

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL EUGENE COLEMAN,

APPELLANT

APPELLATE CASE NO 2019-000936

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 2009-GS-20-00085
5 State of South Carolina
6 Vs.
7 Darryl Eugene Coleman
8
9 Winnsboro, South Carolina
10 May 20-22, 2019
11 Before the Honorable Lawton McIntosh
12 APPEARANCES
13 For the State: Julie Hall
14 For the Defendant: Hemphill Pride
15
16 Reported by: Michael C. Watkins
17 Official Court Reporter
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1 8:30.

2 THE COURT: It is. That's Wednesday, not tomorrow.

3 THE JUROR: It's Wednesday morning at 8:30.

4 THE COURT: You just said tomorrow a minute ago.

5 THE JUROR: Nuh-uh, I told her Wednesday at 8:30.

6 THE COURT: July the 22nd is when you're going to come
7 back, okay?

8 THE JUROR: That's fine.

9 (The juror left the courtroom.)

10 THE COURT: All right. So that would -- if -- the way
11 I've always done it when we do that, the next available
12 alternate moves up to be on the primary unless somebody has
13 a problem with that procedure, that will be alternate number
14 7, Sandra Barnett. Any problem with that?

15 MS. HALL: No.

16 MR. PRIDE: None.

17 (Break in proceedings.)

18 THE COURT: All right. Anything else we need to
19 contend with today?

20 MR. PRIDE: I have one other thing. I have an
21 impatient solicitor twisting my arm that won't give me
22 adequate time to do my job, that tells me do it now before
23 4:00. I need time.

24 MS. HALL: If you need time that's fine.

25 MR. PRIDE: I need time. I just can't rush something

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1 like that, by tomorrow morning.

2 MS. HALL: Well, I -- what I --

3 THE COURT: I'm not going to make her give you an
4 offer, it's not my job to do.

5 MS. HALL: I already have, and quite frankly in all
6 candor it's to the old assault and battery of a high and
7 aggravated nature. And I have talked with the victim in the
8 case and she has agreed to not come today and she's fine
9 with not being here and she trusts us to speak on her behalf
10 at this time. Now, if I call her back -- we have tried to
11 resolve this a couple of different times, I'm quite frankly
12 a little bit tired of pulling her back and forth. If Mr.
13 Pride needs time, that's fine, but tomorrow morning I've got
14 witnesses coming, and so I don't know what more I can do to
15 accommodate. I don't think that anybody is in a huge rush,
16 it's only 4:30 to get out of here so I don't know if we
17 can -- I'm happy to stay until at least 5:00.

18 MR. PRIDE: Judge, anybody that has taken 11 years
19 should not be complaining that I need a few more minutes to
20 do something.

21 THE COURT: Let me just say this, I hear you, that
22 sounds reasonable. Again, I can't require that she continue
23 her offer the next day. I think it's a reasonable request,
24 and that way we have the victim here at least to be able to
25 testify. But also at the same time everybody has had a

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1 number of years to think about these matters, there's no --

2 MR. PRIDE: Except the defendant, he didn't have any.

3 But Judge, just give me -- and I understand that's not your

4 decision, I understand it. I'm just saying --

5 THE COURT: I have no problem stopping the day or going

6 today, it doesn't matter to me. But I'm just saying when

7 you come back tomorrow she may say, "I don't have that offer

8 on the table."

9 MR. PRIDE: Well, I hope she wouldn't do that. Because

10 I have to talk to not only the defendant but family members,

11 that's a reasonable request and one that you should

12 understand, and once I do that I think I may get favorable

13 results. But I just can't do nothing in this courtroom

14 today, that's where I am.

15 THE COURT: At 9:00 in the morning --

16 MR. PRIDE: I'll be here.

17 THE COURT: I'm telling you, I'm starting this trial at

18 9:30.

19 MR. PRIDE: I'll be here.

20 THE COURT: If we burn up 30 minutes then we burn up 30

21 minutes. But otherwise, you know, I really want to get this

22 case moving, that's just my way of doing it.

23 (Court recessed for the day and resumed at 9:00 a.m.,

24 On May 21, 2019.)

25 THE COURT: Mr. Pride, have you seen your client this

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1 morning?

2 MR. PRIDE: I have not, Your Honor.

3 THE COURT: First of all, do the charging documents
4 notify the defendant that a trial will be had in his absence
5 if he doesn't appear?

6 MS. HALL: It's standard bond paperwork, which says
7 that --

8 THE COURT: Well, I know that, let's doublecheck it and
9 be sure.

10 MS. HALL: I read it yesterday. It says that he's
11 required to come to court and to appear when noticed. And
12 it does not as far as I can tell have specific language in
13 it that says if you don't come you will be tried in your
14 absence.

15 THE COURT: Well, let's look at it. I don't want to
16 just be as far as I can tell, I want it to be specific.

17 MS. HALL: He signed on January 7th of 2008 bond
18 paperwork that states, "I understand and have been informed
19 that I have a right and obligation to be present at a trial
20 and should I fail to attend the trial will proceed in my
21 absence."

22 THE COURT: Mr. Pride, obviously your client was here
23 yesterday and he knows -- and I'm not saying he's not
24 showing but I want to have it on the record that he knew
25 that this case was scheduled for today and yesterday. And

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1 also it was previously advised under the bonding papers that
2 the trial would be had in his absence if he did not appear.
3 So unless you have argument against that we will proceed
4 with the trial in his absence, Mr. Pride, okay?

5 MR. PRIDE: Okay.

6 THE COURT: All right. Now, you have a motion for a
7 speedy trial. I will be glad to hear you on that please,
8 sir.

9 MR. PRIDE: Okay. Your Honor, I want you to first
10 recognize and take under consideration the fact that South
11 Carolina is unique as opposed to other states. Why isn't it
12 unique when it comes to a motion for a speedy trial? One
13 reason. In this State, who calls the cases to trial? The
14 solicitor. That's quite unusual. Most other states the
15 clerk will manage the roster, or the judge will set the
16 cases for trial, but since on infinitum the State has
17 allowed solicitor's to call the cases to trial. If you
18 don't mind, Judge, I know you're from Anderson, and up in
19 Anderson, South Carolina there was a federal judge named
20 Judge Anderson. And Judge Anderson, God bless his soul, was
21 about as strict and ran a courtroom as tight as any man I
22 know. And he always used to say -- and as you know, he was
23 a federal court judge -- he would also say, "It's my
24 responsibility as a Judge to let the United States attorney
25 and the defense attorney out the box at the same time, not

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1 to let anybody get an uneven start." And in this case,
2 Judge, there's an uneven start. Because the solicitor at
3 their whims can get a case ready, and when they finish
4 getting ready then they tell the defense lawyer, "All right,
5 I'm calling this case to trial." That's sort of an uneven
6 start but that's the way it is, and that's the way we have
7 to function and that's the way we have functioned. In this
8 case, Judge, the defendant has a constitutional right under
9 the 6th Amendment of the Constitution to a speedy trial.
10 And as Your Honor mentioned yesterday in a casual
11 conversation in chambers, there are four things, or four
12 elements I'll call -- excuse me for turning around -- that
13 the Court looks to in making a determination as to whether
14 or not the defendant has been harmed by the delay. I think,
15 Your Honor, not to be presumptuous, but I think you would
16 have to agree with me that 11 years is a long time.

17 THE COURT: I certainly agree with that.

18 MR. PRIDE: Right. And the second thing, Judge, is
19 that I hope you will agree with me when how and why come up
20 from the Court, the judge wants to know how this happened or
21 why that happened. The one thing I think all judges are
22 looking for is a reasonable explanation. You can't get this
23 in this case. And Judge, I would submit to you that I
24 wasn't the solicitor then and it wasn't me is not a
25 reasonable explanation. It's incumbent upon the office, the

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1 solicitor's office to call these cases first of all in an
2 orderly fashion, second of all to give notice, and third not
3 to delay, not to give an unusual delay. You can't find an
4 answer to how and why in this case that a case was delayed
5 for 11 years. And I can say to you, Judge, without --
6 excuse me, I'm sorry.

7 THE COURT: If he comes in I'll let you know.

8 MR. PRIDE: I'm just hesitant about people in my back
9 when I'm talking. Judge, you can't tell me that a man who
10 went on with his life for 11 years has not been prejudiced
11 by a case not being called to trial.

12 THE COURT: Well, let me ask you this, looking at the
13 factors as I understand them to be, and you correct me if
14 I'm wrong, Mr. Hemphill, and each case apparently depends on
15 the particular circumstances for that particular case. But
16 the factors that we overall look at is the length of delay.
17 And, of course, I agree with you whole heartedly, 11 years is
18 hard to fathom quite frankly. And it's not a case where you
19 have a victim who has a repressed memory and they're not
20 reporting, something of those factors where there is some
21 explanation for the delay. But, you know, 11 years is a
22 long, long time. I haven't heard the reasons for the delay
23 other than what you said we said in chambers and that is
24 when Ms. Hall took over, "I got it put together because I
25 came in and it had been sitting around and I got it done."

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1 And that's very commendable on her but that doesn't explain
2 the rest of the reasons for those delays. Also you have to
3 look at when the defendant asserted his right to have a
4 speedy trial. And prejudice. Now, prejudice as I
5 understand it to be is not the prejudice of going along with
6 your life and thinking that things have been, you know,
7 washed down the river because of the passage of time, but
8 the loss of evidence, the loss of memories, the inability to
9 wage a defense to the charges because of the passage of
10 time. And so -- and you correct me, you've been around and
11 I've been around awhile but you've been around even longer
12 than me, and so the prejudice within this case is probably
13 one that I think is that, and the reason for the delay
14 probably are the more important factors. I don't know why I
15 think that because they're all are important. But can you
16 point to any inability for your client to wage a defense
17 because of evidence that has become stale, lost or witnesses
18 who have moved and are not available, or anything along
19 those lines?

20 MR. PRIDE: I can tell you, Your Honor -- first of all,
21 Your Honor, I acknowledge that I'm in a -- not in a great
22 position to show injurious harm as a result of the delay,
23 I'll have to come up front with you on that. I can't -- but
24 I want to go to one point and I'll come back to that if you
25 don't mind, Judge. The 6th Amendment of the Constitution

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1 vests when the person is arrested. So he had a right to a
2 speedy trial once he was arrested, and it was incumbent upon
3 the State to carry that out, not upon the defendant to
4 assert it. And the reason why he didn't have to assert it
5 is because it's a constitutional right and it's inherent.
6 So that's my answer to that.

7 THE COURT: Okay.

8 MR. PRIDE: Now, Judge, prejudice, that's where I got
9 hurt, okay? That's where I got hurt. And I don't want to
10 make a frivolous argument on that and have to concede that I
11 can't make an argument to demonstrate prejudice, only to say
12 that perhaps -- not even perhaps, my client's memory may not
13 be as good then as it was 11 years ago. But that's also
14 true with the State's witnesses.

15 THE COURT: In fact, my law clerk and I were having
16 that same discussion this morning.

17 MR. PRIDE: Right. So, I mean, that's where the
18 prejudice comes in. It's supposed to -- it hasn't happened
19 yet. And I would ask you, Judge, one thing, you don't have
20 to rule on this motion --

21 THE COURT: I'm going to take this under advisement.

22 MR. PRIDE: Thank you, that's exactly what I want. And
23 if during the course of the trial it comes up and you see
24 where the harm took place then, of course, I know the Judge
25 will -- I know you will take the appropriate action.

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1 THE COURT: And I have no problem throwing this case
2 out of court at all. Here is something I was thinking about
3 on the way over here this morning, about -- because I know
4 there was a good likelihood we would be having this argument
5 now, is that you have to weigh on one hand what harm, other
6 than living your life without having to face the
7 consequences at an earlier time, versus whether or not
8 you're entitled to one free criminal act, and if the passage
9 of time ameliorates that. And I don't think it does
10 necessarily unless I hear more about it. But I do agree
11 with you whole heartedly, Mr. Hemphill, some of this
12 information you're not going to be able to argue because you
13 don't know it yet until you hear it and I won't know it
14 until I hear it. So I'm not going to rule on your motion at
15 this juncture, and then I'll let you supplement your
16 argument at a later date or a later time in this trial. I
17 assume since we're having this argument, Ms. Hall said to me
18 earlier that you sent her an email last night saying no
19 deal, so we're going forward?

20 MR. PRIDE: That's correct. I wanted to let her know
21 as soon as possible.

22 THE COURT: Now, Ms. Hall, I would like to hear from
23 you on the speedy trial aspect at this juncture.

24 MS. HALL: Thank you, Your Honor. I'm going to refer
25 to the case in South Carolina that kind of governs this and

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1 interprets the 6th Amendment, which is the Hunsberger case.
2 I'm sure that the Court is familiar with that. With regard
3 to that, that's where the four part test is sort of
4 enumerated. The first prong is that there's -- the defense
5 has to show that there's a deliberate attempt to delay as a
6 means to hamper the defense, which would weigh heavily
7 against the State. I would submit to the Court that there
8 has been no deliberate attempt to delay this case.

9 THE COURT: I can't imagine for the life of me, Ms.
10 Hall -- and I recognize that in your defense, that you are
11 new to the game and you picked up the file and got it ready
12 to go. But in doing so, have you been able to discover how
13 in the world, how in the world a case languished out there
14 for 11 years without prosecution, especially a case of this
15 magnitude? It really boggles my mind.

16 MS. HALL: Well, it did mine too. And so I went -- I
17 was going to get to that in the second prong, which talks
18 about negligence or overcrowding of a docket which weighs
19 heavily --

20 THE COURT: I don't want to hear about the case right
21 now. I want to hear about what you found out as to why this
22 case was not tried, if you don't mind, please, ma'am.

23 MS. HALL: With regard to that, that is when I --
24 again, as Your Honor knows, I was deputy solicitor in
25 Chester -- well, I started in Chester in 2011, so I was

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1 deputy solicitor there and then came here. So as part of
2 that, being in the same circuit I had an opportunity to
3 witness this, and Mr. Maxwell and I talked about that as
4 well, Barfield was the solicitor then, our circuit had a CSC
5 grant. Within our circuit there was one CSC prosecutor, and
6 I'm talking Lancaster, Fairfield and Chester. The docket,
7 when I was hired in Chester, was pretty -- in arrears. I
8 know that it has been like that --

9 THE COURT: What year were you hired?

10 MS. HALL: In Chester? I went there in 2011.

11 THE COURT: When did you come here?

12 MS. HALL: In June of last year, so I haven't quite
13 been here a year yet. And I was hired specifically because
14 Mr. Maxwell and Mr. Newman recognized that due to these CSC
15 grants -- which let me expound on that for just a second.
16 These CSC prosecutors were hired, one prosecutor per
17 circuit, to travel the entire circuit to prosecute all the
18 CSC cases and all the domestic violence cases, and including
19 some of which were in magistrate court, the domestic
20 violence cases. So you can imagine what those people --
21 they went to preliminary hearings, they went to first
22 appearances, they went to court, they had to prepare cases,
23 driving all of the time through these counties. And I'm not
24 saying that this is an excuse, but it is a reason. And so
25 if you can imagine what these people had to do in order to

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1 prosecute these cases, that plays into it somewhat. Mr.
2 Newman and Mr. Maxwell recognized at some point these CSC
3 grants started to sort of fade away, I guess, and I'm not
4 exactly sure of the mechanics behind that. I know that when
5 I went to Chester in 2011 the same problem existed there and
6 we rectified it. Mr. Newman and Mr. Maxwell, once the CSC
7 prosecutor left here, and I don't know if the grant ran or
8 not, I'm not on it, but they recognized the issue, and I was
9 actually hired specifically to come into Fairfield County to
10 clear up some of these CSC cases. I will tell you when I
11 got -- I think since June of last year I've probably dealt
12 with about 13 of them --

13 THE COURT: And all of that is great, Ms. Hall -- hang
14 on. That's all nice and well, and that's not what I'm
15 asking, because I know that you came here with all due
16 diligence and did what you were supposed to do because it's
17 obvious. I'm talking about 11 years ago when this charge
18 was levied. First of all I would very much be doubtful if
19 they had such thing as CSC prosecutors 11 years ago. I can
20 tell you everywhere I go prosecutors handle all kinds of
21 cases. They may be stuck in this area for awhile, but there
22 is the kind of prosecutors who are fully capable of
23 prosecuting any kind of cases from here to there. But for
24 there to be a ten year delay from the time you got here is
25 really almost inexcusable, and I really have a hard time

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1 with that.

2 MS. HALL: I'm probably going to let Mr. Maxwell
3 address part of this, because he's been here that whole
4 time. But I want the Court to understand very clearly, and
5 I know Mr. Pride understands this, that this -- what
6 happened in this case -- we did not -- in 2008 there was no
7 ILAB. When I picked this case up I had to call SLED and
8 they had to go to some basement somewhere and pull these
9 records out. ILAB did not exist.

10 THE COURT: Now what is ILAB?

11 MS. HALL: Okay. So we sent the rape kit to SLED. And
12 typically what happens is when a rape kit goes to SLED is it
13 goes with the blood of the victim. They have a light, they
14 shine it on the clothing, on the victim, all of the stuff
15 from the rape kit. If there is any semen identified on that
16 they say, "Hey, we've got semen, and went we can't do
17 anything with it because we don't have a suspect standard."
18 Now, in the days that exist today there is an email
19 notification that comes to the investigating officer that
20 notifies them of what's going on. At that point in time the
21 only thing that I can assume, and some of the SLED ladies
22 who are coming will have been here since 2008, it came
23 through the mail in an envelope the old fashioned way, and I
24 don't know what happened to it. Maggie Boyd at that time
25 was the investigator at the sheriff's department --

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1 THE COURT: Well, we had a suspect. This gentleman had
2 been arrested 11 years earlier, it hadn't been 11 years ago.
3 I don't know when that testing was done.

4 MS. HALL: Well, what they were asking for, or what
5 they needed in order to complete their analysis was a
6 suspect standard. My understanding is that no one ever
7 recognized that there was semen found anywhere except for
8 the SLED people, that the sheriff's department -- I don't
9 know what happened. I don't know why they didn't -- because
10 what happens with us now is when there's semen identified it
11 triggers that we need a suspect standard. Sometimes that's
12 gotten through a search warrant on the front end of the
13 investigation if the defendant agrees to it. In this case
14 that was not done, and that was where the thing fell into a
15 hole. So when I came in and saw that we needed a standard,
16 I called SLED and said, "Hey, can you still -- now you have
17 a profile and a DNA profile of the suspect, if I send you a
18 standard, can you still compare it?" And they said,
19 "Absolutely. We've got the profile, it's on paper, all we
20 need is the standard in order to do the comparison." So the
21 only missing link in this scenario was that thing right
22 there. All the rest of the investigation had been
23 completed, it was just that they needed a suspect standard
24 in order to do the comparison, and once that was given to
25 them it was completed within four months. And so why it

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1 wasn't done I cannot attest -- the only thing I can
2 attribute it to, and I want Mr. Maxwell to address the Court
3 in just a minute with regard to the history with the CSC
4 prosecutors, is that the people were traveling. Maggie Boyd
5 was deployed at some point a couple years after this case --
6 and I don't know how backed up SLED was at that time. But
7 Maggie Boyd was -- she was deployed and went to Kosovo as
8 part of her military obligations and she never came back to
9 the sheriff's department. So I don't know if -- but I
10 just -- that's the history of this case. But Mr. Maxwell
11 can better address the mechanics behind the administration
12 of our office since 2008.

13 MR. PRIDE: Before he does, Judge, can I put one more
14 factor?

15 THE COURT: Yes, sir.

16 MR. PRIDE: First of all, Judge, I've had the pleasure
17 of working with Mrs. Hall since she has been a solicitor.
18 She's diligent, she's sometimes easy to work with, she's
19 cantankerous sometimes. But we get along and there's never
20 a time when she fails to do anything. So this case, I'm not
21 making any accusations that Mrs. Hall was derelict in any
22 respect.

23 THE COURT: No, she clearly was not.

24 MR. PRIDE: Right. And I just wanted to make sure that
25 I said that. The other thing, Judge, is the fact that they

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1 can't show the lack of availability on the part of the
2 defendant. You know when the Schmerber test was taken?
3 January of this year. This boy -- excuse me, this man has
4 been around, lives in this community, a brick mason, works
5 for just about everybody in town, in January is when the
6 Schmerber test was taken. And the Schmerber motion was
7 filed, which we consented to because I don't know how you
8 argue against Schmerber. But you put that in along with 11
9 years, that does not answer what I propose to the Court, and
10 that is the fact that a judge wants to know how and why, and
11 when you answer that how and why it's got to be reasonable.
12 And there is no reasonable explanation so far been offered
13 in this case. Thank you.

14 THE COURT: Okay. Thank you. Mr. Maxwell, can you
15 give us more enlightenment as to why this case languished
16 around for 11 years, or ten years before it was really put
17 together?

18 MR. MAXWELL: I can try. I agree that it is not
19 acceptable and that's something that we take -- that I fully
20 recognize and that it doesn't happen now, and there's
21 nothing even close to this on the docket as far as time
22 frame. It did -- there was a CSC grant, several people were
23 on it working CSC type cases over the years. This passed
24 through several different hands, including in my hands at
25 some point at least from -- when somebody would leave it

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1 would be on my docket until somebody else came in to start
2 looking at CSC cases. When Ms. Hall is referring to ILAB a
3 second ago, we don't get notice -- ILAB is a system that
4 SLED has that I can go on there now and I can type in a
5 defendant's name and I can look at -- if it's a drug
6 analysis I can see if the drug analysis is done or not and
7 print off the analysis. If it's a rape case, if there was a
8 rape kit, a DNA firearm analysis, whatever it is we can go
9 on there now and access it, print it out, see that it is
10 done and provide that as discovery and so forth. That
11 didn't exist in '11, or back when it happened. And I say --

12 THE COURT: Let me tell you something, Mr. Maxwell, I
13 tried cases for a long time, and granted, I was more of a
14 civil lawyer, but I had a checklist in my file that I
15 reviewed either biweekly or monthly to make sure that I had
16 doctor's depositions, I had witness depositions, I had
17 expert reports, et cetera, et cetera. I can't see how in
18 the world, even if you didn't get word back from SLED,
19 somebody didn't look up and say, "This file is sitting out
20 here just growing dust, we don't have it together." And I
21 have quite frankly not heard any reasonable explanation as
22 to why that occurred. I know that this may be a little bit
23 before your time but that causes me a lot of concern, I'm
24 telling you, and --

25 MR. MAXWELL: And I agree. And I stand here as

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1 embarrassed because I was here for the majority of all that
2 that time and trying to work against the backlog. That is
3 essentially all I can give you is that there was a backlog
4 at the time, not just the CSC cases but that was a glaring
5 issue of cases coming in faster than we could move them that
6 we never developed a good enough system to move them
7 efficiently. I think we fixed that now. It went through
8 several different hands, and somebody didn't look at the
9 file close enough and determine if there was an issue --
10 that there was this profile that was developed that we
11 didn't know about for -- our own fault that we didn't know
12 about until Ms. Hall diligently found this issue and worked
13 to get it up. And this was one of a lot cases in this --
14 that were kind of in this -- more than we liked that were in
15 this kind of limbo area of how to move. This is one that
16 came up that we can develop enough evidence to get to where
17 we are today. There were a lot of other cases that we
18 couldn't do that and we resolved them either by dismissal,
19 we resolved them either by reduced plea offers and so forth.
20 I worked CSC cases even though there was a CSC prosecutor
21 over the years, even though I didn't handle the majority of
22 them. And Ms. Hall, she did what we asked her to do and why
23 we brought her on board, to clean up this mess, and there
24 was a ton of them, a big stack of them and this was one of
25 them. They were able to determine that there was something

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1 that was not done years ago that should have been done and
2 we corrected it as soon as we could.

3 MS. HALL: If I could just address two other points
4 and, I mean, for what it's worth just to get it on the
5 record. And I understand what Mr. Pride is saying about the
6 fact that the defendant has an inherent 6th Amendment right
7 to a speedy trial. This was not asserted by the defendant
8 until November 1st of 2018.

9 THE COURT: Say that again.

10 MS. HALL: I understand what Mr. Pride is inferring
11 when he's saying that the defendant has an inherent 6th
12 Amendment right to a speedy trial. But I will tell the
13 Court that he did not assert that right until November 1st
14 of 2018, which was about, what, five months ago, or six
15 maybe now. And so that -- you know, in terms of that
16 request obviously it's been honored. And then the other
17 portion of that is -- and I'm going to go back to Hunsberger
18 for a just a second, because the prejudice to the defendant
19 in these kinds of cases I would submit to the Court is so
20 much different than it is in a murder case. CSC's, domestic
21 violence, nine times out of ten there are no witnesses by
22 design. So the fact that there are no absent witnesses, you
23 know, the State has been able to find the sexual assault
24 nurse examiner. Maggie Boyd, who is no longer with the
25 sheriff's department but is here as the investigator on the

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1 case. The victim who is, you know, she's been -- I think
2 she was 14 years old when this happened, so for us to think
3 that she was supposed to advocate for herself to get this to
4 trial I think is obviously not a possibility. But she has
5 been -- she's come forth and is willing to come to court and
6 testify and wants to have closure with regard to this
7 matter. I fail to see the prejudice to the defendant with
8 regard to this, with the exception of what the Court has
9 already stated is that he's just had the opportunity to not
10 address it and get on with his life. And I believe that
11 that has been addressed through the talks that we've had
12 over the course of the last couple of days, that the State
13 has taken that into account in trying to accommodate him.
14 But in terms of -- with regard to a plea. But in -- and the
15 State is sensitive to that fact. However, the State is also
16 sensitive to the victim's fact and the fact that there is a
17 victim that the State has been able to find witnesses, and
18 barring any witness that Mr. Pride can say is unavailable I
19 don't understand what the prejudice to the defendant would
20 be with -- with the exception of what the Court has already
21 stated and the memories of witnesses, which I have to state
22 to the Court that it had -- this case was well documented.
23 It was -- you know, we have incident reports, we have the --
24 all of the stuff from the sexual assault nurse examiner, the
25 report that came through, and we intend to enter that into

1 evidence. So with -- the lady -- my recollection is that
2 Ms. Waters had filled out a statement that she had written.
3 So there is documented things that allow people in terms of
4 memory to refer to, and I will -- and I will also submit
5 that Ms. Waters' memory, and I find this to be true with a
6 lot of sexual assault victims, is pretty clear with regard
7 to that.

8 THE COURT: Well, that remains to be seen. I've heard
9 all the argument I need to hear, I'm ready to get this case
10 started. I've heard all I want to hear. I'll let you put
11 it on the record as you want to, we're not going to drag
12 this case.

13 MR. PRIDE: No. I --

14 THE COURT: Okay. Would y'all bring the jury out,
15 please? I'm taking it under advisement. Bring the jury in.

16 (The jury returned to the courtroom.)

17 THE COURT: All right. Good morning, ladies and
18 gentlemen, thank you for all being here. Those of you -- I
19 think everybody requested a pad and pen, do you have them?
20 All right. Madam Clerk, would you swear the jury in please,
21 ma'am.

22 (The jury was sworn.)

23 THE COURT: All right. Ladies and gentlemen, as you
24 know we're about to start the case of the trial of the State
25 of South Carolina versus Darryl Eugene Coleman. I don't

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1 at anytime need anything, if you would do me a favor, write
2 it down, sign your name, give it to one of our bailiffs
3 right here, she'll bring it to me, I'll go over it with
4 counsel and we'll respond accordingly. Also, I have a
5 tendency, and you can ask my court reporters, to go long in
6 the courtroom. So if you need a break and I'm not giving
7 you one, raise your hand and say, "I need to break," okay?
8 If y'all need a break, get word to her, we'll take one. If
9 I call you back before you're ready to be brought back say,
10 "We need a few more minutes," okay? With that being said,
11 is there any additions or exceptions from the State to my
12 instructions?

13 MS. HALL: No, sir.

14 THE COURT: From the defense?

15 MR. PRIDE: None, Your Honor.

16 THE COURT: Does the defense intend to make an opening
17 Mr. Hemphill?

18 MR. PRIDE: I do, Your Honor.

19 THE COURT: Very good. Ms. Hall, are you ready for
20 opening statements?

21 MS. HALL: Yes, sir.

22 THE COURT: You may proceed.

23 MS. HALL: Thank you, Your Honor. Ladies and
24 gentlemen, as I stated to you when you were out there before
25 you were chosen, my name is Julie Hall, I represent the

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1 State and I am the prosecutor in this case. And His Honor
2 told you some things in overview -- and again anything that
3 I say that you hear from the witness stand, that's where you
4 take it from, and the law he gives you, that's where you
5 take it from. My thought is that we serve a ministerial
6 function and so we're just a vehicle by which you get all of
7 the information that you need in order to render a verdict.
8 But it helps somewhat to have an overview when you hear
9 about it, and it also helps to have somewhat of an overview
10 of the law so you know what you're looking for. The
11 defendant in this case is charged with criminal sexual
12 conduct with a minor in the second degree. This means that,
13 to boil it down, he was 37 -- the allegations are he was 37
14 years old when he had sex with a 14 year old. And that's
15 what the law states, is that for someone to engage in a
16 sexual battery with a minor who is between 11 and 14 that is
17 what makes it second degree in that the defendant was older
18 than the minor when this occurred and the State was
19 (inaudible.) So that's the overview and the law. And then
20 what you're going to hear from the witness stand is what
21 you -- the facts that you apply -- that's where you get the
22 facts that you apply to the law to render your verdict. So
23 the witnesses that the State is going to present, you'll
24 hear from the victim in the case. I'm going to tell you,
25 this is an old case, and you're going to hear about why.

