposely filed on April 22nd.,2016. The petitioner received an letter from the office of the Attorney General in regards to the DNA application being inadvertently sent there when all DNA cases are handled by the Solicitor's office for Beaufort County. See petitioner's exhibits-1 from the Attorney General's office dated January 26th.,2016, exhibit-2 dated August 8th.,2016 exhibit-3 dated August 31st.,2016 and exhibit-4 dated October 20th.,2016. In regards to responding to the application, the Attorney General's office brought the application to the attention of the solicitor's office to the Honorable Isaac McDuffie Stone,III. for their response to the application according to the statute section §17-28-50 states that the solicitor's office shall respond to the application within 90 days. If the solicitor does not respond the court must proceed with an hearing. After, the third notice from the Attorney General's office on August 31st.,2016, the petitioner submitted to the court of general sessions an motion for judgment by default, supposely filed on October 3rd.,2016. All mail that was sent from the petitioner to the solicitor's office were returned to sender.

STATEMENT OF CASE:

On February 2006, the petitioner was an detainee at the Beaufort County detention center for unrelated charges. While, in the jail the petitioner was being questioned about related matters in this case and my where abouts during the time of the stated incident. The petitioner was detained for seven months because was found to be nolle prose for insufficient evidence. Before, being released from the Beaufort County detention center an NCIC check for outstanding warrants was conducted and there were none. The petitioner was release on bond on August 8th.,2006.

Thereafter, two weeks later, the petitioner was in the Piggly Wiggly parking lot and pick up for supposely arrest warrants in relations to this case. The petitioner went before the bond court, requested an preliminary hearing and did not receive. The court dated an preliminary held on September 15th,2006, inn my absence. The petitioner filed an pre-trial motion to quash all warrants on August 25th.,2006. See petitioner's exhibit X, exhibit-Y, exhibit-F-1, exhibit-G, exhibit-E, exhibit-D-1-2. On October 10th.,2006, the motion was denied by the Honorable Circuit Court Judge Roger M. Young,Sr. holding that the petitioner is not entitled to an preliminary hearing because he was already indicted. This is fraud upon the court and this evidence is rebutted with clear and convincing evidence submitted by the petitioner's exhibit-B Circuit Court Judge Howard P. King asked the solicitor's office why have'nt the petitioner been indicted yet? Ordered the case to be tried in 120 days.

LACK OF SUBJECT MATTER AND LACK OF PERSONAL JURISDICTION:

The petitioner will show that the indictments never made its way to the grand jury. The petitioner alleges prosecutorial misconduct. The following solicitor's were involved with the case at that particular time Ms. Millican-Kirby, and Assistance Solicitor Ms. Gail Lovell. This conviction and sentence is void. Solicitor Ms.Millissa Millican, signed the indictment as the grandjury foreman and wrote true bill on the fraudulent indictments. There were also some police misconduct as well. The investigating Officer Brian Chapman, conducted this investigation in bad faith and abuse or misused his office by deceiving the courts with fraud, deceit, tainted evidence, and reckless disregards to the truth in order to injure another. The evidence gathered were all done through an unreasonable search and seizure from the fruits of the poisonous tree analysis. The petitioner contends that the exclusionary rule should apply.

The petitioner responds to the alleged facts of the Respondent, which are fabricated, inaccurate, and frivolous. The petitioner asserts that their allegations are mere speculation of the events that took place. This is an wrongful conviction and its speculation has placed fraud upon the court.

Investigator Brian Chapman's testimony during trial and the evidence used to convict, is unreliable, testimony not credible and according to the Rules of Evidence Rule#608 he should be impeached.

STATEMENT OF FACTS:

On or about March 14th.,2006, Officer Brian Chapman, met with members of the 14th. Judicial Circuit Solicitor's office to discuss the facts regarding this case. This officer was **advised** that at this point, there was **not enough probable cause** for a **Schmerber Hearing** to collect **DNA** from the petitioner. See petitioner's exhibit-P-1 Supplemental report, p.1-4. The officer Chapman decided to proceed by visiting the Beaufort County detention center while the petitioner was an pre-trial detainee, where the petitioner's constitutional rights were violated. The Officer obtained an fraudulent warrant to do an unreasonable search and seizure of petitioner's legal property, of his persons.

The petitioner asserts that all irrelevant evidence gathered should be considered inadmissible as well as his testimony. There were two DNA samples collected by force per judge's orders.

The first DNA results came back with an profile of unidentified male, in August 2006.

There was an sheet that was collected from the detention center and used at trial in which the officer testified that the sheet was collected from the crime scene. **FRAUD!**

The second DNA results came back with an profile of the petitioner. The petitioner's counsel was questioned about the two DNA samples that were collected and never challenged the chain of custody. This performance from trial counsel was very prejudicial. Trial Counsel Stephanie Smart-Gittings,Esquire, retained an DNA expert but did not test DNA nor seek opinion or advice.

DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Petitioner was denied effective assistance of counsel. Trial counsel Stephanie Smart-Gittings,Esquire, deprived the petitioner of his rights to an speedy trial, deprived the petitioner of his rights to an fair trial, petitioner was deprived of receiving an preliminary hearing, and his confrontational clause was also violated. Failure to receive effective assistance during trial deprived the petitioner of the right to fundamental fairness under the 14th. Amendment to the United States Constitution and the S.C. Constitution Article#1 § 3, 4, 10, & 11.

The petitioner claims actual innocence and that he was discriminated against by all court appointed counsels. Trial counsel perjured her statement at the PCR hearing. See petitioner exhibit-Z PCR Transcript page#32-33. Those statement of counsel are inconsistent with petitioner's exhibit-U Trial Counsel Stephanie Smart-Gittings representing the petitioner during schmerber hearing. She stated that she did not have anything to do with the courts order. The petitioner contends that he is entitled to DNA testing according the S.C. Code of laws as amended (1976) eff as of January 1st.,2009 Section §17-28-30(A) Offenses for which post-conviction DNA testing is available. (A). A person who pled not guilty to at least one of the following offenses, was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing. There is no statute of limitations.

LAW AND ANALYSIS:

The petitioner would submit to the Court that he has complied with the requirements of the statute in Section §17-28-40 by responding to question #(6) six.

(6). Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing. The petitioner will explain by saying that all appointed counsel for the petitioner failed to subject the previous DNA testing to an adversarial testing to challenge the sufficiency of the physical evidence. There was also exculpatory evidence that was withheld by the prosecution which is considered an **Brady violation**. Therefore, this request for DNA testing would be admissible relevant evidence that would provide a substantially more probative result that would either exonerate or find guilt.

The petitioner attest to being wrongfully convicted by the fruits of the poisonous tree. The petitioner maintains his innocence and to deny the petitioner's request would amount to an gross miscarriage of justice, when justice is so required.

Based upon the petitioner's genuine facts of this case under the Rules of Evidence Rule#403 should apply. Article V. Privileges Rule#502, the petitioner asserts that his counsels helped bolster the prosecution's case against their client. Material- any evidence is relevant and material which tends to prove or disprove any ultimate issue made by the pleading to make the proposition at issue more or less probable that may be able to throw light on the transaction. This case consists of illegally obtained evidence, and a malicious arrest.

PROSECUTORIAL MISCONDUCT:

The Respondent's stated that the petitioner's DNA application fails to establish each factors required by a preponderance of the evidence. The petitioner admits that in order to establish factors it must be demonstrated with an hearing or through testing , not by application. Denying the application does allow the petitioner to establish or demonstrate relevancy of the issue.

This alleged fact still exists, the prosecutor that once was the Assistant Solicitor in my case is now the Judgment Administrator, Ms.Millissa Millican-Kirby. This would prove by preponderance of evidence that the petitioner would face discrimination, prejudice, and extreme bias. There are prejudicial issues when ever the petitioner file to the courts, or request certain documents that the petitioner never receives.

Actual proof that there is some misconduct in office going on. This is an serious factor that must be tooken into consideration. The prosecutor was once my adversary during trial, and now your my adversary through the court system where every thing is being filed supposely? The Respondent's stated that the DNA evidence that was used to convict still exists, and is located at the Clerk of Court's office. I'am persuaded that its there to make sure that the petitioner will not be able to prepare an defense, or make sure the petitioner has no way out. Actual innocence is my reason for DNA Testing to prove by clear and convicing evidence and more than the preponderance of it. Total discrimination towards court filings.

RULES OF CRIMINAL PROCEDURES:

Rule#6(d) Waiver of rights:

Nothing in this rule shall preclude the right of any defendant to obtain an **expert** chemist or analyst to test a substance in his behalf, provided it is test under the supervision of the authority having custody of the substance or of **SLED**. Nothing in this rule shall preclude the right of any party to introduce any evidence supporting or contradicting reports, or papers entered into evidence under this rule.

ARTICLE II. JUDICIAL NOTICE:

RULES OF EVIDENCE:

Rule# 201 Judicial Notice of Adjudicative Facts.

(b). Kind of Facts- A judicial noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(e). Opportunity to be heard- A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of the prior notification, the request may be after judicial notice has been taken.

CONCLUSION:

The petitioner has examined the State's response to the petitioner's request for DNA testing read in its entirety, has made an reasonable attempt to meet each requirement of the statute and to demonstrate by proponderance of factual evidence established by clear and convicing, concrete evidence that this application for DNA testing should receive consideration in its entirety. Therefore, based on the law and relevant facts stated or presented herein, the petitioner respectfully requests that the Court grant the petitioner's application for post-conviction DNA testing and a hearing to resolve this matter. The petitioner's request is in pursuant to the S.C. Code of laws as amended (1976) eff. January 1st.,2009, Stated in Section §17-28-90 Hearings; factors to be proved; orders relating to DNA samples.(A) The application must be heard in, and before a judge of, the General Sessions Court or Family Court in which the conviction or adjudication took place. A record of the proceedings must be made and preserved.

Dated: Tuesday November 9th, 2016.
Ridgeville, S.C.

Respectfully submitted,
/s/ Nathaniel Johnson Jr.

Nathaniel Johnson,Jr.#211574
LCI. Wando-A#113
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

STATE OF SOUTH CAROLINA)
FOURTEENTH JUDICIAL CIRCUIT) VERIFICATION
COUNTY OF BEAUFORT)

I, Nathaniel Johnson,Jr.#211574, being duly sworn upon my oath, depose and say that I have read and subscribed to the foregoing reply to the State's response, and that I know the contents therein, that it includes every ground known to me for vacating, setting-aside, or correcting the conviction and sentence attacked in this application for Forensic DNA testing; that the matters and allegations therein are true and correct to the best of my knowledge.

/s/ Nathaniel Johnson Jr. #211574
Nathaniel Johnson,Jr.#211574

SWORN to and subscribed before me this 9th day of November ,2016.

Ludrean Bryant (L.S.)
NOTARY PUBLIC

My Commission Expires: May 26, 2020

680

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF GENERAL SESSIONS FOURTEENTH JUDICIAL CIRCUIT
Nathaniel Johnson,Jr.#211574, Petitioner,	)	INDICTMENT#2006-GS-07-1641
v.	)	"PROOF OF SERVICE"
STATE OF SOUTH CAROLINA, Respondent,	)	

2016 NOV 13 PM 2:47
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

"PROOF OF SERVICE"

I, Nathaniel Johnson,Jr.#211574, attest and say that on this 10 day of November ,2016, the original " Reply in Opposition to the State's Response to the petitioner's request for Forensic DNA testing". All U.S. mail has mailed out prepaid postage along with an true copy of the same served on the opposing party sent to the following addresses listed: Jerri Ann Roseneau, Clerk of Court, P.O. Drawer 1128, Beaufort, S.C. 29901. Office of the Solicitor Mary Jordan Lempesis, First Assistant Solicitor, for the Fourteenth Judicial Circuit, P.O. Box 1880 Bluffton, S.C. 29910.

Dated: Thurs, Nov. 10th ,2016.
Ridgeville, S.C. 29472

Respectfully submitted,
/s/ Nathaniel Johnson,Jr.
Nathaniel Johnson,Jr.#211574
LCI. Wando-A#113
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

681

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No.2006GS071640,& 1641
Petitioner,)	
)	Exhibit# R
-vs-)	
)	
STATE OF SOUTH CAROLINA,)	**"NOTICE OF MOTION FOR AN ORDER**
Respondent,)	**TO TERMINATE SEX OFFENDER**
)	**REGISTRATION"**

2008 JUN 28 PM 12:45
BEAUFORT COUNTY S.C.
CLERK OF COURT

PLEASE TAKE JUDICIAL NOTICE, that the Petitioner, **Nathaniel Johnson,Jr.#211574,** hereby moves before this Honorable Court, by way of an pro-se **"Motion For AN ORDER TO TERMINATE THE SEX OFFENDER REGISTRATION".**

Petitioner,s motion is in pursuant to Section 1 Article 7, Chapter 3, Title 23 of the 1976 Code of Laws as amended by adding Section §23-3-560 (A)(1)(2), (B)(1)&(2),(C),(D),&(E). Petitioner makes his pleadings to the following circumstances:

LEGAL MAIL

682

The Petitioner files his motion as a follow-up to his pending case in the Court of General Sessions, before the Honorable Chief Administrative Judge, Carmen T. Mullen, for consideration of an hearing in pursuant to the Access to Justice Post-Conviction DNA Testing Analysis Act.

Petitioner also filed an Motion to Suppress the Illegally Obtained DNA Evidence that was used against during trial. All matters in this case should be given an second opinion based upon the South Carolina Rules of Evidence Rule#608(a)(b)&(c).

