

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

Apr 13 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYQUIN TERRELL JENKINS,

APPELLANT

APPELLATE CASE NO 2019-000284

RECORD ON APPEAL

TAYLOR D. GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD FEBRUARY 11-14, 2019	1
NEIL V. BIGGERS HEARING	12
TESTIMONY (IN CAMERA)	
LORIANNE BRAVO	
Direct Examination by Ms. Cornwell	13
Cross Examination by Mr. Hutto	18
TORI MONTGOMERY	
Direct Examination by Ms. Cornwell	26
Cross Examination by Mr. Hutton	30
OPENING STATEMENT BY MS. CORNWELL	40
OPENING STATEMENT BY MR. HUTTO	44
TESTIMONY	
TORI MONTGOMERY	
Direct Examination by Ms. Cornwell	51
Cross Examination by Mr. Hutto	77
Redirect Examination by Ms. Cornwell	106
TAYLOR MONTGOMERY	
Direct Examination by Ms. Cornwell	110
Cross Examination by Mr. Hutto	114
DAKEIS PRIDE	
Direct Examination by Ms. Cornwell	119
Cross Examination by Mr. Hutto	124
AIKEN STILL	
Direct Examination by Ms. Cornwell	127
Cross Examination by Mr. Hutto	134
Redirect Examination by Ms. Cornwell	149

LATISHA WALKER

Direct Examination by Ms. Cornwell	152
Cross Examination by Mr. Hutto	161
Redirect Examination by Ms. Cornwell.....	184

MARIE SHERMAN

Direct Examination by Ms. Cornwell	195
Cross Examination by Mr. Hutto	212
Redirect Examination by Ms. Cornwell.....	218

JEFFREY CROOKS

Direct Examination by Ms. Cornwell	220
Cross Examination by Mr. Hutto	226
Redirect Examination by Ms. Cornwell.....	229

COURTNEY THOMPSON

Direct Examination by Ms. Cornwell	231
Cross Examination by Mr. Hutto	240
Redirect Examination by Ms. Cornwell.....	245

SAMUEL STEWART

Direct Examination by Ms. Cornwell	247
Cross Examination by Mr. Hutto	258
Redirect Examination by Ms. Cornwell.....	268

THERESA HINES

Direct Examination by Ms. Cornwell	274
Cross Examination by Mr. Hutto	280

SETH WOLFE

Direct Examination by Ms. Cornwell	282
Cross Examination by Mr. Hutto	284
Redirect Examination by Ms. Cornwell.....	285

LORIANNE BRAVO

Direct Examination by Ms. Cornwell	286
Cross Examination by Mr. Hutto	314

COLLOQUY REGARDING DEFENDANT’S RIGHT TO TESTIFY	350

TESTIMONY (CONTINUED)

LORIANNE BRAVO

Direct Examination by Ms. Cornwell	354

THE STATES RESTS	359

MOTION FOR DIRECTED VERDICT	360
COURT’S RULING	361
TESTIMONY	
DEBBIE BROTHERS	
Direct Examination by Mr. Hutto	365
Cross Examination by Ms. Cornwell	388
Redirect Examination by Mr. Hutto.....	397
CARLA DYSON	
Direct Examination by Mr. Hutto	398
Cross Examination by Ms. Cornwell	400
Redirect Examination by Mr. Hutto.....	401
RENEWAL OF PREVIOUS MOTIONS	402
COURT’S RULING	402
CLOSING ARGUMENT BY MS. CORNWELL	405
CLOSING ARGUMENT BY MR. HUTTO	428
JURY CHARGE	453
VERDICT	468
MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT	472
COURT’S RULING	472
SENTENCING	473
INDICTMENT.....	479
CERTIFICATE OF COUNSEL	483

1 State of South Carolina)
2 County of Orangeburg)
3 State of South Carolina,)
4 Plaintiff,)
5 vs.)
6 Tyquin Terrell Jenkins,)
7 Defendant.)
_____)

In the Court
Of General Sessions
Indictment Nos.:
2017-GS-38-2022, 2023

Transcript of Record

8

9

February 11th through 14th, 2019

10

Orangeburg, South Carolina

11

12 BEFORE:

13

The Honorable Maite Murphy, Judge, and a Jury

14

15 APPEARANCES:

16

17

Ashley Cornwell, Assistant State Solicitor
Attorney for the State

18

19

Skyler Hutto, Esquire
Attorney for the Defendant

20

21 ALSO PRESENT:

22

Tyquin Terrell Jenkins

23

24

25

1	INDEX	
2	FEBRUARY 11, 2019	
3	NEIL V. BIGGERS	
4	WITNESS	PAGE
5	LORIANNE GARRISON BRAVO	
6	Direct Examination by Ms. Cornwell	13
7	Cross Examination by Mr. Hutto	18
8	FEBRUARY 12, 2019	
9	NEIL V. BIGGERS	
10	TORI MONTGOMERY	
11	Direct Examination by Ms. Cornwell	67
12	Cross Examination by Mr. Hutto	70
13	JURY SELECTION	25
14	OPENING STATEMENT	
15	By Ms. Cornwell	80
16	By Mr. Hutto	84
17	WITNESS	
18	TORI MONTGOMERY	
19	Direct Examination by Ms. Cornwell	91
20	Cross Examination by Mr. Hutto	117
21	Redirect Examination by Ms. Cornwell	146
22	TAYLOR MONTGOMERY	
23	Direct Examination by Ms. Cornwell	150
24	Cross Examination by Mr. Hutto	154
25		

1	FEBRUARY 12, 2019	
2	WITNESS	PAGE
3	DAKEIS PRIDE	
4	Direct Examination by Ms. Cornwell	159
5	Cross Examination by Mr. Hutto	164
6	AIKEN STILL	
7	Direct Examination by Ms. Cornwell	167
8	Cross Examination by Mr. Hutto	174
9	Redirect Examination by Ms. Cornwell	189
10	LATISHA WALKER	
11	Direct Examination by Ms. Cornwell	192
12	Cross Examination by Mr. Hutto	201
13	Redirect Examination by Ms. Cornwell	224
14	FEBRUARY 13, 2019	
15	MARIE SHERMAN	
16	Direct Examination by Ms. Cornwell	235
17	Cross Examination by Mr. Hutto	252
18	Redirect Examination by Ms. Cornwell	258
19	JEFF CROOKS	
20	Direct Examination by Ms. Cornwell	260
21	Cross Examination by Mr. Hutto	266
22	Redirect Examination by Ms. Cornwell	269
23		
24		
25		

1	FEBRUARY 13, 2019	
2	WITNESS	PAGE
3	COURTNEY THOMPSON	
4	Direct Examination by Ms. Cornwell	271
5	Cross Examination by Mr. Hutto	280
6	Redirect Examination by Ms. Cornwell	285
7	SAMUEL STEWART	
8	Direct Examination by Ms. Cornwell	287
9	Cross Examination by Mr. Hutto	298
10	Redirect Examination by Ms. Cornwell	308
11	THERESA HINES	
12	Direct Examination by Ms. Cornwell	314
13	Cross Examination by Mr. Hutto	321
14	SETH WOLFE	
15	Direct Examination by Ms. Cornwell	323
16	Cross Examination by Mr. Hutto	324
17	Redirect Examination by Ms. Cornwell	325
18	LORIANNE GARRISON BRAVO	
19	Direct Examination by Ms. Cornwell	326
20	Cross Examination by Mr. Hutto	354
21	FEBRUARY 14, 2019	
22	TYQUIN TERRELL JENKINS	
23	Examination by the Court	390
24	LORIANNE GARRISON BRAVO (Recalled)	
25	Redirect Examination by Ms. Cornwell	394

1	FEBRUARY 14, 2019	
2	STATE RESTS	399
3	WITNESS	PAGE
4	DEBBIE BROTHERS	
5	Direct Examination by Mr. Hutto	405
6	Cross Examination by Ms. Cornwell	428
7	Redirect Examination by Mr. Hutto	437
8	CARLA DYSON	
9	Direct Examination by Mr. Hutto	438
10	Cross Examination by Ms. Cornwell	440
11	Redirect Examination by Mr. Hutto	441
12	DEFENSE RESTS	441
13	CLOSING STATEMENT	
14	By Ms. Cornwell	445
15	By Mr. Hutto	468
16	By Ms. Cornwell	486
17	CHARGE OF THE COURT	493
18	VERDICT OF THE JURY	508
19	SENTENCE OF THE COURT	517
20	Certificate of Reporter	518
21		
22		
23		
24		
25		

1	EXHIBITS			
2	COURT'S			
3	NO.	DESCRIPTION	ID	EVDS.
4	1	Foreperson Selection		
5	2	Department of Disabilities/Special Needs		
6	STATE'S			
7	NO.	DESCRIPTION	ID	EVDS.
8	1A	Photo Lineup Form	8	112
9	1B	Photo Lineup	8	112
10	2	Phone	8	172
11	3	Photo - Broughton Street Incident		
12		Loading Dock	8	104
13	4	" " "	8	104
14	5	Evidence Bag, Leggings, Jeans, Hat,		
15		Bra, Shirt, etc.	8	103
16	6	Miranda Form	8	337
17	7	Large Overhead Aerial Map	8	443
18	8	Photo - Cell Phone	8	352
19	9	" " "	8	352
20	10	" " "	8	352
21	11	SANE Kit	8	250
22	12	Defendant's Buccal Swab	8	323
23	DEFENDANT'S			
24	NO.	DESCRIPTION	ID	EVDS.
25	5	Salvation Army Dock 2019	8	417

1	EXHIBITS			
2	DEFENDANT'S			
3	NO.	DESCRIPTION	ID	EVDS.
4	6	Photo - Building adjacent to Salvation		
5		Army	8	
6	7	" A/C On Building	8	419
7	8	" Alley	8	422
8	11	" Loading Dock	8	421
9	15	" Captain D's Building	8	423
10	16	" Camera Fisher Street	8	424
11	17	" Camera Corner Captain D's	8	424
12	18	" T and D	8	409
13	19	" Side of Building	8	409
14	20	" Salvation Army Loading Dock	8	415
15	21	" Back of DPS Building	8	416
16	22	" Camera Alley 2019	8	427
17	24	" Incident Location	134	143
18	25	" Security Camera T & D Bank	8	411
19	26	" Captain D's 2014	8	425
20	27	" A/C 2013	8	420
21				
22				
23				
24				
25				

1 FEBRUARY 11, 2019

2 Thereupon, the following proceedings were had,

3 (Whereupon, State's Exhibits #1a, #1b thru #12
4 marked for identification.)

5 (Whereupon, Defendant's Exhibit #1 thru #27 marked
6 for identification.)

7 THE COURT: Solicitor.

8 MS. CORNWELL: Thank you, Your Honor. Your Honor,
9 the State calls the case of Tyquin Terrell Jenkins.
10 Docket number 2017-GS-38-2022 and 2023, that is one count
11 for criminal sexual conduct in the first degree and one
12 count of kidnapping. Mr. Jenkins was on the trial docket
13 for this week and we would like to address some pretrial
14 matters with the Court prior to the jury coming in
15 tomorrow.

16 After meeting with defense counsel and Your Honor in
17 chambers, there are several motions that I believe we
18 agree are stipulated to. The first would be the
19 defendant's statement. Generally we have a Jackson v.
20 Denno hearing to establish the voluntariness of the
21 statement, whether or not it was a custodial statement
22 and if it was a custodial statement, whether or not
23 Miranda was given. It is my understanding that the
24 defendant is going to waive this hearing and stipulate on
25 the record that the statement was given freely and

1 voluntarily and that the statement was given after he was
2 advised of his Miranda Warnings, therefore, we would
3 simply ask that the Court make a finding consistent with
4 the stipulation that the statement was given under
5 advisement of Miranda and was freely and voluntarily
6 given.

7 THE COURT: Mr. Hutto.

8 MR. HUTTO: That is correct, Your Honor. We are
9 stipulating that the requirements of case law in terms of
10 custodial interrogation were met and that as far as it
11 being voluntary that it is admissible in those respects.
12 We do have separate from the Jackson v. Denno issue a
13 motion in limine as to portions of the statement but
14 that's for a separate reason, not for the voluntariness
15 of the statement.

16 THE COURT: All right. Based upon the counsels'
17 stipulation the Court does make a finding that the
18 statement was voluntarily taken in compliance with
19 Miranda.

20 MS. CORNWELL: Thank you, Your Honor. A few of the
21 other stipulations that we have agreed upon, we have
22 agreed to sequester the witnesses through the course of
23 this trial. That will not include the victim who will be
24 present under the Victims' Rights Act. We also have two
25 investigating officers in this case. It's Investigator

1 Bravo and Investigator Walker. Based on the time between
2 the two they are both the lead case agents and we would
3 simply ask that they be allowed to remain in the
4 courtroom as the case agents.

5 THE COURT: Any objection, Mr. Hutto?

6 MR. HUTTO: Your Honor, with the exception of the
7 victim we would be asking that all witnesses be
8 sequestered. It's my understanding that matters of
9 sequestration are in the discretion of the trial judge
10 and without getting too far into the weeds we believe
11 there may be conflicting details offered by the
12 investigators and that's one of the reasons why we
13 request sequestration. Allowing them to be present for
14 one another's testimony will allow the State potentially
15 correct those errors and I believe that would be
16 prejudicial to the defendant.

17 THE COURT: Based upon your motion though it is
18 customary for the main case officer to be allowed to
19 remain in the courtroom during the State's case for the
20 duration of the case so your motion to exclude those two
21 witnesses is denied. Basically you will be allowed to
22 cross examine on any inconsistencies. You will have that
23 opportunity to do so and the probative value of being in
24 the courtroom outweighs the prejudicial effect and the
25 presentation of the case as far as the State is

1 concerned.

2 MS. CORNWELL: The other stipulation is the State
3 and the defense agree to stipulate that the weather
4 report for January 6th, 2015 shows that the weather
5 between midnight and 2:00 a.m. was clear and calm and the
6 temperature was approximately 35 degrees. We also
7 stipulate that this defendant did consent to having his
8 DNA sample taken in this case and that a SLED analysis of
9 a cell phone in this case revealed that no fingerprint
10 evidence was observed.

11 THE COURT: Is that correct, Mr. Hutto?

12 MR. HUTTO: Those are correct based on what we have
13 been able to agree on. Yes.

14 THE COURT: All right, sir.

15 MS. CORNWELL: In regards to the motions in limine I
16 believe that we have agreed to most of those regarding
17 any visual representation of the defendant and prison
18 attire, I believe that our discussions back in chambers
19 were that we'll cross that bridge if we get to it. As
20 far as prior bad acts or criminal record the State agrees
21 that those will not come in unless the defendant takes
22 the stand and they need to be used for impeachment
23 purposes. I will get with counsel overnight to make sure
24 that all of those convictions would be under 609 but we
25 do agree that those don't come in unless they're used for

1 impeachment purposes and as far as any victim impact
2 testimony regarding the assault in this matter the State
3 stipulates that we will not get into impact statements
4 until the moment arises if sentencing is necessary.

5 THE COURT: Is that correct?

6 MR. HUTTO: That's accurate. Yes.

7 MS. CORNWELL: I believe the only other matter that
8 we need before Your Honor is the Biggers hearing. There
9 was a photo lineup that was presented in this matter.
10 Based on our conversations with counsel I believe that he
11 would like for the officer to testify as to how the photo
12 lineup was generated and presented to the witness. I do
13 not believe that he is requesting that the witness
14 testify as to any of the facts surrounding the suspect
15 identification.

16 THE COURT: Is that correct?

17 MR. HUTTO: For the purposes of this hearing that is
18 correct.

19 THE COURT: All right. You may call your first
20 witness.

21 MS. CORNWELL: Thank you, Your Honor. The State
22 would call Investigator Lori Garrison Bravo, Your Honor.
23 Thereupon,

24 LORIANNE GARRISON BRAVO

25 after having been first duly sworn, testified as follows,

1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MS. CORNWELL:

4 Q. Investigator Bravo, where are you currently
5 employed?

6 A. I am currently employed at the Technology Center for
7 School District Five and I also work part-time at the
8 Department of Public Safety.

9 Q. Back in September of 2017 where were you working?

10 A. Department of Public Safety.

11 Q. And do you recall being involved in the
12 investigation of Tyquin Jenkins?

13 A. Yes, ma'am.

14 Q. Can you tell the Court how you became involved in
15 this investigation?

16 A. Yes. It was a cold case file that my Captain Codone
17 gave to me.

18 Q. What was his reason for giving it to you to
19 re-examine?

20 A. There was a analysis that came back for DNA that
21 tested positive for the suspect.

22 Q. And once you were able to get that information what
23 did you do with that information?

24 A. I contacted SLED to get a photo ID. Photo lineup.
25 Excuse me.

1 Q. You requested that photo lineup be done through
2 SLED?

3 A. Yes. I did.

4 Q. And were you able to get a photo lineup generated by
5 SLED?

6 A. Yes.

7 Q. Once you had that photo lineup generated, what did
8 you do?

9 A. I then contacted the victim so she could meet with
10 me.

11 Q. Did she come down and meet with you?

12 A. Yes. She did.

13 Q. When she met with you, did you give her any
14 instructions or give her any information about why she was
15 there?

16 A. Yes.

17 Q. What information did you give her?

18 A. I read a statement to her that was on a sheet.

19 Q. Is that a statement that you give in regards to the
20 photo lineup?

21 A. Yes.

22 Q. I'm going to show you what's been previously marked
23 as State's Exhibit 1a (proffering.) Do you recognize that
24 document?

25 A. Yes. I do.

1 Q. And State's 1b?

2 A. Yes.

3 Q. What are those documents?

4 A. The first document is the Orangeburg Department of
5 Public Safety photo lineup form that we usually read to the
6 person that we're showing the photo lineup to. The second is
7 the photo lineup that I got from SLED.

8 Q. Okay. And did you read that form to the victim
9 prior to showing her the photo lineup?

10 A. Yes. I did.

11 Q. Other than reading her that form, did you give her
12 any additional information about the suspect or any
13 identifying characteristics of the suspect prior to showing
14 her the lineup?

15 A. No. I did not.

16 Q. Can you please read for the court record the
17 instructions that you gave the victim prior to showing her the
18 lineup?

19 A. Yes. It states, you will be asked to look at a
20 subject or a group of subjects. The fact that the subjects
21 are shown to you should not influence your judgment. You
22 should not conclude or guess that the subjects or the photos
23 contain the picture of the person who committed the crime.
24 You're not obligated to identify anyone. This is just as
25 important to free innocent persons from suspicion as to

1 identifying guilty parties. Please do not discuss the case
2 with other witnesses nor indicate in any way that you have
3 identified someone.

4 Q. After you read that statement to the victim, do you
5 ask the victim any questions regarding that statement?

6 A. If she understood it.

7 Q. And then is there any instructions that you give
8 prior to showing the photo lineup to the victim as to their
9 certainty of whether or not they're going to be able to make
10 an identification?

11 A. Yes. There was another sentence that I read. It
12 says, on a scale of 1 to 10, 1 being the least sure and 10
13 being the most sure, how confident are you of identifying the
14 perpetrator.

15 Q. Did the victim fill that part out prior to looking
16 at the photo lineup?

17 A. Yes. She did.

18 Q. What was her confidence level of being able to
19 identify the perpetrator?

20 A. She circled 8.

21 Q. Once she filled that out, what did you do?

22 A. Have her to sign it and date it.

23 Q. And then after she signed it and dated it, what did
24 you do?

25 A. Showed her the photo lineup.

1 Q. And is that what has been marked as State's Exhibit
2 1b?

3 A. Yes.

4 Q. When you showed her that photo lineup, was she able
5 to make any identifications?

6 A. Immediately. Yes, ma'am.

7 Q. Who did she identify in that?

8 A. She identified the defendant.

9 Q. How did she identify him in the photo lineup?

10 A. She circled it and put her initials.

11 Q. After she circled and put her initials, did you have
12 her do anything else on the advisement form?

13 A. Yes.

14 Q. What did you have her do?

15 A. I read another statement. After you have viewed the
16 subject or subjects on a scale of 1 to 10, 1 being the least
17 sure and 10 being the most sure, how confident are you that
18 your selection is the perpetrator?

19 Q. Okay. What did she indicate on that?

20 A. Ten.

21 Q. Did she sign and date that?

22 A. Yes. She did.

23 MS. CORNWELL: No further questions, Your Honor.

24 THE COURT: Cross examination.

25 CROSS EXAMINATION

1 BY MR. HUTTO:

2 Q. What was the nature of your conversation when you
3 spoke with Ms. Montgomery in asking her to come down to the
4 public safety headquarters?

5 A. I made a call to her advising her that I was now
6 investigating a cold case file in reference that she was a
7 victim.

8 Q. Okay. Did you tell her why the case was no longer
9 considered a cold case?

10 A. Why was it no longer --

11 Q. Did you tell her that there had been a quote,
12 unquote DNA match in this case?

13 A. I am not sure if I told her there was a DNA match.
14 I just told her that I needed to speak with her at the
15 office.

16 Q. Did you ever tell her about the CODIS DNA analysis
17 prior to her viewing the photo lineup?

18 A. I don't recall that I did. I just asked her to pick
19 out a photo. I'm not certain.

20 Q. Okay. How are these photos generated?

21 A. They are generated through SLED.

22 Q. Okay. Do you know how that process works?

23 A. SLED picks out similarities with the facial features
24 and through I believe it's driver's licenses.

25 Q. Okay. So anybody in South Carolina that has a

1 driver's license or an ID could end up in one of these photo
2 lineups?

3 A. As far as I know. Yes.

4 Q. Was there a reporting of any kind of Ms. Montgomery
5 making this identification?

6 A. Prior to or the day?

7 Q. Let me clarify. Was there a video recording of any
8 kind of Ms. Montgomery making this identification?

9 A. I am not sure at this time whether there was. You
10 said was there a video?

11 Q. Yes. What room was the identification conducted in
12 at the public safety headquarters?

13 A. It was conducted in our conference room.

14 Q. Is there a video in that conference room?

15 A. Currently there is not. They have changed the
16 room.

17 Q. Okay. At the time was there a video recording
18 available in that room?

19 A. I know that there were problems with the video. I'm
20 not sure if it was up or not.

21 Q. Okay. Do you know when this photo of the defendant
22 was taken?

23 A. Do I know when this picture was taken? No. I
24 don't.

25 Q. Is that anything that's available through SLED?

1 A. SLED gets the pictures through the driver's license,
2 the current driver's license at that time.

3 Q. Are there any precautions taken to make sure that
4 the photos that exist in that lineup are of similar age to the
5 case that you are investigating?

6 A. Yes. Yes. That's what SLED does.

7 Q. At the time of this interview with Ms. Montgomery,
8 did Orangeburg Public Safety have body cameras?

9 A. I do not believe so. No.

10 Q. Did you have any other conversations with Ms.
11 Montgomery after this photo lineup presentation on that day?

12 A. I believe if I did, it was brief.

13 MR. HUTTO: Nothing else, Your Honor.

14 THE COURT: Anything further?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: May I see the lineup, please.

17 MS. CORNWELL: (Proffering.)

18 THE COURT: Do you have any other witnesses?

19 MS. CORNWELL: No, Your Honor.

20 THE COURT: You may step down, ma'am. Thank you.
21 Any arguments, counsel?

22 MS. CORNWELL: Your Honor, in regards to the photo
23 lineup, to determine reliability of a photo lineup the
24 Court should look for whether the defendant's photo
25 stands out from others. Photos should be of comparable

1 size and composition. I believe if you look at the
2 lineup that was generated by SLED, all of the photos are
3 of the same size and composition, similar lighting, that
4 the subjects are all similar in appearance, age and
5 physical characteristics.

6 Again, Your Honor, looking at that photo lineup all
7 of the subjects do appear to be similar in age,
8 appearance and physical characters, if the photo
9 indicates the identify of the defendant. Obviously there
10 are no names or identifications on that photo lineup.
11 Also whether the photo implies that the defendant has a
12 prior record. Those are not mug shot photos. There is
13 nothing to indicate that he is in any sort of custody or
14 implies any sort of record or conviction and whether or
15 not the photos expressly or implicitly suggest to the
16 witness which photo is of the defendant.

17 Based on Investigator Bravo's testimony she read the
18 advisement of the lineup to the witness prior to showing
19 the witness the lineup. On direct she testified that she
20 did not state anything about the defendant to the witness
21 before showing her the photo lineup and so I do not
22 believe that there is anything to show that she expressly
23 or implicitly suggested to the witness which photo was of
24 the defendant and then after the victim identified the
25 defendant in the photo lineup, she went back and had the

1 victim discuss how certain she was of her pick.

2 In regards to Biggers, there is nothing to show that
3 this was any sort or unduly suggestive lineup or show of
4 identification and there's also not any irreparable harm
5 of misidentification that would be associated with this
6 lineup, therefore, we would ask that Your Honor allow the
7 photo lineup into evidence and also allow any
8 identifications to be made in court.

9 THE COURT: Mr. Hutto.

10 MR. HUTTO: Your Honor, with respect to the factors
11 in a Biggers hearing we don't have any concerns at this
12 time, however, we would reserve the right to address this
13 again on cross examination.

14 THE COURT: All right. As far as the reliability,
15 first of all, the Court does find that the process was
16 not unduly suggestive based upon the testimony that has
17 been presented. In looking at the actual photo lineup of
18 the subjects in the lineup they do appear to have similar
19 features, be of the same age and physical characteristics
20 so certainly I don't find that that is unduly suggestive
21 and also based upon the form which the victim filled out,
22 her level of certainty certainly she indicated was at a
23 10 and prior to being shown how confident was she to be
24 able to identify, that was at an 8 until after she
25 identified him and then it rose up to a 10 so the level

1 of certainty certainly is there and although there was
2 some time in between the alleged crime and the
3 identification the Court finds that it is more probative
4 than prejudicial so it will come in at this juncture
5 subject to cross examination.

6 MS. CORNWELL: Thank you, Your Honor. I believe
7 that those are all of the motions that we need to take up
8 with the Court. The only additional motion that we had
9 discussed in chambers was the rape shield motion and it's
10 my understanding that we're going to limit the cross of
11 the victim and have any questions regarding any samples
12 be directed to the DNA expert.

13 THE COURT: Correct, Mr. Hutto?

14 MR. HUTTO: That is correct with the understanding
15 the State may recall Ms. Montgomery at that time and if
16 so we would like to revisit that but for the time that's
17 a correct statement.

18 THE COURT: Sounds good. We'll cross that bridge
19 when we get to it. Anything further on this matter?

20 MS. CORNWELL: No, Your Honor.

21 (Whereupon, court was adjourned for the evening at
22 3:30 p.m.)

23

24

25

1 February 12, 2019

2 BAILIFF: All rise. Court is now in session. Judge
3 Maite Murphy presiding.

4 THE COURT: Good morning everyone. Please have a
5 seat.

6 MR. HUTTO: Your Honor, may we approach?

7 THE COURT: Certainly.

8 (Side bar off the record.)

9 THE COURT: Ladies and gentlemen of the jury panel,
10 would you please clear the courtroom for just one brief
11 minute and we'll be right back with you. Everyone that
12 is on the jury panel needs to exit the courtroom please.

13 (Whereupon, the jury venire exited the courtroom at
14 10:30 a.m.)

15 THE COURT: All right. Please bring in the
16 defendant.

17 (Whereupon, the defendant entered the courtroom.)

18 THE COURT: All right. Are the parties ready?
19 You want to put him on this side so the jury can't see.
20 We ready?

21 MR. HUTTO: Yes. Thank you, Judge.

22 THE COURT: All right. Let's have our jury panel
23 back in please.

24 (Whereupon, the jury venire entered the courtroom at
25 10:33 a.m.)

1 (Side bar off the record.)

2 THE COURT: Ladies and gentlemen of the jury panel
3 that were not selected for the trial of this case you
4 have fulfilled your jury duty requirements and you are
5 free to go. If you need an excuse for work or anything,
6 the Clerk's Office will be happy to help you. Thank you
7 for being here.

8 (Whereupon, the remaining members of the jury venire
9 were released from further duty at 11:45 a.m.)

10 THE COURT: Welcome ladies and gentlemen of the jury
11 that has been selected. I know it's almost 12:00 and
12 you're probably starving. It's been a long morning for
13 you and we have some other matters that we must take up
14 outside of your presence so it's actually a perfect time
15 for us to take a lunch break. Before you go, our bailiff
16 will show you where your jury room is and where you are
17 to report when you come back. Please do not discuss this
18 case with anyone or allow anyone to discuss this case
19 with you as you must make your determination of the facts
20 solely from what you hear on the witness stand. Again,
21 if you would be back in the jury room say at 1:15 that
22 should give everyone some time to find a place to eat and
23 come back and be back in your jury room. Have a nice
24 lunch. We'll see you then.

25 (Whereupon, the jury was released for lunch at 11:50

1 a.m.)

2 THE COURT: Counsel, y'all ready to proceed with the
3 Biggers Hearing or would you like do that just before we
4 get started? Ms. Cornwell?

5 MS. CORNWELL: The State is prepared, Your Honor.
6 If I can have just a moment to get things ready.

7 THE COURT: Sure. Is that all right with the
8 defense?

9 MR. HUTTO: That's fine. Yes.

10 MS. CORNWELL: Your Honor, the State is prepared.

11 THE COURT: All right. Solicitor, you may call your
12 first witness.

13 MS. CORNWELL: Your Honor, the State would call Tori
14 Montgomery.

15 Thereupon,

16 TORI MONTGOMERY

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. Once you're seated,
19 state your full name for the record spelling your last
20 name please.

21 THE WITNESS: Tori Montgomery,
22 M-o-n-t-g-o-m-e-r-y.

23 THE COURT: Your witness.

24 MS. CORNWELL: Thank you, Your Honor. Your Honor,
25 for purposes of this hearing we may work straight into

1 the things that relate to the identification.

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. CORNWELL:

5 Q. Ms. Montgomery, the incident that occurred on
6 January 6th, 2015, can you tell the Court where this incident
7 happened?

8 A. Near Broughton Street.

9 Q. What was the time of day when this incident
10 occurred?

11 A. Somewhere between 12:00 and 1:00 a.m.

12 Q. What was the lighting out there on the street that
13 day?

14 A. It was dark but there were a few street lights out
15 there so I was able to see pretty clear.

16 MS. CORNWELL: Your Honor, I believe that both
17 parties have stipulated to the fact that the weather that
18 evening was clear.

19 THE COURT: Right.

20 BY MS. CORNWELL:

21 Q. When you encountered the defendant, what was your
22 initial encounter with him?

23 A. Uhm, he just walked past me. At first when I was
24 walking up Broughton Street, I just saw him from a distance
25 and he walked past me and he asked me for a lighter for his

1 cigarette.

2 Q. Did you have a conversation with him standing on the
3 street during that time?

4 A. Yes.

5 Q. Approximately how long would you say you were
6 standing there speaking to him before the incident occurred?

7 A. Maybe about five, 10 minutes at the most.

8 Q. How close were you standing to him when you were
9 having this conversation?

10 A. Uhm, we were pretty close. Not too close but maybe
11 about six - maybe about a foot away from each other.

12 Q. Would you say you were about this close or closer?

13 A. A little closer.

14 Q. Closer. About right here?

15 A. Yes.

16 Q. And at some point during this conversation what
17 happened? Did you try to leave the conversation?

18 A. I did. Uhm, at that time like I said he asked for a
19 lighter and I told him I didn't have anything. He asked for
20 my name and would I like to smoke a joint. I told him no.
21 During that time he asked me, well, he told me that it was his
22 birthday and that there was supposed to be, his grandmother
23 was supposed to be having a party for him nearby. He asked me
24 if I wanted to go. I told him no. I had to get home to my
25 daughter. But he did ask for my cell phone so I did let him

1 use my cell phone.

2 Q. At some point after that conversation did you go
3 somewhere with the defendant?

4 A. No.

5 Q. What happened after he used your phone?

6 A. He hung up so as soon as I -- Well, I didn't hear
7 any conversation going on. Once the phone was hung up, I
8 tried to get my phone back from him telling him that I did
9 have to go back home. As soon as that happened he pulled out
10 the gun.

11 Q. Once he pulled out the gun, what happened?

12 A. He told me to follow him behind the building across
13 Broughton Street.

14 Q. And approximately how long were you with the
15 defendant behind the building?

16 A. About 20, 20 minutes.

17 Q. That was in close proximity of the defendant?

18 A. Yes.

19 Q. After this incident occurred, we heard testimony
20 yesterday from Investigator Bravo that she contacted you
21 regarding a photo lineup?

22 A. Yes.

23 Q. When she contacted you, what did she tell you you
24 were coming in for?

25 A. She said that the case was being reopened and that

1 she needed to speak to me further about what was going to
2 happen.

3 Q. Did she talk to you at all about any suspect or they
4 had a suspect or that they knew anything about?

5 A. At that time, no.

6 Q. When you met with her, did she explain to you that
7 she had a photo lineup that she wanted to show you?

8 A. Yes.

9 Q. Did she ask you any questions about would you be
10 able to recognize this person?

11 A. Yes.

12 Q. And did you feel confident you would be able to
13 recognize him?

14 A. Yes.

15 Q. Once you reviewed the photo lineup, were you able to
16 recognize the person who assaulted you?

17 A. Yes. Definitely.

18 Q. How confident are you in that identification?

19 A. 10 out of 10.

20 MS. CORNWELL: That's all the State has.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION

23 BY MR. HUTTO:

24 Q. When you received the phone call from Detective
25 Bravo, what was the nature of that conversation prior to her

1 showing you the pictures?

2 A. Uhm, she told me that she wanted to meet with me
3 saying that the case would be reopened. It was a cold case
4 and was gonna be reopened.

5 Q. Did she tell you why it was going to be reopened?

6 A. No.

7 Q. Okay. Did she tell you -- What was the nature of
8 the conversation that you had in the police department prior
9 to viewing the photos?

10 A. She just told me that she would be showing me a
11 photo lineup and a possible suspect.

12 Q. Okay. Was there any indication about which photo
13 belonged to which person ahead of your identification?

14 A. No.

15 MR. HUTTO: Okay. Nothing further, Your Honor.

16 THE COURT: All right. Anything further from the
17 State?

18 MS. CORNWELL: No, Your Honor. May this witness
19 step down?

20 THE COURT: Yes, ma'am. You may step down. Based
21 upon the testimony that was given yesterday -- Did you
22 have any argument?

23 MR. HUTTO: No, Your Honor.

24 THE COURT: If you did, I'll be happy to hear from
25 you.

1 MR. HUTTO: Your Honor, I would just like to be able
2 to address this again on cross.

3 THE COURT: Certainly. Anything further from the
4 State?

5 MS. CORNWELL: No, Your Honor. We would ask that
6 based on the testimony that the photo lineup be allowed
7 into evidence as well as any court identification.

8 THE COURT: I agree with that. Considering the
9 circumstances and the testimony of both yesterday and
10 today the Court does find that the lineup was not
11 suggestive and further based upon the factors to be
12 considered in the identification of the defendant the
13 witness did testify to her opportunity to view the
14 defendant at the time of the crime. She apparently paid
15 attention. She was in close proximity to him. There was
16 light. And her level of certainty she claims was a 10
17 out of 10. Although the time between the crime and the
18 confrontation and the lineup is a bit longer, that
19 certainly does not, that would go to the weight and not
20 the admissibility of that so I do find that the
21 identification is proper in this case. Anything before
22 we break for lunch?

23 MS. CORNWELL: Nothing from the State, Your Honor.

24 MR. HUTTO: No, Your Honor. I did want to mention
25 as a matter of course we intend to use power point for

1 part of our opening statement. We have already got the
2 projector screen set up and calibrated the projector so
3 it should project immediately onto there. We just may
4 need a moment between opening arguments to get that set
5 up.

6 THE COURT: Okay. Just don't ask me to run any of
7 it.

8 MR. HUTTO: I think we tested it this morning.

9 THE COURT: So that works.

10 MS. CORNWELL: Are there any, there's not any
11 exhibits or evidence that has to go into evidence or
12 anything showing during the opening statement?

13 MR. HUTTO: There's no photos. There's discussion
14 of what we anticipate being said but no pictures or
15 anything like that.

16 THE COURT: All right. Sounds good. We'll see
17 everybody a couple minutes before 1:15.

18 (Lunch recess.)

19 BAILIFF: All rise. Court is back in session.

20 THE COURT: Thank you. Please be seated. Anything
21 before we bring the jury out from either side?

22 MS. CORNWELL: Nothing from the State, Your Honor.

23 MR. HUTTO: No, Your Honor.

24 THE COURT: Let's have our jury please.

25 (Whereupon, the jury entered the courtroom at 1:25

1 p.m.)

2 THE COURT: Welcome back, ladies and gentlemen of
3 the jury. I hope that you had a nice lunch. Madam
4 Clerk, would you please swear in the jury.

5 THE CLERK: Yes, ma'am.

6 (Whereupon, the jury was duly sworn by the Clerk of
7 Court at 1:25 p.m.)

8 THE COURT: Ladies and gentlemen of the jury, thank
9 you for accepting the important responsibility of jury
10 service and for your contribution today towards our
11 system of justice. What I will now say to you is
12 intended to serve as an introduction to the trial of this
13 case. These remarks are not a charge on the law in this
14 case. I will instruct you on the law applicable to this
15 case at the end of the trial before you retire to
16 consider your verdict. This is merely an explanation of
17 the procedure that we will follow in this trial so you
18 will have a better understanding of what is going on
19 during the trial of this case. You may not take notes
20 during the trial of this case.

21 The defendant in this case is charged with two
22 indictments filed in this court, one indictment for
23 criminal sexual conduct in the first degree and one
24 indictment for kidnapping. The elements of each
25 indictment will be explained to you later. The

1 indictment is simply the charge by which the case is
2 brought into court and it is not in any sense any
3 evidence of any of the allegations they contain. The
4 defendant has pled not guilty to these indictments,
5 therefore, the State has the burden of proving each of
6 the element of each indictment beyond a reasonable doubt.
7 It will be your duty, ladies and gentlemen, to decide
8 whether the State has met that burden.

9 Your purpose as jurors is to find and determine the
10 facts. You are the sole judges of the facts. If at any
11 time I make any comment regarding the facts, you must
12 disregard that. You are to determine the facts from the
13 testimony that you hear and other evidence that is
14 introduced into court. It is entirely up to you to
15 determine the inferences which you may feel may be
16 properly drawn from the evidence. It's especially
17 important that you perform your duty of determining the
18 facts diligently and conscientiously because ordinarily
19 there is no way to correct an erroneous determination of
20 the facts by a jury.

21 On the other hand and with equal emphasis the same
22 law that makes you the judges of the facts makes me the
23 judge of the law. The law as given by the Court is the
24 only law that you may consider. You must accept it and
25 follow it even though you may disagree with it. I cannot

1 tell you what the facts are and you cannot disagree with
2 me about what the law is or what the law should be. Your
3 job is to take the law as I give it to you and apply it
4 to the facts as you find them from the testimony of the
5 witnesses and any other evidence that is introduced.
6 After doing that, you will render your verdict under the
7 solemn oath that you just took as jurors.

8 Until I advise you to begin your deliberations you
9 must not discuss this case with anyone including your
10 fellow jurors, family, friends or anyone involved in this
11 case. This includes any discussions which are
12 face-to-face, anything by text, telephone, e-mail, blogs
13 or any other method of communication. You may not use a
14 computer, a cell phone or any other electronic device
15 with communication capabilities at any time while in the
16 courtroom or during your deliberations. During your
17 breaks or for meals or overnight, if necessary, of
18 course, you may use these devices however you may not at
19 any time use these devices to get or send any information
20 about the case. This includes any information about a
21 party, a witness, an attorney, a court officer, any news
22 accounts about the case, any research on any topics that
23 may be raised or anything that you might think might be
24 helpful in deciding the case or any testimony that is
25 presented by any witness.

1 During the trial please do not read, listen to or
2 watch any news reports about this case. This includes
3 anything that may be in the newspapers, TV, Internet,
4 radio or television. You must not consider anything that
5 you may have heard or read about this case outside of
6 this courtroom whether before or during the trial of this
7 case. After the case is submitted to you, you must
8 discuss it only in the jury room with your fellow jurors.

9 The attorneys and the parties in this case have been
10 advised and instructed not to talk to you so if you see
11 them coming in and out of the courthouse and they don't
12 speak to you, they're not being unfriendly, they're just
13 following the Court's instructions. It's important that
14 you keep an open mind and not decide any issue in the
15 case until all of the evidence has been presented, the
16 parties have made their closing arguments, and I have
17 instructed you on the law in this case. It is your
18 solemn responsibility to determine the guilt or the
19 innocence of the defendant and your verdict must be based
20 solely on the evidence that is presented to you in this
21 trial and the law as I instruct you during and at the
22 close of the trial.

23 In just a moment the Solicitor will make what is
24 called an opening statement in which the Solicitor will
25 explain to you what the issues in this case are or at

1 least what the Solicitor thinks the issues in this case
2 are. The attorney for the defense may also make an
3 opening statement although they're not required to do so.
4 What the attorneys tell you during their opening
5 statements is not evidence in this case. It's only their
6 contention as to what the issues are. The evidence in
7 this case will be presented to you by the testimony of
8 sworn witnesses from the witness stand and any exhibits
9 that are properly introduced during the trial of this
10 case.

11 From time to time during the trial you may hear one
12 of lawyers say something like, Your Honor, may we
13 approach the bench? Or we have a matter of law.
14 Sometimes I myself might find it necessary to excuse you
15 from the courtroom for a short while so the attorneys and
16 I can discuss a matter of law. The reason for this is
17 because you are the judges of the facts in this case and
18 sometimes when I'm discussing matters of law with the
19 attorneys, it may be necessary for me to make some
20 comment as to the facts in connection with a ruling as to
21 whether or not a particular law applies. I'm not
22 supposed to tell you what I think the facts are so I will
23 excuse you from the courtroom for a short while while
24 these discussions take place so that in no way will you
25 be influenced by anything I might say or do in connection

1 with the facts of this case.

2 In determining what the true facts are in this case
3 you must decide whether or not the testimony of a witness
4 is believable. It will be my responsibility to rule as a
5 matter of law as to whether or not certain testimony is
6 admissible at all or not but once the testimony is
7 admitted whether or not you believe it is solely for you
8 to determine. In deciding whether to belief a witness
9 you have the right to consider the interest of any
10 witness, the bias of any witness, the prejudice of any
11 witness, the opportunity for a witness to have seen the
12 matters and the things about which the witness may
13 testify and the way that the witness acts on the witness
14 stand. You have the right to consider anything that is
15 in the record that will help you evaluate the testimony
16 of the witnesses. That means it is your duty to pay
17 close attention to these witnesses, to observe the
18 witnesses, to listen to the witnesses, and pay close
19 attention to the attorneys and to the Court. Please do
20 not let your thoughts wander and give strict attention to
21 the testimony in this case so that at the end of the
22 testimony after the arguments of counsel and the charge
23 on the law by the Court you will be in a position to
24 determine what the facts are in this case and apply the
25 law to those facts and thus render your verdict.

1 It will be the added duty of the court foreman to be
2 the liaison to the Court if you have any questions and
3 also to write the verdict form, fill out the verdict form
4 at the appropriate time which I will instruct you on.

5 Are there any objections or exceptions to the
6 opening remarks from the Court from either the State or
7 the defense?

8 MS. CORNWELL: None from the State, Your Honor.

9 MR. HUTTO: No, Your Honor.

10 THE COURT: All right. Solicitor.

11 MS. CORNWELL: Thank you, Your Honor. May it please
12 the Court and counsel.

13 THE COURT: Yes, ma'am.

14 MS. CORNWELL: January 6th of 2015, a day that Tori
15 Montgomery will never forget because in the early morning
16 hours of January 6th, 2015 Ms. Montgomery was walking
17 right here in downtown Orangeburg clearing her head. She
18 encountered that defendant. During her encounter with
19 that defendant whom she had never met, did not know
20 anything about, he pulled out a gun and forced her down
21 an alley and sexually assaulted her. He made her perform
22 oral sex on him and then he vaginally raped her.

23 You heard this morning the defendant is charged with
24 criminal sexual conduct in the first degree and one count
25 of kidnapping. At the end of this trial the Judge is

1 gonna instruct you on the law, but for right now for the
2 simple purpose of this trial I would like to explain to
3 you what those charges are. Criminal sexual conduct in
4 the first degree can happen in one of three ways. A
5 person can be charged with criminal sexual conduct in the
6 first degree by committing a sexual battery against
7 somebody under forcible confinement. They can also
8 commit sexual criminal conduct in the first degree if
9 they commit a sexual battery upon somebody and they do
10 that while the person is submitting to them through the
11 course of kidnapping, robbery or some other similar
12 crime. A third way a person can commit criminal sexual
13 conduct in the first degree is if they use a drug that
14 incapacitates a person and sexually assaults them.

15 In this case this defendant committed criminal
16 sexual conduct in the first degree in two ways because
17 you're gonna hear throughout the course of this trial
18 from the testimony presented to you and from the evidence
19 that he sexually assaulted her under an aggravated force.
20 In this case the aggravated force was he had a gun. He
21 also sexually assaulted her while kidnapping her. You
22 will hear the Judge tell you what kidnapping is. The
23 definition of kidnapping has a lot of fancy terms.
24 Basically what kidnapping is is if I force you to go from
25 one place to another and you don't want to go there, I

1 have kidnapped you. I don't have to throw you in the
2 trunk of my car, I don't have to duct tape you, I don't
3 have to take you across county lines or anything like
4 that. If I try to make you move from this jury box to
5 the back of this courtroom and you don't want to go and I
6 force you to do that, I have kidnapped you.

7 In this case the defendant you will hear pulled a
8 gun and forced her to go from the street to behind an
9 alley and in that sense he kidnapped her. So he's
10 committed criminal sexual conduct in the first degree, as
11 you will hear, by pulling a gun and sexually assaulting
12 her and by kidnapping her and sexually assaulting her.
13 And the way the State is gonna prove that he committed
14 those two acts is by putting witnesses on the stand.
15 You're gonna hear from the victim herself. She will tell
16 you what she was doing that night, why she was out that
17 late at night, and exactly what happened when she
18 encountered this defendant. You're also gonna hear from
19 family members that were present immediately after this
20 incident occurred. You will hear from hospital staff and
21 law enforcement officers and they're gonna tell you
22 everything that happened in the course of their
23 investigation.

24 This is not a complicated case. But because it's
25 not a complicated case that does not mean that it's not a

1 serious case. That doesn't mean that it doesn't need
2 your attention. But it is a very simple case. Why do I
3 say that? Because in this case as you're gonna hear
4 through the testimony because this victim did not know
5 this defendant and did not know anything about him there
6 was not a whole lot of investigation that could really be
7 done. She went to the hospital and they did a sexual
8 assault examination kit which is commonly referred to as
9 a rape kit. After 18 months to two years you're gonna
10 hear testimony that during that rape kit a DNA match came
11 back and that DNA matched that defendant and after two
12 years the case was reopened with that DNA match and law
13 enforcement contacted the victim and they presented a
14 photo lineup to her and two years later she was able to
15 immediately positively identify that defendant as the man
16 who sexually assaulted her because that night his image
17 was seared in her brain.

18 After you have had a chance to hear from all of the
19 witnesses and you see all of the evidence in this case, I
20 have no doubt that you will find not just beyond a
21 reasonable doubt but beyond all doubt that this defendant
22 absolutely is guilty of criminal sexual conduct in the
23 first degree. He's also absolutely guilty of kidnapping.

24 THE COURT: Counsel.

25 MR. HUTTO: Thank you, Your Honor. If you could

1 indulge me for a moment, I would like to set up a short
2 presentation for the ladies and gentlemen.

3 THE COURT: Certainly.

4 MR. HUTTO: All right. I'm not going to start off
5 with any visual presentation on this screen here because
6 I want to talk to you more personally first. My name is
7 Skyler Hutto from the Williams and Williams firm right
8 down the street. I practice with my father, and Charlie
9 Williams, and with some of the other people whose names
10 you heard earlier, and we are all here because we believe
11 in Tyquin Jenkins. Tyquin Jenkins is the man sitting
12 here in the white shirt. His family is in the courtroom
13 today as well. I don't know how much you will have an
14 opportunity to learn about him personally but he has
15 family that cares about him, a father of three. And
16 while I know a lot of you would rather be at work, rather
17 be with your family, rather be doing a lot of other
18 things today than sitting in this jury box, I promise you
19 that he doesn't want to be here either. But he has faith
20 in you to decide this case fairly and to listen to
21 everything before you make your decision.

22 What the Solicitor is going to present to you in
23 this case in my opinion is that when you have got Ms.
24 Montgomery's story and you have got a DNA sample from
25 Mr. Jenkins, that equals a guilty verdict. I don't think

1 that they're going to intend to show you much beyond
2 that. One thing that I would be interested to know if
3 they're gonna talk to you about is Mr. Jenkins' own
4 statement. Back in 2017 when he was told that he was
5 going to be charged with these two crimes was about two
6 years and nine months after the initial alleged attack.
7 He gave a statement to police and in that statement he
8 adamantly denied ever having assaulted anyone, but he
9 wasn't able to provide much more information than that
10 and that's probably because they wouldn't give him any
11 information about the person who is accusing him.

12 He asked multiple times, "can you tell me what I'm
13 here for? Can you tell me who's saying I did this? Can
14 you show me a picture of who did this?" He didn't get
15 any of that. So he's left to speculate three years in
16 the future until his bond hearing who is accusing him,
17 who is making any of these statements. But what he did
18 do repeatedly is say I don't know exactly who you're
19 talking about but I would never do that to anyone. He
20 said that there's people he has made mad in the past. He
21 said that it's possible that he had sexual relations with
22 a woman in the back seat of his car. It's possible that
23 he offered somebody a ride that he didn't follow through.
24 He tried to come up with any number of things that he
25 could do but he was operating with very little

1 information to defend himself.

2 Here today it's a different story. We believe we
3 know what Ms. Montgomery is gonna tell you about what
4 happened to her that night. Now we know who it is that's
5 accusing him and one thing that I want you to do
6 throughout the course of her testimony, things that we
7 present, things that law enforcement present is ask, does
8 this make sense? Could it have happened this way or must
9 it have happened some other way?

10 Ladies and gentlemen, the first thing that I like to
11 tell every jury is while Mr. Jenkins would rather be
12 almost anywhere else today, he is lucky to be sitting
13 here in a courtroom in the United States because our
14 constitution says that he enjoys the presumption of
15 innocence. Right now before you have heard any evidence
16 it is your duty to assume that he is innocent of these
17 charge and for that he is lucky. When I say that he is
18 lucky, I know that a lot of you are saying how is that
19 possible. He's lucky because he has you to rely upon
20 because he can put his faith in you to judge this fairly.
21 When you are in that position of being the triers of
22 fact, I said that you will want to have all of the
23 information.

24 I want to run through a little thought experiment
25 with you. That's why I have this presentation here for

1 you. But before I do that, let me give you a preface.
2 I'm not saying that anybody in this case is evil. I'm
3 not saying that anybody in this case is a hero. But what
4 I am telling you is that it's very important to get all
5 of the information and so let me give you this little
6 thought here before I belabor that anymore. Imagine this
7 is an election and imagine that rather than being 12
8 people sitting here to decide Mr. Jenkins' fate that
9 you're 12 people casting ballots in an election, all
10 right? You've got two candidates. Candidate A starts
11 everyday with what he calls whiskey mouthwash. He owes
12 over \$75,000.00 to an alcohol distributor from his
13 previous tenure in office. He spends the average
14 taxpayer salary on tobacco alone every two days. He's
15 known to smoke on his publicly funded airplane and his
16 campaign aides suppress information about his extra
17 marital affairs. Probably sounds like somebody that you
18 wouldn't want to vote for.

19 Candidate B on the other hand is selected by popular
20 mandate in previous elections. He keeps a strict
21 vegetarian diet. He never smokes. He never has more
22 than one drink a night. He's dedicated and faithful as a
23 husband and family man. He maintains his Catholic faith
24 strictly and he's actually endorsed by Pope Pius the VII.
25 Maybe some of you history majors take that as a clue as

1 to who these two people are. They are contemporaries of
2 one another. This seems like an easy choice but it's
3 not. It's very easy for me to take some information
4 about one side, all the worst information about Winston
5 Churchill and make him seem like a terrible person and
6 you would never vote for him. It's very easy for me to
7 take all of the best things, quote unquote, or all of the
8 positive attributes of one of the greatest villains in
9 history and make him seem like somebody that you would
10 want to vote for. That is why you need all of the
11 information.

12 So throughout the course of this case again ask
13 yourself are you getting all of the information. You
14 will hear from Tori Montgomery. She's I believe on the
15 stand going to be adamant that she was attacked by
16 someone while she was taking a walk. Is she going to
17 explain all of the multiple contradictory statements
18 about where this occurred that she gave prior to settling
19 on the Salvation Army loading dock? Is she going to
20 explain why she gave multiple contradictory reasons for
21 leaving her house that night? Will she explain why you
22 leave your house late at night in the first place?
23 You're gonna hear I believe about Mr. Jenkins' statement
24 to law enforcement, that he was somewhat equivocal, not
25 able to tell exactly what happened that night to law

1 enforcement when they questioned him. But ask yourself,
2 do you remember what you were doing three years ago
3 today? Do you remember what you were doing three years
4 ago even for your birthday or for Christmas? It's not
5 that easy to come up with those answers without context.

6 You're gonna hear about Ms. Montgomery's cell phone,
7 that at some point I believe she will claim that
8 Mr. Jenkins had possession of it. You will also hear
9 from Mr. Jenkins' statement law enforcement alleged that
10 he took that phone and attempted to dial a number very
11 close to his own. What you won't hear is that law
12 enforcement never conducted a meaningful analysis on this
13 phone. I don't know that you will hear that Mr. Jenkins'
14 fingerprints weren't on this phone. They never ran an
15 analysis on this phone number and even after Mr. Jenkins
16 gave them his phone number, no analysis was ever run on
17 that either to see if he was ever in the area or if any
18 phone records could place these two people together.

19 With regard to the evidence itself the State will
20 claim, I believe, that it performed a complete and
21 accurate investigation of Tyquin's case. They may not
22 tell you that they believe that they may have lost video
23 evidence in this case; that the Municipal Court lost
24 audio recordings of Tyquin's previous hearings. I don't
25 think they will tell you that the State never performed a

1 crime scene analysis not only in 2017 but back on the
2 night of the incident. We are left to speculate about
3 what isn't there and about what the State cannot present
4 to you.

5 So the last thing I want to do is talk to you again
6 briefly about the presumption of innocence. There's a
7 metaphor that I like to use when talking about this with
8 juries. You've got this bar in front of you stretching
9 from this side of the courtroom to where members of the
10 audience can sit. I want you to imagine that one side is
11 innocent and one side is guilty in your deliberations
12 about Mr. Jenkins. Now, if this were a civil trial, the
13 Judge would tell you that at the beginning of a case the
14 scales start right here, right in the middle and that as
15 some evidence gets added to this side and some evidence
16 gets added to this side whichever side you end up on is
17 the side that you should find in favor of at the end of
18 the civil trial.

19 But that is not how we operate in criminal court.
20 Your opinion legally must start with the presumption that
21 he is innocent. That if no evidence is presented or no
22 convincing evidence is presented, then he is here. And
23 if only a little bit of evidence is presented and you
24 only get to here, he should not be found guilty. They
25 can keep piling on evidence this way. We will keep

1 beating back that evidence. But unless you can get your
2 opinion all the way from this side of the bar to that
3 side of the bar, then you cannot find him guilty beyond a
4 reasonable doubt and he should be acquitted. I believe
5 that is what is going to happen at the end of this trial.

6 I ask you the pay close attention because this will
7 be a very interesting day and so will tomorrow and so
8 will Thursday. Thank you.

9 THE COURT: Solicitor, you may call your first
10 witness.

11 MS. CORNWELL: Thank you, Your Honor. The State
12 calls Tori Montgomery.

13 Thereupon,

14 TORI MONTGOMERY
15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. Once you're seated,
17 state your full name for the record.

18 THE WITNESS: Tori Montgomery.

19 THE COURT: Thank you. Your witness.

20 DIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q. Ms. Montgomery, can you please tell the jury why you
23 are here and a little bit about yourself, your age, where you
24 live?

25 A. I'm 25. Right now I stay in Valdosta, Georgia. I'm

1 a single mother and I work at a hotel.

2 Q. How long have you lived in Valdosta, Georgia?

3 A. For about six or seven months.

4 Q. Who lives there with you?

5 A. Right now it's my sister, my stepmother, my daughter
6 and my grandmother.

7 Q. Where were you living back in January of 2015?

8 A. Here in Orangeburg.

9 Q. Do you remember exactly where?

10 A. Landmark Towers downtown South Carolina, Orangeburg,
11 South Carolina.

12 Q. Who lived with you at Landmark Towers Apartment with
13 you at that time?

14 A. My sister, my daughter and my boyfriend at the
15 time.

16 Q. How old was your daughter in January 2015?

17 A. Around seven months.

18 Q. And the boyfriend you were living with, what is his
19 name?

20 A. Dakeis Pride.

21 Q. Is that your daughter's father?

22 A. Yes.

23 Q. Are you and Mr. Pride still together today?

24 A. No. We are not.

25 Q. And the reason that you are here today is because of

1 an incident that occurred back on January 6th of 2015?

2 A. Correct.

3 Q. Do you recall that day?

4 A. I do.

5 Q. Can you tell the jury what happened to you in the
6 early morning hours of January 6th and what you were doing
7 before the incident occurred that lead to this?

8 A. Uhm, I know me and my child's father, we did get
9 into an argument that day. Uhm, I know we were sleeping and I
10 heard his phone go off. I got upset and before that I really
11 couldn't sleep much anyway so I told my sister that I was
12 gonna go take a walk.

13 Q. About what time was that?

14 A. Uhm, between twelve and one. I know it was around
15 twelve and I left out of the apartment and I was heading out
16 towards Russell Street downtown Orangeburg and I made a left
17 onto Broughton Street. At this time I was on the phone with
18 my sister and once I made the left, I saw two guys further
19 down the street on Broughton. One was on a bike and one was
20 walking. I didn't know if they were together or not but I
21 know, I realized that they weren't when the guy on the bike
22 made a turn on the street before he even got to me. At that
23 time I was still walking up Broughton and the defendant walked
24 past me and he stopped me and he asked me for a lighter for a
25 cigarette and I told him I didn't have one and then he asked

1 me for my name and if I smoked or drank or anything and I told
2 him no.

3 And then I know he told me that it was his birthday
4 and that his grandmother was supposed to be having a party
5 nearby either in an apartment or a home but I declined to go
6 because I didn't know him and I told him that I was trying to
7 get home to my daughter. He then asked to use my cell phone
8 so I let him use my cell phone. I assumed that the call
9 didn't go through because I didn't hear a conversation that
10 was going on at all, period. I felt funny about the whole
11 situation for one being out late and away from my daughter so
12 I promptly tried to take my phone from him. That's when he
13 pointed the gun at me and he told me to follow him across the
14 street behind the building.

15 Q. Okay. And you say you were on Broughton Street.
16 This was between twelve and 1:00 in the morning?

17 A. Yes.

18 Q. January 6, 2015, what was the weather like that
19 day?

20 A. It was cold. It was definitely cold but I was able
21 to see. There was plenty of street lights so I was able to
22 see.

23 Q. And prior to him pulling the gun out on you, the
24 conversation that y'all had that you just described, about how
25 long would you say that conversation lasted?

1 A. About 10 minutes at the most. Five.

2 Q. And while you were having that conversation with him
3 how close were y'all standing to each other?

4 A. Pretty close. About a foot away from each other.

5 Q. So if we were on the street having that
6 conversation, would you say it was this close?

7 A. Closer.

8 Q. Was it this close?

9 A. Yes. About.

10 Q. And during your conversation, were you able to see
11 him clearly?

12 A. Yes.

13 Q. Were you able to take notice of the clothes that he
14 was wearing?

15 A. Yes.

16 Q. Once you attempted to take your cell phone back, you
17 say that's when he pulled the gun?

18 A. Yes.

19 Q. Were you able to see what the gun looked like?

20 A. Yes.

21 Q. Please tell the jury what the gun looked like.

22 A. It was a black gun with a wooden handle.

23 Q. Was it a big gun? Was it a little gun?

24 A. It was a small gun.

25 Q. And when he pulled the gun, did he point it at you?

1 What did he do with it?

2 A. He pointed it at me but it wasn't directly in my
3 face. It was towards my lower body.

4 Q. And were you still standing face to face to him?

5 A. Yes.

6 Q. Once he pulled the gun, what did he say to you?

7 A. He told me to follow him behind across the street
8 behind the building.

9 Q. And I'm going to for identification purposes and
10 help explain where this is --

11 MS. CORNWELL: Your Honor, if I may?

12 THE COURT: Has this been premarked?

13 MS. CORNWELL: It's for identification purposes. I
14 can premark it. This is State's Exhibit, I believe, 7
15 for identification purposes.