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1 The allegations are that this occurred December 15th of
2 2008. And there's going to be evidence that -- or testimony
3 as to why this has taken so long to get here. But I would
4 submit that it is extremely important to the defendant and
5 it is extremely important to the victim nonetheless. You're
6 going to hear from the victim, who is obviously now ten
7 years older than she was when this occurred. You're also
8 going to hear from the investigator in the case who was with
9 the sheriff's department at the time who investigated the
10 case, the sexual assault nurse examiner who performed what
11 we call a rape kit on the victim the day after this
12 happened, and the evidence that she garnered from that by
13 way of swabbings, clothing and statements that she took as
14 part of her medical exam. Then you'll also hear from
15 scientists basically from the South Carolina Law Enforcement
16 Division who will come to tell you about what they learned
17 from the evidence that was given to them to review. So
18 that's pretty much it. It's going to be, in terms of the
19 State's portion of it, fairly short and straight forward.
20 Again, that does not in any way reflect on the importance of
21 it. I want to talk about reasonable doubt really quickly,
22 and His Honor told you about it. And they talk about the
23 defendant being cloaked in a cape of innocence and it's the
24 State's job, and we take that burden very seriously, to
25 present evidence that removes that cape piece by piece until

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1 the jury is convinced of the defendant's guilt beyond a
2 reasonable doubt. And again, as I stated before, we serve a
3 ministerial function. This is not about me, I would submit
4 it's not about Mr. Pride, this is about what happened ten
5 years ago, almost 11 years ago between the defendant and the
6 victim in this case. And I feel like once you -- or submit
7 to you that once you hear the evidence in the case you will
8 return a verdict of guilty. I appreciate your attention.

9 THE COURT: Mr. Pride?

10 MR. PRIDE: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. PRIDE: This alleged criminal act purportedly took
13 place on December 15th, 2008. That's exactly, according to
14 my math, 3,809 days ago. That's a long time. And you will
15 hear the Judge tell you that a defendant has a
16 constitutional right to a speedy trial. Eleven years ago,
17 that's not a speedy trial. And it's important that the
18 solicitor, the prosecutor in this case, not give you a
19 frivolous explanation of what took so long. It is important
20 that they gave you a reasonable explanation. A reasonable
21 one is one that can be justified and it can be understood.
22 If it's not reasonable then it's unreasonable. Now, I
23 represent the defendant in this case, and it's incumbent
24 upon me as a lawyer, as his lawyer, first of all to be
25 prepared, second of all to advocate in his behalf. Does

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1 that mean I go out and I make up witnesses or I make up a
2 defense? No. If I do that that's an ethical violation and
3 the Judge will take care of me for doing that, because it
4 would be inappropriate, it would not be proper. I want to
5 tell you something, when it comes to talking about the
6 responsibility of the State, proving a defendant guilty
7 beyond a reasonable doubt, imagine, ladies and gentlemen of
8 the jury, that if you were sitting there and we've all had
9 these puzzles where you've had to put them together and the
10 pieces have been all over the place and through time and
11 effort you put the puzzle together, and once you get all of
12 the pieces in place then what can you do? You can see the
13 picture that's in the puzzle. Now, the solicitor has a
14 responsibility of giving you all of the pieces and all of
15 you can see the picture. If she doesn't give you all of the
16 pieces to this puzzle, then there's not but one decision you
17 make and that's not guilty. That's incumbent upon the State
18 to prove a person's guilt beyond a reasonable doubt. We
19 don't require people to prove their innocence because that
20 could be impossible, and that's where the State -- that
21 burden rests firmly on the prosecutor in this case. Now, I
22 submit to you that when and if this act occurred on
23 December 15th that the victim was seen by persons who
24 examined her on the 16th. The defendant is a life long
25 resident, lives in Great Falls, Rocky Mount Road in Great

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1 Falls, South Carolina, a large family, been there all of his
2 life. He's a brick mason and an outstanding brick mason. I
3 will tell you a little more about his background before I
4 start. But the defendant in this case was not arrested
5 until the 31st of December. The alleged criminal act took
6 place on December the 15th. The alleged -- the defendant
7 was arrested on the 31st of December. Now, the defendant
8 was not required to give a BME specimen until January of
9 this year, January of this year. I submit to you, ladies
10 and gentlemen of the jury, it is your responsibility,
11 because this man's liberty is at jeopardy, it's in your
12 hands, to listen to the testimony. Because the testimony
13 coming to prove his guilt, first of all, has to be truthful,
14 second of all it has to be accurate, and third it has to be
15 consistent. If you hear a witness said something at one
16 time and all of the sudden they give a different version at
17 another time, you know that that witness lacks credibility.
18 And what you are trying to find in this case is the truth,
19 and you can't find the truth from somebody who doesn't have
20 credibility and is not telling you the truth, told something
21 one day and later on they told something another day. Now,
22 the second thing I want you to be mindful of is the kind of
23 investigation that took place in this case. I want you to
24 scrutinize it, look at it very good. You know, one thing
25 about you, I know you know the difference between right and

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1 wrong. You might not know a whole lot about the law, but
2 you know something about right and wrong. And as the Judge
3 said, you are to disregard the fact that you might have seen
4 cases on television, and he is right about that, but the one
5 thing I can tell you that you saw on television that is true
6 and that is the fact that up here we prosecute the guilty
7 and we protect the innocent. And you know whose
8 responsibility that is? It lies right over here. Please,
9 listen to the facts good. This is my client's day in court.
10 He's 46 years old. He's got four children. He's got a
11 daughter that's 11 years old, a son that's -- excuse me, let
12 me make sure of my facts of -- a son that's 26 years old,
13 works in Columbia. Another son is 23 years old that's not
14 working. He has a daughter 18 years old that's a freshman
15 in college. And he has an 11 year old daughter who is in
16 fourth grade. He has been present and in this community
17 before December the 15th and after December the 15th up
18 through today. I ask you, ladies and gentlemen of the jury,
19 to scrutinize and listen good to the witnesses. Listen for
20 inconsistencies. Listen for those things that are not
21 truthful. Listen at the kind of investigation that went on
22 by law enforcement. Please listen at it good. Thank you.
23 Thank you, Judge.

24 THE COURT: Call your first witness, please.

25 MS. HALL: The State calls **Witness [REDACTED]**. Your

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1 Honor, we need to approach.

2 (A bench conference was held.)

3 THE COURT: Madam Forelady, will you take the jury to
4 the jury room?

5 (The jury left the courtroom.)

6 THE COURT: All right. For the record before the first
7 witness was -- was even called to the stand Ms. Hall
8 approached me and Mr. Pride and said that he's going to
9 bring up a criminal record. We're not rushing to my desk
10 every time there's an objection. You can stand up like
11 you're supposed to on the record and make an objection. I'm
12 not going to tolerate that, okay? If you have an objection
13 you make it, but don't come running up here unless it's
14 something that needs to be outside the presence of the jury.
15 Objections are not things that need to be outside the
16 presence of the jury in my experience, okay? So if you have
17 an objection, he tries to bring it up, stand up and make it
18 at the time that it needs to be made. I don't have a motion
19 in limine before me, it hadn't been made and I just -- I
20 don't like cases proceeding on that basis. I don't mean to
21 scold you, it's just one of my preferences, all right?

22 MR. PRIDE: Yes, sir. Judge, I have an objection and I
23 understand that it may be --

24 THE COURT: Well, the objection needs to be made just
25 like I said, when it is the time to do it when you raise an

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1 objection.

2 MR. PRIDE: When I make this one I think you will
3 understand. Judge, you allowed them to have notebooks to
4 take notes. I thought it would be inappropriate for me to
5 stand up and object at that time, but I really have a
6 serious objection.

7 THE COURT: Well, that's noted for the record, it's
8 overruled, and they're going to have notes. I've done it in
9 every one of my trials so that's what they're going to do.
10 Could you bring the jury back out, please? I tell you what,
11 Mr. Pride, I will do that about the notepads, I'm going to
12 require that the jury leave them in the courtroom during
13 breaks, leave them in the jury room during lunch breaks when
14 they're out, and then in the jury room if we go into
15 tomorrow. They're not going to be able to in breaks be able
16 reviewed their notes, because that's somewhat like a
17 deliberation.

18 MR. PRIDE: Judge, respectfully, I don't want to get on
19 the wrong side of you, can I --

20 THE COURT: You ain't going to get on the wrong side.

21 MR. PRIDE: Can I state my grounds for objecting?

22 THE COURT: Certainly.

23 MR. PRIDE: I object to the jurors having notes because
24 some of them don't have notebooks, and it puts the ones that
25 have notebooks in a position to say, "Here, I wrote it down

Witness ■ - DIRECT

1 right here." And it will perhaps give more emphasis to
2 their argument during deliberations than it would for a
3 juror who did not take notes. Thank you, Judge.

4 THE COURT: For the record I've clarified that with the
5 jury, just because it appears in somebody's notes doesn't
6 mean it trumps somebody memory. And for the record all 14
7 have pads and pens, okay?

8 MR. PRIDE: Thank you, Judge.

9 THE COURT: Yes, sir.

10 MS. HALL: I guess I'm just having to go into it --
11 because the thing about the issue with me is the objection
12 is going come after --

13 THE COURT: Why do you want to argue with me?

14 MS. HALL: I'm not, I'm confused.

15 THE COURT: Yes, you are. And I asked you to do the
16 way that we've done it for 35 years and that is to raise the
17 objection when the objection needs to be raised. If you say
18 we need to go outside the presence of the jury I'll honor
19 that and do that. I don't like you to run up here and
20 whisper. First of all appellate court judges tell me it
21 doesn't appear on the record so nobody is protected with
22 that objection. So that's the way we're going to do it
23 today.

24 (The jury returned to the courtroom.)

25 THE COURT: All right. Thank you. And Madam Forelady,

Witness [REDACTED] - DIRECT

1 I neglected, and that's my fault, when we take a break,
2 unless we're going on lunch or overnight, if you the jurors
3 will leave your note pads here in the courtroom and not take
4 them back with you to the jury room unless we are going on a
5 lunch break, I don't want you back there reading on your
6 notes. I want this to be out here so you're not
7 deliberating, okay? Would you call your first witness,
8 please, ma'am.

9 MS. HALL: Thank you. **Witness** [REDACTED].

10 The witness, **Witness** [REDACTED], was first duly sworn and
11 Testified as follows:

12 DIRECT EXAMINATION

13 BY MS. HALL:

14 Q Ms. Waters, if you would please state your full name
15 for the record.

16 A **Witness** [REDACTED].

17 Q And what is your date of birth?

18 A **Witness** [REDACTED].

19 Q Where do you live?

20 A Great Falls, South Carolina.

21 Q In Great Falls, South Carolina?

22 A Yeah.

23 Q Do you live in Chester County or in --

24 A Chester County.

25 Q All right. Are you acquainted with the defendant in

Witness

- DIRECT

1 this case, Darryl Coleman?

2 A Yes.

3 Q How do you know him?

4 A He raped me.

5 Q How did you know him when you were 14 -- when you were
6 14 years old, how did you know him?

7 A I didn't know him.

8 Q Okay. Well, how -- did you come into contact with him
9 on December the 15th 2008?

10 A My cousin and her boyfriend.

11 Q Your cousin and your boyfriend knew him?

12 A And her boyfriend. Well, my cousin, Catherine, and her
13 boyfriend, Hoover.

14 Q Do you keep in touch with that cousin anymore?

15 A No.

16 Q Do you know where she is?

17 A No.

18 Q And what about the boyfriend?

19 A No, I don't, no, ma'am.

20 Q On December the 15th of 2008, were you with your cousin
21 and her boyfriend that day?

22 A Yes, ma'am.

23 Q And how did you come into contact that day with the
24 defendant in this case?

25 A He had called my cousin's boyfriend, Hoover, to go

Witness

- DIRECT

1 fishing.

2 Q Okay. So he called -- the defendant called your
3 cousin's boyfriend. Were you there with your cousin and the
4 boyfriend at the time that the defendant called?

5 A Yes, ma'am, we was at my house.

6 Q In Chester County?

7 A Yes, ma'am.

8 Q And so did you -- did the defendant come to the house
9 or did you leave the house and go --

10 A We left and went to his house.

11 Q When you say we left, who was with you?

12 A Me and my cousin, Catherine, and her boyfriend, Hoover.

13 Q And you went to -- when you say his house, whose house
14 are you talking about?

15 A Darryl Coleman.

16 Q Okay. Had you ever been to that house before?

17 A No, ma'am.

18 Q Had you ever met him before?

19 A No, ma'am.

20 Q Did you know him from around town?

21 A Yes, ma'am.

22 Q Okay. Great Falls is pretty small, isn't it?

23 A Yes.

24 Q And so had you seen him around?

25 A I seen him at stores a lot of times. Because Great

Witness ■ - DIRECT

1 Falls is just so little you always run into him.

2 Q Did you know his name?

3 A No, not then.

4 Q Okay. And who were you living with at the time?

5 A My mom and my dad.

6 Q Okay. And so you say that you were with your cousin
7 and her boyfriend, and that you went over to the defendant's
8 house; is that right?

9 A Yes, ma'am.

10 Q What happened when you got there?

11 A He was talking to my --

12 Q And I need you -- when you say he we've got to keep
13 it -- because the he part and the pronoun part is going to
14 be confusing because you know what you're talking about.
15 But just try to use the names if you can, okay?

16 A Yes, ma'am. Darryl Coleman was talking to my cousin's
17 boyfriend, Catherine, and he was talking to Hoover on the
18 phone. They were talking about fishing or something --

19 MR. PRIDE: Objection, that would be hearsay.

20 THE COURT: The basis of what the other person said I
21 would grant it. On the basis of what the defendant said I
22 would deny it. Rephrase your question.

23 Q So without saying what anybody else said on the phone
24 because you could only hear one of end of the conversation,
25 right? That would be the cousin's boyfriend's end of the

Witness ■ - DIRECT

1 conversation.

2 A Yes, ma'am.

3 Q So without saying what he said, can you tell us what
4 you did in response to that telephone call?

5 A I don't understand what you mean.

6 Q Okay. Hold on. Without saying -- it's okay to say
7 what the defendant said but not okay to say what the
8 boyfriend or your cousin said, okay. So if you could just
9 tell -- you got -- the phone call came. And did you and
10 your cousin -- without saying what they said, did y'all talk
11 about doing something then?

12 A They asked me if I he wanted to go fishing.

13 Q Did you leave the house?

14 A Yeah. We left and went to Darryl Coleman's house.

15 Q Did you think you were going fishing?

16 A Yes.

17 Q So you get to Darryl Coleman's house. And did you go
18 inside?

19 A Yes.

20 Q Okay.

21 MS. HALL: Can I get her some water?

22 THE COURT: Ma'am, do you need a break?

23 THE WITNESS: Yes, please.

24 THE COURT: Madam Forelady, we're going to take a quick
25 break and we'll bring you back here in just a few minutes,

Witness [REDACTED] - DIRECT

1 if you'll leave your pads in the courtroom.

2 (The jury left the courtroom.)

3 THE COURT: Ms. Waters, I'm going to let you stand down
4 for a minute and kind of collect yourself. Don't speak to
5 anybody about your testimony, okay? While we're here and
6 giving her a minute to kind of calm down a little bit, you
7 had raised an objection and I cut you off, and I know you
8 didn't like it but that's okay, that's our jobs. But she
9 has some type of criminal record that you're going to try to
10 hit on; is that right?

11 MR. PRIDE: I'm considering it. I don't know -- I
12 don't think you're going to let me do it.

13 MS. HALL: And that was my problem when I was so
14 confused. Obviously if you're going to allow it I've got to
15 bring it up before we get to cross, so --

16 THE COURT: Let me do this, once we get through her
17 direct -- I want to have time to review this case, maybe
18 just do it now while she's getting her thoughts together,
19 and let me see. Because rules were articulated pretty
20 clearly by the supreme court about distinction between the
21 witness, the accused and what you can and cannot go into
22 based on the distinction between those two. So let's take a
23 break.

24 (A break was taken.)

25 THE COURT: All right. What is the charge that you

Witness [REDACTED] - DIRECT

1 wish to impeach the witness on?

2 MR. PRIDE: On possession with intent to distribute
3 cocaine, an offense which she is presently on probation for.
4 Judge, I don't want to go too far, but as I read that case
5 it doesn't bring a lot to the table. It still boils down to
6 the Court having discretion to determine the admissibility.

7 THE COURT: And we're talking about the Robinson case
8 by the supreme just a week ago. I think it's pretty
9 descriptive of what we need to do. And it's on Ms. Hall
10 under this scenario to basically -- the burden is on you to
11 make sure that it doesn't come in, okay? That's the way I
12 read the case. But it says to me since this is a witness,
13 and everybody in here would agree that PWID meth or
14 whatever, cocaine, is punishable by more than a year. So
15 the standard would be under 609A1, A1, and it says evidence
16 that a witness other than the accused shall be admitted
17 subject to 403 if the crime was punishable by death or
18 imprisonment in excess of more than a year. And then under
19 403 it says may be excluded if its probative value
20 substantially -- is substantially outweighed by the danger,
21 unfair prejudice, confusion of the issues, misleading the
22 jury, undue delay, waste of time and being cumulative. And
23 it says under the Robinson case that places the burden on
24 the person who opposes its admissibility to establish its
25 inadmissibility under 403, and in doing so we look at the

Witness ■ - DIRECT

1 Colf factors, which is the impeachment value of the prior
2 crime. The point in time of the conviction in the witness'
3 subsequent history. Similar past -- similarity between the
4 past crime and the crime charged, which is really not
5 relevant to this person. The importance of the defendant's
6 testimony, which is not relevant to this person. And the
7 centrality of credibility issue in this case. So the bottom
8 line is, you're right, Mr. Pride, that it is discretionary,
9 but I have to go through analysis on the record. I can't
10 just say them, I have to do an analysis of those. So Ms.
11 Hall, first looking at those five factors, do you have those
12 before you?

13 MS. HALL: Yes.

14 THE COURT: Are you ready to address those?

15 MS. HALL: Yes.

16 THE COURT: Okay. I'll be glad it hear from you.

17 MS. HALL: All right. Well, she was convicted again
18 and apparently just put on probation within the last year
19 and a half, I believe. So with regard to the point in time,
20 you know, the State would submit that that is -- this
21 incident occurred -- all of the things that happened with
22 regard to this case were far before she was convicted and
23 put on probation for any drug, for possession with intent to
24 distribute crack cocaine or meth, I believe it was cocaine
25 base. But regardless just possession with intent to

Witness [REDACTED] - DIRECT

1 distribute, it really doesn't have any bearing on her
2 honesty, it really doesn't have any bearing on her
3 credibility. The State's position is that it really would
4 confuse -- all it is is just to create confusion and to
5 basically comment on things that have happened far, far
6 after this initial incident. And so the State would submit
7 that that is much more prejudicial than it is probative in
8 this situation. First and foremost for the point in time in
9 which the conviction occurred with regard to -- as compared
10 to when the actual incident occurred, and then the substance
11 of the conviction itself really doesn't have anything to do
12 with dishonesty or anything. It just has to do with the
13 fact that she committed a crime.

14 THE COURT: And that's a different standard. There's
15 no balancing test on that. All right. Mr. Pride --

16 MR. PRIDE: Yes, sir.

17 THE COURT: Tell me why that you think that it is
18 admissible if you don't mind, please, sir.

19 MR. PRIDE: The reason why I think it's admissible,
20 Your Honor, is that we know what happens when people use
21 drugs, it affects their memory, it certainly goes to their
22 credibility. And this is something -- not something, this
23 conviction occurred in 2017, this young lady is still on
24 probation for it. And I think that to not allow me to go
25 into her past criminal record takes the argument away from

Witness ■ - DIRECT

1 me in closing, "Can you really rely on somebody that uses
2 drugs and her memory and her accuracy?" You take that away
3 from me if you don't allow me to present that. Thank you,
4 Judge.

5 THE COURT: Yes, sir, you're welcome. Let me just say
6 this about this case, about this conviction -- that's the
7 only one she has on her record; is that right?

8 MS. HALL: It is not. It's the only --

9 THE COURT: Well, that's the only one you're seeking to
10 impeach her with, let's say that.

11 MR. PRIDE: That's the only one that would be
12 impeachable. She does have a record but that's the only one
13 that I would raise.

14 THE COURT: First this alleged event took place 11
15 years ago, we've been over that all morning long, and this
16 conviction was -- that was in 2009. It's alleged -- well,
17 not alleged because she pled to it, was in 2017. I mean,
18 that's a long period of time. I don't see that it has any
19 impeachment value quite frankly, Mr. Pride, other than to
20 say, "You are not a good person. You're not a good person."
21 I don't believe that just because somebody had that charge
22 it calls into question whether their memory has been
23 affected, whether they have any kind of lack of the ability
24 to recall things that happened 11 years ago. She hadn't
25 picked up any of the charges from what I hear or from what I

Witness [REDACTED] - DIRECT

1 can tell from what y'all are saying, so the impeachment
2 value is very low in this case. I think that credibility on
3 the other hand to everybody in this case, because it's going
4 to be a she said/he said type of case if it's like other
5 ones I've had in the past, right now I don't have anything
6 before me because we hadn't got out of the gate yet. But it
7 seems to me that credibility is going to be a big part of
8 this case and so that is a huge factor. And then to allow
9 this crime that has no relevance or correlation back to an
10 alleged criminal sexual conduct event that happened 11 years
11 ago, I think, falls squarely under 403, that the probative
12 value is greatly outweighed by the danger of undue prejudice
13 to the witness and to the State and therefore I'm not going
14 to allow it in. And I note your objection for the record,
15 please.

16 MR. PRIDE: Please don't let them get the benefit in
17 the 11 years. Now in this case they're getting of the fact
18 that it was a --

19 THE COURT: I understand that, it's kind of unfair.
20 Now, are we ready to proceed? Have you talked to your
21 witness --

22 (Break in proceedings.)

23 THE COURT: Ms. Waters, would you mind coming around,
24 please? Ms. Waters, if at anytime you need a break you just
25 signal me and we'll stop anytime you need a break. Ms.

Witness ■ - DIRECT

1 Hall, are you ready?

2 MS. HALL: Yes, sir.

3 THE COURT: Mr. Pride, are you ready?

4 MR. PRIDE: I am, Your Honor.

5 (The jury returned to the courtroom.)

6 THE COURT: All right. Ms. Hall?

7 BY MS. HALL:

8 Q I think we left off where you had gone to the
9 defendant's house and you were with your cousin and her
10 boyfriend. And then at some point, did your cousin and her
11 boyfriend leave you there?

12 A Yes, ma'am.

13 Q And when your cousin and her boyfriend left you there,
14 who was in the house at that time?

15 A Just me and Darryl.

16 Q What were you doing when they left you?

17 A I was sitting on the couch watching TV, or in a chair
18 watching TV.

19 Q In the living room?

20 A Yes, ma'am.

21 Q On a little chair or on a couch?

22 A It was on a chair.

23 Q And just the two of you were in the house.

24 A Yes, ma'am.

25 Q Was there any explanation from her cousin or her

Witness ■ - DIRECT

1 boyfriend as to why they were leaving you there?

2 A No, ma'am.

3 Q Did you know they were leaving?

4 A No, ma'am.

5 Q Were you locked into the television or did you just --
6 did -- there's no conversation?

7 A I was watching TV, wasn't really thinking.

8 Q And so at what point did you realize they were gone?

9 A When he told me to come to the bedroom.

10 Q Who is he?

11 A Darryl Coleman.

12 Q When Darryl Coleman told you to come to the bedroom,
13 how did you realize that your cousin and her boyfriend
14 weren't there anymore?

15 A I had asked him where they went.

16 Q And what did he tell you?

17 A Darryl called me and told me that they had left.

18 Q Okay. All right. And you stated just a second ago
19 that he asked you to go to the bedroom.

20 A Yes, ma'am.

21 Q Okay. Was this a house that you were in?

22 A It was a trailer.

23 Q Okay. And did you go -- did he give any explanation as
24 to why he wanted you to go into bedroom?

25 A We were going in there to watch TV.

Witness ■ - DIRECT

1 Q Was there a TV in the bedroom and one in the living
2 room?

3 A Yes, ma'am.

4 Q So did you get up and go into the bedroom?

5 A Yes, ma'am.

6 Q And what did you do when you got in there?

7 A I went in there and sat on the end of the bed.

8 Q And was the television on when you got in there?

9 A Yes, ma'am.

10 Q Okay. And you -- and so when you sat on the end of the
11 bed, what were you doing?

12 A Just started watching TV.

13 Q Where was Mr. Coleman while this was going on?

14 A He was in the bathroom.

15 Q At what point did he go into the bathroom?

16 A After we went in there and into the bedroom, after we
17 went into the bedroom.

18 Q So you sat on the bed and he goes to the bathroom.

19 A Yes, ma'am.

20 Q And you said you were watching TV.

21 A Yes, ma'am.

22 Q At some point did he come out of the bathroom?

23 A Yes, ma'am.

24 Q And do you remember seeing him come out of the
25 bathroom?

Witness

- DIRECT

1 A Yes, ma'am. He didn't have no clothes on when he come
2 out of the bathroom.

3 Q He had taken his clothes off?

4 A Yes, ma'am.

5 Q Where did he go? Took all of his clothes or part of
6 his clothes?

7 A No, ma'am. Just his pants and stuff, pants and boxers
8 and stuff was off.

9 Q And so where did you go when -- did he come toward you
10 or did he go somewhere else?

11 A Come right towards me.

12 Q Did he say anything to you?

13 A Yes. He had told me to take my clothes off.

14 Q What did you do?

15 A I told him I didn't want to, and he started taking my
16 clothes off and pushed me backwards.

17 Q All right. And you said that he pushed you backwards.
18 Did you fall off the bed or were you on the bed?

19 A I was already on the bed. I was sitting on the bed
20 watching TV.

21 Q Okay. So when he pushed you backwards you stayed on
22 the bed.

23 A Yes, ma'am.

24 Q And did he say anything else to you at that point?

25 A No.

Witness [REDACTED] - DIRECT

- 1 Q What did he do?
- 2 A He stuck his thing inside of me.
- 3 Q When you say his thing, what do you mean?
- 4 A His dick.
- 5 Q His penis?
- 6 A Yes, ma'am.
- 7 Q And did you -- what did you do --
- 8 A I laid down --
- 9 Q -- or say.
- 10 A I asked him to stop and he didn't stop.
- 11 Q All right. And do you know how what --
- 12 A I had to cover my head up.
- 13 Q You covered your head up?
- 14 A Yeah, and turned my head.
- 15 Q Okay. And at some point did he stop?
- 16 A Yes, and got off of me.
- 17 Q He was on top of you?
- 18 A Yes, ma'am.
- 19 Q What made him stop, if you know?
- 20 A I don't know.
- 21 Q Okay. So he got off of you, and where did he go?
- 22 A To the bathroom.
- 23 Q Okay. And at some point did he say anything else to
- 24 you?
- 25 A Yeah. He told me to go to the bathroom and wash off.

Witness

- DIRECT

1 Q At that point did you have your clothes on?

2 A No, my clothes were still off.

3 Q Your clothes were still off?

4 A Yes, ma'am.

5 Q Were all of your clothes off?

6 A No, just my pants.

7 Q So he told you to go to the bathroom and wash up and
8 you --

9 A My pants and my panties was off.

10 Q And so did you go in the bathroom and clean yourself
11 off?

12 A Yes, ma'am.

13 Q What did you use to clean --

14 A I used the bathroom first. He peed and walked out and
15 then I cleaned myself off with a rag.

16 Q And did you -- when he came back out of the bathroom --
17 I'm assuming you came back out of the bathroom, right?

18 A Yes, ma'am.

19 Q What did you do then?

20 A I went back and sat in the living room.

21 Q At any point in time did you put your clothes back on?

22 A Yes, ma'am. When I come out of the bathroom and after
23 I went into the bedroom -- in the living room, because my
24 clothes was in bedroom where we was at.

25 Q All right. And do you remember what you were wearing?

Witness

- DIRECT

1 A No, I can't remember.

2 Q Okay. So you came back out -- you put the clothes on,
3 you said you went back out in the living room. Had he said
4 anything else to you at this point?

5 A Yes. That's when we left, when he told me to come on,
6 we was leaving.

7 Q And that was all he said to you?

8 A Yes, ma'am.

9 Q And did you get in the car with him?

10 A Yes, ma'am.

11 Q And where did you go?

12 A He dropped me off at the top of my road and then left.

13 Q So he dropped you off at the top of your road?

14 A And my mama, my daddy, my uncle and my nephew was
15 coming up the road.

16 Q Can you describe for the jury what -- just kind of give
17 us an outline of like what -- was it a dead-end road? Was
18 it a road that went through?