Petitioner asserts that he was wrongfully convicted for the offenses of Criminal Sexual Conduct in the first degree, and Kidnapping. He further seeks justice to maintain his innocence and to clear his name from the sexual offender registration database.

CONCLUSION

WHEREFORE, the Petitioner, Nathaniel Johnson,Jr.#211574, prays for relief to be granted as justice is so required as a matter of law in pursuant to the South Carolina Code of Laws Of 1976 as amended by adding Section §23-3-560(A).

Dated: June 25th 2018 ,2018

Respectfully submitted,

/s/ Nathaniel Johnson Jr. #211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

JAN 683

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No.2006GS071640,&1641
Petitioner,)	
)	
-vs-)	
)	
STATE OF SOUTH CAROLINA,)	**"AFFIDAVIT"**
Respondent,)	

2018 JUN 28 PM 12:45
BEAUFORT COUNTY S.C.
CLERK OF COURT

AFFIDAVIT

PERSONALLY appeared before me **Nathaniel Johnson,Jr.#211574,** the affiant, being duly sworn upon my oath, depose and say, that he subscribeds to the foregoing "Motion For An Order To Terminate the Sexual Offender Registration, that has been fraudulently placed upon him; that he knows the contents therein; that it includes every ground known to him for vacating, setting-aside, or correcting his conviction and sentence attacked in this Motion; and that all matters are true and correct to the best of his knowledge.

/s/ Nathaniel Johnson

SWORN AND AFFIRMED before me this 21
day of June ,2018.
Virginia Stubbs (L.S.)
NOTARY PUBLIC
My Commission Expires: 12/12/22 .

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No.2006GS071640,& 1641
Petitioner,)	
)	
-vs-)	
)	
STATE OF SOUTH CAROLINA,)	**"AFFIDAVIT OF SERVICE BY MAIL"**
Respondent,)	

2018 JUN 28 PM 12:46
CLERK OF COURT

1. Iam the Petitioner in the above-captioned with signature signed below.

2. Regular communication by mail exists throughout the State of South Carolina and that is a proper circumstance of service by mail.

3. I affirm that on this 25th day of June ,2018, the Respondent, Assistant Solicitor Sean P. Thornton, and the BCSO, Beaufort County Sheriff,s Office have been served an true copy of this Motion For An Order To Terminate the Sexual Offender Registration, by depositing into the United States Mail with postage prepaid and addressed to the following;

Mr.Sean P. Thornton,
Office of the Solicitor's
P.O. Box 1880
Bluffton, S.C. 29910

Beaufort County Sheriff,s Office
P.O. Box 1758
Beaufort, S.C. 29901

Dated: June 25th 2018,
Fairfax, S.C.

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827

Exhibit -13

685

1:15-CV-03611-RMG-SVH

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

vs.

NATHANIEL JOHNSON, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

* DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

Exhibit -14

686

1:15-CV-03611-RMG-SVH

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

vs.

NATHANIEL JOHNSON, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 2226
Beaufort, SC 29901
(803) 943-3580

ATTORNEYS FOR RESPONDENT

Exhibit # Q

687

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOR THE 14th JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No's#2006GS071640,&1641
Petitioner,)	
)	
vs.)	
)	" NOTICE OF MOTION FOR
STATE OF SOUTH CAROLINA,)	RELIEF FROM JUDGMENT "
Respondent,)	

2019 MAR 14 PM 12:57
BEAUFORT COUNTY, S.C.
CLERK OF COURT

RELIEF FROM JUDGMENT

PLEASE TAKE JUDICIAL NOTICE, that Nathaniel Johnson Jr. the Petitioner, hereby moves before the Court of General Sessions by way of an pro-se "Motion to be relieved from the judgment of the trial court. This matter is before the Honorable Carmen T. Mullen, the Chief Administrative Judge for the purpose of DNA Testing. Petitioner's motion is in pursuant to the Rule 60(b) of the South Carolina Civil Procedure and the S.C. Rules of Evidence Rule 608, truthfulness vs. untruthfulness and who may be impeached.

Rule#60(b)(2)(3),&(4).

(2). Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule#59(b);

(3). Fraud, misrepresentation, or other misconduct of an adverse party;

(4). The judgment is void.

The Petitioner would submit to the courts the following:

Exhibit # Q

688

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOR THE 14th JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No's#2006GS071640, & 1641
Petitioner,)	
)	
vs.)	
)	" REQUEST FOR CERTIFICATE
STATE OF SOUTH CAROLINA,)	OF INNOCENCE "
Respondent,)	

2019 MAR 14 PM 12:57

REQUEST FOR CERTIFICATE OF INNOCENCE

PLEASE TAKE JUDICIAL NOTICE, that Nathaniel Johnson,Jr., the Petitioner, hereby moves for an order for Certificate of Innocence. This matter is before the Court of General Sessions, for the Fourteenth Judicial Circuit, the Honorable Chief Administrative Judge, Carmen T. Mullen, pending DNA Testing.

The Solicitor's office, Assistant Solicitor, Mary Jordan-Lempesis, consented to the Testing, and there was no victim protesting or opposing. Petitioner contends that he is innocent, of the committed acts, for which he was charged, and intend to prove his innocence through further DNA testing. But, for the errors of his defense counsel during trial, no reasonable juror would have convicted the Petitioner. Petitioner, makes his request for an Certificate of Innocence as a matter of his procedural steps, as a matter of law.

Dated: March 11th, 2019

Respectfully submitted,

/s/ Nathaniel Johnson Jr. #211574

Exhibit #Q

689

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT)	FOR THE 14th JUDICIAL CIRCUIT
)	
Nathaniel Johnson,Jr.#211574,)	Case No's#2006GS071640, & 1641
Petitioner,)	
)	
vs.)	
)	" CERTIFICATE OF SERVICE "
STATE OF SOUTH CAROLINA,)	
Respondent,)	

2019 MAR 14 PM 12:57
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned certifies that he has served the Respondents a true copy of his Motion to be Relieve from the Trial Courts Judgment, and Request for an Certificate of Innocence, by depositing into the Allendale Correctional Institutions mailroom on this 11th day of March ,2019. All mail addressed to the office of the Solicitor, Att: Mary Jordan-Lempesis, First Asst. Solicitor, for the Fourteenth Judicial Circuit, P.O. Box 1880, Bluffton, S.C. 29910.

Dated: March 11th ,2019

Respectfully submitted,
/s/ Nathaniel Johnson Jr #211574
Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

Exhibit #

690

THE STATE OF SOUTH CAROLINA
[In The Court of Appeals]

RECEIVED
MAR 16 2018
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Carmen T. Mullen, Chief Administrative Judge

Case No.#2006-GS-07-1641

Nathaniel Johnson,Jr.#211574,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent,

WRIT OF MANDAMUS

Dated: March 14th, 2018
Fairfax, S.C.

/s/ Mr. Nathaniel Johnson Jr. #211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

Other Counsel of Record:
Mary Jordan-Lempesis
First Assistant Solicitor
Fourteenth Judicial Circuit
Office of the Solicitor
Post Office Box 1880
Bluffton, S.C. 29910

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MAR 23 2018
S.C. SUPREME COURT

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QUESTIONS PRESENTED

(1). Whether the court's failure to render a judgment or a decision to grant a hearing for his application for Post Conviction DNA Testing, or to deny in a reasonable time frame or excessive?

(2). Whether the court is in violation of State Law as required by the statute section §17-28-50(c) and §17-28-90(A)-(G), or the provisions of the S.C. Constitution Art. §4?

LEGAL MAIL

STATEMENT OF THE CASE

On September 9th,2016, this action was set before the Court of General Sessions, in Beaufort County Clerk of Court's Office for the Fourteenth Judicial Circuit. Petitioner awaited an response from the Fourteenth Judicial Circuit Solicitor's Office as required by the S.C. Code of Laws provisions of Section §17-28-50(C).

On August 8th,2016, the Petitioner received an letterhead from the Office of the Attorney General Senior Assistant Deputy Mr.J. Benjamin Aplin, in regards to the inquiry of his DNA Testing application and his application for Post-Conviction Relief, case number#2016-CP-07-979, see Petitioner's Exhibit#2.

On August 31st,2016, I received another letterhead from the Office of the Attorney General, in regards to an inquiry made to the Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court. This letter was advising them that the application for DNA Testing was inadvertently sent to the Attorney General's Office when the statute states that application should have been sent to the attention of the Solicitor's Office and to the Chief Administrative Purposes, Carmen T. Mullen, for consideration. See Petitioner's Exhibit#3.

WILLIAM JASPER
693

On August 31st,2016, the Petitioner filed his "Motion For Judgment By Default", in regards to the State's failure to respond to the application. A copy of that motion was forwarded to the attention of the Office of the Attorney General.

On October 20th,2016, the Petitioner received a letterhead from the office of the attorney General in regards to letter directing the Honorable Isaac McDuffie Stone,III. advising them that they must respond to the matter in pursuant to §17-28-50. Direction sent from Mr.Ruston W. Neely, Assistant Attorney General, see Petitioner's Exhibit#4.

On November 2nd,2016, the Solicitor's Office Respondent, Ms.Mary Jodan-Lempesis, First Assistant Solicitor, made its response to the application requesting that the Court deny the application for post-conviction DNA Testing.

On November 18th,2016, the Petitioner filed his reply in please take judicial notice, in opposition to the State's response to show why the court should not dismiss the application. The Petitioner received an clocked stamped copy of his reply back from the court on March 2nd,2017, but received nothing further from the court on its decision to grant a hearing or to deny the application.

Therefore, the Petitioner moves with his "Motion for Writ of Mandamus", to enforce the court to carry out its ministerial duties by ordering that if the application is granted, that he be brought forth for an immediate hearing on the DNA Testing application in pursuant to the statute section §17-28-90(a).

If, the application has been denied, that it make its fact-finding and conclusion of law as required by §17-28-50(c).

NJABEL
694

ARGUMENTS

(1). The Court's failure to render a decision or judgment and length of delay on the Petitioner's application for DNA Testing is indeed excessive and extremely bias and very prejudicial.

The Petitioner is an pro-se applicant, who claims actual innocene and moved to challenge the DNA evidence that was used to convict him. He asserts that the DNA evidence that the State presented during his trial in March 12th-14th,2007, was fabricated or tainted. The investigator for Beaufort County Sheriff Department, falsify statements by stating that the semen of the Petitioner was found in the rape-kit of the victim and found all over an sheet found at the crime scene.

The Petitioner went to trial along with his public defender Ms.Stephanie Smart-Giddings, and State's Prosecutor Ms.Melissa M. Kirby, Solicitor Issac McDuffie Stone,III., before the Honorable Howard P. King. The former prosecutor whom now works inside the Clerk of Courts office as the Judgment Administrator.

The Petitioner seeks to challenge the Chain of Custody, and the DNA physical evidence and biological material in which the Respondent admits that the DNA evidence is still available for testing, in the possession of the Clerk of Court.

To deny the application for testing would amount to an gross miscarriage of justice, when justice is so required.

ARGUMENTS

(2). The Court is in violation of State Law as required by the statute of the S.C. Code of Laws as amended eff January 1st,2009, Section §17-28-50(C), §17-28-90(A)-(G), and the provisions of the S.C. Constitution Art. §4 the S.C. Supreme Court's decision in * State v. Langford.

The Petitioner contends that the former prosecutor Melissa M. Kirby, whom is currently working inside the Clerk of Court's Office, as the Judgment Administrator, led him to believe that he's being discriminated against, prejudged with bias, and extreme prejudice without proper due process of law in court proceedings. The Petitioner has filed several motions to the court, and being deprived of fundamental fairness under the Fourteenth Amendment of the United States Constitution Section §1.

On March 6th,2017, the Petitioner filed with the Court his Motion to Suppress the Illegally obtained evidence that was gathered and used to convict him, in regards to his case. See Petitioner's Exhibit#5, and Exhibit#6,7, and #8.

NAM JAOEJ
696

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant, his petition for "Writ of Mandamus", as a matter of law.

Dated: March 14th, 2018
Fairfax, S.C. 29827

Respectfully submitted,
/s/ Mr Nathaniel Johnson Jr. #211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail
P.O. Box 1151
Fairfax, S.C. 29827

JIAM JABEL
6097

THE STATE OF SOUTH CAROLINA
[In The Court of Appeals]

RECEIVED
MAR 16 2018
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Chief Administrative Judge

Case No.#2006-GS-07-1641

Nathaniel Johnson,Jr.#211574,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent,

PROOF OF SERVICE

The undersigned hereby certify that a true copy of his petition for "WRIT OF MANDAMUS", have been served on Mary Jordan-Lempesis or Solicitor Isaac McDuffie Stone,III., by depositing into the U.S. Mail, postage prepaid on this 14th day of March 2018. All mail addressed to the office of Solicitor for the Fourteenth Judicial Circuit, Post Office Box 1880, Bluffton, S.C. 29910.

Dated: March 14th,2018
Fairfax, S.C. 29827

Respectfully submitted,
/s/ Mr. Nathaniel Johnson Jr. #211574
Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail
P.O. Box 1151
Fairfax, S.C. 29827

State of South Carolina
OFFICE OF THE SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT

ALLENDALE, BEAUFORT
COLLETON, HAMPTON AND
JASPER COUNTIES

Exhibit C

POST OFFICE BOX 1880
BLUFFTON, SOUTH CAROLINA 29910
TELEPHONE: (843) 255-5880
FACSIMILE: (843) 255-9512

Isaac McDuffie Stone, III
SOLICITOR

April 9, 2018

Re: Nathaniel Johnson, Jr. v. State of South Carolina
Appellate Case Number 2018—000545

The Honorable Daniel E. Shearouse:

Please find enclosed the State's Return to Petitioner's Writ of Mandamus. An original and six copies are enclosed.