16 BY MS. CORNWELL

17 Q. Ms. Montgomery, I'm going to place this map up on
18 the easel to help explain to the jury exactly where you
19 started and where all of this incident occurred. We are
20 looking at this map --

21 THE COURT: Yes, ma'am. Before you show it to the
22 jury, can you mark it as an exhibit?

23 MS. CORNWELL: Yes. I apologize, Your Honor. I
24 thought I had already marked this one. This is State's
25 Exhibit 7 for identification purposes.

1 BY MS. CORNWELL:

2 Q. Ms. Montgomery, if you can just step down
3 momentarily and show the jury about where you were and the
4 path that you took? Just to give you some idea, this would be
5 where the Landmark Tower Apartments are. Just make sure you
6 speak loud.

7 A. So right here, these are the apartments. Let's see.
8 I know I made a left leaving the apartments going up Russell
9 Street.

10 THE COURT: Ms. Montgomery, I hate to interrupt you
11 but stand on this side, that way your back is not to the
12 jury and they can see what you are doing.

13 BY THE WITNESS:

14 A. I was coming up Russell Street and I made a left on
15 Broughton and I was in between here before the incident
16 happened. I know where we was here talking and all at once he
17 pointed the gun and I was supposed to follow him behind one of
18 these buildings here. I would say this building, the
19 Salvation Army.

20 BY MS. CORNWELL:

21 Q. What are some of the other -- Let's familiarize the
22 jury with the exact area. Do you know what some of these
23 other landmarks are?

24 A. This is Captain D's and this over here is T and D.

25 Q. Do you remember seeing those buildings when you were

1 walking down the street?

2 A. Yes. Mm-hmm. And T and D has a mural on the side
3 of it.

4 Q. Okay. Thank you. Once the defendant pulled the gun
5 on you and forced you down that alley, what did he do?
6 Actually, did he -- When he told you to go down the alley with
7 him, did he make any threats?

8 A. At the time, no. He didn't. He just told me to
9 follow with him behind the building with the gun at my side.

10 Q. And did you submit to his request?

11 A. I did.

12 Q. Did you scream or run or try to fight or anything?

13 A. No. I didn't.

14 Q. Why not?

15 A. I didn't know if the gun was loaded and I didn't
16 want to risk losing my life. I had a daughter.

17 Q. So once you went down the alley, what was the first
18 thing that happened?

19 A. We went on the side of the building and that's when
20 he told me to perform oral sex on him.

21 Q. And did you follow his request?

22 A. I did.

23 Q. Approximately how long did you have to perform oral
24 sex?

25 A. Maybe like a minute or so. It wasn't that long.

1 Q. And during the time that you performed oral sex on
2 him, do you recall if he ejaculated?

3 A. No.

4 Q. What made you stop performing oral sex on him?

5 A. He told me to stop and I didn't feel comfortable
6 where we were at anyway so he told me to stand up, he pulled
7 up his pants and we walked further behind the building.

8 Q. When you say you didn't feel comfortable where you
9 were, what do you mean by that?

10 A. For one, I didn't feel comfortable with anything
11 that I was doing but we were out in the open anyway. As far
12 as I remember there was - you could see pretty much where we
13 were at so I don't - I don't know if he took that into mind or
14 I don't know what.

15 Q. So I might have misheard you. Did you say he was
16 uncomfortable or you were uncomfortable?

17 A. I was uncomfortable.

18 Q. So at that point were you able to do as he was
19 asking you with the oral sex?

20 A. Yes.

21 Q. And he's the one that made you stop?

22 A. Yes.

23 Q. And after he pulled his pants up, then what
24 happened?

25 A. We walked further behind the building.

1 Q. Did he tell you to go further behind the building?

2 How did you get further behind the building?

3 A. He told me to walk with him behind the building.

4 Q. Was the gun still in his possession at that time?

5 A. I'm not sure. I didn't see the gun.

6 Q. Once you walked further back behind the building,
7 then what happened?

8 A. We walked up some stairs onto a platform. He told
9 me to turn off my phone and put everything on the table. At
10 the time I had had my phone and keys. I put that on the
11 table. He took off his jacket and he laid it down on the
12 platform and that's when the sexual assault occurred.

13 Q. When he laid his jacket down on the platform, did he
14 tell you anything? Did he make you do anything?

15 A. Once I laid down, he told me to pull down my pants
16 so I pulled down my pants.

17 Q. So you're the one that pulled down your pants?

18 A. (Witness nodding head.)

19 Q. Once you pulled your pants down, did you take them
20 all the way off?

21 A. No. They were halfway.

22 Q. What did he do?

23 A. He then took off his jacket and his shirt and then
24 he had on another red shirt. He pulled that behind his neck
25 and he pulled his pants down and then once my legs were back,

1 that's when he was on top of me and he inserted.

2 Q. And prior to him climbing on top of you, did you see
3 if he used a condom?

4 A. No. No.

5 Q. You didn't see or you don't know?

6 A. I didn't see.

7 Q. Okay. Approximately how long would you say that the
8 sexual encounter occurred?

9 A. About 20 minutes.

10 Q. And do you know if he ejaculated during that time?

11 A. I did not know.

12 Q. At any point in time during this sexual assault did
13 you try to fight him, push him away or struggle with him in
14 any way?

15 A. No. I did not.

16 Q. Did you attempt to injure him or push him off of you
17 or do anything that would cause injury to him?

18 A. No.

19 Q. Did he do anything that would have caused injury to
20 you?

21 A. That I know of, no.

22 Q. Did he say anything to you during the sexual
23 assault?

24 A. No.

25 Q. Once the sexual assault was over what happened?

1 A. Uhm, he stood up and put on his clothes and I pulled
2 up my pants and afterwards he told me to walk in the other
3 direction which was towards, back towards Broughton Street and
4 he told me that if I were to ever look back, he would shoot
5 me.

6 Q. And did you do as he said?

7 A. I did.

8 Q. Ms. Montgomery, I believe that you stated that you
9 were in bed earlier and you elected to take a walk. Do you
10 remember what clothes you were wearing that night?

11 A. I do. I had on from top to bottom my SC State hat,
12 I had on an SC State, a red SC State pullover. I had on a
13 black shirt and a sweater underneath and a tan shirt and then
14 I had on my black leggings and some jeans.

15 Q. I'm going to show you what has been marked as
16 State's Exhibit number 5. Before you pull anything out, look
17 in this bag and tell me if you recognize those items?

18 A. (Witness nodding head.)

19 Q. What are those items?

20 A. My clothes.

21 Q. Are these the clothes you were wearing the night the
22 incident occurred?

23 A. Yes.

24 MS. CORNWELL: Your Honor, at this time the State
25 moves State's Exhibit 5 into evidence.

1 THE COURT: Any objection?

2 MR. HUTTO: No, Your Honor.

3 THE COURT: All right. It's in.

4 MS. CORNWELL: May I publish to the jury, Your
5 Honor?

6 THE COURT: Yes.

7 BY MS. CORNWELL:

8 Q. Ms. Montgomery, just kind of explain to the jury
9 what each of these items are.

10 A. Those are my leggings that I was wearing underneath
11 my jeans. Those are my jeans. That's my hat. That's the bra
12 I was wearing. That's my shirt. And that's my sweater and
13 that is my pullover that I was wearing on top.

14 Q. Okay. When the sexual assault occurred, other than
15 pulling down your pants, were any other clothes taken off?

16 A. No.

17 Q. Were you wearing underwear on this night?

18 A. I was.

19 Q. I'll get to that in a little bit. Do you recall
20 what color the underwear was?

21 A. I don't.

22 Q. So after he told you to walk in the other direction
23 and not turn around or he would shoot you, what happened?

24 A. I ran towards -- Well, I went towards that direction
25 passing Captain D's, I cut through a few streets heading back

1 towards the apartment and as soon as I got upstairs in the
2 apartment I told my sister and my boyfriend at the time what
3 happened.

4 Q. One other thing I wanted to show you. I'm going to
5 show you what's previously been mark as State's Exhibit 4 and
6 3. Look at these two photographs and see if you recognize
7 them.

8 A. I do.

9 Q. What are those two photographs of?

10 A. This is where the sexual assault occurred.

11 Q. Are those true and accurate representations of where
12 it occurred?

13 A. Yes.

14 Q. Is there anything different in these photographs
15 from when the sexual assault occurred?

16 A. On the platform there used to be a table there.
17 There is no longer a table.

18 MS. CORNWELL: Your Honor, at this time the State
19 would move State's Exhibit 3 and 4 into evidence.

20 THE COURT: Any objection?

21 MR. HUTTO: No, Your Honor.

22 THE COURT: All right. They're in.

23 BY MS. CORNWELL:

24 Q. In looking at State's Exhibit 3, can you kind of
25 tell the jury what this area is and where you walked down?

1 A. This is where I was performing the oral sex. We
2 walked up the stairs here. This is where the sexual assault
3 occurred on the platform.

4 Q. So when you first starting back the sexual assault,
5 the oral sex occurred there?

6 A. Yes.

7 Q. That's where you say you were uncomfortable because
8 you were out in the open?

9 A. Right.

10 Q. At any time did anybody walk by or were there any
11 witnesses that saw what was happening?

12 A. No.

13 Q. At any time during this sexual assault did you cry
14 out or scream out?

15 A. No.

16 Q. And then in looking at State's Exhibit 4 can you
17 please tell the jury what this is and what happened here?

18 A. This is where I walked up the steps. Like I say,
19 there was a table right here and this is on top of this
20 platform is where the sexual assault occurred.

21 Q. You indicated that you ran back to your apartment
22 and you told your sister and your boyfriend what happened.
23 What did you tell them happened?

24 A. That I was raped at gun point.

25 Q. When you told your sister and your boyfriend, what

1 did they do?

2 A. My boyfriend, he ran outside of the apartment and my
3 sister she was there to comfort me. She told me to call my
4 dad.

5 Q. Did you call your father?

6 A. I did.

7 Q. Did you tell him what happened?

8 A. I did. He told me to call 911.

9 Q. Did you do that?

10 A. I did.

11 Q. When you called 911, what happened?

12 A. Uhm, they sent EMS to come and then two officers
13 came to ask me about the incident and I told them that he did
14 use the cell phone so they took my cell phone from me.

15 Q. Let me ask you this: When you ran back home and you
16 told your sister and your boyfriend and you said you called
17 your father first and then you called 911?

18 A. I did.

19 Q. Why didn't you immediately call 911 first?

20 A. I didn't know what to do at that point.

21 Q. And --

22 A. I figured that my father would be the one to take me
23 to the hospital not even thinking clearly.

24 Q. And when law enforcement arrived, where did you meet
25 law enforcement?

1 A. Down in the lobby of the apartment.

2 Q. Was anybody waiting with you in the lobby when the
3 police came?

4 A. My sister.

5 Q. Where was your boyfriend at the time?

6 A. He had been outside the apartment. I know I did see
7 him come back because I did have my daughter upstairs so he
8 went back upstairs.

9 Q. And you told the officers what happened to you.
10 Were you able to give them a description of the person?

11 A. Yes.

12 Q. Going back, when you encountered this defendant on
13 the street, had you ever met him before?

14 A. No.

15 Q. Did you know who he was?

16 A. No.

17 Q. Seen him around the neighborhood or anything?

18 A. No.

19 Q. So when law enforcement asked you about the
20 incident, were you able to tell them who did this to you?

21 A. No.

22 Q. You indicated that you gave law enforcement your
23 cell phone. Why was that?

24 A. Because he made a call on my phone.

25 Q. And while you were there did law enforcement look

1 into the phone to see where the phone call was made?

2 A. They did.

3 Q. After you spoke with law enforcement, did EMS
4 arrive?

5 A. Yes.

6 Q. And what happened then?

7 A. Uhm, I rode to the hospital by myself.

8 Q. Once you got to the hospital, were you immediately
9 taken back to an exam room or did you have to wait in the
10 waiting room?

11 A. I had to wait in the waiting room. I had to wait.

12 Q. Did anybody else come to the hospital to be with you
13 while you were in the waiting room?

14 A. My father and my stepmother.

15 Q. Were any other law enforcement officers, any law
16 enforcement officers there with you?

17 A. Yes.

18 Q. Do you remember which law enforcement officers they
19 were?

20 A. I know a female and a male officer that came.

21 Q. And after you were in the waiting room, were you
22 taken back to be examined?

23 A. Yes.

24 Q. And did you have to give that nurse that examined
25 you any information about what happened to you?

1 A. Uhm, yes. She did ask what happened and then right
2 after we did the kit.

3 Q. Did anyone go back to the exam room with you when
4 you met with this nurse?

5 A. The female officer.

6 Q. Did your father or stepmother go back with you?

7 A. No.

8 Q. When you told the nurse what happened, did she kind
9 of explain to you what the process was with the sexual assault
10 examination kit and what she would have to do?

11 A. Yes.

12 Q. After she explained everything she would have to go
13 through, everything she would have to do to you, did you give
14 her consent to perform the sexual assault examination kit?

15 A. Yes.

16 Q. Can you kind of walk the jury through what you had
17 to do for that sexual assault kit to be taken?

18 A. I had to stand on a paper and remove all of my
19 clothing. After that I was laid on a table. I had to put my
20 feet in stirrups with my legs open and they had to do a mouth
21 and a vaginal swab and that was pretty much what happened.

22 Q. And while all this was happening was it just you and
23 one nurse in the room or were there other people in the
24 room?

25 A. Just me and the nurse.

1 Q. Once the exam was over and the nurse collected the
2 evidence from you, what happened?

3 A. My father brought me some clothes from home. I
4 immediately changed into those clothes and I had to wait to be
5 discharged. Once I was discharged, I went home.

6 Q. Did you have to take any medications or anything?
7 Did they give you anything?

8 A. Not that I remember.

9 Q. You say your father brought you clothes up there.
10 Is that because the clothes that you were in were taken by law
11 enforcement that night?

12 A. Yes.

13 Q. And that would include your underwear?

14 A. Yes.

15 Q. To your knowledge after all this happened was law
16 enforcement able to identify any suspects in the days
17 following this incident?

18 A. No.

19 Q. When was the next time you were contacted about this
20 case?

21 A. September 2017.

22 Q. So two years and nine months later?

23 A. Yes.

24 Q. And when you were contacted by law enforcement, what
25 were you told?

1 A. That a new - a new detective was assigned to the
2 case and that they would be reopening the cold case.

3 Q. And what did they ask you to do?

4 A. To come meet with them here in Orangeburg.

5 Q. Did they tell you anything else about why they were
6 reopening the case or why you were going to meet law
7 enforcement officers that day?

8 A. Not that I know of.

9 Q. Did you agree to come and meet law enforcement that
10 day?

11 A. I did.

12 Q. When you met with law enforcement, what did they ask
13 you or what did they tell you?

14 A. They were telling me again that the case was being
15 reopened and that they wanted me to pick, through a photo
16 lineup pick a possible suspect.

17 Q. And when they talked to you about picking a possible
18 suspect in the photo lineup, did you indicate to them that you
19 thought that you would be able to identify the person even
20 though it had been so long?

21 A. Yes.

22 Q. How were you certain that you would be able to
23 identify him?

24 A. At the moment I was pretty certain.

25 Q. I'm going to show you what's been previously marked

1 as State's Exhibits 1a and 1b. Do you recognize those?

2 A. Yes.

3 Q. Do you recognize 1b as well?

4 A. Mm-hmm.

5 Q. Are these the true and accurate copies of what you
6 were shown that day --

7 A. Yes.

8 Q. -- when you met with law enforcement?

9 A. Yes.

10 MS. CORNWELL: Your Honor, at this time the State
11 would move State's 1a and 1b into evidence.

12 THE COURT: Any objections?

13 MR. HUTTO: No, Your Honor.

14 THE COURT: All right. They're in.

15 BY MS. CORNWELL:

16 Q. When you came in and met with law enforcement in
17 September of 2017, did they give you a form and did you fill
18 out that form?

19 A. Yes.

20 Q. And did they advise you of why you were there at the
21 time for the photo lineup?

22 A. Yes. To pick a possible suspect for the case.

23 Q. Before showing you the lineup, did they ask you how
24 confident you were that you would be able to identify the
25 person?

1 A. Yes.

2 Q. How confident were you that you would be able to
3 from identify the person at that time?

4 A. From a scale around about 8.

5 Q. When they showed you the photo lineup, were you able
6 to identify the person who sexually assaulted you?

7 A. Immediately.

8 Q. What did you do when you saw him in the photo
9 lineup?

10 A. I circled his picture and initialed.

11 Q. Is that where you circled and initialed the photo
12 lineup?

13 A. Yes.

14 Q. And did you indicate to the investigators that that
15 was who raped you?

16 A. Yes.

17 Q. After you circled the photo and initialed it, did
18 they show this paper again and have you fill out the second
19 part?

20 A. Yes.

21 Q. And did they ask you how confident you were after
22 seeing the photo lineup that that was the person that did
23 this?

24 A. Yes.

25 Q. How confident were you?

1 A. Very confident.

2 Q. Is that your signature?

3 A. Yes.

4 Q. So two years and nine months later you were able to
5 positively pick out the person who sexually assaulted you in
6 this lineup?

7 A. Yes.

8 Q. After you did the photo lineup, did you have another
9 occasion to meet with law enforcement?

10 A. I did.

11 Q. About how long was that? How long after the photo
12 lineup was that?

13 A. About a week.

14 Q. And during that meeting with them, what did y'all
15 do?

16 A. I showed them the direction that I took and took
17 them to the location of where the sexual assault occurred.

18 Q. Did you tell Investigator Bravo and Jenkins what
19 happened to you back in January of 2015?

20 A. Yes.

21 Q. And I know some time had passed since the time of
22 the incident. Were you able to still recall the details of
23 that night?

24 A. Yes.

25 Q. You indicated that you, that the sexual assault

1 occurred on Broughton Street before you got to Captain D's.

2 Do you know the exact address or location?

3 A. No. I did not.

4 Q. But you were able to give officers a description of
5 the area?

6 A. Yes.

7 Q. And is that when the officers took those photographs
8 of where the sexual assault occurred?

9 A. Yes.

10 Q. After meeting with those officers, did they inform
11 you that they arrested somebody in this case?

12 A. I haven't heard from them.

13 Q. Do you recall meeting with my office on this case?

14 A. Yes.

15 Q. And when was the first time you were contacted by my
16 office about meeting on this case?

17 A. Uhm, toward the end of I want to say last year 2018.
18 At that time I was in Valdosta. That's the first time I heard
19 from Tammy Craven.

20 Q. When she contacted you, what did she inform you?

21 A. Uhm, I'm not exactly sure word-for-word but that at
22 that time they did have him, I believe, in custody for
23 something else prior.

24 Q. Okay. Did she advise you that you were going to
25 have to come to testify at trial.

1 A. Yes.

2 Q. Did you agree to come and testify at trial?

3 A. I did.

4 Q. We didn't have to send law enforcement or anything
5 to come and get you?

6 A. No.

7 Q. When you met with my office, were you also able to
8 tell my office about what happened that night?

9 A. Yes.

10 Q. Have the details of that night changed at all from
11 the time you first talked to officers in September 2017 to
12 2018 when we met in my office?

13 A. No. They haven't.

14 Q. Ms. Montgomery, do you see the man who pulled a gun
15 and force you to perform oral sex and vaginally raped you here
16 in this courtroom today?

17 A. I do.

18 Q. Can you point him out to the jury please.

19 A. Right there (indicating.)

20 Q. Can you tell the jury what he's wearing?

21 A. White shirt and tie.

22 MS. CORNWELL: Your Honor, let the record reflect
23 that the victim has identified the defendant as the
24 person that sexually assaulted her.

25 THE COURT: Yes, ma'am.

1 MS. CORNWELL: That's all. Please answer any
2 questions defense counsel may have.

3 THE COURT: Cross examination.

4 MR. HUTTO: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. HUTTO:

7 Q. Hello, Ms. Montgomery. I'm sorry to meet you under
8 these circumstances and I'm sorry to be here asking you these
9 questions but I need to get some clarity from you on what
10 happened that night, all right?

11 A. That's fine.

12 Q. Okay. At the time this happened you said you lived
13 in Landmark Towers, correct?

14 A. Yes.

15 Q. We're not far from that at all in this courthouse,
16 are we?

17 A. Right.

18 Q. How long did you live there?

19 A. At that time I just moved in there in June so about
20 six, seven months.

21 Q. How long had you been in Orangeburg at that point?

22 A. Uhm, from November so close at that time about a
23 year total.

24 Q. Before you lived in Landmark, did you live close to
25 downtown then as well?

1 A. Close to downtown. Yes.

2 Q. Were you pretty familiar with some of the landmarks
3 that you have pointed out when the Solicitor asked you to talk
4 about the route that you walked that night?

5 A. Some of them. Not all of them.

6 Q. Okay. Let's go back to, I want to ask you about the
7 various members of law enforcement that you met throughout the
8 course of this investigation. So the morning of January 6th,
9 2015 do you remember meeting Corporal Still and Lieutenant
10 Robinson in your apartment?

11 A. Yes.

12 Q. Do you remember talking with them?

13 A. Yes.

14 Q. You were totally sober when you had that
15 conversation? This was fresh in your mind?

16 A. Yes.

17 Q. Okay. Do you remember telling them exactly what
18 happened?

19 A. I do.

20 Q. Okay. Did you notice them taking notes when you
21 were talking to them?

22 A. Yes.

23 Q. Okay. And you said you gave a description of Tyquin
24 that night to the officers?

25 A. Right.

1 Q. Okay. And then the next people you talked to about
2 this weren't actually law enforcement officers because
3 you went to the hospital, right?

4 A. (Witness nodding head.)

5 Q. Is that a yes?

6 A. Yes.

7 Q. And you spoke to a couple nurses there; is that
8 right?

9 A. Yes.

10 Q. There were actually two sets of nurses. There were
11 the ones who did things like take your blood pressure and then
12 there was another set who actually did the kit where they took
13 your clothes and things like that; is that right?

14 A. Right.

15 Q. Okay. And during those conversations you were
16 totally sober and this is fresh in your mind?

17 A. Yes.

18 Q. Okay. So you remember what you told them? Or you
19 remember speaking with them?

20 A. Yes.

21 Q. Okay. And at that point do you remember actually
22 writing a statement on forms with those nurses?

23 A. I do.

24 Q. Okay. And do you remember those nurses taking notes
25 about what you were telling them?

1 A. I don't.

2 Q. All right. But you told them exactly what
3 happened?

4 A. Yes.

5 Q. Okay. And you mentioned meeting a woman officer.
6 Could that be Detective Walker?

7 A. I believe so.

8 Q. Okay. Did you meet her that night or you met her
9 the next day? When did you meet her?

10 A. At the hospital I believe.

11 Q. Do you remember speaking with her?

12 A. Yes.

13 Q. Did you ever give her a written statement?

14 A. I don't recall.

15 Q. Do you remember ever giving her a video interview or
16 being on a body camera?

17 A. No.

18 Q. All right. But you told Detective Walker exactly
19 what happened?

20 A. Yes.

21 Q. And she was taking notes at that time, too?

22 A. Yes.

23 Q. You were in a clear state of mind as well when you
24 talked to her? This all happened one, two, three?

25 A. Yes.

1 Q. Okay. So you didn't talk with anybody in law
2 enforcement for two years and nine months after that, right?

3 A. Correct.

4 Q. Did you ever call to see what was going on with your
5 case?

6 A. Uhm, no. I thought the case just went cold so I
7 didn't.

8 Q. But in September of 2017 you get a phone call, is
9 that right, from a new detective?

10 A. Yes.

11 Q. And it's your understanding that's Detective Bravo
12 who is right here?

13 A. Yes.

14 Q. Okay. Do you remember that call pretty well?

15 A. I do.

16 Q. Did she ever tell you a name or any identifying
17 information during that call?

18 A. No. She did not.

19 Q. Okay. And you were supposed to come and look at a
20 photo lineup on September 14th, 2017? Does that sound
21 right?

22 A. Yes.

23 Q. You actually ended up coming on the next day, the
24 15th; is that correct?

25 A. (Witness nodding head.)

1 Q. Okay.

2 A. Correct.

3 Q. And they later ask you to come back for Tyquin's
4 bond hearing, right?

5 A. Yes.

6 Q. That's when you went down to the Municipal
7 Courthouse on Middleton, correct?

8 A. Yes.

9 Q. And that same day that you came for the bond hearing
10 is when you talked with Detective Bravo again?

11 A. Yes.

12 Q. So so far you have talked with Officer Still and
13 Robinson in your apartment, you've spoken with the nurses at
14 the hospital, you've talked with Detective Walker, and you
15 have spoken with Detective Bravo and Lieutenant Jenkins, that
16 was the male officer; is that right?

17 A. Yes.

18 Q. And you are again here speaking about this today?

19 A. Yes.

20 Q. Okay. The day of the bond hearing you went down the
21 route from your old apartment at Landmark to this area of
22 Broughton Street; is that right?

23 A. Correct.

24 Q. Okay. Do you mind if I ask you to look at this map
25 again for reference?

1 A. That's fine.

2 Q. Okay. This is the same orientation that you just
3 went through with the Solicitor, right, with Landmark Towers
4 right here?

5 A. Yes.

6 Q. Okay. Uhm, so, uhm, when you were with Detective
7 Bravo, did y'all walk or drive this route?

8 A. We drove.

9 Q. Okay. So did you start out in this parking lot over
10 here? It's the Landmark Towers. Where did you start?

11 A. In the front.

12 Q. So on Russell Street?

13 A. Yes.

14 Q. Okay. And you came down Russell Street towards
15 Broughton. This is a big church that's right there on the
16 square, right?

17 A. Yes.

18 Q. And this is the main downtown square in Orangeburg,
19 right?

20 A. Right.

21 Q. Down here is Broughton Street where you say you
22 turned left, right?

23 A. Yes.

24 Q. This big parking lot down here, that's the DPU
25 parking lot. Were you familiar with that at the time?

1 A. No.

2 Q. Okay. Did you often walk this area of Russell
3 between Landmark Towers and Broughton Street?

4 A. No.

5 Q. When you drove, do you remember passing past this
6 square?

7 A. Yes.

8 Q. Did you note the public safety owned cameras that
9 are on a light post right here on this square?

10 A. I did not.

11 Q. Do you remember passing the Bluebird Theater down
12 further on Russell?

13 A. I believe so.

14 Q. Did you note the public safety operated cameras in
15 front of the Bluebird Theater on Russell?

16 A. No. I did not.

17 Q. I kind of want to walk people through what's right
18 here on Broughton. Tell me if you remember this. If you take
19 a left, there are some businesses that are open on the left
20 and Covington Credit is on your right. Does that sound
21 familiar?

22 A. Yes.

23 Q. And if you go past a few more of these businesses
24 right here, there's a music store. There's a little barber
25 shop. And I believe you pointed out this building before as

1 the Salvation Army; is that right?

2 A. Correct.

3 Q. Okay. Do you know what this building it right
4 here?

5 A. I do not.

6 Q. Was that an event venue when you were here in
7 Orangeburg in 2015?

8 A. I do not recall. I'm not sure.

9 Q. This parking lot was here when you were here in
10 2015; is that right?

11 A. I do not recall that.

12 Q. Be that as it may, Market Street is on the left and
13 there's a little furniture store right before you get in front
14 of that. Does that sound familiar?

15 A. Yes.

16 Q. And across Market Street this building is the Times
17 and Democrat, right?

18 A. Yes.

19 Q. And right here is where Captain D's is?

20 A. Right.

21 Q. Okay. I wanted that to be clear for the jury. So
22 you were familiar with several of those landmarks at the
23 time?

24 A. Yes.

25 Q. Now, when you went down to the Salvation Army

1 loading dock, you were there with Detective Bravo and
2 Lieutenant Jenkins; is that right?

3 A. Yes.

4 Q. Did you witness them taking pictures at that time?

5 A. I did.

6 Q. Okay. Did you get out of the car and look around
7 that area too?

8 A. Yes.

9 Q. Okay. And when were they asking you to recount the
10 events? Was it afterward, before or while you were going
11 through the process?

12 A. While we were going through the process.

13 Q. Okay. That was the first time that any law
14 enforcement had ever asked you to show them where this
15 happened, right?

16 A. Correct.

17 Q. That was about two years and nine months later just
18 to be clear?

19 A. Yes.

20 Q. If you had continued up Broughton, you would have
21 hit John C. Calhoun which is a major street in Orangeburg,
22 right?

23 A. Right.

24 Q. Okay. When you drove with them from Broughton
25 Street down to behind that Salvation Army, do you remember if

1 you went through a parking lot or if you went down Fisher
2 Street or do you recall?

3 A. I don't recall a parking lot.

4 Q. Were you making an effort to take them the exact
5 route that you walked on that night?

6 A. Yes.

7 Q. Okay. So it sounds like you believe you went down
8 Fisher Street on that night?

9 A. Possibly. I can't - I don't recall.

10 Q. I'll show you the map again. So this is Broughton
11 Street. This is the parking lot. And this is Fisher Street.
12 Somehow you got behind this building. So do you recall
13 whether you guided them through this parking lot or whether
14 you went down Fisher Street and then took a right on Oliver
15 Street?

16 A. I believe we went down Fisher Street and took them
17 around.

18 Q. While I have got this up, while you were in this
19 space, the Salvation Army parking lot, do you recall observing
20 this area, the DPU parking lot?

21 A. I do not.

22 Q. So when they take you back out to the Salvation Army
23 loading dock, do you tell them that you're a hundred percent
24 certain that that's where this happened?

25 A. Yes.

1 Q. And from there you go to Tyquin's bond hearing?

2 A. Correct.

3 Q. All right. So now that we have talked about some of
4 the landmarks and some of the people you met, let's rewind
5 back all the way through all those conversations that you had
6 with people. You told me you gave a report to Corporal Still
7 in your apartment, right?

8 A. Yes.

9 Q. Do you remember telling him that you had an argument
10 with your boyfriend and you had to go for a walk?

11 A. Yes.

12 Q. Do you remember telling him that you were assaulted
13 behind 1005 Broughton Street?

14 A. No. I do not.

15 Q. Do you know where he got that address from?

16 A. No.

17 Q. Do you realize that's a completely different place
18 than the Salvation Army loading dock?

19 A. I do not know that.

20 Q. Whatever you told him should be in his notes and in
21 his report, correct?

22 A. Correct.

23 Q. Now, when you went to the hospital, you told the
24 nurses that took your blood pressure and things like that that
25 you were attacked while you were walking home from work. Do

1 you remember doing that?

2 A. No. I do not.

3 Q. Okay. But you did say that you recall them taking
4 notes or no?

5 A. As far as the nurses?

6 Q. The nurses that were interacting with you getting
7 your vitals, taking your blood pressure, whatever it may be,
8 do you remember them taking notes about what you were telling
9 them?

10 A. I do not recall that.

11 Q. All right. Now, the nurses who took your clothing
12 and asked you more about the assault, you told them you were
13 taking a walk, right?

14 A. Yes.

15 Q. Okay. And this time you have the opportunity to
16 write down what you're telling them?

17 A. Correct.

18 Q. Do you remember writing down that this happened at a
19 hair salon building?

20 A. No. I do not.

21 Q. If I showed you your handwriting, would you be able
22 to identify it?

23 A. Yes.

24 Q. Is this your statement to the nurses that night?

25 A. Yes.

1 Q. Okay. Is this your handwriting where you write hair
2 salon building?

3 A. No. This is not my handwriting.

4 Q. So are they transcribing what you're telling them?

5 A. Yes.

6 Q. Do you know where they got hair salon building
7 from?

8 A. I do not.

9 Q. You don't dispute that that's what they wrote
10 however?

11 A. Correct.

12 Q. The next person you talk to is Detective Walker,
13 right?

14 A. Right.

15 Q. And you actually tell her this happened behind
16 Captain D's; is that right?

17 A. That's incorrect.

18 Q. That's incorrect? Do you know why she would have
19 written that if you didn't tell her that?

20 A. I told her near Captain D's not behind it.

21 Q. You never told her behind Captain D's?

22 A. Not that I remember.

23 Q. And you didn't tell her a hair salon?

24 A. No.

25 Q. And did you tell her 1005 Broughton Street?

1 A. No.

2 Q. Okay. So what did you tell her?

3 A. That it happened -- I know I was on the street of
4 Captain D's but as far as the hair salon and 1005 I didn't
5 know the address.

6 Q. And you don't know where they got that from?

7 A. I do not.

8 Q. Do you know if they ever went out to any of those
9 places to look for any kind of evidence?

10 A. I do not.

11 Q. Did they ever tell you that they were going to do
12 that?

13 A. They told me.

14 Q. They told you they were going to?

15 A. They were going to check up on everything.

16 Q. Did they ever tell you that they went out there and
17 found a pallet or a table?

18 A. No. No one told me anything.

19 Q. Okay. So years later when they ask you to go out
20 with them, you never mentioned anything to them about Captain
21 D's or a hair salon or anything like that?

22 A. Right.

23 Q. You just take them to the Salvation Army loading
24 dock and you say this is where it happened, right?

25 A. Yes.

1 Q. And you don't tell them that it was when you were
2 walking home from work?

3 A. Right.

4 Q. And you don't tell them you were out because you had
5 a fight with your boyfriend, right?

6 A. Right.

7 Q. You tell them that you couldn't sleep so you go out
8 for a walk at 1:00 a.m.?

9 A. Right.

10 Q. Now, after all that, and again I'm sorry to be
11 asking these questions, but let's talk about what happened
12 when you encounter these men on the street. You said you saw
13 two men that night?

14 A. Correct.

15 Q. You saw two men that night, right?

16 A. Correct.

17 Q. And the second guy who you claim is not Mr. Jenkins,
18 he just rode away on his bike?

19 A. Correct.

20 Q. Why when you spoke with Corporal Still did you spend
21 so much time describing him to the police? Do you recall
22 doing that?

23 A. The guy on the bike?

24 Q. Yes.

25 A. I do not recall that.

1 Q. Do you recall telling them that he had on a gray
2 jacket, he was tall, he had short dreads, and that he was on a
3 bike?

4 A. I do not remember that. I just remember -- I do
5 remember saying that he had on the gray sweater and he was on
6 the bike.

7 Q. So you did describe him?

8 A. Right.

9 Q. But you didn't describe the person who actually
10 attacked you?

11 A. I did.

12 Q. Okay. You told them he was tall or short or fat or
13 skinny? What did you tell them?

14 A. This was when we were at the apartments. That's
15 when they asked me to describe him and I was able to describe
16 him, what he was wearing, what he had on and what he looked
17 like.

18 Q. So you told them all that in your apartments?

19 A. Right.

20 Q. And they were taking notes?

21 A. Right.

22 Q. So you would expect that to be in their report about
23 this incident?

24 A. Correct.

25 Q. Okay. Now we have talked about a few businesses

1 that are right there. Actually I think you pointed a few out
2 to the Solicitor. There's a Captain D's and the T and D right
3 there, isn't there?

4 A. Yes.

5 Q. When you have ever been there, have you ever noticed
6 there's video cameras right there?

7 A. No.

8 Q. If we were to look at video cameras from that night,
9 would we actually see you getting in a car, not being escorted
10 down the street?

11 A. That night?

12 Q. That night.

13 A. No.

14 Q. Now, you say one of these two men was Tyquin and
15 that he came up to you, right?

16 A. Correct.

17 Q. Now, you told Corporal Still that he wanted to be
18 able to light his cigarette, correct?

19 A. Correct.

20 Q. And you told that same thing to Detective Walker?

21 A. Correct.

22 Q. All right. Now, when you came back to talk with
23 police three years later, how is it that you have a whole new
24 or maybe not new, how is it that you have a whole extra set of
25 details?

1 A. What extra set of details?

2 Q. Well, did you know that's the first time that they
3 ever recorded you saying anything about somebody's birthday?

4 A. I do not.

5 Q. So you say you told them that before?

6 A. I have.

7 Q. Okay. Don't know why it's not in their report from
8 2015?

9 A. I do not.

10 Q. Just the first time that anybody heard you say
11 anything about somebody's grandmother?

12 A. That shouldn't have been.

13 Q. But it's not because they told you anything about
14 Tyquin before his bond hearing, right?

15 A. Correct.

16 Q. Okay. Now, when we look at this map again, you
17 mention an alley, right?

18 A. Correct.

19 Q. Okay. Which buildings is this alley between?

20 A. There is no alley. I don't recall anyone telling
21 any of the officers about an alley. I told them behind a
22 building so where alley came from I do not know.

23 Q. Okay. You said you never told any officers about an
24 alley. Is that your testimony to the Court today?

25 A. Yes.

1 Q. All right. Let's talk about this phone. You had a
2 phone with you that night?

3 A. I did.

4 Q. Okay. What happened exactly with your phone between
5 when you were at your apartment to when this gun was presented
6 to you?

7 A. I stated before I was on the phone with my sister
8 talking the entire time. Uhm, before I ran into the
9 defendant, I was still on my phone. He did ask to use my
10 phone so I did hang up and I gave him the phone to use.

11 Q. Okay. You said you left your apartment around
12 twelve, 12:30 that night?

13 A. Yes.

14 Q. So you would expect on your phone that there's
15 evidence that you were on a call with your sister between
16 12:30 and 12:45, 12:15?

17 A. Around that time. Yes. Early.

18 Q. So somewhere before 1:00 you were on the phone with
19 your sister?

20 A. Yes.

21 Q. And somebody you don't know comes up to you on the
22 street at 12:30 in the morning and asks for your phone and you
23 give it to him?

24 A. To let him use it. Yes.

25 Q. Okay. And how long did that person have your

1 phone?

2 A. Maybe about five minutes at the most. Not long.

3 Q. You said he made a phone call?

4 A. Did he make a -- The defendant. Yes.

5 Q. Okay. So he was pressing on the phone like you
6 would to make a phone call?

7 A. That's what it seemed like.

8 Q. Okay. Should his fingerprints be on that phone?

9 A. Possibly.

10 Q. Okay. You're not confident about that one way or
11 the other?

12 A. He did use my phone so they should have been on
13 there.

14 Q. Okay. You said that you talked with him for about
15 10 minutes?

16 A. About that long.

17 Q. Okay. What all did you talk about?

18 A. Like I said, he just asked me for a light. I didn't
19 have. He told me that - he asked me about my information as
20 far as my name and if I smoked or drink or not and then like I
21 said, I was on my phone with my sister at this time, too, so
22 then I know after he asked me, well, he told me about his
23 birthday, it was a party going on that his grandma was holding
24 for him. I declined that. And then afterwards he asked to
25 use my phone. Then after that I hung up and let him use my

1 phone.

2 Q. Do you recall talking with Corporal Still about what
3 happened with your phone that night?

4 A. I do.

5 Q. Do you know how it would be that the person who came
6 up and used your phone would know your phone number?

7 A. No.

8 Q. You reported to Corporal Still that the number
9 dialed in your phone ended with 2672, right?

10 A. I believe so.

11 Q. Okay. Isn't that your phone number?

12 A. That I remember, no.

13 Q. All right. So for the sake of brevity, you don't
14 remember your phone number from that time?

15 A. From that time no.

16 Q. Okay. And after all this just with the phone
17 quickly, did he let you have your phone back?

18 A. Did they let me have my phone back?

19 Q. When you left wherever it was that you left from to
20 go home, you had your phone?

21 A. Yes.

22 Q. Okay. This person, they could have smashed it.
23 They could have stole it. They could have taken the SIM card
24 out. He just gave you your phone back?

25 A. No.

1 Q. How did you get it back?

2 A. I never received my phone back.

3 Q. Okay. When you say you never received it back, you
4 mean you never received it back from the police?

5 A. Correct.

6 Q. But you did receive it back from your alleged
7 attacker?

8 A. Yes. At that time. Yes.

9 Q. Okay. So that person could have smashed it or stole
10 it or taken the SIM card?

11 A. Right.

12 Q. He just gave it back to you?

13 A. Correct.

14 Q. You mentioned to the Solicitor that there's lights
15 everywhere on Russell Street and Broughton Street; is that
16 right?

17 A. Yes. Street lights.

18 Q. Okay. Do you remember how bright or dark it was
19 when you go behind any of those buildings there, the Salvation
20 Army, any of that?

21 A. I know when we walked along the side, it was pretty
22 dark. Around the back it was pretty dark but there was still
23 street lights.

24 Q. Do you remember walking past any motion detectors?

25 A. That I know of no.

1 Q. So no lights flashed on back there when you were
2 walking past them?

3 A. No, sir.

4 Q. How long was the walk from Broughton Street to
5 behind the building?

6 A. Maybe a minute. Less than that.

7 Q. Okay. You get to the loading dock. How bright is
8 it there?

9 A. Uhm, there was a street light behind the loading
10 dock but other than that.

11 Q. What about the DPU parking lot? That isn't lit up
12 at night?

13 A. I believe so.

14 Q. Okay. That's right there, isn't it?

15 A. Right.

16 Q. I mean, 20 or 30 street lamps?

17 A. Right.

18 Q. So was it bright or dark? What was it like light
19 wise?

20 A. We were up on the dock so it was pretty dark under
21 there but there were street lights so I was able to see
22 clearly.

23 Q. Did you notice any motion detector lights on that
24 loading dock?

25 A. I did not.

1 Q. Okay. None came on when you went up there?

2 A. No.

3 Q. All right. When you talked with Corporal Still, you
4 were able to tell him what your alleged attacker was wearing,
5 right?

6 A. Right.

7 Q. You told him a black jacket, red, gray and white
8 shirt and another red shirt, right?

9 A. Right.

10 Q. So with these clothes when you went behind the
11 building you say he took off his jacket?

12 A. When we went behind the building up the stairs,
13 yes.

14 Q. Where did he put it?

15 A. On the ground.

16 Q. Okay. He put it on the ground. What happened with
17 his striped shirt, he put that on the ground, too?

18 A. Yes.

19 Q. Then he took off his undershirt. That was another
20 red shirt?

21 A. Yes. A red shirt.

22 Q. And put it around his neck?

23 A. Yes.

24 Q. Now, you said it was about 35 degrees that night?

25 A. Right.

1 Q. And it's your understanding the prosecution agrees
2 with that that it was 35 degrees?

3 A. Correct.

4 Q. Does it strike you as odd that somebody would take
5 off their jacket and their shirt and their undershirt in 35
6 degree weather?

7 A. I mean, it's -- I don't...

8 Q. All right. Now, the night that you told them about
9 those clothes, you didn't actually say that he put them on the
10 ground, right?

11 A. I told them that. Yes.

12 Q. Are you sure you didn't say that he put them on a
13 pallet?

14 A. I told them he put it on the ground. I don't know
15 if they misinterpreted that as a pallet but I do remember
16 telling them that it was on the ground.

17 Q. Okay. Do you remember going back in 2017 and
18 telling them that he put his clothes on a table?

19 A. I don't recall that.

20 Q. Was the reason that it changed from the ground or a
21 pallet to a table because you went out to the Salvation Army
22 loading dock for the first time and you saw that there wasn't
23 a pallet there but that there was a table there so you
24 incorporated that into your story?

25 A. No.

1 Q. All right. I want to show you one more photo that
2 was taken my understanding is by Detective Bravo.

3 MR. HUTTO: I apologize. It's not premarked. I
4 thought it was a State's Exhibit.

5 (Whereupon, Defense Exhibit #24 marked for
6 identification.)

7 BY MR. HUTTO:

8 Q. Do you recognize this photo similarly to the ones
9 that you recognized earlier?

10 A. Yes.

11 Q. Does this look like one of the photos that was taken
12 when you went out there in September 2017?

13 A. Yes.

14 Q. In this photo there is a table right there?

15 A. Correct.

16 MR. HUTTO: Your Honor, may I publish this to the
17 jury?

18 THE COURT: Do you want to move it into evidence
19 first?

20 MR. HUTTO: I'm sorry. I apologize. Your Honor, we
21 would move this into evidence.

22 MS. CORNWELL: No objection.

23 MR. HUTTO: It's actually defense 24.

24 THE COURT: All right, sir. It's in.

25 MR. HUTTO: Move to publish to the jury.

1 THE COURT: Yes, sir.

2 BY MR. HUTTO:

3 Q. Is that the first time you have ever seen that
4 table?

5 A. Yes.

6 Q. Okay. Do you remember mentioning in 2017 to
7 Detective Bravo that this alleged attack with a jacket and a
8 shirt had occurred on top of a table?

9 A. I don't recall that.

10 Q. Okay. But you were with Detective Bravo at that
11 loading dock?

12 A. Yes.

13 Q. When you were out there in 2017, did you notice that
14 there are security cameras on that loading dock?

15 A. I did not.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 3 and 4. Particularly in exhibit 4 this is a closer
18 view of the two pictures. This is a close up view?

19 A. Yes.

20 Q. Do you see this security camera right here?

21 A. I do.

22 Q. Do you see, it may be hard to tell in this photo, do
23 you see another security camera up here?

24 A. I don't.

25 Q. Okay. Do you see this light right here?

1 A. I do.

2 Q. I apologize. We may be able to get a better version
3 of these photographs. Do you see this light here as well?

4 A. Yes.

5 Q. Is this a motion detecting light?

6 A. I'm not sure if it's a motion detector. It probably
7 is.

8 Q. Okay. So you agree that at least from what you can
9 tell from this photograph there is what is likely a motion
10 detecting light and at least one security camera in this
11 photo?

12 A. Correct.

13 Q. Is it fair to say that you never saw any footage
14 from any of those cameras, right?

15 A. Correct.

16 Q. Is the reason that you never saw any security camera
17 footage was that it was never gathered?

18 A. It's possible.

19 Q. If it had been gathered, do you think it would have
20 shown you there or would you have never been on that camera?

21 MS. CORNWELL: Object to the speculation.

22 THE COURT: I'll allow it on cross examination if
23 she knows.

24 BY MR. HUTTO:

25 Q. Do you think you would have been on that camera?

1 A. At that date possibly.

2 Q. Okay. It wouldn't have been that you were never at
3 that loading dock?

4 A. I was there.

5 Q. Okay. I have only got a couple more questions for
6 you. Again, I'm sorry to be here asking you this. But is the
7 reason that your story changed between 1005 Broughton Street
8 and a hair salon and Captain D's and now the Salvation Army
9 because on that date in 2017 is the first time that you had
10 ever been to that Salvation Army loading dock?

11 A. No.

12 Q. And is the reason that you can't get these places
13 correct or why you were walking around correct because you
14 actually had consensual sex with Tyquin in his car?

15 A. That is incorrect.

16 MR. HUTTO: That is not correct. All right. No
17 further questions.

18 THE COURT: Any redirect?

19 MS. CORNWELL: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q. Ms. Montgomery, you said that prior to this incident
23 you had lived in Orangeburg for about a year?

24 A. Yes.

25 Q. And that was in 2015?

1 A. Yes.

2 Q. And you now live in Valdosta, Georgia?

3 A. Correct.

4 Q. So would it be reasonable that in 2015 when you were
5 talking to officers you were more aware of your surroundings
6 from that incident night?

7 A. Correct.

8 Q. And we talked about a hair salon and stuff. Are you
9 aware in this area on Broughton Street that there are two hair
10 salons across the street from the Salvation Army?

11 A. I was.

12 Q. And when you were telling officers where this
13 happened, were you attempting to give landmarks because you
14 did not know the exact location at that time?

15 A. Yes. They did ask me for surrounding landmarks and
16 I did tell them that.

17 Q. And in that surrounding area, let me point out the
18 Salvation Army, but you're aware that Captain D's is also
19 there, there are hair salons there?

20 A. Yes.

21 Q. And while you were describing this to the officers
22 you were speaking with, they're with the Department of Public
23 Safety?

24 A. Yes.

25 Q. So they would be very familiar with that area,

1 correct?

2 A. Yes. Should be. Yes.

3 Q. So as you're describing the area do you believe that
4 they could have been making their own reference to their
5 landmarks?

6 A. Yes.

7 Q. The same with the nurses?

8 A. Yes.

9 Q. We talked about a table. In looking at State's 3
10 and 4 you indicated that when this assault occurred, that this
11 picture doesn't look like it because there was a table up?

12 A. Yes. There was a table right here.

13 Q. And that table was sitting right there?

14 A. Yes.

15 Q. So you had to explain to the officers when they were
16 taking the picture?

17 A. Yes.

18 Q. At any time in your conversations with Officer
19 Still, Investigator Walker or Detective Bravo, did you ever
20 tell any of them that this sexual assault occurred anywhere
21 but on that platform?

22 A. No.

23 Q. And you would agree those photographs were taken in
24 2017 and not in 2015 when this incident occurred?

25 A. Correct.

1 MS. CORNWELL: That's all the questions I have, Your
2 Honor. Thank you.

3 THE COURT: You may step down, Ms. Montgomery.
4 Thank you. Ladies and gentlemen of the jury, it's about
5 3:10. It might be a good chance for us to take a brief
6 afternoon recess, stretch your legs for a second. Please
7 go to your jury room and we will be right back with you
8 in say five to 10 minutes. Please remember my previous
9 instructions not to discuss this case with anyone.

10 (Whereupon, the jury entered the jury room at 3:10
11 p.m.)

12 (Short break.)

13 THE COURT: Everyone ready to proceed?

14 MS. CORNWELL: Yes, Your Honor.

15 THE COURT: Mr. Hutto?

16 MR. HUTTO: Ready. Yes.

17 THE COURT: Let's have our jury please.

18 (Whereupon, the jury entered the courtroom at 3:20
19 p.m.)

20 THE COURT: Solicitor, you may call your next
21 witness.

22 MS. CORNWELL: Thank you, Your Honor. The State
23 calls Taylor Montgomery.

24 Thereupon,

25 TAYLOR MONTGOMERY

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,
3 state your full name for the record.

4 THE WITNESS: My name is Taylor Montgomery.

5 THE COURT: Your witness.

6 MS. CORNWELL: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q. Ms. Montgomery, how old are you?

10 A. I'm 23.

11 Q. Where do you currently live?

12 A. Uhm, Orangeburg, 94th Street.

13 Q. Who lives there with you?

14 A. My boyfriend.

15 Q. Where were you living in January of 2015?

16 A. With my sister in the Towers.

17 Q. Is that the Landmark Towers Apartments?

18 A. Yes.

19 Q. And who is your sister that you were living with at
20 that time?

21 A. Tori Montgomery.

22 Q. Was there anybody else living with you in that
23 apartment in January of 2015?

24 A. Yes.

25 Q. Who else was living with you?

1 A. Her boyfriend Dakeis Pride.

2 Q. Were there any children?

3 A. Yes. Her daughter.

4 Q. What's her daughter's name?

5 A. Trinity.

6 Q. About how old was Trinity at this time?

7 A. She was an infant. I think probably like five to
8 seven months old maybe.

9 Q. Okay. Looking back on January 6th, 2015, do you
10 recall an incident occurring with your sister that evening?

11 A. Yes.

12 Q. Can you tell the jury what you remember from that
13 night?

14 A. Uhm, I remember she had a fight with her boyfriend
15 and normally what she does when she gets upset, she goes for a
16 walk and I'm not sure where she was walking or anything. I
17 just know that I guess on her way back she gave me a call and
18 during that call she was sounding kind of afraid, uhm, but
19 calm at the same time. She was speaking kind of low to me and
20 saying that she feels like she was being followed and I guess
21 she was speaking to someone, uhm, because when I was speaking
22 with her, uhm, it sounded like she was saying something to
23 somebody else. So I just remember her, you know, repeating
24 over and over again "I'm trying to get home to my daughter.
25 I'm trying to get home to my daughter." And I guess at some

1 point the line went dead so I tried calling her back and it
2 only rang a couple times and then I called her a couple more
3 times and it went straight to voice mail.

4 Q. What do you recall happening after that, after you
5 couldn't reach her on the phone?

6 A. I just remember thinking what should I do. I wasn't
7 sure but like about half an hour had passed when she walked
8 through the door and she was crying and I remember her telling
9 me that she had been raped at gunpoint.

10 Q. And about what time of day was this?

11 A. It was around twelve midnight I would say.

12 Q. You say when she came into the apartment, she was
13 crying?

14 A. Yes.

15 Q. And she indicated that she had been raped at
16 gunpoint?

17 A. Yes.

18 Q. Did she tell you where this happened?

19 A. She told me it was in the area where Captain D's
20 was.

21 Q. And was anybody else in the apartment when she told
22 you this?

23 A. Yes. Her boyfriend.

24 Q. What did her boyfriend do when she said something?

25 A. He immediately heard what she said and left the

1 apartment. I'm guessing, I'm thinking to search for him.

2 Q. And what did you and Tori do?

3 A. Uhm, she notified me that she called the police and
4 also spoke with my dad and his wife now deceased but they were
5 going to go and meet with her at the hospital and the police
6 and the ambulance had came to, you know, do what they had to
7 do so they could take her to the hospital and get what they
8 needed to get from her.

9 Q. And when the police came to the apartment complex,
10 where were you?

11 A. I was downstairs with her.

12 Q. So where did y'all meet with the police?

13 A. Uhm, we were downstairs in the lobby area.

14 Q. Okay. And was Mr. Pride with y'all in the lobby
15 area meeting with law enforcement?

16 A. Yes. But he also had to go back upstairs to tend to
17 his daughter.

18 Q. And while you were standing down with Ms. Montgomery
19 while she was talking to police, what was her demeanor like?

20 A. She seemed very like scared and like just distraught
21 honestly.

22 Q. Did you see, was she able to give law enforcement
23 any of her property or any evidence to assist them?

24 A. She gave them her phone and I'm not sure what else
25 she gave them.

1 Q. Did you happen to go to the hospital with your
2 sister?

3 A. No.

4 Q. Do you know if any of your other family members were
5 there?

6 A. My dad and his wife.

7 Q. And after law enforcement came to the apartments and
8 she went to the hospital, did you do anything else with law
9 enforcement or anything else involving this incident?

10 A. I don't really remember. I think I did speak with
11 them about what happened or what she had told me. Yeah.
12 That's about it.

13 Q. Did you ever write a statement or give any sort of
14 video interview or anything?

15 A. Not that I remember.

16 MS. CORNWELL: Thank you. Your Honor, that's all
17 the questions I have.

18 THE COURT: Cross examination.

19 MR. HUTTO: Yes.

20 CROSS EXAMINATION

21 BY MR. HUTTO:

22 Q. You said that you recall this being around midnight
23 when you were talking with her. Is that when you talked with
24 her before she left the apartment or when you talked with her
25 on the way back home?

1 A. No. That had to be like a little after probably
2 like one when I talked with her on the phone.

3 Q. Okay. Where did midnight come from? What happened
4 then?

5 A. She left around that time when she was upset.

6 Q. So she left around 12:00 from the apartment?

7 A. Mm-hmm.

8 Q. Okay. I would like to show you a map if I could.
9 Does this area look familiar to you? Let me give you a little
10 reference point. This is Landmark Towers. This is Russell
11 Street. You can see some of the street names here. Is this a
12 familiar area to you?

13 A. Mm-hmm.

14 Q. Okay. So down here in the base of Landmark Towers
15 that's where there is that little community police station; is
16 that right?

17 A. I'm not sure.

18 Q. Okay. Was that there at the time?

19 A. I wouldn't know. I just moved down here so I don't
20 really know the area like that besides that strip right
21 there.

22 Q. So you know this area pretty well, is that what
23 you're referring to?

24 A. No.

25 Q. What area do you know well, just up here?

1 A. Yes. Basically.

2 Q. Do you know where Broughton Street is?

3 A. No. But it sounds familiar.

4 Q. Okay. Do you know where Captain D's is?

5 A. Yes.

6 Q. If I told you that this building was Captain D's,
7 that would mean that Captain D's was on Broughton, right?

8 A. I guess so. Yeah.

9 Q. All right. How many blocks is that from Landmark
10 Towers? And feel free to reference this map.

11 A. Not very far.

12 Q. Okay. So to walk from Landmark Towers down to
13 Broughton Street --

14 A. Mm-hmm.

15 Q. -- how long do you think that would take?

16 A. I would say about 10 minutes because I have walked
17 it before so...

18 Q. Okay. Now, on this phone call you said that the
19 line went dead.

20 A. Yes.

21 Q. Did your sister tell you that she was hanging up the
22 phone?

23 A. No. She just hung it up.

24 Q. Okay. Now, when she got back to the apartment, can
25 you describe -- I'm sorry. You have to tell me how to

1 pronounce Dakeis?

2 A. Dakeis.

3 Q. Can you describe Dakeis' demeanor?

4 A. Seemed like he was kind of angry when hearing about
5 it. Yeah.

6 Q. Okay. When he left, how long did it take him to get
7 back?

8 A. Probably like 15 minutes, if anything.

9 Q. Okay. It's your understanding that he didn't find
10 anything wherever he went looking?

11 A. Mm-hmm.

12 Q. Okay. You say the officers met you in the lobby of
13 your apartment?

14 A. Yes.

15 Q. So they never came up to your actual apartment
16 suite?

17 A. No.

18 Q. Okay. Did you ever hear any follow up from law
19 enforcement after that night?

20 A. Uhm, probably sometime around in I'll say 2017 I'm
21 guessing.

22 Q. Is that the same time that you believe they called
23 your sister?

24 A. Mm-hmm.

25 Q. Okay. So you talk with them the early morning of

1 January 6th, 2015; is that right?

2 A. No.

3 Q. Okay. The day that this happened was that -- The
4 day that you talked with police in the lobby of your building,
5 that was January 6th, 2015, wasn't it?

6 A. Yes.

7 Q. So you talked with them that day?

8 A. Mm-hmm.

9 Q. And they never followed up with you for three
10 years?

11 A. Not that I know of because that's her case, not
12 mine.

13 MR. HUTTO: No further questions.

14 THE COURT: Any redirect?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: You may step down, ma'am. Thank you.
17 You may call your next witness.

18 MS. CORNWELL: Thank you, Your Honor. The State
19 would call Dakeis Pride.

20 Thereupon,

21 DAKEIS PRIDE

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. Once you're seated,
24 state your full name for the record spelling your last
25 name.

1 THE WITNESS: My name is Dakeis Pride, P-r-i-d-e.

2 THE COURT: Your witness.

3 DIRECT EXAMINATION

4 BY MS. CORNWELL:

5 Q. For the purpose of the court reporter can you also
6 spell your first name?

7 A. D-a-k-e-i-s.

8 Q. Mr. Pride, how old are you?

9 A. 28.

10 Q. Where do you currently live?

11 A. In Cross, South Carolina.

12 Q. Who lives there with you now?

13 A. Me and my fiancée.

14 Q. Where were you living back in January of 2015?

15 A. In the Towers right there by Roaslias.

16 Q. Is that Landmark Towers Apartments?

17 A. Yes, ma'am.

18 Q. Who were you living with in January 2015?

19 A. It was me, Tori Montgomery and Taylor Montgomery.

20 Q. And who is Tori Montgomery to you?

21 A. That's my child's mother.

22 Q. And y'all were together back in 2015?

23 A. Yes, ma'am.

24 Q. Had you had a child by that time in January?

25 A. Yes, ma'am.

1 Q. Was that child also living with y'all?

2 A. Yes, ma'am.

3 Q. Do you recall an incident with Tori Montgomery on
4 January 6th of 2015?

5 A. Yes, ma'am.

6 Q. Can you tell please the jury what you remember from
7 that night?

8 A. What I remember is I got woken up after I would say,
9 I can't remember exactly what time the situation happened but
10 I got woken up. Taylor was letting me know that Tori was mad
11 at me because she had came home from work and my phone was
12 dead and she was trying to get in contact with me so she came
13 to the house. When she got to the house or whatever, me and
14 her, you know, talked and she left the house to go cool off
15 from the conversation that we had and in the midst of all that
16 I guess that's when I guess the situation happened, you know.
17 She came back to the house saying that she got raped.

18 Q. When she came back to the house, where were you at
19 that time?

20 A. In the bed.

21 Q. And so did she wake you up?

22 A. Yeah.

23 Q. And what was her demeanor? What was she like when
24 she woke you up?

25 A. She was frantic, like steady crying. When I was

1 actually trying to talk to her, she couldn't really talk like,
2 you know, so...

3 Q. She was able to tell you something of what happened
4 to her?

5 A. Yeah.

6 Q. And what did she say happened to her?

7 A. She said while she was on her way back home she ran
8 into some, a dude or whatever and I guess he end up asking to
9 use her phone or whatever and she was trying to walk away and
10 that's when I guess the situation happened.