19 A It's a dead end. It's only one way in and one way out.
20 So he dropped me off at the stop sign, and my mama and my
21 dad and my uncle and them was coming up the road in their
22 truck, and I was walking down the road and I had got in the
23 truck and told my dad what was going on. By that time he
24 was going up the road to --

25 Q Who is he?

Witness ■ - DIRECT

1 A Darryl Coleman was going up the road. And my uncle and
2 my dad followed behind him and was shooting the gun and
3 stuff at him, because I had told my daddy and them what
4 happened. And he sped up -- he sped up and he took down a
5 dead end road and that's when we lost him.

6 Q When you say he sped up, are you talking about --

7 A Darryl Coleman.

8 Q And were you in the car with them, your uncle and your
9 dad, the whole time all of this was going on?

10 A Yes, ma'am.

11 Q And once you -- once he got away, where did y'all go?

12 A To the doctor.

13 Q At any point in time did you go back to your house
14 first?

15 A Yeah, and got my mom.

16 Q You went to your house and got your mom. And then --

17 A My mom and dad took me to the doctor.

18 Q And you were 14, right?

19 A Yes.

20 Q And do you know if they had called the police or
21 anything?

22 A I don't know.

23 Q But you remember going to the doctor?

24 A Yeah.

25 Q Okay. And where are your parents now?

Witness ■ - DIRECT

1 A They're dead.

2 Q Both of them?

3 A Yes, ma'am.

4 MS. HALL: I'm sorry, I didn't hear the question or the
5 answer.

6 THE COURT: She said where are your parents now and the
7 response was they're dead.

8 MR. PRIDE: Thank you.

9 Q And just for a point of clarification, I know this is
10 hard, when you said he put his penis inside of you, did he
11 insert it in your vagina or did he insert anally? Can you
12 tell the jury where --

13 A It was vagina.

14 Q Okay. At that point in time had you ever had sexual
15 intercourse?

16 A No.

17 Q So you were a virgin.

18 A Yes, ma'am.

19 Q And just for the purposes of the record, do you see the
20 man who did this to you in the courtroom today?

21 A Yes, ma'am.

22 Q Can you point him out for the jury, please?

23 A (Witness points to defendant.)

24 Q Thank you.

25 MS. HALL: Please let the record reflect that she's

Witness [REDACTED] - CROSS

1 pointing to the defendant in the case, Darryl Coleman.

2 THE COURT: The record so reflects.

3 MR. PRIDE: Please answer any questions Mr. Pride may
4 have, okay?

5 THE COURT: Cross examination.

6 CROSS EXAMINATION

7 BY MR. PRIDE:

8 Q Ms. Walters (sic), how old are you now?

9 A Twenty-four.

10 Q And where do you live now?

11 A In Great Falls.

12 Q Who do you live with?

13 A My brother, my little brother.

14 Q And do you work?

15 A No.

16 Q How far did you go in school?

17 A The 11th grade.

18 Q Do you think your memory is better today than it was
19 back in 2008?

20 A Yes. Because I done lived with this all of my life.

21 Q You have lived with it.

22 A Yes.

23 Q So you're certain that you recall the events today just
24 as you did back in 2008?

25 A I sure do.

Witness [REDACTED] - CROSS

1 Q Do you recall whether or not you talked with Mrs. Boyd
2 here?

3 A Yes, I did.

4 Q You remember her?

5 A Yes, I do.

6 Q Who did she work for?

7 A She worked for the place that done the rape test on me.

8 Q Okay. Well, the physician didn't do the rape -- you
9 say your mom --

10 A I seen her. I don't remember exactly where I seen her
11 at but I know -- I think it was at the hospital. She was
12 the one that did the rape test and everything on me.

13 Q So the doctor didn't do the rape case.

14 A I'm not sure. I think she was the one.

15 Q Okay. And did she talk to you -- did she say, Mrs.
16 Walters (sic) what happened?

17 A Yes, she talked to me.

18 Q And did you give her a statement?

19 A Yes, sir.

20 Q Did she give you an opportunity to read that statement
21 back to see whether or not this was right or wrong what you
22 had said?

23 A Sir, this has been so long ago I'm not sure.

24 Q Okay. But you do recall that you gave her a statement.

25 A Yes, sir.

Witness [REDACTED] - CROSS

1 Q Okay. And did you also give a statement to the doctor?

2 A Yes, sir.

3 Q And would I be correct by saying that since 2008 you
4 have been available and right here in this community up
5 until today, is that correct? You haven't been anywhere,
6 you've been here the whole time, haven't you?

7 A I don't understand what you mean.

8 Q In other words you were here in 2008.

9 A Yes.

10 Q And you didn't go anywhere and you were ready. Just
11 like you came to trial today, if they would have called you
12 between those two times you would have been ready, wouldn't
13 you?

14 A Yes, sir.

15 Q All right. Now, what is your cousin's name?

16 A Catherine Flowers.

17 Q Flowers?

18 A Yes.

19 Q And what was her boyfriend's name?

20 A Javaris Hoover.

21 Q I'm sorry, speak a little louder.

22 A Javaris Hoover.

23 Q Javon?

24 A Javaris.

25 Q What's the last time?

Witness [REDACTED] - CROSS

- 1 A Hoover.
- 2 Q Hoover. And you rode with them down to where Darryl
- 3 lived?
- 4 A Yes, sir.
- 5 Q What kind of car were they driving in?
- 6 A They were in a black Honda.
- 7 Q They were in a black car?
- 8 A Yes.
- 9 Q Okay. And did Hoover and Flowers go in Darryl's house
- 10 along with you?
- 11 A Yes, sir.
- 12 Q And all of you all were sitting in where?
- 13 A In the living room.
- 14 Q In the living room.
- 15 A Yes, sir.
- 16 Q And you didn't see them leave?
- 17 A No.
- 18 Q You didn't see them leave because you were in the
- 19 bedroom?
- 20 A No. I was in the living room watching TV at that time.
- 21 Q And it was a trailer, too.
- 22 A Yes.
- 23 Q But you didn't see them when they left.
- 24 A No.
- 25 Q All right. Do you think your memory was better in 2008

Witness [REDACTED] - CROSS

1 regarding these events that you have testified about or is
2 it better today?

3 A It's still the same.

4 Q Still the same. And would I be correct that you didn't
5 go fishing?

6 A No.

7 Q And so far as you know your cousin and her boyfriend
8 didn't go fishing.

9 A I don't know what they did.

10 Q And Darryl did not go fishing.

11 A No.

12 Q Was there anybody else in that mobile home besides your
13 cousin, her boyfriend, you and Darryl?

14 A I don't think so.

15 Q And prior to December the 15th had you known Darryl?

16 A No.

17 Q You had no contact with him?

18 A None.

19 MR. PRIDE: All right. Thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: Redirect?

22 MS. HALL: Your Honor, I don't have anything on
23 redirect. We would ask if she wishes to leave that she --

24 THE COURT: I'm sorry?

25 MS. HALL: I said I don't have anything on redirect. I

Witness [REDACTED] - CROSS

1 would ask that if she chooses to leave that she be allowed
2 to do so with the understanding we could get her back if we
3 need to.

4 MR. PRIDE: I would object to that.

5 THE COURT: Just one second. Madam Forelady, let's go
6 back to the jury room right quick, okay?

7 (The jury left the courtroom.)

8 THE COURT: You have an objection to her being excused?

9 MR. PRIDE: I believe in extending professional
10 courtesy, but in this case she's the victim and I'll have
11 witnesses on the stand after that to say, "Can you recognize
12 her out here?" If she's gone they won't be able to identify
13 her. I think she should -- I know this is a horrible
14 experience, and at some point in time I think I'll be able
15 to say, "Yes, I'm finished, now you can let her go." But
16 right now, Judge, I object to it.

17 THE COURT: Ms. Waters, if you would, would you remain
18 in the courtroom? Do we have somebody who is sitting with
19 her? If she's needed for identification or they need to
20 identify her. Now, if this is a ploy to give her a hard
21 time it's not going to be well received, okay?

22 MR. PRIDE: Well, Judge, I don't think -- on my cross
23 examination I didn't give her a hard time.

24 THE COURT: No, you didn't. I thought you were very
25 gentlemanly.

Witness [REDACTED] - CROSS

1 MS. HALL: Can I respond to this? I don't know who he
2 needs to identify her. The only people who need to identify
3 her are currently in the courtroom. That only people who
4 would have ever come into contact with her who are not
5 scientists, Robin Baker, who is the same nurse who did the
6 exam on her, and Maggie Boyd who is the person who
7 interviewed her.

8 THE COURT: I don't know either, Ms. Waters (sic.) For
9 the time being I am going to ask her to stay. As soon as
10 she can go I'll let her go. I know she has rights, so does
11 the defendant, and sometimes we just have to balance them.
12 Now, I asked Mr. Pride whether this is just a ploy, he
13 assures me it is not. I'll remind him that it would not be
14 well received if it was and he tells me it's not so that's
15 the only thing I can go by. Would you bring the jury in?

16 (The jury return to the courtroom.)

17 THE COURT: Ms. Hall, would you call your next witness,
18 please, ma'am?

19 The witness, ROBIN BAKER, was first duly sworn and
20 Testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HALL:

23 Q Your name is Robin Baker?

24 A Yes, ma'am.

25 Q What is your occupation?

ROBIN BAKER - DIRECT

1 A I'm an emergency room nurse.

2 Q And have you been -- how long have you been a nurse?

3 A Since 2001.

4 Q In 2008 what was your occupation?

5 A I was a sexual assault nurse examiner and an emergency
6 room nurse.

7 Q Okay. And in your occupation as a sexual assault nurse
8 examiner, could you please explain what your training is in
9 terms of getting your nursing degree and then going on to
10 become an RN as a sexual assault nurse examiner?

11 A I went four years to get a Bachelors Degree in Nursing.
12 I passed what they called NCLEX, and then I became a
13 registered nurse so that I could practice. After that I
14 decided to go into sexual assaults. It took a little over a
15 year for the certification. I had to do a year of
16 clinicals. I had to do public exams. And I was taught how
17 to use a colposcope, which is a piece of medical equipment
18 that shows or helps to magnify the female or the male
19 genitalia.

20 Q Okay. So you take -- that took about a year?

21 A Yes, ma'am.

22 Q All right. And at some point did you get a
23 certification as a sexual assault nurse examiner?

24 A Yes, ma'am, after that.

25 Q Prior to this young lady coming to you or even since

ROBIN BAKER - DIRECT

1 then, how many sexual assault nurse -- how many exams have
2 you done as a sexual assault nurse examiner?

3 A Probably over 75.

4 Q Did you have to take a test in order to be able to
5 come -- to get your certification?

6 A Yes, ma'am.

7 Q All right. And did you have to -- how long were you a
8 sexual assault nurse examiner?

9 A Probably about seven years.

10 Q Okay. And during that time, did you have to go to
11 continuing training or continuing education in order to
12 maintain your certification?

13 A Yes, ma'am.

14 Q What did that consist you?

15 A I had gone to conferences. I lectured at conferences,
16 going in to do what we call clinical education, taking tests
17 on those.

18 Q And all of that was with regard to the sexual assault
19 nurse examiner, and that was in addition to your regular
20 RN --

21 A Yes, ma'am.

22 Q -- continuing education?

23 A Yes, ma'am.

24 MS. HALL: Your Honor, at this time the State would
25 offer Robin Baker as an expert in sexual assault

ROBIN BAKER - DIRECT

1 examination.

2 THE COURT: Any voir dire?

3 MR. PRIDE: None.

4 THE COURT: Do you stipulate to her expertise?

5 MR. PRIDE: I don't stipulate but I don't object.

6 THE COURT: All right. Madam Forelady, ladies and
7 gentlemen of the jury, normally witnesses are limited to
8 what they can testify to to what they saw, they felt, they
9 heard, it's like your senses in a way. However, they're not
10 allowed to give their opinions unless they're qualified as
11 an expert. And a person because of their education or
12 experience or a combination of those who becomes qualified
13 in an area, and that area would be helpful to you, the jury,
14 to understand the facts of the case, upon being qualified
15 they're allowed to give their opinions. I am going to find
16 that this witness is qualified in the area of sexual assault
17 examination, she'll be allowed to give her opinions in that
18 area. I'll tell you further that expert opinion is like any
19 other testimony you will hear in this case, you may accept
20 it, you may reject it or give it as much weight as you think
21 it deserves. All right. Ms. Hall?

22 MS. HALL: Thank you.

23 Q In your duties as a sexual nurse examiner back on
24 December the 16th of 2018 (sic) did you have an occasion to
25 examine **Witness** [REDACTED], the victim in this case?

ROBIN BAKER - DIRECT

1 A Yes, ma'am, I did.

2 Q All right. I'm going to show you what's been marked as
3 State's Exhibit 3. Can you tell the Court what that is?

4 A This is my documentation from the 12th -- December the
5 16th of 2008 where I did the forensic exam on **Witness**.

6 Q Is this a record that you kept in the regular ordinary
7 course of your exam as you're doing them?

8 A Yes, ma'am. This is a computerized charting program,
9 and it is kept open, and I asked the questions that are on
10 the chart.

11 Q All right. So when a person comes in for a sexual
12 assault exam, can you describe the procedure -- like just in
13 terms of getting them into the room and then what goes on,
14 and then if you could relate back to your form as you do
15 this.

16 A Okay. The first thing that happens is they come into
17 what we call triage. They are asked about their complaint,
18 and if it's a sexual assault then they -- at that time they
19 were placed in a separate room. A physician would come into
20 that room, and it was our interview room. It had no
21 equipment in it other than just my computer and some chairs
22 and a couch. The doctor came in before I did any type of
23 exam on her to make sure that there was no emergent
24 situation that had to be handled. After that I usually ask,
25 especially if it's a younger person, what we would call a

ROBIN BAKER - DIRECT

1 pediatric patient, if they want their parents with them or
2 if they want to leave. I do say that a lot of times, "Even
3 though you want your mother here you may not want to tell me
4 everything." But she asked that her mother stay because
5 that's what's on the chart, that her mother -- or that there
6 was a family member there. And I do remember it was a
7 female and if I'm not mistaken it was her mother.

8 Q So you're in this room and you've got the computer.
9 What is the person that you're going to examine, are they in
10 their clothing that they come in at this point or have they
11 changed?

12 A No. It's whatever she comes into the hospital with.

13 Q Go ahead. If you could continue to describe what the
14 protocol is and how you thought the -- and the questions
15 that you ask.

16 A I ask her name, I get her social security, age, date of
17 birth, gender, ethnicity. I have to document the date of
18 arrival, time of arrival and the entry date that I start
19 charting.

20 Q What date and time did she arrive?

21 A December 16th, 2008. Time of arrival was 1:36 in the
22 afternoon.

23 Q All right. Go ahead.

24 A She arrived with family. The home address was 3039
25 (inaudible) Great Falls. And contact information, telephone

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1 number. The agency that was with her at the time was
2 Fairfield County Sheriff's Department. The questions were
3 on here about forensic exam requested. Same kit used. And
4 both of those answers were yes.

5 Q I'm going to get you to stop real quick. And I'm going
6 to show you what's been marked as State's Exhibit 6.

7 MR. PRIDE: Judge, I object to this. Do you want me to
8 tell you my objection?

9 THE COURT: Let me just remind y'all that these are the
10 lawyer's job to object. You are not to make any inferences
11 from objections and they are not to be subject to your
12 deliberations in the case. But I am going to ask you to
13 leave your notebooks here and go back to the jury room,
14 please.

15 (The jury left the courtroom.)

16 MR. PRIDE: Judge, I don't mean to impress you, but
17 this is my 54th year being a lawyer, I have never tried a
18 rape case where the kit comes to court unsealed. The kit is
19 opened in the courtroom. This -- can I give you this kit to
20 look at? The seal is broken on it.

21 THE COURT: I can see that.

22 MR. PRIDE: But look at the attempt on the other side,
23 Judge, where the seal is broken and an attempt to put some
24 plastic tape. I mean, I object to that. That's not the way
25 it goes, Judge. That's what keeps the --

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1 THE COURT: Go ahead. I was just saying -- hang on.

2 MR. PRIDE: Judge, that's what keeps the credibility of
3 the evidence.

4 THE COURT: Well let me ask you this, Mr. Pride, it
5 would seem to me -- and I agree with you that usually when
6 we see things they're taped up, not always because they've
7 been tested and then but they're put in another seal, but
8 those are typically drugs or some things that are fungible
9 in nature versus things that are not so fungible because the
10 concept is to avoid tampering. So do you have any
11 information that I can listen to or see or hear that would
12 indicate that, number one, this was fungible type of
13 evidence; number two, that there's been somehow some
14 tampering with it?

15 MR. PRIDE: Judge, the burden is not on me to show
16 tampering. What I'm showing to the Court --

17 THE COURT: I might disagree with you on that. I know
18 that the burden is on the State to show chain of custody,
19 which shows lack of tampering.

20 MR. PRIDE: The burden is on the State to give you a
21 reasonable explanation as to why it's not properly sealed.
22 Judge, anybody handling this evidence that opens it will put
23 a seal back on it and close it back up with their own seal
24 showing the last person. Now, there are two seals on here,
25 two seals on here, but it's open. It's -- you understand my

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1 objection, I'm not going to go any further. Do you want to
2 look at it, Judge?

3 THE COURT: I don't. I can see the seal open, that's
4 all I need to see. Ms. Hall, I'll be glad to hear from you.

5 MS. HALL: Well, first of all I can explain why it's
6 open. But I also feel like what we need to do is go through
7 the whole chain, and then if he has an objection then object
8 at the appropriate time. What's going to --

9 THE COURT: Well, I think it is the appropriate time if
10 he looks up and sees the seal once you showed it to him.

11 MS. HALL: The evidence custodian at the sheriff's
12 department unsealed it because we were looking for the
13 original of the sexual assault nurse examiner kit, the
14 paperwork. At this point it had already been through her
15 hands to the investigator's hands, to the South Carolina Law
16 Enforcement Division through testing and back to the
17 sheriff's department. And Detective -- Investigator Douglas
18 is the one who actually opened it, he did it in my presence
19 so that we could look for the sexual assault nurse exam, the
20 original one, which was not in there because we were working
21 from a copy. And when I met with Ms. Baker she had asked
22 about some of the copying on -- this was a little bit skewed
23 and she was asking for a better picture of the vaginal area
24 that was depicted on here so that she would be able to
25 explain to the jury exactly what her findings were, so --

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1 THE COURT: Let me ask you this, Ms. Hall, what are the
2 contents of the box?

3 MS. HALL: I'm sorry?

4 THE COURT: What would be the contents of the box? I
5 don't have a clue what it is. I assume it's some kind of
6 undergarment or something?

7 MS. HALL: No, that's in a different box.

8 THE COURT: So other than this actual report, is that
9 what's in the box?

10 MS. HALL: The report was not in the box.

11 THE COURT: What is in the box?

12 MS. HALL: What is in the box is all of the swabs and
13 everything that they take when they do the sexual assault --
14 and that's what she's going to go through. The only reason
15 that I'm having her go through all of this is I don't intend
16 necessarily to introduce any of this, but I've got to get it
17 to SLED so that they can examine it. So I have got to do
18 the chain all the way through and that's why I have the box.

19 MR. PRIDE: Judge, I wouldn't do it to Ms. Hall, but
20 for her to allow the box to be opened in front of her, do
21 you know what that makes her? A witness. I could take her
22 out of this case. I could ask you -- I could make a motion
23 to take her out of this case, you would decide that. But
24 Judge, you just can't handle evidence like that with no
25 reasonable explanation. They all --

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1 THE COURT: Well, let me say this, Mr. Pride. I think
2 that the explanation is reasonable quite frankly, but I am
3 going to listen to the chain, I'm going to listen to all of
4 the evidence, and that along with the speedy trial motion
5 will be things that I might have to rule on and put on the
6 record, okay, sir?

7 MR. PRIDE: Thank you.

8 THE COURT: Yes, sir. Are we ready to proceed, Ms.
9 Hall?

10 MS. HALL: Yes, sir.

11 THE COURT: That's Exhibit Number 6.

12 MR. PRIDE: Excuse me, Judge. For the record that is
13 the rape kit in this case, am I correct, Ms. Hall?

14 MS. HALL: Yes. And it was opened last week by Brad
15 Douglas, and all of pieces of everything in here are
16 completely still sealed. The only thing that's opened was
17 the box to try to find the paperwork.

18 THE COURT: Okay. Very good. All right. Make note.
19 Are you ready to proceed, Ms. Hall?

20 MS. HALL: Yes.

21 THE COURT: Would you bring the jury back in, please,
22 sir?

23 (The jury returned to the courtroom.)

24 THE COURT: All right. Ms. Hall?

25

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1 BY MS. HALL:

2 Q Ms. Baker, I'm going to show you what has been marked
3 as State's Exhibit 6 for identification purposes. Can you
4 tell me what that is, please?

5 A This is a sexual assault evidence collection kit with
6 my handwriting on it, the victim's name, my name, where the
7 kit was collected, which was Palmetto Health, Richland, and
8 the investigating, Officer Maggie Boyd at Fairfield County.
9 And it's December 16th of '08.

10 Q So I will take this and put it to the side for right
11 now. If you could go back to the form that was marked as
12 State's Exhibit 3. And if you could, continue with your
13 explanation of how you go about performing the sexual
14 assault exam.

15 A Okay. Once we get permission from the investigator and
16 the patient we ask that consent be obtained. And --

17 Q And let me stop real quick. Who is the investigator in
18 this case?

19 A Maggie Boyd.

20 Q And was she present at the time that you were getting
21 consent?

22 A That I can't remember.

23 Q So sometimes do you take it personally and then
24 sometimes you take it over the phone, or how does this work?

25 A Well, sometimes the investigator is still at the scene

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1 and we talk over the phone, or sometimes they just bring the
2 patient in and leave because they've got other things to do.

3 Q Okay. But you did obtain consent from the investigator
4 to go ahead and perform the exam, correct?

5 A Yes, she asked that it be performed. And then I asked
6 the parent and the patient, **Witness**, if she wanted it done.

7 Q And obviously everybody responded in the affirmative
8 because you did it, correct?

9 A Yes, ma'am.

10 Q Now, just go ahead and describe what you do and the
11 questions that you ask.

12 A Okay. I go into detail about what is going to happen.
13 I ask if they want -- there's a trauma -- sexual trauma
14 services in Columbia and ask them if they would like for
15 them to be involved. It's more of like a volunteer type
16 situation, a person comes in and sits with the patient, or
17 sits with the rape victim as the process goes on. And all
18 during the process, if there is a change of venue then I
19 will ask the patient, "Who do you want to be in the room
20 while I'm doing this?" And I do that consistently. So
21 Sherry Fowler, she was with Rape Crisis. The medical
22 clearance was by Dr. Landry, who is an emergency room
23 physician, and he cleared her at 2:40. And persons present
24 during collection of history was the family. Persons
25 present during medical exam was family. Now, here on my

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1 chart it doesn't say who, it just says family. And I go in
2 and I start asking her questions. I do a basically head to
3 toe assessment to make sure there's no abnormalities or
4 bruising or anything like that. So I asked her when her
5 last menstrual period was and she said it was December the
6 15th, which was the day before she presented.

7 MR. PRIDE: I'm sorry, I didn't hear her answer to
8 that.

9 THE COURT: Would you repeat that, please, ma'am?

10 A Okay. I asked her when her last menstrual period was,
11 and it was December the 15th, which was the day before she
12 presented to me. And she had used a tampon. And one of the
13 questions, any recent, within 60 days, anal/genital
14 injuries, surgeries, diagnostic procedures or medical
15 treatment that may affect the interpretation of current
16 physical finding, and she said no. Any other pertinent
17 medical conditions or injuries that may affect the
18 interpretation of current physical findings. No. But she
19 did state that she had a medical history of, and it's in
20 quotes, holes in her heart that caused her breathing
21 problems. Current medications, none. Allergies, none. And
22 then I asked pertinent pre and post-assault related history.
23 So I asked her did you have any of this prior to the assault
24 and after the assault. Consensual intercourse within seven
25 days, no. Oral, no. Vaginal, no. Anal, no. Was a condom

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1 used, no.

2 Q And when you asked that question, is that with regard
3 to the consensual intercourse within seven days question?

4 A Yes.

5 Q So that's not in regard to anything else that she's
6 told you up until this point; is that right?

7 A That's correct.

8 Q Thank you. Please continue.

9 A Any voluntary use of alcohol 12 hours prior to assault,
10 no. Any voluntary use of drugs 96 hours prior to assault,
11 yes. I did not ask what drugs, so it could be anything.
12 Any voluntary use of alcohol or drugs between time of
13 assault and forensic exam, no. Okay. After the assault.
14 Post assault hygiene activity. Urinated, yes. Defecated,
15 in other words had a bowel movement, no. Genital or body
16 wipes, yes. Used a rag with soap on it. Douched, no.
17 Removed tampon with diaphragm, no. Brushed teeth, no.
18 Mouthwash, no. Bath/shower, wash, yes. Ate or drank, yes.
19 Dr. Pepper, hamburger and fries. Changed clothing, yes.
20 Smoked, no. Could I have a little bit of water, please?

21 THE COURT: Yes, ma'am, you certainly may.

22 (Break in proceedings.)

23 A So after all of these questions are answered, I again
24 go into great detail. I tell my patient, and this time it
25 was **Witness**, I'll just explain to you, I'll say, "**Witness**,

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1 now you're here because you were sexually assaulted. Now, I
2 need for you to remember every little tiny detail. And if
3 they come up and say a curse word you tell me what that
4 curse word is. Don't just tell me he cursed me or whatever.
5 If he names a body part you give me the exact language that
6 he used. Tell me exactly how you felt and what happened and
7 the steps that -- or in the order that it happened." So do
8 you want me to read the history of the assault?

9 Q I think that you probably, yeah, need to.

10 A Okay. Date of assault, December 15th, 2008.
11 Approximate time of assault, 1959. That's approximately
12 about 8:00 at night. Location, trailer on Rocky Creek Road,
13 that most people call Rocky Creek Road. City, Great Falls,
14 Fairfield County, South Carolina. History of assault per
15 patient. "Darryl Coleman called me. He called for my
16 cousin, Catherine. He asked if Catherine was there, I said
17 no, she is not. He said okay. Then he said who is this?
18 And I said **Witness**. He said hey, what's up? I said
19 nothing but bored. I'm about to get on the computer. And
20 he said do you want to go fishing? I said no, not really,
21 mama don't want me to go. He said, well, we're just going
22 fishing. I said I really don't care. He said just come on,
23 don't be like that. I said okay. Five minutes later I went
24 and sat on the porch. He called and said are you coming?
25 And then I walked up the road and got in the car. He got on

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1 his phone and called Stupu," S-t-u-p-u, it's I guess a slang
2 name for whoever he was talking to. And his girlfriend,
3 Jessica. We, me and Darryl, went down to the Debutary
4 (phonetically.) Stupu and Jessica were already at the
5 Debutary, and him and that dude, Stupu, got out of the car.
6 They went to the back of the car, got their stuff out, their
7 fishing rods. Me and Jessica stayed in the car. They went
8 fishing and me and her got to talking and she was telling
9 where her kid was. Then they came back up where -- then
10 they came back up there and we left. We went to the house,
11 I don't know what house, it had Christmas lights on the
12 porch. It was a brownish color siding. We went into the
13 house. I sat on the couch and he, Darryl, said come on in
14 here and watch TV in a bedroom. I was sitting on the side
15 of the bed, then he went and took a bath. He was wearing
16 gray jogging pants and a brown shirt. He went into his
17 closet and got his shoes. His cousin called him, and he
18 told me his cousin called me. We were watching a Christmas
19 movie, it was funny, that dude got his foot shot off. Then
20 he asked do you want to fuck? And I said, no, not really.
21 He said why? I said cause. Then he pushed me back on the
22 bed and he pulled my shoes off, then he pulled my pants
23 down, he pulled them off and I thought, oh my God, what am I
24 doing? I felt bad, I didn't want to do it. What have I
25 gotten myself into? I was scared. Then he pulled his pants

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1 down. When he started to pull his pants down I looked the
2 other way and I closed my eyes. Right before he pulled his
3 pants down he spread my legs apart with his hands, that's
4 when he stuck it in me. I felt like I didn't like it at
5 all. It felt like a long time and then I pushed him off of
6 me. He got off of me, went to the bathroom naked and he put
7 his clothes on and walked into another bathroom and got me a
8 rag and I wiped it off. Then I put my clothes on and then
9 he asked me if I was ready to leave and I said yes, and we
10 left around 10:15."

11 Q And are these statements taken so that you'll know how
12 to proceed with regard to your exam?

13 A Yes, ma'am.

14 Q And so what did you do after you took the statement?
15 Did you garner information from this statement that helped
16 you know what to do?