Respectfully Submitted,

Sean Thornton
Deputy Solicitor
Fourteenth Circuit Solicitor's Office

BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No.: 2018-000545

Sean Thornton, Deputy
Solicitor of the Fourteenth
Circuit Solicitor's Office, Respondent,

v.

Nathaniel Johnson, Jr., Petitioner.

STATE'S RETURN TO PETITIONER'S WRIT OF MANDAMUS

Sean Thornton
Post Office Box 1880
Bluffton, South Carolina 29902
(843) 779-8477
Attorney for Respondent

STATE'S RETURN TO PETITIONER'S WRIT OF MANDAMUS

COMES NOW Assistant Solicitor Mary Jordan Lempesis in response to Petitioner's Petition for Writ of Mandamus in the above-captioned case. Petitioner originally moved before the General Sessions Court on December 28, 2015, for post-conviction forensic DNA testing of physical or biological material related to his conviction for Criminal Sexual Conduct, First Degree, pursuant to the Access to Justice Post-Conviction DNA Test Act (The Act), codified in Section 17-28-10 *et seq.* (South Carolina Code of Laws, as amended, 1976). The State filed a response to Petitioner's Application on November 2, 2016. That Response is attached hereto as Exhibit 1. The State asserted that Petitioner's application for post-conviction DNA testing failed to meet the statutory requirements. The Petitioner failed to establish by a preponderance of the evidence each of the factors required by the statute. The State respectfully requested the Court deny Petitioner's application for post-conviction DNA testing.

In response to Petitioner's Petition for Writ of Mandamus, the State relies on the arguments set forth in its Response to Petitioner's Application for Post-Conviction DNA Testing and asks that the General Sessions Court deny the Petitioner's Application.

Respectfully submitted,

Sean Thornton
Deputy Solicitor
Fourteenth Circuit Solicitor's Office

Beaufort, South Carolina

701

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	INDICTMENT NO.: 2006-GS-07-1641
COUNTY OF BEAUFORT	)	
	)	
NATHANIEL JOHNSON, JR.,	)	
	)	
Petitioner,	)	STATE'S RESPONSE TO PETITIONER'S APPLICATION FOR POST-CONVICTION DNA TESTING
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

COMES NOW Assistant Solicitor Mary Jordan Lempesis in response to Petitioner's application for post-conviction DNA Testing in the above-captioned case. Petitioner has moved before the Court for post-conviction forensic DNA testing of physical or biological material related to his conviction for Criminal Sexual Conduct, First Degree, pursuant to the Access to Justice Post-Conviction DNA Test Act (The Act), codified in Section 17-28-10 *et seq.* (South Carolina Code of Laws, as amended, 1976). In response to Petitioner's Application, the State submits the following to the Court.

FACTS

On February 7, 2006, at approximately 11:40 a.m., Petitioner, Nathaniel Johnson, Jr., approached victim [redacted] residence located at 94 Cuffy Road, Saint Helena Island, South Carolina. Petitioner requested to use the victim's telephone. [redacted] allowed Petitioner to use her phone because she had observed road surveyors working outside her home that morning and she believed Petitioner was a member of the work crew. Petitioner entered the victim's home and proceeded to place a telephone call. While inside the home, Petitioner pulled out a gun and pointed it at her. Petitioner then ordered the victim into the bedroom.

Once inside the bedroom, Petitioner ordered the victim to remove her clothing, threatening to shoot her if she didn't comply. Petitioner then sexually assaulted the victim. Petitioner penetrated the victim's vagina multiple times with his penis and his fingers. After the sexual assault, Petitioner stole $472.00 from victim and then left the house. The victim immediately ran out of the home and flagged down the road workers, who contacted law enforcement.

[redacted] provided multiple written statements of the assault and also consented to the hospital obtaining a sexual assault kit for potential forensic evidence. The results of the rape kit were submitted to SLED. A DNA profile was developed from items submitted in the rape kit. Through its investigation, the Beaufort County Sheriff's Office developed Petitioner as a potential suspect in the case. While Petitioner was incarcerated in Beaufort County Detention Center on an unrelated offense, investigators obtained Petitioner's eating utensil and napkin he discarded after a meal on April 21, 2006. These items were submitted for forensic testing to compare to the DNA profile developed from the rape kit. DNA analysis revealed that Petitioner's DNA profile was a match to the semen collected in the rape kit, fingernail scrapings from the victim's right hand, and swabs from the bite wound on the victim's hand inflicted during the assault. Petitioner's blood standard was then taken for comparison and submitted to SLED for comparison with the previously analyzed forensic evidence. The findings were summarized in a report stating, in pertinent part:

> The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion. The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr. The partial DNA profile developed

> from the male contributor to items 1.8R and 1.9 is consistent with Nathaniel Johnson, Jr. (see attached Exhibit A)

The DNA findings and analysis were admitted during the trial of the Petitioner. Petitioner was represented by Stephanie Smart-Gittings, Esquire. He was convicted of Criminal Sexual Conduct, First Degree, and Kidnapping on March 19, 2007, in Beaufort County. The Honorable Howard P. King sentenced Petitioner to concurrent sentences of thirty (30) years' imprisonment.

LAW AND ANALYSIS

To obtain post-conviction relief in the form of DNA testing, an applicant must demonstrate that his trial and subsequent conviction meet the Act's statutory requirements. S.C. Code Ann. § 17-28-10 *et seq.* (1976). Effective as of January 1, 2009, the Act serves as a form of post-conviction relief available to those convicted of certain enumerated crimes. S.C. Code § 17-28-30 (1976). The Act further proscribes the application procedure and application content requirements in order to be properly reviewed by the court that originally adjudicated the applicant's case. S.C. Code Ann. § 17-28-40 (1976). The Act permits the reviewing court to summarily dismiss the application should the court, after reviewing all relevant documents, find the applicant is not entitled to post-conviction DNA testing and no purpose would be served by any further proceedings. S.C. Code Ann. § 17-28-50(C).

The Act requires the court to order DNA testing of the applicant's DNA and the physical evidence or biological material upon a finding that the applicant has established each of the factors listed below by a preponderance of the evidence:

> (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;

(2) the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;

(3) the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(4) the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(5) if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;

(6) the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and

(7) the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

In his application Petitioner identifies the following physical evidence or biological material to be tested as "blood, semen, hair and fingerprinting of Applicant." Question six (6) of the application for DNA testing requires the applicant to "[e]xplain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result." Petitioner responded as follows:

> The Applicant has been charged with criminal sexual conduct in the 1st. [sic] degree and the Applicant still maintain [sic] his claim of actual innocence. Therefore, DNA testing would produce exculpatory evidence that would make the results of Applicant's case would [sic] be different.

Petitioner fails to explain how the requested DNA testing would provide a substantially more probative result than the previous DNA testing. Petitioner repeatedly asserts his "actual innocence" as the reason for the court to order the additional testing. Petitioner's application fails to establish each of the factors required by a preponderance of the evidence. While the physical evidence or biological material is still available (it is in the possession of the Clerk of Court's office as it was submitted as evidence during trial), the Petitioner has failed to state in his application why the additional DNA testing, were it to produce exculpatory results, would change the result of the applicant's conviction or adjudication if a new trial is granted and would not be merely cumulative or impeaching.

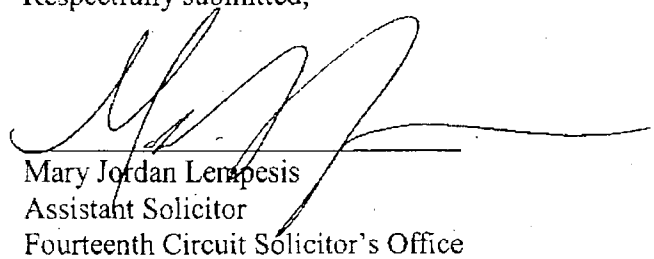
SLED found Petitioner's DNA profile was a match to the DNA profile developed from the previously submitted rape kit. The report's findings were subsequently introduced as evidence during Petitioner's trial for consideration by the jury who ultimately found Petitioner guilty of Criminal Sexual Conduct, First Degree and Kidnapping. Petitioner fails to assert how the requested DNA testing would provide a substantially more probative result than the previous testing performed by SLED, and therefore fails to meets the requirements of the statute.

CONCLUSION

Petitioner's application for post-conviction DNA testing fails to meet the statutory requirements. The Petitioner fails to establish by a preponderance of the evidence each of the

factors required by the statute. Therefore, based on the law and facts stated herein, the State respectfully requests the Court deny Petitioner's application for post-conviction DNA testing.

Respectfully submitted,



Mary Jordan Lempesis
Assistant Solicitor
Fourteenth Circuit Solicitor's Office

Beaufort, South Carolina

EXHIBIT A

2006-0207-359

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

709

MARK SANFORD
Governor

RECEIVED

AUG 16 2006

ROBERT M. STEWART
Chief

Beaufort County Sheriff's Office

LCPL. Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29902

DNA ANALYSIS
August 11, 2006
SLED LAB: L06-02390
Your Case No: 20060207-359
Incident Date: 02/07/2006
[redacted]
(S) Nathaniel Johnson

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:		Results of Examinations:	
1.0	Sexual Assault Evidence Collection Kit from [redacted]		
1.2	Blood standard	1.2	See DNA analysis.
1.4	Smears (vaginal and oral)	1.4	No analysis performed.
1.5	Vaginal swabs	1.5	No semen identified.
1.6	Oral swabs	1.6	No semen identified.
1.7	Miscellaneous body fluids	1.7	Semen identified. See DNA analysis.
1.8 R	Fingernail scrapings (Right)	1.8 R	See DNA analysis.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Items Submitted:		**Results of Examinations:**	
1.8 L	Fingernail scrapings (Left)	1.8 L	Nothing of apparent serological evidentiary value found.
1.9	Bite mark swabs	1.9	See DNA analysis.
1.10	Known head hairs	1.10	No analysis performed.
2.1	Cutting from fitted sheet	2.1	Semen identified. See DNA analysis.
2.2	Cutting from fitted sheet	2.2	No analysis performed.
2.3	Cutting from fitted sheet	2.3	Semen identified. See DNA analysis.
2.4	Cutting from fitted sheet	2.4	Semen identified. See DNA analysis.
2.5	Cutting from fitted sheet	2.5	No analysis performed.
2.6	Trace evidence collected from fitted sheet	2.6	No analysis performed.
3.0	Swabs		
3.1	Swab one taken from bite wound	3.1	See DNA analysis.
3.2	Swab two taken from bite wound	3.2	See DNA analysis.
4.1.1	Cutting from pants	4.1.1	See DNA analysis.
5.0	Plastic spoon said to have been used by Nathaniel Johnson, Jr.	5.0	See DNA analysis.
6.0	Napkin said to have been used by Nathaniel Johnson, Jr.	6.0	See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

1.2 Blood standard from [redacted]

1.7 Miscellaneous body fluids
1.8 Fingernail scrapings from right hand
1.9 Bite mark swabs
2.1 Cutting from fitted sheet
2.3 Cutting from fitted sheet
2.4 Cutting from fitted sheet
3.1 Swab one taken from bite wound
3.2 Swab two taken from bite wound
4.1.1 Cutting from pants
5.0 Plastic spoon said to have been used by Nathaniel Johnson, Jr.
6.0 Napkin said to have been used by Nathaniel Johnson, Jr.

EXAMINATIONS

DNA analysis was performed on items 1.2, 1.7, 1.8, 1.9, 2.1, 2.3, 2.4, 3.1, 3.2, 5.0, and 6.0 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS) for comparison purposes.

The partial DNA profile developed from the male contributor to items 1.8 R and 1.9 is consistent with the semen donor to item 1.7.

The partial DNA profile developed from item 5.0 is also consistent with the semen donor to item 1.7.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [redacted] and the unidentified male individual from item 1.7 cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

The partial DNA profile developed from item 6.0 is too weak to reliably interpret.

No human DNA was extracted from item 4.1.1.

Table 1 – Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5818	D13S317	D7S820	Amelo-genin
[redacted] 1.2	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	28,(31.2)	12,13	8,(11), 13	(9),11, (12),13	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12,13)	(9,11), (12,13)	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	14,15	(28),30, 31.2	11,(13), 16	(8),11, 12,(13)	9,12 (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	28	(11),12, 13,(16)	8,(11) 13	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	28,(30)	(11),12, 13	8,(11), 13	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	11,12, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	15,17, (18)	(22),24, 25	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

Table 2 - Cofiler

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelogenin
[illegible] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, 8	9	10,11	11,12, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11)12, 13	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), 8	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	11,12, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,15, 16	12,13	6,7, 8	8,9, (11)	10,11	11,12, 13	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

( ) = alleles between 75 and 149 rfu - = no results Bold = major contributor

Note: **Any remaining evidence and/or packaging will be returned to the requesting agency.**

Please submit the suspect's blood standard for comparison purposes.