11 Q. When you keep saying the situation, I know it's
12 awkward to say or talk about. Can you explain what you mean
13 by this situation?

14 A. The rape.

15 Q. The rape. And was she able to kind of tell you
16 where the rape happened?

17 A. Kind of. With me not being so familiar with the
18 area like that like when she was describing it I was trying to
19 picture, you know, she told me like a location and I remember
20 walking past it before. You know what I mean? So I kind of.

21 Q. When she came in and woke you up and told you what
22 happened, what did you do when she told you what happened?

23 A. Actually I went out to actually see where she was
24 talking about that the situation happened.

25 Q. When you walked out, were you able to see anyone or

1 see anything?

2 A. No.

3 Q. When you walked out, were you, what was your feeling
4 when you walked out? What were you doing when you were
5 walking out?

6 A. Trying to actually see like, I know, you know, with
7 it being the temperature that it was, you know, I was seeing
8 like exactly where it would actually happen, you know, knowing
9 that we don't stay too far away, you know, from the area that
10 she, that the rape happened but with the whole situation going
11 down and me trying to recollect what's really going on that's
12 when I went out.

13 Q. And then when you got back to the apartments, was
14 law enforcement already there or had they arrived yet?

15 A. No.

16 Q. What did you do when you got back to the apartment
17 complex?

18 A. Had her call 911. She actually called her dad and
19 stepmom at the time and they came basically at the same time
20 as the medics and everybody.

21 Q. And were you down there with her when she talked to
22 law enforcement?

23 A. No. I had the child.

24 Q. So you had gone back up to the apartment by that
25 time. And did you end up going to the hospital with her?

1 A. No.

2 Q. Is there a reason you didn't go to the hospital with
3 her?

4 A. Because I was taking care of my child.

5 Q. After she was taken to the hospital, did you have
6 any more contact with law enforcement and telling them about
7 what she told you that night?

8 A. Yes.

9 Q. When was that?

10 A. I don't remember the exact time.

11 Q. Would it have been around September of 2017?

12 A. Yes.

13 Q. And did you give the same information to officers
14 then that you gave the night of the incident?

15 A. Yes.

16 Q. Is that the same information that you have given us
17 here today?

18 A. Yes, ma'am.

19 Q. Are you and Ms. Montgomery still together?

20 A. No, ma'am.

21 MS. CORNWELL: That's all the questions I have, Your
22 Honor.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. HUTTO:

1 Q. Hello. You say you left your apartment that
2 night?

3 A. Yes.

4 Q. Do you remember around what time that was?

5 A. I don't recall.

6 Q. Okay. You had been asleep then, right?

7 A. Yes.

8 Q. How long had you been asleep for?

9 A. From the time that she was calling me, from then
10 until, you know, after me and her had the little altercation,
11 I laid back down so I end up going back to sleep.

12 Q. You said you never went back to sleep?

13 A. I did went back to sleep.

14 Q. Okay. When you say you had that altercation, do you
15 remember what time that was?

16 A. No.

17 Q. Okay. Do you recall telling officers back in 2015
18 that Ms. Montgomery woke you up when she came back into the
19 apartment?

20 A. Yeah.

21 Q. What did you mean by that?

22 A. As in I was asleep and she woke me up. I mean...

23 Q. Did she come tap you on the shoulder and say wake up
24 or did you get a phone call?

25 A. My phone was dead so that's the main reason why she

1 left and to cool off because me and her had an altercation
2 about that.

3 Q. Okay. After she got back, you said you left the
4 apartment; is that right?

5 A. Yes.

6 Q. Where did you go?

7 A. In the same direction as what I was told that she
8 was at.

9 Q. Okay. Thinking back four years ago, do you remember
10 where that was?

11 A. I'm not from around here.

12 Q. Did you go down towards the colleges or did you go
13 down towards Captain D's or towards the Rose Gardens?

14 A. I think it was like Captain D's area.

15 Q. Is that the landmark that she cited to you?

16 A. That was the area that I took, you know, I mean, and
17 in the list of where she said that she was at I was going
18 somewhere in that area.

19 Q. Okay. Did you see anyone out there?

20 A. No.

21 Q. When you were just talking to the Solicitor, you
22 said with it being the temperature that it was, what made you
23 think about that?

24 A. It was cold.

25 Q. It was really cold, wasn't it?

1 A. Yeah.

2 Q. How did you have to dress when you went out that
3 night?

4 A. I put on something warm.

5 Q. All right. You said that in your conversation with
6 the Solicitor just now that you asked yourself what's really
7 going on. What did you ask yourself about what was really
8 going on?

9 A. Can you repeat that?

10 Q. You just told the Solicitor that you thought to
11 yourself what's really going on. Why did you ask yourself
12 that question?

13 A. I mean, getting woken up to a situation that you
14 don't know nothing about. You know what I mean? Like that's
15 how I was woken up with her being frantic.

16 Q. Okay. How long do you think you stayed out there
17 and looked for somebody?

18 A. It wasn't that long. I mean, it was cold. Once I
19 didn't see nobody, I came back.

20 Q. Okay. Do you remember what time you got back to the
21 apartment?

22 A. No. My phone was dead.

23 MR. HUTTO: Nothing further for this witness, Your
24 Honor.

25 THE COURT: Any redirect?

1 MS. CORNWELL: No, Your Honor.

2 THE COURT: You may step down, sir. Thank you.

3 MS. CORNWELL: May this witness be excused?

4 THE COURT: Any objection?

5 MR. HUTTO: No objection to that, Your Honor.

6 THE COURT: You may call your next witness.

7 MS. CORNWELL: Your Honor, the State calls Corporal
8 Aiken Still.

9 Thereupon,

10 AIKEN STILL

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. Once you're seated,
13 state your name for the record.

14 THE WITNESS: Aiken Still.

15 THE COURT: Your witness.

16 MS. CORNWELL: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. CORNWELL:

19 Q. Officer Still, can you please tell the jury why
20 you're here today and a little bit about your background in
21 law enforcement?

22 A. Yes. I was the responding officer. I was with
23 Orangeburg Public Safety from 2013 until 2017 and now I'm with
24 Lexington County Sheriff's Department.

25 Q. And so were you working with Orangeburg Department

1 of Public Safety on January 6th, 2015?

2 A. I was.

3 Q. During that time did Orangeburg Public Safety have
4 body cameras for officers to wear while they were on duty?

5 A. Not that I can recall.

6 Q. Do you recall being dispatched to Landmark Towers
7 Apartments in the early morning hours of that day?

8 A. I do.

9 Q. What were you dispatched there in reference to?

10 A. A sexual assault.

11 Q. Do you recall approximately what time you were
12 dispatched?

13 A. 2:05 a.m.

14 Q. When you arrived at the apartments, what do you
15 recall?

16 A. I made contact with the victim. She gave me her
17 statement. Said that someone sexually assaulted her at
18 gunpoint.

19 Q. Was she able to tell you where the sexual assault
20 took place?

21 A. She said it was behind the business on Broughton
22 Street at 1005 Broughton Street.

23 Q. Did she give you exactly the address of 1005 or was
24 that just kind of the area where she described?

25 A. No. She described the area and I think she said

1 Fisher Street and we narrowed it down to that location.

2 Q. You said you have been with public safety during
3 that time from 2013 to 2017?

4 A. That's correct.

5 Q. Were you familiar with that area where this incident
6 occurred?

7 A. I was.

8 Q. While you were speaking with her, were you taking
9 notes?

10 A. I was.

11 Q. When you take notes as an officer, are you able to
12 write down verbatim what everybody says?

13 A. No. I'm not.

14 Q. So you're trying to take notes as they're talking?

15 A. That's correct.

16 Q. When you were speaking to the victim, was she able
17 to tell you when the assault occurred?

18 A. She told me about 30 minutes before my arrival.

19 Q. And we're talking about the area of Broughton
20 Street. What county is that in?

21 A. In Orangeburg.

22 Q. Was she able to give you a description of the person
23 that sexually assaulted her?

24 A. She gave me a clothing description. Can I refer to
25 my notes?

1 Q. Yes, if you have that.

2 A. This is the report. I do not have a description of
3 the male. I don't remember her giving me a description of the
4 male.

5 Q. Was she able to give you a description of the
6 clothes that he was wearing?

7 A. Yes.

8 Q. And based on that information were you able to give
9 that information out to look for a suspect?

10 A. Yes.

11 Q. Did she also describe to you the gun that was
12 used?

13 A. She did.

14 Q. And she was able to give you a description of that
15 gun?

16 A. She did. She said it was a small black gun with a
17 wooden handle.

18 Q. And when she was describing the sexual assault to
19 you and where it occurred, did she indicate how she got to the
20 location where the sexual assault occurred?

21 A. Yes. She said she went from walking on the sidewalk
22 to behind the business at gunpoint.

23 Q. And did she tell you once she went behind the
24 building were they had to go for her to, where she was
25 sexually assaulted?

1 A. She said there were some stairs behind the building
2 that they went to.

3 Q. And they had to go up the steps?

4 A. Up the steps and I believe he laid down a pallet.

5 Q. While you were speaking with her did she also give
6 you any indication of any evidence that may have been useful
7 in identifying this person?

8 A. Her cell phone.

9 Q. Was she able to give you the identity of the
10 suspect?

11 A. I'm sorry. No.

12 Q. Did not know who it was?

13 A. Did not.

14 Q. But you say she gave you her cell phone?

15 A. That's correct.

16 Q. Do you recall why she gave you her cell phone?

17 A. She stated that the male took her phone to call a
18 telephone number on it and we collected the phone for maybe
19 physical evidence and for the evidence of the phone number.

20 Q. I'll show you what's been marked as State's Exhibit
21 2. Look in here and see if you recognize what it is.

22 A. I recognize it as the cell phone.

23 Q. That's the phone you took into custody that night?

24 A. Yes, ma'am.

25 MS. CORNWELL: Your Honor, at this time the State

1 moves State's Exhibit 2 into evidence.

2 THE COURT: Any objection?

3 MR. HUTTO: No, Your Honor.

4 THE COURT: It's in.

5 BY MS. CORNWELL:

6 Q. This is the cell phone that you took from her that
7 night?

8 A. That is correct.

9 Q. When she gave you the phone, were you able to look
10 at the call log and see the phone call she was referencing?

11 A. I'm not sure if I recall looking at the call log in
12 and got it or she gave me the phone number. I believe that I
13 looked at the call log. I wrote it down in my report the
14 phone number.

15 Q. After you were able to get the description and
16 information from her and the details of the incident, what did
17 you do?

18 A. We notified officers in the area to be on the look
19 out, we called EMS for transportation to the hospital and also
20 called Investigator Walker.

21 Q. Did EMS come to the apartments?

22 A. They did.

23 Q. And did you go to the hospital along with the
24 victim?

25 A. I followed the victim. Followed the ambulance.

1 Q. And when you got to the hospital, was anybody else
2 at the hospital?

3 A. Investigator Walker.

4 Q. And what did you do once you got to the hospital?

5 A. Uhm, I really didn't have an action in the hospital.
6 I turned everything over to Investigator Walker at that
7 time.

8 Q. After you left the hospital, what did you do?

9 A. I went back to the area which she described which I
10 believe to be 1005 Broughton Street and went behind the
11 building to see if I could find any physical evidence there.

12 Q. Were you able to find any physical evidence?

13 A. I was not.

14 Q. Were you able to locate any suspects that met the
15 description?

16 A. No.

17 Q. While you were looking in that area, were you able
18 to notice if there were any cameras or surveillance video in
19 2015 that would be helpful?

20 A. I don't recall any. No.

21 Q. If you would have seen video cameras in that area in
22 2015, would that have been noted?

23 A. I feel sure.

24 Q. After you went through the area and was unable to
25 locate any physical evidence or suspects, what did you do?

1 A. I turned the phone into evidence and went back to
2 patrol.

3 Q. And once you were able to turn the phone into
4 evidence, did you have any further involvement in this case?

5 A. I did not.

6 MS. CORNWELL: That's all I have. Please answer any
7 questions defense counsel may have.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MR. HUTTO:

11 Q. Corporal, are you still a Corporal?

12 A. FTO.

13 Q. FTO. Sorry. You recall speaking with Ms.
14 Montgomery that night?

15 A. That's correct.

16 Q. And during that time you were taking notes as best
17 you could?

18 A. The best I could. Yes.

19 Q. Now, you attended the Criminal Justice Academy
20 before you were employed by Orangeburg; is that right?

21 A. We are employed and then we go to the Criminal
22 Justice Academy.

23 Q. Prior to this night, you had already attended the
24 Criminal Justice Academy?

25 A. That's correct.

1 Q. At the Criminal Justice Academy you learn about
2 investigating crimes?

3 A. That's correct.

4 Q. And you learn about taking notations about what you
5 learn in the course of your investigations?

6 A. That's correct.

7 Q. You learn the importance of creating a fair and
8 accurate report about what you find?

9 A. That's correct.

10 Q. And actually when you have been answering the
11 Solicitor's questions, you have been using your notes in your
12 report from that night, correct?

13 A. My report. Yes.

14 Q. Okay. You're confident in your ability to record
15 all those things correctly and properly?

16 A. I am.

17 Q. Okay. So on that night you actually got a
18 description of two men; is that right?

19 A. That's correct.

20 Q. Okay. And one of the men allegedly was involved in
21 this assault and one was not; is that correct?

22 A. Correct.

23 Q. And Ms. Montgomery told you that the person who did
24 not assault her had on a gray jacket, he was a tall man with
25 short dreads; is that right?

1 A. I'm pretty sure.

2 Q. Well, feel free to reference your report.

3 A. Yes. I'm looking at it right now. Gray jacket,
4 tall, short dreads. That's correct.

5 Q. The only description that you received of the
6 assailant was of his clothes; is that right?

7 A. That's correct.

8 Q. So no tall versus fat. I'm sorry. Tall versus
9 short; is that right?

10 A. That's correct.

11 Q. No skinny versus fat?

12 A. That's correct.

13 Q. No facial hair?

14 A. That's correct.

15 Q. No hair style?

16 A. That is correct.

17 Q. Did you hear if he was black or white?

18 A. I don't have it in my report so I can't testify to
19 it because I do not remember that.

20 Q. So that night you didn't even know any of that
21 information?

22 A. It's not documented and I can't recall any
23 information that she gave me on that. No.

24 Q. Okay. Now, I want to ask you about some other
25 things that you did, information that you did get from her.

1 You were able to get a description of the clothing; is that
2 right?

3 A. That's correct.

4 Q. She told you that he had on a black jacket. He had
5 on a shirt on the outside that was red, white, gray and then
6 he had on a red undershirt; is that right?

7 A. That's right.

8 Q. In the course of talking to her about that
9 investigation she told you that he took off all three of those
10 articles of clothing, right?

11 A. Yes.

12 Q. And this allegedly occurred just outside?

13 A. Yes.

14 Q. Do you remember, it was freezing cold that night,
15 wasn't it?

16 A. I don't remember the temperature. No.

17 Q. Does it strike you as odd that somebody would take
18 all of their clothes from the belt or waist up?

19 A. I can't really testify to that. I mean...

20 Q. Okay. Now, do you remember writing down that there
21 was an old delivery truck near the incident? It's fine if you
22 don't.

23 A. No. No.

24 Q. Okay. Do you recall her telling you anything about
25 that?

1 A. No.

2 Q. Do you remember her telling you anything about an 18
3 wheeler?

4 A. No.

5 Q. Did you go out and look for any witnesses that
6 night?

7 A. We had other officers that went out and looked
8 around the area and stuff but I did not. No.

9 Q. You went out to 1005 Broughton Street? That's what
10 you said, right?

11 A. That's correct. And not only there but all of the
12 area behind the stores there.

13 Q. Okay.

14 A. I think it's Oliver Street.

15 Q. Sure. I'll get a map for your reference.

16 A. Mm-hmm.

17 Q. If I tell you that this is Landmark Towers and this
18 right here is Russell Street, is that area familiar to you?

19 A. Yes.

20 Q. This is Broughton Street right here.

21 A. Mm-hmm.

22 Q. You said when the Solicitor was asking you
23 questions, that Ms. Montgomery said that this happened behind
24 a building after you turn on Fisher Street?

25 A. I have 1005 in my report. At the time that I was

1 talking to her we were trying to narrow it down. I do
2 remember her saying something across from Captain D's which is
3 right there in that area.

4 Q. Just to help orient you, this is Broughton Street.
5 Does this appear to be T and D right here?

6 A. Yes.

7 Q. That would make this Captain D's?

8 A. That's correct.

9 Q. And then this building right here is 1005 Broughton
10 Street, isn't it?

11 A. Mm-hmm.

12 Q. The corner of Broughton and Fisher?

13 A. Yes.

14 Q. From your best understanding that's where she was
15 describing to you that's where this happened?

16 A. To my best understanding. Yes.

17 Q. This right here is the DPU parking lot, isn't it?

18 A. That's correct.

19 Q. Do you ever patrol this area late at night?

20 A. I have.

21 Q. This parking lot is lit up like a company that
22 doesn't have to pay for its electricity, isn't it?

23 A. I can't recall.

24 Q. You said you took the phone into evidence; is that
25 right?

1 A. That's correct.

2 Q. And you looked through the, you believe you may have
3 looked through the call log?

4 A. I don't know if I looked through it. I'm not going
5 to say that because I don't believe I looked through her call
6 log. I may have let her show me that but that's not something
7 that I would do.

8 Q. Nevertheless, you write in your report that the
9 attacker made a phone call to 803, I'll leave out the next
10 three digits for privacy reasons, but 803 digit digit digit
11 2672; is that right?

12 A. That's correct.

13 Q. There's no indication of how the attacker knew that
14 phone number?

15 A. I don't understand. Can you repeat that?

16 Q. Did you ever do an investigation as to who that
17 number belonged to?

18 A. Not that I can recall.

19 Q. Have you ever tried to call it?

20 A. Not that I can recall.

21 Q. Did anyone ever do any type of phone records
22 investigation to see who that number belonged to?

23 A. Not that I know of.

24 Q. Okay. So on that night when was the last time that
25 you saw Ms. Montgomery, as she was getting into an

1 ambulance?

2 A. At the hospital but I don't recall exactly where is
3 the last place I saw her.

4 Q. Okay. Do you recall Ms. Montgomery telling you that
5 when the attacker took off his clothes, he laid them down on a
6 pallet?

7 A. That's correct.

8 Q. The word pallet is a pretty specific word, isn't
9 it?

10 A. It is.

11 Q. Do you believe that she used that word?

12 A. I do.

13 Q. Okay. Did you go look for a pallet behind 1005
14 Broughton Street?

15 A. I did.

16 Q. And there wasn't one there?

17 A. I can't recall.

18 Q. Well, if you had found one, that would have been
19 pretty important, wouldn't it have been?

20 A. It would have been.

21 Q. You didn't take a pallet into evidence at 1005
22 Broughton Street?

23 A. I did not.

24 Q. And you went to you said the other businesses in
25 that area. Did you look behind Captain D's?

1 A. I don't believe I looked behind Captain D's. I
2 stayed mainly on the opposite side of the road.

3 Q. So the odd numbered side of Broughton; is that
4 right?

5 A. That's correct. Yes.

6 Q. And so you looked around some of the other
7 businesses on that side of the street?

8 A. That's correct.

9 Q. And you never found a pallet?

10 A. There's a lot of pallets back there. I didn't
11 notate anything in my report about pallets but just knowing
12 that area I know there's a lot of store items, pallets, milk
13 crates, all sorts of things.

14 Q. Is it that you didn't find one or there was too many
15 for you to count?

16 A. I'm not going to say there was too many to count. I
17 didn't count anything but I did not see any pallet that I went
18 back and notated on my report but I know from my just I can
19 recall I know there's pallets in that area.

20 Q. You just said it would be important to take one into
21 evidence but you didn't want to do that?

22 A. I didn't find one in the area that I took into
23 evidence or documented so I can't really testify to seeing a
24 pallet there.

25 Q. So on that night there was none that stuck out to

1 you but it's your testimony that they're all over the place
2 back there?

3 A. Not that I can recall. No.

4 Q. Did you ever do anything to go try and found
5 clothing fibers or bodily fluids or anything like that back
6 behind 1005 Broughton Street?

7 A. I went back there to look for clothing and things
8 like that.

9 Q. Did you find anything?

10 A. Did not.

11 Q. Did you ever use a black light back there to look
12 for body fluids?

13 A. I don't have access.

14 Q. Whose responsibility would that have been?

15 A. CSI.

16 Q. Who has the CSI unit?

17 A. At the time I don't remember. I think it was
18 Shultz.

19 Q. Did anybody tell you to stop investigating the crime
20 scene that night?

21 A. No.

22 Q. Okay. Do you know if any detective or any of your
23 supervisors or anybody like that ever went out to go look at
24 that area?

25 A. I do not.

1 Q. Okay. So after you took this initial statement,
2 that was it for you?

3 A. I took the initial statement, went to the hospital
4 briefly and then went and looked behind that building as I
5 have stated. That was it.

6 Q. Okay. Were you there when Ms. Montgomery's clothing
7 was taken into evidence?

8 A. I don't recall. That's normally done back in the
9 privacy of the hospital.

10 Q. Okay. Did you take any photos that night?

11 A. No. I did not. Not that I can recall. No.

12 Q. Were you there when anyone asked Ms. Montgomery for
13 a written statement?

14 A. I have in my report that she has provided a written
15 statement.

16 Q. Do you know who she provided a written statement
17 to?

18 A. I do not. I'm going to assume she did since it's in
19 my report.

20 Q. Do you think she provided a written statement to
21 you?

22 A. I have it in my report that she provided a written
23 statement so in that case I would assume that she gave it to
24 me.

25 Q. Okay. And that should be, would that be in evidence

1 or would that be in the case file? Whose responsibility is it
2 to have that written statement?

3 A. It's turned into, there's a basket at headquarters
4 that written statements are turned into.

5 Q. And you have never seen that again?

6 A. That's correct.

7 Q. Okay. Again, you patrolled that area in 2015?

8 A. That's correct.

9 Q. We talked about a couple businesses that are there.
10 Does Times and Democrat have security cameras or did it in
11 2015?

12 A. Not that I can recall. I don't know.

13 Q. What about Captain D's or the drive through
14 restaurant, did they have security cameras back in 2015?

15 A. I think they had them but when they actually had the
16 cameras I'm not sure.

17 Q. Okay. DPU, did you ever look there? They have
18 security cameras, don't they?

19 A. I did not look.

20 Q. But that parking lot is right there facing the
21 Salvation Army, isn't it?

22 A. The parking lot is across. Yes.

23 Q. Okay. I've just got one more set of cameras to ask
24 you about. The Department of Public Safety, Orangeburg's
25 Department of Public Safety owns security cameras downtown,

1 don't they?

2 A. I don't know. I don't know. I don't have that
3 information.

4 Q. Okay. You have never seen security cameras in the
5 square owned by public safety?

6 A. I know there's one on Russell Street but I don't
7 know who owns it and I don't know when it was installed.

8 Q. Okay. You don't recall when those were installed?

9 A. No.

10 Q. Okay. Do you recall a press release in 2012?

11 A. I do not.

12 Q. But you know that there are security cameras there
13 on Russell Street?

14 A. I can say I know there's one but it's right by the
15 square but I don't know when it was installed.

16 Q. Are you familiar with another set down by the
17 Bluebird Theater?

18 A. I am not.

19 Q. Did you do anything to check those cameras?

20 A. I did not. I didn't know of them.

21 Q. Okay. So back in 2015 when you last seen Ms.
22 Montgomery, the evidence that y'all had was your report, a
23 phone, clothing. Anything else?

24 A. Uhm, I think she went to see a SANE nurse.

25 Q. So a sample from Ms. Montgomery?

1 A. Mm-hmm.

2 Q. All right. Whose responsibility would it have been
3 to follow-up with her cell phone?

4 A. The investigator.

5 Q. So that would have been Investigator Walker's
6 responsibility?

7 A. If she was over the investigation but I don't know
8 who was over it.

9 Q. When you say whoever, it would be the lead
10 investigator's responsibility?

11 A. That's correct.

12 Q. Would it be their responsibility to follow-up on any
13 fingerprints?

14 A. I'm not involved in the investigation portion of it
15 but I would assume that whoever the lead investigator would be
16 would be responsible for following up on those things but like
17 I said, I wasn't in that department and how that department is
18 managed I can't really speak for.

19 Q. So we really need the lead investigator to ask some
20 of these questions to; is that right?

21 A. Yes.

22 Q. Okay. You didn't find a gun that night I take it?

23 A. No.

24 Q. Did you hear her say that -- You started out by
25 saying that you heard her say that somebody was out there on a

1 bicycle, right?

2 A. I don't know if that's how it started.

3 Q. When I started questioning you today you said that
4 there was somebody out there on a bicycle allegedly, right?

5 A. I don't know if I said that but there were two
6 people, one on a bicycle and one that was following closely
7 behind somebody on a bicycle, yes.

8 Q. Okay. Does a person on a bicycle at one or two in
9 the morning stand out as an odd person to you?

10 A. Really not in Orangeburg. No. Because this is a
11 college town.

12 Q. Was any effort made to locate that person?

13 A. We had officers in the area looking for I guess
14 anybody in that area.

15 Q. So they were just looking for anybody?

16 A. Yeah.

17 Q. Did it strike y'all that somebody who is out on a
18 bicycle at two a.m. right on Broughton Street might be there
19 the next night or the night after that?

20 A. That they might be there the next night?

21 Q. Did you make any effort on subsequent nights to go
22 find that person?

23 A. I did not investigate it.

24 Q. So that would have been again the investigator's
25 responsibility to go do that?

1 A. We patrol the area but like I said Orangeburg at
2 2:00 there's people walking, on bikes. It's kind of common.

3 Q. Do you remember when your next shift was?

4 A. Can you tell me what night this was?

5 Q. This was the morning, early morning of September
6 6th, 2015.

7 A. I don't remember what day it was.

8 Q. Tuesday.

9 A. Tuesday. It would have been Friday.

10 Q. So between Tuesday and Friday you were off? You
11 didn't do anything to follow up on this?

12 A. That's correct.

13 MR. HUTTO: No further questions.

14 THE COURT: Any redirect?

15 MS. CORNWELL: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. CORNWELL:

18 Q. Officer Still, we talked about your report writing
19 and you did a report in this case, correct?

20 A. That's correct.

21 Q. It's about a paragraph long report?

22 A. That's right, I guess.

23 Q. That report is based off of the notes that you were
24 taking when you met with the victim?

25 A. That's correct.

1 Q. I think we discussed this. When you're trying to
2 write down notes, you're taking them as fast as you can as an
3 incident is being told to you?

4 A. Yes.

5 Q. And is it possible that writing down in your notes
6 and transcribing those notes to a report that there may have
7 been details that you were told that did not make it into your
8 report?

9 A. That's correct.

10 Q. You agree this case happened four years ago?

11 A. That's correct.

12 Q. And approximately how many calls have you gone out
13 on in the last four years?

14 A. Thousands.

15 Q. So some of these questions that you were asked you
16 don't recall it wouldn't be necessarily because that
17 information wasn't given to you, that information just didn't
18 make it in your report?

19 A. That's correct.

20 Q. You were asked about a phone number that you wrote
21 down in regards to the number called on the victim's cell
22 phone?

23 A. Yes.

24 Q. Would you agree that the phone number that you have
25 in the paragraph of your report is also the phone number that

1 you put as the victim's daytime phone number?

2 A. It is.

3 Q. Could that have been in error in your report when
4 you were writing down phone numbers?

5 A. It could have been.

6 Q. But she did show you a phone number that she
7 indicated that the suspect attempted to call with her phone?

8 A. That's correct.

9 Q. And again, Officer Still, in doing reports and
10 taking notes would you ever claim to be a perfect officer that
11 gets everything perfectly right?

12 A. I wish I was.

13 MS. CORNWELL: That's all the question I have.

14 THE COURT: You may step down, sir. Thank you. You
15 may call your next witness.

16 MS. CORNWELL: Thank you, Your Honor. The State
17 could call Investigator Latisha Walker.

18 Thereupon,

19 LATISHA WALKER

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. Once you're seated,
22 state your full name for the record please.

23 THE WITNESS: Latisha Walker.

24 THE COURT: Your witness.

25 MS. CORNWELL: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. CORNWELL:

3 Q. Investigator Walker, can you please tell the jury
4 why you're here today and a little bit about your background
5 in law enforcement.

6 A. I'm here today in regards to a sexual assault
7 case.

8 Q. Were you the investigator in that case?

9 A. Yes. I was called out to respond to the hospital.

10 Q. Tell the jury a little bit about your experience in
11 law enforcement.

12 A. Well, currently I'm a lieutenant at the South
13 Carolina Law Enforcement Division. In June I will be in law
14 enforcement for 21 years most of them in an investigative
15 capacity.

16 Q. What agency were you working with on January 6th of
17 2015?

18 A. The Orangeburg Department of Public Safety.

19 Q. Do you recall being called out that night in regards
20 to a sexual assault?

21 A. I do.

22 Q. Where did you respond upon receiving that call?

23 A. To the medical TRMC.

24 Q. Once you arrived to TRMC, what did you do?

25 A. I met with the victim and the SANE nurse.

1 Q. Where was the victim when you first met with her?

2 A. In the examination room.

3 Q. All right. She had already been taken back to the
4 exam room?

5 A. Yes.

6 Q. And then were you able to speak with her at that
7 time and get some information about what happened that
8 night?

9 A. I got basic information from her. She was really
10 upset upon my arrival.

11 Q. And had you spoken to Officer Still prior to meeting
12 with her to get any information from him?

13 A. Yes.

14 Q. So when you met with the victim, was she able to
15 tell you what happened to her?

16 A. Yes.

17 Q. And what did she state?

18 A. She said that she was walking down Russell Street
19 and at some point therein she was approached by a male who
20 asked to use her phone. A gun was later pulled on her and she
21 was sexually assaulted.

22 Q. You mentioned Russell Street. Were there any other
23 streets that she had mentioned?

24 A. Broughton Street.

25 Q. Was she able to tell you approximately what time the

1 sexual assault occurred?

2 A. I know it was in the morning. I was called out from
3 home. I was in bed sleeping. It was in the morning. I don't
4 know exactly what time.

5 Q. And were you present in the exam room with the
6 victim when the sexual assault examination kit was done?

7 A. Yes.

8 Q. Was evidence collected during that sexual assault
9 examination?

10 A. Yes.

11 Q. Who took custody of that?

12 A. I did.

13 Q. Who collected the evidence?

14 A. The SANE nurse did.

15 Q. Once the SANE nurse collects it, what do they do
16 with it?

17 A. They package it, seal it, initial it and then I took
18 possession of it.

19 Q. And during the time that you were at the hospital
20 you spoke with the victim and got information from her?

21 A. Yes.

22 Q. After you left the hospital -- Well, let me ask you
23 this: Were any family members with the victim at the
24 hospital?

25 A. Her parents were.

1 Q. And did you speak with them about the incident at
2 all?

3 A. I did briefly.

4 Q. Were they able to give you information that they
5 had?

6 A. They just said that they received a call from her
7 frantic stating that she had been sexually assaulted.

8 Q. After you left the hospital, can you tell the jury
9 what you did in your investigation?

10 A. Once I left the hospital, I took the sexual assault
11 kit that had been given to me from the SANE nurse at the
12 hospital after her examination and I took it to the Department
13 of Public Safety and placed it in the refrigerator evidence
14 locker and then went out to find the location.

15 Q. The sexual assault kit, do they also collect the
16 victim's clothing items at that time?

17 A. Yes.

18 Q. When they do a sexual assault kit, do they separate
19 any one particular clothing item to go with the sexual assault
20 kit?

21 A. The clothes were bagged separately and then the kit
22 is in a box.

23 Q. Do they include the victim's underwear with the kit
24 or do you know?

25 A. The kit mostly has the swabs and then the underwear

1 is separated in a bag.

2 Q. Kept separate from the rest of the clothes?

3 A. Yes.

4 Q. And you indicated that you went to the scene to look
5 around and see if you could find anything?

6 A. Yes.

7 Q. Were you able to find any evidence that would assist
8 you in this investigation?

9 A. Not that night. I mean, it was cold outside and
10 frost was all over the place by the time I got there.

11 Q. Did you see if there were any security cameras,
12 surveillance cameras that would have been helpful?

13 A. There were security cameras but a lot of the
14 security cameras at that time on Russell Street were decoy.
15 They had been put up and the city was in the process of
16 purchasing or doing a contract to purchase them because I had
17 several other cases in that area and wasn't able to obtain
18 footage.

19 Q. You keep saying Russell Street. Were there also
20 cameras around Broughton that you inquired about?

21 A. I don't remember any on Broughton. The majority of
22 the area was Russell Street because that's like the downtown
23 area so the cameras in that area were like I said decoy. They
24 were up to make people believe that footage could be captured
25 on them but they weren't.

1 Q. Did you check with local businesses to see if there
2 was any surveillance cameras in their local businesses that
3 could have caught this incident?

4 A. No. Like I said, in working investigations in that
5 area a lot of businesses don't have cameras in that area. Or
6 working cameras I would say.

7 Q. Were you also able to look at the victim's cell
8 phone?

9 A. Yes.

10 Q. And did you attempt to make any follow up on the
11 phone number that was dialed by the alleged suspect?

12 A. I called the number and it was a non working
13 number.

14 Q. When you met with the victim, was she able to give
15 you a name or tell you who this person was who sexually
16 assaulted her was?

17 A. She didn't know.

18 Q. Were you aware that there was a description of the
19 suspect given?

20 A. Well, she told me it was a black male but like I
21 said again, I really couldn't get much information from her
22 during that time. I mean, I was in the examination room with
23 her. She had three people who were in there and she was
24 receiving a vaginal exam in front of strangers so I wasn't
25 going to push her that night. She was already traumatized

1 enough.

2 Q. Did you also flag the phone for any forensic
3 evidence testing?

4 A. Yes.

5 Q. What was that testing?

6 A. Fingerprints.

7 Q. To your knowledge, were any fingerprints found on
8 the phone?

9 A. No, ma'am.

10 Q. So for your investigation you went to the scene.
11 You couldn't find any surveillance videos. You collected the
12 SANE kit and the victim's clothing. Did you talk to any
13 witnesses in the area or did you try to find any witnesses in
14 the area?

15 A. The next day. I believe it was the next day I did.
16 I came out and the location that the victim described, it was
17 a beauty school and I do recall when I was on patrol riding
18 around on night shift there would be a car parked there at
19 night. I went there. I did make contact with the gentleman
20 at that business and he said that during the time the incident
21 would have occurred, he wasn't there. He had left to take his
22 friend home but he didn't see or hear anything.

23 Q. Was he the only witness that you were able to find
24 that would have had any information at that time?

25 A. Yes, ma'am.

1 Q. Once you sort of canvassed the area and did cell
2 phone stuff, what happened in the case at that point?

3 A. Basically it became a cold case.

4 Q. And were you still with the Department of Public
5 Safety when that case was reopened in 2017?

6 A. No. I left in 2015.

7 Q. So after you did as much investigation as you could
8 in 2015, did you have any more involvement in this case?

9 A. No, ma'am.

10 Q. When you were speaking with the victim at any point
11 did you have an opportunity to speak with the boyfriend or
12 sister that was in the apartment when she came home?

13 A. I think I recall speaking with her sister at some
14 point because we had a conversation about them retrieving the
15 telephone back but that's as far as it went.

16 Q. Were you able to release the phone back to the
17 victim?

18 A. No.

19 Q. Y'all kept that in custody --

20 A. Yes.

21 Q. -- for evidence. Lieutenant Walker, you say you
22 have got almost 20 years experience in law enforcement mainly
23 in investigations. When you meet with a victim in a crime and
24 it's a traumatic event, do they always, are they always able
25 to verbalize every single detail at that moment to officers?

1 A. No.

2 Q. Generally how does that develop? How does their
3 memory develop and their recollection develop?

4 A. It comes back in stages. Sometimes it can be a
5 month, two months, three months, even a year.

6 Q. As an officer when you're getting these details and
7 taking these reports from victims of trauma, when you're
8 writing notes, are you able to write notes verbatim as to what
9 they're saying and write down every piece of --

10 A. No. When you're taking notes, you're taking notes
11 for yourself. You're basically freehand. You've got to
12 shorthand it. A lot of times the victim speaks so quickly
13 because again they're traumatized and they're trying to just
14 hurry up and tell you what they have to say to get it over
15 with so basically shorthanding, you know, what you can get,
16 the main, the key points of what they're saying.

17 Q. So is it possible that in taking those notes the
18 victim gives details that don't get written down and don't
19 make it into a report?

20 A. Yes, ma'am.

21 MS. CORNWELL: Your Honor, that's all the questions
22 I have for right now.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. HUTTO:

1 Q. How are you, officer?

2 A. I'm doing well.

3 Q. All right. If I might ask, when did you leave the
4 Department of Public Safety?

5 A. In July of 2015.

6 Q. So about six months after this report?

7 A. Actually it was June of 2015.

8 Q. So five to six months?

9 A. Yeah.

10 Q. Okay. And do you recall as the Solicitor noted
11 making investigatory notes about what you did in investigating
12 this case?

13 A. Yes.

14 Q. Have you had a chance to review those notes prior to
15 coming to court today?

16 A. I did.

17 Q. Okay. Do you have a copy of those with you?

18 A. I don't.

19 Q. Okay. When you arrived at the hospital, had you
20 already talked with then Corporal Still?

21 A. No. I talked with him at the hospital.

22 Q. Did you have any information from him before you
23 talked to Ms. Montgomery?

24 A. Basically the reason that we were there. We didn't
25 go into details or anything.

1 Q. You didn't use his notes or his report in the
2 process of formulating your notes for your report, right?

3 A. I don't understand what you're asking me.

4 Q. Well, you said that you wrote investigatory notes
5 with regards to this case?

6 A. Mm-hmm.

7 Q. Did you reference Corporal Still's notes when you
8 wrote your notes or did you write them independently?

9 A. Yes. Basically independently as far as what I had
10 done.

11 Q. Okay. So when you write these notes, you're only
12 writing about what was told to you and what you did?

13 A. For the most part. Yes.

14 Q. In your notes about this case you mention a witness
15 Eric Jenkins. Do you remember that?

16 A. Mm-hmm.

17 Q. Who is he?

18 A. The guy that was at the store at the beauty shop.

19 Q. Okay. What beauty shop is that?

20 A. The location, the incident location. It was
21 actually a beauty school and they did hair there.

22 Q. Okay. When you say the beauty school and they did
23 hair there, do you mind if I ask you where that is on the
24 map?

25 A. It's the same location you showed everyone else.

1 Q. 1005 Broughton?

2 A. Yes.

3 Q. So you talked with Eric Jenkins at 1005 Broughton?

4 A. Yes.

5 Q. By the way, when you say that I have shown everyone
6 else, you have been in the courtroom witnessing what I have
7 been asking everybody, right?

8 A. I came in at the latter part.

9 Q. Okay. So it was your understanding at that point
10 that this incident occurred between 1005 Broughton Street and
11 Captain D's?

12 A. No. It wasn't between. Captain D's was basically a
13 landmark because as Ms. Montgomery stated she wasn't from the
14 area so Captain D's was a landmark.

15 Q. Is that what she told you when you talked to her
16 that night?

17 A. What? Told me what?

18 Q. That Captain D's was a landmark?

19 A. No. That's the conclusion that I came to because
20 she wasn't from the area and all she could tell me was it was
21 near Captain D's.

22 Q. Is that exactly what you wrote in your report?

23 A. No. It's not.

24 Q. In your report you said that Ms. Montgomery told you
25 that this assault happened behind Captain D's, right?

1 A. Mm-hmm. Yes.

2 Q. Okay. Do you want to see that on a map?

3 A. I don't have to.

4 Q. Okay. That's across the street from 1005

5 Broughton?

6 A. Yes.

7 Q. And it's down the street and across the street from
8 the Salvation Army?

9 A. Okay. The Salvation Army is on the opposite side of
10 the street down the street back towards --

11 Q. Back towards Russell?

12 A. Yes.

13 Q. We agree?

14 A. Yes.

15 Q. What did Eric Jenkins tell you?

16 A. What I testified to earlier. Basically that he had
17 left to take a friend home and didn't see or hear anything.

18 Q. Is that the only person that you tried to talk to
19 about this whole thing?

20 A. Basically like at three or 4:00 in the morning
21 you're not gonna see too many people walking around like it's
22 a Sunday afternoon so, I mean, there wasn't too many people to
23 talk to.

24 Q. Did you go back the next night or later that day?

25 A. Again, same thing, you're not gonna see too many

1 people just freeloading, walking up and down Broughton Street
2 like the weird hours in the morning.

3 Q. What about just the next morning business hours, did
4 you go down there?

5 A. No. I didn't.

6 Q. I'm sorry if you said that. Did Eric Jenkins say
7 why he was there that early in the morning?

8 A. He lived there. Basically he stayed there. As I
9 previously testified when I was on patrol you would see a car
10 parked on the side of that business at nighttime and it would
11 be the weird hours of the morning so I went back to talk to
12 him to see if he had heard something because that car was
13 there again.

14 Q. Okay. Did you often note where there were cars
15 parked along that street when you were doing your patrol?

16 A. Normally the cars aren't parked along that street.
17 That's why I paid special attention to that car being parked
18 there especially at night shift when you're doing property
19 checks.

20 Q. There are other businesses along that street where
21 there are apartments above them, aren't there?

22 A. Not during the time in 2015. Not to my knowledge.

23 Q. What about, are you familiar with Rosalia's Mexican
24 Restaurant?

25 A. Rosalia's is on the other side of Russell.

1 Q. I understand, but people live above those
2 apartments?

3 A. Not to my knowledge in 2015. They may live there
4 now but not in 2015. Rosalia's wasn't there in 2015.

5 Q. Now, did you hear Ms. Montgomery tell you about a
6 pallet at that time?

7 A. A pallet? I don't recall. I don't recall a
8 pallet.

9 Q. So it's safe to say you never went out and looked
10 for a pallet behind 1005 Broughton Street?

11 A. Safe to say.

12 Q. And it's safe to say you never went out looking for
13 something like that behind Captain D's?

14 A. No.

15 Q. Okay. And you didn't look for anything like that
16 anywhere else up and down that strip?

17 A. No.

18 Q. Okay. Did you go out and look for clothing or body
19 fluids or anything like that behind any of those buildings?

20 A. When I went behind the actual location that night, I
21 didn't see any clothing. Again, like I stated, there was
22 frost on the ground so if body fluids would have been on the
23 ground, they would have been frozen as well so I didn't see
24 any.

25 Q. So there was no effort made to do any sort of crime

1 scene investigation that night beyond just visual
2 observation?

3 A. Who is going to do the crime scene? You're asking
4 me if I did it?

5 Q. Are you the lead investigator?

6 A. Yes.

7 Q. Who should have done it?

8 A. I'm not certified in crime scene.

9 Q. Okay. Who should you have gotten to do the crime
10 scene investigation?

11 A. We had officers coming out. I heard you mention a
12 black light and, I mean, that's on TV. That's CSI. That's
13 not normal investigative stuff for a small town agency.

14 Q. So what sort of crime scene investigation was done
15 for any of those places, Captain D's, 1005 Broughton Street,
16 Salvation Army, anywhere along that street, what kind of crime
17 scene investigation was done?

18 A. Like I said, there was dew and frost on the ground.
19 If you can work a crime scene in the frost, then I don't know.
20 I mean, it would have been done.

21 Q. So you just give up?

22 A. No. I said it would have been done. But like I
23 said, there was frost on the ground so...

24 Q. So how do they do a crime scene investigation in
25 Canada?

1 A. I have no idea. I don't live in Canada and I don't
2 work law enforcement in Canada so I don't know. I can't
3 answer that.

4 Q. You're saying frost on the ground defeats the whole
5 thing?

6 A. Well, I'm sure they have special tools for the
7 environment but I'm speaking of here in Orangeburg, what's
8 afforded in Orangeburg to the investigators.

9 Q. Is this the first time y'all have ever seen frost on
10 the ground?

11 A. No. It's not. But what you asking me specific
12 questions as far as my capabilities and I'm just giving you
13 answers to that so I don't know about Canada. I can't speak
14 about Canada but I'm sure that they are afforded the necessary
15 equipment they need in Canada.

16 Q. So as soon as it's too cold in Orangeburg, South
17 Carolina, y'all just have to give up on a crime scene
18 investigation?

19 A. Didn't say that.

20 Q. So what did you do?

21 A. I told you what my capabilities were.

22 Q. And you never asked for anybody to do anything
23 else?

24 A. What should we have done?

25 Q. You're the detective.

1 A. You're asking me.

2 Q. What else could be done? Did you go out and look
3 for clothing fibers?

4 A. I said no. I mean, I didn't see any clothing
5 fibers.

6 Q. That's something that can be done as part of the
7 crime scene investigation, right?

8 A. I didn't see any clothing fibers.

9 Q. And you didn't see any bodily fluids?

10 A. No.

11 Q. Didn't see any clothing left behind?

12 A. No.

13 Q. Did you see anybody out there at all besides Eric
14 Jenkins?

15 A. No.

16 Q. And just for the record you have no knowledge if
17 Eric Jenkins is any relation to Tyquin Jenkins?

18 A. No. I don't know who he is. I mean, I don't
19 know.

20 Q. Well, let's talk about some other things you can do.
21 You said you didn't get any security camera footage, right?

22 A. Right.

23 Q. Is that something that you would normally do as an
24 investigator?

25 A. Yes.

1 Q. So what businesses did you go ask if they had any
2 security camera footage?

3 A. Like I have been working in Orangeburg for 10 years
4 when I was here in an investigative capacity the majority of
5 the time and so the areas on Russell Street with cameras you
6 know the majority of them do not have cameras. Numerous
7 crimes were committed in that area and video cameras would
8 have been in assistance or aided in investigations but because
9 there weren't cameras, that's why we didn't have any.

10 Q. You say there weren't cameras; is that right?

11 A. There were cameras there, yes. But like I said a
12 lot of them were decoy.

13 Q. All right. So are you familiar with this -- Were
14 you with Orangeburg Department of Public Safety in 2015?

15 A. I was.

16 Q. Okay. Were you familiar with this press release to
17 the Times and Democrat entitled "Police Add Security Cameras
18 Downtown"?

19 A. Yeah.

20 Q. Okay. And those cameras are fake?

21 A. A lot of them were a fake. Like I said, they have
22 to renew the contract and keep the contract so when the
23 cameras were initially put there, it was put there for a test
24 trial and then a contract had to be basically paid for and
25 kept.

1 Q. And the city didn't do that?

2 A. Not to my knowledge. I mean, I wasn't able to
3 obtain footage for some other cases that were on Russell
4 Street during that time.

5 Q. Did you ever try to go get footage for this case?

6 A. Yes.

7 Q. And on those cameras what did you see?

8 A. Nothing.

9 Q. So y'all got these cameras up just to afford people
10 a false sense of security when they're downtown?

11 A. Well, I can't tell you what they did. That was city
12 employees or the city administrator. I think you should
13 probably call him and ask him but I don't know.

14 Q. Was that a concern of yours?

15 A. What was a concern?

16 Q. The people had a false sense of security downtown
17 because y'all put out this press release talking about how
18 you're going to prevent crime downtown and then never turn on
19 the cameras?

20 A. Well, the thing is, I mean, I don't know what they
21 would put in a news article but my knowledge as far as
22 obtaining video footage in that area and the cameras actually
23 working in that area was no.

24 Q. Okay. What about the Times and Democrat, that's
25 right there, isn't it?

1 A. Yes.

2 Q. It's your contention they didn't have any working
3 security cameras at that time?

4 A. Well, the incident didn't occur on the front street.
5 The incident occurred behind 1005 Russell Street. I mean,
6 excuse me, Broughton Street.

7 Q. You say that. Didn't Ms. Montgomery tell you she
8 came upon the person who allegedly attacked her on Broughton
9 Street?

10 A. I think she told Officer Still that.

11 Q. She never told you that she met the person on
12 Broughton Street?

13 A. She did. She did. Yes.

14 Q. Okay. So you knew that this alleged attacker was on
15 Broughton Street?

16 A. Yes.

17 Q. Did you ever check the T and D to see if they had
18 any footage?

19 A. No.

20 Q. They have security cameras in their parking lot and
21 they did in 2015, didn't they?

22 A. I don't know what they had. I don't know.

23 Q. Okay. So if a private investigator came and said
24 they had security cameras back in 2015, would that sway you at
25 all?

1 A. If a private investigator did and he had knowledge
2 of it, then yes.

3 Q. Okay. What about Captain D's? You're telling me
4 you don't know if they had any cameras in 2015?

5 A. I don't know.

6 Q. So you never checked with either of those businesses
7 back in 2015?

8 A. I did not.

9 Q. Is that something that normally an investigator
10 would do?

11 A. It depends on the circumstance. Yes.

12 Q. Okay. What about -- I want to show you some
13 pictures. Are you familiar with this picture of this building
14 that's been marked as State's Exhibit number 4?

15 A. I need to see the front of the building.

16 Q. Okay. Fair enough. Does it help you that there's a
17 Salvation Army logo on that door?

18 A. It doesn't help me. Is it the Salvation Army?

19 Q. If you can't identify it, that's fine.

20 A. Okay.

21 Q. Let me ask you one thing about this photo.
22 Regardless of where it is, you see a security camera in that
23 photo?

24 A. I don't know what that is.

25 Q. All right. You made reference in your report to an

1 18 wheeler truck. Do you remember that?

2 A. Yes.

3 Q. Why did you do that?

4 A. Because, uhm, someone told me about, I think it was
5 Ms. Montgomery about an 18 wheeler truck being in the area.

6 Q. Okay. And you never found one?

7 A. No.

8 Q. How long did you look for one?

9 A. Well, actually that's actually off the truck route.
10 If it was in the area, then they wouldn't want us to find
11 it.

12 Q. Okay. Has anyone ever gathered any information in
13 this case about Mr. Jenkins, Tyquin Jenkins driving an 18
14 wheeler?

15 A. No.

16 Q. Okay. You're familiar with that intersection right
17 there. I just want to ask you one more thing. 1005 Broughton
18 Street where you say there's a beauty school or was a beauty
19 school, that's a free standing building, right?

20 A. What do you mean by free standing.

21 Q. It doesn't connect to any other business or building
22 on that street?

23 A. No.

24 Q. Did Ms. Montgomery ever tell you anything about
25 going through an alley or being forced into an alley?

1 A. I don't recall being told that.

2 Q. In fact, there are no alleys in that area, are
3 there?

4 A. Well, behind the building someone could probably
5 reference that to an alley on that side part behind the
6 building.

7 Q. They could call Oliver Street an alley? Do you want
8 to look at where Oliver Street is?

9 A. Yeah. I don't recall Oliver Street by name.

10 Q. Are you saying that somebody could -- Sorry. This
11 is Russell Street. This is Broughton. This is the Salvation
12 Army. This is 1005 Broughton. This is the T and D. This is
13 Captain D's. This is Fisher Street. This is Oliver Street.
14 This is DPU. Are you saying that they could refer to Oliver
15 Street as an alley?

16 A. No. If you come around behind the 1005 Russell
17 Street.

18 Q. You mean 1005 Broughton?

19 A. Yes. Broughton Street. If you go around that area
20 on the backside of DPU, there is an alley that goes back to a
21 business up in there. It's a gravel road so I mean that could
22 be considered an alley.

23 Q. All right. Anything ever done to search that area
24 back in 2015?

25 A. The area was searched and no clothes were found if

1 that's what you're asking.

2 Q. The alley specifically, was anything ever done to
3 look in that alley in 2015?

4 A. The entire area was searched for clothes and nothing
5 was found.

6 Q. Okay. Besides looking for clothes, what else were
7 you looking for?

8 A. Besides looking for clothes, what was the last
9 part.

10 Q. Was all you were looking for is clothes?

11 A. Well, you asked me if I located any witnesses. I
12 told you no. I mean, what else did you want me to find?

13 Q. You're the investigator. What else can you find?

14 A. You're asking me with something in mind. I'm just
15 wondering what you would have thought that I would be looking
16 for.

17 Q. I'll move on. Are you familiar with Ms.
18 Montgomery's cell phone?

19 A. I mean, I know it was a cell phone.

20 Q. Do you know if it was placed in evidence?

21 A. Yes.

22 Q. Okay. So did y'all fingerprint that phone?

23 A. The phone was fingerprinted. Yes.

24 Q. Mr. Jenkins' fingerprints were not on it, correct?

25 A. Ms. Montgomery's fingerprints wasn't on it.

1 Q. Fingerprints were not on it?

2 A. Right.

3 Q. Okay. And what was done to investigate that phone
4 in 2015?

5 A. What do you mean?

6 Q. Did you go through the call log? Did you get cell
7 phone records? Did you get records of the text messages? Did
8 you see what cell towers it pinged to? Did you do any of that
9 in 2015?

10 A. Like I previously stated, the number that was called
11 that Ms. Montgomery said Mr. Jenkins called was a non working
12 number because I called it from my phone.

13 Q. Okay. So all you know is that it -- And you know
14 this because you looked at the call log and you saw a number
15 that didn't work?

16 A. She told me what number it was and then around the
17 time.

18 Q. Okay. Was anything ever, any other information
19 taken from that phone in 2015?

20 A. No other information was needed.

21 Q. Okay. And it wasn't your understanding that
22 Ms. Montgomery had referenced her own phone number as the
23 number that her attacker dialed?

24 A. No. Not at all.

25 Q. Did you ever find a gun anywhere that matched the

1 description of the one that was allegedly pulled on Ms.
2 Montgomery?

3 A. No.

4 Q. Okay. I want to ask you something else about your
5 report and I think it would be helpful for you to have it up
6 there. Do you recognize this as your report?

7 A. Yes.

8 Q. Okay. Three paragraphs. A long paragraph, really
9 short paragraph, another short paragraph?

10 A. Yes.

11 Q. All right. If you don't mind, I would like to I
12 suppose read it verbatim but I would be happy to read it along
13 with you if that's all right?

14 A. Mm-hmm.

15 Q. In your second paragraph you write, I continued to
16 talk to her, uhm, and told her that but he continued talking
17 to her. He stated that he then -- And then there's a double
18 space -- telling her that he got her -- And then that sentence
19 just ends without a period or anything.

20 A. Well, I noticed that when I reviewed it and a lot of
21 sentences are cut out from the report. I have no idea what
22 happened with the computer or what issues but this is not the
23 full report.

24 Q. So it wasn't that you gave up writing halfway
25 through this report?

1 A. I would not give up on a crime as serious as this
2 writing a report.

3 Q. So your explanation for why the report just cuts off
4 with blank things missing out of it is that it wasn't saved on
5 a computer right?

6 A. It was saved but, I mean, I don't know what
7 happened. Like I said, I left in 2015. The first time I saw
8 this again was a couple of weeks ago so I have no idea.

9 Q. So public safety didn't preserve your report over
10 the last four years?

11 A. I'm not gonna say public safety didn't preserve a
12 report. Like I said, I don't know what happened to it as far
13 as computer issues or what but, I mean, I wouldn't write a
14 partial sentence, delete it and then go to another sentence.
15 I mean, that makes no sense.

16 Q. I agree. Do you remember talking to the Times and
17 Democrat immediately after this incident?

18 A. No.

19 Q. You don't. Did you -- Let me try and refresh your
20 memory here. Do you recall telling the Times and Democrat we
21 don't have any suspects at this time? Orangeburg -- I'm
22 reading this part now. Orangeburg Department of Public Safety
23 sergeant Latisha Walker said back to your quotation, we want
24 to let the public know that there is no cause for alarm in
25 this situation. You don't remember saying that?

1 A. No. I wasn't the person to speak with the press
2 during that time.

3 Q. Okay. Can you take a look at this?

4 A. Sure.

5 Q. Why would that be in the paper?

6 A. The same way a lot of things are in the paper that's
7 not true.

8 Q. Okay. It wasn't that you didn't think anybody
9 should be worried about going into downtown Orangeburg because
10 you didn't believe Ms. Montgomery?

11 A. No.

12 Q. And you didn't stop halfway through your report
13 because you just got frustrated with all the inconsistencies
14 in her story so you just stopped writing?

15 A. Well, no, it wasn't that I stopped halfway through
16 the report. Like I said, if you read the report, you can see
17 where certain sentences were there and it was cut off for
18 whatever reason and spaced off so I don't know what happened
19 but at no point was I frustrated about in a sexual assault
20 case.

21 Q. Okay. And do you know why the paper would print
22 your name with that quotation if they didn't get it from
23 you?

24 A. The same way you look at the paper and you see
25 things for entertainment purposes. I don't know why the paper

1 would print anything but like I said I wasn't the PIO officer
2 for public safety at that time to give news releases to public
3 safety or for public safety.

4 Q. Just because you weren't the person to do it doesn't
5 mean you couldn't do it; isn't that right?

6 A. Well, we are not allowed to speak with the press.

7 Q. So where did they get your name?

8 A. The same way you got it.

9 Q. Well, I got it by looking at the paper right
10 there?

11 A. No. You knew it before that. You knew my name
12 before then.

13 Q. So your contention is that the Times and Democrat
14 completely fabricated this story about you talking to them?

15 A. They didn't -- I'm not saying the Times and Democrat
16 fabricated anything but what I'm saying is in speaking with
17 the public, I mean, I wouldn't go to the extent of saying we
18 want the public to know there's no cause for alarm in this
19 situation. I mean, like I said, I didn't make direct
20 statements to the press. We had someone who was in charge of
21 doing that so you may need to call the person from T and D and
22 ask them if I gave them that statement.

23 Q. And what if they say that you did?

24 A. They're not gonna say that because I'm telling you I
25 didn't.

1 Q. Okay. So they pulled your name out of the ether,
2 assigned that quote to you but you never said it?

3 A. What the newspaper does in case you don't know every
4 like over the weekend that morning, that Monday morning
5 they'll come up and get a copy of all of the incident reports.
6 They'll then talk with the staff at the department and then
7 print the story. So like I said, I mean, they wouldn't have
8 come to me for a direct quote in the paper. I didn't have
9 that authority to give the newspaper quotes.

10 Q. All right. I'll change topics. You have been
11 investigating all kinds of crimes for how long?

12 A. Let's say 18 years.

13 Q. In 18 years have you ever heard of somebody who's a
14 robber, an attacker or a rapist taking somebody's phone and
15 then handing it back to them?

16 A. Let me tell you, I have heard some of the strangest
17 things and experienced some of the strangest things in 18
18 years in law enforcement.

19 Q. You agree that's totally illogical?

20 A. No. It's not.

21 Q. It's not illogical for that person to give the
22 person's phone back to them?

23 A. No. It's not.

24 Q. Well, why would they do that?

25 A. I have no idea.

1 Q. Have you ever charged somebody with making a false
2 police report?

3 A. I did.

4 Q. That can make people afraid to change their story,
5 right?

6 A. That was never an issue in this instance.

7 Q. I'm not asking you about this instance. But if
8 somebody comes to you and gives you a false police report, you
9 don't know it's false, you might make a charge based on that,
10 right?

11 A. If I don't know it's false?

12 Q. Right.

13 A. Why would I make a charge if I don't know?

14 Q. Let me clarify. Somebody comes to you with false
15 information about a robbery.

16 A. Okay.

17 Q. You believe them.

18 A. Mm-hmm.

19 Q. You charge somebody with robbery based on that.

20 A. I'm not gonna charge someone based on what they say
21 and because I believe it. I'm gonna charge them based on
22 evidence.

23 Q. Okay. Well, if that person who gave you that report
24 then later tries to withdraw their story, you could charge
25 them with filing a false police report, couldn't you?

1 A. Yes. You could.

2 Q. So that would make people afraid to tell the truth
3 to police after they have given a false report, wouldn't it?

4 A. But again like I previously stated, that has never
5 been an option or a point of circumstance in this incident.

6 Q. Well, you believe that. But generally couldn't it
7 make somebody afraid to change their story?

8 A. Speaking of this case that was never an option.

9 Q. All right.

10 A. That never came to the forefront.

11 MR. HUTTO: All right. Nothing further.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. CORNWELL:

15 Q. Investigator Walker, we've been kind of going around
16 and around about your investigation and what you did, what you
17 found, what you didn't find. In investigating this case can
18 you put items into evidence that don't exist?

19 A. No.

20 Q. So if you can't find bodily fluids or if you can't
21 find clothing, is there anything to put into evidence at that
22 point?