17 A Yes, ma'am.

18 Q And what do you do?

19 A So after we interviewed we went into the exam room, and
20 the exam room has a gynecological bed that females know, you
21 put your feet up into the stirrups. And then I had a
22 microscope. I had swabs. I collect blood. And we have
23 what we call a colposcope, it takes pictures, and it
24 magnifies the vaginal area, or the genitalia. So I
25 explained all of that to **Witness**. Now, at age 14 we do not

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1 like to do pelvic exams, so I did not do a pelvic exam, I
2 just did the outside. And that's more or less protocol.
3 Because a 14 year old is not developed enough to where it
4 would be an easy way to go in. But you know what? Hold on
5 a minute. I think I did. Let me go through this.

6 Q Okay.

7 A But normally we do not do vaginal exams. Okay.
8 Assault history continued. Number one, assailant. Darryl
9 Coleman, age 37, African-American, male, non-stranger. "I
10 met him through my friend Hoover and Catherine." Okay.
11 Methods employed. Weapons, threatened, injuries inflicted,
12 types of weapons, physical blows, no. Grabbing, holding,
13 pinching, yes. "He put his arms around me and I looked
14 away." Physical restraints, strangulation, burns, chemical
15 or thermal, verbal threats, no. Other methods, "He was
16 laying on top of me." Ingestion of alcohol/drugs by
17 patient, no. Describe patient, stated she took some type of
18 pain medication on the 15th, unsure if was a narcotic.
19 Alcohol use by assailant, yes. Drugs. "He and Stupu were
20 smoking weed when they got out of the car." And she said
21 the time was about 8:00 on the 15th. Were any injuries
22 inflicted upon the assailant during the assault, no. Is the
23 assailant known to have an STD, vasectomy or sterile, no.
24 Any witnesses to the assault, no. Penetration of vagina by
25 the penis, yes. Finger, object, no. Penetration of anus by

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1 penis, finger, object, no. Oral copulation of genitals --
2 that just means licking or mouth around the genital area --
3 of patient or assailant, no. Non-genital acts, licking,
4 kissing, suction, injury, binding and fondling, no. Other
5 acts, no. Masturbation, yes. "He tried to masturbate
6 himself when he was done having sex." Did ejaculation
7 occur, mouth, no. Vagina, unsure. Anus, no. Body, no.
8 Clothing, no. Bedding, unsure. Other, yes. "He wacked off
9 in the floor." Contraceptive or lubricant used, foam,
10 jelly, lubricant, no. Condom, yes. Okay. It goes through
11 her vital signs. Now, there is -- her vital signs were
12 normal. There is a thing called Tanner Stage. Tanner Stage
13 is a way of measuring how old the patient or how mature the
14 patient's body is. Tanner one would be like a child with no
15 hair, no breasts, no penile type growth. And she -- and all
16 of the way to five, five would be an adult genitalia and
17 hair and all of this other good stuff. So she, at that
18 time, was a Tanner Stage five. Her physical appearance was
19 dishoveled hair, dingy clothing. And I have to describe her
20 demeanor. She was quiet, she was anxiousness, she responded
21 to my questions readily. Her eye contact was very poor. My
22 assessment of her body, the head, ears, eyes, nose and
23 throat were normal. Neck, chest, abdomen, musculoskeletal
24 neurological, skin, all of that was normal. Strangulation
25 was not applicable. In other words, she didn't say that she

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1 was strangled so there's no reason for me to go into that.
2 Drug facilitate, sexual assault assessment, didn't have to
3 do that. Okay. Then I go in -- and maybe you can't really
4 see it, but there are diagrams. And it's of the front of
5 the body and it's of the back of the body. And there were
6 no bruises, no anything like that on her from head to toe.
7 Okay. Now, genitalia examination.

8 Q I'm going to stop you right there real quick, and I'm
9 going to show you what has been marked as State's Exhibit 5.

10 A I would like to express that --

11 THE COURT: Just one second. Do you have any objection
12 to Exhibit 5?

13 MR. PRIDE: I don't have an objection. I don't have an
14 objection.

15 Q I'm going to show you what's been marked as State's
16 Exhibit 5. And I was going to set that up if you decide you
17 want me to at some point. Does that mirror what you were
18 seeing on your report?

19 A Yes.

20 Q Will that aid you in explaining to the jury what you --

21 A What I saw, yes, ma'am.

22 Q Do you need a pen or pencil or something to point with?

23 A Yeah, if you don't mind.

24 Q Uh-huh.

25 A Okay.

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1 THE WITNESS: Mr. Pride, if you want to, because I'm
2 going to let them see, I'll show you. Okay.

3 MR. PRIDE: Thank you very much.

4 A Okay. Now, during my exam these are gloves that we use
5 so that we don't cross contaminate. Every time I go from
6 one part of the body to another I will change gloves. I
7 change gloves in a sexual assault probably 30 or 40 times
8 because there's no -- we don't want any type of cross
9 contamination. Now, this right here is the female
10 genitalia. This right here is what we call the mons pubis.
11 That is the mound right before you get to where the labia
12 minora, it's that little tiny skinny flap of skin, and then
13 the labia majora is the fat outer lips, okay? Now, on the
14 left labia minora there was an abrasion. Now, how I am able
15 to see that is what we call is blue dye, and I swab it on
16 the outside and I rinse it off a little bit. Now, what
17 happens if there is no skin that's abraded, if there's no
18 laceration or cut or anything, then the blue just kind of
19 washes off. Now, if there is an abrasion or laceration,
20 then that dye just sucks it up and it is very pronounced,
21 and it's like a really dark deep purplish blue color. And
22 with the colposcope, when I look at this it magnifies it,
23 okay? But it also converts it to a size. So it magnifies
24 to where I can see what's going on, but then it will give me
25 the actual size, okay? And it's in millimeters.

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1 Millimeters are very small, but still they're pretty much
2 indicative of some type of trauma. Okay. Now, the labia
3 minora is on the left side, so it's going to be somewhere
4 along in through here, there is an abrasion and it is 10.207
5 millimeters by 4.433 millimeters. It's a tear with dye
6 uptake. That just means that the dye was there and I was
7 able to see the abrasion or the tear. Okay. Now, in the
8 fossa navicularis, not many people know exactly what that is
9 except sexual assault nurse examiners. Okay. The fossa,
10 there's like a little dip between the -- right after the
11 vagina and it looks like a little boat. And it separates
12 what we call the perineum, that little area between the
13 vagina and the anus, or the rectum. Okay. And the fossa
14 navicularis, which is right here, it's right here, there was
15 a laceration at 5:00, 6.401 millimeters in length going
16 towards the posterior fourchette. The posterior fourchette
17 is that little -- it's just a tiny little piece of skin.
18 And that's what I told you about there's a little dip and
19 there's a little piece of skin, that's the posterior
20 fourchette.

21 Q Just for clarification purposes, could you mark on that
22 piece of paper that I've given you? I think it's State's 6,
23 if you could mark where you saw this.

24 A Okay, now. Now, when we do any type of examination,
25 you know, we look at the clock and we look at our person.

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1 Okay. So 5:00. If you look at 5:00 it's going to be kind
2 of down. 7:00, it's going to be right there at the very
3 bottom. 12:00 is going to be the top, 6:00 is going to be
4 the bottom of any organ that we examine. Okay. That was
5 the laceration. And then there was a bruise in the fossa
6 navicularis. I'm not sure if you can see this, but this is
7 the left labia minora. This is posterior fourchette -- I
8 mean, the fossa navicularis, and then the posterior
9 fourchette. The injury was from 5:00 to 7:00. And within
10 that area there was not only a laceration but there was a
11 bruise, which is consistent with some type of blunt force
12 trauma.

13 Q Okay. When you say abrasions, do you mean -- I mean,
14 is that a scrape basically in laymen's terms?

15 A It is where -- you know how -- it's sheered skin. Like
16 if you had something rubbing up against it it sheered and it
17 sheered off.

18 Q Okay. And is a laceration a cut?

19 A It's from -- it is an open area from blunt force trauma
20 that's torn. Now, a cut is something that like if you get a
21 knife cut that the edges of the wound is very nice and neat
22 and you can pull it together, and it's -- there's no jagged
23 edges. An abrasion, you're not going to have really an open
24 wound. A laceration, you're going to have jagged edges.

25 Q Okay. And then bruise is a bruise.

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1 A And the bruise.

2 Q Okay. And in your opinion as a sexual assault nurse
3 examiner, are the injuries that you saw consistent with a
4 sexual assault?

5 A Yes, ma'am.

6 Q And is it consistent with sexual assault of somebody
7 who has not been penetrated before?

8 A Well, that I can't say.

9 Q Okay. But it is consistent with sexual assault.

10 A Yes. Well, it's with force.

11 Q With force?

12 A Yes. It's consistent with some type of force.

13 Q Is it consistent with someone forcing their penis
14 inside the vaginal opening?

15 A Yes.

16 MR. PRIDE: Suggestive and leading, Judge.

17 THE COURT: Yes, ma'am, I'll sustain that.

18 MS. HALL: At this time the State would move Exhibit 5
19 into evidence.

20 MR. PRIDE: I beg your pardon?

21 MS. HALL: I'm moving this into evidence.

22 THE COURT: I think he said no objection.

23 MS. HALL: Okay. Thank you.

24 (The was received as State's 5.)

25 Q All right. And if you need to refer to that again

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1 please let me know and I'll give it back to you. So
2 continue, please, with the way that -- and I guess at this
3 point, are we moving into the evidence collection portion of
4 your exam?

5 A Yes, ma'am. And what I do there is there is swabs that
6 I do and I swab. And the swabs are not only for testing for
7 chlamydia and gonorrhea and syphilis, but it's also to see
8 if there's any type of sperm there in the vaginal vault.

9 Q And I've shown you before what's been marked as State's
10 Exhibit 6. Is this the evidence portion of the sexual
11 assault kit?

12 A Yes, ma'am.

13 Q If you would, please, explain -- and you can open the
14 box if you need to -- if you could explain procedure that
15 you use, and there are gloves there if you need them --

16 A Okay.

17 Q -- and what you do with regard to the steps.

18 A Basically I open up a kit, and the kit has paperwork in
19 it. It also has tubes -- not tubes, it has swabs in it.
20 And those are the swabs that I'm talking about when I
21 collect semen or sperm or collect for gonorrhea, chlamydia
22 or syphilis. And if you notice this right here,
23 everything -- when I do something I will collect it and I
24 will seal it, okay? And so these -- like this says,
25 miscellaneous materials, envelope, pubic hair combings,

ROBIN BAKER - DIRECT

1 known cubic hairs, known head hairs envelope. So after I
2 looked at her genitalia I went through and I combed her
3 pubic hair. And the reason why is there is -- sometimes you
4 can collect a pubic hair from the perpetrator, and if they
5 look at the victim's evidence or DNA and then they can see
6 that there's another or different pubic hair or whatever.
7 And there are times when I've even collected sperm from that
8 too. Okay. And these right here, these are just little
9 envelopes that will say blood, any other swabs are done,
10 anything like that.

11 Q Where does the blood come from?

12 A The blood comes from the victim. And there's no
13 alcohol used, it's just like a wet wipe that we use water,
14 that's all it is. And we collect the blood for testing, for
15 HIV testing.

16 Q Okay. And so did you indeed do all of the swabbing and
17 everything, and did you seal that into those packages?

18 A Yes, ma'am.

19 Q How can you tell you sealed it into the packages?

20 A Because it should have my -- yeah, see right here, the
21 red tape? It will have my initials on it and it does have
22 my initials on it.

23 Q And once you're finished with it, did you seal
24 everything in there with the red tape and the separate
25 packaging?

ROBIN BAKER - DIRECT

- 1 A Yes.
- 2 Q And did you put it into -- what did you do with it
- 3 after that?
- 4 A I kept it until I handed it over to the investigator.
- 5 Q Okay. And did you place it into that box, though, and
- 6 seal the tape with the box?
- 7 A Yes.
- 8 Q I mean the box with the tape?
- 9 A Yes.
- 10 Q All right. And is there anywhere on the box that you
- 11 indicate that you did all of this or who you turned it over
- 12 to?
- 13 A Okay. Up here on this side it'll tell you the
- 14 patient's name or the victim's name, my name, or the sexual
- 15 assault nurse examiner's name, and where the kit was
- 16 collected. Over here it will say who I gave the kit to,
- 17 where they're from and the date. This right here is chain
- 18 of custody right here. This is where I signed it over to
- 19 them, over to the investigator.
- 20 Q And the investigator signed it over to, who was that?
- 21 A It doesn't say.
- 22 Q Does it say it on the other side of the box?
- 23 A No, ma'am. Well, it just said I gave it to Maggie.
- 24 Q That you gave it Maggie Boyd?
- 25 A Yes.

ROBIN BAKER - DIRECT

1 Q Where does it say that?

2 A Right here on the corner.

3 Q All right. Did you give anything else to Maggie?

4 A A copy of the report. I put my information in here and
5 then I give a copy to Maggie.

6 Q So when the evidence is released to Maggie you can tell
7 you did that from the report as well?

8 A Yes, ma'am, because I indicated it.

9 Q What evidence did you release to her?

10 A The same kit, the documentation, and it has her
11 signature and my signature.

12 Q Did you release clothing to her as well?

13 A Yes.

14 Q All right. And you -- and you signed it and she signed
15 it; is that correct?

16 A Yes, ma'am.

17 Q Okay.

18 MS. HALL: Your Honor, at this time the State would
19 move Exhibit 3, which is the sexual nurse protocol
20 paperwork, into evidence.

21 THE COURT: Any objection?

22 MR. PRIDE: None.

23 THE COURT: Admitted.

24 (The paperwork was received as State's 3.)

25 Q Did this come --

ROBIN BAKER - DIRECT

1 MR. PRIDE: Wait a minute, it's only -- I don't object
2 to --

3 THE COURT: It's Exhibit 3, just the paperwork.

4 MR. PRIDE: Just the paperwork. Okay.

5 MS. HALL: Just to be clear, 3 and 5 are now what's in
6 evidence, correct?

7 THE COURT: Yes, ma'am.

8 MS. HALL: I don't have anything further. Please
9 answer anything further Mr. Pride may have.

10 THE COURT: Hang upon for a second, Mr. Pride, if you
11 don't mind. Let's take a morning break and then we will
12 come back here for cross examination. And, ma'am, you're
13 free to step down but don't talk with anybody about your
14 testimony with anybody, okay? Madam Forelady, would you
15 take your jury room to the jury room, please, ma'am.

16 (The jury left the courtroom.)

17 THE COURT: All right. Let's have about a 10 or 15
18 minute recess.

19 (A break was taken.)

20 THE COURT: Mr. Pride, are you ready to go?

21 MR. PRIDE: Yes, Judge. And I promise you, Judge, from
22 now on my client will be in his seat when you hit the bench
23 and this won't happen anymore. Please don't hold him
24 overnight.

25 THE COURT: I'm not going to do that. Let's come to

ROBIN BAKER - CROSS

1 order in the courtroom. Bring in the jury.

2 (The jury returned to the courtroom.)

3 THE COURT: All right. Mr. Pride, cross examination.

4 CROSS EXAMINATION

5 BY MR. PRIDE:

6 Q I find you to be a very meticulous person with volumes
7 of experience. When you take a statement from a victim you
8 are very careful to put down exactly what they say I would
9 imagine.

10 A I try, yes, sir.

11 Q And my impression of you is that after you take that
12 statement you would review it with the victim to make sure
13 that what you put down was correct, is that not correct?
14 You would want to make sure that the statement is what the
15 victim said, wouldn't you?

16 A I type as she talks, and then if I have questions then
17 I will ask.

18 Q Okay. And when you asked Mrs. Waters was she a virgin,
19 what did she say?

20 A I didn't ask if she was a virgin.

21 Q There's a place on the statement for it; is that
22 correct?

23 A Not that I know of. I would have to review the notes.
24 It just says have you had sexual intercourse seven days
25 prior.

ROBIN BAKER - CROSS

1 Q What was the answer?

2 A No.

3 MR. PRIDE: May I approach the witness?

4 THE COURT: Yes, sir.

5 Q What is this right here?

6 A What do you mean? Did ejaculation occur?

7 Q Uh-huh. And right under that?

8 A It says, mouth, vagina, anus -- and the answers are
9 going to be, no. Yes. Attempted. Unsure. And so anyway,
10 with the vagina it says unsure.

11 Q Unsure.

12 A Yes, sir.

13 Q Well, she's unsure of what? What was your
14 understanding?

15 A Ejaculation.

16 Q Of any ejaculation?

17 A Yes, sir.

18 Q And she also -- and I'm saying she, I mean Mrs. Walters
19 (sic) also told you during your examination of her that she
20 had taken a shower prior to coming to your office; is that
21 correct?

22 A Yes, sir.

23 Q And I think based on your testimony --

24 A Well, I won't say so much a shower, she just said she
25 washed.

ROBIN BAKER - CROSS

1 Q Well, she also said that she used a cloth --

2 A Yes.

3 Q -- in a trailer.

4 A She used a rag with soap on it, and that was post
5 assault.

6 Q Okay. And she also told you that purportedly Mr.
7 Coleman ejaculated; is that correct?

8 A On the floor.

9 Q On the floor. Okay. And you --

10 A And that was her words on the floor.

11 Q Okay. And in the statement that you took, would you
12 look at that statement for me? Do you see any place in that
13 statement where it says that she was accompanied by her
14 cousin and her cousin's boyfriend to Darryl's place?

15 A Okay. "And then I walked up the road and got in the
16 car, he got on his phone and called Stupu, and his
17 girlfriend, Jessica. We, me and Darryl, went down to the
18 Debutary. Stupu and Jessica were already at the Debutary,
19 and him and that dude, Stupu, got out of the car. They went
20 to the back of the car and got their stuff out, their
21 fishing rods. Me and Jessica stayed in the car. They went
22 fishing, and me and her got to talking. She was talking
23 about her kid."

24 Q Okay. But Jessica was not her cousin, was she?

25 A I don't know.

ROBIN BAKER - CROSS

1 Q Oh, you don't know. Okay.

2 A No, sir.

3 Q And when you testified about the bruises and the
4 abrasions that you were able to determine, were you able to
5 determine where those bruises and abrasions came from?

6 A We go by what the patient states.

7 Q Okay. Bruises and abrasions can come from many other
8 reasons than having penetration; is that correct?

9 A Not really.

10 Q Riding on a bicycle?

11 A No.

12 Q You can't? A woman can't get it riding on a bike?

13 A No, sir. And the reason why is because the female
14 anatomy protects itself. So you're not going to get a
15 bruise in the foussa navicularis, or a laceration or an
16 abrasion in that area, because the labia majora covers it.

17 Q Can you get it from wearing tight underwear?

18 A Back then they didn't have thongs, but, no, sir, not --

19 Q In 2008?

20 A No, sir.

21 Q All right. Now, when you talked to Mrs. Walker (sic) I
22 think you described her demeanor as being quiet; is that
23 correct?

24 A Yes, sir.

25 Q And you had no reason not to believe that she was being

ROBIN BAKER - CROSS

1 truthful in her version of what happened.

2 A I write down and I ask questions and I go by that, I do
3 not make judgments.

4 Q Okay. Okay. I just have a few more questions I want
5 to ask you. I show you what has been marked by the State as
6 State's Exhibit 6 and ask you at the time that you passed
7 this rape case kit to Mrs. Boyd, did you seal it?

8 A Yes, sir, it would have been sealed.

9 Q And the protocol is that whenever it's opened the
10 person that opens it makes a record of that; is that
11 correct?

12 A Yes, sir.

13 Q And the person that seals it back makes a report of
14 that.

15 A Now that I don't know. I just know when I hand it off
16 to somebody they're --

17 Q Okay. Did you ask Mrs. Waters whether she ever put her
18 hand on Mr. Coleman's penis?

19 A Well, that's in the chart. Basically it states did she
20 have any -- it's in the yes/no questions.

21 Q Okay.

22 A But she did not indicate that.

23 Q Okay. And she also did indicate that she had used
24 drugs; is that correct?

25 A Well, she didn't know whether or not it was a narcotic.

ROBIN BAKER - CROSS

1 She had used some type of medication.

2 Q So she did indicate that she had used drugs. The
3 answer would be yes.

4 A Not necessarily.

5 Q She didn't say that she had used drugs?

6 A She said that she did not know whether or not it was a
7 narcotic.

8 Q And you didn't ask her what she had used, did you?

9 A She didn't know. She just said that -- I think it
10 probably Motrin or something like that, that's what I
11 assume. But as a sexual assault nurse examiner I don't go
12 into detail about that.

13 Q But the answer is you don't know, right? That's a
14 correct answer.

15 A Yes, sir, just exactly what's in the chart.

16 Q And when Mrs. Boyd showed up at your office you
17 recognized her to be a member of law enforcement; is that
18 correct?

19 A Yes, sir, she showed me her credentials.

20 Q Right. And the protocol at that time was for you to
21 seal State's Exhibit 6 and give it to Mrs. Boyd along with
22 the information that you had ascertained from Mrs. Walters
23 (sic); is that correct?

24 A Yes, with the bag of clothes.

25 Q Okay.

ROBIN BAKER - REDIRECT

1 MR. PRIDE: Thank you very much.

2 MS. HALL: Just briefly, Your Honor.

3 THE COURT: Yes, ma'am.

4 REDIRECT EXAMINATION

5 BY MS. HALL:

6 Q Two things. You state -- particularly on your report,
7 I believe it's on page four, ingestion of alcohol or drugs
8 by patient. And correct me if I'm wrong, what -- did you
9 say -- on your description when it says "Patient states she
10 took some type of pain medication, unsure if narcotic,"
11 correct?

12 A Yes.

13 Q And she took it the day prior to seeing you; is that
14 correct?

15 A Yes, she took it at 12:15.

16 Q And in the time -- you said that you handed Maggie
17 Boyd -- when she came to see you, you asked for her
18 credentials in law enforcement, you handed her this and you
19 also handed her a bag of clothes; is that correct?

20 A Yes, ma'am.

21 Q And during the time that -- between the time -- when
22 you got finished with the actual exam, was Maggie Boyd
23 already there, or would these things have remained in your
24 care and custody up until the time you gave them to Maggie
25 Boyd?

ROBIN BAKER - REDIRECT

1 A I believe Maggie was there but she was not in the area
2 where I was examining the patient.

3 Q But would you have taken the bag of clothes and the
4 sexual assault kit and handed them directly to her?

5 A Yes.

6 Q And would they have ever left your care, custody or
7 control prior to you giving them to Maggie Boyd?

8 A No.

9 Q The bag that -- because it's in this box, and so the
10 bag that you've sealed, do you do the same type of protocol
11 with regard to putting tape on it and initialing it in
12 anything? Would you have put it in something like this?

13 A No.

14 Q Okay. And I'm going to ask you to see if there's
15 anything in there that's indicative of anything that you
16 gave to Maggie Boyd?

17 A Yes, ma'am.

18 MR. PRIDE: Judge, usually --

19 THE COURT: Sir?

20 MR. PRIDE: I said usually I get to chance to look at
21 it before the witness does.

22 THE COURT: I do not want it to be published to the
23 jury until it has been admitted in any way. But please, if
24 you would, let Mr. Pride look at it, please.

25 Q Are there things in that box that bear your seal?

ROBIN BAKER - REDIRECT

1 A Yes.

2 MS. HALL: And I guess I need to mark these then as
3 State's --

4 Q How many articles are in there, while you -- the
5 barrier tape or seal or whatever?

6 (Break in proceedings.)

7 MR. PRIDE: I think the witness identified everything
8 but the box.

9 Q And so when I show you what has been marked 7 and 8 you
10 said that these are items that you sealed and handed to
11 Maggie Boyd; is that correct?

12 A Yes, ma'am.

13 MS. HALL: Your Honor, at this time the State would
14 move 7 and 8 into evidence. Well, no, I guess I'll wait
15 until the end but. Thank you. I don't have anything
16 further.

17 THE COURT: May this witness be excused?

18 MS. HALL: Yes, sir.

19 MR. PRIDE: May I ask her a brief question?

20 THE COURT: Yes, sir.

21 RECROSS EXAMINATION

22 BY MR. PRIDE:

23 Q When you testified to the centimeters --

24 A Centimeters -- not -- millimeters.

25 Q Millimeters, thank you. Could you show me about how

ROBIN BAKER - RECROSS

1 large one of those centimeters is --

2 A Millimeters?

3 Q Millimeters. Thank you.

4 A I would much rather do inches but we don't. This right
5 here is ten millimeters approximately, and that's from
6 memory.

7 Q Okay. All right.

8 A So the abrasion on the left labia minora is 10.2
9 millimeters by 4.43. The laceration was six.

10 Q So the ten was the most.

11 A Largest.

12 Q Largest.

13 A Well, no. It says here irregularly shaped bruise.
14 Now, the bruise was larger. But when you look at like a cut
15 or an abrasion or something then the abrasion was larger,
16 okay? The laceration wasn't quite as big. Now, irregularly
17 shaped bruise from 4:00 to 7:00 would with dimensions of
18 24.322 at the longest point and -- I mean at the shortest
19 point, and 30.525 as the longest point.

20 Q All right. And you also testified on direct
21 examination that when you were talking to Mrs. Walters (sic)
22 you were able to ascertain the fact that her period had
23 stopped on the 15th, that's what she told you.

24 A Yeah.

25 Q All right.

MAGGIE BOYD - DIRECT

1 MR. PRIDE: Thank you very much.

2 THE COURT: Now may this witness be excused?

3 MR. PRIDE: Yes.

4 THE COURT: All right. Thank you, ma'am. Go ahead and
5 call your next witness.

6 MS. HALL: Yes, sir. Maggie Boyd.

7 The witness, MAGGIE BOYD, was first duly sworn and
8 Testified as follows:

9 DIRECT EXAMINATION

10 BY MS. HALL:

11 Q Please state your name for the record.

12 A Maggie Boyd Chapman.

13 Q And where were you employed in 2008?

14 A With the Fairfield County Sheriff's Office.

15 Q At that point in time, how long had you been with the
16 Fairfield County Sheriff's Office?

17 A Since 1994.

18 Q So if that was 2008, how long would that make it? A
19 long time?

20 A Yeah.

21 Q And so if you -- had you been a law enforcement officer
22 all of that time that you've been employed with them?

23 A Yes.

24 Q Okay. And did you -- in 2008, what were your duties
25 with the Fairfield --

MAGGIE BOYD - DIRECT

1 A I was an investigator.

2 Q You were? And did you have occasion to get a call to
3 investigate the case that we're trying here today?

4 A Yes.

5 Q And if you could describe to the Court the nature of
6 the call, how it came in and what you did in response.

7 A We received a call from dispatch and then I traveled to
8 Richland County to meet with the victim.

9 Q I'm going to back you up just a second. When did you
10 get the call?

11 A December the 16th, 2008.

12 Q About what time?

13 A Approximately -- it was -- well, I got there and
14 arrived there at 19:43, so it takes me about 30 minutes to
15 get there.

16 Q You said you went to Richland ER?

17 A Yes.

18 Q That's in Richland County at the hospital in Columbia.

19 A Yes.

20 Q And did you know why you were going there?

21 A Yes. We received a call about a victim had been
22 sexually assaulted.

23 Q And once you got to the -- did you know who the victim
24 was at that point in time?

25 A I think we did have a name.

MAGGIE BOYD - DIRECT

1 Q Okay. So did you direct them to go to the emergency
2 room or to go to the hospital, or did you just meet them
3 there?

4 A I met them there once they called us.

5 Q Do you know who directed them, if anyone, to go there?

6 A No, I'm not sure.

7 Q And so they -- how -- when you're an investigator, how
8 do calls typically get to you? Does it come --

9 A Usually the victim calls us but I think this was
10 different, they took her to the hospital and then I think
11 the hospital called. I'm not sure exactly because I didn't
12 receive the call directly myself, it was passed over to me.

13 Q So when you were an investigator somebody takes the
14 call and then passes it to you.

15 A Yes.

16 Q So you just get the call and then you respond.

17 A Yes.

18 Q Okay. You were told to go to the hospital, is that
19 correct or incorrect?

20 A Correct.

21 Q So you get to the hospital and what do you find?

22 A The victim, **Witness**, was with the nurse at the
23 time talking to her, going through the procedures, and I
24 waited in the interview room until they came into the
25 interview room.

MAGGIE BOYD - DIRECT

1 Q Do you know approximately how long you waited until
2 they got there?

3 A Not quite, no. It was a good bit of time.

4 Q So once you -- at some point in time did you meet with
5 the nurse who came out first to talk to you?

6 A Yes. The nurse came out and talked to me. Then Ms.
7 Waters came in and sat down in an interview room and I
8 listened to her talk to the nurse and took notes to make my
9 report.

10 Q Okay. And at that point -- I'm going to show you
11 what's been marked as State's Exhibit 6. Did she give you
12 anything when you met with the nurse?