Kimberly A. Hahn
Forensic Scientist

cc: Beaufort County Solicitor's Office

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

RECEIVED 715

MARK SANFORD
Governor

ROBERT M. STEWART
Chief

Beaufort County Sheriff's Office

LCPL Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS
February 14, 2007
SLED LAB: L06-2390
Your Case No: 200602070359
Incident Date: 2/7/2006
[S] Nathaniel Johnson, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

7 Blood standard from Nathaniel Johnson, Jr. (All other items were previously analyzed. Refer to report dated August 11, 2006 signed by Kimberly A. Hahn)

EXAMINATIONS

DNA analysis was performed on the item 7 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1.

RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion.

The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

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The partial DNA profile developed from the male contributor to items 1.8R and 1.9 is consistent with Nathaniel Johnson, Jr.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [redacted] and Nathaniel Johnson, Jr. cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

Table 1 – Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5818	D13S317	D7S820	Amelo-genin
[redacted] 1.2	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids **1.7 F**	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids **1.7 M**	16	15,18	22,24	14,15	**28**,(31.2)	12,13	8,(11), **13**	(9),**11**, (12),**13**	11,12	XY
Fingernail scrapings **1.8 R**	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12,13)	(9,11), (12,13)	-	XY
Bite mark swabs **1.9**	15,16	15,17	24,25	14,15	(28),**30**, **31.2**	**11**,(13), **16**	(8),**11**, **12**,(13)	**9,12** (13)	12,13	XY
Cutting-fitted sheet **2.1 F**	16	15,18	22,24	14,15	**28**	(11),12, 13,(16)	8,(11) **13**	11,13	11,12	XY
Cutting-fitted sheet **2.1 M**	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet **2.3 F**	16	15,18	22,24	14,15	**28**,(30)	(11),**12**, **13**	8,(11), **13**	11,13	11,12	XY
Cutting-fitted sheet **2.3 M**	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet **2.4 F**	15,16	15,17, **18**	22,24, 25	14,15	**28**,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	**11**,12, (13)	XY
Cutting-fitted sheet **2.4 M**	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound **3.1**	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,(12), **13**,16	8,**11**, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound **3.2**	15,16	**15**,17, (18)	(22),24, **25**	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson **5.0**	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson **6.0**	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

( ) = alleles between 75 and 149 rfu - = no results **Bold** = major contributor

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Table 2 - Cofiler

Items	D3S1358	D16S539	THO1	TPOX	CSF1PO	D7S820	Amelogenin
[redacted] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, **8**	9	10,11	**11,12,** (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11)**12, 13**	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), **8**	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	**11,12,** 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	**14,15, 16**	12,13	6,7, 8	8,9, (11)	10,11	**11,12, 13**	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

( ) = alleles between 75 and 149 rfu - = no results **Bold = major contributor**

Note: **Any remaining evidence and/or packaging will be returned to the requesting agency.**

Robin Taylor

Robin Taylor
Forensic Scientist

cc: Beaufort County Solicitor's Office

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
7 Johnson	14,15	28	11,12	10,11	16	6,8	11,13	12,13	19,25	13.2,16	15,18	9	12,13	8,13	22,24	XY

Exhibit E

LABEL 720

BRIEF OF PETITIONER

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Chief Administrative Judge

Case No:2018-000545

Nathaniel Johnson,Jr.#211574, Petitioner,

v.

Sean Thornton, Deputy
Solicitor of the Fourteenth
Circuit Solicitor's Office, Respondent,

Petitioner's Reply in Opposition to the State's Return

Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 R#52
1057 Revolutionary Trail Hwy 17
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

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721

PETITIONER'S REPLY IN OPPOSITION TO THE STATE'S RETURN

Comes Now, Nathaniel Johnson,Jr.#211574, and move with his Reply in opposition to the State's Return of the Petitioner's Petition for Writ of Mandamus. Petitioner denies ever moving before the Court of General Sessions on December 28th,2015, for an post-conviction forensic DNA testing for the conviction of Criminal Sexual Conduct, First Degree. Petitioner would admit that he made an error by moving to the Court of General Sessions under the wrong indictment number for the conviction of kidnapping, indictment number #2006GS071640. Petitioner made a follow-up and moved with his petition by subsequently filing another post-conviction forensic DNA Testing application for the conviction of Criminal Sexual Conduct First Degree, under the indictment number #2006GS071641, on April 16th,2016.

Please Take Judicial Notice, of the Petitioner's Exhibits from the Attorney General's Office dated January 26th,2016, August 31st,2016, and October 20th,2016.

The Clerk of Court for Beaufort County's Office inadvertently sent the application to the office of the Attorney General as if it were an post-conviction relief application. However, it was brought to the attention of the Clerk of Court, the Office of the Solicitor's, and the Chief Administrative Judge, Carmen T. Mullen, that the Court of General Sessions and the Solicitor's Office should handled this matter in pursuant to the S.C. Code of Laws as amended (1976) Section §17-28-50. The application was later filed with the Court of General Sessions on September 9th,2016.

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722

On November 2nd,2016, Petitioner received an response to his application, after the Petitioner moved with his Motion for Judgment by Default, on October 3rd,2016, and sent a copy to the office of the Attorney General. The Attorney General's Office contacted the Solicitor's Office, Solicitor Isaac McDuffie Stone,III, in regards to the motion for judgment by default. See Petitioner's exhibits dated October 20th,2016.

The State responded improperly to the Petition for Writ of Mandamus, because its response was irrelevant to the issues presented before this court. It does not oppose nor denied whether the lower courts are in violation of statute by failing to render a decision or judgment of the application in compliance with the S.C. Code of Laws as amended (1976) eff as of January 1st,2009, Section§17-28-30(A), of the Access to Justice Post-Conviction DNA Act and codified in Section§17-28-50.

The Petitioner also asserts that since the trial the Honorable Judge, Howard P. King, is now retired and now this matter is before the Honorable Chief Administrative Judge, Carmen T. Mullen, for consideration.

Petitioner will further show the court that the State has failed to properly respond to the Petitioner's Petition for Writ of Mandamus, to either oppose or deny any allegations listed in his petition.(1) The first question or issue alleged is why have the Petitioner not been brought forth for an hearing? (2) The second question alleged is whether the State believe that they are not in violation of the Petitioner's Due Process Clause rights?

The State further, responded by stating that the Petitioner's application for forensic DNA Testing failed to meet the statutory requirements. Petitioner asserts that page #5 was missing from the application, in which is an application to proceed without payment or costs of proceeding. Petitioner filed application to proceed with the courts for his forensic DNA Testing application to be completed, to meet the statutory requirements.

The State asserted that its arguments relied on its response to the Petitioner's application for forensic DNA Testing, but did not provide this court with an copy of the Petitioner's DNA application, or his Reply in opposition to the State's response to the application.

Petitioner contends that he is innocent and believes that he is entitled to challenge the constitutionality of his conviction and sentence based upon a wrongful conviction, and should also be able to proceed based upon the claim of actual innocence in pursuant to the Access to Justice Post-Conviction DNA Testing Reform Act codified Section§17-28-30(A), for which there is no statute of limitations, South Carolina Code of Laws as amended (1976) eff as of January 1st,2009.

The State has violated the provisions of S.C. Const. Art.V §4, and should be held accountable. Also, see S.C. Code of laws as amended (1976) Section §16-9-10 Purjury and Subordination (A)(1), (A)(2), & (B)(1). In regards to Solicitor Mary Jordan-Lempesis moving before the court and signed by Deputy Solicitor Sean Thornton. Fraud upon the Court! Also, an Rule#11 violation.

CONCLUSION

For reasons stated, the Petitioner's Petition For Writ of Mandamus, should be granted ordering the State to a specific amount of time for a hearing, and to make its finding of fact and conclusion of law, as a matter of law, as justice is so required.

Mon. April 16th,2018
Fairfax, S.C. 29827

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy 17
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Chief Administrative Judge

Case No:2018-000545

Nathaniel Johnson,Jr.#211574, Petitioner,

v.

Sean Thornton, Deputy
Solicitor of the Fourteenth
Circuit Solicitor's Office, Respondent,

PROOF OF SERVICE

The undersigned hereby certify that an true copy of his Reply in opposition to the State's Return has been served on the Respondent, Sean Thornton, Deputy Solicitor, by depositing into the U.S. mail postage prepaid and addressed to Att: Sean Thornton, Deputy Solicitor for the Fourteenth Judicial Circuit, P.O. Box 1880, Bluffton, S.C. 29910, this 16th day of April 2018.

Mon. April 16th,2018

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574

Exhibit # E-1

726

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APR 26 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Carmen T. Mullen, Chief Administrative Judge

Case No:2018-000545

Nathaniel Johnson,Jr.#211574, Petitioner,

v.

Sean Thornton, Deputy
Solicitor of the Fourteenth
Circuit Solicitor's Office, Respondent,

MOTION FOR ORDER COMPELLING DISCOVERY AND INSPECTION

Comes Now, Nathaniel Johnson,Jr.#211574, the Petitioner who hereby moves for an order to compel discovery of DNA Evidence and Inspection by an DNA Expert. Petitioner is requesting to be awarded expenses paid by the State in obtaining such order for evading or incomplete answers to the Petitioner's Petition for Writ of Mandamus. Petitioner is also requesting an order for protection or injuction to suspend business or dealings with any partnership, association or corporation.
Motion is hereby made for discovery of rape kit, and sheet placed into evidence and used against the Petitioner during trial. This evidence is said to be placed into the possession of the Clerk of Court for Beaufort County.

The Supreme Court of South Carolina

Exhibit #46

Nathaniel Johnson, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-000545
Lower Court Case No. 2006GS0701641

ORDER

On April 22, 2016, petitioner filed an Application for Forensic DNA Testing (Application) with the circuit court. In November 2016, the Solicitor filed a return to the application.

Petitioner has now filed a petition for a writ of mandamus. He alleges that no action has been taken on his Application, and seeks to compel the court of general sessions to hold a hearing on the Application. The Solicitor has filed a return opposing the petition, and petitioner has filed a reply to the return. Petitioner has also filed a motion for an order compelling discovery and inspection.

This Court declines to issue a writ of mandamus in this case. Instead, this Court is confident that the court of general sessions, if alerted to this delay, will promptly consider the Application, and take such action as may be appropriate. A copy of this order is being provided the chief judge for administrative purposes in Beaufort County. Finally, the motion for an order compelling discovery and inspection is

dismissed pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.,E.2d 356 (1991).

C.J.
FOR THE COURT

Columbia, South Carolina
May 3, 2018

cc: Sean Paul Thornton, Esquire
Mr. Nathaniel Johnson, Jr., #211574
The Honorable Carmen T. Mullen (with a copy of petition, return and reply filed in this case)
The Honorable Jerri Ann Roseneau (with copy of petition and return filed in this case)

729

Exhibit # 47

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

CARMEN MULLEN
JUDGE

100 RIBAUT ROAD
POST OFFICE DRAWER 1128
BEAUFORT, SOUTH CAROLINA 29901-1128
TELEPHONE: (843) 255-5070
FAX: (843) 522-8362

September 10, 2018

Nathaniel Johnson, Jr., #211574
ACI Colleton Unit F-1 A#02
1057 Revolutionary Trail Hwy 47
P.O. Box 1151
Fairfax, SC 29827

Re: State v. Nathaniel Johnson, Jr.
2006-GS-07-01641

Dear Mr. Johnson:

This letter is in regard to the Forensic DNA Testing Application hearing scheduled in front of Judge Mullen in Beaufort County on August 28, 2018. The solicitor's office did not obtain the required Order of Transport authorizing your transportation to the courthouse for the hearing, and therefore the Court could not proceed with the hearing on its scheduled date.

We have re-scheduled this hearing to take place during the September 17-21 term of court. I apologize for any inconvenience this has caused.

Sincerely,

Julia A. Bradshaw
Law Clerk to the Honorable Carmen T. Mullen
Fourteenth Judicial Circuit

Hearing held on November 15th 2018 Thursday
Court Reporter Rebecca Hill

Cc; Mary Jordan Lempesis via email

Exhibit # 730
48

State of South Carolina
The Circuit Court of The Fourteenth Judicial Circuit

Rebecca H. Hill
Official Court Reporter

522 Dowling Avenue
Walterboro, SC 29488

Dec. 12, 2018

Nathaniel Johnson # 211574
ACI Colleton Unit F-1 A#02
1057 Revolutionary Trail, Hwy 47
P.O. Box 1151
Fairfax, SC 29827

In Re: STATE V. NATHANIEL JOHNSON

Dear Mr. Johnson, :

I have received your request for a transcript of record for the above-referenced case. The **estimated** cost to prepare such transcript and postage is approximately **$125.00**.

Please note that court reporters are not required by State or Federal law to provide free transcripts. It is also my understanding that no State agency is required to provide free transcripts, so I am not able to refer you to any other source.

Pursuant to Rule 607, the total amount indicated above is due for the transcript you have requested. Upon receipt of the amount due, certified check or money order (no personal checks) made out to **Rebecca H. Hill,** your transcript request will be placed in line for production. If, at the time of delivery, there is a difference in the quoted total amount due, the remaining balance due or to be refunded will be settled. Under the South Carolina Court Rules, a court reporter has 60 days from the date of request to complete the transcript. In this instance, the 60 day period will be determined based on the date the total amount due has been received. You will be notified if any extensions are approved by Court Administration beyond 60 days. If you aren't interested in ordering the transcript, no further contact is required.