23 A. No.

24 Q. If there aren't witnesses around, you can't find
25 witnesses, are you able to just make up statements from

1 witnesses to corroborate your theory?

2 A. No.

3 Q. And if there are no videos, are you able to move
4 videos into evidence?

5 A. No.

6 Q. And in looking at some of these cameras you were
7 very familiar with that area at the time?

8 A. Yes, ma'am.

9 Q. And you were aware, you talked about the cameras on
10 Russell Street?

11 A. Yes.

12 Q. The public safety camera on Russell Street, is that
13 anywhere near this, even when they did work did, did the
14 projection go all the way to where this crime scene would have
15 been?

16 A. No. It would have had to go up the street and
17 around a corner and around another corner.

18 Q. And those cameras were, that press release was from
19 2012?

20 A. Yes.

21 Q. This incident occurred in 2015?

22 A. Yes.

23 Q. Is it unheard of for cameras to break or be non
24 operational three years later?

25 A. Definitely.

1 Q. And in the area of the businesses you have
2 referenced the T and D cameras, Captain D's cameras, generally
3 speaking when those cameras on those businesses are they
4 projecting onto the street to other businesses or are they
5 projecting into their own business to document their own
6 business?

7 A. Mostly in their own parking lot or right in front of
8 the door.

9 Q. Did this happen at the T and D?

10 A. No.

11 Q. Did this happen at Captain D's?

12 A. No.

13 Q. In regard to the victim's cell phone, you followed
14 up by requesting fingerprint evidence?

15 A. Yes.

16 Q. And you also followed up by attempting to track down
17 the phone number that was dialed?

18 A. Yes.

19 Q. You were asked questions about getting cell phone
20 records and things like that from the victim. Was the victim
21 ever a suspect or did you ever think that the victim was being
22 untruthful to you to cause you to investigate the victim?

23 A. No.

24 Q. So would there have been any reason for you to pull
25 phone records or call logs of a victim in a sexual assault

1 case?

2 A. No.

3 Q. Did the victim ever indicate that she knew the
4 suspect or knew who he was or had seen him around?

5 A. No.

6 Q. Did she ever indicate to you that they had texted or
7 called prior to this?

8 A. No.

9 Q. If she had indicated that, would you have looked at
10 phone records?

11 A. Yes.

12 Q. You referenced the sentences cut out of your report.
13 When you're putting a report into your system, do you type a
14 report into that computer system?

15 A. Yes.

16 Q. Once you hit save, do you have anything else to do
17 with the storage or keeping of that report?

18 A. No.

19 Q. In your experience in the 18 years of law
20 enforcement have there been times when law enforcement has
21 switched software programs or switched report programs and had
22 to transfer reports over to different programs?

23 A. Yes, ma'am.

24 Q. In those transferring of other reports, are there
25 sometimes errors or things lost?

1 A. Yes.

2 Q. In a case like this where there is an allegation of
3 sexual assault would you have ever not written a report or not
4 followed up with your report?

5 A. No.

6 Q. And in this case when you left in June of 2015, have
7 you made any charges against anyone in regards to this case?

8 A. No.

9 Q. Why not?

10 A. Because at the time we didn't have a suspect named
11 and the DNA and everything hadn't come back.

12 Q. So if you don't have a suspect and you don't have
13 evidence, you can't just arrest anyone, can you?

14 A. No.

15 MS. CORNWELL: That's all the questions I have, Your
16 Honor.

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

18 MR. HUTTO: Your Honor, may I be heard briefly on
19 redirect?

20 THE COURT: No, sir. There was nothing further
21 brought up.

22 MR. HUTTO: All right.

23 THE COURT: You may step down, ma'am. Ladies and
24 gentlemen of the jury, it's almost 5:00. I know there
25 are places that you need to be. It's been a long day for

1 you. We certainly appreciate your patience. If you
2 would please return to your jury room at 9:30 in the
3 morning, we'll resume with the trial of the case. Please
4 remember not to discuss this case with anyone or allow
5 anyone to discuss the case with you. Is there something
6 you need?

7 MS. CORNWELL: Your Honor, if I may approach
8 briefly.

9 THE COURT: Certainly.

10 (Side bar off the record.)

11 THE COURT: Ladies and gentlemen, if you would
12 please report to the jury room at 9:30 in the morning and
13 we'll resume with the trial of this case. Again, please
14 remember not to discuss this case with anyone or allow
15 anyone to discuss the case with you. Have a nice
16 evening.

17 (Whereupon, the jury was released for the evening at
18 5:00 p.m.)

19 THE COURT: Anything further for the Court or we'll
20 be in recess until 9:30 tomorrow morning.

21 MS. CORNWELL: No, Your Honor.

22 MR. HUTTO: No, Your Honor.

23 THE COURT: See everyone at 9:30.

24 (Whereupon, court was adjourned for the day at 5:00
25 p.m.)

1 FEBRUARY 13, 2019

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Maite Murphy presiding.

4 THE COURT: Thank you. Good morning. Please be
5 seated. I understand there is a matter we need to place
6 on the record from the State.

7 MS. CORNWELL: Yes, Your Honor. During our pretrial
8 conference in this matter the State and defense counsel
9 discussed the defendant's statement which was taken
10 through investigation in this case. The State indicated
11 to the Court and to defense that we had no intention of
12 introducing the statement in our direct examination. We
13 thought the statement was mainly self-serving hearsay and
14 also it referenced prior bad acts that would not be
15 admissible in its direct testimony but we reserved the
16 right to introduce it as impeachment testimony if the
17 defendant took the stand. We also went ahead and did the
18 Jackson v. Denno stipulation just in case during the
19 course of direct testimony the State did want to bring in
20 portions of that statement in its case in chief to speed
21 up kind of the trial process and not have to excuse the
22 jury mid trial to do a pretrial hearing. During the
23 pretrial hearings on the record the State again indicated
24 that we did not intend on introducing the defendant's
25 statement, however, we did reserve the right to introduce

1 it at the appropriate time given the appropriate
2 redactions that were previously discussed. During
3 opening statements, prior to opening statements defense
4 counsel indicated he had a PowerPoint presentation. The
5 State specifically inquired as to whether there were
6 going to be any photographs or evidence showing any power
7 point presentation that had not been admitted into
8 evidence in court yet. They indicated no, that they were
9 only going to show the PowerPoint presentations of what
10 they thought the testimony was going to be which is
11 clearly allowed. However, during the course of their
12 opening statement they referenced and actually stated,
13 you know, I'm interested to see if the State talks about
14 the defendant's statement and then had a PowerPoint slide
15 that went into detail about what the defendant said
16 including the self serving parts and, in fact, went into
17 one part that stated, you know, you're gonna hear the
18 defendant, you know, even say he was a good guy, that he
19 would never do something like this to a woman. Obviously
20 the State feels like that opened the door to get into the
21 statement in its entirety including the prior
22 convictions, prior bad acts that are referenced
23 throughout that statement and the fact that he was not
24 being truthful in his statement, that there are prior
25 convictions of crimes against women and that that

1 evidence should be allowed in under 106 now and also
2 through State v. Jackson and State v. Carrera Pena which
3 allows any party to put in a complete record of a
4 statement when a statement is introduced. It's the
5 State's position that since the door has been opened we
6 should be able to show the statement in its entirety
7 including all the prior convictions, not as prior bad
8 acts however but as impeachment testimony to rebut the
9 statement that the defense has already made to the
10 jury.

11 THE COURT: Mr. Hutto.

12 MR. HUTTO: Yes, Your Honor. First of all, as you
13 noted, opening statements are not evidence, however, we
14 did introduce prior to the Jackson v. Denno a motion in
15 limine to prevent the introduction of those prior bad
16 acts or prior convictions as are more prejudicial than
17 probative. It's also our position that within the case
18 law and rules cited by the State the only requirement is
19 that context be given to any statements not that the
20 entirety of a given statement come in. We maintain our
21 objection to the entirety of the defendant's statement
22 including the visual portion coming in under principally
23 Rule 403, that it is more prejudicial than probative and
24 could also likely lead to confusion of issues amongst the
25 jury. It's my understanding that we have been able to

1 read a language that will allow for the State to address
2 its concern with law enforcement without getting into the
3 entirety of the defendant's record.

4 THE COURT: Thank you, Mr. Hutto. I do find that
5 based upon the opening, the door was opened and some of
6 the evidence I think is allowable, however, again opening
7 statements are not evidence and the jury will be
8 instructed on that. I'm going to limit the testimony of
9 law enforcement as to what he admitted to and his prior
10 convictions only to show that there is evidence to prove
11 otherwise because I believe your opening statement that I
12 would never do something to a female or something to that
13 effect. My concern about the prior convictions are
14 they're for domestic violence and also involving a weapon
15 and obviously I think that's too similar in nature to the
16 alleged crime and the introduction of such evidence would
17 be more prejudicial than probative so if you would please
18 instruct the witness accordingly I would appreciate
19 that.

20 MS. CORNWELL: Yes, Your Honor. Thank you.

21 THE COURT: Anything further before we bring the
22 jury out?

23 MS. CORNWELL: Nothing from the State, Your Honor.

24 MR. HUTTO: No. I just need the defendant.

25 THE COURT: I'm sorry. I thought he was in here.

1 (Whereupon, the defendant entered the courtroom.)

2 THE COURT: Mr. Hutto, do you need a brief second
3 just to discuss with your client what just went on the
4 record since he was not present?

5 (Whereupon, defense counsel had a short discussion
6 with his client.)

7 THE COURT: Ready to proceed?

8 MR. HUTTO: Yes.

9 THE COURT: Let's have our jury please.

10 (Whereupon, the jury entered the courtroom at 10:00
11 a.m.)

12 THE COURT: Good morning, ladies and gentlemen of
13 the jury. Thank you for your patience this morning. I
14 promise you we were working while you were waiting back
15 there. I wanted to discuss with you a little bit about
16 our scheduling for today so that you kind of have a game
17 plan. Unfortunately, sometimes I have to juggle other
18 matters at the same time I'm doing this trial and I'm
19 required to be in Dorchester County this afternoon. So
20 I want to try to get through as much testimony as
21 possible this morning. We'll break by 1:30. I have
22 asked the bailiff to please put snacks and things in the
23 jury room in case you get hungry. I don't want to starve
24 you out and I want to make sure that you're comfortable
25 with your time with us but I also want to be conscious of

1 our time so that we can get as much done today as
2 possible so I just wanted to give you a heads up that
3 although lunch will be a little bit late today, then you
4 will have the rest of the afternoon to be free from your
5 court responsibilities here today but we are now ready to
6 proceed. You may call your next witness.

7 MS. CORNWELL: Thank you, Your Honor. The State
8 could call Marie Sherman.

9 Thereupon,

10 MARIE SHERMAN

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. Once you're seated,
13 state your name for the are record.

14 THE WITNESS: Marie Sherman.

15 THE COURT: Your witness.

16 MS. CORNWELL: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. CORNWELL:

19 Q. Ms. Sherman, can you tell the jury why you are here
20 today and a little bit about your experience and educational
21 background?

22 A. Okay. My name is Marie Sherman. I'm a registered
23 nurse. I'm here today because I was the one that did the
24 sexual assault exam on the victim. I have been a nurse since
25 2005. I have been a registered nurse since 2012. I have a

1 Bachelor's Degree.

2 Q. Do you happen to have your report from this night
3 with you?

4 A. I don't have it.

5 Q. Let me show you what's been previously marked as
6 State's Exhibit number 13 for identification. I'm just gonna
7 let you look at that for your reference purposes.

8 A. Okay.

9 Q. Ms. Sherman, do you have special qualifications or
10 titles to do sexual assault examinations?

11 A. I do. I've completed the requirements that the
12 Regional Medical Center has which is so many normal exams and
13 then so many sexual assault exams. Besides that I've done a
14 40 hour course on that through the Forensic Nurses Association
15 and I've 16 hours of simulation lab.

16 Q. As somebody that is qualified as a sexual assault
17 nurse examiner does that qualify you to collect evidence in
18 sexual assault cases?

19 A. Yes. It does.

20 Q. I'll just leave this up here. This is your report
21 if you need to reference it at any point during your
22 testimony. Approximately how many times have you either
23 examined or been in the exam room with the victim of a sexual
24 assault?

25 A. I would say 20 to 25 times.

1 Q. And who provides the sexual assault kits and
2 protocol forms to the hospital?

3 A. Our kits come from SLED.

4 Q. Can you tell the jury please what the standard
5 protocol is when you're examining a victim of sexual
6 assault?

7 A. Okay, first of all we introduce ourselves to the
8 patient or the victim. We let them know what exactly the SANE
9 nurse does, the sexual assault nurse. We get a consent if
10 they agree to go ahead with the exam. After that we start
11 with the exam which is asking questions and findings out what
12 happened during the assault and after the assault, like have
13 they showered or anything like that afterwards. After that we
14 go ahead and start with the physical exam which is a head to
15 toe exam to see if there is any apparent injuries. Then we go
16 ahead and we would do like the pelvic exam and then collect
17 evidence if there is any evidence to be collected.

18 Q. When you're first speaking with the victim and
19 getting the information from them, you indicated that you
20 explain to them in detail what the sexual assault examination
21 is going to entail?

22 A. Yes.

23 Q. And does that include explaining to them taking
24 swabs and photographs, things of that nature that is
25 necessary?

1 A. Yes.

2 Q. And when you're doing the head to toe examination,
3 is that a clothed head to toe examination or is it undressed
4 at that time?

5 A. They're undressed. If the clothing can be taken as
6 evidence, we have them undress on a debris sheet and then we
7 collect the clothing. We do a head to toe exam and then we
8 give them a gown to put on.

9 Q. And in your experience with all of the sexual
10 assault exams that you have done is there a typical victim
11 reaction to sexual assault?

12 A. No. Everybody reacts differently to trauma.

13 Q. In your experience do you typically expect to find
14 physical injuries on a person that's been sexually
15 assaulted?

16 A. It depends on the type of the assault. If they
17 fought the victim or if the assailant attacked the victim, you
18 know, roughly or anything, sometimes there's no apparent
19 injury. Sometimes there is.

20 Q. So it's dependent on the situation?

21 A. Yes.

22 Q. If I can direct your attention to the early morning
23 of January 6th, 2015, do you recall doing a sexual assault
24 examination kit and filling out a protocol form on the victim
25 in this case Tori Montgomery?

1 A. Yes.

2 Q. Can you tell the jury, I would like to go through
3 your protocol. Did you do the standard protocol with her that
4 you just described to the jury?

5 A. I did.

6 Q. And in this case was she still wearing the clothing
7 from the attack?

8 A. Yes.

9 Q. Did you have her stand on the debris sheet and
10 undress?

11 A. Yes. She did.

12 Q. Was there anybody in the room with you when this
13 exam was going on?

14 A. Melissa Hutto. She's another SANE nurse.

15 Q. What was her role in this particular exam?

16 A. She was precepting me.

17 Q. So she was your supervisor at the time?

18 A. Yes.

19 Q. And when you were going through and speaking with
20 the victim and getting the information, did she indicate to
21 you her prior history, her prior medical history, her prior
22 sexual history, things of that nature?

23 A. She did.

24 Q. In speaking with her did you ask her if she had had
25 consensual intercourse within the last seven days?

1 A. Yes.

2 Q. Had she had consensual intercourse within the last
3 seven days?

4 A. Yes. She had.

5 Q. It looks like you actually asked the three different
6 kinds of intercourse which would be oral, vaginal, and anal.

7 A. Yes.

8 Q. What type of consensual sex did she admit to having
9 within the last seven days?

10 A. Vaginal.

11 Q. Did she indicate when she had that consensual
12 intercourse whether a condom was used?

13 A. No condom was used.

14 Q. Was she on any type of birth control or
15 contraceptive at that time?

16 A. Yes. She was. Mirena.

17 Q. Did you ask the victim if she had ingested any drugs
18 or alcohol prior to the assault?

19 A. Yes.

20 Q. What was her response?

21 A. No.

22 Q. In fact, you actually go through 12 hours, 96 hours
23 and times between the assault and the exam and did she answer
24 on all of those questions as well?

25 A. Yes.

1 Q. At any time from 96 hours prior to the assault to
2 the time of the exam did she indicate that she had consumed
3 any drugs or alcohol?

4 A. No.

5 Q. Prior to doing the exam, did you ask her about her
6 hygiene and activity after the assault?

7 A. I did.

8 Q. And did she indicate that she had done anything
9 after the assault but prior to coming in?

10 A. She had urinated but that was all.

11 Q. But hadn't showered?

12 A. No.

13 Q. Why is that information important?

14 A. Because like a shower could wash away evidence.

15 Q. Why is evidence or questions about consensual sexual
16 relations important in a sexual assault exam?

17 A. Because you want to know like say if they did have
18 an injury, could the injury have come from something else
19 other than the assault.

20 Q. And is that also in case there is other DNA found?

21 A. Yes.

22 Q. To corroborate a sexual partner or a non consensual
23 partner?

24 A. Yes.

25 Q. When you got the history of the assault, can you

1 explain to the jury what she told you happened in the assault
2 for what you needed for medical purposes?

3 A. She indicated that there was vaginal intercourse and
4 there was ejaculation.

5 Q. Did she indicate to you that - did she indicate
6 whether or not any weapons were used?

7 A. Yes. She indicated there was a gun.

8 Q. Did she indicate whether or not the assailant
9 inflicted any injuries upon her?

10 A. No apparent injuries.

11 Q. Did she tell you that the defendant caused any
12 physical blows to her, grabbed her, held her, pinched her, put
13 her in physical restraint, burned her or used any other method
14 of physical assault against her?

15 A. No.

16 Q. Did she indicate that there were verbal threats of
17 harm?

18 A. She did say there were verbal threats.

19 Q. Is that where she indicated that she was threatened
20 with the gun?

21 A. Yes.

22 Q. Did she tell you that she received any injuries
23 during the assault?

24 A. No. She did not.

25 Q. Did she indicate to you whether she was able to

1 inflict any injuries upon the assailant?

2 A. She did not.

3 Q. So she was forthcoming with that?

4 A. Yes.

5 Q. She didn't fight back? She submitted to him?

6 A. Yes. She did state that she asked him not to hurt
7 her because she had a daughter.

8 Q. Did she indicate to you whether or not she knew who
9 this person was?

10 A. She did not.

11 Q. So did she know any information about him as to
12 whether or not he had an STD or anything of that nature?

13 A. It was unknown.

14 Q. Did you ask her if she was aware whether alcohol or
15 drug use had been used by the assailant?

16 A. She said the assailant told her that he had been
17 drinking.

18 Q. In going through the course of your exam and your
19 information you asked about the contact by the patient
20 inflicted from the assailant and did she indicate what type of
21 penetration was done to her?

22 A. Vaginal penetration with his penis.

23 Q. Did she indicate that he used his finger or any
24 other object other than his penis?

25 A. No.

1 Q. Did she indicate to you whether or not there was any
2 anal penetration by any part of his body?

3 A. No.

4 Q. Did she indicate to you that there was any oral
5 copulation done by her to him?

6 A. She did. She said there was.

7 Q. So she stated that she had to give oral sex to
8 him?

9 A. Yes.

10 Q. Did she indicate whether he ended up doing any oral
11 sex to her?

12 A. He did not.

13 Q. Did she indicate whether or not there were any non
14 injurious acts such as licking, kissing, sucking, or
15 fondling?

16 A. No.

17 Q. Were there any other acts that she noted?

18 A. No.

19 Q. Did she indicate whether or not there was any
20 ejaculation into her mouth, vagina, anus, on her body, on her
21 clothing or any other part?

22 A. She indicated there was ejaculation into her
23 vagina.

24 Q. Did she indicate that she knew there was ejaculation
25 into her vagina or that she was unsure?

1 A. She was unsure. I'm sorry. She was unsure.

2 Q. That's okay. It's a long time ago.

3 A. Yes.

4 Q. And did she indicate whether or not she believed any
5 contraception had been used during the assault?

6 A. Not that she knew of.

7 Q. When you were able to examine her prior to her
8 undressing, what was her general appearance?

9 A. Well groomed. She was cooperative.

10 Q. And so you indicate on her form her general
11 demeanor. What was her general demeanor?

12 A. She was quiet but she answered questions
13 appropriately and readily. She didn't have any hesitation.

14 Q. Was she fully cooperative with you?

15 A. Yes.

16 Q. Did it seem that she wanted to give you as much
17 information as she could to help?

18 A. She did.

19 Q. And when you examined her, you say you take her
20 clothes off on the debris sheet and collect those clothes, in
21 your sexual assault kit do you separate out the underwear from
22 the clothes to be submitted with the sexual assault kit?

23 A. Yes. The underwear goes in a separate bag.

24 Q. So the clothes that were collected, the underwear
25 would not be in that same bag of evidence with those

1 clothing?

2 A. Right.

3 Q. After you collected the clothes, you indicated you
4 gave her a gown so that you could do the rest of your
5 examination?

6 A. Yes.

7 Q. How is that examination performed?

8 A. Supine position.

9 Q. And for the non medical people, what do you mean by
10 supine?

11 A. On the back.

12 Q. Is this on an exam table?

13 A. A stretcher.

14 Q. And are there stirrups with places for her to put
15 her feet?

16 A. We have pelvic pillows that slide under the
17 patient.

18 Q. Is that so you can get a full detailed look?

19 A. Yes.

20 Q. When you're doing the pelvic examination, do you use
21 any tools or instruments during that?

22 A. On this one I used a speculum, a vaginal speculum.

23 Q. Can you describe for the jury what a speculum is and
24 what its purpose is?

25 A. It opens the vagina so you can see the cervix and

1 make sure there's no internal injuries.

2 Q. So it's a tool that goes into the vagina and then
3 opens up your walls?

4 A. Yes.

5 Q. And when you're getting the evidence, are you
6 getting, are you scraping the tissue, getting smears, swabs of
7 all the tissues and collecting evidence?

8 A. Yes.

9 Q. Is that what was done here?

10 A. It is.

11 Q. So can you tell the jury what evidence you collected
12 from the victim during your examination?

13 A. I collected known buccal swabs which is her DNA
14 that's known to be hers. I collected oral swabs and smear. I
15 collected the clothing and I also did vaginal swabs and
16 smear.

17 Q. And the swab is just the, kind of like a Q-tip?

18 A. It's a Q-tip.

19 Q. And the smear is getting the cells?

20 A. Yes.

21 Q. Once you finished your exam, was there any visual
22 presence of sperm that you saw?

23 A. Not that I could tell. Uhm, she did appear to have
24 like some discharge but not anything that I could say was
25 sperm.

1 Q. But would you also agree that as a SANE nurse
2 visualizing that is something that you would note but that you
3 are not qualified to state whether or not something is sperm
4 or discharge or --

5 A. Yes.

6 Q. Did she indicate to you whether or not there was any
7 sort of strangulation or drug facilitated sexual assault or
8 any of that?

9 A. No.

10 Q. You said you did not have to go through those
11 protocols with her?

12 A. No.

13 Q. Did you perform any lab test?

14 A. Other than the swabs, no. We did not do blood.

15 Q. Do y'all generally do a pregnancy test?

16 A. That's something that the hospital may do.

17 Q. Look at page 4 of 6 under the lab tests performed.
18 Did you note that a pregnancy test was performed that day?

19 A. Yes. I did.

20 Q. And then during your exam did you note any physical
21 injuries to the victim?

22 A. I did not see any apparent injuries.

23 Q. Based on her description of the assault did you
24 expect to find any visual injuries?

25 A. No.

1 Q. Can you please tell the jury the clothing
2 description that you collected?

3 A. It was a beige tank top, a black sweatshirt, red and
4 burgundy pullover, one pair of blue and one pair of black
5 pants, and the underwear was blue with white polkadots and a
6 black and pink bra and a red and burgundy hat.

7 Q. Afterwards were any medications administered to
8 her?

9 A. Yes. She had Rocephin, Cipromax and Flagyl.

10 Q. And what are those for?

11 A. They are antibiotics for STD correction.

12 Q. Is that because there was an unknown quantity of the
13 STD?

14 A. Yes.

15 Q. After you finished your exam and collected all of
16 the evidence, do you give her any instructions on any type of
17 follow up?

18 A. She was to follow-up with her OBGYN within six
19 weeks.

20 Q. When you collected the evidence, the oral swabs, the
21 known buccal swabs, the smears, and the underwear, do you
22 place them in a specific kit to be examined for evidence?

23 A. Yes. They are placed in a kit.

24 Q. When you collect that, do you remain in custody of
25 that evidence --

1 A. Yes.

2 Q. -- until it is properly sealed and identified?

3 A. Yes. Until law enforcement gets it.

4 Q. I'll show you what's been marked as State's Exhibit

5 11. Do you recognize that item?

6 A. Yes.

7 Q. What is that item?

8 A. It's a sexual assault evidence kit.

9 Q. Is this the kit from Ms. Montgomery that you
10 collected?

11 A. Yes.

12 Q. And is this the tape where you had sealed it and
13 initialed that it was sealed?

14 A. Yes.

15 Q. And who did you submit this to?

16 A. Latisha Walker.

17 Q. And this is the true and accurate actual kit?

18 A. Yes.

19 MS. CORNWELL: Your Honor, at this time the State
20 moves State's Exhibit 11 into evidence.

21 THE COURT: Any objection?

22 MR. HUTTO: No objection.

23 THE COURT: All right.

24 BY MS. CORNWELL:

25 Q. Once you seal and tape it and you place your

1 initials and date on it, is there any way for this kit to
2 opened without somebody cutting open that seal?

3 A. No.

4 Q. And approximately what time was this kit admitted to
5 law enforcement?

6 A. 5:00 in the morning.

7 Q. Does your report notate approximately what time the
8 victim came in with law enforcement?

9 A. I have what time law enforcement arrived which was
10 2:25 in the morning.

11 Q. At the very top of that page on the sticker with the
12 bar code for the admission does it also indicate 2:25 a.m.?

13 A. Yes.

14 Q. So that would be the time that the victim and law
15 enforcement were present for the exam?

16 A. Yes.

17 Q. And ultimately the kit was collected and submitted
18 for evidence at 5:06 a.m.?

19 A. Yes.

20 Q. So a fairly lengthy process?

21 A. It is.

22 Q. After you finished examining the victim and
23 submitted the evidence that you submitted to law enforcement,
24 did you have any further involvement in this case?

25 A. No.

1 MS. CORNWELL: Thank you. Please answer any
2 questions defense counsel may have.

3 THE COURT: Cross examination.

4 MR. HUTTO: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. HUTTO:

7 Q. Good morning, ma'am. How long have you, or how long
8 were you an employee at Regional Medical Center?

9 A. Since 2012.

10 Q. Are you still employed there?

11 A. Yes.

12 Q. As part of -- Let me clarify. When you fill out one
13 of these reports for SLED, the hospital doesn't keep that,
14 right?

15 A. This report?

16 Q. That report. Yes.

17 A. They do keep a copy.

18 Q. The original goes with this box that you have
19 identified --

20 A. Yes.

21 Q. -- for the Solicitor? Okay. But as part of
22 admission to the hospital the hospital creates its own file;
23 is that right?

24 A. Yes.

25 Q. Okay. And in the hospital's file there might be

1 more medical type information like blood pressure, heart rate,
2 that kind of thing?

3 A. Yes.

4 Q. Okay. And those records are kept in the hospital
5 for how long?

6 A. I'm not sure on the exact time.

7 Q. Okay. Now, I want to show you a document and see if
8 you can identify it. Feel free to look through it. Do those
9 appear to be the hospital records from this night for Ms.
10 Montgomery?

11 A. Yes.

12 MR. HUTTO: Your Honor, at this time we would like
13 to move these records into evidence.

14 THE COURT: Any objection?

15 MS. CORNWELL: I would object, Your Honor. I
16 believe that he can ask questions but I think moving a
17 victim's medical records into evidence is not appropriate
18 at this time. He can question her regarding --

19 THE COURT: Y'all approach and let me see the
20 records.

21 (Side bar off the record.)

22 BY MR. HUTTO:

23 Q. I would like to ask you to read just a couple things
24 out of here. I will give you these. That's the original. So
25 if you look on the first page after the cover page, it's

1 marked page 1 of 58, do you see the arrival time of 2:25?
2 It's in the bottom left corner there for encounter
3 information.

4 A. Yes.

5 Q. Okay. So from the hospital's records she had
6 arrived at the hospital at 2:25 a.m.?

7 A. Right.

8 Q. Were you on shift at that time?

9 A. No.

10 Q. Okay. When did you come on shift?

11 A. I was called in to do the kit.

12 Q. Okay. Understood. Can you go to the tenth page of
13 this document? I'll be happy to point it out to you. It's
14 under emergency documentation. I'll show you what it looks
15 like. This page here. I believe you're looking at it.

16 A. All right.

17 Q. Now, under emergency documentation under affect and
18 behavior there are the same three adjectives that you used
19 before, I think, appropriate, calm and cooperative. Is that
20 in keeping with what you understood to be her demeanor at the
21 time?

22 A. Yes.

23 Q. Okay. And then on the bottom of that page you see
24 the section marked additional comments?

25 A. Yes.

1 Q. Do you see where it says patient states that she was
2 walking home from work when she was held at gunpoint?

3 A. Yes.

4 Q. Okay. If you could turn with me to the next page.
5 It's a further header emergency documentation and there's a
6 subsection for history of present illness.

7 A. Right.

8 Q. And under that section two sentences in it reads the
9 location where the incident occurred was in the street and it
10 goes on to say type of injury, none. Do you see both of those
11 statements within these records?

12 A. Yes.

13 Q. Okay. Now, I would like to go back to your report
14 if I could so feel free to set that aside. Those are your
15 initials on the bottom of each page of your report?

16 A. Yes.

17 Q. Okay. So you were the one physically taking down
18 these notations?

19 A. Yes.

20 Q. All right. I'm gonna look through part of this
21 report. You went through almost this entire thing with the
22 Solicitor section by section, sometimes line by line when the
23 State was just asking you questions; is that correct?

24 A. Yes.

25 Q. Okay. I want to turn with you or I would like you

1 to turn with me to the second page of your report, assault
2 history. Do you see that?

3 A. Yes.

4 Q. Now, you did not get into that previously with the
5 jury; is that right?

6 A. No.

7 Q. Okay. Can you read where Ms. Montgomery told you
8 that this assault occurred?

9 A. Behind the hair salon building.

10 Q. Okay. Let me ask you about the next two pages where
11 it's on top of page 4 where you have the general physical
12 examination for Ms. Montgomery. Now, this form has some
13 pre-written boxes on it under general demeanor and it says you
14 can choose between quiet, tearful, trembling, anxious,
15 controlled, angry, sobbing or tense and at that time you
16 placed a check mark by quiet?

17 A. Yes.

18 Q. So if someone else there had described her as
19 distraught or distressed, that would not have been your
20 characterization at the time?

21 A. She was quiet. I mean, everybody shows distress
22 differently.

23 Q. What about distraught?

24 A. She was not acting out as being distraught.

25 Q. Okay. You have already gone over most of the rest

1 of your report so I won't belabor that. Can I get you to flip
2 back to assault history though for a moment.

3 A. Okay.

4 Q. This is a narrative that you took from Ms.
5 Montgomery. She was telling you this and you were
6 transcribing it; is that right?

7 A. Yes.

8 Q. Because it's written -- I understand this is your
9 handwriting but it's written in the first person so you were
10 writing what she was telling you?

11 A. Yes.

12 Q. Okay. Read through that history of assault real
13 quick and I just want to ask you pretty much one question
14 about it.

15 A. (Witness complies.) Okay.

16 Q. All right. There's no mention of any oral sex
17 anywhere in that statement, is there?

18 A. No.

19 Q. Okay. I see that you noted time of assault as 1:30.
20 That's from her?

21 A. Yes.

22 Q. Okay. So she didn't tell you 12:00 a.m. or 12:30 or
23 1:00, it was 1:30?

24 A. It was 1:30.

25 Q. Just to go back, the statement from Ms. Montgomery

1 at that time was behind a hair salon, not any other address,
2 not a restaurant, not a donation center, nothing of that
3 nature?

4 A. No. What she told me was a hair salon building.

5 MR. HUTTO: I believe that's all the questions I
6 have got for you.

7 THE COURT: Any redirect?

8 MS. CORNWELL: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. CORNWELL:

11 Q. Ms. Sherman, in the medical records that you were
12 shown, were those notes taken by you or by a different nurse
13 or doctor?

14 A. A different nurse and another doctor.

15 Q. When you were looking at where it states the history
16 of present illness, the location of the incident occurred,
17 above that where it says additional information other, would
18 you agree it says EMS states the patient? So that would have
19 been a statement by EMS?

20 A. Yes.

21 Q. Would you also agree that as hard as nurses try
22 sometimes, sometimes information is inaccurately put in the
23 history or sometimes wrong?

24 A. It can happen.

25 Q. With the general demeanor, you indicated that she

1 was quiet, that everybody acts differently but there was no
2 acting out or distraught. You would also agree that you
3 didn't see her when she was first brought to the emergency
4 room?

5 A. Right.

6 Q. It was sometime later that you were able to see
7 her?

8 A. Yes.

9 Q. And you indicated that in the assault history there
10 is no mention of oral sex, however, were you advised of oral
11 sex?

12 A. Yes.

13 Q. Is that the reason you took an oral swab?

14 A. Yes.

15 Q. If you had not been advised of oral sex, would you
16 have had a need to take an oral swab?

17 A. No. Just her known DNA swab.

18 Q. Is that why you did not take any anal swabs --

19 A. Yes.

20 Q. -- because there was no anal sex?

21 A. Yes.

22 MS. CORNWELL: That's all the question I have.

23 THE COURT: You may step down, ma'am. Thank you.
24 You may call your next witness.

25 MS. CORNWELL: The State calls Lieutenant Jeff

1 Crooks.

2 Thereupon,

3 JEFFREY CROOKS

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated,
6 state your name for the record.

7 THE WITNESS: My name is Jeffrey Crooks.

8 THE COURT: Your witness.

9 MS. CORNWELL: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. CORNWELL:

12 Q. Lieutenant Crooks, if you could please tell the jury
13 what your involvement in this case is and a little bit about
14 your educational and work background.

15 A. Yes, ma'am. Again, my name is Jeffrey Crooks. I'm
16 a lieutenant with the South Carolina State Law Enforcement
17 Division commonly referred to as SLED. I'm the supervisor of
18 the latent print department. Our responsibilities include
19 processing evidence submitted to us for the presence of
20 fingerprints. We also conduct examinations of these unknown
21 prints to known standards to determine if it came from the
22 same source.

23 Q. And when you say latent prints, that's a technical
24 term for fingerprints?

25 A. Yes, ma'am. Basically we look at two types. The

1 latent prints, latent in itself means hidden. It's a print,
2 it's a fingerprint that's left behind or could be left behind
3 when you touch an object. We also have what we refer to as
4 known prints. Those are the known standards ink prints of
5 individuals who get fingerprinted that we compare to the
6 unknown prints.

7 Q. And approximately how many print analysis have you
8 done in the course of your career?

9 A. I don't have an exact number but well into to the
10 tens maybe even upwards of a hundred thousand. I have been a
11 fingerprint examiner for 17 years. I have been in law
12 enforcement for going on 26 years. I have testified in State
13 Courts of South Carolina as well as North Carolina and also
14 Federal Court 27 times on fingerprint examinations. I have
15 completed numerous courses in fingerprint examination. Our
16 inhouse training program is approximately a thousand hours of
17 training and I have taken numerous external courses in
18 fingerprints both in the development of fingerprint evidence
19 as well as comparison of fingerprints.

20 MS. CORNWELL: Your Honor, at this time the State
21 would move to qualify Lieutenant Crooks as an expert in
22 latent print analysis.

23 THE COURT: Any voir dire?

24 MR. HUTTO: No.

25 THE COURT: The Court finds that he is so qualified.

1 Ladies and gentlemen of the jury, normally a person
2 cannot give opinion testimony. Normally when a person
3 testifies they must testify as to what they either saw,
4 heard or sensed by smell or something of that nature.
5 However, there's an exception when someone is qualified
6 as an expert because of their education or experience
7 they're permitted to give their opinion in certain areas
8 if the Court qualifies them in that way. Lieutenant
9 Crooks is qualified in the field of fingerprint analysis
10 to give opinion testimony in that area. That does not
11 mean that you must accept that opinion but it's evidence
12 for you to use in any way that you see fit and give it
13 the weight and credibility that you deem as appropriate.
14 You may proceed.

15 MS. CORNWELL: Thank you, Your Honor.

16 BY MS. CORNWELL:

17 Q. Lieutenant Crooks, if you could just explain to the
18 jury how you go about analyzing a piece of evidence for
19 fingerprints?

20 A. Yes, ma'am. We basically determine the processes
21 that we use on the type of evidence that we receive. In this
22 particular case we received a cell phone that we were asked to
23 examine for the presence of latent print evidence. For the
24 cell phone the techniques I used, there were several steps
25 that I used. The first is fuming with what we call

1 cyanoacrylate. Cyanoacrylate is a fancy word for Super Glue.
2 We fume the item. The Super Glue is heated up in a process
3 that creates Super Glue fumes. If there's any fingerprint
4 evidence present on the item, the Super Glue fumes will
5 strengthen them and it will allow us to perform additional
6 tests to further enhance the visibility of these unknown
7 prints because originally the reason we call them latent
8 prints is you normally can't see them just by looking for
9 them. Sometimes you can with certain lighting techniques but
10 for the most part you typically cannot. A fingerprint is
11 about 99 percent moisture. When you touch an item, you could
12 leave a fingerprint but you don't necessarily always leave a
13 fingerprint. The moisture in the print if you leave one will
14 evaporate leaving about one percent residue, sweat that exudes
15 from your skin. Sometimes you can get the oily residue on
16 your face on the surface of your skin and the sweat or the
17 residue that is present when you touch an item, it's possible
18 to leave an outline of your fingerprint much like a rubber
19 stamp would do with ink.

20 In this particular case I fumed the phone and then I
21 use a chemical which causes fingerprints to fluoresce in an
22 alternate light, an alternate wave length other than normal
23 white light. It's the typical processes that we use for this
24 type of evidence. So I performed these tests and conducted a
25 visual examination of the phone after each step to determine

1 if fingerprint evidence was present.

2 Q. And was fingerprint evidence observed on this
3 phone?

4 A. No, ma'am. It was not.

5 Q. So there was no evidence from the owner of the phone
6 or any other person?

7 A. No, ma'am. Sometimes we'll see evidence of
8 fingerprints but they will not be of a sufficient quality to
9 allow us to conduct an examination. In other words, we see
10 ridge detail present but it's just not enough. In this
11 particular case I didn't see any ridge detail anywhere on the
12 phone.

13 Q. And I think you have already explained a little bit
14 about how a piece of evidence could have been touched and
15 fingerprints may not be observed on that item even though it
16 was touched maybe some moisture and other factors. Is that
17 kind of like, I guess if anybody has ever been fingerprinted
18 and you have to kind of roll and sometimes it doesn't take and
19 you have to wipe your finger off and do that. The factors
20 that go into that, how easy is it to get a fingerprint on
21 something, an item that's frequently touched, frequently
22 wiped, frequently used?

23 A. Well, when we refer to fingerprints -- First let me
24 explain, if I may. The surface of your fingers, palms and
25 feet contain raised lines of skin called ridges. The purpose

1 of these ridges is to allow you to grip items when you hold
2 them or to prevent you from slipping when you're walking
3 barefoot. Along these raised lines of skin, along these
4 ridges are little holes called pores. That's where your sweat
5 comes out. When you touch an item, depending on if there's
6 any residue on those raised lines of skin you may leave an
7 outline of your ridges, of those ridge lines. Like I said
8 before much like a rubber stamp would do with ink.

9 The condition of the surface that you're touching as
10 well as the condition of your skin when you touch that item
11 all affect whether or not you're gonna leave a fingerprint.
12 If your skin is really dry or if the surface is a rough
13 surface, there's a possibility that you may touch that item
14 and not leave a fingerprint. The other issue is fingerprints
15 by their very nature are very fragile. I mentioned the Super
16 Glue technique earlier that we use and the reason for that is
17 because fingerprints are very fragile.

18 When the moisture evaporates from a print, you're
19 talking about one percent of residue that can easily be wiped
20 off if something comes in contact. Friction is a fingerprints
21 worst enemy. Because of the fragile nature of it we have to
22 first strengthen that print before we do anything else because
23 we know that simply applying a liquid chemical to that print
24 could cause that print to wash away so fingerprints are very
25 fragile. The surface of the item that you're touching as well

1 as the condition of your skin when you touch it all have
2 effects on whether or not you're going to leave a
3 fingerprint.

4 Q. So based on your expert opinion just because there
5 aren't fingerprints on an item does not mean that a person did
6 not touch that item?

7 A. That's correct.

8 MS. CORNWELL: Thank you. That's all the questions
9 I have.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. HUTTO:

13 Q. Thank you for being here, sir. You have been able
14 to get fingerprint evidence from phones in the past?

15 A. Yes, sir. I have.

16 Q. Okay. Were you the one who received this particular
17 phone into SLED's custody or was that done by somebody else?

18 A. The standard routine for submitting to our
19 laboratory, we have a department called evidence control that
20 receives all the evidence that is submitted from local
21 agencies. The evidence is pre-logged by a computer system by
22 that local agency and it has to be packaged in a sealed
23 container. Once they've submitted evidence and the evidence
24 control reviews the documentation and the packaging ensuring
25 that everything is done properly, then it is distributed to

1 the individual departments within the laboratory. I actually
2 received the evidence from our latent incoming. If I remember
3 correctly it was received from our latent incoming which is
4 basically our storage of incoming evidence and then I
5 processed it and then returned it back to go back downstairs
6 to be returned to the local agency.

7 Q. Okay. Do you know when it was that SLED received
8 that phone?

9 A. Uhm, may I refer to my notes?

10 THE COURT: Yes, sir.

11 BY MR. HUTTO:

12 Q. Please.

13 A. I received it on January 23rd of 2019. I believe it
14 was submitted if I remember correctly, I think that might have
15 been a Monday, I'm not sure, but I believe it was submitted
16 either that Friday before or the day before whichever. I'm
17 not sure which day of the week the 23rd is or was.

18 Q. So if somebody allegedly touched this phone on
19 January 6th, 2015, you got it on January 23rd of 2019, that
20 would mean that no testing was done on it for four years and a
21 couple weeks?

22 A. One of the first things we do when we receive an
23 item of evidence is we do what we call a visual examination.
24 We obviously are looking for any evidence that needs to be
25 collected but we are also looking to see if any processes have

1 already been performed on that item that may potentially have
2 been performed by the submitting agency and we were not aware
3 of. I did not see any indication that any type of processing
4 had been done on the phone. I saw no evidence of that so I
5 can't say for sure what was done with it before I received it,
6 but I did not see any indication that any type of processing
7 or examination for latent prints had been done prior to my
8 receiving it.

9 Q. So in your expert opinion it's likely that no
10 testing was done for four years and a couple weeks?

11 A. That's correct. I did not see any evidence that
12 anything had been done.

13 Q. You testified that fingerprints are very fragile?

14 A. Yes, sir. That's correct.

15 Q. Is it possible that if you had gotten that evidence
16 earlier than four years and a couple weeks later that
17 fingerprints might have been there?

18 A. It's possible. Yes, sir.

19 Q. Okay. And fingerprints can help confirm, or confirm
20 that somebody was somewhere, or confirm that they weren't
21 somewhere; isn't that right?

22 A. What the fingerprints can determine is whether they
23 touched the item. I have actually eliminated individuals many
24 times that we were asked to look at to determine if they were
25 the source of the latent print. Many times I don't have the

1 information as far as the relevance of that item to a
2 particular case so I can't state as to the relevance or the
3 importance of any result that I may give on a report to that
4 case so I couldn't really speak to that I don't think as far
5 as whether it was relevant to this case my result.

6 Q. Okay. Is there any reason why you couldn't have
7 tested this phone on January 7th of 2015 other than that you
8 didn't have it?

9 A. No, sir. If it was submitted, whenever it was
10 submitted, we would have worked it.

11 Q. And you didn't tell Orangeburg, SLED does not have a
12 practice of telling any public safety department not to submit
13 evidence to them quickly; is that right?

14 A. No, sir. We have no authority over any local agency
15 as far as telling them how to work their case. We are an
16 assisting agency. An agency that needs our services can send
17 it to us and we will be more than happy to do that. It's up
18 to that agency to decide what to do with their evidence.

19 MR. HUTTO: No further questions.

20 THE COURT: Redirect?

21 MS. CORNWELL: Just one quick follow up.

22 REDIRECT EXAMINATION

23 BY MS. CORNWELL:

24 Q. You were asked if fingerprints can determine whether
25 or not a person was at a particular location. Fingerprints

1 can't do that, correct?

2 A. The only thing fingerprints can do is tell you if
3 somebody touched something. In the affirmative I can tell you
4 if a print is suitable for examination is there and I can
5 identify it to an individual, I can tell you that individual
6 touched the item. If there's no prints there, I can't tell
7 you whether they touched the item or not again because the
8 only thing I can tell you for sure is when I get an
9 identification that that person touched that item. I can't
10 tell you when, I can't tell you why, just the fact that they
11 touched that item.

12 Q. Just because you don't find fingerprints on an item
13 doesn't mean somebody didn't touch that item?

14 A. That's correct. We don't always get fingerprints.

15 MS. CORNWELL: Thank you, Your Honor. That's all I
16 have.

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

18 MS. CORNWELL: May this witness be excused?

19 THE COURT: Any objection?

20 MR. HUTTO: No objection.

21 THE COURT: Okay. You may call your next witness.

22 MS. CORNWELL: The State would call Courtney
23 Thompson.

24 Thereupon,

25 COURTNEY THOMPSON

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,
3 state your name please for the record.

4 THE WITNESS: My name is Courtney Thompson.

5 THE COURT: Your witness.

6 MS. CORNWELL: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q. Ms. Thompson, can you please tell the jury what your
10 involvement in this case was and a little bit about your
11 education and professional background?

12 A. Sure. My involvement in this case is, first of all,
13 I'm employed at the South Carolina Law Enforcement Division
14 also called SLED. I'm a forensic serologist in the DNA case
15 work department and what that means is basically different
16 types of evidence are submitted to the lab for testing and my
17 involvement with them varies based off of the kind of evidence
18 that's been submitted and that sort of thing, what kind of
19 event had occurred, but I examine items of evidence for
20 possible DNA collection and prepare those items of evidence
21 for a DNA analyst.

22 Q. How long have you been working in serology?

23 A. I have been a serologist for about six and a half
24 years.

25 Q. Can you tell the jury a little bit about your

1 education and experience and how long you have been working as
2 a serologist?

3 A. Sure. I have a Bachelor of Science in forensic
4 science from Southern Wesleyan University. I was trained in
5 the DNA Department for a little over a year under a DNA
6 analyst who just went through all the different types of
7 evidence handling and different procedures that are lab has to
8 abide by. I had to go through a large series of tests in
9 order to prove that I was capable of handling evidence on my
10 own and that included like a mock case, a written exam, oral
11 exam, as well as a mock trial in order to be deemed competent
12 and able to perform case work independently. So I passed all
13 of that and have been performing independent case work and
14 analysis for the last about five and a half years.

15 Q. Approximately how many samples have you analyzed
16 over the course of your years?

17 A. We don't actually track the number of samples but I
18 would say it has to be several thousand at this point.

19 Q. Have you ever testified in court as an expert?

20 A. Yes. I have.

21 Q. Approximately how many times?

22 A. Approximately 30 times.

23 MS. CORNWELL: Your Honor, at this time the State
24 would move to qualify Ms. Thompson as an expert in the
25 field of serology.

1 THE COURT: Any voir dire?

2 MR. HUTTO: No, Your Honor.

3 THE COURT: The Court finds that she's so
4 qualified.

5 MS. CORNWELL: Thank you, Your Honor.

6 BY MS. CORNWELL:

7 Q. Ms. Thompson, if you could please explain to the
8 jury in detail what the analysis of serology is. You went
9 through that a little bit just a moment ago but...

10 A. Sure. The practice of forensic serology is the
11 examination of different types of evidence. Most commonly we
12 look at different types of body fluids. The body fluids we
13 mainly look at are blood, semen, and saliva. The reason why
14 we analyze items of evidence for these body fluids is because
15 they're very good sources of potential DNA. And so my job is
16 to look at items of evidence and try and collect potential DNA
17 left behind off of them and then I prepare those items for a
18 DNA analyst so that they can perform their analysis on them as
19 well.

20 Q. What is your standard protocol when you receive a
21 piece of evidence?

22 A. Standard protocol of receiving evidence is always to
23 make sure that the evidence is properly marked and tabled.
24 Each item of evidence when it comes into the lab gets
25 generated with a special number that's associated to the case

1 and then an item number that's associated to that item
2 specifically just to be able to track it throughout the lab.
3 So I need to make sure all evidence is properly identified
4 before working on it and then also properly intact so that the
5 evidence, to make sure that it has not come unsealed or been
6 tampered with at all.

7 Q. Do you recall receiving any evidence in this
8 particular case?

9 A. Yes. I did receive evidence in this case.

10 Q. What lab number is associated with this case?

11 A. Lab number is L1600396.

12 Q. Is that lab number assigned to all pieces of
13 evidence in this case?

14 A. That's correct. It would be.

15 Q. Does it matter if the pieces of evidence were
16 submitted at different times?

17 A. No. As long as it's still related to the exact same
18 case. Multiple submissions can be made of the evidence so
19 there can be several times that evidence is brought to the lab
20 that relates specifically to this case.

21 Q. Are all those pieces of evidence given the same lab
22 number?

23 A. Yes. They are.

24 Q. And when you received the evidence in this case, did
25 you do a visual inspection of the package to make sure the

1 evidence wasn't tampered with or opened or changed or modified
2 in any way?

3 A. That is correct. I do a visual exam of every item
4 of evidence before I open it. In this case I did the same and
5 I did not see any type of seal that was not intact.

6 Q. What evidence did you receive in this case?

7 A. In this case I received item 1 which is a sexual
8 assault evidence collection kit from Tori Montgomery and item
9 2 which is a pair of underwear that came out of the sexual
10 assault kit.

11 Q. Within the sexual assault kit what did you do with
12 the evidence inside that kit?

13 A. The sexual assault kit comes packaged up together
14 and so when I first look at the kit, what I will do is check
15 to see what kind of items are inside of the kit because we
16 don't know basically until we open it up and then for each
17 item that is collected inside of the kit it receives a new
18 item number that follows the original item or what we call the
19 parent item. So inside this kit there was a vaginal smear,
20 vaginal swabs, victim buccal swabs, or just a known standard
21 from the victim, a debris collection and then I also again
22 took a pair of underwear into my custody as well and performed
23 screening on that as well.

24 Q. When you look at the underwear, do you examine that
25 piece of evidence whole or do you do any manipulation of it?

1 A. If the testing that I do is indicative that it needs
2 to be tested further, what I will do is often I will cut or
3 swab the items of evidence that I'm processing. In this case
4 I did a visual examination and testing on the pair of
5 underwear and I found an area that I deemed was necessary to
6 go forth with further testing so I cut that and that item is
7 called the cutting from crotch of underwear and then I also
8 collected hair off of the underwear as well.

9 Q. And did you perform an analysis on each piece of
10 evidence in the kit?

11 A. I performed analysis on multiple items in the kit,
12 however, the vaginal smear that was submitted I did not
13 perform an analysis on as well as the debris collection that
14 was submitted inside of the sexual assault kit.

15 Q. Did you perform any analysis on item 2.2 which is
16 hair from the underwear?

17 A. Also I did not perform an analysis on that.

18 Q. Can you explain to the jury why you would not
19 perform analysis on certain pieces of evidence?

20 A. Sure. Based off of our procedures that our lab has
21 set forth based off of the results of certain types of tests
22 that are present inside of a case I may not have to do
23 anything with things like hair or debris collections. Debris
24 collections are typically an item that I'm looking for hair on
25 them. If the results of other tests are positive, they are

1 typically a better source of DNA and so we won't look at other
2 items of evidence such as the debris collection or the hair
3 off of the underwear. It won't be sent for further analysis
4 because in effect we have something that we believe is more
5 probative to send for. The smear was not done just because
6 again our procedures allow us to not look at the vaginal smear
7 that's submitted if we have positive results on other items.

8 Q. Regarding the items of evidence that were analyzed
9 which I believe is 1.2, the vaginal swabs, 1.3 which was the
10 victim buccal swab, and 2.1 which is the item from the crotch,
11 would you please tell the jury about your analysis on each of
12 those pieces of evidence and what your findings were?

13 A. Sure. So item 1.2 which is the vaginal swabs, my
14 results are that the examinations that I did for components of
15 semen which are P30 spermatozoa were positive so the item was
16 forwarded to the DNA section for testing. The victim buccal
17 swabs I simply prepared those for the DNA analyst and then the
18 cutting off of the pair of underwear my results were that
19 examination for components of semen which were acid
20 phosphatase, P350 and spermatozoa were positive so that item
21 was forwarded to the DNA section as well for further
22 testing.

23 Q. When you're examining and testing these items,
24 explain to the jury how you examine them and test them and how
25 you're able to determine whether or not there is DNA present.

1 A. So what I'm looking for on these two items that
2 we're talking about specifically is the presence of semen and
3 that's just based off of the scenario of this particular case.
4 That's why I chose to do that type of testing on these items.
5 The component that we're looking for are both things that are
6 found in extremely high concentrations in male seminal fluid.
7 The attempt I'm making is to identify those components and
8 basically I can say then that semen was present and it can be
9 forwarded on for further testing to the analyst. I do that by
10 we have a test that is a standardized test that can detective
11 elevated levels of what we call P30 which is again a component
12 found in semen. That test was positive in this case. And
13 then after I finished my P30 test, I made a microscopic slide
14 and that slide is then put on a microscope and the sample is
15 looked at and I try to identify a spermatozoa or sperm cell.
16 The reason for doing this is the sperm cells is what contain
17 the DNA in male seminal fluid so they're important to identify
18 for DNA analysis. So I was able to do that on the vaginal
19 swabs.

20 And then on the cutting from the underwear I did an
21 initial screening test to look for the component acid
22 phosphatase which again is another component found in very
23 high concentrations in male seminal fluid. I do this test on
24 larger items of evidence. The reason why is it's quick and
25 it's an easy test to perform when I'm screening something

1 larger than a swab so, for example, a pair of underwear, it
2 helps me narrow down the areas that are positive and eliminate
3 the areas that are negative. So I took the positive areas and
4 forwarded those on and then I did again the P30 test and the
5 spermatozoa examination on the item and those were also
6 positive as well.

7 Q. Let's talk about the victim's buccal swab. Can you
8 explain to the jury what a buccal swab is?

9 A. Sure. A buccal swab is another way to say a known
10 standard that is collected off of an individual. In this case
11 a buccal swab is two sterile swabs are rubbed against the
12 inside of a person's mouth to collect cells from the cheek
13 area and then they're typically submitted as a standard for
14 comparison for that particular individual.

15 Q. So the swabs are done orally?

16 A. Yes.

17 Q. Do you perform any analysis on the oral swabs?

18 A. On the victim standard?

19 Q. Yes.

20 A. No. I don't do any analysis on them. I just
21 prepare them for DNA.

22 Q. Once you completed your analysis in this case, what
23 did you do with the evidence?

24 A. After I completed my analysis and I was finished
25 with all the samples in this case, they were again prepared

1 for DNA and then the packaging that all of the items came in
2 would have been sealed up and then I returned the items back
3 to evidence control where they were securely stored until the
4 DNA analyst was ready to pick them up.

5 Q. After you forwarded the evidence to DNA, did you
6 have any further involvement in this case?

7 A. No. I did not.

8 MS. CORNWELL: Thank you, Ms. Thompson. Please
9 answer any questions defense may way.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. HUTTO:

13 Q. Hello. Thank you for being here. Just to clarify,
14 your profession when you were going through this evidence that
15 you collect, your role is not to identify one person or
16 another person but to identify whether a certain substance is
17 present or not. Is that generally correct?

18 A. That would be a good, yes, an accurate
19 representation of what I do. I'm looking for body fluids most
20 commonly on the items of evidence.

21 Q. You're not identifying who those belong to?

22 A. That is correct. I'm not performing any DNA
23 analysis.

24 Q. Okay. Do you recognize, feel free to look at it,
25 what has been marked as a State's Exhibit here?

1 A. Actually I have not seen that personally because I
2 have not seen the boxes. I'm not sure if the sexual assault
3 kit is inside of it or not but when the evidence is submitted
4 to SLED, the box is not retained at SLED. I don't need it and
5 so I just have the csc kit pouch so I have actually never seen
6 that box specifically, but if the csc kit is inside of that, I
7 can identify that.

8 Q. Are you familiar with what is generally in a sexual
9 assault collection kit?

10 A. Yes. I have seen many of them.

11 Q. All right. I notice that one thing that you don't
12 have listed in your items submitted is a toxicology report; is
13 that right?

14 A. Are you asking if like toxicology blood was
15 submitted?

16 Q. Yes.

17 A. Based off of what I'm looking at here under the
18 submission receipt, no. It doesn't appear that any blood from
19 toxicology was submitted.

20 Q. Okay. But if one was in that kit, you wouldn't have
21 received it anyway?

22 A. No. At the time the toxicology samples, if any, had
23 been submitted it would have been separated away from the
24 parts of evidence that would have come to me and then the
25 toxicology samples would have traveled to the toxicology

1 department.

2 Q. Okay. For the jury, can you tell us generally what
3 a toxicologist is?

4 A. A toxicologist is someone who is performing analysis
5 on different types of body fluids in order to identify
6 different substances that may be inside of them. An example
7 of that could be like alcohol.

8 Q. Okay. Your report is dated October 20th, 2016; is
9 that right?

10 A. That is correct.

11 Q. Do you know when SLED received these items that you
12 then used to generate your report?

13 A. The date of submission for the sexual assault kit
14 was January 8th, 2016.

15 Q. So if the alleged assault occurred on January 6th,
16 2015 and you didn't receive it until January 8th of 2016, SLED
17 did not receive any of this information for over a year?

18 A. That would be correct. The date of submission is
19 the time that we received all of the evidence and any
20 information regarding the case.

21 Q. From SLED's perspective is there any reason that you
22 couldn't have received that collection kit the very next
23 day?

24 A. I mean, SLED is a business that operates from Monday
25 to Friday from 8:30 to 5:00. That's our times that we would

1 be accepting any type of evidence submission. So to my
2 knowledge, no. I don't know any reason why. However, we do
3 not have any policies on when an item of evidence must be
4 submitted to our lab for testing. It is determined by the
5 agency that's bringing the evidence to us.

6 Q. Can some of the things that you look for, that you
7 mentioned that you look for degrade over time?

8 A. It is possible, however, as long as an item is kept
9 in a good storage manner so in a clean and dry location most
10 of these samples that, the samples that I come into contact
11 with are extremely stable and can be tested years later
12 actually as long as they have been stored properly.

13 Q. Okay. You don't have any information about how
14 Orangeburg stores its evidence; is that right?

15 A. No. I'm not privy to any information about how any
16 agencies really store their evidence.

17 Q. But SLED does have strict guidelines in its policy
18 for evidence collection and packaging?

19 A. We do have a submission guideline policy that we
20 request all submitters abide by.

21 Q. Are you familiar with the SLED Forensic Services
22 Laboratory Evidence Submission Manual?

23 A. Yes. I have read it before. I don't have it
24 memorized but I have read it and referenced it before.

25 Q. Okay. And in your capacity as an expert and in your

1 familiarity with that manual you would agree that heat, cold,
2 rooms without air conditioning, anything like that, those can
3 be harmful to DNA samples?

4 A. That is correct. Those type of conditions can
5 possibly degrade the DNA over time.

6 Q. And the same thing with humidity, non air
7 conditioned environments, long term refrigeration, those can
8 all be harmful to DNA?

9 A. Humidity and no air conditioning could possibly be.
10 Refrigeration is an accepted form of storage as long as the
11 refrigerator is temperature controlled.

12 Q. Has to be humidity controlled as well; is that
13 right?

14 A. Yes.

15 Q. With the evidence that you received in your report,
16 did you receive known standards for this DNA?

17 A. I received a standard from the victim inside of the
18 sexual assault kit.

19 Q. A majority of the analysis of the actual DNA or
20 substances that may have contained DNA was done by another
21 person in this instance?

22 A. That is correct. The purpose of what I do is to
23 identify the body fluids and identify potentially good sources
24 of DNA and then the actual analysis is performed by another
25 person in my department.

1 Q. Are you familiar with the term elimination
2 standard?

3 A. Yes. I am familiar with that term. It is a type of
4 standard that is sometimes submitted in order for an analyst
5 to make a comparison and sometimes eliminate a potential
6 individual.