13 A At that point in time?

14 Q Okay. At that point in time.

15 A No. I can't recall that she gave me nothing right
16 then, she gave me something later.

17 Q Okay. So then -- well, let's just back up and -- what
18 did you do when you first talked with her?

19 A I listened to her statement of what happened.

20 Q Okay. To Ms. Waters or to the nurse?

21 A To Ms. Waters. When I talked to Ms. Waters -- she was
22 just saying that the victim had come in saying that she had
23 been sexually assaulted and they was going through the
24 procedure making sure they do everything correct and move
25 these sexual assault kit -- sexual assault. I asked her to

MAGGIE BOYD - DIRECT

1 do a kit to make sure that I had some evidence to take to
2 SLED.

3 Q Okay. When you said SLED, are you referring to the
4 South Carolina Law Enforcement Division?

5 A Yes.

6 Q Okay. And so when you first got there, though -- I'm
7 trying to get the chronology straight -- who did you first
8 meet with?

9 A The nurse.

10 Q And that's the conversation you had with the nurse, the
11 one that you just recalled?

12 A Yes.

13 Q And then at some point in time did she give you
14 anything to take back to -- like you had asked for the
15 collection kit.

16 A Yeah. She did give me the sexual assault kit and the
17 clothing to take to SLED.

18 Q Okay. And I'm going to show you what has been marked
19 as State's Exhibit 6. Do you recognize this?

20 A Yes.

21 Q Okay. What is it?

22 A It's a sexual assault kit.

23 Q And how do you know that she -- is that the sexual
24 assault kit that Robin Baker gave you on December 16th of
25 2008?

MAGGIE BOYD - DIRECT

1 A Yes.

2 Q How do you know that?

3 A Because she wrote my name on it and I initialed it, I
4 think.

5 Q Let's not think, let's just know.

6 A She wrote my name on it and this is what they gave me.

7 Q And so then with regard to States's 7 and 8, do you
8 recognize these items? And if you need gloves in order to
9 be able to do it, is there any identifying criteria there on
10 the interior or the exterior of that box?

11 A The interior of the box, yes. Those are the clothes
12 that she gave me also.

13 Q Okay. So she gave you two envelopes, right?

14 A Correct.

15 Q What's 7?

16 A What's what?

17 Q State's 7. You said they're both clothes. Can you
18 tell that, or how do you know that? Is there an evidence or
19 intake sheet or anything that you use when you do that?

20 A Yes, I have it here.

21 Q Okay. And that's a record that you keep in the normal
22 course of your activities as an investigator; is that
23 correct?

24 A Yes.

25 Q Okay. Referring back to your records, what did you

MAGGIE BOYD - DIRECT

1 pick up while you were at the hospital?

2 A I picked up a sexual assault evidence collection kit, a
3 white tank top, white T-shirt, black stretch pants,
4 underpants and --

5 Q And these three items, are these the items that you
6 picked up?

7 A Yes.

8 Q And once you picked these items up, what did you do
9 with them?

10 A I carried them back to our office and put them in
11 evidence.

12 Q How does that work?

13 A How does that work? We lock evidence in the evidence
14 box so no one else can get to it or contaminate it.

15 Q So is it fair to say that you took these items directly
16 from Robin Baker? And were they in your -- you got them
17 directly from her.

18 A Yes.

19 Q Did you keep them in your exclusive care, custody and
20 control until the time that you entered them into this
21 locked evidence locker at the Fairfield County Sheriff's
22 Office?

23 A Yes.

24 Q All three of these items.

25 A Yes.

MAGGIE BOYD - DIRECT

1 Q Now, backing up to go to what the conversation is that
2 you were having at the hospital, you said that you did take
3 **Witness** [REDACTED] into an interview room and speak with her;
4 is that correct?

5 A Yes.

6 Q Was there anyone else present with you during this
7 interview?

8 A The nurse, she was there.

9 Q So she was there with you.

10 A Yes.

11 Q All right. And did you get a full statement from

12 **Witness** [REDACTED] ?

13 A I wrote a report.

14 Q She was 14, right.

15 A Yes.

16 Q Did she sign -- did she write a statement or sign
17 anything?

18 A No.

19 Q So everything that you took from her was -- did you
20 write it down yourself and put it just in the incident
21 report and not in anything else; is that right?

22 A Correct.

23 Q And then during your investigation, were you able to
24 ascertain the date of birth of the defendant in this case,
25 Darryl Coleman?

MAGGIE BOYD - DIRECT

1 A Yes.

2 Q What is his date of birth?

3 A His date of birth is [REDACTED].

4 Q Thank you. And did how -- did you identify the person
5 who you ultimately ended up arresting and identified as
6 Darryl Coleman?

7 A **Witness** [REDACTED] gave me his name. I went through DMV
8 and pulled up his records and that's how we found him.

9 Q Okay. Did she tell you where this incident had taken
10 place or give you any description of the place it happened?

11 A Yes.

12 Q And were you able to ascertain an address for the place
13 that this happened?

14 A Yes.

15 Q And did you -- where is it?

16 A The incident occurred at 744 Catawba Road in Great
17 Falls.

18 Q Is that in Fairfield County?

19 A Yes.

20 Q Did you do anything else during the course of your
21 investigation?

22 A Yes. I did do an arrest warrant for Darryl.

23 Q You did an arrest warrant for Darryl Coleman?

24 A Yes.

25 Q When was the arrest warrant issued?

MAGGIE BOYD - DIRECT

1 A 12/29/2008.

2 Q The arrest warrant wasn't issued until the 29th of
3 December of 2008, right?

4 A I think that's right. Let me look at it. Yes.

5 Q Okay. And is that typical in an investigation not to
6 issue an arrest warrant for a little bit of time after the
7 incident is reported?

8 A Yes.

9 Q And why is that?

10 A We was still trying to collect evidence.

11 Q And in trying to collect evidence, could you expand on
12 that and talk about what you did or did not have a chance to
13 do during the course of that two week period of time?

14 A First we had to identify him like you said, make sure
15 we had the right person. And I did, I think -- tried to go
16 to his residence and see if I could collect some of the
17 items that the victim said was there at the house. But I
18 only was able to take pictures throughout the house and get
19 a search warrant.

20 Q You had a search warrant? Yes or no.

21 A Yes.

22 Q Okay. And what items did you say the victim said were
23 at the house?

24 A Hold on just a second, please. A blue and white
25 comforter, red bed sheets, blue wash cloth, condom.

MAGGIE BOYD - DIRECT

1 Q And you stated you did get a search warrant for this
2 house; is that correct?

3 A Yes.

4 Q Did you go and execute the search warrant?

5 A Yes.

6 Q Did you find any of those items that you just stated;
7 the comforter, the condom, the rag or anything there at the
8 house?

9 A No, I can't recall finding them.

10 Q If you would have found them, would you have kept a
11 record of it?

12 A Yes.

13 Q How would you have done that?

14 A I would have put it in my search warrant and then we
15 would have put it into evidence.

16 Q Would it have been on the return portion of the search
17 warrant?

18 A Yes.

19 Q And did you put anything on the return portion of that
20 search warrant?

21 A Yes.

22 Q What did you put?

23 A Several pictures taken throughout the residence.

24 Q Okay. And if you had found the comforter and all of
25 those other things, would you have collected them and put

MAGGIE BOYD - DIRECT

1 them into evidence?

2 A Yes.

3 Q Did you find them?

4 A No.

5 Q So then -- and this was -- what's the date on the
6 search warrant?

7 A December the 30th.

8 Q Okay. And so that was the day -- you said the warrant
9 was issued on the 29th?

10 A Yes.

11 Q Okay. And the search warrant was served the next day.
12 Is there a process involved to get a search warrant?

13 A Yes. We have to write affidavits saying the reason we
14 want that search warrant to make sure everything we wrote on
15 the affidavit is true.

16 Q And that's a little bit time consuming, is it not?

17 A Yes.

18 Q All right. And so when you went and served the search
19 warrant and you say you had pictures, what would you have
20 done with those pictures? Would you have kept them in the
21 file?

22 A Yes.

23 Q And how long after this incident, which was in 2008,
24 did you remain employed with the Fairfield County Sheriff's
25 Office?

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1 A I was with the Fairfield County Sheriff's Office until
2 2015, but I started processing and go overseas in 2011, and
3 I left in 2012.

4 Q And so let's back it up a minute. Did you have another
5 job -- at that time, did you have another job besides this
6 investigator job?

7 A Yes. I was a Master Sergeant in the Army National
8 Guard.

9 Q Okay. And so when you said you started processing to
10 go overseas, is that because you were deployed?

11 A Yes, we was getting deployed.

12 Q And when you were processing to go overseas, do you
13 leave your investigator job to go do that, or could you do
14 it at the same time?

15 A Some of both. We'll leave and come back, and then we
16 will go and stay awhile and train and then we would come
17 back and leave to go overseas.

18 Q And did you indeed leave to go overseas?

19 A Yes, I left in 2012.

20 Q Where did you go?

21 A I went to Kosovo and Bosnia.

22 Q And how long did you stay there?

23 A Ten months.

24 Q And then at some point, did anything happen to you
25 while you were over there -- did you intend to come back to

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1 the sheriff's department when you returned?

2 A Yes.

3 Q Did anything happen that caused that to not take place?

4 A Yes. I had a fall while I was there, I got hurt.

5 Q So when you came back from overseas from your

6 employment, did you resume any employment with the Fairfield

7 County Sheriff's Office?

8 A I was still employed but I was at medical hold with the

9 military.

10 Q So did you ever actually work at the Fairfield County

11 Sheriff's Office?

12 A No.

13 Q Okay. So do you have any knowledge of what possibly

14 could have happened to your file?

15 A No.

16 Q To your knowledge, have you -- does the Fairfield

17 County Sheriff's Department have the file?

18 A I don't know.

19 Q And I showed you what had been marked as State's 7 and

20 8. When you collected these types of evidence, did you take

21 them in their sealed form or did you ever open them or up or

22 anything?

23 A I took them in the sealed form, I never opened them.

24 Q And then you put them in the evidence locker?

25 A Correct.

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1 Q And is that the last time you ever saw them until
2 today?

3 A No. When we took them out to send them to SLED I had
4 to fill out the evidence sheet. So I took it and filled out
5 the evidence sheet so that one of the other employees could
6 take it to SLED.

7 Q Okay. And when you did that --

8 A Investigators.

9 Q -- would someone else have been present at the time
10 that you did that?

11 A Yes.

12 Q Who would that have been?

13 A Jeff Talbert.

14 Q Was he the evidence custodian at the time?

15 A Yes. Well, no, he wasn't evidence custodian, he was
16 going to SLED at the time. And the way it was sent is since
17 we can't all just go down at one time we'll send it by the
18 investigator that's going down.

19 Q So you and the investigator were going down to take the
20 stuff out of the locker and then write down just what it is.
21 But did it remain sealed the entire time?

22 A Yes.

23 Q And then you turned it over to him to take to --

24 A SLED.

25 Q -- with the intention that he was going take it to

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1 SLED; is that right?

2 A Correct.

3 Q And again, you said had you had ascertained that the
4 defendant in this case, Darryl Coleman -- did you determine
5 that he actually lived at the residence where you served the
6 search warrant or that he had some connection with that
7 residence?

8 A Yes.

9 Q Could you describe that, please?

10 A Excuse me?

11 Q You said he was connected to that house how.

12 A This is the address that he had on his license at the
13 time I pulled up at the DMV.

14 Q And that was the same incident -- the same incident
15 location where **Witness** said that this occurred.

16 A Yes.

17 Q Okay. And again, what was his date of birth?

18 A .

19 Q When you filled out the evidence form to -- the SLED
20 evidence form to send the items to SLED, did you send
21 them -- did you indicate on the form what the purpose of
22 sending them down there is?

23 A The incident report most of the time is attached to
24 that so they know what it's for. Let me look at my form.

25 Q When you talk about all of the things that you sent, is

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1 there a portion that you can put the reason that you're
2 sending it?

3 A One minute, please. Yeah, the analysis request is
4 there.

5 Q And is there any way to tell what date that was filled
6 out or what date you put that information on the form to
7 send in? If not it's okay. Just is there --

8 A Yes. There is the forensic sheet that go with it.

9 Q Does it have a date on it that you send the stuff?

10 A No, there is not a date.

11 Q As part of your investigation, did you discover -- did
12 you determine what the victim in the case, what her date of
13 birth was?

14 A Yes.

15 Q And what was that?

16 A Her date of birth is [REDACTED].

17 MS. HALL: I don't have anything further. Please
18 answer anything Mr. Pride may have.

19 CROSS EXAMINATION

20 BY MR. PRIDE:

21 Q Ms. Boyd, do you recognize **Witness** [REDACTED] (sic) in
22 the courtroom?

23 A Yes.

24 Q Where is she?

25 A Right there.

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1 Q In the back of the solicitor's table?

2 A Uh-huh.

3 MR. PRIDE: You can let her go now.

4 MS. HALL: Your Honor, I would ask that -- we're
5 excusing Ms. Waters, that we please let the record reflect
6 that this witness did identify the victim in the case.

7 THE COURT: The record so reflects. And Ms. Waters, if
8 you would like to leave you are certainly free to do so.

9 Q Before I go into examining I want to straighten up
10 examining. What date -- you said that you looked up Darryl
11 Coleman's address and all --

12 A I didn't say a date.

13 Q I'm saying, how did you find his address?

14 A I looked -- I had the person that run the DMV at the
15 time.

16 Q And what was the date of birth that you have from
17 the --

18 A On here?

19 Q Uh-huh.

20 A Dates of birth says [REDACTED] according to the DMV.

21 Q And according to this driver's license, whose driver's
22 license is this?

23 A It says Darryl Coleman, Eugene Coleman.

24 Q And what is his address?

25 A 591 Catawba Road, and this was given in --

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- 1 Q No. That's his address; is that correct?
- 2 A Yes --
- 3 Q And what's the date --
- 4 A -- at this time.
- 5 Q What's the date birth on that driver's license?
- 6 A [REDACTED].
- 7 Q 12/09.
- 8 A Yes.
- 9 Q All right. Now, would it be fair to say that you're
- 10 the chief investigating officer on this case?
- 11 A I was the investigating officer on the case, yes.
- 12 Q Okay. And as a result of it you are responsible for
- 13 talking with the victim.
- 14 A Yes.
- 15 Q And talking with the defendant if he's willing to talk
- 16 to you, he or she is willing to talk to you.
- 17 A Yes.
- 18 Q Did you try and talk with Mr. Coleman?
- 19 A I think I did ask him to come to the office and he
- 20 didn't want to come.
- 21 Q Are you sure about that?
- 22 A I'm pretty sure.
- 23 Q Pretty sure?
- 24 A Yes. I can't be for certain, but I --
- 25 Q Can you look at your notes and tell me?

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1 A I don't have notes of that, no, sir.

2 Q You don't take notes?

3 A Sir, my notes would have been at the sheriff's office.

4 I left. I don't know where my file is that I wrote for

5 Darryl Coleman so I can't tell you whether I made notes or

6 not.

7 Q Did you know you were coming here today as a witness?

8 A Yes.

9 Q Did you go to the sheriff's department and get those
10 notes?

11 A They're not -- they couldn't find the case file that I
12 myself made.

13 Q So the sheriff's department couldn't find Darryl
14 Coleman's case file?

15 A As far as I know they couldn't find it.

16 Q So your testimony is based not from your file but from
17 your recollection back in 2008.

18 A Negative. I still have the copy of the report, the
19 search warrant, the information from the medical center.

20 Q You don't have your file from the sheriff's department,
21 do you?

22 A This is from the sheriff's department but not my file.

23 Q I'm talking about your file. You don't have your file
24 from the sheriff's department, do you?

25 A I don't have my file from the sheriff's department.

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1 But I do have the information I wrote down because the
2 report, search warrant and the medical records is still
3 here.

4 Q Well, let me see your pictures, look at the pictures
5 that you took.

6 A Sir, I stated I didn't have those pictures.

7 Q Why don't you have those pictures?

8 A Sir, I can't tell you where they are because I was not
9 there. I've since retired from the sheriff's office, I
10 didn't never go back after 2011/2012. I was on medical hold
11 with the military.

12 Q Well, is that what happens when somebody retires, the
13 file is no longer at the sheriff's department?

14 A I couldn't tell you that, sir.

15 Q You couldn't. All right, ma'am. Now, Investigator
16 Boyd, would you tell the jury for me how much training did
17 you -- I'm sorry. Could you tell me how much training you
18 went through in order to be employed with the sheriff's
19 department?

20 A I went through the academy, the extensive training.
21 Then once I became an investigator I went back to the
22 academy to be trained as an investigator.

23 Q As an investigator.

24 A Yes.

25 Q And an investigator, would I be correct in saying that

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1 an investigator's responsibility is to collect all of the
2 evidence concerning the crime and preserve it? Would that
3 be a correct statement?

4 A Yes.

5 Q I show you a copy of this report.

6 A I have it.

7 Q And this report, it is emulated from the sheriff's
8 department concerning this matter; is that correct?

9 A Yes.

10 Q And based on this report, who are the two people named
11 in this report that you obtained from the victim that was
12 there at the time of the incident?

13 A Stupu and Jessica.

14 Q What is Stupu's real name? It's really James, isn't
15 it?

16 A James.

17 Q Yeah. Okay. And Jessica.

18 A Correct.

19 Q And those two names were given to you on the 16th of
20 December, 2008; is that correct?

21 A Correct.

22 Q Could I see a copy of the statements you took from
23 those two witnesses?

24 A I don't have a statement from them.

25 Q Why?

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1 A Because they wasn't present when the alleged crime
2 happened.

3 Q Didn't Mrs. Walters (sic) tell you that they were
4 there?

5 A They was there earlier but they wasn't there when the
6 crime allegedly happened.

7 Q Didn't she tell you that she sat in the car and talked
8 with James?

9 A That wouldn't have anything to do with the victim being
10 assaulted.

11 Q Why? You don't know what they knew, do you? Because
12 you didn't go. You don't know, do you?

13 A Well, I didn't see a reason to talk to them because
14 they wasn't present at the time of the crime.

15 Q How do you know that? Mrs. Walters (sic) gave you
16 those two names as people that she was with at the time that
17 she went to Coleman's house; isn't that correct?

18 A That's correct. Ms. Waters also stated that the
19 victim -- I mean, those two people left that area and she
20 wasn't there. They wasn't there when it happened.

21 Q Well, did you go ask them, Mr. Talford, "Were you down
22 there like Mrs. Walters (sic) said?" Did you go do that?
23 Yes or no.

24 A No.

25 Q Did you go ask Jennifer, "Were you down there sitting

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1 in the car talking to Mrs. Walters (sic) and walked up on
2 the front porch with her?" Did you ask her that?

3 A No.

4 Q Tell the jury, what evidence did you gather between the
5 16th of December and when you finally left the sheriff's
6 office beyond the statement? Tell me, what did you do?

7 A I went into the report from the victim, I gathered the
8 sexual assault kit and her clothing and made sure they was
9 sent to SLED.

10 Q And based on that --

11 A And I can't tell you everything else I did because I
12 can't just go on my memory from 11 years.

13 Q You can't?

14 A No.

15 Q Well, you expect the defendant to go on his memory of
16 11 years, don't you?

17 A But the defendant is being charged with a crime.

18 Q Okay.

19 A So he need to know what he did.

20 Q All right. So what you did is little or nothing; isn't
21 that correct?

22 A Negative.

23 Q Did you know about the fact that Mrs. Walters (sic)
24 said that Mr. Coleman had ejaculated on the floor?

25 A If it's not in my statement I can't tell you that I

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1 knew that.

2 Q Again I ask you, did you know it? Yes or no. I'm not
3 talking about your statement, I'm talking about what you
4 know.

5 A I can't tell you that I do know that because it's not
6 in my statement. I would have written whatever she told me
7 down.

8 Q Do you have the statement before you?

9 A I have the report right here and it don't say that,
10 so --

11 Q Read it.

12 A "The victim stated Darryl Coleman called for her
13 cousin, Catherine's. And she told him that she was not
14 there and he was not there" --

15 MS. HALL: Your Honor, I'm going to object to this
16 because this is hearsay as well.

17 THE COURT: Just one second. Madam Forelady, let's go
18 ahead and go back, and we're going to discuss a lunch break.
19 I want to look at this statement and we'll make a decision.
20 But if you'll go back to the jury room right quick.

21 (The jury left the courtroom.)

22 MR. PRIDE: Judge, excuse me, I have a request that you
23 remove the witness from the courtroom during our
24 discussions, I don't want to educate her.

25 THE COURT: All right, I'll do that. If you'll have a

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1 seat on the front viranda, please, ma'am.

2 (The witness stepped out.)

3 THE COURT: All right, sir?

4 MR. PRIDE: I don't blame Ms. Hall, I wouldn't want it
5 in either. It's the third version, which contradicts --
6 each version contradicts a previous version of what
7 happened. Mrs. Hall asked you, "Let me put the statement in
8 from the Palmetto Health," in which the little lady sent out
9 and took the statement from the victim. That statement went
10 in. This is an official record from the sheriff's
11 department. It's necessary.

12 THE COURT: Ms. Hall?

13 MS. HALL: Your Honor, I believe that she could use it
14 to refresh her memory. The fact of the matter if we're
15 going to -- it is hearsay from her -- she's basically saying
16 --

17 THE COURT: You opened the door when you admitted that
18 other statement in writing.

19 MS. HALL: For purposes of medical examination, which
20 is an exception to the hearsay rule.

21 THE COURT: I disagree. It went well beyond purposes
22 of medical examination, it goes to the detail of what she
23 said happened and is far beyond 8034.

24 MS. HALL: And Mr. Pride did not object to that at that
25 time. And also the other part of this is that I believe

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1 that if he wants to impeach the -- he had the incident
2 report, he knew all of the details that were contained
3 therein, he's had full access to interview Maggie Boyd. And
4 I believe the proper way for that to have been done was for
5 him to have asked **Witness** [REDACTED] on the stand, "Did you
6 give a statement to Maggie Boyd at a certain time?" If it
7 was an inconsistent statement then give the witness a chance
8 to explain it rather than come in on the back end when he's
9 already excused her and now asking -- it is pitting her
10 against the victim, which I don't --

11 THE COURT: I disagree with you. I think you opened
12 the door and I'm going to find it's admissible, I'm going to
13 overrule your objection. All right. Now, what are we going
14 to do for lunch? It's 1:00 now. How much longer do you
15 have with this witness?

16 MR. PRIDE: Judge, I'm going to be a long time with
17 this witness.

18 THE COURT: I'm going to go ahead and break for lunch.
19 Let's bring the jury in and excuse them and then we'll
20 figure out timing.

21 (The jury return to the courtroom.)

22 THE COURT: Madam Forelady and ladies and gentlemen, I
23 decided this, I think, is going to be a little while, I
24 think this is a good stopping point to go ahead and let's go
25 to lunch. Can you be back in your jury room by 2:30? If

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1 you will leave your notebooks, your pads in the jury room,
2 don't take them with you. I'll remind you not to speak with
3 anybody, including yourselves, about this case and we'll
4 resume the trial at 2:30.

5 (The jury left the courtroom.)

6 THE COURT: You have a matter we need to put on the
7 record?

8 MS. HALL: Just very quickly in an effort to sort of
9 roll through the next few witnesses after Ms. Maggie. Mr.
10 Pride and I had spoken a week or so ago. There was an
11 investigator named Bill Dove who in the presence of Mr.
12 Pride came and did a buccal swab of the defendant on a
13 consent Schmerber motion. And so Mr. Pride had indicated
14 that he would stipulate to that buccal swab being taken by
15 that investigator and being transported to SLED by that
16 investigator, the same person who did it. And that way --
17 he's in training in Columbia and we'll keep him from having
18 to come back.

19 THE COURT: Is that true, Mr. Pride?

20 MR. PRIDE: That's correctly stated.

21 THE COURT: Thank you very much, that will avoid that
22 testimony then. Are you ready to proceed? You were cross
23 examining. For the record, the State had objected to its
24 admissibility, I felt like they had opened the door so I
25 admitted it. And you were cross examining her at the time

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1 we broke, correct?

2 MR. PRIDE: That's correct.

3 THE COURT: Are you ready to proceed?

4 MR. PRIDE: I'm ready to proceed, Judge.

5 THE COURT: Very good. Would you bring the jury in,
6 please, ma'am?

7 (The jury returned to the courtroom.)

8 THE COURT: Madam Forelady, before we get started, did
9 each of your jurors leave their notepads in the jury room
10 during the break?

11 FOREPERSON: Yes, sir.

12 THE COURT: And has any of the jurors been -- had any
13 communication with one another or from anybody else about
14 this case during the break? If so, raise your hand. Thank
15 you so much. All right. Mr. Pride?

16 MR. PRIDE: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 BY MR. PRIDE:

19 Q I was asking you about a statement that you indicated
20 that you took from Mrs. Waters on the 16th of December; is
21 that correct?

22 A Yes.

23 Q And you have that statement before you, right?

24 A Yes.

25 Q Okay. I'm going to ask you to start over and read that

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1 report to the jury, please.

2 A The victim stated that Derrick Coleman called her
3 cousin, Catherine and she told him that she was not there.

4 Q Excuse me, just a moment. Did you ever look for
5 Catherine?

6 A No.

7 Q Go right ahead.

8 A "Darryl asked who am I speaking to, the victim stated
9 **Witness**. Darryl asked the victim what's up and what she
10 was doing. She told him that she was bored, doing nothing.
11 Darryl asked the victim did she want to go fishing. The
12 victim stated my mother do not like me going places. The
13 subject stated we're just going fishing. The victim said
14 okay and hung the phone up, went outside and sat on the
15 porch. The subject called back and asked the victim are you
16 going or not? The victim said okay, and walked up to the
17 crossroads where the subject picked her up and in a white
18 car. The subject called his friend, Stupu, James Talford,
19 and his girlfriend, Jessica. We met them at the Debutary.
20 Darryl and Stupu went fishing. Jessica and I stayed in the
21 car and talked. Later they came back and we left. Darryl
22 drove to the trailer and told me to get out. We went inside
23 and I sat on the couch. Darryl told me to come in the
24 bedroom and watch TV in the bedroom. I went in the room and
25 sat on the side of the bed, Darryl went and took a shower.

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1 We was watching a movie and then Darryl asked me did I want
2 to have sex, I said no, not really. He pushed me back on
3 the bed, pulled my shoes off and pulled my pants down and
4 pulled them off. He spread my legs apart. I was scared.
5 He pulled his pants down and I looked away. He put his
6 penis inside of me and it stayed inside for a long time.
7 Then I pushed him off me. He went inside the bathroom and
8 brought a wash rag back for me. He put his clothes on and I
9 put my clothes on and then he took me home."

10 Q And based on the taking of this statement, can I assume
11 that that was the beginning of your investigation?

12 A Yes, sir.

13 Q And can I also assume that later on as a result of this
14 statement you thought it was necessary to get a search
15 warrant; is that right?

16 A Yes, the statement and the other evidence.

17 Q Now, when you went before the magistrate in order to
18 get a search warrant you had to swear to certain facts that
19 ultimately would let the magistrate determine whether or not
20 there was sufficient cause for him to allow you to search,
21 am I correct?

22 A Correct.

23 Q And I show you the search warrant and ask you just to
24 take a look at it, I want to make sure I'm using the correct
25 one.

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- 1 A Search warrant?
- 2 Q Yes. Have you got one up there?
- 3 A Yes, sir.
- 4 Q Okay. Your search warrant is dated what?
- 5 A I didn't get the warrant based on a search warrant, I
- 6 got the warrant based on the facts that the victim gave me.
- 7 Q Wait a minute now, you said you didn't get the search
- 8 warrant --
- 9 A I didn't get the warrant based on the search warrant.
- 10 Q I'm not talking about the warrant. I asked you whether
- 11 or not you obtained a search warrant.
- 12 A Yes.
- 13 Q And you told me yes.
- 14 A Yes.
- 15 Q And you told me that you had a copy of that search
- 16 warrant.
- 17 A I do.
- 18 Q And I'm asking you based on your reviewing the search
- 19 warrant, what day did you get it?
- 20 A 29th of December.
- 21 Q Why did you wait so late?
- 22 A I'm not sure.
- 23 Q You're not sure? You do know a man is on trial today,
- 24 right?
- 25 A Yes.

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1 Q And you're not sure --

2 A It was probably because we were still investigating the
3 case.

4 Q Ain't no we, it's you.

5 A Well, we all get together and investigate, sir. We
6 help each other out.

7 Q What were you investigating during that period of time?

8 A Well, I had to find out who he was, where he lived and
9 tried to get the -- make sure I had everything to get and
10 did the search warrant.

11 Q What is make sure I had everything?

12 A Make sure I had the right address, make sure I had the
13 right person.

14 Q Well, you told the jury in order to ascertain that
15 information you went to the what I call South Carolina
16 driver's license computer and got that off, right?

17 A Correct.

18 Q So after that what did you do? That was all you did,
19 right?

20 A According to the report, yes.

21 Q Okay. So then you went before the magistrate you're
22 saying on the 29th.

23 A Yes.

24 Q And between the 16th of December and the 29th of
25 December, what you did according to your own testimony which

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1 constituted your investigation was go on the computer and
2 find out Darryl's name and his address; is that correct?