Sincerely,

Rebecca H Hill

Rebecca H. Hill
Official Court Reporter

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Exhibit #49

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

1330 Lady Street, Suite 401
Post Office Box 11433
Columbia, South Carolina 29211-1433
Telephone: (803) 734-1343
Facsimile: (803) 734-1345
E-Mail: executive@sccid.sc.gov

Hugh Ryan, Esq., Executive Director
Hervery Young, Deputy Director and General Counsel
Lori Frost, Assistant Director

January 25, 2019

Nathaniel Johnson, Jr. #211574
ACI Colleton Unit F-1 A#02
1057 Revolutionary Trail, Hwy 47
PO Box 1151
Fairfax, SC 29827

RE: Request for funding for transcript

Dear Mr. Johnson:

In your letter dated December 28, 2019, you requested funding of $125.00 for a transcript from a hearing with Judge Carmen T. Mullen on November 15, 2018 in case number 2006GS071641. This office would need an appropriate court order to provide funding for the court reporter to be paid to provide the requested transcript to you. Assuming that you are attempting to appeal Judge Mullen's ruling, other factors might also come into play.

I have checked the public index, and it shows a written order of Judge Mullen filed September 25, 2018, dismissing your PCR application (Case No. 2016-CP-07-0979), which included your request for DNA testing. Nothing is online at this point regarding the November hearing, so I can only assume that was a hearing asking Judge Mullen to reconsider her ruling, which she denied. If that is the case, the normal procedure would be for the Judge to issue a written order from that hearing and for you to then file a notice of intent to appeal that ruling within the required time. Normally you would also request that the Office of Appellate Defense be appointed to represent you on the appeal, if you wish them to do so. Assuming that request was granted, and the appeal proceeded, Appellate Defense would then obtain a transcript of the hearing. If you wish to obtain a copy of the transcript to pursue the matter further on your own, then you would need to obtain an order from the judge authorizing funding for the transcript.

This office cannot provide you legal advice, so any information provided is general information and is not intended as or to be relied upon as legal advice. The facts and circumstances of each situation are different.

Sincerely,

W. Lawrence Brown
Deputy General Counsel

Exhibit #50

State of South Carolina County of Beaufort	In the Court of General Sessions For the 14th Judicial Circuit
Nathaniel Johnson Jr. #211574 Petitioner VS. State of South Carolina Respondent	Indictment No's #2006-GS-07-01640-01641 Motion and Order

Please take Judicial Notice, that the Petitioner, Nathaniel Johnson Jr. #211574, an pro se litigant hereby moves for an Orders Authorizing Funding for DNA Hearing Transcript, held on November 15th, 2018.

The Petitioner is indigent and according the United States Supreme Court ruling in the case of *Ake v. Oklahoma 470 U.S. 78, 84 L.Ed. 2d. 53, 105 S.Ct. 1087 (1985) Petitioner asserts that he is entitled by right to resources from the indigent defense fund, that he maybe provided with funding to supply his transcript necessary for an appeal. Also, See *Griffin v. Illinois, 351 U.S. 12, 76. SCt. 585 (1956) where under the Fourteenth Amendment the Petitioner is entitled to Due Process guarantee of fundamental fairness and should not be deprived because of his economical states.

Now Therefore, for good cause shown

It is ordered that the South Carolina Commission on Indigent Defense is hereby ordered authorization for funding to provide transcript.

It is further Ordered that the South Carolina Commission on Indigent Defense is authorized to incur reasonable fees, therefore not to exceed One Hundred Twenty-Five Dollars ($125.00) subject to the approval of this Court as authorized by law, without further order of the Court, Ms. Johnson, may apply to this Court for further relief if necessary, pursuant to Section 17-3-50 (c) Code of Laws of South Carolina, 1976 as amended.

AND IT IS SO ORDERED

Beaufort, South Carolina
_____ 2019

_____
Chief Administrative Judge
Fourteenth Judicial Circuit

Exhibit #51

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735

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
WRIT OF HABEAS CORPUS TO BEAUFORT COUNTY
Court of General Sessions
Carmen T. Mullen, Chief Judge Administrative Purposes

Case No:2006-GS-07-01640,& 01641

Nathaniel Johnson,Jr.#211574, Petitioner,

VS.

Warden M. Newton, Respondent,

WRIT OF HABEAS CORPUS

DATED: Thurs. June 27th ,2019 /s/ Mr. Nathaniel Johnson Jr.

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

Other Counsel of Record:
Alan Wilson, Attorney General
Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

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JUL 02 2019
S.C. SUPREME COURT

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S.C. SUPREME COURT

QUESTIONS PRESENTED

1. Whether the lower court abused its discretion by failing to take further action, when justice is so required, as a matter of law?

2. Whether the conviction and sentence for the offenses of criminal sexual conduct 1st degree, and kidnapping based upon an reasonable application of clearly established federal law, as determined by the Supreme Court of the United States?

3. Whether the Petitioner was unlawfully arrested which amounted to an wrongful conviction based upon an reasonable determination of the facts in light of the DNA evidence that was presented in the State Court proceeding on March 12th-14th, 2007?

4. Whether the two convictions for the offense of kidnapping and criminal sexual conduct in the 1st degree, which stemmed from the same incident constitutes a violation of the Double Jeopardy Clause?

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S.C. SUPREME COURT

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STATEMENT OF FACTS

The Petitioner, is being held unlawfully under an fraudulent order of committment of the Beaufort County Clerk of Court's office since March 14th,2007.

Petitioner, rebuts all allegations of ever being indicted by the Beafort County Grand Jury on September 21st,2006.

The Petitioner, was misled by following the lead of his court appointed counsels which prevented him from properly exhausting his state remedies. This was strategic and prejudicial which denied the Petitioner an opportunity to properly exhausted his procedural due process. This process has been brought to the attention to the District Court on the claim of actual innocence, excused the procedural bar.

On December 21st,2015, the United States District Court placed the Petitioner's case in abeyance allowing the Petitioner, to return back to the state courts to exhausted issues properly.

On September 9th,2016, the Petitioner, moved before the Court of General Sessions, in Beaufort County, for an Post-Conviction DNA Testing Application. The Court failed to take action, depriving the Petitioner an opportunity to exhausted his state remedies.

The Petitioner moved before the S.C. Supreme Court, on March 23rd,2018, with an motion for a Writ of Mandamus,Appellant No:#2018-000545. On May 3rd,2018, the Supreme Court declined to grant the Writ of Mandamus, but ordered the Court of General Sessions, to promptly consider the Application and take any necessary actions that may be appropriate.

On November 15th,2018, the Court of General Session Chief Administrative Judge, Carmen T. Mullen, ordered the appearance of the Petitioner for an DNA Hearing.

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Petitioner requested testing of the DNA evidence and the Respondent, Solicitor's Office stated that if he wants to test its in the possession of the Clerk of Court's Office. Petitioner filed several motions that are still pending in the Court of General Sessions. Motion to Suppress Illegally Obtained DNA evidence, Motion for Certificate of Innocence, Motion for an Order to Terminate the Sexual Offender Registration, and a Motion Rule 60(b) To be Relieved of the Judgment. Allegations are being raised because Petitioner was denied fundamental fairness in violation of the S.C. Constitution and the Constitution of the United States.

JIAM 18571
740

ARGUMENTS:

1. Petitioner argues that the Court has an obligation or an duty in a reasonable manner of time to make a finding of fact, or an conclusion of law where it decides whether or not the Petitioner's motions, application for testing has merit.

Petitioner alleges that the Court has failed to carry out its ministrial duties, which has created bias and prejudice and deprives the Petitioner of his procedural due process, right to an appeal, as a matter of law.

2.The prior decision where the Petitioner was convicted was based upon an unreasonable application of an clearly established federal law. The Petitioner was unlawfully arrested and convicted through the fruits of the poisonous tree analysis, by an unreasonable search and seizure, violating the Petitioner's Fourth Amendment, Self-Incrimination through the use of his own blood, and convicted violating the Double Jeopardy Clause of the Petitioner's Fifth Amendment, Denied Effective Assistance of Counsel and Denied his Confrontational Clause during the critical stage violating his Sixth Amendment, and violating the Petitioner's Fourteenth Amendment under the Due Process Clause depriving him of Fundamental Fairness.

3. Petitioner argues that he was unlawfully arrested and wrongfully convicted based upon an unreasonable determination of the facts in light of prosecutorial misconduct, police misconduct, fraudulent warrants, fraudulent indictment, and fraudulent physical DNA evidence.

The Prosecutorial misconduct stemmed from the Chief Judgment Administrator of the Clerk of Court's office fraudulently signing the indictment and writing true bill on as the grand jury foreperson Melissa Johnson. Currently working in the Clerk of Court is the former prosecutor Melissa Milligan-Kilby, as the Judgment Administrator.

ARGUMENTS CONTINUED:

4. The Investigator Brian Chapman, of the Beaufort County Sheriff's office, testified and lied under oath with total disregard for the truth in bad faith in order to injure another. He stated, that the semen in the rape kit was that of the Petitioner. This testimony is not credible, and is fraud upon the court.

5. Petitioner argues that he is being held unlawfully and demands immediate release as a matter of law or suffer the consequences of this case going public for the interest of justice.

LEGAL MAIL

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WRIT OF HABEAS CORPUS APPLICATION:

1. Name and location of court that entered the judgment of conviction and sentence you are challenging?

14th Judicial Circuit in Beaufort County Court of General Sessions.

(b). Criminal docket or case numbers:
#2006-GS-07-01640, & 01641.

2.(a). Date of judgment of conviction?
March 14th,2007.

3. Length of sentence?
thirty years for each conviction ran concurrent.

4. In this case, were you convicted on more than one count or more than one crime? Yes. more than one crime.

5. Identify all crimes of which you were convicted and sentenced in this case?
convicted of kidnapping and sentenced to 30 years, convicted of criminal sexual conduct in the 1st degree and sentenced to 30 years all ran concurrent.

6.(a). What was your plea? Not guilty.

(b). If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge what did you plead guilty to and what did you plead not guilty to?

Petitioner pled not guilty to all charges in which he was acquitted on three other offenses and the jury found him guilty of two, kidnapping and criminal sexual conduct in the 1st degree.

(c). If you went to trial, what kind of trial did you have? Jury Trial.

7. Did you testify at a pre-trial hearing? No. Did you testify at a post-trial hearing? Yes. PCR evidentiary hearing.

8. Did you appeal, answer the following:
(a). Name of Court- S.C. Court of Appeals
(b). Docket or case number- #2008-UP-690
(c). Result- Affirmed
(d). Date of Result- Submitted Dec.1st,2008-Filed Dec.11th,2008.
(e). Citation to the case- This opinion has no precedential value. It should not be cited or relied on as precedent.
(f). Grounds raised- Issue raised by Appellate Defender LaNelle C. Durant- Did the trial court err in failing to grant the mistrial motion when the evidence of prior bad act was not admissible?
(g). Did you seek further review by a higher state court? Yes.

9. Name of Court- S.C. Supreme Court
(a). Docket or case number- Appellant No:#2011-202807
(b). Result- Denied
(c). Date of Result- June 5th,2013
(d). Citation to the case- None
(e). Ground raised- Issue raised by Appellate Defender Robert M. Pachak- Whether trial counsel was ineffective in failing to object to the trial court's curative instruction after the Petitioner's character was twice put into issue because the instruction was not sufficient to cure the errors?

10. Did you file a petition for certiorari in the United States Supreme Court? No.

11. Other than the direct appeals, listed above, have you previously filed any other petitions, applications or motions concerning this judgment of conviction in any state court? Yes.
(a). If your answer to Question 11 was "yes" give the following information:
(b). Name of Court- Court of General Sessions for the 14th Judicial Circuit in Beaufort County.
(c). Docket or case number#2006-GS-07-01640, & 01641.
(d). Date of Filing- September 9th,2016.
(e). Nature of Proceeding- Claim of Actual Innocence Post-Conviction DNA Testing.
(f). Grounds raised- Issues raised by the Petitioner pro-se Double Jeopardy, Actual Innocence by way of an fraudulent DNA evidence, Unreasonable search and seizure, Motion for Certificate of Innocence, Motion to Suppress Illegally Obtained DNA evidence, and Motion to be Relieved of Judgment based upon Prosecutorial misconduct and violations of the Grand Jury Clause.
(g). Did you receive a hearing where evidence was given on your petitions, application, or motions? Yes.
(h). Result- After filing to the S.C. Supreme Court for an Writ of Mandamus on March 23rd,2018, the Court declined to issue writ , but ordered this case to move forward and promptly consider the Application and take such actions as may be appropriate on May 3rd,2018. A hearing was conducted on November 15th,2018, before the Chief Administrative Judge, Carmen T. Mullen.
(i). Date of Results- None.

12. If you filed any second petition, application, or motion give the information? None.
(a). Did you appeal to the highest state court having jurisdiction, explain why you did not?
The Petitioner is being denied or deprived of his procedural due process right to an appeal. The Petitioner cannot fairly and fully exhaust his issues.

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13. Give the name and address, if you know of each attorney who represented you in the following stages of the judgment you are challenging?

(a). At preliminary hearing- Petitioner was denied the right to a preliminary hearing because of the false information that the Petitioner was already indicted before an preliminary hearing was held. If you would examine the Petitioner's Brief of the Appellate Counsel stating that the Petitioner was supposely indicted on September 21st,2006. the Magistrate's Court stated that a preliminary hearing was conducted on September 15th,2006, violating the Petitioner's Confrontational Clause of the Sixth Amendment.

(b). At arraigment and plea-- without counsel

(c). At trial- Denied effective assistance of counsel by Stephanie Smart-Gittings- Hampton Co. Public Defender's Office P.O. Box 506, Hampton, S.C. 29924.