7 Q. Do you know whether or not one was submitted in this
8 case?

9 A. I do not know actually if one was submitted in this
10 case. That is actually kind of outside the scope of my
11 involvement in this case.

12 MR. HUTTO: No further questions.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MS. CORNWELL:

16 Q. You indicated that with sexual assault kits storage
17 in a refrigerator is acceptable to preserve the evidence?

18 A. Yes. That's a common method of storage I think by a
19 lot of agencies.

20 Q. While in your testimony temperature may affect the
21 degradation of some evidence, in your experience have you ever
22 experienced evidence appearing over time?

23 A. Can you clarify the question? I'm sorry.

24 Q. That was a weird question. I apologize for that.
25 In those situations where evidence would be submitted and in

1 storage all of a sudden DNA that wasn't there collect on it?

2 A. In my experience the samples are sealed and so
3 there's not really any way for them to really add any sort of
4 DNA to them whatsoever. That would basically be some type of
5 contamination and since this particular kit was sealed
6 whenever I received it, I did not notice any evidence of
7 contamination on them.

8 Q. I believed you testified evidence of semen, blood,
9 saliva can be preserved for years as long as they're properly
10 stored?

11 A. That is correct. It's not uncommon actually for the
12 DNA department to work on cases that are decades old as long
13 as the evidence has been properly stored during that time
14 frame.

15 Q. When you receive a kit, do you know when you receive
16 that kit whether or not there is a known suspect or an unknown
17 suspect?

18 A. Sometimes it's indicated to us whether or not a
19 suspect is known but it's not always information that is
20 provided upon the submission of the evidence. However,
21 knowing whether or not a suspect is identified in a case
22 doesn't really change or affect the way that the DNA
23 department handles any of the cases.

24 MS. CORNWELL: That's all, Your Honor.

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

1 You may call your next witness.

2 MS. CORNWELL: The State would call Samuel Stewart.

3 Thereupon,

4 SAMUEL ALLEN STEWART

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full name spelling your last please.

8 THE WITNESS: Samuel Allen Stewart, S-t-e-w-a-r-t.

9 THE COURT: Your witness.

10 MS. CORNWELL: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. CORNWELL:

13 Q. Mr. Stewart, can you please tell the jury what your
14 involvement in this case is and a little bit about your
15 education and professional background?

16 A. I'm a forensic scientist assigned to the DNA case
17 work department at SLED, South Carolina Law Enforcement
18 Division. I have been there for approximately seven years
19 now. I received my Bachelor of Science in biology from
20 Francis Marion University and I also received inhouse SLED
21 training under other qualified analysts for over a year and a
22 half where I successfully completed a written exam, an oral
23 exam and competency and a mock trial before I was deemed
24 competent as a DNA analyst.

25 Q. How long have you been doing DNA analysis for

1 SLED?

2 A. Approximately seven years.

3 Q. Through the course of those seven years
4 approximately how many samples have you analyzed over the
5 course of your career?

6 A. Thousands I would say.

7 Q. Have you ever testified in court as an expert?

8 A. Yes. I have.

9 Q. Approximately how many times?

10 A. Approximately 27.

11 MS. CORNWELL: Your Honor, at this time the State
12 would move Mr. Stewart into evidence - would qualify
13 Mr. Stewart as an expert in DNA analysis. I'm not gonna
14 move him into evidence.

15 THE COURT: Any voir dire?

16 MR. HUTTO: No, Your Honor.

17 THE COURT: He's qualified.

18 BY MS. CORNWELL:

19 Q. Mr. Stewart, if you could please explain to the jury
20 what DNA analysis is?

21 A. DNA stands for deoxyribonucleic acid, the genetic
22 material that is found in every cell of the human body
23 excluding red blood cells and is responsible for certain
24 traits such as our eye and our hair color. DNA is contained
25 in dense packets known as chromosomes and we use those

1 chromosomes and we look at certain locations on those
2 chromosomes. Those locations are known as str's, short tandem
3 repeat. We look at 21 of those different str locations on
4 various chromosomes to develop what is known as a DNA profile.
5 We use that to identify one individual from another excluding
6 identical twins.

7 Q. What is your standard protocol when you receive a
8 piece of evidence?

9 A. Whenever a case is submitted to SLED it goes through
10 our evidence control department. From there it is given a
11 unique SLED number and any items associated with that case is
12 given a unique SLED item number. That item is inhouse in our
13 evidence control vault until it is assigned to an analyst in
14 the lab.

15 Q. Do you recall receiving any evidence in this case?

16 A. Yes. I did.

17 Q. What lab number was associated with the evidence
18 received?

19 A. It was given a SLED unique lab number L16-00396.

20 Q. Is that lab number assigned to all pieces of
21 evidence with this case?

22 A. That is correct.

23 Q. What evidence did you receive in this case?

24 A. Initially I was given SLED item 1.3 which I tested,
25 a buccal swab from Tori Montgomery, item 1.2 vaginal swabs,

1 item 2.1 cutting from crotch of underwear, item 2.2.1 hair
2 from underwear, and item 2.2.2 hair from underwear.

3 Q. And you indicated that you received a buccal swab.
4 Can you explain to the jury what a buccal swab is and why it's
5 important in analyzing DNA evidence?

6 A. A buccal swab is a sterile swab used to collect skin
7 cells or cheek cells from the inside of the mouth. From that
8 point we call it a buccal swab. We use that as a known
9 standard for comparison to any kind of DNA profile we develop
10 from the evidence.

11 Q. And once you received the evidence in this case, did
12 you follow a standard protocol in analyzing that evidence?

13 A. That is correct.

14 Q. What is your standard protocol when you receive
15 evidence?

16 A. Once the case is assigned to me, I take the items, I
17 cut either the swab or the cutting, I take it through a
18 process of extracting DNA and developing a DNA profile from
19 each one of those items and then I use that known standard to
20 compare the evidence to the known standard.

21 Q. Is that what you did in this case?

22 A. That is correct.

23 Q. Please tell the jury about your analysis of each
24 piece of evidence in this case beginning with item 1.2, the
25 vaginal swab from the sexual assault kit.

1 A. Yes. If I may explain, when we have a sexual
2 assault case with potential male and female DNA that may be on
3 the item, what we do is known as a differential extraction.
4 What that means is that we separate the item into two
5 different portions. One portion is gonna be known as known as
6 the non sperm fraction. This is the portion that we hope to
7 separate any kind of female DNA that may be there typically
8 because those items come from her body and we expect that.
9 The sperm fraction is going to be a fraction and we hope to
10 capture any potential male DNA that may be on that item. I
11 just wanted to make sure I explained that before I went
12 through my report since I will be referring to some items and
13 non sperm and sperm fractions.

14 Q. Just to follow up on that, is that an absolute
15 process when you separate that sperm fraction from non sperm
16 fraction that there's going to be no female DNA evidence in
17 that sperm fraction?

18 A. No. That's not necessarily the case. Sometimes you
19 can't get complete separation. That does happen sometimes.

20 Q. So in the sperm fraction there could still be female
21 DNA present?

22 A. It is possible.

23 Q. I'm sorry. Can you go on and explain your
24 analysis?

25 A. I just wanted to ask, should I be referring to my

1 first report of March 10th?

2 Q. If you would. I know that there are other reports
3 after this one and we'll go into that. Just for chronological
4 sack let's go to the first report.

5 A. Okay. The first reference is to item 1.2, the DNA
6 profile, the sperm fraction 1.2 is a mixture of at least two
7 individuals. A mixture is when they have more than one
8 individual contributing their DNA to an item. The DNA profile
9 of the major contributor is an unidentified male individual.
10 Due to the inability to perform statistical calculations no
11 comparison will be offered regarding the minor contributor to
12 this mixture. Typically when I have a mixture sometimes I'll
13 have a major contributor and a minor contributor. The major
14 contributor is someone who contributed significantly more DNA
15 to that mixture where the minor contributor will be that
16 individual who contributed less DNA to that item.

17 Q. Typically are you able to develop a profile from
18 both a major contributor and a minor contributor?

19 A. Occasionally but not always.

20 Q. In this case you indicate that due to the inability
21 to perform statistical calculations no comparisons will be
22 offered on the minor contributor. Can you explain a little
23 bit more about what that means?

24 A. What that means is that because the profile is so
25 low I did not have enough genetic material so because I can't

1 actually, I guess, make a comparison to it because of the low
2 amount of DNA for that minor contributor we won't use it for
3 any kind of comparisons.

4 Q. You were able to develop a profile from an
5 individual say in this case a major contributor as an
6 unidentified male individual. Is there a DNA database that
7 you can put that evidence in to try to find the identity of
8 that DNA?

9 A. Yes. It is. That database is called CODIS, called
10 the Combined DNA Index System. I did put that major
11 contributor to that 1.2 sperm fraction into CODIS.

12 Q. Are you the person that enters that into that DNA
13 database?

14 A. I am.

15 Q. And you did that for the major contributor of 1.2?

16 A. Yes. 1.2 the sperm fraction. That is correct.

17 Q. And what was your analysis from the findings of item
18 2.1, the cutting of the crotch from the underwear?

19 A. The DNA profile developed from the sperm fraction
20 from item 2.1 is a mixture of at least three individuals. Due
21 to inability to perform statistical calculations no
22 comparisons will be offered for this mixture. The DNA profile
23 developed from the non sperm fraction of item 2.1 is a mixture
24 of at least two individuals. The partial DNA profile of the
25 major contributor is consistent with the DNA profile of Tori

1 Montgomery. Due to the inability to perform statistical
2 calculations no comparisons will be offered regarding the
3 minor contributor to this mixture.

4 Q. When you're looking at that evidence, when you state
5 that there's a mixture of at least three individuals, are you
6 stating that there's sperm from three different individuals or
7 that there's DNA?

8 A. Mostly I'm saying it's DNA from three different
9 individuals.

10 Q. So that doesn't mean just because it's developed
11 from sperm fraction that that's three individual pieces of
12 sperm or semen?

13 A. That is correct.

14 Q. And DNA can be anything from skin cells, saliva,
15 hair, blood?

16 A. Body fluids. That's correct.

17 Q. And you were unable to calculate a statistical
18 calculation from the sperm fraction 2.1?

19 A. That is correct. Because the profile, if I don't
20 have a hundred percent confidence throughout the totality of
21 that profile to put a match to it, we'll deem that profile as
22 insufficient or unable to do any statistical calculations.

23 Q. And in the non sperm fraction which would have been
24 the female fraction that you separated, that major profile
25 contributor was Tori Montgomery?

1 A. That is correct.

2 Q. Did you do the same process for items 2.2.1 and
3 2.2.2 which is the hair?

4 A. Yes. I did.

5 Q. Were you able to perform any statistical
6 calculations regarding the profiles on those items?

7 A. No. I was not.

8 Q. After you finished your analysis, did you make any
9 requests regarding the initial evidence that you received?

10 A. Yes. On my report I made a request for the
11 consensual partner for comparison purposes.

12 Q. So you did ask for a known standard from a
13 consensual partner?

14 A. That is correct.

15 Q. If you had received the known standard from a
16 consensual partner, would you have been able to compare it to
17 all of the evidence to come up with any matches?

18 A. The only one I would have been able to do a
19 comparison to was that major contributor from item 1.2, the
20 sperm fraction.

21 Q. So you would not have been able to develop a profile
22 or match him to 2.1 or 2.2?

23 A. You mean 2.2.1, 2.2.2, the hairs?

24 Q. Yes.

25 A. That is correct.

1 Q. At some point did you receive additional evidence in
2 this case?

3 A. Yes. I did.

4 Q. What additional evidence did you receive?

5 A. That additional evidence was item 3, buccal swabs
6 from Tyquin Jenkins.

7 Q. And again, that is the oral swab that is a known
8 standard?

9 A. That is correct.

10 Q. And did you perform an analysis on that piece of
11 evidence?

12 A. Yes. I did develop a known profile.

13 Q. And once you were able to develop a known profile,
14 were you able to compare that known profile to any of the
15 evidence that you had previously analyzed?

16 A. Yes. I did.

17 Q. Can you please tell the jury what your findings were
18 in that analysis?

19 A. The DNA profile, excuse me, this is from item 1.2,
20 the sperm fraction, the DNA profile of the major contributor
21 matches the DNA profile of Tyquin Jenkins. The probability of
22 randomly selecting an unrelated individual having a DNA
23 profile matching a major contributor to this mixture is one in
24 670 nonillion.

25 Q. Do you know how many zeros are in a nonillion?

1 A. Actually I really don't. I know it's significantly
2 high. At least I would say 21 zeros I would think.

3 Q. So the probability that the DNA in a sperm fraction
4 that you found in item 1.2 matching anyone other than Tyquin
5 Jenkins is one in 670 nonillion?

6 A. Nonillion. That's correct.

7 Q. Based on your analysis matching the sperm found in
8 the vaginal swabs of the victim matching Mr. Jenkins once you
9 were able to match that to Mr. Jenkins was there any need for
10 a consensual partner standard to be submitted to you?

11 A. No. There was not. All the other profiles I was
12 unable to be able to do statistical calculations so no. There
13 was not.

14 Q. After you completed your analysis of the defendant's
15 buccal swabs and compared them to the DNA profiles and the
16 evidence that you had previously analyzed, did you have any
17 occasion to do anything else in this case?

18 A. Yes. There was - I issued an amended report to my
19 original report that was issued on March 10th, 2017. In that
20 amended report there was a change made to the bolding on the
21 DNA table. That's on page 4 of my report. That was for the
22 1.2 non sperm. The bolding was done on the Y and L. But we
23 later determined that it was not necessary. This is one of
24 the times we were coming into this new technology so we were
25 still determining how we were going to mark it on our DNA case

1 table. But it did not change any of the results or change any
2 of the comparisons that were previously reported. We just
3 noticed an oversight and we decided to issue an amended report
4 because of it.

5 Q. So the only change from your initial report to the
6 amended report is a number in that report was originally in
7 boldface type and the only change you made was to unbold it?

8 A. That is correct.

9 Q. Did that change the findings of your analysis?

10 A. It did not.

11 MS. CORNWELL: Thank you. Please answer any
12 questions defense counsel may have.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION

15 BY MR. HUTTO:

16 Q. Thank you for being here.

17 A. Yes, sir.

18 Q. I mostly want to ask you about your report from June
19 25th, 2018. Do you have that in front of you?

20 A. Yes. I do.

21 Q. Okay. This is the report you give once you have
22 buccal swab from Ms. Montgomery and a buccal swab from
23 Mr. Jenkins; is that right?

24 A. Yes. It is.

25 Q. Okay. And you went over specifically the results

1 from item 1.2 with the Solicitor; is that right?

2 A. That is correct.

3 Q. Okay. But you actually did have some calculations.
4 Calculations is the wrong word. Some conclusions from the
5 other items in evidence which just -- I'll stop using the
6 numbers. I think that's a little confusing. 1.2 is the
7 vaginal swabs. You were able to get some conclusions from
8 that?

9 A. Yes. I did.

10 Q. You were also able to draw some conclusions from the
11 piece of underwear that you tested and from two hair samples
12 that you tested; is that right?

13 A. That is correct.

14 Q. So let's start with the swabs first. As you
15 mentioned there's a non sperm fraction and a sperm fraction;
16 is that right?

17 A. That is correct.

18 Q. Once you had the profile of Tyquin, you were able to
19 determine that the sperm fraction, and I'll quote here, "the
20 DNA profile is a mixture of at least two individuals"; is that
21 right?

22 A. For the sperm fraction of 1.2?

23 Q. Yes.

24 A. That is correct.

25 Q. And you weren't able to compare that to any

1 consensual partners because you didn't have enough DNA to do
2 that?

3 A. The only profile that I had that was suitable was
4 that major contributor from item 1.2, the sperm fraction.
5 That's correct. So the other profiles were not suitable for
6 comparison.

7 Q. So let's go down to the, I guess, cutting from the
8 underwear that you tested. You were able to test this for
9 what's called Y-STR DNA?

10 A. Yes. I did. Y-STR is DNA that focuses just on male
11 DNA. We target just that Y chromosome and we develop a
12 profile from different locations on that Y chromosome. It
13 should also be noted that the same Y-STR profile that we
14 developed from the individual, his brother or his father or
15 his uncle or son will have that same Y-STR profile because the
16 Y chromosome is passed down from father to son, so the father
17 paternal lineage.

18 Q. Take us back maybe to high school with our
19 chromosomes here for a second. Woman have two X chromosomes
20 and men have an X and a Y chromosome?

21 A. That is correct.

22 Q. So when you test for something and you find evidence
23 of multiple Y chromosomes, that means there is evidence of
24 multiple men there?

25 A. That is -- Yeah. That's correct.

1 Q. And in particular with the cutting from this
2 underwear, the conclusion that you came to is the Y -- Does
3 STR stand for strain --

4 A. No. It's the - STR stands for short tandem
5 repeat.

6 Q. Okay. I'll just say STR. The Y-STR DNA profile
7 developed is a mixture of at least two male individuals. Is
8 that the conclusion that you were able to draw from that?

9 A. From item 2.1 the non sperm and sperm fraction.
10 Yes. It was Y-STR profile developed, a mixture of at least
11 two male individuals. That's correct.

12 Q. And you weren't able to match either of those to
13 Tyquin based on the samples that you had?

14 A. Because of the overall make-up of that profile
15 because I couldn't have, as I stated before, the totality of
16 the profile, I couldn't put a hundred percent confidence on
17 any individual being there then we deem that profile inability
18 to do any kind of statistical calculations.

19 Q. And to clarify, it's not that you're saying that you
20 have the Y-STR profile of two male individuals. It's at least
21 two male individuals; is that right?

22 A. That is correct.

23 Q. So you can't eliminate more than two as a
24 possibility?

25 A. I can't say that there's -- Yeah. You're correct.

1 So it should be somewhere around two but it could possibly be
2 three. So that's what the at least means.

3 Q. Okay. And that was from specifically the cutting
4 from the underwear. So let's move onto the hair that you
5 tested from these samples. This is in your report 2.2.2.
6 Again, you came to the conclusion that the DNA profile is a
7 mixture of at least three individuals in this case, correct?

8 A. The Y-STR profile?

9 Q. No. Just the DNA.

10 A. Yes. That is correct.

11 Q. And you believe that it's possible that one of those
12 profiles is from the victim?

13 A. I can't say because of the overall --

14 Q. You just know there's at least three people who have
15 their DNA present?

16 A. That is correct.

17 Q. You know that at least two of them were men?

18 A. Yes. I can say that.

19 Q. So because this is hair that you're testing there's
20 at least two male hairs from different individuals present in
21 the items that you tested?

22 A. It was only one singular hair but as we stated
23 earlier DNA can be transferred from skin cells or from bodily
24 fluids so I can just say that it was more than one male DNA
25 there but I can't say there was more than one hair.

1 Q. Okay. Going back to my question about the three
2 individuals, that's true of the sperm fraction from the
3 underwear cutting; is that correct? That there's DNA from at
4 least three individuals present?

5 A. Are we talking about item 2.1?

6 Q. I'm referring to item 2.1 in the sperm fraction. It
7 reads that the mixture is one of at least three individuals?

8 A. That is correct.

9 Q. Okay. So do you recall -- This is a question that
10 you may have an answer to in your notes. I'm not sure of the
11 answer. Do you know when you requested a known sample from a
12 consensual partner in this case?

13 A. It was dated on my March 10th report.

14 Q. Okay. So this was March 10th of 2017 and when you
15 issued that report, was that issued to the local agency here
16 in Orangeburg?

17 A. I believe so. Yes, sir.

18 Q. So March 10th, 2017 you submit that request. When
19 does the sample from Mr. Jenkins come to you for comparison?

20 A. Just give me a minute. I'm trying to get the chain
21 of custody. Item 3 the buccal swab from Tyquin Jenkins, that
22 was submitted to SLED on May 17th, 2018.

23 Q. Okay. So from March 10th of 2017 to May of 2018
24 which is, that's over a year?

25 A. I believe so. Yes.

1 Q. That entire time your request for a known sample is
2 just hanging out there to local law enforcement agency?

3 A. I would believe so.

4 Q. And you in that entire year and two months they
5 never got you that sample for comparison; is that correct?

6 A. No. They did not.

7 Q. And you were never able to run any tests on any
8 alleged consensual partner for DNA?

9 A. No. I did not.

10 Q. Okay. Are you familiar with what we have been
11 referring to as SANE kits, or sexual assault examination
12 kits?

13 A. Yes. I am.

14 Q. Besides DNA, what's normally collected in those?

15 A. I believe everything has DNA potential, rectal
16 swabs, vaginal swabs. Just depending upon I believe the notes
17 that the SANE nurse takes she collects any kind of evidence
18 pertinent for biological testing.

19 Q. I understand from your perspective as a DNA analyst
20 biological testing is particularly important but things like
21 clothes, for example, are collected in a sexual assault
22 examination kit?

23 A. I believe so.

24 Q. Is it your understanding that it's SLED policy to
25 get toxicology done with a sexual assault examination kit?

1 A. I couldn't be one hundred percent sure but I think
2 so.

3 Q. Okay. Is it your understanding that in this case
4 there was a sample taken for toxicological analysis?

5 A. I do not know.

6 Q. Are you familiar with this kit that's been presented
7 into evidence, this white box here?

8 A. I have not seen that kit. Everything was collected
9 by Courtney Thompson and then she submitted those items to me
10 so I never really officially took the kit into my custody.

11 Q. Okay. When you receive items that you are going to
12 test, how are they sealed?

13 A. They're sealed in a heat sealed pouch that has the
14 SLED unique item number on there, dates and initials whenever
15 anyone has entered or exited that pouch.

16 Q. Okay. Are you familiar with what those SLED seals
17 look like?

18 A. Do you mean the labels?

19 Q. I suppose if that's what you call them.

20 A. Yes. I am familiar with the SLED labels. I am.

21 Q. Okay. What do they look like?

22 A. They're a yellow label with the unique case number
23 on there, perhaps even the item number that goes associated
24 with that piece of evidence, the submitting agency as well
25 also is on that label.

1 Q. Okay. This red tape that you can, I don't know if
2 you can see it from your side, this red tape that appears on
3 the sexual assault evidence collection kit, is that provided
4 by SLED?

5 A. I believe that's done by the SANE nurse. I couldn't
6 be one hundred percent sure but I believe we also have those
7 labels inhouse and I do know we tend to use them from time to
8 time.

9 Q. So if something had that seal on it, would that
10 generally mean it was not opened by SLED?

11 MS. CORNWELL: Your Honor, I'm gonna go ahead and
12 object at this point. Mr. Stewart is only allowed to
13 testify to evidence he received in evidence that he saw
14 in the packaging he had. He can't testify as to what
15 other departments may or may not received or what seals
16 were done on other evidence.

17 THE COURT: Move on counsel.

18 MR. HUTTO: Okay.

19 BY MR. HUTTO:

20 Q. Are you familiar with the date when SLED first
21 received these samples into evidence prior to your March 10th
22 report?

23 A. I'm just trying to find the chain of custody again.
24 I apologize.

25 Q. No problem.

1 A. January 8, 2016 is when the sexual assault kit was
2 submitted to SLED.

3 Q. Okay. So the incident date that you have marked on
4 your March 10th report is January 6th of 2015; is that
5 correct?

6 A. That is correct.

7 Q. And so that being the incident date it took over a
8 year for Orangeburg to submit this white box here to SLED?

9 A. I believe so.

10 Q. Okay. Why does it take SLED an additional year to
11 test that DNA?

12 A. We have a lot of samples. We just try to get to
13 every case that we can as quickly as we can.

14 Q. So it's kind of a first come first serve
15 situation?

16 A. It depends upon circumstances. If the agency also
17 calls, we can also make arrangements to test those kits.

18 Q. It's fair to say that you can't test the kit though
19 before you have it?

20 A. That is correct.

21 Q. When you test DNA, there's nothing in the data that
22 you receive that can tell the difference between, let's say,
23 semen that was produced by consensual sex versus non
24 consensual sex; is that right?

25 A. No. We cannot.

1 Q. You can merely detect the presence of a certain
2 DNA?

3 A. That is correct.

4 MR. HUTTO: No further questions.

5 THE COURT: Any redirect?

6 MS. CORNWELL: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q. I just want to clarify. Mr. Stewart, when defense
10 counsel initially started asking you questions regarding your
11 report on June 25th, 2018 they discussed the sperm fraction of
12 1.2 and noted the Y strand was at least two individual
13 mixtures. On item 1.2 which is the vaginal swabs does your
14 report from June 25th make any notation of the Y-STR DNA
15 mixtures?

16 A. No. It does not.

17 Q. So when you've got the DNA profile is a mixture of
18 at least two individuals, the other individual in the vaginal
19 swab could be the victim's DNA?

20 A. It is possible.

21 Q. You indicated that while you tested one hair, that
22 DNA can transfer so that could be the reason for the multiple
23 pieces of DNA being on one hair?

24 A. That is correct.

25 Q. So there were not multiple hairs or anything that

1 you examined?

2 A. No. Other than the 2.2.1 and 2.2.2, we test each
3 hair separately.

4 Q. And then 2.1 the sperm fraction from the cutting of
5 the underwear, you indicate that that is a mixture of at least
6 three individuals and that the Y-STR DNA is two male
7 individuals; is that correct?

8 A. That is correct.

9 Q. So is there reason to believe that the third
10 individual would have been the female victim?

11 A. I would think so but I could not be one hundred
12 percent certain.

13 MS. CORNWELL: That's all the follow up I have, Your
14 Honor. Thank you.

15 THE COURT: Thank you, sir. You may step down.
16 Ladies and gentlemen of the jury, this may be a good time
17 for us to take a brief recess, might grab a snack,
18 stretch your legs, go to the restroom. Let us know when
19 you're ready to proceed. Let's say about ten minutes.
20 Let us know when you're ready. Please remember do not
21 discuss this case amongst yourselves.

22 (Whereupon, the jury entered the jury room at 11:55
23 a.m.)

24 THE COURT: Anything before we take a brief recess?

25 MS. CORNWELL: Nothing from the State, Your Honor.

1 MR. HUTTO: No.

2 (Short break.)

3 BAILIFF: Come to order please.

4 THE COURT: Thank you everyone. Please have a seat.
5 Counsel, during the last witness it was rather evident
6 that one of our jurors was having a hard time staying
7 awake. Dee, do you happen to know her juror number?

8 BAILIFF: Yes, Your Honor. Juror 116, Ms. Minus.

9 THE COURT: Ms. Minus?

10 BAILIFF: Yes, ma'am.

11 THE COURT: Thank you, ma'am. I have discussed the
12 same with counsel. It was obviously evident that she was
13 falling asleep. Considering the importance of this case
14 and the obvious importance of her being awake and paying
15 attention to the testimony I have discussed with counsel
16 having her removed from the jury and going to the first
17 alternate. It's my understanding that both counsel agree
18 with that and have no objections to that. Is that
19 correct from the State?

20 MS. CORNWELL: Yes, Your Honor.

21 MR. HUTTO: Your Honor, my understanding is that the
22 alternate will be picked at random between the two for a
23 criminal matter.

24 THE COURT: Is that the statute or do you go to the
25 first one?

1 MR. HUTTO: I actually do think that I have the case
2 law on that. I would have to go back and look at it.
3 It's an odd situation. We just mentioned that scenario
4 to Judge Dickson outside and that was his understanding
5 of what was to occur in a criminal case. Let me see if I
6 can find it here.

7 MS. CORNWELL: I have done it both ways.

8 THE COURT: Do you have it?

9 MR. HUTTO: Your Honor, I don't have the cite for
10 that immediately at hand. I'm sorry. I thought I did.
11 Nevertheless, that's our understanding of what would
12 occur with the presentation of an alternate in a criminal
13 matter.

14 THE COURT: Any objection to that, Solicitor?

15 MS. CORNWELL: No, Your Honor. I think we usually,
16 I believe the first alternate would be the one to replace
17 but I don't have any reason to have issue with either
18 alternate.

19 THE COURT: Mr. Hutto, by random you wish me to flip
20 a coin, heads first alternate, tails the second
21 alternate? How would you like to do that?

22 MR. HUTTO: That's fine or you can draw a number out
23 of a hat or a name out of a hat.

24 THE COURT: Sure. We can put 1, 2, and I'll
25 actually let you pick, how about that? I'll let the

1 clerk pull the numbers and you select first, Mr. Hutto,
2 and allow the Solicitor to select a number.

3 MR. HUTTO: Whose selection would be the alternate
4 in that scenario?

5 THE COURT: 1, 2. So 1 would be the first
6 alternate, 2 would be the second alternate. That make
7 sense?

8 MR. HUTTO: That's fine.

9 (Counsel selecting numbered piece of paper from a
10 cup.)

11 MR. HUTTO: 1 would be the first alternate so there
12 you go.

13 THE COURT: There you go. All right. So any
14 objection? Obviously I don't want to embarrass our
15 juror. I would like to ask Ms. Dee to go in there and
16 pull her out and just explain to her because of her
17 falling asleep they're going to excuse her from the jury.
18 I understand she may have taken some medication this
19 morning that makes her really drowsy so my next concern
20 is obviously her safety. I want to make sure that she
21 either has transportation home and she is not personally
22 driving home. I don't want her driving if she can't stay
23 awake so if you will coordinate that as well I would
24 appreciate that.

25 BAILIFF: Yes, ma'am.

1 THE COURT: All right. So just let us know when the
2 rest of the jury is ready. Any objections to that
3 process?

4 MS. CORNWELL: No, Your Honor. Thank you.

5 MR. HUTTO: No.

6 BAILIFF: Pull her out now and let her go home?

7 THE COURT: Yes, ma'am.

8 BAILIFF: But make sure I do everything that Your
9 Honor say.

10 THE COURT: Yes, ma'am. Thank you so much.

11 (Whereupon, juror number 116, Jaynequa Minus was
12 released from further jury duty and replaced by juror
13 number 181, Mary Washington.)

14 THE COURT: Let's have our jury.

15 (Whereupon, the jury entered the courtroom at 12:20
16 p.m.)

17 THE COURT: Thank you, ladies and gentlemen of the
18 jury. Welcome back. Ms. Washington, you're now no
19 longer an alternate but a member of the actual jury. You
20 may call your next witness.

21 MS. CORNWELL: Thank you, Your Honor. The State
22 calls Theresa Hines.

23 Thereupon,

24 THERESA HINES

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name for the record.

3 THE WITNESS: My name is Theresa Hines, H-i-n-e-s.

4 THE COURT: Your witness.

5 MS. CORNWELL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. CORNWELL:

8 Q. Ms. Hines, can you tell the jury what your
9 involvement is in this case and a little bit about your
10 education and background to qualify you for that.

11 A. As stated, my name is Theresa Hines. I work with
12 the South Carolina Law Enforcement Division in the DNA
13 database department, and my involvement in this case was I
14 issued an identification letter to the investigating agency.
15 I have a degree from the University of South Carolina in
16 biology. While attending the university and I actually
17 interned at SLED in the DNA area. Upon receiving my degree in
18 2006 I was a full-time employee and I later was a DNA analyst
19 that went through a two year training period. Once completing
20 that two year training period I was proficient in DNA. There
21 was a need in the database department so I was transferred
22 over to the database department where I had gone through an
23 additional year of training and I also attended classes held
24 by the FBI.

25 Q. In total how long have you been working in DNA?

1 A. Pretty much since I have been employed in '06.

2 Q. So approximately 12 years?

3 A. Approximately.

4 Q. How long have you been working specifically in the
5 DNA database section?

6 A. I have been in the DNA database section for over 10
7 years as an analyst.

8 Q. Have you ever testified in court as an expert?

9 A. I have.

10 Q. Approximately how many times?

11 A. Twice.

12 Q. In the database field approximately how many
13 profiles and hits have you analyzed over the course of your
14 career?

15 A. I have analyzed approximately, well over
16 approximately 50,000 profiles and I have issued around 2500
17 hits.

18 MS. CORNWELL: Your Honor, at this time the State
19 would move Ms. Hines - would ask to qualify Ms. Hines as
20 an expert in the field of DNA database.

21 THE COURT: Any voir dire?

22 MR. HUTTO: No.

23 THE COURT: She is qualified.

24 MS. CORNWELL: Thank you, Your Honor.

25 BY MS. CORNWELL:

1 Q. Ms. Hines, can you please explain to the jury what
2 working with the DNA database entails?

3 A. My responsibilities are to analyze samples that are
4 received by the DNA database department for the purposes of
5 being entered into the database so I perform analysis, I
6 conduct searches, I issue identification letters as well as
7 performing reviews and testifying in court as needed.

8 Q. And how are DNA profiles entered into the
9 database?

10 A. The South Carolina Law Enforcement Division will
11 accept profiles, reference samples, if you will, and at the
12 time of receipt those samples have additional identifying
13 information that is submitted with them and are received by
14 the database department where all the information is entered
15 into a tracking system. That tracking system allows us to
16 uniquely identify each individual sample so that it can be
17 traced throughout the lab at that point. Once that sample has
18 a unique identifier, then a DNA analyst will start the
19 analysis process of it. Once the process is completed, the
20 data will be reviewed and then it will be entered into the
21 database.

22 Q. And do you have anything to do with developing the
23 DNA profile or actually entering the profile into the
24 database?

25 A. For reference samples, yes. I analyze profiles

1 strictly for the DNA database department but I do not handle
2 evidence.

3 Q. How do you find out if a DNA profile matches a
4 profile that's already in the database?

5 A. Each business morning a DNA analyst in the database
6 department would review the results from the searches and it's
7 at that point in time that the analyst would become aware of a
8 potential lead to a case.

9 Q. And what is your standard protocol once the analyst
10 notifies you of a potential lead?

11 A. We do something called a hit confirmation process so
12 the sample that was originally in the database that is
13 involved in that hit would have to be re-analyzed. The
14 information also that was submitted at the time of collection
15 identifying that sample to an individual would also have to be
16 verified. So all of that data is reviewed by an additional
17 qualified analyst and taken and reviewed and then that hit
18 notification letter that was drafted and reviewed would be
19 issued to the submitting agency.

20 Q. And once you have submitted that letter to the
21 submitting agency, do you have anything to do with getting any
22 other additional evidence?

23 A. I do not.

24 Q. Whose responsibility is it to follow-up on the
25 notification letter that's sent?

1 A. That would be the investigating agency that
2 submitted the evidence to SLED.

3 Q. And why is it important to get a DNA standard from a
4 person identified in the database if you have already
5 confirmed a profile matches a particular individual?

6 A. The samples that are received in the DNA database
7 department are referred to as reference samples so there's not
8 a chain of custody with these so they provide a lead in a
9 case. The case is not actually considered complete until an
10 additional standard is submitted for comparison purposes.

11 Q. So before anything can be confirmed you have to have
12 a known standard to compare and confirm the match?

13 A. The case work analyst would need an additional
14 standard with the chain of custody in order to be able to
15 provide a stat to the item of evidence.

16 Q. And do you recall analyzing a DNA database match in
17 this case?

18 A. I do.

19 Q. And did you go through your standard protocol in
20 confirming that the match was one of value?

21 A. Yes. I did.

22 Q. Once you went through your standard protocol in
23 examining the match, what was your finding?

24 A. May I refer to my report?

25 THE COURT: Yes, ma'am.

1 THE WITNESS: Thank you.

2 BY THE WITNESS:

3 A. Upon the search of the South Carolina State DNA
4 database a high stringency match occurred between the DNA
5 profile obtained in the sperm fraction of the major
6 contributor to item 2 and the DNA profile contained within the
7 South Carolina State DNA database identified as belonging to
8 Tyquin Jenkins also known as Tyquin Jenkins with a date of
9 birth of January 6th of 1987. This information is used only
10 as investigative lead and supports probable cause to obtain a
11 DNA standard from the above individual. Analysis in this
12 case is not considered complete until a DNA standard is
13 obtained from this individual and submitted for comparison
14 purposes. Please notify the South Carolina Law Enforcement
15 Division DNA Database Department via email if you determine
16 that this individual is not a subject of your investigation.
17 For example, a consensual partner or witness so that this
18 profile will no longer be routinely queried in the database.

19 Q. I believe you said the sperm fraction of the major
20 contributor to item 2 --

21 A. I'm sorry. It's item 1.2. My apologies.

22 Q. Are you aware that item 1.2 is the vaginal swab from
23 the sexual assault kit?

24 A. Yes. I am.

25 Q. You indicated that the match was a high stringency

1 match. Can you explain to the jury what that means?

2 A. So a high stringency match means that the profile
3 developed from item 1.2 that was entered into the DNA database
4 per the case work analyst matched the reference sample that is
5 housed within that database at every single location
6 exactly.

7 Q. And after you were able to confirm the high
8 stringency match of the defendant to the evidence from the
9 sexual assault kit, what did you do?

10 A. I stated before we would have confirmed that sample
11 and once it went through all the review process, the hit
12 notification letter would have been issued to the submitting
13 agency.

14 Q. Which agency did you notify in this case?

15 A. It was Orangeburg Department of Public Safety.

16 Q. After notifying the Orangeburg Department of Public
17 Safety regarding the match, did you have any further
18 involvement in this case?

19 A. I did not.

20 MS. CORNWELL: Thank you. Please answer any
21 questions the defense may have.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MR. HUTTO:

25 Q. Ma'am, can tell us what an elimination standard

1 is?

2 A. An elimination standard is a standard that is
3 submitted from an individual that could be a consensual sex
4 partner, a witness, a boyfriend, a husband, a victim,
5 something of that sort.

6 Q. Was any elimination standard ever submitted in this
7 case?

8 A. I don't handle evidence so I wouldn't know if an
9 elimination standard was submitted or not.

10 Q. Do you know, are you aware that Mr. Jenkins
11 consented to having his DNA provided for comparison
12 purposes?

13 A. Knowing that a standard was used for comparison in
14 the case, yes.

15 MR. HUTTO: Nothing further.

16 THE COURT: Any redirect?

17 MS. CORNWELL: No, Your Honor.

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

19 MS. CORNWELL: Your Honor, may this witness be
20 excused?

21 THE COURT: Any objection?

22 MR. HUTTO: No.

23 THE COURT: You're free to go. You may call your
24 next witness.

25 MS. CORNWELL: Your Honor, the State would call

1 Investigator Seth Wolfe.

2 Thereupon,

3 SETH WOLFE

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated,
6 state your full name please.

7 THE WITNESS: Investigator Seth Wolfe.

8 THE COURT: Your witness.

9 MS. CORNWELL: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. CORNWELL:

12 Q. Investigator Wolfe, can you please tell the jury
13 what your involvement was in this case and a little bit about
14 your law enforcement background?

15 A. For background I am the crime scene investigator for
16 Orangeburg Department of Public Safety. Been in that capacity
17 for a little over a year now. My involvement was I collected
18 a known DNA standard of the defendant using buccal swabs.

19 Q. I want to show you what's been previously marked as
20 State's Exhibit 12. Do you recognize that?

21 A. Yes, ma'am.

22 Q. What is this?

23 A. That is a buccal swab collection kit.

24 Q. And is this the buccal swab that you collected on
25 the defendant Mr. Jenkins?

1 A. Yes, ma'am.

2 MS. CORNWELL: Your Honor, at this time the State
3 would move State's Exhibit 12 into evidence.

4 THE COURT: Any objection?

5 MR. HUTTO: Without objection.

6 THE COURT: All right. It's in.

7 BY MS. CORNWELL:

8 Q. Investigator Wolfe, when you took that buccal swab,
9 who was present when you took that buccal swab?

10 A. Another investigator with public safety,
11 Investigator Black and the defendant's attorney.

12 Q. Were there any issues in collecting the swab?

13 A. No, ma'am.

14 Q. Once you collected the swab, what did you do with
15 it?

16 A. It was properly sealed while still on location and
17 then packaged and transported to SLED.

18 Q. After you transported that evidence to SLED, did you
19 have any further involvement in this case?

20 A. No, ma'am.

21 MS. CORNWELL: That's all the questions I have, Your
22 Honor.

23 THE COURT: Any cross examination?

24 MR. HUTTO: Yes.

25 CROSS EXAMINATION

1 BY MR. HUTTO:

2 Q. You said that you worked in crime scene
3 investigation?

4 A. Yes, sir.

5 Q. Is that commonly abbreviated as CSI?

6 A. Yes, sir.

7 Q. How long have you been the crime scene investigator
8 for Orangeburg?

9 A. A year and one month.

10 Q. Okay. Was there a crime scene investigation unit
11 prior to you being in that position?

12 A. Yes, sir.

13 Q. Okay. Do you know how long there's been a crime
14 scene investigation unit for Orangeburg?

15 A. I cannot give you the exact time to my knowledge.

16 Q. Is it your understanding that there would have been
17 a crime scene investigation unit on January 6th of 2015?

18 A. To my knowledge there should be.

19 Q. Do you have any record of any crime scene, any area
20 being designated as a crime scene from January 6th, 2015?

21 A. No, sir. I didn't have any involvement so I
22 wouldn't have the documentation.

23 Q. Okay. If someone had testified that crime scene
24 investigation was not available at that time in Orangeburg,
25 that would be inaccurate?

1 A. It depends on what they knew.

2 MR. HUTTO: All right. No further questions.

3 THE COURT: Any redirect?

4 MS. CORNWELL: Briefly.

5 REDIRECT EXAMINATION

6 BY MS. CORNWELL:

7 Q. Investigator Wolfe, how many people are in your
8 crime scene investigation unit?

9 A. Currently me.

10 Q. Is it typical that there's one person in that
11 unit?

12 A. Yes, ma'am.

13 Q. And so if that one person is out of town or say
14 anything like that is there anybody available in crimes in the
15 Orangeburg Department of Public Safety?

16 A. Yes, ma'am. The investigator on call will handle
17 all crime scene activities if the crime scene unit is not
18 available.

19 Q. So those duties fall to the investigator on call --

20 A. Yes, ma'am.

21 Q. -- and their capabilities?

22 A. Yes, ma'am.

23 MS. CORNWELL: Nothing further, Your Honor.

24 THE COURT: You may step down, sir. Thank you. You
25 may call your next witness.

1 MS. CORNWELL: Your Honor, the State would call
2 Lorianne Bravo.

3 Thereupon,

4 LORIANNE GARRISON BRAVO

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full for the record.

8 THE WITNESS: Lorianne Garrison Bravo.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MS. CORNWELL:

12 Q. Investigator Bravo, can you please tell the jury
13 about your involvement in this case and what your background
14 is in law enforcement?

15 A. Yes. My involvement in this case is that I got
16 involved around September of 2017 and my background is that I
17 have been in law enforcement for, it will be 20 years in
18 November of this year. I have worked in various positions
19 such as patrol, victim advocate, school resource officer,
20 investigations, criminal domestic violence coordinator and
21 firefighter.

22 Q. Were you working with the Orangeburg Department of
23 Public Safety in January of 2015?

24 A. No. I was not.

25 Q. Where were you working then?

1 A. I was working at the Sheriff's Office as an
2 investigator.

3 Q. When did you begin working with the Orangeburg
4 Department of Public Safety?

5 A. In October of 2015.

6 Q. When did you first become involved in this matter?

7 A. In September of 2017.

8 Q. Why did you become involved in this particular
9 investigation?

10 A. There was a hit on a possible suspect and I was
11 given that information.

12 Q. Who gave you that information?

13 A. By Captain Cordon.

14 Q. When you say there was a hit, do you know what
15 evidence that hit came from?

16 A. From DNA.

17 Q. That was DNA off of what type of evidence?

18 A. Off the sperm. DNA off the sperm of the SANE kit.

19 Q. From the sexual assault examination kit?

20 A. Yes.

21 Q. After being informed that there was a DNA match and
22 that you needed to reopen the case, what did you do?

23 A. From there I made contact with SLED and asked for a
24 photo lineup.

25 Q. And did you request the defendant's photo in that

1 photo lineup?

2 A. Yes. I did.

3 Q. Did you also review any reports and evidence sheets
4 prior to once you were given the case?

5 A. Yes.

6 Q. In reviewing those reports and the evidence sheets,
7 were you able to note how the sexual assault kit was stored
8 prior to being sent for analysis?

9 A. Yes. It was kept in a refrigerator.

10 Q. After you requested the photo lineup from SLED, what
11 did you do?

12 A. I made contact with the victim and just asked if she
13 could come down; that the case was being reopened.

14 Q. When you spoke to the victim that day, did you give
15 her any information as to why the case was being reopened?

16 A. No.

17 Q. Did you inform her that a suspect had been
18 identified through a DNA match?

19 A. No.

20 Q. Did you inform her of anything regarding the suspect
21 such as his name, date of birth or any identifying
22 information?

23 A. No.

24 Q. Was the victim cooperative and willing to come meet
25 with you?

1 A. Yes. She was.

2 Q. Once the victim came to the station, what did you
3 do?

4 A. I just spoke with her in reference to the case being
5 reopened.

6 Q. Did you give her any information as to why the case
7 was being reopened at that time?

8 A. No. I just asked if she could look at some
9 photos.

10 Q. And September 2017 would have been approximately two
11 years and nine months after the incident first occurred?

12 A. Yes. I believe so.

13 Q. And when you discussed her looking at a photo
14 lineup, did you ask her if she thought she would still be able
15 to identify the person?

16 A. Yes. I did.

17 Q. And was she cooperative in stating that she thought
18 she would be able to?

19 A. Yes.

20 Q. Prior to showing her the photo lineup, did you give
21 her any instructions regarding the lineup process?

22 A. Yes. Our Department of Public Safety has a written
23 protocol that I read to her.

24 Q. I'm going to show you what's already been moved into
25 evidence as State's Exhibits 1a and 1b. Would those be the

1 affidavit on the photo lineup that you showed the victim that
2 day?

3 A. Yes.

4 Q. And State's 1a, is that the form that you presented
5 to her prior to showing her the photo lineup?

6 A. Yes.

7 Q. Can you tell the jury what the instructions on that
8 piece of paper are?

9 A. Yes. It states you will be asked to look at a
10 subject or group of subjects. The fact that the subjects are
11 shown to you should not influence your judgment. You should
12 not conclude or guess that the subjects or the photographs
13 contain the picture of the person who committed the crime.
14 You're not obligated to identify anyone. It is just as
15 important to free innocent persons from suspicion as to
16 identify guilty parties. Please do not discuss the case with
17 other witnesses nor indicate in any way you have identified
18 someone.

19 Q. And when you read that to her, did she seem to
20 understand the purpose of the photo lineup?

21 A. Yes.

22 Q. Before showing her the photo lineup, did you ask her
23 to identify how confident she would be in making a proper
24 identification?

25 A. Yes. I did. There was another line that read on a

1 scale of 1 to 10, 1 being the least sure, 10 being the most,
2 how confident are you to identifying the perpetrator.

3 Q. Did she fill that portion out prior to looking at
4 the lineup?

5 A. Yes. She did.

6 Q. How confident did she indicate she would be in being
7 able to identify?

8 A. She circled an 8.

9 Q. And then did she time stamp and sign?

10 A. Yes. She did.

11 Q. After you had her fill out that top part, did you
12 then show her the photo lineup?

13 A. Yes. I did.

14 Q. And what happened when you showed her the photo
15 lineup?

16 A. When she saw it, she immediately identified the
17 subject Mr. Jenkins.

18 Q. In looking at State's 1b, how did - once she
19 immediately identified, how did you have her indicate that
20 that was the person she recognized?

21 A. She circled it and put her initials.

22 Q. And she circled and indicated subject number 4?

23 A. Yes.

24 Q. Who is the person in picture number 4?

25 A. Tyquin Jenkins.

1 Q. After she was able to view the lineup, did you get
2 any further information or instruction from her?

3 A. When she identified Mr. Jenkins, she was very
4 tearful. I didn't want to put her through any undue stress so
5 no.

6 Q. Did you go over the bottom portion of the form with
7 her?

8 A. Yes. I did.

9 Q. Can you tell the jury what the bottom portion of
10 that form is?

11 A. Yes. After you have reviewed the subject or
12 subjects on a scale of 1 to 10, 1 being the least sure and 10
13 being the most, how confident are you in that selection? How
14 confident is that your selection is the perpetrator? And she
15 circled 10.

16 Q. So she was very confident that was the person?

17 A. Yes.

18 Q. And did she sign and date that as well?

19 A. Yes. She did.

20 MS. CORNWELL: Your Honor, that's state's 1a. I
21 believe that 1a and 1b were moved into evidence through
22 Ms. Montgomery, but if they haven't, the State would ask
23 to move them into evidence at this time.

24 THE COURT: They're in.

25 MS. CORNWELL: Thank you.

1 BY MS. CORNWELL:

2 Q. So obviously that was a very emotional meeting
3 with you?

4 A. Yes. It was.

5 Q. So after she identified the perpetrator in the photo
6 lineup, did you push her anymore on the details of the case or
7 get anymore information from her that day?

8 A. No. Because of her reaction. I probably offered
9 her to speak to the victim advocate, I'm not a hundred percent
10 sure, for counseling purposes.

11 Q. After meeting with the victim that day and once she
12 identified the defendant, what did you do next?

13 A. I then called Ms. Walker in reference to any
14 follow-ups that I may have missed or observed from her notes.

15 Q. When you spoke with Investigator Walker, was she
16 still employed at public safety at that time?

17 A. No. She was not.

18 Q. Do you know where she was employed at that time?

19 A. She was employed at SLED.

20 Q. Did she remember the case or have her notes with her
21 to reference what she was speaking to you about?

22 A. No. I was speaking to her over the phone and it was
23 briefly so she didn't have her notes.

24 Q. Did she remember this case?

25 A. Vaguely. She did say that there may have been a

1 video but she was not sure.

2 Q. Did she also indicate whether or not she had any
3 notes?

4 A. Yes. On the computer.

5 Q. So she indicated that she had submitted notes into a
6 computer?

7 A. Yes.

8 Q. Did she specifically recall or tell you that she did
9 get video evidence in this case?

10 A. No. She did not.

11 Q. When you looked in the evidence, were you able to
12 find any video evidence that was submitted?

13 A. No. I didn't.

14 Q. Were you able to locate her notes in the computer?

15 A. Yes.

16 Q. Did it appear to be the full report of notes in the
17 computer?

18 A. Yes.

19 Q. Did her notes indicate that she ever obtained any
20 video in this case?

21 A. No. It did not.

22 Q. So in your report you reference that there may be
23 video. Were you able to confirm whether or not there actually
24 was video?

25 A. No. There was not any video.

1 Q. And there was never any collected?

2 A. No.

3 Q. After speaking with Investigator Walker, what did
4 you do?

5 A. After speaking with Investigator Walker, I then made
6 contact, I tried to make contact with Mr. Jenkins.

7 Q. Were you eventually able to make contact with the
8 defendant?

9 A. Yes. After a while we did make contact with
10 Mr. Jenkins.

11 Q. Okay. Did you have an opportunity to meet with him
12 and speak to him about this incident?

13 A. Yes. I did.

14 Q. And was that interview done with anybody else?

15 A. Yes. Lieutenant Jenkins was also present with me.

16 Q. When you met with the defendant in regards to this
17 incident, had he already been charged with this incident?

18 A. No. He was not.

19 Q. Why was he not charged by that time? You already
20 had the victim's statement, the DNA, the identification photo
21 lineup?

22 A. I have done criminal sexual cases prior to at the
23 Sheriff's Office and my typical protocol is that I interview
24 the possible perpetrator in the case.

25 Q. Why do you like to do that before making any

1 decisions on charging?

2 A. Because I like to get both sides of the story.

3 Q. Was the defendant advised of his Miranda Rights
4 before you started questioning him about the incident?

5 A. Yes. He was.

6 Q. And that Miranda Form, was that advised orally or
7 was that advised written?

8 A. Both oral and written.

9 Q. I'm going to show you what has been previously
10 marked as State's Exhibit 6. Do you recognize that
11 document?

12 A. Yes. I do.

13 Q. What is that document?

14 A. It is our Miranda Warning and Waiver of Rights.

15 Q. Is that a true and accurate copy of the Waiver of
16 Rights and Miranda Rights that you gave the defendant when you
17 met with him?

18 A. Yes. It is.

19 Q. Have any changes or alterations, deletions or
20 modifications been made to that form?

21 A. No. It has not.

22 MS. CORNWELL: Your Honor, at this time the State
23 moves State's Exhibit 6 into evidence.

24 THE COURT: Any objection?

25 MR. HUTTO: No.

1 THE COURT: All right. It's in.

2 BY MS. CORNWELL:

3 Q. Investigator Bravo, please tell the jury what that
4 form states and what rights were given to the defendant.

5 A. Before we ask you any questions, you must understand
6 your rights. You have the right to remain silent. Anything
7 you say can be used against you in a court. You have the
8 right to talk to a lawyer for advice before we ask you any
9 questions and to have him with you during questioning. If you
10 cannot afford a lawyer, one will be appointed for you before
11 any questioning if you wish. If you decide to answer
12 questions now without a lawyer present, you still have the
13 right to stop answering at any time. You also have the right
14 to stop answering at any time until you talk to a lawyer.

15 Q. Did the defendant indicate that he understood all of
16 his rights?

17 A. Yes. He did.

18 Q. How did he indicate that he understood his rights?

19 A. He initialed by every sentence and he signed it that
20 he understood his rights.

21 Q. On that form is there also a Waiver of Rights where
22 the defendant agrees to speak with you?

23 A. Yes.

24 Q. Can you tell the jury what the Waiver of Rights
25 states?

1 A. It states, I have read the statement of my rights
2 and I understand what my rights are. I am willing to make a
3 statement and answer questions. I do not want a lawyer at
4 this time. I understand and know what I'm doing. No promises
5 or threats have been made to me and no pressure or coercion of
6 any kind has been used against me.

7 Q. Did the defendant acknowledge that waiver and agree
8 to speak with you?

9 A. Yes. He did.

10 Q. How did he acknowledge that waiver?

11 A. He signed it and initialed behind the statement.

12 Q. Once you were able to start speaking with the
13 defendant about this incident, during the interview did the
14 defendant appear to be truthful and forthcoming with all of
15 his answers and questions that you and Lieutenant Jenkins
16 asked him?

17 A. No. He was not.

18 Q. Were there occasions where specific questions were
19 asked about events in his life that he would be untruthful
20 about until confronted with evidence to the contrary?

21 A. Yes.

22 Q. And once he was confronted with that evidence to the
23 contrary how would he justify his untruthfulness?

24 A. Somewhat argumentative.

25 Q. Did the defendant remember this particular

1 incident?

2 A. He stated that he did not remember the incident.

3 Q. When you started explaining the incident to him and
4 giving him the opportunity to try to recollect this incident,
5 did he make any statements to you about never hurting a
6 woman?

7 A. Yes.

8 Q. And after he made that statement, was that a
9 truthful statement?

10 A. No. It was not.

11 Q. Is that because the defendant does have some prior
12 convictions to prove otherwise?

13 A. Yes.

14 Q. And regarding this incident when you were trying to
15 get him to refresh the details of this incident, did you
16 explain to him what date the allegations occurred on?

17 A. Yes.

18 Q. Was that day significant in any way?

19 A. Yes. It was.

20 Q. How was that day significant?

21 A. It was his birthday.

22 Q. That would have been January 6th of 2015?

23 A. Yes.

24 Q. What is the defendant's birthday?

25 A. January 6th, 1987.

1 Q. In your experience as an investigator do days with
2 certain events or memorable moments cause somebody to remember
3 those days more particular than just any random day?

4 A. Yes.

5 Q. So when you were questioning him about this day of
6 the incident, were your questions about his recollection in
7 saying what did you do for your birthday and trying to get him
8 to remember this incident?

9 A. Yes.

10 Q. What did the defendant tell you about his
11 recollection of this incident?

12 A. He kept saying he didn't really remember. He did
13 talk about drinking a lot. He talked about having sexual
14 relations with a lot of women.

15 Q. Did he indicate to you that he had done bad things
16 in the past and dealt with a lot of girls because of his
17 drinking habits?

18 A. Yes.

19 Q. Did he also indicate to you that he had sex with
20 lots of women and would lie to them sometimes?

21 A. Yes.

22 Q. Did he state that he also would offer to pay
23 prostitutes for sex but that once he had sex with them he
24 would refuse to pay them?

25 A. Yes.

1 Q. When he stated that he didn't remember this incident
2 or having sex with someone he didn't know on his birthday, did
3 you indicate to him that DNA had been collected and matched
4 with his?

5 A. Lieutenant Jenkins did inform him of that
6 information.

7 Q. And once he was informed of that information what
8 was his response?

9 A. He stated that if it was so, it was probably
10 somebody who was upset with him or maybe a prostitute that he
11 didn't pay.

12 Q. Did he inquire as to whether or not the victim
13 called him out by name?

14 A. No.

15 Q. He didn't ask if the victim named him as the
16 person?

17 A. I'm sorry. I didn't understand the question.

18 Q. Did he ask you if his name was given out or if it
19 was just the DNA?

20 A. If his name was given out.

21 Q. And did you indicate to him whether or not the
22 victim ever named him personally?

23 A. No.

24 Q. Once you stated that the victim did not know his
25 name, what was his response to that?

1 A. He kept saying that it probably was somebody that he
2 had intercourse with in the past that he didn't pay was more
3 than likely what happened.

4 Q. And was there also a comment made about whoever the
5 woman must have been probably just gave in to him?

6 A. Yes.

7 Q. And that he probably lied to her or something and
8 that's why she submitted?

9 A. Yes.

10 Q. In speaking to the defendant was he easy to get
11 information out of?

12 A. No. He wasn't.

13 Q. Was he being challenging regarding the verbiage of
14 certain words?

15 A. Yes.

16 Q. At some point do you recall Lieutenant Jenkins
17 asking him what his MO was?

18 A. Yes.

19 Q. And do you recall him indicating that his MO was to
20 deal with women to work, party, and make decisions sometimes
21 that he shouldn't have?

22 A. Yes.

23 Q. Did the defendant indicate that he smokes
24 cigarettes?

25 A. Yes. He did.

1 Q. Did you ask him any questions about whether or not
2 he has ever had to borrow a lighter from someone?

3 A. Yes.

4 Q. Did he admit that he's had to borrow a lighter from
5 people in the past?

6 A. Yes.

7 Q. Do you recall, did he say that he's never had to
8 borrow a lighter; that he always has his own lighter?

9 A. No. He never said he ever had his own lighter. He
10 borrowed lighters in the past.

11 Q. Did you ever ask him if he had encountered anybody
12 on the street and had to use their cell phone before?

13 A. I'm not sure what his answer was.

14 Q. If you don't recollect, that's fine. During your
15 interrogation of him, did the defendant make a comment that
16 he's never lied, he never lies?

17 A. No. I believe he said he told some untruths.

18 Q. So was he inconsistent in saying whether he lied to
19 people or not lied to people?

20 A. Correct.

21 Q. So when he told you that he didn't lie to people,
22 were you able to then tell him you just admitted that you lied
23 to women all the time?

24 A. Yes.

25 Q. And during his statement did he admit to you that if

1 there were certain things that he did that y'all didn't know
2 about, he would not be willing to tell you about them because
3 he wouldn't want to get charged?

4 A. Yes.

5 Q. And had he been charged with criminal sexual conduct
6 and kidnapping at that point?

7 A. No. He was not.

8 Q. So do you think he would have been willing to tell
9 you about committing those crimes if he had not already been
10 charged with them?

11 A. No.

12 Q. Other than denying any memory of this incident and
13 saying that if his DNA was found if someone were lying on him
14 or a trick that he didn't pay, did he give you any other
15 information regarding anything that could have occurred on
16 this night?

17 A. He kept saying he didn't really remember what
18 happened on this particular night.

19 Q. One brief question. When you first started talking
20 to the defendant and asking him where he would stay in
21 Orangeburg, did at any point he reference an address that was
22 close to this incident location?

23 A. Yes. He did.

24 Q. What was the street that he lived off of that was
25 close to the incident location?

1 A. Doyle.

2 Q. How long did he say he lived there?

3 A. I can't recall the time that he said he stayed on
4 Doyle but he did say he stayed on Doyle at one time.

5 Q. Would that have been in 2015 for about a month?

6 A. Yes.

7 Q. So around the time of this incident he did admit
8 that he stayed on Doyle Street which is very close to the
9 incident location during that time?

10 A. Correct.

11 Q. Despite the fact that it was his birthday he could
12 not recall having sex with any unknown females. When you
13 mentioned the fact that it was his birthday, he indicated to
14 you that he did not recall having sex with any unknown females
15 on his birthday?

16 A. Correct.

17 Q. If he had sex with anybody on his birthday, it would
18 have been his baby mama?

19 A. Correct.

20 Q. That's all the questions I have about the statement.
21 After you took the statement from the defendant, what did you
22 do?