3 A I'm not saying that's all I did, but that's according
4 to the report, yes.

5 Q Tell me what else you did.

6 A Correct.

7 Q That's all you did, right?

8 A Correct.

9 Q And then based on that you went before the magistrate,
10 right?

11 A Correct.

12 Q To obtain a search warrant.

13 A Correct.

14 Q Now, when you went before the magistrate, do you have a
15 copy of your affidavit?

16 A Yes, sir.

17 Q And you see where it says description of property?

18 First of all, a search warrant is legal authorization for a
19 law enforcement officer to come to a person's property and
20 look for something, you're looking for something. Is that a
21 pretty good description of a search warrant?

22 A Correct.

23 Q Okay. And in order to get that search warrant the
24 magistrate is required to make sure that the officer has
25 cause; is that correct?

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1 A Correct.

2 Q And the way that you demonstrate that cause to the
3 magistrate is that you sign an affidavit; is that correct?

4 A Correct.

5 Q Now, in your affidavit, what did you tell the
6 magistrate that you wanted to look for?

7 A The affiant said, "The affiant, who is an investigator
8 with the Fairfield County Sheriff's Office, is currently
9 conducting an investigation against the juvenile victim,
10 **Witness**, which occurred December the 15th of 2008.
11 The subject, Darryl Coleman, drove the victim to 744 Catawba
12 Road and committed sexual battery against the victim. Based
13 on investigation it is the affiant's belief that evidence
14 needed to further this investigation is located at this
15 residence at this time."

16 Q Well now -- no. Down where it says description of
17 property.

18 A Oh, you said the affidavit.

19 Q All right. You're not looking at the --

20 A Yeah. Okay. It says blue and white comforter, red bed
21 sheets, blue wash cloth --

22 Q Why were you looking for red bed sheets?

23 A I guess that's what the victim told me at the time.

24 Q You guess? You know this man is on trial and you're
25 sitting up there guessing?

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1 A Sir, I can only tell you what's on the report.

2 Q The truth of the matter is you just told the magistrate
3 something in order to pass that test so you could get a
4 search warrant.

5 A Negative. I had no reason --

6 Q What did red sheets have to do with this case? Nobody
7 had told you that.

8 A Sir, I have nothing to gain or lose for this case to
9 push false evidence on a report.

10 Q Please -- just -- I'm not accusing you of that. I'm
11 asking for an explanation of why you did it, not an
12 accusation.

13 A This information was given to me at some time.

14 Q By who?

15 A **Witness**.

16 Q Who?

17 A The victim.

18 Q **Witness** told you that there was a red sheet on the
19 bed?

20 A If I put it in the record, sir, she told me.

21 Q All right. What else did you tell the magistrate?

22 A Exactly what's on the --

23 Q No. Read what your affidavit says.

24 A I read it. What part do you want me to read?

25 Q What else did you -- in your affidavit description of

MAGGIE BOYD - CROSS

1 property, do you see that?

2 A Yes, sir.

3 Q You had to describe for the magistrate -- and the
4 magistrate is a lower judge, a lesser judge than today here
5 in court, you had to describe for him the property that you
6 wanted to find and that you wanted to look for during the
7 search, right?

8 A Yes, sir.

9 Q All right. Now, where it says description of property,
10 tell me what your signed affidavit -- you know what a signed
11 affidavit is, right? Hello?

12 A Yes, sir.

13 MR. PRIDE: I'm sorry. Excuse me, Judge.

14 Q Now, what did you say where it says description of
15 property?

16 A Description of premises, is that what you want?

17 MR. PRIDE: Can I approach the witness?

18 THE COURT: Yes, sir.

19 A Description of property. It says blue and white
20 comforter, red bed sheets, blue and white picture, hair
21 fiber, body fluids, condom, also to include but not limited
22 to any microscopic evidence of any other item related to the
23 crime of criminal sexual conduct.

24 Q Well, when you were before that magistrate you knew
25 that Mrs. Walters (sic) had told you that there was a wash

MAGGIE BOYD - CROSS

1 rag that she used to wipe off herself, right?

2 A It says wash cloth.

3 Q Wash cloth?

4 A Correct. Blue wash cloth.

5 Q Did you find a blue wash cloth?

6 A No, sir.

7 Q When you went to conduct this search, who went with
8 you?

9 MR. PRIDE: Excuse me a minute, Judge, while she's
10 looking.

11 (Break in proceedings.)

12 Q Did you find it?

13 A No, I don't have the return.

14 Q So can we assume that you went by yourself?

15 A Negative. I wouldn't go by myself, sir. But I can't
16 tell you at this time, no.

17 Q You can't look at your notes either.

18 A No, sir.

19 Q And tell the jury what you told the judge the address
20 of the residence was that you went to search. I'll help you
21 out --

22 A The residence is Albert Castleberry, described as white
23 house with gray shutters with the porch in the front located
24 at 744 Catawba Road in Great Falls, South Carolina.

25 Q Where did you get that 745 (sic) Catawba Road?

MAGGIE BOYD - CROSS

1 A Off the report, sir.

2 Q Off what report? I can't hear you.

3 A Just a minute, please.

4 Q You went to the wrong address, didn't you? Tell the
5 truth. You went to the wrong address, didn't you?

6 A Hold on a minute, sir.

7 Q I know you went to the wrong address and you do too.

8 A Okay. Maybe I went to the wrong address.

9 MS. HALL: Your Honor, I object to this --

10 THE COURT: I didn't hear the --

11 MS. HALL: He's testifying for her. He's saying, "I
12 know you went to the wrong address," when she --

13 MR. PRIDE: I shouldn't have said that and I'll mind
14 myself.

15 Q And looking at Darryl Jackson -- Darryl Coleman's
16 license plate (sic), what is his address?

17 A 591 Catawba Road.

18 Q And that's where Mrs. Walters (sic) told you that the
19 alleged rape took place, isn't it?

20 A It could have been an error.

21 Q I didn't ask you -- answer my question. Isn't that
22 where Mrs. Walters (sic) told you that the rape took place?

23 A She told it took place at -- I'm looking for the
24 report. I done changed my papers around so many times, just
25 hold on a second, please. According to report the incident

MAGGIE BOYD - CROSS

1 location was 744 Catawba Road. That was an error.

2 Q According to whose report?

3 A According to the incident report.

4 Q Whose incident report?

5 A Mine, sir.

6 Q All right. And when you told the jury that you got a
7 search warrant and that you went to Darryl's house and took
8 pictures, you didn't tell the truth, did you?

9 A I went to the address on the report and took pictures,
10 correct.

11 Q Well, how did you get in that house? You didn't do
12 anything, did you?

13 A Sir, that's your opinion. I did.

14 Q Why did you tell this jury that you went to Darryl's
15 house and you took pictures, and then you turned around when
16 I asked you for the pictures and you said they were lost
17 when you went overseas?

18 A Sir, I told you I didn't know what happened to them
19 because I left them there when I did go overseas. I'm not
20 in control of what happened at the sheriff's office.

21 Q You are in control of evidence, aren't you?

22 A If I'm not there I can't be in control.

23 MR. PRIDE: Judge, I would like to introduce into
24 evidence a copy of the driver's license and I will show it
25 to --

MAGGIE BOYD - CROSS

1 THE COURT: Any objections?

2 MS. HALL: Well, this was issued in 2016 so I don't
3 know that it is going to be relevant.

4 THE COURT: Would you take your jury to the jury room,
5 please, ma'am? Leave your pads in the courtroom, please.

6 (The jury left courtroom.)

7 THE COURT: When was that one issued?

8 MR. PRIDE: It's an older one than this one.

9 THE CLERK: Issued 11/5 of 2014.

10 MR. PRIDE: And this one was done on '16.

11 THE COURT: Well, I think the objection, if I
12 understand what Ms. Hall is saying, is that the date of this
13 was December 15th of 2008, isn't it 2008? Do you have
14 anything showing that that was his address at that point?

15 MR. PRIDE: Judge, I won't go there, the testimony is
16 what I'll rely on. She told us where she went, and of
17 course, we're going to show where he lives so that will
18 settle that. And maybe I'll come back and address this to
19 you at -- but I can lay the foundation.

20 THE COURT: Okay. So at this juncture you're
21 withdrawing the offer of that evidence and laying a further
22 foundation.

23 MR. PRIDE: Yes, right, because of the objection.

24 THE COURT: I've got you. Would you bring the jury
25 back?

MAGGIE BOYD - CROSS

1 (The jury left the courtroom.)

2 MR. PRIDE: May it please the Court?

3 THE COURT: Yes, sir.

4 BY MR. PRIDE:

5 Q Mrs. Boyd, can we agree that if the search warrant that
6 you obtained was for Catawba Street, it was for 744 Catawba
7 Road that's where you went?

8 A Correct.

9 Q And that's where you have told the jury that you took
10 the pictures.

11 A Correct.

12 Q And as a result of your investigation the only thing
13 you got out of Catawba obviously were pictures; is that
14 right?

15 A Correct.

16 Q And you don't know where those pictures are.

17 A Correct. I don't know where they are.

18 Q I'll try to not ask you again. All right. And how did
19 you get in Catawba Street?

20 A The resident let me in.

21 Q Did you give them a copy of the search warrant?

22 A This is the only search warrant I have.

23 Q And that search warrant has a return to it, too,
24 doesn't it?

25 A Yes, it does.

MAGGIE BOYD - CROSS

1 Q And that return is a sworn affidavit, too, because it
2 has to be notarized by a notary public, is that not correct?

3 A Correct.

4 Q And you have before you your return, don't you?

5 A Correct.

6 Q Tell the jury -- and the return -- in other words, when
7 the judge says, "Mr. or Mrs. Law Enforcement Officer, okay,
8 I'm going to give you a search warrant," and you take the
9 search warrant out, and whatever you retrieve is to be
10 placed on the return so that the judge and everybody else
11 will know what you took; is that correct?

12 A Correct.

13 Q What does that return say? What did you get?

14 A You've got return right there in your face. It says,
15 "Several pictures taken right there in the residence."

16 MR. PRIDE: Judge --

17 THE COURT: Yes, ma'am, if you would answer the
18 question, please.

19 A It says, "Several pictures taken throughout the
20 residence." That's the only thing that was taken.

21 MR. PRIDE: Can I approach the witness?

22 THE COURT: Yes.

23 Q You have in your investigation package this picture; is
24 that correct?

25 A Correct.

MAGGIE BOYD - CROSS

1 Q Would you take that picture out, please? Do you have
2 it?

3 A Yes, sir.

4 Q Where it says home address, what's on that picture?

5 A 591.

6 MR. PRIDE: At this point in time, Your Honor, I think
7 I have laid a sufficient foundation for the introduction and
8 I would so move to admit it.

9 THE COURT: Admitted. And that's marked as Defendant's
10 Number 1?

11 (The driver's license was received as Defense 1.)

12 MR. PRIDE: Yes, sir. Can I proceed, Judge?

13 THE COURT: Yes, sir.

14 Q Okay. Now, you were in court and heard **Witness**
15 testify; is that correct?

16 A Correct.

17 Q Did she ever tell you anything about her cousin and her
18 boyfriend drove her down to the house?

19 A I can only speak to what was on my report. She told me
20 what's on my report.

21 Q So that's not on your report, is it?

22 A Correct.

23 Q All right. And when you obtained the report from the
24 hospital, did you look at the statement that the lady who
25 had the rape kit took?

MAGGIE BOYD - CROSS

1 A Not at that time, I wrote my own individual report.

2 Q Certainly that would have been of some benefit for you,
3 wouldn't it?

4 A Yes, sir. I wrote what Witness told me in my report.

5 Q And when did Witness give you that report?

6 A At the hospital.

7 Q So Witness gave both statements at the hospital.

8 A Correct.

9 Q All right. Now, did you ever come to court in 2008 for
10 this case?

11 A No, sir.

12 Q Have you ever been called to court -- is this the first
13 time you've been called to court for this case?

14 A Yes, sir.

15 Q Now, you do have today records from the Fairfield
16 County Sheriff's Department, don't you, involving this case?

17 A Excuse me?

18 Q You do have in your possession today records from the
19 Fairfield County Sheriff's Department involving this case.

20 A No, sir. I do not have records from the Fairfield
21 County Sheriff's office, the only thing I have is this.

22 Q In there aren't there some records from the Fairfield
23 County --

24 MR. PRIDE: Can I approach, Judge?

25 THE COURT: Yes, sir.

MAGGIE BOYD - CROSS

1 A Oh, you're talking about the regular report. I have
2 the report, the incident report.

3 Q And those incident reports were reports from the
4 Fairfield County Sheriff's Department; is that correct?

5 A This report, it is one of the Fairfield County
6 Sheriff's Office.

7 Q But these reports were separate from the file that you
8 can't find.

9 A No, sir. The report I have is here.

10 Q No, ma'am.

11 A I don't know what you're talking about.

12 Q All right. You have told the jury that you can't find
13 a file, right?

14 A Yes, sir. I didn't have that file, no, sir. I haven't
15 been to the sheriff's office to look for a file because I
16 don't work there.

17 Q There's a file missing in this case from the Fairfield
18 County Sheriff's Department, can we agree on that?

19 A Yes, sir.

20 Q But yet you have in your file today reports that
21 emulate from the Fairfield County Sheriff's Department,
22 don't you?

23 A Yes, sir. They are computer generated.

24 Q Okay. How did you get in possession?

25 A The solicitor gave them to me.

MAGGIE BOYD - CROSS

1 Q So those reports, were they in the file also as
2 missing?

3 A Yes, sir.

4 Q Do you remember that?

5 A It's a computer generated report that is in the
6 computer and it was in my file.

7 Q Now answer the question. You remember that in the file
8 that was lost these documents were contained.

9 A Incident reports I have in my hand, yes, sir.

10 Q No. Once more, let's try one more time. There's a
11 file lost, right?

12 A Yes, sir.

13 Q And you have in your hand what you have identified as
14 sheets or as reports called criminal paper, Fairfield County
15 Sheriff's Department; is that correct?

16 A No, sir.

17 Q You don't see that?

18 A No, sir.

19 MR. PRIDE: Can I approach one more time, Judge?

20 THE COURT: Yes, sir.

21 A No, sir, I don't have this. I only have the incident
22 report.

23 Q You don't recognize these documents either?

24 A You asked me did I have them in my --

25 Q No. That was does a --

MAGGIE BOYD - CROSS

1 A I just need to look at it again, that's the only thing
2 I'm saying. No, sir.

3 Q Don't recognize them. Now, Mrs. Boyd, am I correct
4 that the total investigation conducted by you in this
5 case -- you've already told the jury that you were the lead
6 officer or the chief investigating officer on this case, the
7 total investigation that you conducted was, in fact, that
8 you went to the Richland County Hospital because you got a
9 report that a rape had taken place, am I correct about that?

10 A Correct.

11 Q And when you got down there you learned that the person
12 involved in it was Mrs. **Witness** Hall -- I'm sorry, **Witness**
13 **Witness** (sic). You learned that, didn't you?

14 A Correct.

15 Q And also you learned that she was being examined there
16 for a possible rape; is that correct?

17 A Correct.

18 Q And you waited there and got a statement from Mrs.
19 Walters (sic).

20 A I went there and got a report, yes, sir.

21 Q Okay. And when you got that report from Mrs. Walters
22 (sic) did you read it back and say, "Mrs. Walters (sic) is
23 this right or wrong what you told me?" You usually do that.
24 And then you say, "If it's not I'll change this," and we put
25 an initial up there. Isn't that the way you do it?

MAGGIE BOYD - CROSS

1 A Yes, sir.

2 Q Nothing was changed on that report, right?

3 A No, sir.

4 Q All right. So after you got that report you were given
5 a rape kit.

6 A Correct.

7 Q And you took the rape kit and you went -- and this
8 would have been -- all of this was occurring on the 16th of
9 December, right?

10 A 16th/17th because it was late when we left. It was --

11 Q Well, it can't be 16 and 17. I want you to look at
12 your reports and tell me.

13 A Yes, sir. I'm just saying we left early in the morning
14 that morning.

15 Q No, ma'am. My question is when was the statement
16 taken.

17 A The statement was taken on the 16th, correct.

18 Q All right. So the incident happened on the 15th, you
19 took the statement on the 16th, and you didn't do
20 anything -- and you got the rape kit that same day; is that
21 correct?

22 A Yes, sir.

23 Q And so far as you're concerned that rape kit was -- the
24 box was sealed up; is that correct?

25 A Correct.

MAGGIE BOYD - CROSS

1 Q And it was marked who it was given to, being you; isn't
2 that correct?

3 A Correct.

4 Q And you testified that you took this box and you put it
5 in the evidence room.

6 A Correct.

7 Q When is the next time you saw that box?

8 A When we took it out to take it to go to SLED, so it
9 could go to SLED.

10 Q When was that?

11 A It was in '08 still in December, because the case
12 number is 08010027. But I don't have the exact date.

13 Q Don't know the exact date.

14 A Correct.

15 Q All right, ma'am. And also you waited until the 29th
16 of December before you did anything in this case, obtained a
17 search warrant; is that correct?

18 A Correct.

19 Q Would you not agree with me that regardless of what
20 kind of crime it is, what law enforcement does is try and
21 get the evidence as soon as possible?

22 A Correct.

23 Q Why did you wait until the 29th?

24 A Sir, I don't know the full details of the wait at this
25 time, I can only go by what I have in my hand, sir.

MAGGIE BOYD - REDIRECT

1 Q So your answer really is I don't know.

2 A Exactly.

3 Q Now, after the 29th you then arrested Coleman, Darryl
4 Coleman, on the 31st of December.

5 A Correct.

6 Q And between the 31st of December and the 22nd of May,
7 2019, this is the first time you have been to court on this
8 case?

9 A Correct.

10 MR. PRIDE: Thank you ma'am.

11 MS. HALL: Just very briefly.

12 REDIRECT EXAMINATION

13 BY MS. HALL:

14 Q Just a couple of things. When you take a statement
15 from a victim or any witness in a case, is it your -- is
16 that what he's referring to when -- did you take a statement
17 from the victim in this case?

18 A The only thing I wrote is a report. They had already
19 taken a statement at the hospital and I didn't want to put
20 the victim through that over and over again.

21 Q So you wrote a report. Now, I want to back up and I
22 want to talk about when you take a written statement from a
23 witness or a victim, or even a defendant, is it typical for
24 you to write it out and then have them read it?

25 A Correct.

MAGGIE BOYD - REDIRECT

1 Q When you write your incident report, is it typical for
2 you to write it out and then let the victim or the witness
3 or somebody come back and read your incident report?

4 A No.

5 Q And the statement that you would take from a witness or
6 a victim or a defendant that you would let them come back
7 and read --

8 MS. HALL: Judge, excuse me. This line questioning is
9 suggestive and it is leading and it's on redirect. I
10 object.

11 THE COURT: I sustain to the leading. You can rephrase
12 your question, however.

13 MS. HALL: Thank you.

14 Q Did you take a statement that would have been shown to
15 anyone in this case and allowed them to come back and
16 correct it or read it before you submitted it into the
17 records at the sheriff's department?

18 A No, I did not.

19 Q So what your incident report states is what you believe
20 her to have told you.

21 A Correct.

22 Q And that's just basically the facts of the case.

23 A Correct.

24 Q All right. One more question. Do you -- who signed --
25 when you take a search warrant to somebody or to a house, do

MAGGIE BOYD - REDIRECT

1 you have to leave it with someone?

2 A Yes.

3 Q Who did you leave that search warrant with?

4 A I'm not sure.

5 Q Please look at the search warrant.

6 A I think it was the homeowner. Hold on a second,
7 please.

8 MR. PRIDE: I missed the question. What was the
9 question?

10 MS. HALL: I'm just asking her when she left the search
11 warrant who did she leave it with.

12 THE COURT: I missed it too.

13 MS. HALL: I'm sorry. I'm asking her when she
14 served -- you know, we have to serve the search warrant or
15 take the search warrant and leave it with someone at the
16 place and I'm asking her who she left it with.

17 THE COURT: Okay.

18 A Alberto Castleberry.

19 Q Alberto Castleberry? You said that -- and Mr. Pride
20 touched on this pretty heavy, the four or five things that
21 you asked for permission to go and look for, did you find
22 any of them?

23 A No.

24 Q And did you go to the house that you believed to be the
25 incident location where the sexual assault had occurred?

MAGGIE BOYD - REDIRECT

1 A Correct.

2 Q And is it customary as when you were an investigator,
3 would you give your entire file to the solicitor's office?

4 A Correct.

5 Q And did you do so in this case?

6 A I'm not sure.

7 Q But that was your custom to give the file to the
8 solicitor's office.

9 MR. PRIDE: I object.

10 A Correct.

11 THE COURT: Just one second.

12 MS. HALL: I'm sorry.

13 MR. PRIDE: It was too fast.

14 Q And then you stated on cross that the search warrant
15 and the arrest warrant were issued the same day; is that
16 correct?

17 A No. I think one of them was the 29th and the other one
18 was the 30th -- hold on a second. The search warrant and
19 the -- I meant the -- yeah. The search warrant and the
20 warrant was issued on the -- I cannot see this, I'm sorry.

21 MS. HALL: May I approach, please?

22 THE COURT: Yes, ma'am.

23 Q So you have the search warrant. When was the search
24 warrant issued? When was the arrest warrant issued?

25 A The arrest warrant was issued 12/29.

MAGGIE BOYD - REDIRECT

1 Q '08?

2 A Yes.

3 Q So that's 12/29/08 on the arrest warrant. When was the
4 search warrant issued?

5 A 12/29.

6 Q 12/29/08 as well. Same day?

7 A Exactly.

8 Q And did you -- when you were an investigator, is it
9 typical for you to make an arrest based on probable cause or
10 evidence that you have and then to continue to investigate a
11 case?

12 MR. PRIDE: Objection. Objection, Your Honor. This is
13 not a typical case. We're not talking about what's typical,
14 we're talking about what did happen. That's what a fact is,
15 a fact is what a thing is. You're asking her to make a
16 assumptions.

17 THE COURT: Make your objection to me.

18 MR. PRIDE: I object, Your Honor, on the ground --

19 THE COURT: I sustain on the relevance.

20 MS. HALL: I just withdraw it.

21 THE COURT: Thank you.

22 MS. HALL: I don't have anything else.

23 MR. PRIDE: Judge, I'll be brief, I have one question.

24 THE COURT: Okay.

25 RECROSS EXAMINATION

MAGGIE BOYD - RECROSS

1 BY MR. PRIDE:

2 Q Ms. Boyd, I want to ask you one question. When you
3 went to the wrong house, searched the wrong house, took the
4 pictures at the wrong house, gave the search warrant to the
5 wrong person, did you ever ask that lady where is Darryl
6 Coleman?

7 A He was locked up at the time, sir, that we did the
8 search warrant.

9 Q No, ma'am. You just told me that this was on the 29th.

10 A I mean the warrant is on the 29th also.

11 Q He was locked up on the 31st.

12 A Okay. I can't recall that --

13 Q No --

14 A -- if I asked her where Darryl was or not.

15 Q I asked you one question. When you went to the wrong
16 place and you left the search, did you ever ask that lady,
17 "Does Darryl live here," or, "Where is he?" Did you ever do
18 that? No, you didn't, did you?

19 A Sir, I can't recall.

20 MR. PRIDE: Thank you, Judge, I appreciate it.

21 THE COURT: May this witness be excused?

22 MS. HALL: Yes, please.

23 MR. PRIDE: Yes.

24 THE COURT: Thank you, ma'am. Call your next witness.

25 MS. HALL: State calls Jeff Talbert.

JEFF TALBERT - DIRECT

1 The witness, JEFF TALBERT, was first duly sworn and
2 Testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HALL:

5 Q What is your name, please?

6 A Jeff Talbert.

7 Q Where are you employed?

8 A Fairfield County Sheriff's Office.

9 Q And you're employed there now?

10 A Yes, sir.

11 Q What is your job there now?

12 A Lieutenant in the criminal investigations division.

13 Q And what was your job there -- were you employed there
14 in 2008?

15 A I was.

16 Q What was your job then?

17 A An investigator.

18 Q With regard to this case, what was your involvement?

19 A Whenever the sexual assault kit was taken to SLED to be
20 analyzed by SLED, I actually took it from the sheriff's
21 office to SLED and dropped it off.

22 Q And I'm going to show you real quick what's been marked
23 as State's Exhibit 6. Is this the sexual assault kit that
24 you got out of the evidence locker and took to SLED?

25 A This is sexual assault kit. I don't see my signature

JEFF TALBERT - DIRECT

1 on this box anywhere.

2 Q Would you have signed the box or would you have signed
3 the evidence sheet?

4 A The evidence sheet should be signed by me.

5 Q And on this evidence sheet, does that bear your
6 signature?

7 A It does.

8 Q And what does that say that you took to SLED?

9 A It says item one was a sexual assault collection kit.
10 And the item two was a bag with a white tank top, a white
11 t-shirt and black stretch pants.

12 Q And what is the lab number that is on that sheet?

13 A The lab number is L08-18002.

14 Q Okay. So going back to State's Exhibit 6, what's the
15 lab number on that?

16 A I don't see the lab number on this box.

17 Q Is it on the other side perhaps? Or is there things
18 inside that you can open it up and see? But there should
19 be --

20 MS. HALL: Your Honor, I would just ask to open the
21 box.

22 A Yeah. That's not the lab number, I think that may be a
23 case number.

24 Q Is there a lab number on the contents in the box that
25 was taken to SLED?

JEFF TALBERT - DIRECT

1 A There is a lab number on this, it's L08-18002.

2 Q So that -- and that matches your evidence sheet for the
3 items you transported; is that correct?

4 A It does.

5 Q Let me show you what's been marked as State's Exhibit
6 7. Does that lab number match as well?

7 A It does. This lab number is L08-18002.

8 Q On State's Exhibit 8, what is the lab number on that?

9 A L08-18002.

10 Q So would those be the items that you took to SLED?

11 A It is. And my initials actually are on the packet.

12 Q They're on the packet inside. And what is the date on
13 the packet that you took these items to SLED?

14 A December 17th, 2008.

15 Q Are you familiar with Catawba Road?

16 A Yes, ma'am.

17 Q Where is it?

18 A It's located in Fairfield County.

19 Q Is all of Catawba Road located in Fairfield County?

20 A Yes, ma'am.

21 Q When you went to take any of these -- all of these
22 items to SLED, did you open any of them or did they go in a
23 sealed form?

24 A No, ma'am. Whenever I take them down it's in sealed
25 form, and the evidence custodian at SLED, they would have

JEFF TALBERT - DIRECT

1 opened it and put them in those packages and heat sealed it,
2 and I initialed and dated it right in front of them.

3 Q And then, indeed, you've had a chance to look over
4 these items and they are all heat sealed and dated; is that
5 true?

6 A That's correct.

7 MS. HALL: I don't have anything further for this
8 witness.

9 THE COURT: Cross examination?

10 MR. PRIDE: I have no questions, Your Honor.

11 THE COURT: All right. May this witness be excused?

12 MS. HALL: Yes, please.

13 THE COURT: All right. Thank you, sir, you're excused.

14 MR. PRIDE: Judge, if you'll let us approach the bench
15 one more time I can assure you it will be beneficiary to all
16 of us.

17 THE COURT: Okay.

18 (A bench conference was held.)

19 THE COURT: Madam Forelady, we're going to ask you to
20 go back to your jury room. I think we're going to do things
21 that are going to expedite some matters, so if you would
22 take your jury to the jury room now. Leave your pads in the
23 courtroom here, please.

24 (The jury left the courtroom.)

25 THE COURT: We had a bench meeting and Mr. Pride told

JEFF TALBERT - DIRECT

1 me he was going to be able to stipulate to the remainder
2 chain of custody, so making the other witnesses establishing
3 that chain unnecessary; is that correct?

4 MR. PRIDE: Right. I would like to make a statement if
5 you don't mind.

6 THE COURT: Well, I don't know if I want to hear it,
7 but go ahead. I might stop you.

8 MR. PRIDE: Judge, I have reviewed the chain of
9 custody, I have looked at each item and I have -- not
10 necessarily from my experience, but as an old lawyer I feel
11 that if, in fact, I didn't stipulate and we went forward
12 that the State could present the necessary foundation that I
13 would not prevail in a motion regarding this. So therefore
14 based on my experience and based on my review and all I am
15 willing to make that stipulation.

16 THE COURT: Mr. Pride, thank you so much. We'll accept
17 your statement, okay? So that means what witnesses are not
18 necessary, Ms. Hall?

19 MS. HALL: I want to go through that very quickly and
20 make sure we're on the same page about this. Catherine
21 Leisy is here from the South Carolina Law Enforcement
22 Division, she is a DNA analyst and a serology expert. She
23 would be able to testify to this semen that was found on the
24 clothing and her analysis of the semen.

25 THE COURT: I don't think he's saying that the results

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1 are admissible --

2 MS. HALL: No, I understand that. But in order for me
3 not to have to call a bunch of people this is what I'm
4 trying to make sure that we're on the same page. Because
5 now what happens at SLED --

6 THE COURT: Okay. I don't want to hear that. Give me
7 the names of the people that you don't have to call, that
8 you think you don't have to call and I am going to have him
9 verify that, that would be the thing to expedite it, please.