(d). At sentencing- Same trial attorney

(e). On appeal- S.C. Court of Appeal- Appellate Defender LaNelle C. Durant- Division of Appellate Defense, 1330 Lady Street, Suite#401, Columbia, S.C. 29201-3332.

(f). In any post-conviction proceeding:
Timothy Wogan-PCR attorney-at-Law
Law Office of Timothy M. Wogan, P.O. Box 22124, Hilton Head,S.C. 29925.

(g). On appeal from any ruling against in a post-conviction proceeding:

Appellate Defense Attorney, Robert Pachak,Esq.
S.C. Commission on Indigent Defense
P.O. Box 11589, Columbia, S.C. 29211-1589

14. For this petition, state every ground on which you claim that you are being held unlawfully in violation of the State's Constitution, laws, or treaties of the United States Constitution. State the facts supporting each ground.

Ground One: Unreasonable Search and Seizure, violating the Petitioner's Fourth Amendment to the State's Const. Art#1 § 3 & 10, and the Constitution of the United States. See * State v. Baccus, 367 S.C. 41, 625 S.E.2d. 216, (S.C. 2006), * State v. Easterling, 257 S.C. 239, 185 S.E.2d. 366 (S.C. 1971), * Mapp v. Ohio, 367 U.S. 532, 548 (1897), Exclusionary Rule applies to State for violations of the 4th Amendment.

Supporting Facts: On February 13th,2006, the Petitioner was unlawfully arrested for the offenses of kidnapping and lewd act upon a child under 16. On June 27th,2006, those charges were dismissed after being detained until August 8th,2006, and then being released after bonding out on bank charges of forgery J-330567, financial trans card theft J-330566, financial Trans card fraud J-330572. The Petitioner was granted release after posting bond with the 24/7 Bail Bonding Co. on 08/08/06. There were no outstanding warrants in the NCIC database listed for the offense that the Petitioner is currently being held in custody for. See* U.S. v. Leon, 468 U.S. 897, 916 (1984),

Investigator Brian Chapman, of the BCSO lied under oath to obtain an fraudulent warrant and during his testimony at trial that the semen recovered in the rape kit was that of the Petitioner. Petitioner asserts that there was not an complete chain of custody handling this DNA evidence.

On August 21st,2006, the Petitioner was re-arrested on fraudulent warrants without probable cause as stated by the 14th Judicial Circuit which had advised Officer Brian Chapman.

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On August 21st,2006, the Petitioner was arrested for the offenses of Burglary 1st J-330914, Poss of weapon during the commission of a violent crime J-330915, Petty larceny J-330911, criminal sexual conduct 1st degree J-330913, and kidnapping J-330912.

The Petitioner was acquitted on March 14th,2007, for the offenses of Burglary 1st, Poss of a weapon, and petty larceny. The jury returned a verdict of guilty for the offenses of criminal sexual conduct 1st, and kidnapping. See * State v. Hill, 245 S.C. 76, 138 S.E.2d. 829 (S.C. 1964). Also, See * Petitioner's Exhibits W-2, P-1, P-2, and O.

GROUND TWO: Double Jeopardy, Self-Incrimination by being forced to surrender, violating the Petitioner's Fifth and Fourteenth Amendment Sec § 1 of the United States Constitution and the State's Constitution Art.#1 § 12 See * Blackburn v. Alabama, 361 U.S. 199 205 (1960) Exclusionary Rule

The Double Jeopardy Clause prohibits the government from punishing twice for the same offense, concurrent sentences of multiple convictions arising from an single incident is a clear violation of the Double Jeopardy Clause. See * Ex-Parte Dawson, 675 SO 2d. 905 (Ala 1996).

Self-incrimination is where the law enforcement used the Petitioner's blood against him in order to gain their conviction. Judge Howard P. King, abused his authority by ordering that the Petitioner's blood may be taken by force if necessary. The Petitioner was deprived of life, liberty, and property by compulsion. See * Lefkowitz v. Cunningham, 413 U.S. 801 (1977).

It is an Fifth Amendment violation, compelling submission to physical examination, to compel a person to submit to testing by reasonable force in which an effort will be made to determine his guilt or innocence on the basis of physiological responses, whether willed or not, violates privilege against self-incrimination.

GROUND THREE: Lack of Subject matter and violating the Grand Jury Process.

Petitioner alleges that Melissa Johnson, the Chief Judgment Administrator for the Fourteenth Judicial Circuit Clerk of Court's Office fraudulently signed the indictment as the Grandjury foreperson and wrote true bill on. Grand Jury Clause violation. Former prosecutor Melissa Milligan-Kilby, is currently working beside her as the Judgement Administrator, for the Beaufort County Clerk of Court office. A prosecution without an proper indictment issued by an grand jury is a violation to the State's Constitution against mandatory and subject matter jurisdictional prerequisite for all felony prosecutions. These types of felonies are void ab-initio.
See Petitioner's Exhibits#2,#4, &#5 A real True Bill Indictment. Also, See * U.S. v. Cotton, 535 U.S. 625, 630 (2002) subject matter jurisdiction. See * Ex-Parte Bain, 121 U.S. 1, 9-10 (1887)

GROUND FOUR: Denied Effective Assistance of Counsel, Denied the right to face his accusers through the Confrontational Clause violating the Petitioner's Sixth and Fourteenth Amendment of the United States Constitution.

Counsel failed to evaluate the chain of custody, failed to challenge the DNA evidence, but rather helped the State by bolstering the case against her client. Trial Counsel Stephanie Smart-Gittings, stated on record at the post-conviction hearing that she did not challenged the DNA evidence because she used it to the Petitioner's advantage. Petitioner was denied the right to counsel at his critical stage for an preliminary hearing

This practice by counsel was very prejudicial because had counsel challenged the DNA evidence at trial the Petitioner would not have to fight for his own rights for justice, and no reasonable juror would have convicted the Petitioner. Counsel stated that she did not challenge the chain of custody because she believed that her client was guilty, and this is why she submitted the DNA evidence into evidence for the jury.

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Petitioner filed several pro-se pre-trial motions on his own behalf, one for an speedy trial, and a motion to quash all charges for violating the Petitioner's Sixth Amendment Confrontational Clause. The Petitioner made a timely request for an preliminary hearing and was denied appearance in court to face his accusers. On October 10th,2006, Circuit Court Judge Roger M. Young,Sr. denied the motion holding that the Petitioner was already indicted before an preliminary hearing were to be held. This decision was clearly an error of law! Petitioner has clear and convincing evidence that on September 15th,2006, an preliminary hearing was conducted and the Chief Public Defender did not know about the hearing. Mr.Gene Hood. See * Petitioner's Exhibits W-1, F-1, #9, X G, and Y.

Denied Effective Assistance from Appellate Defender LaNelle C. Durant. Counsel known or should have known that Solicitor David Pascoe is out of Summerville, S.C. and was not originally assigned to this case, but he signs the initial brief on Direct Appeals. Solicitor for the Fourteenth Judicial Circuit, Isaac McDuffie Stone,III, was originally assigned to this case and he signed the final brief of the respondents.

Denied Effective Assistance from the PCR Counsel Timothy M. Wogan, Attorney-at-Law. Counsel failed to file an Rule 59(e) Motion when he was requested to do so, because Judge D. Craig Brown, did not properly rule of all issues raised on the PCR application. All court appointed counsel for the Petitioner had an conflict of interest by filing frivolous issues for the purpose of obstructing justice.

See * Satterwhite v. Texas, 486 U.S. 249, 256 (1988) Critical stage.

* Evitts v. Lucey, 469 U.S. 387, 396 (1985) First Appeal as of right.

* Elmore v. Ozmint, 661 F.3d. 783, 866 (4th Cir. 2011) counsel's obligation.

* Gentry v. Sevier, 597 F.3d. 838, 851-52 (7th Cir 2010) 4th Amendment violation.

* Johnson v. U.S., 604 F.3d. 1016 1019-22 (7th Cir. 2010) Counsel ineffective for failing to suppress DNA evidence.

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GROUND FIVE: PROSECUTORIAL MISCONDUCT, POLICE MISCONDUCT, AND JUDICIAL MISCONDUCT, AND BRADY VIOLATION!

All parties involved at the time Head Solicitor Issaac McDuffie Stone,III, Solicitor Ms. McCall-Tanner, prosecutors Gail lovell, and Melissa Milligan-Kilby. Judges involved Magistrate Judge C. L. Smith, Circuit Court Judges Curtis L. Coltrane, Roger M. Young,Sr., Carmen Tevis Mullen, and Howard P. King, and David Pascoe.

All names listed took part in this conspiracy of an malicous prosecution. On or about March 14th,2006, this officer Brian Chapman, met with the members of the 14th Judicial Circuit Solicitor's Office to discuss the facts regarding this case. This Officer Brian Chapman, **was advised** that at this point, **there was not enough probable cause for a Schmerber hearing to collect DNA from Mr.Nathaniel Johnson,Jr.** See* Petitioner's Exhibit-P Supplemental Incident Report dated 4/21/06.

After, properly investigating the matter at hand about all evidence gathered, the only conclusion that comes to mind about the sheet used against the Petitioner, was that sheet had to have come from the detention center. A west-point-stevens name brand. See* Petitioner's Exhibit#8 Dated 5/2/06.

Judge Howard P. King, abused his authority by participating in this case before trial. See* Tumey v. Ohio, 273 U.S. 510, 522 (1927) Actual bias, a judge shall recuse themselves.

Solicitors known or should have known about the false testimony that surfaced during trial but, failed to disclose in regards to the tainted DNA of the sheet and the rape Kit.

The Petitioner never had any sexual contact with the victim.

Where the chain of custody is concerned it must have been left to conjecture. There could not have been an complete chain of custody which should have been challenged by trial counsel. See * State v. Sweet, 647 S.E.2d. 202 (S.C. 2007). Petitioner believes that had counsel challenged the DNA evidence, the jury would have acquitted on all charges.

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GROUND SIX: ACTUAL INOCENCE, TAINTED DNA EVIDENCE, FALSIFIED STATMENTS AND IMPROPER CHAIN OF CUSTODY.

Petitioner asserts actual innocence due to the falsified statments by SLED employees, BCSO officers, and Investigator Brian Chapman lying under oath in "bad faith" from the fruit of the poisonous tree analysis. The DNA was tainted because of the improper chain of custody which was left to "conjecture".

It was stated on record at trial by investigator Brian Chapman, that the semen that was found in the rape kit was that of the Petitioner's. Now its time for the State to produce this evidence for testing and now they don't have! This is proof and evidence why it is so difficult for Judge Mullen to make a ruling because she was apart of this conspiracy from the very beginning.

Therefore, the Petitioner believes that he is entitled under §17-17-10, to apply for an State Habeas Corpus relief through the case of * Metrish v. Lancaster, 2013 133 S.Ct. 1781, 185, L.Ed.2d. 988 and * Butler v. State, (S.C. 1990) 302 S.C. 466, 397 S.Ed.2d. 87 111 S.Ct. 442, 498, U.S. 972 112 L.Ed.2d. 425, where the writ will issue only under circumstances where there has been a violation and a denial of fundamental fairness. Exhaustion of state remedies are unavailable where the Petitioner is required to exhaust PCR remedies and move for PCR DNA testing as a prerequisite to filing a Writ of Habeas Corpus in the State Supreme Court under §17-17-10, and the S.C. Constitution Art.#1§18. See * Pennington v. State, (S.C. 1994) 312 S.C. 436 441 S.E.d.2d. 315. Also, See * McCall v. State, 247 S.C. 15, 145 S.Ed.2d. 419, (1995) the habeas corpus remedy that can only be granted is release from custody. S.C. Constitution Art.#1§18 * Baskins v. Moore, 362 F. Supp. 187 (DSC 1973) finding the Act is a procedural device and does not supplant the Constitutional right to seek habeas corpus nor does it unconstitutionally suspend that right.

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CONCLUSION

WHEREFORE, for all reasons stated the Petitioner, **Nathaniel Johnson,Jr.#211574**, prays that this Honorable Court grant the following relief sought. Petitioner prays that this Court vacate the conviction and sentence due to fundamental unfairness Immediate release from State custody with leave to restore, and Certificate of Innocence, as justice is so required, as a matter of law.

Dated: Thurs. June 27th ,2019 Respectfully submitted,

/s/ Nathaniel Johnson,Jr. #211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
WRIT OF HABEAS CORPUS TO BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
Carmen T. Mullen, Chief Judge Administrative Purposes

Case No:2006GS-07-01640,& 01641

Nathaniel Johnson,Jr.#211574, Petitioner,

vs.

Warden M. Newton, Respondent,

AFFIDAVIT

PERSONALLY appeared before me Nathaniel Johnson,Jr.#211574, the affiant being duly sworn upon my oath, depose and say that under the penalty of perjury, he subscribeds to the foregoing State Writ of Habeas Corpus action; that he knows the content therein; that it includes every ground known to him for vacating, the conviction and sentence attacked in this petition for being held unlawfully; that all matters are true and correct to the best of the Petitioner's knowledge.

Nathaniel Johnson,Jr.#211574 #211574

SWORN AND AFFIRMED before me this 26
day of June,2019.
Virginia Grubbs (L.S.)
NOTARY PUBLIC
My Commission Expires: 12/12/22.

RECEIVED
JUL 02 2019
S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

WRIT OF HABEAS CORPUS TO BEAUFORT COUNTY

COURT OF GENERAL SESSIONS

Carmen T. Mullen, Chief Judge Administrative Purposes

Case No:2006-GS-07-01640,& 01641

Nathaniel Johnson,Jr.#211574, Petitioner,

vs.