23 A. I was able to obtain the warrants for kidnapping and
24 the criminal sexual conduct.

25 Q. So after you spoke with the defendant, at that point

1 you decided to get a warrant for criminal sexual conduct first
2 degree and kidnapping?

3 A. Yes.

4 Q. Is that because you did not feel like he was
5 truthful with you?

6 A. Correct.

7 Q. Did you give the victim any notification that you
8 were making an arrest in her case?

9 A. After. Afterwards.

10 Q. After you got the arrest warrants --

11 A. Correct.

12 Q. -- you notified her of the bond hearing?

13 A. Yes.

14 Q. And did the victim indicate that she wished to be
15 present at his bond hearing?

16 A. Yes. She did.

17 Q. What happened on the day of the bond hearing?

18 A. The day of the bond hearing she came in early and
19 myself and Lieutenant Jenkins asked her if she would be able
20 to take us through the route that she walked that night of the
21 incident and she agreed.

22 Q. While she took you on that route, did y'all walk
23 that route with her or did you drive?

24 A. We drove.

25 Q. And while you were driving with her, at that point

1 in time did you ask her about the incident itself?

2 A. Yes.

3 Q. Was this the first time you had spoken to her about
4 the details of the incident?

5 A. Correct.

6 Q. And was she able to give you the details of the
7 incident as she remembered it happening?

8 A. Yes. She did.

9 Q. Was the victim's statement that she gave to you that
10 day regarding the sexual assault consistent with the prior
11 reports that you had read?

12 A. Yes.

13 Q. And in your experience as an investigator do sexual
14 victims or witnesses give the exact same verbatim story every
15 time to every person they speak to?

16 A. Yes. A victim of this nature would give the same
17 exact story and that's exactly what she did.

18 Q. Is it your experience that sometimes victims will
19 recall more information after an initial trauma has taken
20 place?

21 A. Correct.

22 Q. So in your experience as an investigator would you
23 agree that sometimes you get more details in subsequent
24 interviews?

25 A. Correct. Sometimes they forget initially when it

1 first happened. Given time, a time frame they can remember or
2 recall additional information. That's normal for a victim.

3 Q. And when victims are giving information to law
4 enforcement officers, are you trying to take down notes as to
5 what the victim is telling you at that time?

6 A. Yes.

7 Q. Are you able to write down every single word and
8 every single detail that a victim is telling you in those
9 notes?

10 A. Not every single word or detail.

11 Q. So would it be unusual when taking notes of an
12 initial statement that some details might not be in one report
13 but in later reports talking to a different officer when they
14 appear in those reports?

15 A. Correct.

16 Q. In looking at all your reports the main crux of the
17 incident was consistent?

18 A. Yes.

19 Q. And she was able to give you details in addition to
20 what you had read in the reports?

21 A. Correct.

22 Q. After the victim showed you the route where the
23 sexual assault took place and explained to you exactly what
24 happened on the night of the incident, what did y'all do
25 then?

1 A. We took pictures of the incident.

2 Q. Are those the photographs that have been marked as
3 State's Exhibits 3 and 4?

4 A. Yes.

5 Q. Also Defendant's Exhibit 24?

6 A. Yes.

7 Q. These photographs were taken at the end of September
8 in 2017?

9 A. Yes.

10 Q. So while this is the incident location that she
11 identified, are you aware if this is exactly how this building
12 looked and what equipment this building had from 2015?

13 A. It should be different. That business moved I
14 believe.

15 Q. Okay. So the structure is likely the same but just
16 the structure, not necessarily the business or the
17 equipment?

18 A. Correct.

19 Q. And after you took photographs, what did y'all do?

20 A. We went back to bond court.

21 Q. And did the victim tell you why she wanted to be
22 present at the bond hearing?

23 A. Yes. She wanted to be present because she didn't
24 want anybody else to go through what she went through and she
25 didn't want to be afraid. She said she didn't want to be

1 afraid to talk. She wanted to speak on her behalf.

2 Q. And was she able to address the court that day?

3 A. No. She wasn't.

4 Q. Why not?

5 A. When he came in the courtroom, she broke down and
6 cried and she couldn't. She just lost her composure.

7 Q. When you say she breaks down and cries, is she the
8 type of victim that sobs loudly and uncontrollably? What's
9 her demeanor when she cries?

10 A. She cries quietly.

11 Q. After the bond hearing, what did you do?

12 A. After the bond hearing, I closed the case.

13 Q. Prior to closing the case, were you able to make
14 contact with the victim's father and ex-boyfriend regarding
15 the incident?

16 A. Correct. After the bond hearing I did speak with
17 the victim to ask if she told anybody about what happened
18 directly after and she did inform me that she did talk to her
19 father, sister and her boyfriend and I tried to make contact
20 with all three.

21 Q. Were you able to make contact with them?

22 A. Yes. Two. The father and the boyfriend.

23 Q. Was she still with the boyfriend at that time or was
24 that an ex-boyfriend by 2017?

25 A. Ex-boyfriend at that time.

1 Q. Speaking with the witnesses were their recollections
2 of the incident consistent with their prior reports?

3 A. Yes.

4 Q. At that point after you spoke with the witnesses,
5 what did you do with the case?

6 A. I closed the case.

7 Q. Did you submit that case to my office?

8 A. Yes.

9 Q. In preparation for trial were you able to, obviously
10 you looked at the evidence prior to closing the case and you
11 were aware there was a phone in evidence?

12 A. Correct.

13 Q. That was the victim's cell phone?

14 A. Yes.

15 Q. In preparation for trial were you able to go through
16 that cell phone and look at the call logs from the day of this
17 incident?

18 A. Yes.

19 Q. I'm gonna show you what has been previously marked
20 as State's Exhibits 8, 9 and 10. Do you recognize those
21 photographs?

22 A. Yes.

23 Q. What are those photographs of?

24 A. The victim's call log on the night in question.

25 Q. Are those true and accurate representations of what

1 the call log was on the victim's phone when you were able to
2 look through it?

3 A. Yes.

4 MS. CORNWELL: Your Honor, at this time the State
5 would move State's Exhibits 8, 9 and 10 into evidence.

6 THE COURT: Any objection?

7 MR. HUTTO: No, Your Honor.

8 THE COURT: All right. They're in.

9 BY MS. CORNWELL:

10 Q. And in looking at State's 8, were you able to
11 confirm that the victim was on the phone with her sister
12 around the time that this incident allegedly occurred?

13 A. Yes.

14 Q. What time was that?

15 A. 1:14 a.m.

16 Q. After a call with her sister at 1:14 a.m., what is
17 the next number that was dialed?

18 A. It's 803-395-0405.

19 Q. What time was that number called?

20 A. 1:21 a.m.

21 Q. And is there a name or any reference to that
22 number?

23 A. No.

24 Q. And when is the next call made? Looking at State's
25 Exhibit 9, what is the next call from that call log on that

1 incident date?

2 A. 1:54.

3 Q. Who was that call placed to?

4 A. I believe that's her boyfriend. I apologize. The
5 next number is to her dad.

6 Q. After her dad, what number did she call?

7 A. Her boyfriend.

8 Q. Looking at State's Exhibit 10, what was that next
9 calling time that was made?

10 A. 2:13 a.m. and that was to dad.

11 Q. What is the -- You said that she called her
12 boyfriend at 1:54 a.m. What is the next call after the
13 boyfriend at 1:54 a.m.?

14 A. Emergency number. She called 911.

15 Q. After she called 911, is there a missed call after
16 that?

17 A. That would be her boyfriend. I'm sorry.

18 Q. And then a second missed call on top of that?

19 A. Her dad.

20 Q. Those would be after she called 911?

21 A. Correct.

22 Q. So based on your review of the call logs in the
23 victim's cell phone from that night, were those call logs
24 consistent with the information that she gave to law
25 enforcement on the night this incident occurred?

1 A. Yes. It was.

2 Q. After closing the case and submitting it to the
3 Solicitor's Office and examining things for trial, has there
4 been any further investigation in this matter?

5 A. Not to my knowledge.

6 Q. In speaking with the victim and the defendant, were
7 you able to secure warrants in this case?

8 A. Yes. I was.

9 Q. What were those warrants for?

10 A. Criminal sexual conduct first degree and
11 kidnapping.

12 MS. CORNWELL: Please answer any questions that
13 defense counsel may have.

14 THE COURT: Cross examination.

15 MR. HUTTO: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HUTTO:

18 Q. Detective, you have been here the entire trial
19 sitting right over here?

20 A. Yes.

21 Q. All right. So you have heard, detective or
22 investigator -- What's your rank?

23 A. Lori is just fine.

24 Q. Okay. Are you confident in your investigation?

25 A. Yes.

1 Q. Are you confident in the investigation that you
2 reviewed prior to taking on this cold case?

3 A. Yes.

4 Q. And in the course of your investigation you believe
5 you have done everything that you possibly could to gather
6 evidence so that you can prove a case beyond a reasonable
7 doubt; is that right?

8 A. Correct.

9 Q. Okay. You were not the investigator in January of
10 2015; is that right?

11 A. Correct.

12 Q. How were you employed in 2015? You may have said.

13 A. I worked at the Sheriff's Office as an
14 investigator.

15 Q. Okay. You came on in October of 2015 to the
16 Department of Public Safety?

17 A. Correct.

18 Q. But you didn't know anything about this case until
19 September of 2017?

20 A. Correct.

21 Q. And that's when you get a call from who?

22 A. I spoke with my captain.

23 Q. What information did your captain have?

24 A. He had the DNA sample.

25 Q. Okay. Now, this DNA sample, are you familiar with

1 how it was kept at the Department of Public Safety?

2 A. Looking at the notes it was kept in a
3 refrigerator.

4 Q. Okay. And it was placed there on January 7th, 2015,
5 right?

6 A. January 7th what?

7 Q. Of 2015?

8 A. Mm-hmm.

9 Q. Okay. Now, it wasn't sent to SLED until January 8th
10 of 2016. Do you agree with that?

11 A. I wasn't aware of it at the time.

12 Q. Would you like to review the property report from
13 the Department of Public Safety?

14 A. Yes. I can review it.

15 Q. (Proffering.) And there are notations at the bottom
16 that say what's going on with that sample at what date,
17 right?

18 A. Yes.

19 Q. So it wasn't sent off until over a year later in
20 January of 2016; is that right?

21 A. If that's what it says on this form. I was not
22 aware of it. I only got involved in September of 2017.
23 That's what I'm trying to say.

24 Q. You don't have any reason to think that's
25 inaccurate?

1 A. No. Not if it's kept in a fridge. I worked at the
2 Sheriff's Office and my primary job there was to investigate
3 criminal sexual conduct cases. As long as it's kept in a
4 fridge it's fine.

5 Q. My question is, why would the Department of Public
6 Safety wait one year to send the sample to SLED?

7 A. I cannot answer that. I do not know.

8 Q. All right. Now, the first thing you did when you
9 got information about this DNA sample is you got Mr. Jenkins'
10 name?

11 A. His name was on the form that I received.

12 Q. Okay. You never had his name at any point prior to
13 this case?

14 A. No.

15 Q. Okay. You didn't know who he was?

16 A. Did not know.

17 Q. And you had never talked with him?

18 A. Not until the day we picked him up.

19 Q. All right. But before you ever talked to him, you
20 put him in a photo lineup and called Ms. Montgomery; is that
21 right?

22 A. Correct.

23 Q. Had you already decided that he was guilty at that
24 point?

25 A. No.

1 Q. All right. When you contacted Ms. Montgomery, the
2 first time you did that was September 14th, 2017, correct?

3 A. Correct.

4 Q. She was supposed to come meet you that day?

5 A. Correct.

6 Q. She did not show up; is that right?

7 A. She didn't have a ride.

8 Q. Okay. She came the next day and what was the nature
9 of the conversation that you had with her?

10 A. As I stated earlier, I read to her verbatim our
11 protocol of the photo lineup.

12 Q. How long did it take to go through the process of
13 you explaining the photo lineup to her and then her making the
14 identification?

15 A. It did not take long at all. A matter of minutes.

16 Q. Would you expect her also to be able to identify
17 anybody that she had consensual sex with relatively quickly?

18 A. Yes.

19 Q. So the fact that she could make that identification
20 at all or the fact that she could make it quickly doesn't tell
21 you anything about whether her interaction with Tyquin was
22 consensual or non consensual, right?

23 A. Based on her reaction when she identified him she
24 was in tears.

25 Q. But her ability to make that identification and to

1 do it quickly doesn't tell you anything about whether their
2 interaction was consensual or non consensual, right? Because
3 you just told me that somebody can also identify somebody that
4 they have had consensual sex with?

5 A. Correct. But they wouldn't cry behind it I don't
6 think. She was in tears.

7 Q. I understand that's your testimony but specifically
8 her ability to make that identification does not tell you
9 whether her interaction with him was consensual or non
10 consensual?

11 A. Just identifying alone, no.

12 Q. Okay. Who was the first person you contacted after
13 you were speaking with Ms. Montgomery?

14 A. The first person I contacted?

15 Q. In relation to this case. Let me clarify. Who was
16 the first person you contacted after speaking with Ms.
17 Montgomery?

18 A. Ms. Walker.

19 Q. Is that the first person that you contacted?

20 A. If I can recall, it would be Ms. Walker.

21 Q. Okay. And she had told you that there might be or
22 that there was supposed to be video in this case?

23 A. Possibly. She didn't have her notes in front of her
24 and we were on the telephone.

25 Q. Okay. Now, she had left investigative notes,

1 correct?

2 A. Correct.

3 Q. Did you review those notes?

4 A. Yes. I did.

5 Q. Now, the entirety of those notes, do you recall what
6 they looked like?

7 A. Not offhand.

8 Q. If I show you those notes, can you tell me if this
9 is what you reviewed or not?

10 A. Yes.

11 Q. Those are the notes that you reviewed from Detective
12 Walker; is that right?

13 A. Yes.

14 Q. So was Detective Walker in the same position then
15 that you are in now in terms of her capacity with the
16 Department of Public Safety?

17 A. Currently I work part-time at public safety.

18 Q. Would her role in a given case have been the same as
19 what your role is now with the Department of Public Safety?

20 A. I am not sure. I'm not sure the capacity that she
21 was working in prior to me coming there.

22 Q. Fair enough. Nevertheless, the entirety of the
23 notes generated by Detective Walker are three paragraphs?

24 A. Correct.

25 Q. Does that stand out to you as odd or insufficient?

1 A. I know at public safety there were several times
2 where my notes got completely erased and I had to go to our IT
3 department because when I would put notes in sometimes, they
4 would get completely erased. So to say some of her notes
5 aren't all the way in there, that's why I made the call.

6 Q. So it's your contention that it's possible that
7 software error or some computer problem at public safety
8 caused a vast majority of the notes to be lost?

9 A. It is a possibility. I had it happen when I was at
10 public safety.

11 Q. Is that fair to Ms. Montgomery?

12 A. No. It is not.

13 Q. Is it fair to defendants?

14 A. No. It is not.

15 Q. All right. Were there any other notes that you
16 reviewed besides Detective Walker's?

17 A. The incident report.

18 Q. Okay. And that was from Corporal Still who
19 testified also yesterday?

20 A. Correct.

21 Q. And did you also have access to the SANE report or
22 the document that was generated by the nurse who spoke this
23 morning?

24 A. Yes.

25 Q. So you could review all three of those things in

1 formulating your opinions about this case, right?

2 A. I am not here to give my opinion. I wasn't there to
3 give my opinion, just to investigate the case.

4 Q. Well, those three pieces of testimony and those
5 three people could all inform the way that you investigate the
6 case; is that right?

7 A. The information on the reports, that's why I also
8 made contact with, tried to make contact with each person.

9 Q. You made contact with Corporal Still?

10 A. I did not have his information and I did ask for it
11 at the time. They didn't have his information.

12 Q. Did you make contact with any of the nurses from the
13 hospital that made notes about the case?

14 A. No. I did not.

15 Q. Now, let me ask you about those things that you
16 reviewed. You testified just now that Ms. Montgomery has had
17 the, and I believe your words were the same exact story
18 throughout the entirety of her interactions with law
19 enforcement?

20 A. What I meant was the gist of her story, the basic -
21 the basis of her story stayed the same. Because she does not
22 live here or did not live here I can understand why she got
23 some of the landmarks confused.

24 Q. She lived here at the time, did she not?

25 A. She did. She was a student but she was not from

1 here.

2 Q. How far, if I may, how far is Landmark Towers from
3 all of the things that we have been discussing in this
4 matter?

5 A. A couple of blocks.

6 Q. Okay. And she stated that she had been living there
7 for several months, right?

8 A. Correct.

9 Q. But it's your contention that she may not have been
10 familiar with the landmarks in the couple of blocks around
11 here?

12 A. Correct.

13 Q. All right. So when you reviewed these three
14 documents -- Well, let me ask you, did you have any other
15 documentation to go on at the time besides Corporal Still's
16 report, Investigator Walker's report and then the SANE
17 report?

18 A. Basically that's what I initially started off
19 with.

20 Q. Okay. You agree that in Corporal Still's report Ms.
21 Montgomery stated that she was assaulted about 30 minutes
22 prior to the police arriving and he notes that that must be
23 around 1:30?

24 A. Correct.

25 Q. Okay. You were present at trial yesterday, right?

1 A. Yes.

2 Q. And that's not what Ms. Montgomery said on the
3 stand, is it?

4 A. I'm not exactly certain. I think it was like 12, I
5 think. I'm not sure.

6 Q. I agree. I think she said it was around midnight so
7 that would be about an hour and a half difference between what
8 she told police that night and what she said here on the stand
9 today?

10 A. Correct.

11 Q. And you heard her sister testify as well that she
12 thinks that she left the apartment at around midnight,
13 right?

14 A. Correct.

15 Q. All right. You also heard her sister testify that
16 it takes about 10 minutes to get from Landmark Towers down to
17 the intersection of Russell and Broughton?

18 A. That's what her sister said.

19 Q. Have you had occasion to walk along Russell
20 Street?

21 A. Yes. I do.

22 Q. Whether it takes five minutes or 10 minutes or
23 however long, it does not take very long to get from Landmark
24 Towers down to the corner of Broughton and Russell Street,
25 does it?

1 A. It would depend on the shape of the person.

2 Q. Okay. Well, how slow would you have to be moving
3 for it to take you an hour and a half to get from Landmark
4 Towers to the corner of Russell and Broughton Street?

5 A. I'm not certain.

6 Q. Very slow. Unless that's not the way that you
7 actually went, right?

8 A. The way that I went?

9 Q. Well, you heard Ms. Montgomery testify that she
10 walked directly out of Landmark Towers onto Russell Street?

11 A. Correct.

12 Q. And then walked to the corner of Russell and
13 Broughton?

14 A. Yes.

15 Q. That's a pretty short distance. So for it to take
16 you an hour and a half to go that distance that might not be
17 the route that you walked, correct?

18 A. Or the times could have been mixed up.

19 Q. All right. Let's talk about the reasons that you
20 reviewed for Ms. Montgomery leaving her apartment. Corporal
21 Still states that she left the apartment because she had an
22 argument with her boyfriend, right?

23 A. Correct.

24 Q. Now, Investigator Walker's report states that she
25 leaves her home because she couldn't sleep; is that right?

1 A. Yes.

2 Q. All right. And the SANE report which allegedly is a
3 transcription of Ms. Montgomery's own words says that she was
4 just going for a walk that night.

5 A. Okay.

6 Q. Is that right?

7 A. Yes.

8 Q. Okay. So let's talk about the discussion that she
9 had allegedly with Tyquin while she was walking around
10 downtown. In Corporal Still's report and Investigator
11 Walker's report they agree that Tyquin allegedly or whoever
12 this person is allegedly walked up and asked her for a light
13 for his cigarette, right?

14 A. Correct.

15 Q. Okay. However, when she then comes to Orangeburg in
16 September of 2017, there's a few new details to that story,
17 aren't there?

18 A. Correct.

19 Q. Because for the first time not documented by
20 Corporal Still and not documented by Investigator Walker but
21 for the first time to you she says I think he mentioned it was
22 his birthday and there was something going on at his
23 grandmother's house, right?

24 A. Correct.

25 Q. Then on the stand yesterday she added a new detail

1 about him asking her if she smoked or drank herself, right?

2 A. I believe that's in Ms. Walker's report as well.

3 Q. Okay. Nevertheless, what the birthday and having a
4 party at his grandmother's house, that was never mentioned to
5 anyone prior to this to your knowledge?

6 A. Correct. And how would she have knowledge of his
7 birthday? Nobody told her that prior to her telling that to
8 us.

9 Q. We'll get to that here in a minute. I want to keep
10 talking about these statements. So with regards to the cell
11 phone, the statement you reviewed from Corporal Still states
12 that Ms. Montgomery said that a male took her phone and
13 dialed, I won't say the whole number, 803, and then a number
14 ending in 2672; is that right?

15 A. Can you repeat that again?

16 Q. Do you need Corporal Still's report for reference?

17 A. Yes.

18 Q. Okay. (Proffering)

19 A. Okay.

20 Q. You would agree with me that in his report he was
21 told that the perpetrator dialed that number ending in 2672,
22 right?

23 A. Correct. That's on his report.

24 Q. That is not the number that is in the cell phone log
25 that you just looked at, right?

1 A. Correct.

2 Q. All right. Now, I guess later that night Ms.
3 Montgomery informed Investigator Walker that the person had
4 tried to make a call but it didn't go through, right?

5 A. Correct.

6 Q. So you have, we have already talked about some
7 landmarks in this case but I want to keep asking you.
8 Corporal Still states that the incident happened at either the
9 corner of Broughton and Fisher or at 1005 Broughton Street; is
10 that right?

11 A. Yes.

12 Q. And so for reference that's this building right here
13 at the corner of Oliver Street and Broughton Street and Fisher
14 Street.

15 A. Okay.

16 Q. I mean, is it? Are you familiar with this area?

17 A. I'm familiar with the area but I'm not familiar with
18 the way it looks right now.

19 Q. Okay. Fair enough. And then that same night the
20 next statement she makes to the nurse at the hospital she says
21 it happened behind a hair salon, correct?

22 A. Correct.

23 Q. Later that night she then talks with Investigator
24 Walker and allegedly the incident happened across the street
25 behind Captain D's, right? Feel free to reference her report.

1 A. I'm still trying to see where it happened. She
2 stated that it happened behind Captain D's?

3 Q. Isn't that what's in Investigator Walker's report?

4 A. It says walking near Captain D's.

5 Q. If I may, I may be able to point it out. Do you
6 mind?

7 A. Mmm-mmm.

8 Q. (Proffering) This is the second paragraph. I'll
9 read it and then you tell me if I read it correctly. I then
10 asked her what building did she walk behind. Initially she
11 stated Captain D's. I continued to talk to her and told --
12 This is the part that I assume there's pieces cut out of. I
13 continued to talk to her and told her that but he continued
14 talking to her. She stated that he then telling her that he
15 got her -- But it's the second paragraph (proffering.)

16 A. But I don't see where it says the incident occurred
17 behind the Captain D's.

18 Q. Is this not a statement? I asked her what building
19 did she walk behind. Initially she stated Captain D's?

20 A. That's what it says.

21 Q. Okay. And this incident allegedly occurred behind a
22 building, right?

23 A. But it doesn't necessarily say that she said that it
24 happened behind Captain D's.

25 Q. What other way is there to interpret this?

1 A. I don't interpret it that way. It just says that
2 she walked behind the building but I asked her what building
3 did she walk behind. Initially she stated Captain D's.

4 Q. Okay. Meaning that she may have changed her story
5 again with Investigator Walker?

6 A. No. It doesn't say she changed her story. Captain
7 D's is what she referenced throughout the whole thing is what
8 it was near.

9 Q. I guess we are speculating about what was said. You
10 agree that report states that initially she said she went
11 behind Captain D's?

12 A. No. That's not what I said.

13 Q. Can I get you to just read the first sentence of
14 that second paragraph to the jury?

15 A. I then asked her what building did she walk behind.
16 Initially she stated Captain D's. You want me to read
17 anymore?

18 Q. That's all I need for the purposes of reading that
19 to the jury. Now, I want to ask you about one more thing and
20 I understand this is getting into the more sensitive topics in
21 this matter but Corporal Still's report, the very first
22 report, isn't it true that Ms. Montgomery told him that the
23 person who attacked her meaning Ms. Montgomery laid his
24 clothes down on a pallet?

25 A. I was not there. I cannot say that that's what she

1 told Corporal Still. That's what he wrote in his report but I
2 cannot say that that's what was said.

3 Q. In your preparation for speaking with Mr. Jenkins
4 you relied upon these reports, correct?

5 A. When you say relied upon them, that's what I'm kind
6 of confused about.

7 Q. You had to read these to understand something about
8 this case, correct?

9 A. I read this report. Correct.

10 Q. Okay. And you actually in your interview with
11 Tyquin bring up, you and Lieutenant Jenkins I should say,
12 bring up pallets yourself to him, don't you?

13 A. I cannot recall us bringing up pallets at this time.
14 I can't recall that.

15 Q. Do you recall ever asking him if he had sex outside
16 or on a pallet and he said no. I don't think so. That
17 doesn't sound right?

18 A. I can't recall saying pallet.

19 Q. Okay. Coming forward to 2017, that's when you
20 finally have the opportunity to speak with Ms. Montgomery,
21 right?

22 A. Correct.

23 Q. And you guys drive her out and how is it that you
24 get to the Salvation Army?

25 A. We asked her to tell us the route that she took and

1 where it happened.

2 Q. Okay. When you went back to the Salvation Army
3 building, that was the first time anybody had ever been there
4 with Ms. Montgomery, right?

5 A. As far as I know.

6 Q. That was the first time that had ever been
7 investigated as a crime scene in any capacity, right?

8 A. As far as I know. Yes.

9 Q. With regard to this case?

10 A. Yes.

11 Q. Okay. And at that point do you recall seeing a
12 table laid out amongst the things, actually there weren't very
13 many things, but a table laid out there at the Salvation
14 Army?

15 A. No.

16 Q. This is the photo that you took. It's been marked
17 as Defendant's Exhibit 24. Can you observe a table in that
18 picture?

19 A. It looks like something in the corner that may
20 resemble something that looks like a table.

21 Q. You don't agree with me that that's a folding table
22 in that photograph?

23 A. I can't say yes or no. It appears to be something
24 that could be construed as a table, a folding table in the
25 corner.

1 Q. You don't recall making a note of a table being out
2 there when you went; is that right? That didn't stand out to
3 you?

4 A. The table?

5 Q. Correct.

6 A. No.

7 Q. Did the table stand out to you? Did it stand out to
8 you that she switched her story from speaking with Corporal
9 Still and saying this happened on a pallet to then you're
10 there at the loading dock and it happened on a table?

11 A. Does it stand out to me? No.

12 Q. It doesn't stand out to you. It didn't occur to you
13 that she could have seen that table and then just incorporated
14 it into her story because now she's there?

15 A. No.

16 Q. What about when she testified here yesterday
17 morning, she didn't say it happened on a pallet or a table,
18 right?

19 A. I can't remember her exact words of what she said.

20 Q. Well, was her exact words that it happened on the
21 ground?

22 A. I am not sure.

23 Q. Okay. Well, we do luckily have a court reporter so
24 we can verify that. Something that I wanted to ask you about.
25 You made a note in your own report from 2017 that you asked

1 Ms. Byrd what was in evidence; is that right? Debbie Byrd.

2 A. Did I ask her in general what was in evidence?

3 Q. Yes. Your report says that you checked with her to
4 see what was in evidence.

5 A. If that's what I wrote, then yes, that's what I
6 asked her.

7 Q. Okay. And she didn't inform you of any body mics or
8 cameras or body cameras?

9 A. We did not have that at the time.

10 Q. Well, beyond the two investigative notes that you
11 have received and the property report saying that there was a
12 cell phone in evidence and clothing in evidence was there
13 anything else that you had to be cognizant that there was
14 other evidence out there?

15 A. No.

16 Q. Okay. Did do you anything besides talk with
17 Investigator Walker and ask Debbie Byrd to see if there was
18 any more evidence?

19 A. I spoke with both the victim and the suspect and the
20 witnesses.

21 Q. But did you -- You didn't try to track down any
22 additional evidence that may have been in the evidence room or
23 anything like that?

24 A. Yes. I asked about the evidence. I went to the
25 evidence technician and asked was there any additional

1 evidence in the evidence room.

2 Q. Okay. On that day in September when you had the
3 opportunity to speak with Ms. Montgomery, did you talk with
4 her about her phone?

5 A. On which day?

6 Q. September, I believe it was the 25th. No. Sorry.
7 That's when you spoke with somebody else. When Ms. Montgomery
8 came to Orangeburg to walk that route with you and Lieutenant
9 Jenkins, did you speak with her about that phone that day?

10 A. She did mention her phone when we were talking about
11 here walking the route. Yes.

12 Q. Did you do anything with her phone or use her phone
13 in any capacity to investigate this case?

14 A. Besides looking at the call log?

15 Q. Did you look at the call log on that day?

16 A. Not that particular day. No.

17 Q. Was the first time that you looked at the call log
18 standing right here when the Solicitor showed it to you?

19 A. No.

20 Q. When was the first time that you saw it?

21 A. I can't recall when was the first time I saw it.

22 Q. Okay. It's fair to say that you hadn't reviewed it
23 prior to the Solicitor just asking you about it; is that
24 right?

25 A. I reviewed it before, prior to this case.

1 Q. I want to ask you a little bit about the interview
2 that you did with Mr. Jenkins and I do have part of it
3 recorded in case we need to reference it here. One of the
4 first things that I think you even testified to today was that
5 there's two sides to every story, right?

6 A. Yes. That's what Lieutenant Jenkins told him.

7 Q. Well, that's not all Lieutenant Jenkins told him,
8 right? Because he said it's not just that there's two sides
9 to every story. He said that if you guys took Tyquin's story
10 and then Ms. Montgomery's story, that the truth is in the
11 middle. Do you remember him saying that?

12 A. Yes.

13 Q. Okay. Now, do you recall asking Tyquin about
14 whether or not he had ever engaged in a sexual assault?

15 A. I don't know if I said those exact words.

16 Q. Okay. Well, whether you said assault or rape or
17 attack, whatever it is, you did ask him about that more than
18 once, right?

19 A. I know I asked him what did he do on that day on
20 January 6th.

21 Q. Well, before we get to whether or not you asked him
22 about an assault, let me ask you about that comment about
23 January 6th. You emphasized to him that it was his birthday
24 on that day, right?

25 A. I don't know if I would say I emphasized with him.

1 I asked him what did he do on his birthday in 2015.

2 Q. You agree then that you were suggesting to him that
3 he should be thinking about what happened to him on his
4 birthday, right?

5 A. Yes. I wanted to know what he did on his birthday
6 January 2015.

7 Q. And he told you January 2015 as best he can remember
8 he was probably with one of the mothers of his children on
9 that day, right?

10 A. That was one of the things that he said. Yes.

11 Q. Okay. What's interesting about that is that you
12 have done nothing to prove that was not true, correct?
13 Because the night of January 6th, 2015 would have been the
14 next day. It had only been January 6th for one minute at
15 12:01 January 6th when you say she left her apartment; isn't
16 that right?

17 A. So at midnight, because it was midnight you're
18 saying that it's January 7th so it's not his birthday?

19 Q. No. I'm saying that that night was January 5th. It
20 had only been January 6th for a few minutes when Ms.
21 Montgomery testified she left her apartment. So weren't you
22 asking him about the wrong day?

23 A. No. I asked him what he was doing, what did he do
24 for his birthday.

25 Q. But his birthday is the next day. Do you stay up

1 until midnight on the day before your birthday and then at
2 12:01 say great, it's my birthday and then go to sleep?

3 A. Sometimes I do.

4 Q. Okay. What most people do is wake up the next
5 morning and they say it's my birthday, right?

6 A. I don't know. I know sometimes I do.

7 Q. Okay. So when you ask him what he's doing on his
8 birthday, you're really asking him about the next night,
9 aren't you?

10 A. No. I asked him what did he do on his birthday.

11 Q. So you're saying he could have planned this, he was
12 planning something to do minutes after it became his
13 birthday?

14 MS. CORNWELL: Your Honor, object to
15 argumentative.

16 THE COURT: Sustained. Let's move on, counsel.

17 MR. HUTTO: All right.

18 BY MR. HUTTO:

19 Q. Let's go back to some other things you talked about.
20 I think you already testified to some of them. Do you agree
21 that Mr. Jenkins said that he would sometimes or he could have
22 had sex with somebody in the back seat of his car?

23 A. I don't think I testified to that.

24 Q. I'm asking if he said that to you?

25 A. I can't recall at this time about a back seat of a

1 car.

2 Q. Would you like to hear a clip from --

3 A. (Witness nodding head.)

4 Q. Let me make sure that this is working properly.

5 (Whereupon, counsel playing clip of defendant's
6 audio interview.)

7 BY MR. HUTTO:

8 Q. So you did ask him about that?

9 A. I think he just said that. I don't think I asked
10 him about particularly a back seat of a car. No. But that's
11 what he gave the information to.

12 Q. Well, that didn't strike you as making more sense
13 than engaging in a sexual assault outside in 35 degree
14 weather?

15 A. No.

16 Q. Okay. What about the fact that he actually said
17 that -- I apologize. Strike that. When you were asking him
18 about this incident, you told the Solicitor that he couldn't
19 really remember what day or incident you were talking about,
20 right?

21 A. Say that again. Can you repeat that?

22 Q. Well, part of what I believe the Solicitor asked you
23 about was that Mr. Jenkins was unable to give you a clear
24 response as to his involvement with this or what he was doing
25 on that night, correct?

1 A. Right. He said he didn't remember.

2 Q. Okay. We have already addressed the matter of it
3 may have been the next night that he was thinking of but let
4 me ask you, you never -- What context did you give him to know
5 what to talk about with you?

6 A. I asked him what he did for his birthday and when he
7 asked why was he here, Lieutenant Jenkins did tell him why he
8 was there and he went into detail.

9 Q. But, for example, you never showed him a picture so
10 that he could say, oh, yeah, I remember her? You never gave
11 him a name so he could say, oh, yeah, I know who you're
12 talking about?

13 A. I would not give him a picture of the victim.
14 That's the victim.

15 Q. That's fine. But what context did he have when you
16 were talking to him to know what you were talking about?

17 A. As stated Lieutenant Jenkins told him exactly why he
18 was there of the allegation.

19 Q. Did he also deny that he ever walked around
20 downtown?

21 A. He did.

22 Q. What evidence do you have to the contrary?

23 A. He wasn't being truthful throughout the entire
24 conversations that we had with him.

25 Q. I want to be clear about something that you said

1 earlier. I believe it has been made clear but he does not
2 have a record for sexual assault; is that correct?

3 A. No. He does not.

4 Q. There's one final thing I want to ask you about
5 these statements. He told you several times that he did not
6 rape anybody; is that correct?

7 A. He stated that. Yes.

8 Q. Would you say about four or five times?

9 A. He stated it several times. I can't recall how many
10 times.

11 Q. Okay. How familiar would you say you are with that
12 space between Russell, Broughton and John C. Calhoun
13 Boulevard?

14 A. Pretty familiar.

15 Q. Okay. There's actually two sets of public safety
16 cameras in that area, aren't there?

17 A. I'm not certain.

18 Q. Okay. So you personally never did anything to
19 investigate those cameras at all? You don't know they exist?
20 You never did anything to investigate those cameras?

21 A. I know that there are cameras on Russell Street. I
22 also know that they are not always operational.

23 Q. Okay. Whose responsibility would it have been to go
24 look for camera footage back in 2015?

25 A. I have no idea.

1 Q. You don't know whose responsibility that would have
2 been?

3 A. To look for a camera?

4 Q. Camera footage of this incident?

5 A. It would be the investigator.

6 Q. So that would have been Investigator Walker's
7 responsibility?

8 A. If she was the investigator, yes.

9 Q. To your knowledge it's not that she didn't - it's
10 that she didn't find any camera footage or that she never
11 looked for any camera footage?

12 A. I can't make that assumption for Ms. Walker.

13 Q. Okay. You had her notes. Is that all you knew
14 about the case from her?

15 A. And when I made a call to her.

16 Q. Okay. Do you think it's fair to Ms. Montgomery that
17 nobody ever made an effort to go do those things back in 2015?

18 MS. CORNWELL: Objection, Your Honor.

19 THE COURT: What's the basis of your objection?

20 MS. CORNWELL: Asking for an opinion of fairness and
21 equity in the case. It's not for her to make a decision
22 of.

23 THE COURT: He's not asking her the ultimate fact of
24 truth for the jury. He can ask the question but let's
25 move on counsel.

1 BY MR. HUTTO:

2 Q. Is it fair to Ms. Montgomery that nobody looked for
3 those things in 2015?

4 A. I don't know what was done in 2015.

5 Q. When you were there on that loading dock, you got a
6 pretty good look around; is that right?

7 A. Yes.

8 Q. What time of day was it when you visited?

9 A. It was in the afternoon.

10 Q. So you could see pretty clearly at that time?

11 A. Yes.

12 Q. You noticed that when you're there that the DP
13 parking lot is right there right in front of you?

14 A. Yes.

15 Q. And it's full of light posts, right?

16 A. Well, it was during the day so...

17 Q. But you can see the posts are there during the
18 day?

19 A. Yes.

20 Q. Did you notice that they have several cameras up in
21 that parking lot?

22 A. I wasn't looking at, particularly paying too much
23 attention to the DP parking lot.

24 Q. Have you ever gone out there at night?

25 A. Yes.

1 Q. So that parking lot is pretty bright; isn't it?

2 A. Yes.

3 Q. Okay. And, in fact, when you're on that loading
4 dock, you can see the DPU building pretty clearly, right?

5 A. Yes.

6 Q. And you can see Russell Street pretty clearly?

7 A. Not from the loading dock.

8 Q. You can't?

9 A. Russell Street?

10 Q. Yes. Can't you see Russell Street from the loading
11 dock or do you recall?

12 A. Not that I can recall, not Russell Street, not from
13 that loading dock.

14 Q. Okay. What about John C. Calhoun? When you're
15 standing on that loading dock, you can see John C. Calhoun,
16 can't you?

17 A. Yes.

18 Q. Okay. Did you notice when you were at that loading
19 dock in 2017 that there are two security cameras there?

20 A. I don't know if they would be there in 2015.

21 Q. Did you check them in 2017?

22 A. No.

23 Q. How many investigations would you say that you have
24 been involved with over the course of your career?

25 A. Thousands.

1 Q. What kind of training have you received specifically
2 regarding investigation of sexual assault?

3 A. I have numerous training. I have numerous training
4 in investigations in sexual assaults. That was my primary
5 job. I was the only investigator of sexual assault at the
6 Sheriff's Office for approximately five and a half years so
7 during that time I was training routinely on sexual
8 assaults.

9 Q. Isn't it true at least statistically that almost all
10 sexual assaults are committed by somebody who knows the
11 alleged victim?

12 A. Routinely.

13 Q. That's the majority of cases, isn't it?

14 A. Yes.

15 Q. And in the course of your career people have been
16 untruthful with you, correct?

17 A. Yes.

18 Q. All right. And sometimes the people who are
19 untruthful are the people who are even the ones that call the
20 police out there, doesn't that happen?

21 A. Occasionally.

22 Q. And you have the ability as a law enforcement
23 officer to charge somebody with filing a false police report,
24 don't you?

25 A. I do.

1 Q. You can receive jail time for that, can't you?

2 A. Yes. You can.

3 Q. So that would be a great reason to stick with your
4 story after you told police, isn't it?

5 A. For someone who had done that, yes.

6 MR. HUTTO: That's all I have.

7 THE COURT: Counsel, please approach.

8 (Side bar off the record.)

9 THE COURT: Ladies and gentlemen of the jury, I told
10 you we would be here until 1:30 and it's almost 2:00 so
11 my apologies. Sometimes things take a little longer than
12 we anticipated but that is certainly well within what
13 happens in trials so again, we will recess for the
14 afternoon. If you would please be back in the jury room
15 at 9:20. That way when we have everyone together, we'll
16 get started right at 9:30. Again, please remember my
17 previous instructions not to discuss this case with
18 anyone and do not allow anyone to discuss the case
19 with you. Have a nice evening.

20 (Whereupon, the jury was released for the day at
21 1:55 p.m.)

22 THE COURT: You may step down, ma'am. Thank you.
23 Just remember you're still considered on the stand so
24 you're not allowed to discuss your testimony with
25 anyone.

1 MS. CORNWELL: Your Honor, in the next five minutes
2 the State does intend to rest after our redirect of this
3 witness. I don't know if Your Honor would like to go
4 ahead and advise the defendant regarding whether or not
5 he wants to testify, that way we don't, he can talk to
6 his attorney overnight to maybe discuss that.

7 THE COURT: Do you need time to talk to your client
8 about that?

9 MR. HUTTO: It may be easier if we handle that in
10 the morning.

11 THE COURT: Then we'll reconvene at 9:15 and we'll
12 do that at 9:15 before we bring the jury back out. Also,
13 we did find the no corroboration statute language. It's
14 State v. Stukes, and it is trial error to charge the no
15 corroboration statute and so that will not be given.

16 MS. CORNWELL: Appreciate it, Your Honor.

17 THE COURT: All right. Anything further before we
18 recess until 9:15?

19 MS. CORNWELL: No, Your Honor.

20 THE COURT: Have a good afternoon.

21 (Whereupon, court was adjourned for the day at 2:15
22 p.m.)

23

24

25

1 February 14, 2019

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Maite Murphy presiding.

4 THE COURT: Good morning. Thank you. Please be
5 seated. Are the parties ready to proceed?

6 MS. CORNWELL: We are, Your Honor.

7 MR. HUTTO: Just one thing. I'm sorry. We could
8 have brought it up with you in chambers. We would just
9 like to clarify that for the purposes of addressing the
10 -- We would like to, I guess, perhaps make a motion in
11 limine or fashion another motion in a similar manner that
12 for the purposes of redirect on the issue of Mr. Jenkins'
13 prior record is off the table and not subject to
14 redirect.

15 THE COURT: She can go into what you went into on
16 your cross examination and clarify any of those issues
17 but nothing further. So if you touched on it on your
18 cross examination which you kind of stayed away from it
19 for the most part, I don't have my notes right in front
20 of me but it's fair game. She can go within the
21 boundaries of what I ruled yesterday but I'm not gonna
22 prohibit her --

23 MR. HUTTO: I understand that she could restate what
24 was ruled yesterday and I don't know that there was any
25 new information brought up. I just want to make sure

1 that we're still within the bounds of that ruling.

2 THE COURT: Solicitor, you okay with that?

3 MS. CORNWELL: I will clarify. I think the door was
4 opened to a certain portion that I'm actually not going
5 to walk through it. There was a big discussion about the
6 night of the birthday and, you know, technically his
7 birthday night was the next night, not the night that
8 we're talking about so not to be confused, in the very
9 beginning of the interview when investigators asked him
10 what were you doing on January of 2015. He says, January
11 of 2015, I was in jail January 2015. And I'm not gonna
12 get into that. But then he goes back and says, you know,
13 and he's talking about it, he says, no, I got out like
14 January 3rd or 4th. All I'm gonna ask is, you know, you
15 asked about the time around, you know, his birthday. You
16 didn't just ask specifically about his birthday and
17 without saying in detail what he said, he knew
18 specifically where he was up until like January 3rd and
19 4th, correct. And then you also talked about January the
20 28th. That's when his kid was born, you know. So he
21 knew specifically where he was around that time. So he
22 knew and he can give you details, you know, right before
23 these couple of days and right after. The only time that
24 he wasn't able to give you details were right at this
25 incident, and that's all I'm gonna say. I don't want her

1 to go into -- I'm not gonna say, he said he was in jail.
2 I don't think that that's appropriate. But I do intend
3 on saying, you know, he told you where he was. He knew
4 exactly where he was up until about January 3rd or 4th,
5 correct? And just have her answer yes or no.

6 THE COURT: I think that's fair game. So
7 Investigator Bravo, you just make sure you stay within
8 those parameters. Anything else?

9 MS. CORNWELL: No, Your Honor.

10 MR. HUTTO: No, Your Honor.

11 THE COURT: I know you haven't rested yet. You have
12 redirect. I guess I can put him under oath after you
13 make your motions, if you want me to go ahead and do that
14 now if we have to do that. I mean, we're kind of jumping
15 the gun a little bit. Have you had a chance to discuss
16 that with him?

17 MR. HUTTO: At this time I don't believe that Tyquin
18 intends to testify. We can address that now if you would
19 like.

20 THE COURT: Okay. Sure. Mr. Jenkins, if you would
21 please stand.

22 Thereupon,

23 TYQUIN TERRELL JENKINS

24 after having been first duly sworn, testified as follows,

25 THE COURT: Mr. Jenkins, once the Solicitor finishes

1 her redirect examination with this witness, the State
2 intends on resting their case and based upon that it will
3 then be time for you to have an opportunity to present
4 your defense. At this time I'm going to explain to you
5 certain of your rights. If you do not understand
6 anything that I say, please let me know. If you want me
7 to explain anything in more detail also please let me
8 know. Do you understand?

9 TYQUIN JENKINS: Yes, ma'am.

10 THE COURT: We have reached the stage of the trial
11 where you may present your defense. You have the right
12 to claim the protections given to you by the Fifth
13 Amendment of the Constitution of the United States. This
14 amendment states in part that no person shall be
15 compelled in any criminal case to be a witness against
16 himself. This means that you cannot be required to
17 testify in this case. You have the right to testify in
18 this case on your own behalf, however, no one can make
19 you testify. This is a personal right and no one can
20 waive this right except for you. If you decide to
21 testify, you will be subject to the same rules that
22 govern other witnesses and then you may be examined and
23 cross examined on any relevant issue in this case.

24 In addition, if you have any convictions involving
25 dishonesty or false statements or crimes punishable by

1 imprisonment for more than one year and I determine that
2 the probative value of admitting this evidence outweighs
3 the prejudicial effect to you, the Solicitor will be able
4 to introduce your prior record and attack your
5 credibility.

6 If you decide to testify, this decision on your part
7 must be freely, voluntarily, and intelligently made with
8 the knowledge of the protections given to you and the
9 consequences of your decision to testify. If you decide
10 not to testify, I will instruct the jurors that they
11 cannot give the fact that you did not testify any
12 consideration whatsoever and that there's to be
13 absolutely no prejudice to you because you did not
14 testify. It's left entirely up to you whether or not you
15 wish to testify. You may talk with your attorney, your
16 family, your friends, or anyone else but the final
17 decision is completely left entirely up to you.

18 Do you understand what I have just explained to you?

19 TYQUIN JENKINS: Yes, ma'am.

20 THE COURT: Do you have any questions about what I
21 have explained to you?

22 TYQUIN JENKINS: No, ma'am.

23 THE COURT: Have you discussed with your attorney
24 whether or not you wish to testify?

25 TYQUIN JENKINS: Yes, ma'am.

1 THE COURT: Do you need any more time to talk to him
2 about whether or not you wish to testify?

3 TYQUIN JENKINS: No, ma'am.

4 THE COURT: Do you wish to testify?

5 TYQUIN JENKINS: No, ma'am.

6 THE COURT: All right, sir. Thank you. You may
7 have a seat. Anything further before we bring the jury
8 out?

9 MS. CORNWELL: Nothing from the State, Your Honor.
10 Would you like Investigator Bravo to take the stand?

11 THE COURT: Yes, ma'am. Come on back up here.

12 MS. CORNWELL: For purposes of the record, I have
13 not spoken to Ms. Bravo since she got off the stand
14 yesterday.

15 THE COURT: Yes, ma'am. Okay.

16 (Whereupon, the jury entered the courtroom at 9:50
17 a.m.)

18 THE COURT: Good morning, ladies and gentlemen of
19 the jury. I hope that you had a nice afternoon yesterday
20 and a nice evening. We are now ready to proceed with the
21 redirect examination. You may proceed.

22 MS. CORNWELL: Thank you, Your Honor.

23 Thereupon,

24 LORIANNE GARRISON BRAVO

25 after having been previously duly sworn, testified further as

1 follows,

2 REDIRECT EXAMINATION

3 BY MS. CORNWELL:

4 Q. Investigator Bravo, yesterday on cross examination
5 you were asked several questions about where this incident
6 occurred and whether it was consistent or inconsistent with
7 other reports that were submitted in this case. In fact, you
8 were referred to Investigator Still or Officer Still's report
9 about the area. Are there landmarks in that area consistent
10 with what is in each report?

11 A. Yes.

12 Q. And what are those landmarks?

13 A. Captain D's. There is a hair salon and a mural.
14 She referenced a mural also.

15 Q. In reviewing all of the previous reports and Deputy
16 Still's report, do you recall where he wrote that the victim
17 in describing the location while she could not give an exact
18 address or an exact location, when she described it, she did
19 reference having to go up a few steps before he laid her down
20 and assaulted her?

21 A. Correct.

22 Q. Is that consistent with the area that she showed you
23 behind the building that she said this happened, that there
24 were some steps that she would have had to go up to get to the
25 area where she was sexually assaulted?

1 A. Correct. Uhm, that is the area that she stated it
2 happened in and in that area that is the only set of steps
3 behind a building.

4 Q. In looking at State's Exhibit 4, would those be the
5 steps that she referenced going up?

6 A. Correct.

7 Q. And that's consistent with what was in the initial
8 report?

9 A. Correct.

10 Q. You were also asked several questions regarding the
11 night of the defendant's birthday and when you were discussing
12 the night of the defendant's birthday, it was not technically
13 what he would perceive as the night of his birthday. Do you
14 recall those questions?

15 A. Yes.

16 Q. When you interviewed the defendant, did you only
17 discuss the night of the birthday or did you discuss other
18 times during the month of January with him?

19 A. We discussed other times during the month of
20 January.

21 Q. And was the defendant able to specifically recall
22 where he was and what he was doing the first three or four
23 days of January?

24 A. Yes.

25 Q. And he was able to give you speak details of where

1 he was and what he was doing those days?

2 A. Correct.

3 Q. And was he able to give you specific details of
4 where he was and what he was doing in the latter days of
5 January?

6 A. Yes.

7 Q. And the details that he was able to give you were
8 surrounded by significant events such as the birth of his
9 child, right?

10 A. Correct.

11 Q. That was toward the end of January?

12 A. Correct.

13 Q. So when you were discussing this incident, did you
14 only ask him about his birthday or did you ask about time
15 around his birthday?

16 A. Times around his birthday.

17 Q. And you were played a small clip to refresh your
18 recollection regarding the defendant making a statement about
19 having sex in a car. Do you recall that little clip?

20 A. Yes.

21 Q. And would it help refresh your recollection to
22 understand the full context of that statement as far as what
23 the discussion was and what prompted that response?

24 A. Yes.

25 Q. Would it refresh your recollection that you asked

1 him what he was doing around that time and he discussed he
2 only remembered being with his baby mamas around that time?

3 A. Yes.

4 Q. But that if he was going to have sex --

5 MR. HUTTO: I'm going to object to leading and I
6 believe the Solicitor is entering some testimony of her
7 own at this point.

8 MS. CORNWELL: Your Honor, I believe the Court has
9 discretion in testimony. I'm trying to limit my question
10 and response based on the rules of admissibility that we
11 previously discussed.

12 THE COURT: I'll allow it for those specific
13 purposes. Other than that let's get past that point.

14 BY MS. CORNWELL:

15 Q. Investigator Bravo -- Give me just a moment. I'll
16 reference exactly the statement that I'm referring to. Do you
17 recall that he was asked about what he was doing around that
18 time and he stated to you the only person that he remembered
19 being around at that time was his baby mamas but he could have
20 gone and had some drinks at a club and picked someone up at a
21 club and maybe had sex in the back of a car?

22 A. Yes.

23 Q. That was the full context. Did he remember and was
24 he stating that he had sex in the back of a car in reference
25 to this incident or was it a hypothetical?

1 A. A hypothetical.

2 Q. And, in fact, was he ever able to give you any
3 specific explanation of how his DNA got inside the victim in
4 this case?

5 A. No. He did not.

6 Q. And in regards to his hypothetical of a club and
7 picking someone up at a club and having sex in the back of a
8 car, is there any club in that area where this incident
9 occurred?

10 A. No. There is not.

11 Q. And in your experience when girls are in a club, are
12 they wearing two pairs of pants, a tank top, a sweatshirt, a
13 hoodie and a knit cap?

14 A. No.

15 Q. In that statement the defendant also admitted to
16 drinking and making bad decisions when he drinks?

17 A. Yes. That is correct.

18 Q. And did the victim mention anything about alcohol
19 during this incident?

20 A. Yes. She said he was drinking.

21 Q. And you were also asked about the defendant denying
22 that he raped anyone and, in fact, the context of that we are
23 talking about aggressively raping someone, and he never
24 aggressively raped and would never hurt a woman like that,
25 correct?

1 A. Correct.

2 Q. And while he did admit that and saying that he never
3 hurt women, you were able to prove that that was not a
4 truthful statement by showing that he has prior convictions of
5 crimes against women, correct?

6 A. Correct.

7 MS. CORNWELL: Your Honor, that's all the questions
8 I have.

9 THE COURT: Thank you, ma'am. You may step down.
10 You may call your next witness.

11 MS. CORNWELL: Your Honor, at this time the State
12 rests.

13 THE COURT: Thank you, Solicitor. Ladies and
14 gentlemen of the jury, we're gonna take a very brief
15 recess. If you would please go to your jury room.
16 Although the State has rested their case, please again do
17 not discuss this case amongst yourselves. We will be
18 right back with you.

19 (Whereupon, the jury entered the jury room at 10:00
20 a.m.)

21 THE COURT: Any motions?

22 MR. HUTTO: One thing, Your Honor, before we do get
23 to motions. I hope this is still considered
24 contemporaneous. I would object to the last comment made
25 by the Solicitor regarding prior convictions. I believe

1 that was beyond the scope of what was agreed upon in your
2 chambers and discussed prior to our redirect. I would
3 move that that be stricken from the record.

4 THE COURT: Tell me again what exactly you said.

5 MS. CORNWELL: You were asked about the fact that
6 the defendant denied ever raping anyone and the context
7 of that conversation was discussed as aggressively raping
8 someone and he denied ever raping anybody and he also
9 said he would never hurt women but you were able to show
10 that that was not a truthful statement, correct? And she
11 said yes. And I said, because he has prior convictions
12 of crimes against women? And she said yes.

13 THE COURT: That's consistent with what was
14 allowable yesterday so I'll overrule your objection.

15 MS. CORNWELL: Thank you, Your Honor.

16 MR. HUTTO: Your Honor, we would also make a motion
17 for a directed verdict at this time. The basis of our
18 directed verdict is that the State has the burden of
19 proving the defendant's guilt beyond a reasonable doubt.
20 I believe that there are several elements of this crime
21 for which they are missing the ability to meet their
22 burden. You have heard testimony from several officers
23 that nothing was done to investigate this case. Well,
24 perhaps that's me being argumentative. That there was
25 little done to investigate this case for some time and

1 that there has been inconsistent testimony from witnesses
2 throughout the course of 2015 and 2017. I don't believe
3 that the State could possibly prove this case beyond a
4 reasonable doubt so we would move for a directed verdict
5 of not guilty.

6 THE COURT: Thank you, Mr. Hutto. As you know, at
7 this juncture the Court is concerned with the existence
8 of evidence and there is direct evidence on each and
9 every element of the offense to establish the defendant's
10 guilt and your motion is respectfully denied. Ready for
11 the jury?

12 MS. CORNWELL: Yes, Your Honor.

13 MR. HUTTO: Your Honor, may I be sure that my
14 witness is here outside?

15 THE COURT: Sure.

16 (Brief delay.)

17 THE COURT: Is your witness ready?

18 MR. HUTTO: Your Honor, I believe both of our
19 witnesses are on the way but I would like to also read
20 stipulations to the jury, if that's possible, as part of
21 our defense case.

22 THE COURT: Can you write out exactly what the
23 stipulation is?

24 MR. HUTTO: Yes. I have a copy here. These are the
25 same ones that we spoke about in chambers. I retyped the

1 third one to I believe reflect what the Solicitor and I
2 were able to agree upon as far as a stipulation.

3 MS. CORNWELL: I'm sorry. Are you going to
4 reference them in your questioning of your witnesses?

5 MR. HUTTO: I would like to publish them to the jury
6 as stipulations that they just should consider.

7 MS. CORNWELL: I would simply ask that the Judge be
8 the one to publish them to the jury and you not be the
9 one to instruct the jury is my only request.

10 THE COURT: What was that?

11 MS. CORNWELL: He just wants to publish them to the
12 jury and not enter them through his witnesses. So my
13 only request would be that Your Honor is the one that
14 instructs the jury of stipulations, not Mr. Hutto.

15 THE COURT: I'm happy to do it either way.
16 Traditionally I think the Court does it. I can say that
17 the parties have stipulated to the following facts and
18 read those facts into it and basically let the jury know
19 that that's an agreement that you have come to as a fact
20 in this case that they don't need to come to a decision
21 on that. So I'm happy to do that. Can I see those?

22 MR. HUTTO: Sure (proffering.)

23 MS. CORNWELL: That's the State's preference.

24 MR. HUTTO: I would be happy for that. That's
25 probably a better way as far as I'm concerned as well for

1 that to occur.

2 THE COURT: Okay. Well, we'll get started with that
3 and hopefully your witnesses are here.

4 MS. CORNWELL: I know that, since the jury is out
5 and we have a moment, Skyler mentioned that, we had
6 talked about adding a fourth stipulation regarding the
7 statement of the defendant since we can't actually move
8 the statement into evidence and just possibly doing a
9 fourth stipulation that the parties have agreed that the
10 defendant did give a statement in this case or portions
11 that have been deemed admissible. It's still up to you
12 to determine whether or not --

13 THE COURT: All right. So here is what I'll read to
14 the jury. The State and defendant have stipulated to
15 four matters in this and you will have these stipulations
16 read to you. One is the weather report for January 6th,
17 2015 shows that the weather between midnight and 2:00
18 a.m. was clear and calm. The temperature was
19 approximately 35 degrees. Two, the defendant consented
20 to having his DNA sample in this case. Three, SLED
21 analysis of the cell phone in this case revealed that no
22 fingerprints were present. That should be not present.

23 MR. HUTTO: Yes. And I believe that my typo from
24 the first version is still there. It should be sample,
25 not samples. I apologize.

1 THE COURT: All right. And then four, that the
2 statement made by the defendant was voluntarily and
3 freely done as well and that's for the jury.

4 MR. HUTTO: That's fine.

5 THE COURT: Let's have our jury please.

6 BAILIFF: Yes, Your Honor.

7 (Whereupon, the jury entered the courtroom at 10:10
8 a.m.)

9 THE COURT: Welcome back, ladies and gentlemen of
10 the jury. Before we begin with the ability of the
11 defense to present their case if they wish to present
12 anything, the State and the defendant have stipulated to
13 four matters in this case. A stipulation is basically an
14 agreement that they agree that this is a fact in this
15 case. The four stipulations in this case are as follows:
16 Number 1, that the weather report for January the 6th of
17 2015 shows that the weather between midnight and 2:00
18 a.m. was clear and calm. The temperature was
19 approximately 35 degrees. Number 2, the defendant
20 consented to having his DNA sampled in this case. And
21 number 3, a SLED analysis of the cell phone in this case
22 revealed that no fingerprints were present. Number 4,
23 the statement by the defendant was made voluntarily and
24 of his own free will. Those are the stipulations that
25 counsel has entered into with the State and the

1 defendant. Counsel for the defense.

2 MR. HUTTO: Yes, Your Honor. We call Debbie
3 Brothers.

4 THE COURT: Yes, sir.

5 Thereupon,

6 DEBBIE BROTHERS

7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. Once you're seated,
9 state your first and last name for the record.

10 THE WITNESS: Debbie Brothers.

11 THE COURT: Your witness.

12 MR. HUTTO: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. HUTTO:

15 Q. Ms. Brothers, can you tell the jury how you're
16 employed and what you do?

17 A. I'm a private investigator with Brothers Detective
18 Agency. We have had an agency for over 28 years.

19 Q. Okay. And all 28 of those years have you been in
20 Orangeburg?

21 A. Yes.

22 Q. About how many matters do you think you have had the
23 opportunity to investigate in Orangeburg?

24 A. Over the years, sir, I can't remember. Many.

25 Q. Okay. And where is your detective agency?

1 A. We're locate at 1250 Amelia Street here in
2 Orangeburg, South Carolina.

3 Q. Is that fairly close to here?

4 A. That is close to here.

5 Q. Are you familiar with some of the allegations in
6 this case?

7 A. No. I'm not.

8 Q. Okay. Are you familiar with some of the locations
9 in this case that have been mentioned by the alleged victim?

10 A. Yes. I am.

11 Q. Okay. Are you familiar with that area generally
12 outside of this case?

13 A. Yes. I am.

14 Q. Okay. How close is your business to downtown
15 Orangeburg?

16 A. Downtown Orangeburg? We're actually one block over
17 from Russell Street.

18 Q. Have you had the opportunity to walk from or observe
19 the route between Landmark Towers and the intersection of
20 Russell and Broughton Street?