10 MS. HALL: Okay. Kimberly McGill. Verona Herrera,
11 Betty Butler, and Maryann Boehm.

12 THE COURT: Do you agree with that?

13 MR. PRIDE: I agree that those are the witnesses that
14 would be called, and if they were called they could
15 establish the chain was not broken and therefore the
16 evidence would be admissible.

17 THE COURT: Okay. So you can cut those loose. I'm
18 sorry to be -- I just want to get to the point.

19 MS. HALL: I do, too. And the serology report as well
20 as the DNA report I will seek to introduce through Catherine
21 Leisy and that's what I was getting to, and I want to make
22 sure that's copasetic before I cut them loose.

23 THE COURT: I agree with that. Do you agree with that
24 procedure? She's going to cut loose her other witnesses and
25 she's going to call -- who was she calling?

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1 MS. HALL: Catherine Leisy.

2 THE COURT: And she's going to do the serology report
3 and what else?

4 MS. HALL: DNA.

5 THE COURT: Any objection to cutting the people loose
6 and letting her testify as to those matters?

7 MR. PRIDE: I have none.

8 THE COURT: Very good. So we can cut those other
9 witnesses loose. Other than Ms. Leisy, do you have any
10 other witnesses, Ms. Hall?

11 MS. HALL: I don't think so. No, that's it, that's the
12 end.

13 MR. PRIDE: Judge, and I would appreciate it if you
14 would allow me to call out of order character witnesses
15 because of business commitments. Ordinarily I know you
16 don't call character witnesses until the end of the -- but I
17 would appreciate it if you would let me call them out of
18 order in order to accommodate them, especially when I have
19 been so accommodating.

20 THE COURT: I'm just thinking whether they're
21 admissible. I guess character is brought in to question.

22 MR. PRIDE: Yeah, for truth and honesty.

23 THE COURT: Just general?

24 MR. PRIDE: And it would be limited to do you know him,
25 do you know his representation in the --

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1 THE COURT: Let me tell you -- I'm not going to ask you
2 to drop your cards at this juncture but you call them
3 whatever order you want to, I'm fine.

4 (A break was taken.)

5 (The jury returned to the courtroom.)

6 THE COURT: Call your next witness, please.

7 MS. HALL: Thank you, Your Honor. The State calls
8 Catherine Leisy.

9 The witness, CATHERINE LEISY, was first duly sworn and
10 Testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HALL:

13 Q Can you state your name for the record, please?

14 A Catherine Leisy, L-e-i-s-y.

15 Q And where are you employed?

16 A I work for the South Carolina Law Enforcement Division,
17 more commonly referred to as SLED.

18 Q How long have you been working there?

19 A 13 years.

20 Q And have you worked in the same capacity since you
21 began 13 years ago?

22 A I have.

23 Q And what capacity is that?

24 A I'm a forensic scientist assigned to the DNA casework
25 department.

CATHERINE LEISY - DIRECT

1 Q And what are your duties as a forensic scientist
2 assigned to the DNA casework department?

3 A My responsibilities include processing forensic cases,
4 generating reports based on the results of the conclusions,
5 and testifying to those reports as necessary. I also assist
6 with quality control duties within the laboratory. And I
7 have helped with training of lesser experienced analysts.

8 Q And what is your educational background that allows you
9 to work in this capacity?

10 A I have a Bachelor of Science Degree in Genetic
11 Engineering from Cedar Crest College in Allentown,
12 Pennsylvania. I also have approximately four years of
13 experience as a forensic DNA analyst at a private testing
14 facility that --

15 Q And have you continued your training since you -- for
16 the last 13 years?

17 A That's correct. We are required to perform continuing
18 education, which consists of attending conferences or
19 lectures, seminars regarding new techniques and developments
20 in forensic science.

21 Q And during your tenure as a forensic scientist, how
22 many DNA tests or results do you think that you have
23 performed, or DNA kits that you've analyzed to come up with
24 the results?

25 A In terms of individual samples I have tested thousands

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1 of samples, I couldn't give you an exact number.

2 Q Okay.

3 MS. HALL: And at this point in time, Your Honor, the
4 State would offer Catherine Leisy as an expert in the field
5 of serology and DNA analysis.

6 THE COURT: Serology and DNA analysis?

7 MS. HALL: Yes.

8 THE COURT: Do you have any objection to that or any
9 voir dire you want to engage in?

10 MR. PRIDE: I don't admit but I don't object.

11 THE COURT: All right. Madam Forelady, ladies and
12 gentlemen of the jury, if you recall earlier about the
13 earlier person who was qualified, I will give you the same
14 admonitions, I will remind you of those. This witness is
15 going to be found to be an expert in the field of forensic
16 DNA analysis and serology and be allowed to give her opinion
17 in those areas. All right. Ms. Hall?

18 MS. HALL: Thank you.

19 Q I'm going to show you what has been marked as State's
20 Exhibit 4 for identification. Can you tell me what this is?

21 A It appears to be a portion of a chain of custody that
22 was generated by SLED documenting the location and transfer
23 of items involved in this case.

24 Q Is it a portion or is that in its entirety?

25 A I believe there's one page missing.

CATHERINE LEISY - DIRECT

1 Q Which page would that be?

2 A It would be the final page documenting the chain of
3 custody for SLED item number seven.

4 Q So how many pages are included on that document?

5 A There should be 16.

6 Q It may have fallen off. So would that appear to be
7 with regard to the same case the final page that you think
8 is missing?

9 A This page does include the chain for item seven, yes.

10 Q So that would be the chain of custody in its entirety?

11 A It looks like originally this was printed double-sided,
12 the even numbered pages aren't present.

13 Q Sorry.

14 MS. HALL: Here let me just -- can we switch the number
15 because I think this may have -- that may be my fault.

16 MR. PRIDE: Judge, you do realize that I stipulated.

17 MS. HALL: I still feel like for the record we need to
18 put this in.

19 Q All right. Now, I'm going to show you again State's
20 Exhibit 4. If you could confirm that every page on that
21 report is present, please.

22 A This appears to be a complete copy.

23 Q And is that a document that's kept in the normal course
24 of business throughout the South Carolina Law Enforcement
25 Division?

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1 A It is. It can be generated at anytime to show a
2 history of who was in custody of a particular item at a
3 particular time.

4 Q And what is the purpose of this?

5 A Again it's to track the transfer of any item of
6 evidence throughout the laboratory to know who may be in
7 possession of it and who tested it and where it was stored
8 or located at anytime.

9 Q Okay. I'm going to show you what has been marked as
10 State's Exhibit 6. And can you tell me if you recognize
11 that in the correspondence with the paperwork from State's
12 Exhibit 4?

13 A There's no identifying mark, it would be just on the
14 outside of the box. I can check the contents inside.

15 Q That would be fine.

16 A The pouches contained within the box are labeled with
17 bar coded stickers identifying the SLED lab number, which is
18 L08-18002.

19 Q And does that correspond with the chain of custody that
20 you have in your possession as State's 4?

21 A Yes, it does.

22 Q If you would just track piece by piece. Was this
23 evidence submitted to you at one point in time, and if so by
24 whom?

25 A Beginning with the sexual assault evidence collection

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1 kit, it was initially submitted to the laboratory on
2 December the 17th of 2008.

3 Q Okay. And could you explain, once it comes to the
4 sexual assault kit, once it comes to the laboratory how was
5 it processed?

6 A Once a kit is submitted it will be -- at that time it
7 was most likely analyzed by a forensic DNA analyst. We
8 would perform preliminary serological testing looking for
9 the possible presence of bodily fluid. If items come up
10 positive indicating the possible presence of a fluid that
11 we're interested in testing we would carry that forward
12 through DNA testing to try and develop a DNA profile for
13 comparison to that known individuals.

14 Q And when you get that box and that evidence, what do
15 you do to ensure the integrity of the packaging?

16 A When we receive the evidence, when it's submitted for
17 the laboratory, it's placed inside these heat sealed
18 pouches. Those pouches are labeled with bar coded stickers
19 so that we know what case it is related to, and then the
20 pouch is heat sealed to be closed, and the initials of
21 individuals sealing it, along with a date that it's being
22 sealed are marked across that seal. Anytime someone goes
23 into the pouch to process evidence or to perform anything
24 else necessary with the evidence, when the evidence is
25 placed back in the pouch they would seal it back up, initial

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1 and date it so that we know who has been in the pouch and we
2 can assure it hasn't been tampered with or altered in any
3 way.

4 Q When you received that evidence, can you tell the Court
5 what state it was in?

6 A This particular item was not in my physical custody.

7 Q But can you tell from the chain of custody whose
8 physical custody it was in and what was done with it?

9 A It was taken into the custody of forensic DNA analyst
10 Kimberly McGill on January the 16th of 2009. And I do
11 recognize Ms. McGill's initials on the pouch as having
12 sealed it.

13 Q And in your training as an analyst, what are you to do
14 if you receive something that's not properly sealed?

15 A Something that's not properly sealed, we're going to
16 investigate, we're going to check to see who had it last,
17 did they just forget to initial it. If there's any doubt
18 whatsoever if the item has been tampered with or it's not
19 what it should be we're not going to perform testing on it.

20 Q And did Kimberly McGill actually in this situation
21 perform testing on these items that were submitted to her?

22 A Yes, she did.

23 Q And does she work for the South Carolina Law
24 Enforcement Division anymore?

25 A She does not.

CATHERINE LEISY - DIRECT

1 Q But were you working at the South Carolina Law
2 Enforcement Division at the same time in 2008 as well?

3 A That's correct, I was.

4 Q So you were colleagues more or less.

5 A We were hired within a couple of months of each other
6 and actually did a lot of other training together.

7 Q And so can you -- so you said you saw her initials on
8 the packaging. And when you see them, is it indicative that
9 it was given to her in a sealed fashion and was it resealed
10 by her?

11 A It's indicative that it was resealed by her. I
12 wouldn't able to tell exactly what condition it was when she
13 took custody of it. But again, if she were concerned it
14 would have been our policy not to test if there were issues.

15 Q Once the testing is complete, what is done with the kit
16 at that point?

17 A Once we're done with testing the items are returned to
18 our secure evidence controlled department, and then
19 eventually returned to the submitting agency.

20 Q And can you tell from the chain of custody if that's
21 what was done in this case?

22 A The sexual assault kit was returned to the agency
23 July 27th of 2010.

24 Q Thank you. I'm going to show you also what's been
25 marked as State's Exhibit 8 and 7, and without taking them

CATHERINE LEISY - DIRECT

1 out of the box necessarily. Can you -- were these -- could
2 you tell if these items were analyzed by the South Carolina
3 Law Enforcement Division?

4 A These items do contain the SLED lab number that has
5 been written on the packing. I also recognize the initial
6 BWB as Betty Butler who was employed as a forensic
7 technician at SLED.

8 Q And were those items received by a DNA analyst at SLED
9 at some point?

10 A The items themselves I don't believe would have been.
11 There would have been cuttings or smaller portions of the
12 sample taken by a forensic technician and then forwarded on
13 for additional testing by a DNA analyst.

14 Q And would Betty Butler have been a forensic technician?

15 A That's correct.

16 Q I'm going to show you what has been marked as State's
17 Exhibit 9. Can you identify that document?

18 A This appears to be a copy of the report that was issued
19 by forensic technician Betty Butler outlining what items she
20 had performed at this process.

21 Q And did she take cuttings from the clothing in this
22 case?

23 A On several of the items, yes.

24 Q Did she take specifically cuttings from pants?

25 A Yes.

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1 Q And which item would that be?

2 A That's identified as SLED item number four. And there
3 were several cuttings taken from the pants.

4 Q And when you say there were several cuttings taken from
5 the pants, do you have a diagram of where the cuttings were
6 taken?

7 A I do.

8 Q And I'm going to come back to that in just a minute.

9 MS. HALL: At this time the State would move 9 into
10 evidence.

11 THE COURT: Any objection?

12 MR. PRIDE: I stipulated I thought, but I don't object.

13 MS. HALL: Thank you.

14 (The report was received as State's 9.)

15 Q Once the cuttings are taken, where are they sent?

16 A Once the cuttings are taken, again, anything that may
17 be of interest to us because it has shown a possible
18 presence of a biological fluid, it's then transferred on to
19 the DNA analyst assigned to the case. Additional serology
20 testing may be performed by the analyst, and then if
21 necessary they go on with DNA testing.

22 Q Okay. Can you explain to the jury what serology is?

23 A Forensic serology is the identification of bodily
24 fluids such as semen, saliva or blood as it relates to
25 criminal proceedings.

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1 Q Okay. I'm going to show you what has been marked as
2 State's Exhibit 10. Can you identify this document?

3 A This appears to be a copy of the DNA analysis report
4 that was prepared by Kimberly McGill.

5 Q And is it typical when you get -- when you receive
6 items that you receive a standard from the victim in the
7 case?

8 A It is. In a case like this typically there is a
9 standard included in the sexual assault kit.

10 Q And can you tell from the documentation if the standard
11 was included in this sexual assault kit?

12 A There was. It was identified as SLED item 1.1, and it
13 was a blood standard from **Witness**.

14 Q And what date was this blood standard submitted to the
15 South Carolina Law Enforcement Division for analysis?

16 A Again, the blood would have been part of the sexual
17 assault evidence collection kit, and that was submitted on
18 December the 17th of 2008 to SLED.

19 Q And explain to the jury what a profile is, or how DNA
20 works, or how you can identify things or people, please.

21 A DNA stands for deoxyribonucleic acid. It is the
22 genetic material found in all of our body cells with the
23 exception of our red blood cells. DNA is packaged in
24 structures called chromosomes, which contain our genes. And
25 genes are simply strands of DNA that go for our physical

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1 characteristics such as our height or our eye color. We
2 inherit one copy of DNA from our mother and one copy from
3 our father, therefore we have two copies of every gene.
4 Approximately 99.9 percent of an individual's DNA is
5 identical to that of everyone else's, and by testing the
6 remaining variation in that .1 percent that's left over, it
7 allows us to tell people apart.

8 Q And so were you able to develop a profile from the
9 victim in this case at that time?

10 A There was a DNA profile developed from Ms. Waters at
11 that time by Kimberly McGill.

12 Q And what was the date that that profile was developed
13 from this blood sample that came in?

14 A Based on Ms. McGill's report it was dated January the
15 9th of 2010.

16 Q And referring to that same report with regard to --
17 were there -- with regard to the CSC assault kit that was
18 State's 6 that we just looked at, were other things
19 submitted to serology as well?

20 A There were several items within the kit that were
21 submitted, yes.

22 Q And were there vaginal and oral smears submitted?

23 A There were.

24 Q And was there anything found on that that would be --
25 that could have been analyzed?

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1 A Based on Ms. McGill's notes and reporting, she
2 microscopically examined the smears and did not identify any
3 spermatozoa or sperm cells present.

4 Q What about on the vaginal swabs?

5 A On the vaginal swabs the testing indicated there was no
6 semen present.

7 Q What about oral swabs?

8 A Again, no semen was -- or, excuse me, no semen was
9 identified.

10 Q Pubic hair combings?

11 A No hair was found.

12 Q Okay. And cutting from the tank shirt?

13 A There were two cuttings taken from the tank shirt.
14 SLED item 2.1, on that particular item Ms. McGill reported
15 the semen was indicated. That particular item did go
16 forward for DNA testing. The second cutting was SLED item
17 2.2, on that particular item there was blood indicated.

18 Q And did that go forward for DNA testing?

19 A It did not.

20 Q Why is that?

21 A Ms. McGill would have made decisions about what
22 presumptive results indicated were most appropriate as far
23 as what samples to go forward, and she selected samples
24 where there was a possible presence of semen was indicated.

25 Q And was that due to the nature of the case?

CATHERINE LEISY - DIRECT

1 A Yes.

2 Q And what about the cutting from a sleeveless shirt and
3 hood?

4 A That was --

5 MR. PRIDE: Cutting from what? Excuse me.

6 MS. HALL: 3.1, the cutting from a shirt.

7 A Ms. McGill's results indicated that blood was indicated
8 on that particular item.

9 Q Did it go forward for DNA testing?

10 A It did not.

11 Q Were there cuttings taken from the pants that were
12 submitted?

13 A There were.

14 Q And how many cuttings were taken from the pants?

15 A There was a total of six cuttings taken from the pants.

16 Q Which ones went forward for DNA analysis?

17 A Those would be SLED items 4.1 and 4.5.

18 Q Do you have any way to tell where those cuttings came
19 off the pants?

20 A There is a diagram that outlines exactly where the
21 cuttings were taken that was produced by Betty Butler when
22 she performed the processing on those pants.

23 Q Where did 4.1 come from?

24 A Based on Ms. Butler's notes item 4.1 was a cutting from
25 the front right pant leg up near the thigh area.

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1 Q And what about 4.5?

2 A 4.5 was a cutting from the back of the right leg
3 towards the calf area.

4 Q And those two items were forwarded for DNA analysis; is
5 that correct?

6 A That's correct.

7 Q Along with the cutting from the tank shirt.

8 A Correct.

9 Q Okay. And then when it was forwarded for DNA analysis,
10 who was the analyst who did the DNA analysis?

11 A That analysis was performed by Kimberly McGill.

12 Q And what were her findings with regard to the items
13 that were forwarded to 2.1, 4.1 and 4.5?

14 A Because these items potentially contained the presence
15 of semen, what was known as a differential extraction was
16 performed. That allows us to try and separate out any
17 female DNA from any male DNA, and it results in there being
18 two fractions for each item, the non-sperm fraction and the
19 sperm fraction. For item 2.1, which was again the cutting
20 from the tank shirt, the partial DNA profile developed from
21 the sperm fraction --

22 MR. PRIDE: I'm sorry. Cutting from where?

23 THE WITNESS: From the tank shirt.

24 MR. PRIDE: Thank you.

25 A The partial DNA profile developed from the sperm

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1 fraction is insufficient for reliable interpretation. And
2 no DNA profile was developed from the non-sperm fraction of
3 SLED item 2.1. In regards to SLED item 4.1, which was a
4 cutting from the front right leg area of the pants, there
5 was no DNA profile developed from the non-sperm fraction,
6 and there was no human DNA obtained from the sperm fraction.
7 That indicated that there was not any DNA detected during
8 the testing. With respect to SLED item 4.5, the cutting
9 from the back of the right leg of the pants, the non-sperm
10 fraction did not yield any human DNA so there was no profile
11 developed. And the partial DNA profile developed from the
12 sperm fraction of item 4.5 was reported out as being from an
13 unidentified male individual.

14 Q So to boil this down in laymen's terms, was there
15 anything from any of these cuttings that you could -- you as
16 a DNA analyst or Kimberly McGill as a DNA analyst could use
17 to determine -- you said there was sperm present. Is there
18 anything that you could use to determine whose sperm it was
19 or --

20 A At the time that this report was prepared there was no
21 way -- there was nothing to compare it to. The only
22 standard that was submitted was that of the victim. So we
23 only had a partial DNA profile developed from the semen on
24 4.5 as being from an unidentified male.

25 Q So on 4.5, the cutting from the leg, you have something

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1 to work with but you just don't have anything to compare it
2 to, is that fair to say?

3 A That's correct.

4 MS. HALL: At this time the State would move, I think,
5 Exhibit 1 into evidence.

6 THE COURT: Any objection?

7 MR. PRIDE: No.

8 THE COURT: Admitted.

9 (The report was received as State's 1.)

10 MS. HALL: And the State would just go ahead and move 6
11 into evidence, along with 7 and 8.

12 THE COURT: Any objection to 6, 7, or 8?

13 MR. PRIDE: None.

14 THE COURT: All are admitted.

15 (The items were received as State's 6-8.)

16 Q I show you what's been marked as State's Exhibit 2. Do
17 you recognize this document?

18 A This appears to be a copy of the DNA report that I
19 prepared reflecting the results of my analysis.

20 Q All right. And when was this report completed?

21 A I issued this report on February 5th of this year.

22 Q And at some point in time, did you get evidence that
23 would allow you to complete a DNA analysis?

24 A There was a standard submitted for Darryl Coleman in
25 January of this year that was used for comparison.

CATHERINE LEISY - DIRECT

1 Q Okay. And can you explain kind of what a standard is
2 and what you do with it when you get it, and how it would be
3 significant with regard to this case?

4 A In this particular case the standard that was submitted
5 from Mr. Coleman was a set of buccal swabs. Buccal swabs
6 are simply sterile Q-tips or cotton swabs that were rubbed
7 against the inside of the cheek to collect cells, we then
8 use those swabs to develop a DNA profile from that known
9 individual. And we compare that individual's profile to a
10 profile that's been developed from items of evidence to
11 determine whether or not that individual contributed to the
12 evidence.

13 Q And did you indeed compare the profile that you
14 developed from the Darryl Coleman suspect standard that you
15 got in 2019 with the DNA profile that you got from the pants
16 leg of 4.5 back in 2010?

17 A I did. I compared it to the profile developed by Ms.
18 McGill.

19 Q And what were your conclusions?

20 A The partial DNA profile developed from the semen from
21 the cutting of 4.5 matches the DNA profile of Darryl
22 Coleman. And the probability of randomly selecting an
23 unrelated individual having a DNA profile matching the semen
24 on this item is approximately one in 77 trillion.

25 Q And just so we can get a perspective on how many people

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1 that is, how many people are in -- if you have statistics
2 that you can share, like how many in the world or how many
3 people are in the country. 77 trillion people, how many is
4 that?

5 A There are approximately seven billion people currently
6 on earth.

7 Q And how many billions are in a trillion?

8 A 77 trillion is significantly larger than the current
9 population on the earth.

10 Q So the likelihood of selecting anyone else on the earth
11 would be one in 77 trillion; is that right?

12 A Essentially what the stat means is that if you randomly
13 select an unrelated individual from the population, the
14 probability that that individual would have this particular
15 profile is approximately one in 77 trillion.

16 Q Okay. All right.

17 MS. HALL: At this time the State would move 2 into
18 evidence.

19 THE COURT: Any objection?

20 MR. PRIDE: None.

21 THE COURT: Admitted.

22 (The report was received as State's 2.)

23 Q And I'm going to go back really quickly to State's 4,
24 and that's that chain of custody that we talked about a
25 little while ago. All of the items that we've talked about

CATHERINE LEISY - DIRECT

1 today are on that chain of custody; is that correct?

2 A That's correct.

3 MS. HALL: At this time the State would move 4 into
4 evidence as well.

5 THE COURT: Any objection?

6 MR. PRIDE: None.

7 THE COURT: Admitted.

8 (The report was received as State's 4.)

9 Q Are you in possession of buccal swabs that was taken
10 from Darryl Coleman?

11 A I am.

12 Q And do you have that with you?

13 A Yes, ma'am.

14 Q Okay. And is there a date on that when this swab was
15 taken and when you received it?

16 A As far as when it was taken, all I have to go back on
17 packaging it that it was stored on November the 6th of 2018,
18 I don't know exactly when it was taken. It was submitted to
19 SLED on January the 10th of this year.

20 Q The only other thing -- at some point in time, did you
21 have a conversation with somebody at the solicitor's office
22 with regard to this case?

23 A We have been contacted, I believe, several times.

24 Multiple people within the laboratory discussed the case
25 with the solicitor's office in terms or whether or not it

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1 would be suitable for comparison should a subject's standard
2 be submitted.

3 Q And do you have in that system when that last
4 conversation took place?

5 A I have an indication there was a conversation in June
6 of last year regarding whether or not it would be
7 appropriate and suitable for comparison. It appears there
8 was another call in August of last year. And we have been
9 in communication personally about the submission of a
10 standard and the comparison performed.

11 Q Since that time.

12 A Yes, ma'am.

13 Q And with regard to those conversations, that was when
14 the standard was submitted; is that correct?

15 A The last indication that I have as far as a
16 conversation about the assignment of the standard was
17 January the 8th of this year.

18 Q And your report was issued when?

19 A February the 5th.

20 MS. HALL: I just want to confirm that everything is
21 in. Excuse me one second.

22 (Break in proceedings.)

23 Q State's Exhibit 10. Is that the buccal swab you
24 referred to a little while ago?

25 A It is.

CATHERINE LEISY - CROSS

1 MS. HALL: Your Honor, at this time we would move 10
2 in.

3 THE COURT: Any objection?

4 MR. PRIDE: No objection.

5 THE COURT: Admitted.

6 (The buccal swab was received as State's 10.)

7 MS. HALL: Your Honor, the State rests.

8 THE COURT: Cross examination.

9 MS. HALL: I'm sorry. Please answer any questions Mr.
10 Pride may have.

11 CROSS EXAMINATION

12 BY MR. PRIDE:

13 Q How many times have you testified in a courtroom?

14 A At least 50. I don't know the exact number.

15 Q At least what?

16 A At least 50.

17 Q Over a 13 year period?

18 A Actually since 2003. I first testified with my
19 previous employer. I have testified in numerous states as
20 well as federal court and the District of Columbia.

21 Q Testified in a courtroom is nothing to you.

22 A No, sir.

23 Q All right. I want to show you something.

24 MR. PRIDE: Can I approach the witness, Judge?

25 THE COURT: Yes, sir.

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1 Q Do you have this sheet among your documents? And if
2 so, can you identify it?

3 A Yes, sir, I believe I do. It would appear to be a
4 portion of our submission paperwork that is required when
5 the cases are submitted to the laboratory. Yes, sir, I do
6 have that document.

7 Q Can I see it? Why is this obliterated, do you know?

8 A I believe it's just shading as far as when the copy is
9 made. I don't know that it would be redacted or obliterated
10 for any other purpose, I think it's just a shading issue
11 with the paper.

12 Q All right. Thank you. Now, when you do your analysis
13 specimens are brought in; is that correct?

14 A Yes, sir.

15 Q And thereafter they are prepared to be analyzed; is
16 that correct?

17 A They're initially processed or tested for possible
18 bodily fluids.

19 Q All right. And when Mrs. Walters' (sic) specimens were
20 brought in, what clothing items were brought to SLED?

21 A The specific items were identified as white tank shirt,
22 a whole white t-shirt, black stretch pants and panties.

23 Q All right. And was any semen found on the white
24 t-shirt?

25 A Based on the notes taken during processing there was no

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1 indication of semen on the white t-shirt, that would be item
2 SLED three.

3 Q All right. And what was the there any foreign semen
4 found on the black pants?

5 A The black pants, those would be cuttings 4.1 and 4.5
6 that were forwarded for DNA testing and processed.

7 Q And standing before you, tell me based on my pants,
8 where would you be cutting, here or would you be cutting
9 back here?

10 A Based on the diagram that was prepared during
11 processing, the first cutting 4.1 was taken on the thigh
12 area on the front of the right pant leg.

13 Q Would you stand up if you don't mind and demonstrate
14 what area?

15 A If I may step down?

16 Q Yes, please.

17 MR. PRIDE: And pardon me for not asking you.

18 A Item 4.1, based on the notes, would have been this area
19 of the pant leg. And then 4.5 would have the lower right
20 bear the calf area.

21 Q And are those the only two areas that semen was found,
22 foreign semen?

23 A Well, there were a total of five cuttings taken from
24 the pants that gave a preliminary indication of the presence
25 of semen, those items were forwarded to Ms. McGill. She

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1 selected two items to cut to go forward for DNA testing.

2 Q So two items.

3 A From the pants, yes, sir.

4 Q From the pants? Well, you didn't have any items from
5 any other areas, right?

6 A The only other cutting that was run with DNA was item
7 2.1, which was from the tank shirt.

8 Q Well, my question is no other foreign semen was
9 recognized in any other areas, would that be a fair
10 statement?

11 A On the pants? That would be a fair statement based on
12 the notes that were taken. There were five areas where
13 there was an indication of a possible presence of semen.

14 Q Okay. And when you as an examiner analyze something,
15 the one thing you cannot testify to is how it got on there,
16 can you?

17 A No, we can't testify to that.

18 Q You're only able to analyze that semen that you can
19 find from the items that were brought to you.

20 A Correct. We can only testify to what is present on
21 that item as we receive it.

22 Q And my understanding is that the specimens were not --
23 were not -- were brought to you in 2010; is that correct?

24 A I believe initially the items were submitted in 2008 as
25 far as the sexual assault kit. Clothing items were also

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1 submitted in 2008.

2 Q Well, in 2010, did you return them after you had
3 completed your analysis?

4 A Those particular items I did not analyze again, but the
5 items were returned to the submitting agency in 2010.

6 Q All right. And then in 2019 you were able to get a DNA
7 specimen from Darryl Coleman.

8 A Correct, sir.

9 Q And in 2019 is when you performed your test, and you
10 are able to testify today to the results of it.

11 A That's correct. I performed my analysis and the
12 comparison in January of this year, reporting in February.

13 Q You weren't looking for any DNA that might have come
14 from Mrs. Walters (sic), were you?

15 A The only profile that was suitable for comparison based
16 on the work that Ms. McGill had done was an unidentified
17 male DNA profile, that's all I had to compare to when I
18 received Ms. Coleman's standard.

19 Q And once you are able to identify what items, and in
20 this case it would be the black pants, do you then go
21 back to -- you don't do any investigation? You only do
22 analysis, is that a fair statement?