Warden M. Newton, Respondent,

PROOF OF SERVICE

The undersigned **Nathaniel Johnson,Jr.#211574,** certify that he has served a true copy of his State Writ of Habeas Corpus, on the following parties, the Beaufort County Clerk of Court, Jerri Ann Roseneau, P.O. Drawer 1128, Beaufort, S.C., Alan Wilson Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211, on this 27th day of June ,2019.

Dated: Thurs. June 27th ,2019

Respectfully submitted,

/s/ Nathaniel Johnson Jr.

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

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JUL 02 2019
S.C. SUPREME COURT

The Supreme Court of South Carolina

Nathaniel Johnson, Jr., Petitioner

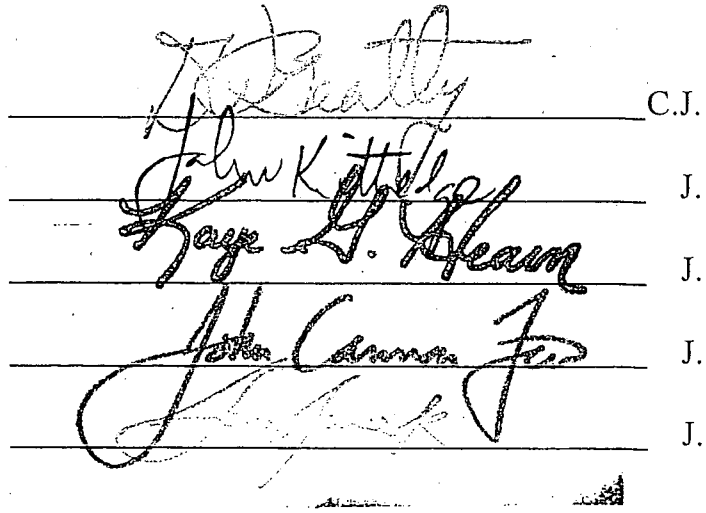
v.

Warden M. Newton, Respondent.

Appellate Case No. 2019-001079

ORDER

This matter is before the Court on a petition for a writ of habeas corpus dated June 27, 2019, and an application to proceed *in forma pauperis*, dated July 16, 2019. We grant the petition to proceed *in forma pauperis*. We deny the petition for a writ of habeas corpus because Petitioner has failed to show he is entitled to habeas corpus relief. *See Simpson v. State*, 329 S.C. 43, 47, 495 S.E.2d 429, 431 (1998) (holding a petitioner seeking a writ of habeas corpus must allege a constitutional violation that constitutes a denial of fundamental fairness shocking to the universal sense of justice); *see also also Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (holding habeas corpus is available only when other remedies are inadequate or unavailable, and the petitioner must allege sufficient facts to show why other remedies are unavailable or inadequate).



C.J.

J.

J.

J.

J.

Columbia, South Carolina

November 20, 2019

cc:
Isaac McDuffie Stone, III, Esquire
Carmen Tevis Mullen, Esquire
Nathaniel Johnson, Jr., #211574

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	INDICTMENT NO.: 2006-GS-07-1641
COUNTY OF BEAUFORT	)	J330913
	)	
NATHANIEL JOHNSON, JR.,	)	
	)	
Petitioner,	)	ORDER DENYING PETITIONER'S APPLICATION FOR POST-CONVICTION DNA TESTING
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

RECEIVED
JAN 23 2020
SC Court of Appeals

This matter came before the Court on November 15, 2018, on Petitioner's Application for Post-Conviction DNA Testing. After hearing arguments by Mary Jordan Lempesis, Assistant Solicitor, and Petitioner, the Court hereby finds the following:

FACTS

Petitioner moved before the Court for post-conviction forensic DNA testing of physical or biological material related to his conviction for Criminal Sexual Conduct, First Degree, pursuant to the Access to Justice Post-Conviction DNA Test Act (The Act), codified in Section 17-28-10 *et seq.* (South Carolina Code of Laws, as amended, 1976).

On February 7, 2006, at approximately 11:40 a.m., Petitioner, Nathaniel Johnson, Jr., approached victim Ana Rodriguez's residence located at 94 Cuffy Road, Saint Helena Island, South Carolina. Petitioner requested to use the victim's telephone. Ms. Rodriguez allowed Petitioner to use her phone because she had observed road surveyors working outside her home that morning and she believed Petitioner was a member of the work crew. Petitioner entered the victim's home and proceeded to place a telephone call. While inside the home, Petitioner pulled out a gun and pointed it at her. Petitioner then ordered the victim into the bedroom.

Once inside the bedroom, Petitioner ordered the victim to remove her clothing, threatening to shoot her if she didn't comply. Petitioner then sexually assaulted the victim. Petitioner penetrated the victim's vagina multiple times with his penis and his fingers. After the sexual assault, Petitioner stole $472.00 from victim and then left the house. The victim immediately ran out of the home and flagged down the road workers, who contacted law enforcement.

Ms. Rodriguez provided multiple written statements of the assault and also consented to the hospital obtaining a sexual assault kit for potential forensic evidence. The results of the rape kit were submitted to SLED. A DNA profile was developed from items submitted in the rape kit. Through its investigation, the Beaufort County Sheriff's Office developed Petitioner as a potential suspect in the case. While Petitioner was incarcerated in Beaufort County Detention Center on an unrelated offense, investigators obtained Petitioner's eating utensil and napkin he discarded after a meal on April 21, 2006. These items were submitted for forensic testing to compare to the DNA profile developed from the rape kit. DNA analysis revealed that Petitioner's DNA profile was a match to the semen collected in the rape kit, fingernail scrapings from the victim's right hand, and swabs from the bite wound on the victim's hand inflicted during the assault. Petitioner's blood standard was then taken for comparison and submitted to SLED for comparison with the previously analyzed forensic evidence. The findings were summarized in a report stating, in pertinent part:

> The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion. The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr. The partial DNA profile developed from the male contributor to items 1.8R and 1.9 is consistent with Nathaniel Johnson, Jr. (see attached Exhibit A)

The DNA findings and analysis were admitted during the trial of the Petitioner. Petitioner was represented by Stephanie Smart-Gittings, Esquire. He was convicted of Criminal Sexual Conduct, First Degree, and Kidnapping on March 19, 2007, in Beaufort County. The Honorable Howard P. King sentenced Petitioner to concurrent sentences of thirty (30) years' imprisonment.

LAW AND ANALYSIS

To obtain post-conviction relief in the form of DNA testing, an applicant must demonstrate that his trial and subsequent conviction meet the Act's statutory requirements. S.C. Code Ann. § 17-28-10 *et seq.* (1976). Effective as of January 1, 2009, the Act serves as a form of post-conviction relief available to those convicted of certain enumerated crimes. S.C. Code § 17-28-30 (1976). The Act further proscribes the application procedure and application content requirements in order to be properly reviewed by the court that originally adjudicated the applicant's case. S.C. Code Ann. § 17-28-40 (1976). The Act permits the reviewing court to summarily dismiss the application should the court, after reviewing all relevant documents, find the applicant is not entitled to post-conviction DNA testing and no purpose would be served by any further proceedings. S.C. Code Ann. § 17-28-50(C).

The Act requires the court to order DNA testing of the applicant's DNA and the physical evidence or biological material upon a finding that the applicant has established each of the factors listed below by a preponderance of the evidence:

> (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;
>
> (2) the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;

(3) the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(4) the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(5) if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;

(6) the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and

(7) the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

In his application Petitioner identified the following physical evidence or biological material to be tested as "blood, semen, hair and fingerprinting of Applicant." Question six (6) of the application for DNA testing requires the applicant to "[e]xplain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result." Petitioner responded as follows:

> The Applicant has been charged with criminal sexual conduct in the 1st. [sic] degree and the Applicant still maintain [sic] his claim of actual innocence. Therefore, DNA testing would produce exculpatory evidence that would make the results of Applicant's case would [sic] be different.

Petitioner failed to explain how the requested DNA testing would provide a substantially more probative result than the previous DNA testing. Petitioner repeatedly asserts his "actual innocence" as the reason for the court to order the additional testing. Petitioner's application fails to establish each of the factors required by a preponderance of the evidence. While the physical evidence or biological material is still available (it is in the possession of the Clerk of Court's office as it was submitted as evidence during trial), the Petitioner has failed to state in his application why the additional DNA testing, were it to produce exculpatory results, would change the result of the applicant's conviction or adjudication if a new trial is granted and would not be merely cumulative or impeaching.

SLED found Petitioner's DNA profile was a match to the DNA profile developed from the previously submitted rape kit. The report's findings were subsequently introduced as evidence during Petitioner's trial for consideration by the jury who ultimately found Petitioner guilty of Criminal Sexual Conduct, First Degree and Kidnapping. Petitioner failed to assert how the requested DNA testing would provide a substantially more probative result than the previous testing performed by SLED, and therefore failed to meet the requirements of the statute.

Therefore, in light of the foregoing, the Petitioner's application for post-conviction DNA testing is hereby DENIED.

IT IS SO ORDERED.

Honorable Carmen T. Mullen
Fourteenth Judicial Circuit

10 - 17, 2019
Beaufort, SC

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE CARMEN T. MULLEN, CHIEF ADMINISTRATIVE JUDGE
Case No:2006-GS-07-1640, & 1641

RECEIVED
JAN 23 2020
SC Court of Appeals

Nathaniel Johnson,Jr.#211574, Appellant,

V.

STATE OF SOUTH CAROLINA, Respondent,

NOTICE OF AN BELATED APPEAL

Appellant, filed an Application, before the Court of General Sessions, in Beaufort County, under the discretion of the Honorable Carmen T. Mullen, Chief Administrative Purposes Judge, on September 9th, 2016. The Appellant, appeared in court for an hearing request for DNA Testing, on November 15th, 2018. The Belated Appeal, is taken from the Court's decision to deny and based upon the Respondent's and the Court's failure to provide the Appellant with adequate notice of the order denying the Appellant's Application for Post-Conviction DNA Testing, received by request on the status on Jan. 16th,2020.

January 21st,2020.

/s/ Nathaniel Johnson Jr. #211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Appellant

Other Counsel of Record:
Mary Jordan Lempesis,
Assistant Solicitor
14th Judicial Circuit
P.O. Box 1880
Bluffton, S.C. 29910

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE CARMEN T. MULLEN, CHIEF ADMINISTRATIVE JUDGE
Case No:2006-GS-07-1640, & 1641

RECEIVED
JAN 23 2020
SC Court of Appeals

Nathaniel Johnson,Jr.#211574, Appellant,

V.

STATE OF SOUTH CAROLINA, Respondent,

PROOF OF SERVICE

I, Nathaniel Johnson,Jr.#211574, certify that I have served an true copy of the Appellant's "NOTICE OF AN BELATED APPEAL", AND "APPLICATION TO PROCEED IN FORMA PAUPERIS", on Mary Jordan-Lempesis, and the Beaufort County Clerk of Court, by depositing into the United States mail, postage prepaid on this 21st, day of January 2020, addressed to: Mary Jordan-Lempesis, Asst. Solicitor for the Fourteenth Judicial Circuit, P.O. Box 1880, Bluffton, S.C. 29910, the Honorable Jerri Ann Roseneau, Clerk of Court, for Beaufort County, P.O. Drawer 1128, Beaufort, S.C. 29901.

January 21st,2020.

/s/Nathaniel Johnson,Jr.#211574

Mr.Nathaniel Johnson,Jr.#211574
ACI. Colleton Unit F-1 A#05
1057 Revolutionary Trail Hwy47
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Appellant

JIAM JAOBJ
764

RECEIVED
JAN 23 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE CARMEN T. MULLEN, CHIEF ADMINISTRATIVE JUDGE
Case No:2006-GS-07-1640, & 1641

Nathaniel Johnson,Jr.#211574, Appellant,

V.

STATE OF SOUTH CAROLINA, Respondent,

APPLICATION TO PROCEED IN FORMA PAUPERIS

I, Nathaniel Johnson,Jr.#211574, a pro-se Appellant, is requesting permission to proceed IN FORMA PAUPERIS. In support of my application for request to proceed without being required to prepay fees or costs, I state that because of my poverty, Iam unable to pay the costs of said proceeding or to give security therefor; that I believe that Iam entitled to an Belated Appeal citing * White v. State, 263 S.C. 110, 208 S.Ed.2d. 35 (1974). Whether the Appellant, is entitled to the right of an Direct Appeal, and Whether the Appellant, knowingly, intelligently waived his rights to appeal citing Section §17-28-90(G). Access to Justice Post-Conviction DNA Testing Act? Appellant belives that he is entitled to redress and entitled to relief.

The Appellant, was prejudiced by the actions of the Respondent, and the Clerk of Court's failure to provide the Appellant, with adequate notice of the order, but upon request by the Appellant, he was provided with an copy of the Order dated November 14th,2019, received by the Appellant on January 16th,2020, Order Denying Application for Post-Conviction DNA Testing. Appellant, hereby files his Notice of an Belated Appeal and Application to Proceed In Forma Pauperis in support thereof. Appellant is requesting appointment of "Standby Appellate Counsel."

LEGAL MAIL
765

In further support of this application, I answer the following questions:

1. Have you ever brought an action or appeal in the S.C. Court of Appeals?
Yes X or No ____.

Were any of the actions or appeals dismissed because they were frivolous, malicious or failed to state a claim upon which relief may be granted?
Yes ____ or No X.