21 A. Yes. I did.

22 Q. And have you also had the opportunity to walk
23 through and observe the space between the intersection of
24 Russell and Broughton Street and Broughton and Fisher
25 Street?

1 A. Yes. I did.

2 Q. Let me use this for reference, if I may. Just to
3 help orient you, the Solicitor has marked this as Landmark
4 Towers. Are you familiar with that location?

5 A. I am familiar with Landmark Towers.

6 Q. Are you familiar with the intersection of Broughton
7 and Russell?

8 A. Yes. I am.

9 Q. Okay. Is your office actually visible on this map?
10 This is Amelia Street up here.

11 A. Bring it in just a little closer for me.

12 Q. Sure.

13 A. Yes. My office is located right in this area.

14 Q. Okay. So right in here you were pointing to?

15 A. That is correct.

16 Q. And you again have had the opportunity to go down to
17 this intersection Broughton and Fisher?

18 A. That is correct.

19 Q. As well as Fisher and Oliver down in this
20 intersection?

21 A. That is correct.

22 Q. Okay. In your experience with downtown Orangeburg
23 about how long does it take to walk from Landmark Towers down
24 to the intersection of Russell and Broughton?

25 A. From Landmark to Russell and Broughton would

1 probably take you if you're in a good speed it would probably
2 take you about five to 10 minutes, if that.

3 Q. Okay. And it's significantly shorter or is it
4 shorter or longer to get from Russell and Broughton to
5 Broughton and Fisher?

6 A. Can you repeat that again?

7 Q. It may be again helpful to use this map. Is it even
8 a shorter distance from this intersection to that
9 intersection?

10 A. I would say it's a little shorter.

11 Q. Okay. In the course of going through that area have
12 you had the opportunity to make observations about it in the
13 course of your work?

14 A. Yes.

15 Q. Okay. What are some landmarks that are right in
16 that Broughton and Fisher intersection?

17 A. At the Broughton and Fisher intersection there's a
18 Captain D's, there's a event venue, there's two event venues
19 there, and there's the T and D, Times and Democrat.

20 Q. Okay. I would like to show you some photographs if
21 I may and please tell me if you can identify them. This has
22 been marked as Defendant's Exhibit 18. Are you familiar with
23 what that is?

24 A. Yes. That is the Times and Democrat.

25 Q. Okay. Is this photo a fair and accurate depiction

1 of how the outside of that building appears?

2 A. Yes. It does.

3 MR. HUTTO: Your Honor, at this time we would move
4 defendant's 18 into evidence.

5 THE COURT: Any objection?

6 MS. CORNWELL: No, Your Honor.

7 THE COURT: Okay. It's in.

8 BY MR. HUTTO:

9 Q. And with respect to this photo can you identify it
10 for us?

11 A. That again is the corner of T and D.

12 Q. That's the other side of the building?

13 A. That is correct.

14 Q. Is that a fair and accurate depiction of that, the
15 side of that building?

16 A. Yes.

17 MR. HUTTO: Okay. I apologize. I don't know that
18 I've shown it to the Solicitor. Your Honor, at this time
19 we would move defendant's 19 into evidence.

20 THE COURT: Any objection?

21 MS. CORNWELL: No, Your Honor.

22 THE COURT: Okay. It's in.

23 BY MR. HUTTO:

24 Q. Now, looking specifically at defendant's 19, do you
25 view any security cameras on that building?

1 A. Yes. I do.

2 Q. Okay. Are you familiar with these cameras from your
3 investigations previously?

4 A. Doing surveillance in the area, yes.

5 Q. So you have actually had the opportunity to view
6 what these cameras can see?

7 A. Yes.

8 Q. Can these cameras see out to Fisher Street?

9 A. Yes. It can.

10 Q. And can you see any portion of Broughton in that
11 street?

12 A. From the camera down low you would be able to.

13 Q. How recently were you able to observe the security
14 camera footage from the Times and Democrat?

15 A. That's been quite a while. I can't remember exactly
16 when but it has been quite a while.

17 Q. Do you believe that you did have an opportunity to
18 view that footage prior to January of 2015?

19 A. I cannot remember that.

20 Q. Okay. Specifically with the camera in defendant's
21 19, that is the camera that reaches out Fisher Street?

22 A. That is correct.

23 Q. Are you familiar with how long that camera has been
24 there?

25 A. No. I am not.

1 Q. If I showed you a photo from the past of the Times
2 and Democrat, do you believe that you may be able to speak to
3 the existence of that camera in the past?

4 A. I should be able to.

5 Q. I'm going to show you what purports to be a photo
6 from 2014. Do you believe that is a fair and accurate
7 depiction of that building at that time?

8 A. Yes.

9 MR. HUTTO: Your Honor, at this time we move
10 defendant's 25 into evidence.

11 THE COURT: Any objection?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: Okay. It's in.

14 BY MR. HUTTO:

15 Q. And the security camera is present there in 2014?

16 A. That is the same camera that I saw.

17 Q. Okay.

18 THE COURT: Mr. Hutto, where was that.

19 MR. HUTTO: What location?

20 THE COURT: Yes.

21 MR. HUTTO: This is the Times and Democrat.

22 THE COURT: Okay.

23 BY MR. HUTTO:

24 Q. Now, you mentioned two event venues that are right
25 there at that intersection?

1 A. What intersection was that again?

2 Q. The intersection of Broughton and Fisher.

3 A. That is correct.

4 Q. There's a parking lot in between those two event
5 venues?

6 A. That is correct.

7 Q. And if you were to go around the corner, I believe
8 you have already identified this but for the sake of the jury,
9 if you were to go around the corner from Broughton and Fisher
10 to the right, the first thing that you would come to is Oliver
11 Street; is that correct?

12 A. That is correct.

13 Q. All right. And does Oliver Street -- Well, I'm
14 simply going to ask you this. This is Oliver Street,
15 correct?

16 A. That is correct.

17 Q. And is this the Department of Public Utilities
18 parking lot?

19 A. That is correct.

20 Q. And over here slightly out of frame, that would be
21 the actual Department of Public Utilities building?

22 A. That is correct.

23 Q. Have you had the opportunity to canvass that area
24 recently?

25 A. Yes.

1 Q. Okay. And about how many lamp posts would you say
2 illuminate that Department of Public Utilities parking lot at
3 night?

4 A. Approximately five or six.

5 Q. When you incorporate the nearby street lamp posts,
6 how many might you estimate are out there?

7 A. The streetlights on Oliver?

8 Q. Well, the various ones that are out there between
9 Oliver, Russell, wherever?

10 A. There's one actually facing Oliver. There's maybe
11 four or five that are actually facing the parking lot of the
12 Department of Public Utilities.

13 Q. So right in there you might say right around ten
14 just at that meeting of Oliver and the Department of Public
15 Utilities?

16 A. That's exactly where they start.

17 Q. Okay. Oliver Street sort of dead ends or finishes
18 before it meets Russell Street; is that correct?

19 A. That is correct.

20 Q. And at the end of Oliver is Rosalias Mexican
21 Restaurant?

22 A. That is correct.

23 Q. And they have a little parking lot in the back of
24 their restaurant?

25 A. Yes. They do.

1 Q. Above Rosalias there's a set of apartments?

2 A. That is correct.

3 Q. The people who, some of the people who work at the
4 restaurant actually live in those apartments, is that your
5 understanding?

6 A. My understanding is the persons who own the
7 restaurant lives above the restaurant.

8 Q. Do you know how long that restaurant has been in
9 existence?

10 A. I think they moved there sometime probably about
11 four or five years ago.

12 Q. I want to briefly go back. Are you familiar with
13 the Salvation Army loading dock itself?

14 A. Yes. I am.

15 Q. You have had the opportunity to go out and observe
16 it?

17 A. Yes. I did.

18 Q. That loading dock abuts Oliver Street?

19 A. That is correct.

20 Q. And directly across from it is the Department of
21 Public Utilities parking lot?

22 A. That is correct.

23 Q. I want to show you what is marked as Defendant's
24 Exhibit 20. What is that a photo of?

25 A. That is the parking lot of the Salvation Army.

1 Q. And the view from there overlooks the -- Or sorry.
2 The view from the Salvation Army overlooks the Department of
3 Public Utilities parking lot?

4 A. Yes. It does.

5 Q. Would you say that's a fair and accurate depiction
6 of what you have been able to view out there at the Salvation
7 Army loading dock?

8 A. That is correct.

9 MR. HUTTO: Your Honor, at this time we would move
10 defendant's 20 into evidence.

11 THE COURT: Any objection?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: It's in.

14 BY MR. HUTTO:

15 Q. Can you identify what this photo is for us?

16 A. That is the top of DPU.

17 Q. What are some things that you can observe in that
18 photograph?

19 A. There are two cameras located on the back end
20 corners of DPU.

21 Q. Is that a fair and accurate representation of that
22 building as you have seen it?

23 A. Absolutely.

24 MR. HUTTO: Your Honor, at this time we would move
25 defendant's 21 into evidence.

1 THE COURT: Any objection?

2 MS. CORNWELL: No, Your Honor.

3 THE COURT: It's in.

4 MR. HUTTO: Your Honor, at this point I would like
5 to publish all of the photos that have been so far
6 entered into evidence to the jury.

7 THE COURT: Yes, sir.

8 (Whereupon, counsel published Defendant's Exhibits
9 to the jury.)

10 BY MR. HUTTO:

11 Q. Allow me to keep speaking about that Salvation Army
12 parking lot. That actually is adjacent to another building
13 marked Guns and Ammo or something to that effect. Are you
14 familiar with that sign?

15 A. I'm not sure if I'm familiar with that sign but that
16 building is adjacent to another building.

17 Q. Okay. How recently have you been out there to
18 observe the docks behind those two buildings?

19 A. How recently have I been out there? As recent as a
20 week ago.

21 Q. Okay. In your observation of this area were you
22 able to observe a number of cameras both at the Salvation Army
23 loading dock and the adjacent building?

24 A. Yes. I have.

25 Q. I would like to show you what's marked as

1 Defendant's Exhibit 5. Is that one of the security cameras
2 present on the Salvation Army loading dock?

3 A. Yes. It is.

4 Q. Is that a fair and accurate representation of what
5 you observed there?

6 A. Yes. It is.

7 MR. HUTTO: At this time we would like to move
8 Defendant's Exhibit 5 into evidence.

9 THE COURT: Any objection?

10 MS. CORNWELL: Can we clarify the date and time that
11 that photograph was taken.

12 MR. HUTTO: This photograph I believe would be from
13 approximately six days ago.

14 MS. CORNWELL: That's all I need. Just 2019. Thank
15 you.

16 THE COURT: It's in.

17 BY MR. HUTTO:

18 Q. The Solicitor just asked me about a date. How long
19 has the Salvation Army been gone from that building?

20 A. If I'm correct, I think they moved out around
21 2016.

22 Q. In your experience do businesses put cameras up
23 after they leave?

24 A. I don't believe so.

25 Q. I would like to show you what's been marked as

1 Defendant's Exhibit 6. Can you identify what that is?

2 A. That is a camera.

3 Q. Where is that located?

4 A. It's actually located on the building that is
5 adjacent to the Salvation Army.

6 Q. So if I were looking at this map at the back of
7 Oliver Street, is it your understanding that this building
8 right here with the black roof top is the Salvation Army?

9 A. I would say so. Yes.

10 Q. And the camera that you are referring to, is it in
11 the parking lot lower down or higher up?

12 A. Higher up.

13 Q. So right here?

14 A. It would be. Yes.

15 Q. It may be difficult to see. In this parking lot
16 would you describe it as being in the upper part of the photo
17 or the lower part?

18 A. The upper part.

19 Q. Okay. I would like to show you what's been marked
20 as defendant's 7. Do you recognize this photograph?

21 A. Yes. I do.

22 Q. And what is that a photograph of?

23 A. That is a camera that is located under an air
24 conditioner.

25 Q. Where is that air conditioner and camera?

1 A. That air conditioner and camera is a little closer
2 to Oliver Street.

3 Q. In that same parking lot?

4 A. In that same parking lot.

5 Q. Is that a fair and accurate representation of what
6 you observed?

7 A. Yes.

8 MR. HUTTO: Your Honor, at this time we would move
9 Defendant's Exhibit 7 into evidence.

10 THE COURT: Is that also from 2019?

11 MR. HUTTO: This one is. Yes.

12 THE COURT: Any objection?

13 MS. CORNWELL: No objection.

14 THE COURT: It's in.

15 BY MR. HUTTO:

16 Q. Speaking of 2019, I would like to show you a photo
17 that purports to be from 2013. Is this the same building that
18 you were just speaking about?

19 A. Yes. It is.

20 Q. Is that same camera visible in this photograph?

21 A. Yes. It is.

22 Q. And that's a fair and accurate representation of
23 what you believe that building looked like in 2013?

24 A. Yes.

25 MR. HUTTO: Your Honor, at this time we would move

1 this photograph into evidence as well, defendant's 27.

2 THE COURT: Any objection?

3 MS. CORNWELL: No objection.

4 THE COURT: You said 27?

5 MR. HUTTO: 27. Yes.

6 THE COURT: It's in.

7 BY MR. HUTTO:

8 Q. In your capacity as a private detective are you
9 familiar with the appearance of cameras and motion detecting
10 devices?

11 A. Yes. I am.

12 Q. I would like to show you what's been marked as
13 defendant's 11. Are you familiar with what this is?

14 A. Yes. I am.

15 Q. Okay. What is it?

16 A. There's a motion light that is on that building and
17 there's a camera also on that building.

18 Q. When you say that building, what building are you
19 referring to?

20 A. The Salvation Army.

21 Q. Is that a fair and accurate description of what you
22 have observed at the Salvation Army loading dock?

23 A. Yes.

24 MR. HUTTO: Your Honor, at this time we would move
25 defendant's 11 into evidence.

1 THE COURT: Any objection?

2 MS. CORNWELL: No, Your Honor.

3 THE COURT: It's in.

4 BY MR. HUTTO:

5 Q. I would like to ask you about one more photograph.

6 Are you familiar with this area?

7 A. Yes. I am.

8 Q. Okay. I don't think it would be immediately obvious
9 to someone who looked at it what it is? What is that a
10 picture of?

11 A. It looks like it could be a -- There are two
12 buildings there for sure. It could be a alley way but it's a
13 very narrow alley way where no one could possibly walk
14 through.

15 Q. Is this behind the Salvation Army?

16 A. That is correct.

17 Q. In your observation of that area does that alley go
18 all the way through to Broughton Street?

19 A. Yes. It does.

20 MR. HUTTO: Your Honor, at this time I would like to
21 publish the various photographs that I have just been
22 speaking about to the jury.

23 THE COURT: You didn't admit the last one into
24 evidence.

25 MR. HUTTO: I apologize.

1 BY MR. HUTTO:

2 Q. Is that a fair and accurate depiction of that area.

3 A. At this time. Yes.

4 MR. HUTTO: Your Honor, I would move Defendant's
5 Exhibit 8 into evidence.

6 THE COURT: Any objection?

7 MS. CORNWELL: No objection.

8 THE COURT: Okay. It's in.

9 (Whereupon, counsel published Defendant's Exhibits
10 to the jury.)

11 MR. HUTTO: This is the photograph of a camera on
12 the Salvation Army Loading dock. This is a photograph of
13 a second camera and motion detecting light on the
14 Salvation Army Loading dock. This is a photograph of a
15 camera on the adjacent building. Separate camera
16 depicted on the adjacent building. This is a photograph
17 in 2013 depicting a camera on the adjacent building.
18 This is the alleyway.

19 BY MR. HUTTO:

20 Q. You mentioned one building earlier that we haven't
21 talked about yet. That's Captain D's. Are you familiar with
22 that building?

23 A. Yes. I am.

24 Q. Have you ever observed cameras at that restaurant?

25 A. Yes. I have.

1 Q. Okay. I would like to ask you to, I want to show
2 you what's been marked as defendant's 15. Can you tell me
3 what that is?

4 A. That's Captain D's and that's a camera that's
5 located at the base of that building.

6 Q. Is that a fair and accurate depiction of the corner
7 of the Captain D's building?

8 A. Yes. It is.

9 MR. HUTTO: Your Honor, at this time we would move
10 defendant's 15 into evidence.

11 THE COURT: Any objection?

12 MS. CORNWELL: No objection, Your Honor.

13 THE COURT: Okay. It's in.

14 BY MR. HUTTO:

15 Q. I'll ask you the same question. Can you identify
16 what that is?

17 A. That is at the corner of Captain D's and there's a
18 camera located there.

19 Q. Okay. That is for clarity a different corner than
20 the one that you identified previously?

21 A. That is correct.

22 Q. Is that a fair and accurate depiction of what that
23 building looks like?

24 A. Yes. It is.

25 MR. HUTTO: Your Honor, at this time we would move

1 defendant's 17 in evidence.

2 THE COURT: Any objection?

3 MS. CORNWELL: No objection, Your Honor.

4 THE COURT: Okay. It's in.

5 BY MR. HUTTO:

6 Q. And finally can you tell the jury what that is a
7 photo of?

8 A. That is a camera that is on the back corner that is
9 facing Fisher of Captain D's.

10 Q. Okay. Is that a fair and accurate depiction of the
11 side of that building?

12 A. Yes. It is.

13 MR. HUTTO: Your Honor, at this time we would move
14 defendant's 16 into evidence.

15 THE COURT: Any objection?

16 MS. CORNWELL: No objection.

17 THE COURT: All right. It's in.

18 BY MR. HUTTO:

19 Q. I would like to show you a photo that purports to be
20 from 2014. Is that the same camera that you just reviewed?

21 A. Yes. It is.

22 Q. Is that a fair and accurate depiction of that
23 building in 2014?

24 A. That would be correct.

25 MR. HUTTO: Your Honor, at this time we would move

1 defendant's 26 into evidence.

2 THE COURT: Any objection?

3 MS. CORNWELL: No, Your Honor.

4 THE COURT: Okay. It's in.

5 MR. HUTTO: Your Honor, at this time I would like to
6 publish these four photographs to the jury.

7 THE COURT: Yes, sir.

8 (Whereupon, counsel published Defendant's Exhibits
9 to the jury.)

10 MR. HUTTO: This is the first corner. This is the
11 second corner. This is the recent photograph of the side
12 of that building on Fisher Street. This is the 2014
13 photograph same side of the building.

14 BY MR. HUTTO:

15 Q. I want to ask you just a couple more things about
16 that area. When you're on that loading dock, can you see all
17 the way to Russell Street?

18 A. When you're on the loading dock?

19 Q. Yes.

20 A. During the day. Yes.

21 Q. When you're on that loading dock, can you see to
22 John C. Calhoun?

23 A. Yes. You can.

24 Q. Okay. You have had the opportunity to walk behind
25 several of the buildings that I have asked you about?

1 A. Yes. I have.

2 Q. Okay. You have also had the opportunity to walk
3 behind several other buildings in that area?

4 A. That is correct.

5 Q. Are there -- There's more than one place with steps;
6 is that correct?

7 A. That is correct.

8 Q. Okay. If somebody had stated that there was only
9 one building in that area with steps, would that be
10 accurate?

11 A. No. It would not.

12 MS. CORNWELL: Objection, Your Honor. Pitting the
13 witness.

14 THE COURT: Sustained.

15 BY MR. HUTTO:

16 Q. One more set of things I would like you to look at.
17 You said you had the opportunity to go the route between
18 Landmark and the corner of Russell and Broughton?

19 A. That is correct.

20 Q. Are you familiar with the items in this
21 photograph?

22 A. Yes. I am.

23 Q. What is that?

24 A. That is a public safety camera and there's an
25 alleyway that leads back to the back parking area of those

1 buildings that leads out to Amelia Street that would go out to
2 Amelia.

3 Q. This camera is on Russell Street; is that correct?

4 A. That is correct.

5 Q. All right. Is that a fair and accurate
6 representation of what that set of cameras look like?

7 A. Yes.

8 MR. HUTTO: Okay. Your Honor, at this time we would
9 move defendant's 22 into evidence.

10 THE COURT: What date is that?

11 MR. HUTTO: This is a recently taken photograph.

12 THE COURT: 2019?

13 MR. HUTTO: Yes.

14 THE COURT: All right. Any objection?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: All right. It's in. What number again
17 was that, Mr. Hutto?

18 MR. HUTTO: This is defendant's 22.

19 THE COURT: All right. Thank you.

20 BY MR. HUTTO:

21 Q. You have had the opportunity to go through the
22 Department of Public Utilities parking lot at nighttime?

23 A. Yes.

24 Q. It's fairly well lit, is it not?

25 A. Very well lit.

1 MR. HUTTO: No further questions.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION

4 BY MS. CORNWELL:

5 Q. Good morning, Ms. Brothers. How are you?

6 A. Good morning. How are you?

7 Q. I'm good. 28 years as a private investigator is a
8 long time in Orangeburg?

9 A. That is correct.

10 Q. You have been shown several pictures of buildings
11 and cameras and you have mentioned in your experience as a
12 private investigator you have had the opportunity to sometimes
13 view camera footage in that area in your investigations; is
14 that correct?

15 A. Not view cameras. Observe cameras in that area.

16 Q. Have you been able to observe footage from those
17 cameras?

18 A. Not those cameras.

19 Q. So you have never viewed any footage from those
20 cameras?

21 A. Not in that area.

22 Q. So you don't have any personal knowledge of what
23 area and what part of that area those cameras capture?

24 A. In the Salvation Army area?

25 Q. Yes, ma'am.

1 A. Looking at those cameras, observing those cameras in
2 that area I would say that those cameras cover that whole
3 entire parking lot area.

4 Q. But that's just your speculation. You haven't
5 actually been able to look at the camera and see what the
6 angle is?

7 A. Not actually look at the camera.

8 Q. And you would agree that over the course of your
9 investigation there are oftentimes that there are cameras and
10 you go to get footage of that from a particular day and the
11 camera is not operational or is not in use during that time
12 period?

13 A. I do not have the answer to that.

14 Q. Have you ever in your position as a private
15 investigator needed to get copies of video footage for any of
16 your cases?

17 A. Yes.

18 Q. Would those be from surveillance videos in
19 buildings?

20 A. That is correct.

21 Q. At any point in your career for a case have you had
22 to go to a building and ask for surveillance video and been
23 told that it's not available because the camera was not
24 operational?

25 A. No. I have not.

1 Q. Would you agree that it would not be unusual for a
2 camera to be not operational on any given day?

3 A. I cannot say that.

4 Q. You spoke about the cameras at the T and D. Have
5 you ever had an opportunity to view any footage from those
6 cameras at the T and D?

7 A. It's been years. Many, many years ago.

8 Q. And those cameras the footage that you viewed from
9 the T and D, does it show the loading dock of the Salvation
10 Army?

11 A. No.

12 Q. And while we were shown photographs from 2014 as
13 well as 2019, do you have any personal knowledge as to whether
14 or not those cameras were in use or operational in January of
15 2015?

16 A. Repeat that question.

17 Q. Do you have any personal knowledge of the cameras
18 shown from either 2014 or 2019 and whether they were actually
19 in use in January of 2015?

20 A. I can't say that they were in use but they were
21 observed being on those buildings.

22 Q. But you don't know if they were on or if they were
23 recording?

24 A. I cannot answer that.

25 Q. But can you state definitively that even if they

1 were running or recording, they would not capture any footage
2 from the Salvation Army parking lot?

3 A. I cannot answer that.

4 Q. I believe you just answered --

5 A. Repeat that question.

6 Q. I'm sorry. You cannot say that those cameras will
7 show the loading dock of the Salvation Army?

8 A. If they were on?

9 Q. Yes.

10 A. They should have.

11 Q. So you have had the opportunity to view those
12 cameras and those cameras at the T and D will capture footage
13 all the way across to the loading dock of the Salvation
14 Army?

15 A. No. I did not say that.

16 Q. I'm sorry if I'm being confusing. Please tell me,
17 those camera angles from the T and D --

18 A. The cameras from the T and D will show Fisher Street
19 and Broughton.

20 Q. And for somebody that's unfamiliar with that area
21 would that include the loading dock of the Salvation Army?

22 A. No. That would not include the loading dock.

23 Q. So would you agree with me that none of the cameras
24 at the T and D would have captured this incident that occurred
25 at the loading dock of the Salvation Army?

1 A. The cameras at T and D would actually capture
2 Broughton Street and Fisher at that corner.

3 Q. But not behind the Salvation Army?

4 A. Not Oliver Street.

5 Q. You also talked about the cameras at DPU and the DPU
6 lights and lamp posts. Would the camera angles from DPU
7 capture the loading dock at the Salvation Army?

8 A. It covers that whole entire parking lot area. I
9 cannot say that it would capture that but it's very clear that
10 there's a possibility that it could capture that area.

11 Q. But you have no personal knowledge of whether it
12 actually does or does not?

13 A. No. I do not.

14 Q. We also talked about the cameras and camera angles
15 at the Salvation Army and the building adjacent to it. Do you
16 have any personal knowledge whether in 2015 those cameras were
17 operational?

18 A. I cannot say if they were on, however, I did observe
19 the cameras in the area.

20 Q. And you would agree with me that just because
21 there's a physical camera loaded somewhere, that does not
22 necessarily mean that camera is operational or recording; is
23 that correct?

24 A. I cannot say that.

25 Q. And we also talked about motion detector lights. Do

1 you know if there were any motion detector lights on that
2 building in January of 2015?

3 A. In 2015?

4 Q. Yes, ma'am?

5 A. I did observe motion lights on that building in 2015
6 riding through the area.

7 Q. You can specifically recollect that there were
8 motion lights on the Salvation Army loading dock in 2015?

9 A. Absolutely.

10 Q. Can you recollect if those were operational and
11 working?

12 A. I cannot say that.

13 Q. You were also shown photographs from Captain D's.
14 Would you agree with me that the cameras at Captain D's would
15 not show the loading dock at the Salvation Army?

16 A. I would have to agree to that.

17 Q. Would you also agree that if you are coming down
18 Russell and turning up Broughton that the incident location at
19 the Salvation Army loading dock, you would not have walked
20 past Captain D's to get to that location?

21 A. Repeat that question again.

22 Q. If I'm coming off of Russell and turning on
23 Broughton, I get to the Salvation Army before I get to Captain
24 D's, correct?

25 A. That is correct.

1 Q. So if I'm walking up Broughton and this incident
2 took place behind the Salvation Army, I would have never
3 walked past Captain D's, correct?

4 A. You would have walked up to the corner probably 75
5 feet from Captain D's to make the right to go behind the
6 building.

7 Q. But you haven't had an opportunity to view the angle
8 of those cameras to state whether or not it would see from 75
9 feet away prior to approaching it?

10 A. The cameras on that corner would possibly capture
11 that.

12 Q. But you have no personal knowledge?

13 A. I have no personal knowledge of whether it would or
14 not.

15 Q. And again, all of these photographs that we have
16 shown, all of these cameras you have no personal knowledge
17 whether they would show the Salvation Army loading dock?

18 A. When you say all of these cameras, you're speaking
19 of the cameras on Fisher and Broughton or you're speaking of
20 the cameras on Oliver?

21 Q. I'm talking about the cameras at DPU, the cameras at
22 the T and D, the cameras at Captain D's, you don't have any
23 personal knowledge whether any of those camera angles would
24 catch the Salvation Army loading dock?

25 A. The DPU cameras possibly would and the loading dock

1 cameras would.

2 Q. But you haven't viewed those cameras?

3 A. No. I have not viewed any.

4 Q. So you're just assuming they could possibly?

5 A. That is correct.

6 Q. It's also possible that they could not, correct?

7 A. That's a possibility.

8 Q. Looking at the cameras, the public safety cameras,
9 you mentioned that it was at Fisher looking down towards
10 Amelia?

11 A. Repeat that question.

12 Q. The camera from Orangeburg Department of Public
13 Safety, you said this is on Russell looking down toward
14 Amelia?

15 A. That is Russell Street looking towards Broughton and
16 Middleton.

17 Q. I apologize. I thought when you testified earlier
18 you said if you go down this alley, that's going down towards
19 Amelia Street?

20 A. That is leading back towards Amelia Street, that is
21 correct, in that back parking area.

22 Q. So this area would be Russell Street?

23 A. That is correct.

24 Q. And back that way leads back to Amelia?

25 A. It would into a parking lot and then Amelia

1 Street.

2 Q. So that camera is not on Broughton and would not
3 capture any footage from Broughton or the Salvation Army?

4 A. I can't say that it won't capture footage from
5 Broughton Street because Russell and Broughton do cross.

6 Q. But again, you have no personal knowledge of what
7 that camera would actually capture?

8 A. Absolutely not.

9 Q. And, Investigator Brothers, can you please tell me
10 how you became associated with this case?

11 A. I was asked to verify any cameras that I have
12 observed during my course of investigation.

13 Q. Who asked you to verify that?

14 A. The Law Office of Williams and Williams.

15 Q. When did they ask you to do that?

16 A. It's been a couple weeks.

17 Q. And are they paying you for your services?

18 A. I am being paid. Yes.

19 Q. And when they hired you to discuss your knowledge of
20 the area as part of your agreement with them you never went
21 and looked at any of those cameras to see any of those
22 angles?

23 A. During the course of my investigation over the past
24 28 years I am out a lot at night and during the day so I do
25 observe, I did observe several cameras in that area.

1 Q. But you didn't have the occasion to go into the
2 businesses and ask to see the cameras and their angles?

3 A. Absolutely not.

4 Q. And you would agree that you have no knowledge of
5 whether any of those cameras were working, recording or would
6 have been able to observe footage from January 6th, 2015?

7 A. That is correct.

8 MS. CORNWELL: That's all the questions I have, Your
9 Honor. Thank you.

10 THE COURT: Any redirect?

11 MR. HUTTO: Yes.

12 REDIRECT EXAMINATION

13 BY MR. HUTTO:

14 Q. Your many years of investigating you have never been
15 able to tell if a camera was working or not working if you
16 never checked it; is that correct?

17 A. That is correct.

18 Q. And has camera footage been helpful to you in
19 previous investigations?

20 A. Yes. It has.

21 Q. How quickly do you generally need to go look for
22 it?

23 A. Immediately after the incident.

24 Q. And you were not the investigator on this case back
25 in 2015 in any capacity; is that correct?

1 A. That is correct.

2 Q. When you were asked about viewing nearby areas, when
3 you view cameras, that tells you who is leaving a certain area
4 potentially; is that correct?

5 A. That is correct.

6 Q. It tells you who is exiting a certain area; is that
7 correct?

8 A. That is correct.

9 Q. It can tell you other people who were there who
10 potentially witnessed an incident; is that correct?

11 A. That is correct.

12 MR. HUTTO: No further questions, Your Honor.

13 THE COURT: You may step down, ma'am. Thank you.
14 You may call next witness.

15 MR. HUTTO: Your Honor, we call Carla Dyson.

16 Thereupon,

17 CARLA DYSON

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. Once you're seated,
20 state your full name for the record.

21 THE WITNESS: Carla Dyson.

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY MR. HUTTO:

25 Q. Ms. Dyson, can you tell the jury how you are

1 employed?

2 A. I'm employed with Orangeburg, City of Orangeburg
3 Clerk of Court.

4 Q. And that is the city's Clerk of Court, correct?

5 A. That's correct.

6 Q. As part of your duties do you schedule preliminary
7 hearings for defendants?

8 A. No.

9 Q. How are those scheduled?

10 A. Judge Avenger.

11 Q. Are you familiar in the course of the municipal
12 court general duties they conduct preliminary hearings on
13 cases?

14 A. Yes.

15 Q. Do you recall my office requesting records of Tyquin
16 Jenkins' preliminary hearing?

17 A. Yes, sir.

18 Q. Where were those records?

19 A. In the courtroom.

20 Q. Okay. Those hearings are meant to be recorded; is
21 that correct?

22 A. Correct.

23 Q. His was not?

24 A. No.

25 Q. I'm not trying to embarrass you but do you know why

1 that was?

2 A. I'm not sure. I wasn't in there.

3 MR. HUTTO: No further questions.

4 THE COURT: Any cross examination?

5 CROSS EXAMINATION

6 BY MS. CORNWELL:

7 Q. Ms. Dyson, when they have these preliminary
8 hearings, the recording devices, is there a court reporter in
9 a preliminary hearing?

10 A. No.

11 Q. How are those preliminary hearings recorded?

12 A. CD.

13 Q. Through just a digital recorder?

14 A. Yes.

15 Q. Whose responsibility is it to make that digital
16 recording?

17 A. Judges.

18 Q. So the judge makes a determination of recording or
19 not recording a preliminary hearing?

20 A. Yes. They record everything.

21 Q. And that decision is not up to law enforcement
22 officers or the Solicitor?

23 A. No.

24 MS. CORNWELL: No further questions, Your Honor.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Just to clarify, a preliminary hearing it's not a
4 decision to record it, they are all meant to be recorded; is
5 that correct?

6 A. Correct.

7 Q. This is the City of Orangeburg's court that you work
8 for?

9 A. Yes.

10 Q. That is the same city of Orangeburg that works with
11 the Department of Public Safety?

12 A. Yes.

13 MR. HUTTO: No further questions.

14 THE COURT: You may step down, ma'am. Thank you.
15 You may call your next witness.

16 MR. HUTTO: Your Honor, we do not have any more
17 witnesses at this time. The defense would rest.

18 THE COURT: Solicitor, any reply testimony?

19 MS. CORNWELL: No, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, both
21 sides have rested their case. We'll take a very brief
22 recess and then we'll go into the jury instructions and
23 the closing arguments of counsel. We will be right back
24 with you. Again, although both sides have rested their
25 case, please do not discuss this case amongst yourselves

1 as you do not have it yet to deliberate. Thank you.

2 (Whereupon, the jury entered the jury room at 11:00
3 a.m.)

4 THE COURT: Mr. Hutto, at this time do you want to
5 renew your previous motions?

6 MR. HUTTO: You read my mind, Your Honor. Yes. We
7 would renew our previous directed verdict motion.

8 THE COURT: All right, sir. Thank you. Again, for
9 the reasons as previously stated your motions are
10 respectfully denied. Anything further? I understand
11 that the parties have been given a proposed copy of the
12 proposed jury instructions. Any objections from either
13 the State or from the defense on the proposed jury
14 instructions?

15 MR. HUTTO: Your Honor, I don't believe that I have
16 seen the new version from last night. If I may.

17 THE COURT: Sure.

18 MR. HUTTO: I have reviewed the verdict form. That
19 looks great to me.

20 MS. CORNWELL: I prefer alphabetical order on the
21 jury form.

22 MR. HUTTO: Your Honor, I believe we both intend to
23 use an audio/visual element for this. Do you mind if I
24 go ahead and set that up?

25 THE COURT: Sure. I did have one other thing.

1 State's Exhibit number 7 which is the overhead which both
2 parties have published without objection has not been
3 formally been moved into evidence. I'm assuming since
4 both of you used it you consent to it being in?

5 MR. HUTTO: I would be happy for it to be in
6 evidence.

7 MS. CORNWELL: I apologize, Your Honor. I thought I
8 had done it for identification for demonstrative purposes
9 but I can move it in.

10 THE COURT: Okay. So it's in then. I just wanted
11 to make sure.

12 MS. CORNWELL: Thank you.

13 THE COURT: Do you want me to read the stipulation
14 in with jury instructions or separate that from the jury?

15 MS. CORNWELL: Your Honor, that's in your
16 discretion. I think you can just hand them to them. If
17 you feel that you need to read them again, I would not
18 object to that.

19 MR. HUTTO: I suppose we prefer to have them read
20 again.

21 THE COURT: You okay with - the language is just a
22 tad different of what's printed in the jury instructions.
23 Are you in agreement with that?

24 MR. HUTTO: That would be fine. Your Honor, may I
25 address one matter?

1 THE COURT: Sure.

2 MR. HUTTO: I understand your previous ruling. I
3 would just like to preserve my object regarding the
4 statements of a prior record and for the purposes of the
5 record I would also request a curative instruction.

6 THE COURT: What specific curative instruction are
7 you requesting?

8 MR. HUTTO: My previous --

9 THE COURT: Hold on a second. My previous ruling
10 was that she wasn't going to be allowed to get into the
11 details. You're the one that opened the door. I limited
12 the testimony as to very limited convictions that were
13 there.

14 MR. HUTTO: Yes, Your Honor. And I do understand
15 your ruling. I'm just attempting to preserve it at this
16 point. The basis of my objection was the lack of
17 striking that statement from the record immediately after
18 it was given by the detective.

19 THE COURT: Yes, sir. Your motion is respectfully
20 denied. Are we ready to proceed?

21 MS. CORNWELL: Yes, Your Honor.

22 THE COURT: Let's have the jury please.

23 BAILIFF: Yes, Your Honor.

24 (Whereupon, the jury entered the courtroom at 11:20
25 a.m.)

1 THE COURT: Welcome back, ladies and gentlemen of
2 the jury. We are now ready to proceed to the closing
3 arguments of counsel. Please pay close attention.

4 MS. CORNWELL: Thank you, Your Honor. May it please
5 the Court. Counsel.

6 THE COURT: Yes.

7 MS. CORNWELL: Sexual assault cases are the hardest
8 cases to prosecute. They are difficult on the victim and
9 they are difficult on the jury because you're put in a
10 position where you have to determine the credibility of
11 an allegation. Crimes of sexual assault often go
12 unreported because of this reason. You heard at the
13 beginning of this trial from defense counsel and I'm sure
14 you're gonna hear it again from defense counsel as well
15 as the Judge that the defendant is presumed innocent. He
16 has a constitutional right to be presumed innocent and
17 that presumption of innocence starts from the day he's
18 charged until the end of this trial when you the jury
19 determine whether he is found guilty or not guilty.
20 She's going to explain to you that presumption of
21 innocence is like a robe of righteousness around the
22 defendant's shoulders and he will continue to wear that
23 robe of righteousness until you the jury strip that robe
24 off of him and find him guilty.

25 In sexual assault cases the victims are presumed to

1 be liars until they are proven honest. That is the only
2 charge where the victim is on trial just as much. The
3 victims have to put themselves through being called
4 liars. They have to put themselves in a position of
5 being told that they deserved it. Being blamed for it.
6 And that's after they have already experienced the trauma
7 of being physically assaulted. It's a difficult process.
8 It's not easy and that's why we have seen recently with
9 Harvey Weinstein and Justice Cavanaugh and with the
10 Lieutenant Governor in Virginia these claims that come
11 years later. Sometimes it takes a lot of courage. It
12 takes a lot of help in going forward. It's also why
13 crimes of sexual assault are not reported and do not get
14 prosecuted because oftentimes victims can't put
15 themselves in this position.

16 We talk about women being raped and women being
17 raped all the time and that's the language that we use,
18 that a woman is raped. We never talk about a man raping
19 a woman. It's a passive term and it allows belief to the
20 defendants. We're talking about the woman being raped
21 but we don't talk about it in the context of a man raping
22 a woman. As soon as a sexual allegation is made you
23 start doubting the story and you don't know who to
24 believe and for some reason in every other crime, when we
25 look at an armed robbery, you hear society says if

1 somebody comes up to you and points a gun at you and says
2 give me your money, give me your wallet, they tell you
3 don't fight back. Don't run or try to scream. Just give
4 the person your wallet because it's not worth your life.
5 We tell that to men. We tell that to women. We tell
6 that to anybody. If there's a gun pointed at you, just
7 do what they say and do what you can to save your life.

8 However, when a woman is sexually assaulted, the
9 first question is why didn't she run? Why didn't she
10 scream? Why didn't she fight back? Why didn't she try
11 to do something? Why are we expecting women to put their
12 lives at risk to save themselves? We don't question that
13 when it's an armed robbery. We don't question that when
14 it's a burglary. But when there's a sexual assault,
15 you want to know, well, there should be injuries. She
16 should have fought. She shouldn't have let this happen.
17 But a gun is a gun and if a gun is pointed at you in
18 order to save your life the best thing to do is just
19 submit. Why don't we want to have women doing that when
20 confronted with assault.

21 In this case at the beginning of the trial you were
22 told that you would hear testimony that showed that the
23 defendant sexually assaulted the victim and that he did
24 so with aggravated force by using a gun and during the
25 course of a kidnapping. In defense's opening he told you

1 about the time of night. What did he say? He said ask
2 yourself why was she out at that time of night? And we
3 are already blaming the victim. We are already saying,
4 well, she shouldn't have been out that late at night.
5 Let me give you one fact, a woman is not raped because
6 she's out at night. A woman is not raped because she's
7 drinking. A woman is not raped because she's wearing a
8 fitted black dress. A woman is raped because men like
9 the defendant raped them. There is nothing that they do
10 or act or say that allows or permits or causes or makes
11 them deserve to be raped.

12 You heard testimony from this victim on this stand.
13 You heard her tell you that on the night of this incident
14 she was asleep. She was laying in bed with her boyfriend
15 asleep. He had a call or a text. They woke up. They
16 got into an argument. She decided to take a walk to
17 clear her head. She told her sister where she was going.
18 She had her phone and her keys. She put her hoodie and
19 knit cap on and she walked outside. She told you she
20 made a left, got onto Russell, left onto Broughton and
21 she was walking down Broughton when this defendant walked
22 past her and he started a conversation with her and told
23 her, do you drink? He asked her for a lighter first.
24 She told him she didn't smoke. He asked her if she
25 drank. She said no. Not anymore. He said it's his

1 birthday. He's been drinking. His grandma is throwing
2 him a party, did she want to come. She said no. She had
3 to get back home to her daughter. He asked if he could
4 use her cell phone and she allowed him to.

5 She was on the cell phone with her sister and you
6 will have the call logs, photographs of the call logs to
7 corroborate that she's on the phone with her sister and
8 there's a hang up and a few minutes later another number
9 is dialed. She told you that after he makes the call,
10 there's no conversation. She doesn't think the call goes
11 through. She takes the phone back from him and she
12 continues to leave and at that point he pulls out a gun,
13 puts it in her side and forces her to go back behind a
14 building. He tells her - he pulls down his pants and
15 tells her to perform oral sex on him. She's
16 uncomfortable. She's upset. She's distraught at this
17 point. She's terrified. There's a gun. She's not able
18 to perform this sexual act to his satisfaction. He's not
19 getting what he wants out of this sexual act so he pulls
20 up his pants and gets her farther back where there's a
21 platform on a landing and takes her up the steps and
22 makes her turn off her phone and put down her keys and
23 makes her lay on the ground and vaginally rapes her.

24 She doesn't fight. She doesn't have any injuries.
25 There's no testimony and she's never told you that she

1 fought or had any injuries. She doesn't say that she was
2 aggressive. She doesn't say that he harmed her in any
3 way other than the fact that he harmed her by raping her.

4 After the rape, he told her to go in the other
5 direction. Don't look back or I'll shoot you. She was
6 still in fear for her life and she does exactly what she
7 is told. She goes in the other direction and once she
8 gets far enough away she runs and she runs immediately
9 home. And what does she do when she gets home? She's
10 crying. She wakes up her boyfriend and tells him what
11 happened. She tells her sister what happened. You got
12 to hear from the sister and the boyfriend and they both
13 corroborated that she got upset that night, she went out
14 for a walk and when she returned, she returned crying and
15 distraught and immediately told them that she was raped
16 at gun point. The boyfriend runs out to try to see if he
17 can find anyone and then she calls her dad and then she
18 calls 911 and she's taken to the hospital.

19 First as a 21 year old, she gives her phone log to
20 law enforcement and then she's taken to the hospital
21 where she's there for almost four hours. She has to
22 submit to undressing in front of strangers. She has to
23 again recount details. She has to put herself in a
24 position where she is photographed by strangers, where
25 she is poked and prodded, where she has an instrument

1 placed inside of her and has tissue scraped out of her
2 insides. It's not a pleasant experience. And you heard
3 her testify to you that after that she doesn't hear
4 anything for almost three years. However, after almost
5 three years when she does get a call, she cooperates
6 fully. She's still cooperating. She's still involved.

7 She comes and she is able to immediately identify
8 this defendant as the man who sexually assaulted her.
9 She doesn't have any information about him. She hasn't
10 been told anything since the night the incident happened
11 and that she is still able to immediately identify this
12 defendant and she's right about the identification. How
13 do we know this? Because the only way we know his
14 identification is because his semen is found inside of
15 her. That is sexual assault and that is kidnapping.

16 We have got the testimony today. Law enforcement
17 told you they're not going to make an arrest just off one
18 person's statement. They want to get the other side of
19 the story so they talked to the defendant. What does the
20 defendant say? I don't remember. I don't recall. He's
21 not very forthcoming. He's not truthful. He's now
22 saying things we know aren't true. He lies and never
23 gives an explanation of why his semen is inside this
24 victim. That is the evidence and testimony that we have
25 in this case. It proves beyond a reasonable doubt that

1 this defendant is guilty.

2 But I want to go through the law with you and show
3 you exactly how this defendant has committed the crimes
4 of criminal sexual conduct and kidnapping. The Judge is
5 going to instruct you on the law at the end of this so
6 whatever I say about the law and whatever the defense
7 counsel may say about the law if it differs in any way
8 from what the Judge tells you is the law, then you should
9 ignore or disregard what I say or what defense counsel
10 says because the sole judge of the law in this case is
11 Judge Murphy. But I believe that she is going to
12 instruct you on criminal sexual conduct in the first
13 degree which the State has to prove that the defendant
14 engaged in a sexual battery of a victim. We have to
15 prove that first. If you do not believe that a sexual
16 battery occurred in this incident, then you stop there
17 and you find the defendant not guilty.

18 However, if you do believe based on the testimony
19 and the evidence that you have seen that a sexual battery
20 absolutely did occur which it did in this case, then you
21 have to consider whether there was aggravated force used
22 to accomplish the sexual battery or whether the victim
23 was submitted to sexual battery while she was also the
24 victim of, there are several crimes associated with this,
25 the one that we are focusing on is kidnapping.

1 The State does not have to prove both of those. We
2 have to prove sexual battery and we only have to prove
3 either aggravated forced or sexual battery during a
4 kidnapping. We only have to prove one of the two, but I
5 would submit to you that in this case the defendant did
6 both of these things and the State has proven that he
7 committed both of these crimes or committed the crime in
8 both of those ways.

9 Let's talk about what a sexual battery is. A sexual
10 battery is vaginal sex or sexual intercourse. It's oral
11 sex. Also referred to as fellatio, cunnilingus, anal
12 sex, or any intrusion however slight of any part of a
13 person's body or of any object into the genitalia or anal
14 opening of another person's body. In this particular
15 case you have testimony and evidence presented to you
16 regarding both vaginal sex and oral sex. We don't have
17 to show all of these things happened. If any one of
18 these things happened that is sexual battery. In this
19 case there were two sexual batteries.

20 So what is aggravated force? The State would have
21 to prove the defendant used physical force or physical
22 violence of a high and aggravated nature to overcome the
23 victim. The Judge is going to instruct you that that
24 includes threat of using a deadly weapon. So the threat
25 of using a deadly weapon such as a gun is considered

1 aggravated force. In this case the defendant committed
2 sexual battery with a gun and that is using aggravated
3 force.

4 She's going to instruct you on the law of
5 kidnapping. I told you at the beginning of this case
6 kidnapping has a lot of fancy language with it. To
7 kidnap a person you can either seize, confine, inveigle,
8 decoy, kidnap, abduct, or carry away. What does all that
9 mean? There's definitions beside it but basically what
10 that means is if someone makes you go somewhere that you
11 don't want to go in any way against your will, they have
12 kidnapped you. It doesn't have to be that they pick you
13 up or they push you or they do anything. If you have to
14 go somewhere with somebody against your will, you have
15 been kidnapped. In this case based on the definitions
16 the defendant committed a kidnapping. The fact that he
17 seized the victim, he kidnapped the victim and he carried
18 away the victim. We only have to show one of those seven
19 things happened. In this case using those definitions
20 we can show three happened.

21 It's the State's burden to prove each and every
22 element of each and every charge beyond a reasonable
23 doubt. So what is a reasonable doubt? A reasonable
24 doubt is the kind of doubt that would cause a reasonable
25 person to hesitate to act. Proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced of the
2 defendant's guilt. The law does not require proof that
3 overcomes every possible doubt. We don't have to submit
4 it beyond all doubt. It's beyond a reasonable doubt.
5 And if you are firmly convinced that the defendant is
6 guilty of the crimes charged, you must find him guilty.

7 For instance, in this case when you were in the jury
8 pool and we were doing jury selection and the Judge
9 mentioned does anybody have any knowledge of this case,
10 if you were truthful in your responses that you had no
11 knowledge of this case prior to sitting in this jury box
12 and now after sitting here for the last three days and
13 listening to the testimony given to you and viewing the
14 evidence that will go back with you in your jury room you
15 are now firmly convinced that this defendant absolutely
16 sexually assaulted this victim under aggravated force and
17 under force of a kidnapping, then you must find him
18 guilty.

19 So how do we prove our case beyond a reasonable
20 doubt? We do it through evidence. There are two types
21 of evidence in criminal cases, direct evidence and
22 circumstantial evidence. Direct evidence is evidence
23 that comes directly from a person's actual knowledge of a
24 fact. The best example I can give to you is this week
25 we've been in this courtroom. If when you came into this

1 courtroom it was raining outside, you saw the rain, you
2 felt the rain, you heard the rain, you smelled the rain,
3 stuck out your tongue and you taste the rain, that is
4 direct evidence that it rained. You saw it. You heard
5 it. You felt it.

6 On the other hand, if when you came into this
7 courtroom it was not raining. It was clear skies and the
8 sun was shining. However, when you leave, there are no
9 windows in this courtroom, when you left the courtroom in
10 the evening and you walk outside and you can smell the
11 smell of rain in the air and can feel the thickness of
12 the air and you see puddles of water on the ground that
13 weren't there when you came in, well, that's
14 circumstantial evidence and proof that it rained while
15 you were in the courtroom. You didn't see it rain. You
16 didn't hear it rain. You didn't feel it rain, but you
17 know it rained based on the circumstances of when you
18 walked out.

19 The law makes no distinction between the weight or
20 the value to be given to either direct or circumstantial
21 evidence. The State can prove its case solely based on
22 the circumstantial evidence. The State can also prove
23 its case solely based on direct evidence or based on a
24 combination of the two. There is no greater weight or
25 value given to either piece of evidence.

1 We also have to prove the case through the
2 credibility of the witnesses. And as I discussed with
3 you just a few minutes ago, in cases of sexual assault
4 credibility is very important. Each of you have had your
5 own life experiences. You bring with you the greatest
6 thing that anybody can have in a courtroom and that's
7 your common sense and your life experience. You judge
8 the credibility of people your whole life. You know if a
9 witness is believable and the way you know how a witness
10 is believable is by judging them on whether or not they
11 had any interest, if they have any bias, is they have any
12 prejudice. Is there any motive in what they're telling
13 you. You're also able to see the demeanor and manner of
14 the witness and see how they're acting and if they're
15 acting the way a truthful person would act or if they're
16 acting suspicious or in an untruthful way.

17 So let's talk about the witnesses in this case.
18 Tori Montgomery. She doesn't have a motive. She doesn't
19 have a reason to lie. She gave statements regarding a
20 sexual assault at gunpoint which has been consistent for
21 over four years. Her ex-boyfriend and her sister's
22 statements corroborate what she said. The call logs of
23 her cell phone that night corroborate what she told law
24 enforcement. The location that she described
25 corroborates what she said. The fact that the

1 defendant's DNA is found inside her corroborates what she
2 said. The fact that she was cooperative almost three
3 years later, that she was able to identify the defendant
4 and she was willing to come and testify in trial four
5 years later and put herself in a position to be called a
6 liar, to be blamed, that shows you that she has no motive
7 or reason to lie.

8 So let's talk about sexual assault. If somebody
9 isn't sexually assaulted, why would they run home in
10 tears and wake their boyfriend up and tell them they were
11 sexually assaulted? This isn't a case where she came
12 home and he said, well, where were you and where have you
13 been? And he maybe thought she was running out on him
14 and doing something. No. She comes to him and wakes him
15 up out of his sleep crying. Who calls their father at
16 1:54 in the morning and wakes their father up and says
17 I've been sexually assaulted if it didn't happen? Who
18 calls the police and voluntarily gives up their cell
19 phone? We live in a day and age where our lives are in
20 our cell phones. To not have your cell phone for five or
21 ten minutes is stressful so to give that cell phone up to
22 law enforcement and not have that piece of property
23 anymore, why would you do that if the sexual assault
24 didn't occur? Why would you put yourself through three
25 and a half hours in a room full of strangers to have a

1 speculum placed inside you and have your tissue scraped
2 if you weren't sexually assaulted? Why would you agree
3 to meet with law enforcement three years later?

4 You keep hearing questions about, well, can't she be
5 charged with filing a false police report if she changes
6 her story? Well, they didn't know anything for four
7 years almost so within three years they call her and if
8 this wasn't truthful, she could have just said, you know
9 what, I've moved on. It happened but I don't want to
10 come back to it. I'm not interested in pursuing this
11 anymore. Well, she's not even charged with that. She
12 could have easily said no. I'm done with this. She
13 doesn't. She cooperates because she wants to have
14 justice and she wants to make sure that this doesn't
15 happen again. If she wasn't sexually assaulted, why
16 would she do that? If she wasn't sexually assaulted, why
17 would she continue to assist law enforcement and agree to
18 come to the bond hearing and try to confront the
19 defendant? Why would she drive five hours from Valdosta,
20 Georgia to Orangeburg, South Carolina multiple times to
21 prepare for a trial? Why would she have to find child
22 care for her daughter because she told you she's a single
23 mother every time she has to come to this courtroom,
24 every time she has had to meet if this didn't happen?
25 And why would she get on the witness stand and subject

1 herself to being blamed for sexual conduct, being called
2 a liar, to be made out to be a promiscuous person in a
3 courtroom full of strangers if she wasn't sexually
4 assaulted? There's no motive. There's no bias. There
5 is an interest in the case and the interest is in getting
6 justice against the person that sexually assaulted her
7 and kidnapped her.

8 So we look at the credibility of her sister Taylor
9 Montgomery and her boyfriend Dakeis Pride. They have no
10 motive or reason to lie. They're being dragged up here
11 four years later out of their lives. Mr. Pride and Tori
12 aren't even together anymore. What motive or reason do
13 they have to come up here and lie? You have also got the
14 call logs that corroborate their accounts, too, and tell
15 you she was on the phone and she tried to call and no one
16 answered. You will have those call logs with you.

17 So let's talk about who does have a motive to lie.
18 Let's talk about the defendant's statement. You were
19 able to hear testimony regarding parts of the defendant's
20 statement. You heard that he never explains how his
21 semen got inside the victim. He admits that, yeah, I
22 make bad decisions when I drink. You also heard
23 testimony that we know he was drinking that night. He
24 admits that, yeah, I have sex with lots of women and
25 sometimes I get them to give into my by lying to them. I

1 would submit that he also gets them to give into him by
2 pointing guns at them as he did with this victim. He
3 admits that, yeah, sometimes I have sex with prostitutes
4 and I don't pay them. And he tells them, so if my DNA is
5 inside this girl, it's got to either be some girl that
6 I've lied to that I've messed around with that wanted to
7 be with me and I lied to her or it's a prostitute that I
8 didn't pay, the only two things that could have happened.
9 But he also tells law enforcement, why would I tell you
10 of something that I have done that I haven't been charged
11 with? He let's them know in advance he's not telling
12 them about what happened this night. And then you also
13 heard that he lied about never hurting women but he has
14 prior convictions for crimes against women. We know he
15 has a motive to lie and we know he has a reason to lie
16 and when you judge the credibility of a witness, those
17 are the things that you should take into consideration.

18 We talked a lot about the investigation. We talked
19 about how every officer takes their notes differently and
20 gets information in their own way and just because
21 reports don't match each other verbatim doesn't mean that
22 the victim is being inconsistent and the best way that I
23 can explain that is to look at how people give
24 directions. Men and women often give very different sets
25 of directions. Women talk about landmarks. If I were to

1 tell you how to get somewhere, I may say, you know, when
2 you come out of the parking lot here, you're gonna go
3 down and when you hit the Bojangles, you're gonna take a
4 left and after you turn at Bojangles, you go down and
5 you'll pass a gas station, you'll pass a Dollar General
6 and then the next street past the Dollar General make a
7 right and then you'll go down that street.

8 When a man tells directions, he often uses road
9 names, street names. You're gonna go out here and you're
10 gonna go to 301, take a left on 301, travel down about
11 two and a half miles and after you go two and a half
12 miles, you'll see Jasper Street on the right, make a
13 right on Jasper Street. When we talked about these
14 reports, you can see that implication as well.
15 Investigator Still depicts the location as described as
16 an address. It's around 1005 Broughton Street. It's
17 near the corner of Broughton and Fisher. When we talked
18 with Investigator Walker and Investigator Bravo and the
19 SANE nurse, when they're recording, when they're writing
20 the victim's recollection, they're using landmarks. A
21 hair salon. Captain D's. It happened in that area.
22 Just because one says one set of facts and one says one
23 landmark and one references another landmark doesn't mean
24 that that's being inconsistent.

25 We also talked about how statements don't match

1 verbatim. There's been a lot of talk about the word
2 alley and quite frankly the victim has never used the
3 word alley for going back behind the building. That was
4 a term that I used, and the reason that I used it is
5 because when the victim told me her account, I envisioned
6 when she was talking to me and I was writing my notes,
7 that to get behind a building you go through an alley.
8 That's my term. When people are describing where an
9 incident occurred and I have to go up steps behind a
10 building, some people would call it a loading dock. Some
11 people would call it a platform. You have heard it
12 called a pallet. There are different terms. When
13 somebody is telling you a story and you're writing it
14 down in your notes, you're interpreting that story the
15 way that you're seeing it in your mind. It doesn't mean
16 that the victim is being inconsistent.

17 If you told a story to your spouse or you told a
18 story to a friend with your spouse around, how many times
19 does somebody interject with additional details? Just
20 because you didn't state those details doesn't mean that
21 those details didn't happen. It's just your recollection
22 of how you tell a story to one person that may differ
23 from telling the same story to another person based on
24 your conformability with them, based on your relationship
25 with them. Sexual assault victims may tell less details

1 to a man immediately than to a woman. That doesn't mean
2 that they're being inconsistent. In this case you heard
3 the victim was consistent. You have seen that the major
4 fact in this report are consistent.

5 Let's talk about evidence that was or wasn't
6 collected. Investigators can't manufacture or collect
7 evidence if it's not there. We watch a lot of
8 entertainment in TV shows, CSI, Criminal Minds and Law
9 and Order and if we had screen writers to write every one
10 of our crimes and investigations, we probably would have
11 a lot more evidence, but unfortunately in the real world
12 we don't have a Garcia or an Abbie to go and find a red
13 thread that happens to match a Ralph Lauren sweater
14 that's only sold by this particular store and we check
15 the credit card receipt and the only person -- That's not
16 real life. It doesn't happen.

17 When you heard the account of this incident, you
18 heard it was cold. There was frost and dew around and
19 that when the sexual assault occurred, he laid his
20 clothes down and it happened on top of his clothes. Then
21 we heard in the DNA kit that ejaculated inside her
22 because that's how his semen, his DNA got inside her.
23 Afterwards when he was finished, he dressed himself and
24 he left. So what evidence was there to collect?

25 You heard about cameras and we had testimony just a

1 minute ago and you're gonna have a bunch of photographs
2 of cameras and stuff. But what was the testimony from
3 the officer who has the experience and who actually
4 investigates cases and has pulled video for these
5 reports? There was not video of this location that was
6 operational or working at that time. There was no video
7 to be pulled. Don't you think if there was video of
8 this, they would want that and that's what they would
9 get? They can't just create evidence if it doesn't
10 exist.

11 You heard him talk about, well, why didn't you talk
12 with witnesses and why didn't you go to all these places?
13 Again, you can't make witnesses appear that weren't
14 there. You can't ask people to tell you something that
15 they didn't see. You heard about the fact that evidence
16 took a certain amount of time to get tested or a certain
17 amount of time for these things. And I told you every
18 case is important but unfortunately some cases take
19 priority over others especially when it comes to
20 submitting evidence in analyzing a case. Unfortunately
21 in rape cases when there's an unknown suspect, one of
22 those cases get bumped back for other priority cases and
23 the evidence submitted. And unfortunately it's an
24 epidemic that is nationwide. There are thousands upon
25 thousands of untested and unsolved rape cases from DNA

1 kits that have not been tested and it goes back to the
2 '80s. Unfortunately it's just the way it is. It doesn't
3 mean that the case isn't important. It doesn't mean that
4 the investigators didn't do the leg work. It just means
5 that sometimes cases take time to develop and sometimes
6 evidence takes time to be submitted.

7 So let's show how the State has proven beyond a
8 reasonable doubt that the defendant is guilty of these
9 crimes. Did the defendant engage in a sexual battery
10 with the victim? Absolutely. We have shown you through
11 testimony that there was oral sex and vaginal sex. We
12 also have shown you through testimony the results of the
13 defendant's semen that was found inside the victim. So
14 he has done a sexual battery against the victim. We have
15 also proven beyond a reasonable doubt that the defendant
16 used aggravated force to accomplish a sexual battery.
17 You have testimony that there was a gun used. You have
18 got a description in the testimony of a small black gun
19 with a wooden handle and that fact has never changed. We
20 have also shown that the victim submitted to a sexual
21 battery while she was the victim of a kidnapping. You
22 have got testimony that the victim was taken behind a
23 building while being held at gunpoint.

24 We don't have to prove both of those elements. We
25 only have to prove one or the other happened in

1 conjunction with the sexual battery. However, in this
2 case the State can show that not only did he perform a
3 sexual battery, he did it with both aggravated force and
4 with a kidnapping. We have also proved the kidnapping.
5 We showed you the defendant knowingly and unlawfully
6 seized the victim. We know that because there was
7 testimony that the defendant took hold of the victim
8 suddenly and the way he took hold of her, he didn't grab
9 her, he didn't have to hold her but he seized her and
10 took hold of her when he pointed a gun at her and
11 restricted her movements. He kidnapped when he removed
12 her from the sidewalk against her will by unlawful force,
13 and again the unlawful force was the threat with a gun
14 and took her behind the building. He also carried her
15 away. She testified that the defendant removed her from
16 the sidewalk and took her behind the building.

17 We only have to show that one of those seven things
18 happened. But you have seen proof beyond a reasonable
19 doubt that at least three of those things happened and
20 he's absolutely guilty of kidnapping. So when you go
21 back in your jury room and you deliberate about this case
22 and you look at the types of evidence that have been
23 presented and you determine the credibility of the
24 witnesses, that is what you are supposed to make your
25 determination on. It's not your job to go in the back

1 and look for reasonable doubt. It's not your job to go
2 back and try to create other scenarios on how this may or
3 could or would or should have happened. Your job is to
4 take the testimony and the evidence that was given to you
5 in this courtroom and apply it to the law as the Judge
6 gives it to you and in doing that I am confident that you
7 will find beyond a reasonable doubt that this defendant
8 is guilty of criminal sexual conduct in the first degree
9 and he's guilty of kidnapping. Thank you.

10 THE COURT: Counsel.

11 MR. HUTTO: Thank you. May it please the Court.

12 THE COURT: Yes, sir.

13 MR. HUTTO: I'm not going to start with PowerPoint.
14 We'll get to that in a moment. I want to ask you, have
15 you ever heard the saying something doesn't smell right?
16 There's two things in this case that every time I started
17 to think about them, really think about them, I thought
18 this doesn't smell right and the more I thought about it
19 the more I said this stinks and the more I thought about
20 it I said this is rotten. Something is wrong.

21 I want to point out these two dates to you, March
22 10th, 2017 to June 25th of 2018. Seems pretty innocuous.
23 Those are the time between Samuel Stewart's reports.
24 Samuel Stewart is the gentleman from SLED who sat in this
25 chair, graduated from Francis Marion University, a very

1 qualified person and came and told you about DNA
2 evidence. He said that his first report in this case was
3 issued on March 10th of 2017. Later after May of 2018
4 when Tyquin consented to give his DNA for investigation
5 he issued a secondary report June 25th of 2018.

6 Before I talk to you about what's wrong with those
7 two dates, let's talk about what was in that second
8 report. They tested four things for DNA evidence. They
9 tested a swab. They tested a cutting of a cloth. They
10 tested two hairs. We learned that from the swab they
11 were able to confirm the presence of Ms. Montgomery's DNA
12 which makes sense. We learned that they were able to
13 find the presence of Tyquin's DNA. But what about
14 happened with the cutting of cloth and the hairs that
15 they tested? Mr. Stewart testified that there were at
16 least three DNA samples present on that cutting of cloth
17 and at least three DNA samples present on that hair. Not
18 only that but he testified that at least two of those
19 samples were male, possibly three of those samples were
20 male because they came or had evidence of Y chromosome
21 something that only men have.

22 Now, he did not testify that those two sets of male
23 DNA belonged to Tyquin. He said that that was not a test
24 that SLED did. He also did not say that those at least
25 two sets of male DNA all belong to the same men. But

1 that is really not what stinks about the difference
2 between these two dates. Mr. Stewart told you that on
3 March 10th of 2017 he requested the DNA of a consensual
4 partner so that that consensual partner could be ruled
5 out as a contributor to one of these DNA samples. That
6 was again 2017. Presumably that consensual partner is
7 Mr. Pride who came and testified, somebody that y'all
8 heard from. They had access to him, the ability to
9 contact him for over a year and never submitted a
10 consensual partner DNA sample. What stinks about that is
11 why. Why? Because they didn't want to know. They
12 didn't want to rule out Mr. Pride as being one of those
13 two male DNA samples possibly three because if they were
14 able to rule him out as one of the possessors of those
15 two male DNA samples, then their whole theory of this
16 case falls apart. They didn't want to know. That
17 stinks. That is rotten.

18 Let me share with you two more dates. This troubled
19 me for a long time. January 6th, 2015 to September 27th
20 of 2017. You have heard many times that those are the
21 times between Ms. Montgomery's statements but there's one
22 particular thing that has always stood out to me about
23 what changed between January 6th, 2015 and September of
24 2017, that is the mention of a birthday, of Tyquin's
25 birthday.

1 So let's delve into some of the things that happened
2 between January 6th, 2015 and September of 2017,
3 particularly September 27th of 2017. They get the
4 initial statement from Ms. Montgomery at her apartment on
5 January 6th. EMS and the hospital intake get another
6 statement from her. Then the SANE nurse gets a third
7 statement from her. And the fourth person to speak with
8 Ms. Montgomery on January 6th of 2015 was Investigator
9 Walker. They all had the opportunity to write what was
10 said and with the SANE nurse she testified that she was
11 transcribing it. That's why her report is written in the
12 first person. I was walking. I was doing. Because
13 she's writing what is being told to her. There are four
14 of those statements. Not one mentions a birthday.

15 Then law enforcement gets a hit on a piece of DNA.
16 They can identify the person. I'm sure they can look up
17 his social security number, his birthday, his weight, his
18 height, I don't know, but they certainly would have
19 access to his birthday and we know that because in mid
20 September 2017 when they questioned Tyquin, they're
21 asking him plenty of times about his birthday. So we
22 know they had figured that out at that point maybe two
23 weeks before September 27th of 2017. Then they call Ms.
24 Montgomery in to come to Tyquin's bond hearing and give
25 another statement. Now for the first time there's a

1 recording that she mentions his birthday after we know
2 law enforcement had figured it out. Does it make more
3 sense that she remembered that two years and nine months
4 later? Or does it make more sense that somebody fed her
5 that information? Told her, hey, we think we've got this
6 suspect. Do you remember anything about a birthday?
7 That's not what they testified to but I believe that is
8 what makes far more sense.

9 Ladies and gentlemen, the Solicitor already told you
10 about reasonable doubt but I want to just emphasize this
11 again. Reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act. That is
13 from our law in South Carolina and I believe you will
14 hear the Judge reiterate that. So before we go into some
15 of the things that I might have reasonable doubt about or
16 that I think you may have reasonable doubt about, I want
17 to summarize very briefly what we learned on the first
18 two days of trial before we got here today.

19 Day one we learned Ms. Montgomery's story has
20 changed several times in her giving of it. I'm not here
21 to tell you that people may have different accounts of
22 tragic events in their lives. I understand that. I'm
23 also not here to attack the victims of crimes but it is
24 your job to exam this case and one thing that you do need
25 to consider is those inconsistencies. The other thing

1 that we learned on day one and I think this would be the
2 take away of anybody who was in the courtroom on that day
3 is that public safety made almost no effort to
4 investigate this crime when it allegedly happened in
5 2015. They didn't even go get pictures. They said, you
6 heard Ms. Walker say or Investigator Walker say there was
7 frost on the ground. Sorry. Can't do an investigation.

8 Day two. Day two we heard about DNA evidence which
9 I have already spoken to you about. Day two we also
10 learned that Tyquin attempted to cooperate with police.
11 Not only did he give his DNA sample but he attempted to
12 talk with them for an hour and a half, submitted himself
13 to an interrogation and what I took away from their
14 comments about his interrogation is that they were never
15 going to accept anything but a confession from him so
16 when he said I didn't do it, I can't confess to it, then
17 their conclusion is, well, then he must be lying because
18 we know he did it. They were never going to accept
19 anything less than a confession and so when he said he
20 could not confess, he didn't do it, then they had to say
21 you must be lying.

22 I want to walk you through some doubts that you
23 might have in this case because there are things that
24 have troubled me every time I come back to it. I'm going
25 to start with why did Ms. Montgomery do certain things.

1 I'm going to go onto why did Ms. Montgomery tell people
2 certain things or say certain things. I want to ask you
3 about why law enforcement took the actions that they did
4 and then there's some questions out there that don't
5 apply to any of those three but they stand out as how is
6 this possible. Why is this.

7 I hope that my slide isn't too cluttered for you all
8 to be able to read it but there are a lot of questions
9 that I have about this case and why Tori Montgomery did
10 what she did. Why did Tori Montgomery leave her
11 apartment that night? Was it that she was upset with her
12 boyfriend? Was it that she was having a hard time
13 sleeping? Or was it something else entirely? Why would,
14 why did she and her sister testified that she left her
15 home at midnight and say that she walked down to the
16 corner of Russell and Broughton when the allegation is
17 that this assault occurred at 1:30 at night?

18 Now, the Solicitor has mentioned these call logs. I
19 would submit to you they don't corroborate any of that.
20 If she was on the phone with her sister immediately after
21 leaving her apartment, she should have been on the phone
22 with her sister far closer to midnight, not after 1:00
23 a.m. Again, that was the testimony of both her and her
24 sister. Why would somebody stay out for two hours in 35
25 degree weather and how is it possible that it would take

1 you over an hour to walk from Landmark Towers to the
2 corner of Russell and Broughton? That doesn't make
3 sense. Why did Tori Montgomery hang up the phone with
4 her sister and begin talking to a stranger? Your common
5 sense should tell you that doesn't make sense. She said
6 she was scared and that's why she was on the phone with
7 her sister. Then why hang up and give the phone to the
8 person who's been bothering her? That should not sit
9 well with you. Didn't she say that she had a ten minute
10 conversation on the phone and yet prior to September of
11 2017 her testimony about the contents of that
12 conversation where he came up and asked me for a lighter.
13 That does not take ten minutes.

14 Why did Tori Montgomery give a stranger on the
15 street her phone and yet somehow get it back undamaged?
16 I asked Investigator Walker if that was something that
17 normally happened in criminal investigations. Why did
18 Tori Montgomery say that she felt uncomfortable when
19 performing oral sex on the street and thus needed to
20 move? Ms. Cornwell attempted to clarify or correct that
21 testimony from her but she said that again in response to
22 questioning. And for that matter what street were they
23 on? We have talked about Fisher Street. We have talked
24 about this parking lot. We have talked about Market
25 Street. It's not clear where they went for that

1 encounter.

2 Why did Tori Montgomery call her boyfriend's phone
3 before calling 911? I didn't see this until yesterday
4 when we talked about these call logs but didn't Ms.
5 Montgomery testify that she was mad at her boyfriend
6 because her boyfriend's phone was dead? So on her way
7 home why would she call him before 911 knowing his phone
8 wasn't working? Does any of that give you a reasonable
9 doubt? Why did Ms. Montgomery tell Corporal Still that
10 this occurred behind 1005 Broughton Street or did she use
11 landmarks. His incident report he testified also says
12 Broughton and Fisher Street. That intersection. Only to
13 then immediately tell the staff at the hospital that this
14 happened while she was walking home from work. That was
15 what the SANE nurse said was in the hospital records.
16 Then to speak with the SANE nurse herself and say this
17 happened behind a hair salon which again was Ms.
18 Montgomery's wording that was being taken down as a
19 transcript of sorts. And then tell Investigator Walker
20 this happened behind Captain D's.

21 Ladies and gentlemen, these are not the same places
22 and even if you thought they're all relatively close, the
23 Salvation Army is down the street and completely
24 separated from this Broughton and Fisher intersection.
25 Why did Ms. Montgomery say that her assault occurred on a

1 pallet which Corporal Still testified was her word. It's
2 a very specific word, pallet, not something that
3 generally just comes into the forefront of your
4 imagination. He testified that she said pallet, later to
5 claim a table and then here in court say it happened on
6 the ground. What's interesting about that table comment,
7 and you can see this from the photos that I showed you,
8 is when the investigators took her out there in 2017
9 there was a table on that loading dock. I submit to you
10 that she just incorporated that into her story upon
11 seeing it and being confronted with this location for the
12 first time.

13 Why did Ms. Montgomery spend great detail describing
14 her attacker's clothing but gives no description of him
15 physically, not even his race or height or build, nothing
16 of that nature at least that Corporal Still could
17 remember and never provide any of those details again to
18 law enforcement whether it was to Investigator Walker or
19 anyone else? Why did Ms. Montgomery tell Investigator
20 Bravo about the Salvation Army for the first time in
21 September of 2017 two years and nine months after the
22 alleged attack?

23 We have already discussed the birthday but how is it
24 that that came up for the first time in September of
25 2017? And I said it's one thing to be in a traumatic

1 situation or a difficult situation and have differing
2 accounts especially if they're from different people but
3 it is another to give completely different stories
4 especially back to back. Does any of that give you a
5 reasonable doubt?

6 I spent a lot of time talking to law enforcement in
7 this case and this case made me mad with law enforcement.
8 You might be thinking the same thing. I don't understand
9 why they did half the things they did in this case. Why
10 did law enforcement immediately abandon this case, refuse
11 to do a crime scene investigation? You heard
12 Investigator Walker say I couldn't do a crime scene
13 investigation. What do you expect from me? We don't
14 have crime scene investigation. And then the next
15 morning Investigator Wolfe comes in and he tells you,
16 hello, jury. I'm the head of crime scene investigation
17 for Orangeburg and yes, we did have crime scene
18 investigations in 2015, immediately contradicting another
19 member of public safety.

20 Why did law enforcement never get a written
21 statement from Ms. Montgomery to this day? The only
22 people who have ever gotten Ms. Montgomery's statement in
23 writing was the hospital. Why did law enforcement refuse
24 to take photos of the alleged incident site for almost
25 three years? You heard the Solicitor and I argue about

1 whether this photo was there then or a different time or
2 on a different date. We could have known all of that if
3 they had simply taken a photo that night or done
4 anything. Why did law enforcement refuse to investigate
5 their own cameras? Why did they refuse to investigate
6 the cameras at the T and D which my private investigator
7 was able to figure out do reach to Fisher Street? Why
8 did law enforcement refuse to investigate cameras at the
9 Salvation Army which you can see photos of in their
10 pictures? And why did they refuse to investigate cameras
11 at the T and D.?

12 What about the building next to Salvation Army.
13 Again, you have a photo from 2013 that shows that there
14 is at least some security surveillance on that building.
15 Why did they refuse to investigate the many cameras at
16 DPU? And one thing I want to say about cameras is let's
17 say, let's give them the benefit of the doubt that the
18 cameras at the Salvation Army weren't working even though
19 they never bothered to check them. Let's give them the
20 benefit of the doubt that they weren't on that day.
21 Cameras don't just show you where one thing happens.
22 They tell who's leaving. They tell you who's coming.
23 They tell you who else could have been there. They give
24 you more information than just the sliver of, well, we
25 don't have this one particular incident site on a camera.

1 If the conversation about this lighter and this birthday
2 allegedly occurred at the corner of Broughton and Fisher,
3 then it should be on the T and D's camera. It could be
4 on Captain D's cameras. It could be that -- Well, let me
5 -- Ms. Montgomery testified, she said she felt like she
6 was being followed. If she was walking down Russell
7 Street, there are two large depositories of public safety
8 cameras on Russell that could have seen somebody
9 following her and none of that was done. These are the
10 same cameras that could have recorded Ms. Montgomery.
11 They could have recorded Tyquin if he had actually been
12 there. They could have recorded Eric Jenkins. They
13 could have recorded the guy on the bike who nobody ever
14 found. They could have recorded an 18 wheeler or this
15 delivery truck that make an appearance in some of the
16 testimony but never followed up on. These are the same
17 cameras that could have recorded the path of her walk or
18 the license plate of the car that we contend that she got
19 into that night.

20 Why did law enforcement refuse to send DNA evidence
21 to SLED for over a year and why did they refuse to send
22 the cell phone for over four years which SLED's own
23 expert said could have degraded the sample? He also
24 testified he has used the fingerprinting of items to
25 eliminate suspects before. They didn't plan on

1 eliminating any suspects in this case. Why did law
2 enforcement give up immediately because of frost? Can't
3 frost preserve evidence? Couldn't frost create more
4 evidence like footprints or marks on the ground? None of
5 that was done. Does any of that give you a reasonable
6 doubt?

7 Let's keep going. Why did law enforcement tell the
8 public that there was no cause for concern following this
9 incident? Is it because they didn't think it really
10 happened? Why did law enforcement never investigate Ms.
11 Montgomery's phone? Until a couple of days ago this call
12 log was to my knowledge not investigated. And I
13 encourage you to look at it because it does not
14 corroborate the story that was given from the stand.
15 After Tyquin submitted his number to law enforcement for
16 their records and during their interrogation, they never
17 followed up on his phone records. Why did law
18 enforcement never canvass the people in the Rosalia's
19 apartments? Those apartments are directly adjacent to
20 this loading dock. Those residents' bedroom is right
21 there. Why did law enforcement get confused about Ms.
22 Montgomery's own cell number with regard to incoming and
23 outgoing phone calls?

24 Why did law enforcement never take Ms. Montgomery's
25 shoes into evidence? Is it because they don't match up

1 with her story that she was walking for an hour before
2 this happened? Or they don't confirm the story that she
3 gave on the stand that she was only walking for ten
4 minutes before this happened? Why did law enforcement
5 never look for an 18 wheeler or delivery truck in the
6 area and never take a pallet into evidence? Both
7 Corporal Still and Investigator Walker said they went out
8 and kind of surveilled the area briefly that night. They
9 never saw a pallet? They never thought, hey, that might
10 have incredibly important evidence on it? I better go
11 move that into the evidence room at the Department of
12 Public Safety and because they never did that, they never
13 looked for clothing fibers evidence, bodily fluids or
14 anything. Maybe because there were too many incident
15 sites. They couldn't check behind Captain D's and behind
16 1005 Broughton and behind the hair salon and at the
17 corner of Broughton and Fisher and wherever Ms.
18 Montgomery claimed to be walking home from work form and
19 then later behind the Salvation Army.

20 How did law enforcement lose part of Investigator
21 Walker's statement and why did they never investigate
22 this man on the bike for whom they have a complete
23 description? You heard from Corporal Still that Ms.
24 Montgomery was able to give a very detailed account of
25 this man on the bike, his bike, his hair, his clothing,

1 his build, and they never went out any other night to see
2 if there was a gentleman riding his bike on Broughton
3 Street that met that description.

4 One thing that has always stood out to me as very
5 odd finally is why did law enforcement never investigate
6 the only witnesses that it did have from that night?
7 Eric Jenkins and his friend. They never even got the
8 friend's name even though they were allegedly at the
9 business at the corner of Broughton and Fisher until 1:30
10 the night before the exact time when it has been
11 suggested that this happened. Never even got his name.
12 Never talked to him. Never put Eric Jenkins' contact
13 information in any of their documentation. Does any of
14 that give you a reasonable doubt?

15 These are the things, ladies and gentlemen, that
16 don't fit into any particular category but they make me
17 think why and how. Why would someone plan to engage in
18 sex outside in 35 degree weather and then on top of that
19 remove all of the clothes from your belt up? That
20 doesn't make any sense. Why would a criminal pick a
21 visible well lit and surveilled area to engage in a
22 sexual assault? Why did Ms. Montgomery's boyfriend leave
23 her apartment as soon as she came back? Doesn't that
24 strike you as a totally out of the ordinary reaction to
25 your significant other being hurt? He says that he runs

1 out. He asks himself what's really going on and is gone
2 for 15 to 20 minutes. He doesn't remember which way he
3 went for 15 or 20 minutes but he's gone trying to figure
4 out what's really going on.

5 Why would a criminal take somebody's phone only to
6 immediately give it back to them? Wouldn't that be the
7 best way to get caught? Why would someone use their own
8 clothes as bedding especially in 35 degree temperatures
9 and why could Investigator Walker not speak with a
10 frantic or distraught Ms. Montgomery in the hospital when
11 the hospital records have stated that Ms. Montgomery was
12 quiet, neither frantic nor distraught? How, how could
13 someone take off their jacket and their shirt, lay it
14 down for another person all the while having a gun in
15 their right hand? It doesn't work. The reason none of
16 this makes sense is because it did not happen the way Ms.
17 Montgomery claims it did.

18 Doesn't it make way more sense that it happened the
19 way that Tyquin suggested to investigators, that he had
20 consensual sex with her in this car and then she got mad
21 at him for a variety of reasons that he suggested to them
22 none of which they wanted to hear? Doesn't that comport
23 with these facts much more? That is why there is no
24 evidence from that scene. That is why Ms. Montgomery
25 can't remember where she was because she was never there.

1 That takes care of the temperature problem. It takes
2 care of the clothing problem. It solves everything.

3 Ladies and gentlemen, I'm going to turn this off.
4 When I first spoke to you, I told you a few things. I
5 said that the Solicitor, the State would come here and
6 say we have her story and we have DNA and that means
7 guilty. If you look back on what they have produced to
8 you, that is still what they have. They have her story
9 and they have a sample of DNA. They have brought a lot
10 of people that she talked to up here to say, well, yeah,
11 this corroborates her story, that corroborates her story.
12 But what really corroborates her story? What really is
13 there to corroborate? Because it changes every time.
14 Their proof to you is a story and DNA. A story that does
15 not make sense. DNA that actually gives me a lot more
16 questions than answers and I have already told you about
17 that.

18 But the other thing that I told you in opening
19 statement is, and the Solicitor I believe mentioned to
20 you just now, is that when my client walks into this
21 courtroom, he enjoys that presumption of innocence. This
22 bar in front of you is like a line between innocent and
23 guilty and the State is going to start stacking blocks
24 trying to go through way, trying to get you to over there
25 to guilty. Meanwhile, I'm gonna ask questions about

1 those blocks and I'm gonna tear them down and I'm gonna
2 try and show you that I believe in my client and that he
3 is innocent. Every single question that I ask you and
4 plenty that you might have on your own are reasons that
5 these blocks don't stack up. The reasons that they can't
6 fit together and that they cannot get from that side to
7 that side.

8 When you go back in your jury room, I hope you start
9 asking questions trying to understand this whole
10 scenario, this whole case. But there's something that's
11 interesting about questions because when you ask a
12 question, you are hesitating to act. You're saying,
13 well, I could make this decision but this. I could make
14 this decision but that. Or but all of these things. You
15 asking questions of each other in the jury room and
16 saying this does not make sense, that is the verbal
17 manifestation of a hesitation to act and like the Judge
18 is going to tell you, that hesitation to act of
19 reasonable people indicates reasonable doubt. This is a
20 very difficult thing for me to have been involved with.
21 I'm sure for everyone to have been involved with. Thank
22 you for your service as jury members and thank you for
23 your consideration in this matter.

24 THE COURT: Reply.

25 MS. CORNWELL: Blame the victim. Why is she out at

1 night? Why is she being nice to a stranger? Why is she
2 letting someone use her phone? Why is she talking to
3 people? Blame the victim. It's her fault she got raped.
4 That's not what the law says.

5 I want to talk about the time that she testified to
6 around 12:00 and the time this incident occurred and the
7 time of the call logs. Four years later you might not
8 have an exact time but on the night of the incident you
9 have heard the testimony that she left, that she was gone
10 for about 30 or so minutes and that she told law
11 enforcement this incident happened approximately 30
12 minutes before they were called out. They were
13 dispatched at 2:05 in the morning. This incident
14 occurring about 1:30 in the morning. You will see all
15 the call logs, the phone calls she makes. She called her
16 sister. She says she leaves out of her apartment and on
17 the phone with her sister while she's walking. Her and
18 her sister are talking about why she's upset. You will
19 see that that call is approximately 1:14 or so in the
20 morning. You're going to see the unknown call about 1:27
21 in the morning. You're gonna see the calls to her father
22 and law enforcement are about 1:54 in the morning.
23 You're also going to recall the testimony of her sister
24 who also said that she was on the phone with her sister
25 when she left the apartment and that her sister was gone

1 for about 30 or so minutes before she came back in tears
2 crying telling her that she was sexually assaulted at
3 gunpoint and waking up her boyfriend.

4 Just because four years later they say it was around
5 midnight or so, it was late at night, they were asleep
6 and woken up, it doesn't mean that she was out for over
7 an hour before this happened or that she was walking
8 around for two hours. It's not reasonable and that does
9 not match up with the evidence that you will have. Let's
10 blame the boyfriend. Why would you run out? If your
11 loved one has been harmed in any way, your instinct is to
12 find the person that harmed her and find justice for a
13 loved one as immediately as you can. They say, well, she
14 said she was mad at him because his phone died. Why is
15 she trying to call him? When you have gone through a
16 trauma like that, you're not thinking clearly. You will
17 see on the call log the phone call doesn't go through.
18 They hang up on her. That's when she calls 911. It's
19 not inconsistent. It's not unreasonable.

20 They talk about the law investigation. What they
21 didn't do and what they didn't collect and what they
22 could have done and what they should have done. I submit
23 to you that no investigation is perfect and in hindsight
24 there are definitely things that could have been. That
25 doesn't mean that what happened to this victim didn't

1 occur. They about Eric Jenkins and why they didn't get
2 more information from him. Well, they found the only
3 person that was a possible witness and they did talk to
4 him. And what did he say? I left about 1:30 in the
5 morning to take someone home. I doubt he was looking at
6 his watch when he took that person home and testified
7 exactly to 1:30. He said around 1:30 I took someone home
8 and I didn't come back until 2:00. When I left out, I
9 didn't see anything. You can't make a witness see
10 something that they didn't and they can't make a
11 statement to something that they didn't see.

12 They talk about the whys someone would have sex in
13 35 degree weather and why would they take off clothes in
14 35 degree weather. Well, you heard the defendant say he
15 makes bad decisions when he drinks. And as far as why
16 would someone have sex outside and why would they do all
17 of that, why do people do things like this? I don't have
18 an answer for that. We know that he makes bad decisions
19 when he drinks. I can also tell you that rape is not
20 about sex. It's about power and getting what you want
21 when you want it then. He was looking for what he
22 wanted. He was going to make her give it to him. He
23 makes bad decisions when he's drinking. That's basically
24 the reason.

25 You also heard testimony that he lived right there

1 on Doyle Street. If this was some act where he just
2 picked up a girl and was gonna have a one night stand,
3 why not take her back to Doyle Street? Because it was
4 not an act that she wanted to have happen. It was an act
5 that she was forced to do.

6 Defense counsel has thrown this image of a black car
7 and getting into a black car before you twice now when he
8 cross examined the victim and now in his closing
9 statement. And while the defense does not have to put up
10 evidence and does not have to put up a case, but when
11 they do put up evidence in a case, you have to consider
12 all of the evidence in that case. You haven't heard any
13 testimony or any evidence or anything that anybody ever
14 alleges that this happened in a black car, that the
15 victim ever got in a black car. No one has testified to
16 that. The defendant doesn't say that. That's not
17 anywhere in the testimony or the evidence. That's one of
18 those things we call a red herring. The things that
19 people get so upset with lawyers about. They try to
20 shift your attention with something that's not there,
21 that's not relevant and didn't happen, that you don't
22 have any proof of other than insinuating. Don't let that
23 distract you.

24 The evidence and testimony show that this incident
25 occurred where it occurred and when it occurred and what

1 happened after it occurred. Well, why wasn't she
2 distraught? Why wasn't she upset? Now, all of the
3 medical records say she was quiet, that she was
4 cooperative. You have been able to observe the victim in
5 this courtroom for the last three days and you saw her on
6 the stand. She's a quiet person, a reserved person. And
7 even when she cries, she's not extravagant, loud,
8 distraughtful. People process things in different ways.
9 People react in different ways, and peoples mannerisms
10 are different. Just because she wasn't flailing and
11 sobbing and acting out in a visible way does not mean
12 that this didn't happen.

13 Let me talk about the very first thing that
14 Mr. Hutto discussed with you and that's the submission of
15 DNA and the time between the DNA reports. You will have
16 the evidence in the back with you and you will note that
17 the buccal swabs when they were collected, when they were
18 submitted was made and then the second report came out in
19 June. Once that it was made, it's not as if someone
20 could immediately go and locate the defendant. They have
21 to talk to him. They have to get his consent. He
22 doesn't give consent in September. He gives it in May,
23 and the testimony he gave in May when his attorney was
24 present. So it's not as if after it was made there was
25 some long delay because nobody believed anybody. There

1 are proper procedures and protocols that have to be gone
2 through. There are certain constitutional rights that
3 people are afforded and those things have to be followed.
4 There are also standards of submission and things of that
5 nature. It doesn't mean that nobody believed anybody.

6 Also, with the victim blame he talked about multiple
7 DNA and multiple partners and consensual partners. That
8 word consensual bothers me more than anything.
9 Consensual sex is a redundant term. Consensual sex is
10 called that because people don't like calling rape rape.
11 They need something nicer. Rape isn't nice. When we
12 talk about swimming versus drowning, we don't call it
13 breathing swimming and non breathing swimming. We call
14 it swimming and drowning. So why do we make a different
15 distinction for sex and rape? There's no such thing as
16 non consensual sex. You're either having sex or you're
17 being sexually assaulted.

18 When they ask for the partner DNA, again, this is
19 years later, they're not together, there's a process to
20 go through to get that information. And in that process
21 what did you hear? That there was a DNA database match
22 to the only piece of evidence that could have been
23 compared to anybody. I asked Samuel Stewart if you were
24 able to get Mr. Pride's DNA after you had made that
25 match, would you have been able to make any

1 determinations on that? He said no. They had a match on
2 the only piece of evidence they could match and the most
3 important piece of evidence in this case and that's this
4 defendant's DNA is inside the victim.

5 The evidence is there. When you go back in your
6 jury room and you analyze this case based on your common
7 sense and based on what you have seen and what you have
8 heard, you know that this defendant is guilty of these
9 crimes. You don't have to have a video of the incident
10 to confirm that. You don't have to have eyewitness
11 statements to tell you this happened. You have got
12 testimony from the victim. You have got call logs. You
13 have got DNA. And you have got your common sense to show
14 you that this case has been proved beyond a reasonable
15 doubt and if you are firmly convinced of that, I'm going
16 to ask you to hold firmly to your convictions and to go
17 back in your jury room and find this defendant guilty of
18 the crimes that he committed because he is guilty of
19 committing criminal sexual conduct in the first degree
20 against Ms. Montgomery and he is guilty of kidnapping Ms.
21 Montgomery. Thank you.

22 THE COURT: Thank you. Ladies and gentlemen of the
23 jury, it is now time for me to charge you on the law in
24 this case. I remind you that, during this trial, you and
25 I have certain duties to perform. As the trial Judge, it

1 is my responsibility to preside over the trial of this
2 case, and I also have the duty to rule on the
3 admissibility of all the evidence offered during this
4 trial. You are to consider only the competent evidence
5 that was before you. If there was any testimony ordered
6 stricken from the record in this case during this trial,
7 you must disregard that testimony. You are to consider
8 only the testimony which has been presented from the
9 witness stand. Any exhibits which have been made part of
10 the record in this case, and any stipulations of counsel,
11 the State and defendant have stipulated to four matters
12 in this case, and you have heard those stipulations read
13 to you, you should consider those stipulations to be true
14 and do not need to deliberate upon them. The
15 stipulations were, one, the temperature of 35 degrees on
16 the night of the incident; two, the lack of any
17 identifiable fingerprints on the victim's phone; three,
18 the defendant's consent to the DNA test; and four, the
19 statement by the defendant was made voluntarily and of
20 his own free will.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding Judge, I am
23 the sole judge of the law in this case, and it is your
24 duty to accept and to apply the law as I now state it to
25 you. If you already have an idea as to what the law is

1 or what the law ought to be and it does not agree with
2 what I now tell you the law is, you must abandon this
3 idea because you are sworn to accept the law and apply
4 the law exactly as I state it to you.

5 In every case tried in this court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in
7 a case. A trial judge cannot intimate, state, comment
8 on, or make any statement to a trial jury about the facts
9 in a case. Since you, the jury, are the sole judge of
10 the facts in this case, you are not to infer from what I
11 have said during the progress of this trial in ruling on
12 the admissibility of evidence, or otherwise, or anything
13 that I say now during the course of this instruction to
14 you, that I have any opinion about the facts in this
15 case. The law does not allow me to have an opinion about
16 the facts in this case. This matter is solely for you,
17 the jury, to determine. As jurors, it is your duty to
18 determine the effect, value, weight, and the truth of the
19 evidence presented during this trial.

20 The indictments charge the defendant with both
21 criminal sexual conduct in the first degree and
22 kidnapping. I remind you that the fact that the
23 defendant was arrested, charged and indicted in this
24 case, is not evidence in this case and cannot be
25 considered by you as evidence of guilt in this case, nor

1 does it create any presumption or inference of guilt.
2 The documents are simply the formal written instruments
3 which contain the charges made against the defendant.
4 They are the formal documents by which the case is
5 brought into this court.

6 The indictments in this case allege several
7 different offenses against the defendant.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on
10 the evidence and the law applicable to it uninfluenced by
11 your decision as to any other indictment. The defendant
12 may be convicted or acquitted on any or both of the
13 offenses charged. You will be asked to write a separate
14 verdict of guilty or not guilty on each indictment.

15 The defendant has pled not guilty to these
16 indictments, and that plea puts the burden on the State
17 to prove the defendant guilty. A person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove themselves innocent.

20 I charge you that it is an important rule of the law
21 that the defendant in a criminal trial, no matter what
22 the seriousness of the charge may be, will always be
23 presumed to be innocent of the crime for which the
24 indictment was issued unless guilt has been proven by
25 evidence satisfying you of that guilt beyond a reasonable

1 doubt. The presumption of innocence does not end when
2 you begin your deliberations, but it accompanies the
3 defendant throughout the trial until you reach a verdict
4 of guilt based on evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the defendant
8 which remains with the defendant until it is has been
9 stripped from the defendant by evidence satisfying you of
10 the defendant's guilt beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory. It's not just a legal phrase. It is a
13 substantial right to which every defendant is entitled to
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 The State has the burden of proving the defendant
17 guilty beyond a reasonable doubt. Some of you may have
18 served as jurors in civil cases, where you were told that
19 it is only necessary to prove that a fact is more likely
20 true than not true, such as by the greater weight or
21 preponderance of the evidence. In criminal cases, the
22 State's proof must be more powerful than that. It must
23 be beyond a reasonable doubt. What is a reasonable doubt
24 in the law? A reasonable doubt is the kind of doubt that
25 would cause a reasonable person to hesitate to act.

1 Proof beyond a reasonable doubt is proof that leaves
2 you firmly convinced of the defendant's guilt. There are
3 very few things in this world that we know with absolute
4 certainty, and in criminal cases the law does not require
5 proof that overcomes every possible doubt. If, based
6 upon your consideration of the evidence, you are firmly
7 convinced that the defendant is guilty of the crime
8 charged, you must find the defendant guilty. If on the
9 other hand, you think there is a real possibility that
10 the defendant is not guilty, you must give the defendant
11 the benefit of the doubt and find him not guilty.

12 There are two types of evidence generally presented
13 during a trial, direct evidence and circumstantial
14 evidence.

15 Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact, such as an
17 eyewitness.

18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a fact.

20 The law makes absolutely no distinction between the
21 weight or to the value given to either direct or to
22 circumstantial evidence. Nor is a greater degree of
23 certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all of the evidence in
25 this case. After weighing all of the evidence, if you

1 are not convinced of the guilt of the defendant beyond a
2 reasonable doubt, you must find the defendant not guilty.

3 Necessarily, you must determine the credibility of
4 witnesses who have testified in this case. Credibility
5 simply means believability. It becomes your duty as
6 jurors to analyze and to evaluate the evidence and
7 determine which evidence convinces you of its truth.

8 In determining the believability of witnesses who
9 have testified in this case, you may believe one witness
10 over several witnesses or several witnesses over one
11 witness. You may believe a part of the testimony of a
12 witness and reject the remaining part of the testimony of
13 that same witness. You may believe the testimony of a
14 witness in its entirety or reject the testimony of a
15 witness in its entirety. You may consider whether the
16 witness has exhibited to you any interest, bias,
17 prejudice, or other motive in this case. You may also
18 consider the appearance and the manner of a witness while
19 on the witness stand.

20 The rules of evidence ordinarily do not permit
21 witnesses to testify as to opinions or conclusions. An
22 exception to this rule exists with witnesses that we call
23 "expert witnesses." A witness who, by education and
24 experience, has become expert in some art, science,
25 profession, or calling may state an opinion as to

1 relevant and material matter, in which the witness claims
2 to be an expert, and may also state the reasons for the
3 opinion.

4 You should consider any expert opinion received into
5 evidence in this case and, like any other evidence, give
6 it the weight that you think it deserves. If you decide
7 that the opinion of an expert witness is not based on
8 sufficient education and experience, or if you conclude
9 that the reasons given in support of the opinion are not
10 sound, or that the opinion is outweighed by other
11 evidence, you may disregard the opinion entirely.

12 An expert witness' testimony is to be given no
13 greater weight than that of other witnesses simply
14 because the witness is an expert witness. Further, you
15 are not required to accept an expert witness' opinion,
16 even though it is not contradicted.

17 As mentioned above, the State and defendant have
18 stipulated that the statement by the defendant was made
19 voluntarily and of his own free will. You may now give
20 the parts of the statement which were elicited through
21 witness testimony any further consideration that you deem
22 proper. You must decide what weight, if any, should be
23 given to these parts of the statement.

24 I instruct you and emphasize that the fact the
25 defendant did not testify is not a factor to be

1 considered by you in any way in your deliberation and in
2 your consideration on the question of the guilt or the
3 innocence of the defendant. It must not be considered by
4 you in any manner whatsoever. A defendant has the
5 Constitutional Right to remain silent, and the assertion
6 of this right must not be considered by you in your
7 deliberations. I repeat, under your oath, you are to
8 draw no conclusion whatsoever from the fact that the
9 defendant in this case did not testify. The fact that
10 this defendant did not testify should not even be
11 discussed in the jury room. The burden of proof, as I
12 have stated to you, is on the State. The defendant is
13 not required to prove his innocence. The burden of proof
14 remains on the State to prove guilt beyond a reasonable
15 doubt.

16 In order to establish criminal liability, criminal
17 intent is required. For example, the mental state
18 required to be proven by the State for a particular crime
19 might be purpose, intent, knowledge, recklessness, or
20 criminal negligence. Criminal intent must be proven by
21 the State beyond a reasonable doubt. Criminal intent is
22 always a matter that must be determined by the jury from
23 the circumstances surrounding the situation. There is no
24 way to prove intent to a mathematical certainty. There
25 is no way medical science can dissect a person's brain

1 and determine what that person had in mind, so the law
2 says that criminal intent may be inferred from the
3 circumstances shown to have existed. This is how you
4 make a determination of whether or not the element
5 requiring intent was present. It is not necessary to
6 establish intent by direct and positive evidence, but
7 intent may be established by inference in the same way as
8 any other fact by taking into consideration the acts of
9 the parties and all of the facts and circumstances of the
10 case.

11 Criminal intent is a mental state, a conscience
12 wrongdoing. It is up to you to determine what the
13 defendant intended to do based upon the circumstances
14 shown to have existed.

15 An issue in this case is the identification of the
16 defendant as the person who committed the crime charged.
17 The State has the burden of proving identity beyond a
18 reasonable doubt. You must be satisfied beyond a
19 reasonable doubt of the accuracy of the identification of
20 the defendant before you may convict the defendant.

21 Identification testimony is an expression of belief
22 or impression by a witness. You must determine the
23 accuracy of the identification of the defendant. You
24 must consider the believability of each identification
25 witness in the same way as any other witness. You may

1 consider whether the witness has had an adequate
2 opportunity to observe the offender at the time of the
3 offense. This will be affected by things like how long
4 or short of time was available, how far or close the
5 witness was, the lighting conditions, and whether the
6 witness had the chance to see or know the person in the
7 past. Once again, I instruct you the burden of proof on
8 the State extends to every element of the crime charged,
9 and this specifically includes the burden of proving
10 beyond a reasonable doubt the identity of the defendant
11 as the person who committed the crime. If, after
12 examining the testimony, you have a reasonable doubt as
13 to the accuracy of the identification, you must find the
14 defendant not guilty.

15 The defendant is charged with criminal sexual
16 conduct in the first degree.

17 The first element which the State must prove beyond
18 a reasonable doubt is that the defendant engaged in a
19 sexual battery with the victim. A sexual battery is
20 sexual intercourse, cunnilingus, fellatio, anal
21 intercourse, or any intrusion, however slight, of any
22 part of a person's body or of any object into the genital
23 or anal openings of another person's body, except when
24 the intrusion is accomplished for medically recognized
25 treatment or diagnostic purposes.

1 If you find that the State has not shown beyond a
2 reasonable doubt that a sexual battery occurred, you
3 should stop deliberating and your verdict would be not
4 guilty to that indictment.

5 If you find that a sexual battery did occur, you
6 must then decide whether the State has proven beyond a
7 reasonable doubt that either: One, the defendant used
8 aggravated force to accomplish the sexual battery.

9 Aggravated force means the use of physical force or
10 physical violence of a high and aggravated nature to
11 overcome the victim. This includes the threat of using a
12 deadly weapon.

13 Or two, the victim submitted to sexual battery while
14 the victim was also the victim of forcible confinement,
15 kidnapping, robbery, extortion, burglary, housebreaking,
16 or any other similar act or offense.

17 The defendant is also charged with kidnapping. The
18 State must prove beyond a reasonable doubt that the
19 defendant knowingly and unlawfully seized, confined,
20 inveigled, decoyed, kidnapped, abducted, or carried away
21 another person without authority of law.

22 To do a thing unlawfully is to do it willfully
23 against the law. Knowingly means with knowledge,
24 consciously, and not accidentally. Seize means to take
25 hold of suddenly or forcibly.

1 Confine means to limit, restrict, or enclose within
2 bounds, imprison, or shut or keep in.

3 Inveigle means to lure, entice, or lead astray by
4 false representations, promises, or other deceitful
5 means.

6 Decoy means to lure by, or as if by, decoy. A decoy
7 is something to entice a person into a trap.

8 Kidnap is to remove a person against his or her will
9 by unlawful force or by fraud.

10 Abduct means to carry off secretly or by force for
11 an illegal purpose.

12 Carry away means to remove.

13 The State does not have to prove that the defendant
14 did all of these things. Instead, if you find beyond a
15 reasonable doubt that the defendant did any of these
16 things, you may find the defendant guilty of kidnapping.

17 Something done without authority of law is something
18 which the law does not sanction, permit, allow, condone,
19 or provide justification for.

20 The kidnapping does not have to be for any personal
21 or monetary gain for any illegal purpose, but may be for
22 any reason whatsoever.

23 Ladies and gentlemen of the jury, you will have in
24 the jury room all of the exhibits. Your verdict must be
25 a unanimous verdict which, of course, means that all 12

1 of you must agree on the verdict.

2 Mr. Foreman, you will also have the verdict form
3 which is rather self explanatory. It states as to the
4 charge of criminal sexual conduct in the first degree we
5 the jury unanimously find the defendant, and then you
6 circle the appropriate verdict that the jury comes to a
7 decision on. Then you would go on as to the charge of
8 kidnapping. We the jury unanimously find the defendant,
9 and again circle the appropriate verdict that the jury
10 comes to a determination on. Sign and date the verdict
11 form. You will also have with you in the jury room the
12 actual indictments, and on the front of the indictment
13 there's a section that says verdict. If you would write
14 the appropriate verdict, sign and date it, Mr. Foreman,
15 on each of the indictments. You will have those back
16 there with you.

17 Again, your verdict must be unanimous. I'll ask you
18 to please go to your jury room. Do not begin your
19 deliberations until you receive the exhibits and the
20 verdict form into the jury room. At that time you can
21 begin your deliberations. When you reach a verdict,
22 please knock on the door and let us know and we will
23 receive your verdict. Thank you.

24 (Whereupon, the jury entered the jury room at 12:55
25 p.m.)

1 THE COURT: Any exceptions or objections to the
2 charge on the law from the State or the defense?

3 MS. CORNWELL: None from the State, Your Honor.

4 MR. HUTTO: No, Your Honor.

5 THE COURT: All right. Great. Y'all get all the
6 exhibits together and make sure we have everything. We
7 have the verdict form. I suppose we'll ask the jury at
8 some juncture if they want us to order lunch or not.
9 We'll wait a few minutes and then we'll ask them. Any
10 objections to releasing the alternate?

11 MS. CORNWELL: I would prefer to keep him until
12 after lunch.

13 THE COURT: Pardon.

14 MS. CORNWELL: I know in a trial I had a juror had
15 to leave and so then we had to have her replaced with the
16 alternate so out of an abundance of caution I generally
17 ask to keep the alternate but I'll leave that to the
18 discretion of Your Honor.

19 THE COURT: Once they start their deliberations,
20 they're starting their deliberations. I'll wait five
21 minutes and then I'll release him. I don't want to keep
22 him any further. He's certainly done his service.

23 (Whereupon, the exhibits and verdict form were sent
24 into the jury room and deliberations began at 1:00 p.m.)

25 (Deliberations.)

1 THE COURT: I understand we have a verdict in our
2 case. Let's make certain we contact counsel. We'll
3 contact the defense. We'll take a brief break and then
4 receive the verdict.

5 (Short break.)

6 THE COURT: It's my understanding that we have a
7 verdict. Anything from anyone before I bring the jury
8 out?

9 MS. CORNWELL: Nothing from the State, Your Honor.

10 MR. HUTTO: No, Your Honor.

11 THE COURT: Let's have our jury please.

12 (Whereupon, the jury entered the courtroom at 2:50
13 p.m.)

14 THE COURT: Mr. Foreman, has the jury reached a
15 verdict?

16 THE FOREMAN: Yes, ma'am.

17 THE COURT: Would you please hand it to the bailiff.

18 THE FOREMAN: (Complies.)

19 BAILIFF: Your Honor, may I approach?

20 THE COURT: Yes, ma'am. Madam Clerk, please publish
21 the verdict.

22 THE CLERK: I bring the Court's attention to
23 indictment numbers 2017-GS-38-2022 and 2023, the State of
24 South Carolina versus Tyquin Terrell Jenkins. As to the
25 charge of criminal sexual conduct in the first degree, we

1 the jury unanimously find the defendant guilty. As to
2 the charge of kidnapping, we the jury unanimously find
3 the defendant guilty. It is signed today February the
4 14th, 2019 by the jury foreperson.

5 THE COURT: Thank you, ma'am. Would you please poll
6 the jury.

7 THE CLERK: Yes, ma'am. As I call your name, please
8 answer to this question. Lenard Thompson, juror number
9 169, would you please stand. Is this your verdict?

10 LENARD THOMPSON: Yes.

11 THE CLERK: And is it still your verdict?

12 LENARD THOMPSON: Yes.

13 THE CLERK: Thank you. You may be seated. Juror
14 number 145, Israel Salley, please stand. Is this your
15 verdict?

16 ISRAEL SALLEY: Yes.

17 THE CLERK: And is it still your verdict?

18 ISRAEL SALLEY: Yes.

19 THE CLERK: Thank you. Juror number 85, Malik
20 Jackson. Is this your verdict?

21 MALIK JACKSON: Yes.

22 THE CLERK: And is it still your verdict?

23 MALIK JACKSON: Yes.

24 THE CLERK: Thank you. Juror number 7, Beverly
25 Atkinson. Is this your verdict?

1 BEVERLY ATKINSON: Yes.

2 THE CLERK: And is it still your verdict?

3 BEVERLY ATKINSON: Yes.

4 THE CLERK: Thank you. Juror number 27, Robert Owen
5 Brown. Is this your verdict?

6 ROBERT OWEN BROWN: Yes.

7 THE CLERK: And is it still you verdict?

8 ROBERT OWEN BROWN: Yes, ma'am.

9 THE CLERK: Thank you. Juror number 31, Travis
10 Cain. Is this your verdict?

11 TRAVIS CAIN: Yes.

12 THE CLERK: And is it still your verdict?

13 TRAVIS CAIN: Yes, ma'am.

14 THE CLERK: Thank you. Juror number 41, Jerome
15 Corley. Is this your verdict?

16 JEROME CORELY: Yes.

17 THE CLERK: And is it still your verdict?

18 JEROME CORLEY: Yes.

19 THE CLERK: Thank you. Juror number 104, Melvin
20 Lang. Is this your verdict?

21 MELVIN LANG: Yes.

22 THE CLERK: And is it still your verdict?

23 MELVIN LANG: Yes.

24 THE CLERK: Thank you. Juror number 100, Lavern
25 King. Is this your verdict?

1 LAVERN KING: Yes.

2 THE CLERK: And is it still your verdict?

3 LAVERN KING: Yes.

4 THE CLERK: Thank you. Juror number 68, Roy
5 Haigler. Is this your verdict?

6 ROY HAIGLER: Yes.

7 THE CLERK: And is it still your verdict?

8 ROY HAIGLER: Yes.

9 THE CLERK: Than you. Juror number 8, Travis
10 Atkinson. Is this your verdict?

11 TRAVIS ATKINSON: Yes.

12 THE CLERK: And is it still your verdict?

13 TRAVIS ATKINSON: Yes.

14 THE CLERK: Thank you. Juror number 181, Mary
15 Washington. Is this your verdict?

16 MARY WASHINGTON: Yes.

17 THE CLERK: And is it still your verdict?

18 MARY WASHINGTON: Yes.

19 THE CLERK: Thank you.

20 THE COURT: Thank you. Ladies and gentlemen of the
21 jury, please return to your jury room one last time and
22 I'll be in there momentarily to release you.

23 (Whereupon, the jury entered the jury room at 3:00
24 p.m.)

25 THE COURT: Anything before I release the jury?

1 MS. CORNWELL: No, Your Honor.

2 THE COURT: Have you prepared sentencing sheets?

3 MS. CORNWELL: Yes, Your Honor.

4 THE COURT: Anything, Mr. Hutto?

5 MR. HUTTO: At the appropriate time I would like to
6 make a motion for you to act in your capacity as a
7 thirteenth juror and a motion for a judgment not
8 withstanding the verdict but I don't believe that is
9 dependent upon the jury's presence.

10 THE COURT: If you like, I can go ahead and hear
11 your motion if you like.

12 MR. HUTTO: Thank you, Your Honor. These motions
13 will be based upon the same basis as my motions for a
14 directed verdict prior to the jury's verdict in this
15 case. Your Honor, I don't believe the State has
16 presented sufficient evidence to prove my client's guilt
17 beyond a reasonable doubt based on both their
18 investigation and the evidence that was presented here
19 and the testimony here at trial.

20 THE COURT: Thank you, Mr. Hutto. Again, for the
21 same reasons there was direct and circumstantial evidence
22 tending to establish each of the elements of the offenses
23 charged against your client and your motion is
24 respectfully denied.

25 MS. CORNWELL: Thank you, Your Honor.

1 THE COURT: Solicitor, are you ready?

2 MS. CORNWELL: They're bringing me the sentencing
3 sheets now.

4 THE COURT: Mr. Hutto, are you ready to proceed?

5 MR. HUTTO: May I have one moment to ask his family
6 if they would like to say something?

7 THE COURT: Sure.

8 MR. HUTTO: Yes, Your Honor, I believe we are.

9 THE COURT: Madam Solicitor, does the victim wish to
10 present any victim impact?

11 MS. CORNWELL: Your Honor, she does not wish to
12 address the Court. She would like for me to relay to
13 Your Honor that she would request the maximum sentence on
14 each charge in this case. This was obviously a very
15 traumatic experience for her and it has affected her in
16 ways that she couldn't imagine. As a 21 year old young
17 lady you hear about these things but you don't actually
18 think that they could ever happen to you. Since this
19 incident occurred it's affected her ability in
20 relationships and school and it's also impacted her
21 ability to feel safe at night and walking alone. She has
22 a small daughter and has placed feared in her for her
23 daughter. So it has had a significant impact on her so
24 she is asking the Court for a maximum sentence. At the
25 appropriate time I can give Your Honor the prior

1 convictions.

2 THE COURT: I would like you to do that now.

3 MS. CORNWELL: Your Honor, the defendant has a
4 significant prior criminal history. In 2004 he was
5 convicted of possession with intent to distribute
6 marijuana. In 2005 he was convicted of assault and
7 battery of a high and aggravated nature. In 2007 he was
8 convicted of unlawful carrying of a pistol. In 2008 he
9 was convicted of a violation of probation, an unlawful
10 carry of a pistol, a DUS third, open container,
11 possession of marijuana. In 2009 he was convicted of
12 assault and battery in the third degree. In 2012 he was
13 convicted of unlawful carrying of a pistol, possession of
14 cocaine, and criminal domestic violence. In 2013 he was
15 convicted of a violation of probation, malicious injury
16 to personal property less than \$10,000.00. In 2017 he
17 was convicted of domestic violence in the first degree
18 and obstruction of justice. I would also like to note
19 for Your Honor that as part of that plea the State also
20 dismissed gun charges against him. And then recently in
21 2018 he pled guilty to domestic violence in the second
22 degree. Given the severity of this crime to the victim
23 and the significant record of the defendant the State
24 would agree that this is a case where a maximum sentence
25 on each charge is appropriate and the State would also

1 ask for the maximum sentence to be imposed on this, Your
2 Honor.

3 THE COURT: Thank you, Solicitor.

4 MS. CORNWELL: Thank you, Your Honor.

5 THE COURT: Mr. Hutto.

6 MR. HUTTO: Thank you, Your Honor. It's been my
7 pleasure to represent Mr. Jenkins throughout this
8 process. He's been cordial, cooperative. He's been
9 there to help us in the preparation of his case along the
10 way. I understand the jury's verdict. Based on my
11 interactions with him, acts of this type are totally out
12 of his character. I do understand the record that the
13 Solicitor has just read to you, however, it appears that
14 there's nothing of this severity that appears previously
15 in that record. From our perspective, a sentencing
16 perspective we would request that you run the sentence on
17 these two charges concurrent. From a legal perspective I
18 would note that it is perhaps a legal technicality but it
19 would be almost impossible to engage in criminal sexual
20 conduct, if one did so, without also engaging in
21 kidnapping because presumably the other person would not
22 want to be present for that. I don't intend to call
23 these charges redundant but I hope that gives Your Honor
24 a reason to run these sentences concurrent along with
25 again his conduct here in trial, his respectfulness and

1 his cooperativeness throughout the course of this
2 investigation, speaking with investigators and providing
3 DNA so that this investigation could proceed smoothly. I
4 would ask at this time as well for his mother, I believe,
5 would like to say a few words on his behalf.

6 THE COURT: Certainly. I would be happy to hear
7 from her. Good afternoon, ma'am. If you would please
8 state your name for the record.

9 YOLANDA JENKINS: Yolanda Jenkins.

10 THE COURT: Yes, ma'am.

11 YOLANDA JENKINS: Could you have some leniency on my
12 son? Because he has never raped anybody and he never, he
13 never beat up nobody, no woman or nothing like that. It
14 was only but one woman. I really don't think he raped
15 her.

16 THE COURT: Thank you, ma'am.

17 MR. HUTTO: Your Honor, he's been accompanied by
18 many of his family members that you have seen throughout
19 the course of this trial. This is hard for them to speak
20 to his character. I think at this point because of the
21 degree to which they care about him, I believe that they
22 would have similar remarks as I did, that they believe
23 this is totally outside of his character. Again, we
24 would ask for a concurrent sentence in this matter.

25 THE COURT: Anything further from anyone?

1 MR. HUTTO: I don't believe the rest of his family
2 wishes to address the Court at this time.

3 THE COURT: Mr. Jenkins, please stand.

4 TYQUIN TERRELL JENKINS: (Complies.)

5 THE COURT: Mr. Jenkins, certainly your attorney has
6 indicated that you have been respectful throughout this
7 trial and I certainly don't have anything to say that you
8 have not been respectful throughout this trial, however,
9 your prior record, your statement to law enforcement,
10 your prior record involving domestic violence against
11 females you show a complete and utter disregard for any
12 females including your own mother who is standing here to
13 talk on your behalf. Look at the pain that you have
14 caused her as well as everybody else in this courtroom.

15 I do think it's appropriate under 2017-GS-38-2023,
16 it's the indictment for kidnapping which I do make a
17 specific finding that the defendant is to also be placed
18 on the Sex Offender Registry due to the nature of this
19 crime, you're hereby committed to the State Department of
20 Corrections for a period of 30 years. That's concurrent
21 to 2017-GS-38-2022 where you are likewise committed to
22 the State Department of Corrections for a period of 30
23 years. We are adjourned on this matter.

24 MS. CORNWELL: Thank you, Your Honor.

25 WHEREUPON, THE TRIAL WAS CONCLUDED.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 11th through the 14th day of
11 February, 2019.

12 I FURTHER CERTIFY that the forgoing 517 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 18th day of May, 2019.

18
19 
20 By: Steven E. LeBlanc

21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

WITNESSES

Danny W Brightwell Jr

Orangeburg Police Department

ARREST WARRANT NUMBER
2017A3820800333

Arrested: September 26, 2017

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: January 16, 2019

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 2/14/2019

DOCKET NO. 2017GS38-2023

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

January 22, 2019 TERM

THE STATE
vs.

Tyquin Terrell Jenkins

Indictment for
KIDNAPPING

SC Code: 16-3-910

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. **RECEIVED**
FEB 20 2019
SC Court of Appeals

Unrecorded

2019 JAN 16 AM 10:53

FILED FOR RECORD
CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

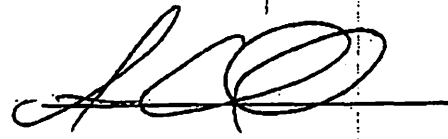
INDICTMENT
2017GS38-2023

At a Court of General Sessions, convened on January 16, 2019 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about January 6, 2015, the Defendant, Tyquin Terrell Jenkins, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Tori Montgomery, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Ashley B. Cornwell, Solicitor

WITNESSES

Danny W Brightwell Jr

Orangeburg Police Department

ARREST WARRANT NUMBER
2017A3820800332

Arrested: September 26, 2017

ACTION OF GRAND JURY
TRUE BILL

[Signature]

JAN 16 2019

Foreperson of Grand Jury

Date: January 16, 2019

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 2/14/2019

DOCKET NO. 2017GS38-2022

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

January 22, 2019 TERM

THE STATE
vs.

Tyquin Terrell Jenkins

Indictment for

**CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE**

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.

RECEIVED
FEB 20 2019
SC Court of Appeals

UNRECORDED

2019 JAN 16 AM 10:53

FILED FOR RECORD

SC Code: 16-3-652

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2017GS38-2022

At a Court of General Sessions, convened on January 16, 2019 the Grand Jurors of Orangeburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about January 6, 2015, the Defendant, Tyquin Terrell Jenkins, did commit a sexual battery upon the victim, Tori Montgomery, and the victim did submit to sexual battery under aggravated force, and/or kidnapping. This offense in violation of Section 16-03-652 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Ashley B. Cornwell, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED
Apr 13 2020
SC Court of Appeals

s/Taylor D. Gilliam
Taylor D. Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of April, 2020.