2. Are you presently employed?
Yes ____ or No X.

3. Have you received within the past twelve months any money from any of the following sources?

(a). Business, profession, or form of self-employment?
Yes ____ or No X.

(b). Rent payments, interest, or dividends?
Yes ____ or No X.

(c). Pensions, annuities, or life insurance payments?
Yes ____ or No X.

(d). Gifts or inheritance?
Yes ____ or No X.

(e). Any other sources?
Yes ____ or No X.

4. Do you own any cash, or do you have money in a checkings or saving account?
Yes ____ or No X.

For accounts at other financial institutions, state the present balance and the amount of all deposits over the past six months? $00.00.

For prisoners account, state the present balance and the amount of all deposits over the past six months? $00.00.

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property?

Yes _____ or No X .

6. List the persons who are dependent upon you for support, state your relationship to those persons and indicate, how much contributed towards their support?

There are no persons who are dependent upon me for support. $00.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 01/21/20 ,2020.

/s/ Nathaniel Johnson Jr. #211574
Mr.Nathaniel Johnson,Jr.#211574
Pro-Se Appellant

SUBSCRIBED TO AND AFFIRMED before me this 21
day of Jan ,2020.

Kenya Green (L.S.)
NOTARY PUBLIC

My Commission Expires: 10/28/29 .

RECEIVED
JAN 23 2020
SC Court of Appeals

CERTIFICATE

I hereby certify that on January 21st,2020, the Appellant, Nathaniel Johnson,Jr.#211574, has the sum of $00.00, on account to his credit at the Allendale Correctional Institution where he is confined. I further certify that during the past six months the Appellant, received the average monthly balance of $00.00. I attach a true and correct copy of the record of deposits that the Appellant, received into his trust account for the past six months.

Kenya Green
Institution Mailroom Clerk

01/21/20
Dated

767

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 29, 2020

Nathaniel Johnson, Jr., #211574
Allendale Correctional Institution
P. O. Box 1151, Hwy 47
Fairfax SC 29827

Re: Nathaniel Johnson, Jr. v. State of SC
Appellate Case No. 2020-000110

Dear Mr. Johnson:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Nathaniel Johnson, Jr., Petitioner,

v.

State of South Carolina, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

The application to proceed in forma pauperis is moot and will not be acted upon as there are no fees involved in a criminal appeal.

Very truly yours,

Jay A. Kirby

CLERK

cc: Robert Michael Dudek, Esquire
Isaac McDuffie Stone, III, Esquire

769

STATE OF SOUTH CAROLINA

FOURTEENTH JUDICIAL CIRCUIT

Post Office Box 1880
Bluffton, South Carolina 29910

Telephone: (843) 255-5880
Facsimile: (843) 255-9512

ISAAC MCDUFFIE STONE, III
SOLICITOR

Exhibit #9
Case No: 2018-000545
Signed By Chief Administrative Judge
Carmen T Mullen

January 19, 2018

RE: Order of Destruction of Arrest Records

This letter is to inform you that your Expungement has been completed. Enclosed please find two copies of the Certified True Order of Destruction of Arrest Records. We advise that you keep these copies in a safe place for possible future use. Copies have been sent to SLED, the detention center, the arresting agency, and the court.

Please understand that SLED is the Office that physically removes charges from one's criminal record, and it can possibly take up to fifteen days for them to receive and process.

We are not responsible for expunging any information that the media or private agencies release.

Sincerely,

Expungement Services

JBF:
Enclosures

770

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS

ORDER FOR DESTRUCTION OF ARREST RECORDS

2016 JAN 17 A 10:41
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE STATE OF SOUTH CAROLINA)
v.)

NATHANIEL JOHNSON, JR)
Defendant)

AKA)

Race AA Sex MALE Age 51
DOB [redacted] SSN [redacted]

SID # SC00523880

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

IT APPEARS that the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed or sealed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. J330914; J330915 Date of Arrest 08/22/2006 Place of Arrest BEAUFORT County, S.C.

Arrest Charge BURGLARY 1ST; POSS WEAPON VIOLENT CRIME

☒	§17-1-40. The charge was dismissed, *nolle prossed*, or the defendant was found not guilty on 03/14/2007.
☐	§22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of $1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction **or** five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. (*Summary court judge must attest to eligibility if disposed of in that court.*)
☐	§22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
☐	§34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by §34-11-90(e) has taken place in one year from date of conviction.
☒	§44-53-450(b). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).
☐	§56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED _____ Date _____

IT IS ORDERED that all records relating to such arrest and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except as follows:

(1) arrest and booking record, associated bench warrants, mug shots and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order;

(2) probation records retained by S.C. Department of Probation, Pardon, and Parole Services pursuant to §17-1-40 (B)(3) whose charges were dismissed by conditional discharge pursuant to §44-53-450;

(3) nonpublic information retained by S.C. Law Enforcement Division (SLED) pursuant to §22-5-910, §22-5-920, 34-11-90(e), and §44-53-450; and

(4) nonpublic information retained by SLED and S.C. Department of Public Safety/Department of Motor Vehicles pursuant to §56-5-750(F), as well as any nonpublic records retained by S.C. Commission on Prosecution Coordination as required by law.

_____ S.C. Bar No.: _____
Name of Defense Counsel (if represented)

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Delores Green

SCCA 223A1 (Revised 5/16)

To be completed by Summary Court Judge if charge disposed of in that court:

771

I ATTEST that the defendant is eligible for expungement pursuant to §22-5-910, §34-11-90(e), or §44-53-450(b).

I CERTIFY (check one):

☐ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.

☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

_____
Summary Court Judge

Printed/Typed Name: _____ Signed this ____ day of ____, 20____

To be completed by Solicitor:

Solicitor: ☑ Consents ☐ Declines to Consent ☐ Determined ineligible for expungement

The charge covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, or any other statutorily authorized diversion program operated by a solicitor's office. The charge covered by this order can legally be expunged.

_____
Circuit Solicitor

Printed/Typed Name: SEAN P. THORNTON Signed this 14 day of DECEMBER, 2017

IT IS SO ORDERED.

_____, Circuit Court Judge 2142 Judge Code Signed this 10 day of 1, 20 18

For SLED internal use only: Expunged by SLED by: _____ Date: _____

SCCA 223A1 (Revised 5/16)

772

STATE OF SOUTH CAROLINA

FOURTEENTH JUDICIAL CIRCUIT

Post Office Box 1880
Bluffton, South Carolina 29910

Telephone: (843) 779-8477
Facsimile: (843) 705-7479

ISAAC MCDUFFIE STONE, III
SOLICITOR

Exhibit #10
Case No: 2018-000545
Signed By Chief Administrative Judge Carmen T. Mullen

March 19, 2018

RE: Order of Destruction of Arrest Records

This letter is to inform you that your Expungement has been completed. Enclosed please find two copies of the Certified True Order of Destruction of Arrest Records. We advise that you keep these copies in a safe place for possible future use. Copies have been sent to SLED, the detention center, the arresting agency, and the court.

Please understand that SLED is the Office that physically removes charges from one's criminal record, and it can possibly take up to fifteen days for them to receive and process.

We are not responsible for expunging any information that the media or private agencies release.

Sincerely,

Expungement Services

JBF:
Enclosures

773

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS

ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA)
v.)
NATHANIEL JOHNSON, JR.)
Defendant)
AKA)

2018 MAR -2 PM 4:01
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Race AA Sex MALE Age 51
DOB [redacted] SSN [redacted]

SID # SC00523880

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

IT APPEARS that the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed or sealed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. H988131; H559832 Date of Arrest 02/13/2006 Place of Arrest BEAUFORT County, S.C.

Arrest Charge KIDNAPPING; LEWD ACT COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER 16

☒	§17-1-40. The charge was dismissed, *nolle prossed*, or the defendant was found not guilty on 06/27/2006.
☐	§22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of $1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction **or** five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. (*Summary court judge must attest to eligibility if disposed of in that court.*)
☐	§22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
☐	§34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by §34-11-90(e) has taken place in one year from date of conviction.
☐	§44-53-450(b). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).
☐	§56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED _____ Date _____

IT IS ORDERED that all records relating to such arrest and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except as follows:

(1) arrest and booking record, associated bench warrants, mug shots and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order;

(2) probation records retained by S.C. Department of Probation, Pardon, and Parole Services pursuant to §17-1-40 (B)(3) whose charges were dismissed by conditional discharge pursuant to §44-53-450;

(3) nonpublic information retained by S.C. Law Enforcement Division (SLED) pursuant to §22-5-910, §22-5-920, 34-11-90(e), and §44-53-450; and

(4) nonpublic information retained by SLED and S.C. Department of Public Safety/Department of Motor Vehicles pursuant to §56-5-750(F), as well as any nonpublic records retained by S.C. Commission on Prosecution Coordination as required by law.

_____ S.C. Bar No.: _____
Name of Defense Counsel (if represented)

Certified - A True Copy
Pam Burries
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

SCCA 223A1 (Revised 5/16)

To be completed by Summary Court Judge if charge disposed of in that court:

774

I ATTEST that the defendant is eligible for expungement pursuant to §22-5-910, §34-11-90(e), or §44-53-450(b).

I CERTIFY (check one):

☒ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.

☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

_____
Summary Court Judge

Printed/Typed Name: _____ Signed this _____ day of _____, 20_____

To be completed by Solicitor:

Solicitor: ☑ Consents ☐ Declines to Consent ☐ Determined ineligible for expungement

The charge covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, or any other statutorily authorized diversion program operated by a solicitor's office. The charge covered by this order can legally be expunged.

_____
Circuit Solicitor

Printed/Typed Name: SEAN P. THORNTON Signed this _____ day of FEBRUARY, 2018

IT IS SO ORDERED.

_____ Circuit Court Judge 2142 Judge Code Signed this 26 day of Feb, 2018

For SLED internal use only: Expunged by SLED by: _____ Date: _____

SCCA 223A1 (Revised 5/16)

775

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT

Post Office Box 1880
Bluffton, South Carolina 29910

Telephone: (843) 790-6283
Facsimile: (843) 779-8477

Exhibit #11

ISAAC MCDUFFIE STONE, III
SOLICITOR

May 4, 2018

RE: Order of Destruction of Arrest Records

Dear Sir/Ma'am:

This letter is to inform you that your expungement has been completed. Enclosed please find two copies of your Certified True Order of Destruction of Arrest Records. We advise that you keep this paperwork in your personal records for possible future use. Copies have been sent to SLED, the Detention Center, the Arresting Agency, and the Court.

Please understand that SLED is the office that physically removes charges from one's arrest record, and it can take up to fifteen days for them to receive and process. We are not responsible for expunging any information that the media or private agencies release.

Sincerely

Jacqueline Brown-Fields

Jacqueline Brown-Fields
Expungement Services

JBF:
Enclosure

776

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort)

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA)
v.)
Nathaniel Johnson)
Defendant)
AKA)

2018 APR 30 PM 3:11
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Race Black Sex Male Age 40
DOB [redacted] SSN [redacted]

SID # SC00523880

Charges were disposed of in the court indicated below:

☒ Magistrate ☐ Municipal ☐ General Sessions

BCSO

IT APPEARS that the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed or sealed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. J330911 Date of Arrest 8/21/2006 Place of Arrest Beaufort County, S.C.
Arrest Charge Petty Larceny

☒	§17-1-40. The charge was dismissed, *nolle prossed*, or the defendant was found not guilty on 04/10/2007.
☐	§22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of $1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction **or** five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. (*Summary court judge must attest to eligibility if disposed of in that court.*)
☐	§22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
☐	§34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by §34-11-90(e) has taken place in one year from date of conviction.
☐	§44-53-450(b). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).
☐	§56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED _____ Date _____

IT IS ORDERED that all records relating to such arrest and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except as follows:

(1) arrest and booking record, associated bench warrants, mug shots and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); under §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order;

(2) probation records retained by S.C. Department of Probation, Pardon, and Parole Services pursuant to §17-1-40 (B)(3) whose charges were dismissed by conditional discharge pursuant to §44-53-450;

(3) nonpublic information retained by S.C. Law Enforcement Division (SLED) pursuant to §22-5-910, §22-5-920, 34-11-90(e), and §44-53-450; and

(4) nonpublic information retained by SLED and S.C. Department of Public Safety/Department of Motor Vehicles pursuant to §56-5-750(F), as well as any nonpublic records retained by S.C. Commission on Prosecution Coordination as required by law.

_____ S.C. Bar No.: _____
Name of Defense Counsel (if represented)

SCCA 223A1 (Revised 5/16)

To be completed by Summary Court Judge if charge disposed of in that court:

Certified - A True Copy
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

I ATTEST that the defendant is eligible for expungement pursuant to §22-5-910, §34-11-90(e), or §44-53-450(b). 7717

I CERTIFY (check one):

☐ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.

☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

Summary Court Judge

Printed/Typed Name: LaShonda G. Scott Signed this 13th day of April, 20 18

To be completed by Solicitor:

Solicitor: ☑ Consents ☐ Declines to Consent ☐ Determined ineligible for expungement

The charge covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, or any other statutorily authorized diversion program operated by a solicitor's office. The charge covered by this order can legally be expunged.

Circuit Solicitor

Printed/Typed Name: Sean P. Thornton Signed this 10 day of April, 20 18

IT IS SO ORDERED.

, Circuit Court Judge 2142 Judge Code Signed this 26 day of 4, 20 18

For SLED internal use only: Expunged by SLED by: Date:

SCCA 223A1 (Revised 5/16)