23 A Correct. We can only process or analyze what's
24 submitted to the laboratory. As a forensic scientist I
25 don't perform an investigation passed analysis of what is

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1 submitted to me.

2 Q And based on your investigation you're able to
3 determine that there were two places, as you demonstrated,
4 on the black pants that you found foreign semen, male semen.

5 A Well, there were two areas that indicated the possible
6 presence of semen on the pants that were taken forward to
7 DNA analysis. There were other areas on the pants that did
8 give at least a preliminary positive result for the possible
9 presence of semen, two were selected to go forward for DNA.

10 Q But the two were the only two that compared to Darryl
11 Coleman; isn't that correct?

12 A Well, as those were the items from the pants processed
13 for DNA they would be the only items I had to compare to
14 Mr. Coleman, yes, sir.

15 MR. PRIDE: Thank you very much.

16 MS. HALL: Briefly.

17 REDIRECT EXAMINATION

18 BY MS. HALL:

19 Q What is semen?

20 A Semen is male reproductive fluid. It's one of the
21 common bodily fluids that you test for, especially in sexual
22 assault cases.

23 Q And does DNA change over time?

24 A DNA can degrade or break down based on the conditions
25 under which it's stored. A profile is not going to be

CATHERINE LEISY - REDIRECT

1 altered over time, it may just break down to the point it's
2 difficult for us to develop a profile from.

3 Q Because if the profile -- with regard to this case, if
4 you had developed a profile in 2008 or 2010, or whenever it
5 was, quickly after it was submitted to you, would that have
6 any affect on the ability to compare it to a standard that
7 is submitted in 2019?

8 A No, it would not. It's not uncommon for us to use
9 previously developed profiles from up to several years prior
10 with newer collected standards for comparison.

11 Q So when you say that DNA profiles can break down over
12 time, would that occur if you failed to analyze it over
13 time?

14 A Correct. If an item of evidence is stored for an
15 extended period of time, or stored under less than ideal
16 conditions, the DNA on that item of evidence can break down.
17 Once the profile is developed, as it was by Ms. McGill, that
18 profile can be used going forward. That doesn't change,
19 that doesn't get altered.

20 MR. PRIDE: That's a new matter, I move that it be
21 stricken. Solicitor didn't go into that on direct
22 examination.

23 THE COURT: Just one second. Would you go back to your
24 jury room, please, ma'am?

25 (The jury left the courtroom.)

CATHERINE LEISY - REDIRECT

1 THE COURT: All right, sir. I'll be glad to hear from
2 you.

3 MR. PRIDE: I object, Your Honor. That was not -- this
4 is redirect from my cross examination. That's a new matter
5 she's raising on her re-examination of the witness, and on
6 that basis I object.

7 THE COURT: All right. Quite frankly I missed the
8 question to be honest. What was the question?

9 MS. HALL: The question was in response to my
10 recollection of the situation is that Mr. Pride --

11 THE COURT: What was the question, please?

12 MS. HALL: The question was can DNA break down -- and
13 I've got to go back. He asked the -- I can't explain it
14 very easily, I'll try again.

15 THE COURT: Please answer the question, tell me what
16 you asked and then we can go from there, please, okay?

17 Q When you analyze -- get a sample from pants or whatever
18 and you analyze it in 2008 basically contemporaneously with
19 the pants being submitted to you, does that contribute to
20 DNA -- the break down of a DNA profile? How would that
21 profile break down? Would it be -- if you analyzed it
22 contemporaneously and developed a profile, would that
23 profile break down over time?

24 MR. PRIDE: Judge, that's not what she asked.

25 THE COURT: Why is that not -- I don't remember you

CATHERINE LEISY - REDIRECT

1 covering -- him asking about that at all on cross quite
2 frankly.

3 MS. HALL: That's why I was trying to go back. He
4 started talking about the time frame and DNA -- a DNA
5 profile breaking down over time, and I was trying to clarify
6 that this DNA profile was developed in 2008, another one was
7 submitted in 2019 and analyzed and compared with each other.
8 2008 to 2019, the profile is not going to change as long as
9 it is analyzed quickly after it's submitted.

10 THE COURT: I got that. The question is whether he
11 brought up this issue of it breaking down. I don't have it
12 in my notes about it breaking down. Did you ask about it
13 breaking down?

14 MR. PRIDE: No.

15 THE COURT: I don't have it in my notes either.

16 MR. PRIDE: And the point she was trying to make out of
17 this witness is whether or not time has any deterring factor
18 to it, and --

19 THE COURT: I understand what she's trying to do. But
20 the rules are your redirect is responsive to his cross and I
21 don't have it. Let me just go back and look.

22 MS. HALL: Mike would have it. But I heard her say the
23 break down of a DNA profile -- a DNA profile can break down
24 over time in response to a question Mr. Pride asked.

25 THE COURT: He asked the question can it break down

CATHERINE LEISY - REDIRECT

1 over time?

2 MR. PRIDE: No, I didn't.

3 (Break in proceedings.)

4 MS. HALL: The inference that he was making from the
5 line of questioning, I can't remember what he said exactly
6 when he said it -- I say it and then -- but my recollection
7 is the last thing that Mr. Pride asked Ms. Leisy before he
8 sat down and what I was trying to clarify was he was
9 inferring through her -- and her answers were pointed toward
10 that, that he -- that if you don't analyze DNA and develop a
11 profile fairly close to getting it that over time the DNA
12 can degrade and you are not able to develop a profile. And
13 what I was trying to do is clarify the fact that profile
14 just in terms of dates and when it was done.

15 THE COURT: I understand. I am sustaining the
16 objection because it's not responsive to his question, okay?
17 Thank you. All right. Let's bring the jury back out.

18 (The jury left the courtroom.)

19 THE COURT: Ms. Hall?

20 MS. HALL: Thank you.

21 BY MS. HALL:

22 Q Mr. Pride was asking you a minute ago about the pieces
23 of clothing that were selected to go forward to DNA. How
24 are those selected?

25 A Typically when we have numerous items that may contain

CATHERINE LEISY - REDIRECT

1 the presence of a bodily fluid that we're interested in
2 testing, an analyst is going to select two, maybe three
3 items. We're necessarily going to run every item that's
4 forwarded to us, that's dependent upon case circumstance and
5 different factors go into it. But it is not uncommon for us
6 to simply select a sampling of the items that have been
7 forwarded to us for processing.

8 MS. HALL: Nothing else.

9 THE COURT: All right. May this witness be excused?

10 MS. HALL: Yes, please.

11 MR. PRIDE: She can be excused.

12 THE COURT: Okay. Thank you, ma'am. Call your next
13 witness, please.

14 MS. HALL: State rests.

15 MR. PRIDE: I have a motion.

16 THE COURT: Madam Forelady, the State has advised that
17 it rests, which means it has presented its case in chief. I
18 have some administrative matters to take up now. If you
19 would go back to your jury room, we'll bring you back out
20 here and the case will continue in some form or fashion,
21 okay? Thank you.

22 (The jury left the courtroom.)

23 MR. PRIDE: Judge, I'll get right to the point on this
24 matter. And also, Judge, I wish you would help me out and
25 run a little longer and let me put up two character

1 witnesses. That's all I've got after my argument.

2 THE COURT: Well, I want to hear your motions, please,
3 sir.

4 MR. PRIDE: Judge, the State's case is incredulous.
5 First of all they give you no reasonable explanation that
6 you can hang your hat on why it took 11 years. And I was
7 thinking about something. In our discussion earlier I had
8 to concede, and you made it very clear to me that you were,
9 where is your prejudice, Mr. Pride? How did your defendant
10 get hurt? Because that's one of the elements. You know how
11 he got hurt? His constitutional right was violated, because
12 he's got a 6th Amendment right to a speedy trial, and that
13 was violated out of nonsense. That's the only thing I can
14 really call it, Judge, it's pure nonsense. And then you get
15 the little lady who is the chief investigating officer in
16 this case, Judge, that's not reliable testimony. She knew
17 nothing. She did nothing. She even went to the wrong house
18 and took pictures and carried a search warrant and never
19 asked the people at anytime does Coleman live here. I don't
20 know how you do that, Judge, I really don't know how you do
21 that. And then she says that when she went there that the
22 only thing that she got was some pictures. Yeah. That's
23 probably -- she may be right of that -- might be right about
24 that because she was at the wrong place. And not only that,
25 she told the magistrate that she wanted to search for red

1 sheets. There was no testimony -- and I asked her, "Where
2 did you get that from?" She said, "I got it from the
3 victim." Because the victim's statement, her version of
4 this case 11 years later is quite different from what it
5 was. And plus, Judge, you heard just like me, I don't think
6 I need to wear you down with an argument on this, you're
7 going to sort of -- it's either clear or it's not clear.
8 But that's my argument, Judge. This case should not go to
9 the jury and I move for a directed verdict or in the
10 alternative to dismiss the indictment. Thank you.

11 THE COURT: Thank you. As to the directed verdict
12 motion, I'm going to deny that motion. I don't weigh the
13 evidence at this juncture, it's just whether or not there is
14 the existence of evidence sufficient for the jury to make
15 that determination. We have the victim's age. We have the
16 defendant's age. We have the DNA testing that shows on at
17 least two pieces of her pants the defendant's DNA was there,
18 along with the other testimony. Granted, some of it is
19 inconsistent, but it is sufficient for the case to go to the
20 jury for them to decide. As to your motion for speedy
21 trial, I think that you -- that's a lot closer call quite
22 frankly, but I'm going to deny it as well. The length is
23 totally unreasonable, 11 years. There's not been assigned a
24 reason for that delay, so the State loses on two of the four
25 issues. At the same time we didn't have the defendant

1 assert his right to a speedy trial until last year, and so
2 after he did assert that right the trial was scheduled. And
3 there's been no real evidence -- there's been no evidence of
4 prejudice to him caused by the delay. In fact, I made a
5 note in my notes during the course of this trial that you
6 had made the discussion that witness' memories would fade
7 and they would not be able to remember things as well as
8 they could have earlier, and therefore that's going to be a
9 problem. But most of the things I heard were their
10 memory -- lack of memory was collateral issues, not issues
11 that are made facts to be established in this case. I'm
12 still going to deny your motion because you hadn't
13 established a prejudice here to my satisfaction, I don't
14 think there is. And I could take note of the fact that we
15 have a victim involved in this case, we have a victim
16 involved in this case, and she has her own constitutional
17 rights as well. And I don't think under the facts of this
18 case that as a defendant you have one right to make -- you
19 don't have the right -- under the facts of this case I think
20 the jury just makes a call whether or not he is guilty or
21 innocent. I'm not saying he's guilty, I am saying they make
22 the call by the jury. So that leaves me to my last ruling
23 and that is on Exhibit Number 6, the rape kit. Quite
24 frankly it was done in a fashion unusual for me, too, but
25 when I looked at it being opened, the containers, which did

1 have the ID numbers, were in sealed bags and so there's been
2 no evidence of tampering, there can be no evidence of
3 tampering. So I'm denying your motion on all counts. Now,
4 that being said, I need to go over with your client his 5th
5 Amendment, rights, if you would let me do that. Sir, do you
6 mind coming up to the bar? All right, sir. You are Darryl
7 Eugene Coleman; is that correct?

8 THE DEFENDANT: Yeah.

9 (The defendant was sworn.)

10 THE COURT: Now, Mr. Coleman, we have come to that
11 point in time that I need to explain to you certain rights
12 that you have. I know your fine lawyer has done it already
13 but I need to make sure for the record it is done, okay? If
14 you want me to explain anything more than once or if you
15 don't understand anything I tell you, please let me know and
16 I'll repeat it or explain it as many times as you need,
17 okay? All right, sir. If we could, give me verbal
18 responses if you don't mind, sir, so this gentleman can take
19 it down.

20 THE DEFENDANT: Got you.

21 THE COURT: Now, Mr. Coleman, we've reached that stage
22 in the trial when you have a right to present your defense
23 in this matter. You have a right to claim the protections
24 that are afforded to you by the 5th Amendment to the United
25 States Constitution, and I want to read just a pertinent

1 part of that to you, this is what it says. It says that no
2 person shall be compelled in any criminal case to be a
3 witness against himself. And I'm sure your attorney has
4 explained to you your 5th Amendment rights, has he not?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I want to make sure that I do it as well.
7 That means, Mr. Coleman, that you cannot be required by the
8 State, by me, by your attorney or anyone, law enforcement,
9 to get on the stand and testify. At the same time you have
10 a right to testify if you desire to do so. That's a
11 decision as to whether or not you wish to testify or not to
12 testify that you must make. It's a decision personal to you
13 and you have to make it freely, voluntarily and knowingly of
14 your rights under the 5th Amendment and the consequences of
15 your decision if you decide to get on the stand and testify.
16 Now, does your client have a criminal record?

17 MR. PRIDE: He does not.

18 THE COURT: I thought that's what I remembered, not
19 before nor after.

20 MR. PRIDE: That's correct.

21 THE COURT: So one thing is the State would not be in a
22 position to bring up a prior criminal record to impeach you,
23 but they will try to impeach you if you get on the stand,
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: They'll cross examine you vigorously and
2 try to discredit your testimony, do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, if you decide that you do not want to
5 testify, at the end of the trial when I give the jury an
6 instruction on the law I will tell them that they may not
7 consider and they shall not consider your failure to testify
8 because that's your constitutional right under the 5th
9 Amendment, and because the State has the burden of proving
10 your guilt by proof beyond a reasonable doubt, do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about anything I
14 have asked you or have told you?

15 THE DEFENDANT: No, sir.

16 THE COURT: And have you had an opportunity, Mr. Pride,
17 to explain to Mr. Coleman his 5th Amendment rights?

18 MR. PRIDE: Yes.

19 THE COURT: And does he wish to make a determination
20 today as to whether or not he wishes to testify?

21 MR. PRIDE: He does not wish to make that determination
22 today.

23 THE COURT: Now, let me go back to you, sir, of course
24 I'll let him make it in the morning. Now, let me -- Mr.
25 Pride has asked that he be allowed to go a little bit

1 further and put up two character witnesses. Does anybody
2 from the State have a problem with that going forward a
3 little bit longer?

4 MR. PRIDE: I'll be short, Judge.

5 MS. HALL: I can't imagine they would take very long so
6 I don't have any problem doing it today.

7 THE COURT: Do you have any problem, Madam Clerk, with
8 your staff doing that?

9 THE CLERK: No.

10 (Break in proceedings.)

11 THE COURT: I'm going to deny your motion for a
12 directed verdict and your other motions, we'll get your
13 character witness in today, okay?

14 MR. PRIDE: Thank you. Would you bring the jury back
15 out, please?

16 MS. HALL: Your Honor, I do have a matter that I want
17 to take up before with regard to one of the character
18 witnesses. It is way past the time frame, but one of the
19 character witnesses has a prior criminal history. I don't
20 know --

21 MR. PRIDE: Who does?

22 MS. HALL: I just got the -- I didn't have a chance to
23 run anything until just now because I just got their names
24 and dates of birth.

25 THE COURT: All right. What is the prior criminal

1 record? It's for a witness; is that correct?

2 MS. HALL: Yes, sir.

3 THE COURT: Okay. So you will be under 609A1 being
4 that it's could be charged for -- it be sentenced for in
5 excess of a year.

6 MS. HALL: Yes.

7 THE COURT: It is?

8 MS. HALL: Yes.

9 THE COURT: And what is the charge?

10 MS. HALL: Trafficking.

11 THE COURT: Definitely that qualifies for that.

12 MR. PRIDE: What's the name of the person?

13 (Break in proceedings.)

14 MR. PRIDE: 30 years ago.

15 THE COURT: 30 years ago? Okay. What's the standard
16 then, Ms. Hall, for its admissibility?

17 MS. HALL: That the probative value of the conviction
18 supported by the facts and circumstances --

19 THE COURT: Ma'am?

20 MS. HALL: That the probative value outweighs its
21 prejudicial value.

22 THE COURT: No, that's not the standard. It's under
23 609B based on the Robinson case, and you have the burden of
24 proving its admissibility.

25 MS. HALL: I thought I stated the standard correctly.

1 THE COURT: Ma'am?

2 MS. HALL: I thought I stated the standard correctly.

3 THE COURT: Well, you did not, so --

4 MS. HALL: That the probative value of the conviction
5 outweighs the prejudicial value.

6 THE COURT: If you look at the Robinson case that was
7 issued last week from the supreme court they gave very clear
8 guidance to that.

9 MS. HALL: Okay. Right, with regard to that, yes.

10 THE COURT: Excuse me. And you know your visceral
11 reaction to everything I do that's contrary to you is noted
12 for the record. But 609B provides this, and it applies to
13 whether you're a witness or the accused. If the crime is
14 over ten years of age the default is that it is admissible
15 unless the evidence establishes that the probative value of
16 the conviction supported by specific facts and circumstances
17 substantially outweighs its prejudicial effect, okay?
18 Substantially, not just outweighs it. And it's your burden
19 to show that it does, okay? And I note, number one, that
20 under that rule, 609B, there is a notice requirement, okay?
21 Did you give notice that your intent to use that?

22 MS. HALL: Well, I couldn't really give notice because
23 I didn't have any of the names until --

24 THE COURT: Well, that's fair enough, that's true, I'll
25 agree with you on that. The character evidence was just

1 brought into court after we started court yesterday; is that
2 correct?

3 MR. PRIDE: Yes, sir. I was just given the names and
4 dates of birth today in order to be able to run it.

5 THE COURT: I would note that, so you were prevented
6 from being able to do that. So it's your argument to make,
7 please, ma'am?

8 MS. HALL: I feel like -- well, my argument would be
9 that the probative value is significant in that what Mr.
10 Pride is bringing him in for is a character witness, and
11 obviously his character is tainted by having been charged
12 with trafficking in cocaine back no matter how long ago it
13 was.

14 THE COURT: Have you looked at the --

15 MR. PRIDE: It's not a matter of how long it was.

16 MS. HALL: I understand that. And I'm bringing it to
17 the Court's attention and I'm making the argument that in my
18 opinion it is probative as to his character. When he's
19 testifying to somebody else's character it is probative. He
20 has another conviction from 1995, which again goes back a
21 long ways, that was a possession of marijuana more than a
22 gram. He has -- there were several --

23 THE COURT: What was the '95 conviction?

24 MS. HALL: That was another -- it was punishable by
25 more than one year, but it's just a possession of marijuana.

1 I'm not going to in good conscious make an argument that
2 that is something that's probative. But the trafficking, it
3 was like four or five counts of it, he was convicted of all
4 of them, and he got six years suspended on 18 months
5 confinement. I would submit to the Court that that is
6 probative as to his character, and if he's testifying about
7 somebody else's character I think it's relevant.

8 THE COURT: Let me just say this, under the Robinson
9 case you have the burden to prove its admissibility and you
10 have got to show that the probative value substantially
11 outweighs it. I hear what you're saying because he is
12 coming in here presuming to be a character witness, that
13 this shows on his character. But if you go back and look at
14 the factors, they tell us under the Colf case, C-o-l-f, and
15 I mispronouncing --

16 MR. PRIDE: That's cited in the Robbins (sic) case, I
17 think.

18 THE COURT: Yeah, it is. And it says that the
19 impeachment value of the prior crime. In this case, you
20 know, it doesn't fall under the 609A2, dishonesty or false
21 statements even those it's a narcotic, and it may be that
22 his testimony shouldn't be believed. But if it was more
23 recent in time I would tend to agree with you, but it's been
24 30 years. Has it, in fact, been 30 years, Ms. Hall?

25 MR. PRIDE: It was '89.

1 THE COURT: So 20 years.

2 MS. HALL: It would be 30.

3 THE COURT: I'm terrible with math. It has been 30
4 years and there's nothing else but a simple marijuana, which
5 would never come in anyway.

6 MR. PRIDE: And we deny the marijuana conviction.

7 THE COURT: Okay. But the impeachment value is just
8 not there. And if you look at the other factors,
9 specifically the point in time of the conviction and the
10 witness' subsequent history, you know, the fact of the
11 matter is you get in trouble and you haven't been in trouble
12 for 30 years, that's an indicator that you learned from your
13 mistake, you've done what you are supposed to do. I just
14 have to go over these factors on the record every time
15 they're raised, that's why I'm doing this. There's no
16 similarity, it's not really, between the crime charged and
17 the present crime because it's not him -- and the
18 defendant's testimony in this case is not really relevant.
19 And credibility, again, is a central issue in this case, I
20 think it's very important. So for those factors I think
21 that the prior record of 30 years ago is inadmissible and so
22 I'm going to grant the defendant's motion not to -- or to
23 suppress it, okay? Now, any other witnesses we have a
24 problem with on the same basis?

25 MS. HALL: No.

KEITH STALLS - DIRECT

1 THE COURT: Okay. Bring in the jury in. Are you ready
2 to proceed?

3 MR. PRIDE: I am, Your Honor.

4 THE COURT: Are you ready to proceed, Ms. Hall?

5 MS. HALL: Yes, sir.

6 (The jury returned to the courtroom.)

7 THE COURT: Call your first witness.

8 MR. PRIDE: I call Mr. Keith Stalls. Judge, will you
9 give the charge on character witness and explain it to them?

10 THE COURT: I'll let you just go ahead and bring it
11 out.

12 The witness, KEITH STALLS, SR., was first duly sworn

13 And testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PRIDE:

16 Q Keith, state your full name.

17 A Brian Keith Stalls, Sr.

18 Q And where do you live?

19 A Great Falls.

20 Q How long have you lived there?

21 A All my life.

22 Q And how long have you known Darryl?

23 A All my life.

24 Q How long is that?

25 A I'm 53 years old.

KEITH STALLS - DIRECT

1 Q Can you tell me what capacity you know him, what have
2 you done with him to --

3 A I knew the whole family. We used to do things together
4 when we were his neighbors and stuff. I watched Darryl grow
5 up, grew up around his sisters.

6 Q Have you seen him recently?

7 A Yes, sir, I see him everyday.

8 Q Okay. Based on your knowledge of Darryl, what is
9 your -- does he have -- what is his reputation in the
10 community? Is it good or bad?

11 A He is a good boy. He goes to work everyday, he tries
12 to make a living, tries to have something. He keeps to
13 himself.

14 Q What is his reputation in the community for truth and
15 veracity?

16 A Well, people trust him because he's a good man.

17 MR. PRIDE: Thank you very much.

18 THE COURT: Just one second. Do you want to cross
19 examine this witness?

20 MS. HALL: Just briefly.

21 CROSS EXAMINATION

22 BY MS. HALL:

23 Q Were you with Darryl Coleman on December the 15th of
24 2018?

25 A No, ma'am.

NELSON KING - DIRECT

1 Q Were you present at the home where this incident
2 occurred?

3 A No, ma'am.

4 Q On that date?

5 A No, ma'am.

6 Q Did you see Mr. Coleman on that date?

7 A No, ma'am.

8 MS. HALL: Thank you.

9 THE COURT: Redirect?

10 MR. PRIDE: I don't have anything further.

11 THE COURT: May this witness be excused?

12 MR. PRIDE: Yes.

13 THE COURT: Thank you, sir.

14 The witness, NELSON KING, was first duly sworn and

15 Testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PRIDE:

18 Q Nelson, state your full name.

19 A Dr. Nelson Maurice King.

20 Q And where do you live?

21 A Rock Hill, South Carolina.

22 Q And what kind of doctor are you?

23 A Dentist.

24 Q And where do you practice?

25 A I'm not practicing at the present, but I practiced in

NELSON KING - DIRECT

1 North Carolina. I'm a mortician and contracting. Right now
2 I'm doing contracting.

3 Q How long have you known Darryl Coleman?

4 A Over 20 years.

5 Q And in what capacity do you know him?

6 A Well, my family business, we serviced their family in
7 the funeral business. And Darryl has worked for me
8 throughout my construction business as a mason.

9 Q Do you know his reputation in the community -- in the
10 community for truth and honesty?

11 A Yes.

12 Q Is it good or bad?

13 A Good.

14 Q Do you know his reputation in the community for honesty
15 and his veracity?

16 A He's a very honest guy. He's been honest with me on
17 all the jobs he worked for me.

18 Q And you've known him for how long?

19 A Over 20 years.

20 MR. PRIDE: Answer any questions, please.

21 CROSS EXAMINATION

22 BY MS. HALL:

23 Q Doctor King, it's fair to say he's been honest with you
24 so far as you know; is that correct?

25 A He's been honest with me, yes.

1 Q So far as you know.

2 A Yes.

3 Q Were you with him on December the 15th of 2008?

4 A I was not.

5 MS. HALL: Thank you. I don't have any further
6 questions.

7 THE COURT: May this witness be excused?

8 MR. PRIDE: Yes.

9 THE COURT: Very good. Thank you, sir. All right.

10 Madam Forelady, ladies and gentlemen of the jury, it's about
11 ten to 5:00, I think it's a good time today to go ahead and
12 break. Can you be back in the jury room at 9:30 in the
13 morning? Let me remind you to please leave your notepads in
14 the jury room, do not speak amongst yourselves or with
15 anyone else about this case, I'm going to ask you to be back
16 at 9:30 in the morning. Have a good evening.

17 (The jury left the courtroom.)

18 (Court recessed for the evening and resumed at 9:30

19 A.m., on Wednesday, May 22, 2019.)

20 THE COURT: Mr. Pride, Ms. Hall told me that y'all had
21 an agreement y'all need to put on the record this morning?

22 MR. PRIDE: She's absolutely correct.

23 MS. HALL: With regard to State's Exhibit Number 2,
24 which was entered into evidence, I was looking through it
25 this morning and it came to my attention that on page two

1 that there appears to be pink highlighting on it. When I
2 spoke with Mr. Pride I showed it to him and I suggested that
3 we replace it with one that doesn't have pink highlighting
4 on it that's exactly the same thing but just a clean copy,
5 and that's what we were going to agree to do.

6 THE COURT: Okay.

7 MR. PRIDE: I agree.

8 THE COURT: Very good. Any other matters before we get
9 started?

10 MS. HALL: Nothing from the State.

11 MR. PRIDE: Nothing from the defense, Your Honor.

12 THE COURT: Now, Mr. Pride, have you had an opportunity
13 to review with your client whether or not he wishes to
14 testify in this matter?

15 MR. PRIDE: Can you indulge me one minute?

16 THE COURT: Yes, sir.

17 (Break in proceedings.)

18 MR. PRIDE: My client will testify.

19 THE COURT: He will testify.

20 MR. PRIDE: Yes.

21 THE COURT: All right. Mr. Coleman, are you making
22 that decision to testify knowing your rights under the 5th
23 Amendment?

24 THE DEFENDANT: Yes, sir.

25 MR. PRIDE: And this is your own personal decision?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Nobody forced, threatened or coerced you in
3 any manner to get you to testify.

4 THE DEFENDANT: Oh, no, sir.

5 THE COURT: Okay, sir. Are you ready proceed?

6 MR. PRIDE: I am ready.

7 THE COURT: All right. Are you ready, Ms. Hall?

8 MS. HALL: Yes, sir.

9 THE COURT: Would you bring the jury in?

10 (The jury returned to the courtroom.)

11 THE COURT: Good morning. I hope you had a nice
12 evening last night. Let me ask a couple of questions,
13 please, before we get started. Did everyone leave their
14 notepads here at the courthouse? If you did not raise your
15 hand. Has anyone spoken with anybody about this case or
16 read, heard or seen anything about this case during the
17 break? If so, would you raise your hand? Excellent. Thank
18 you very much. All right. Mr. Pride, is the defendant
19 ready to proceed?

20 MR. PRIDE: Your Honor, the defendant wishes to take
21 the stand on his own behalf.

22 THE COURT: All right, sir. Come around, Mr. Coleman.

23 The witness, DARRYL COLEMAN, was first duly sworn and

24 Testified as follows:

25 DIRECT EXAMINATION

DARRYL COLEMAN - DIRECT

- 1 BY MR. PRIDE:
- 2 Q Good morning.
- 3 A Good morning.
- 4 Q Good morning.
- 5 A Good morning.
- 6 Q I'm standing over here because I want to make you talk
- 7 loud enough to make sure that all of these jurors can hear.
- 8 A Yes, sir.
- 9 Q Now, tell me your name.
- 10 A Darryl Coleman.
- 11 Q And tell me where you live.
- 12 A 591 Catawba Road.
- 13 Q How long have you been living there?
- 14 A Eighteen years.
- 15 Q And how old are you?
- 16 A Forty-six.
- 17 Q How far did you go in school?
- 18 A Twelve years.
- 19 Q You graduated from high school?
- 20 A Yes, sir.
- 21 Q And after graduating from high school what did you do?
- 22 A Went to work.
- 23 Q What kind of work?
- 24 A Construction.
- 25 Q Construction work.

DARRYL COLEMAN - DIRECT

- 1 A Yeah.
- 2 Q Now, is that the kind of work that you do presently?
- 3 A Yes, sir, I'm a brick mason.
- 4 Q Brick mason. Okay. Now, do you have children?
- 5 A Yes, sir.
- 6 Q I told the jury about them but I want you to tell me,
7 how many children do you have?
- 8 A Four.
- 9 Q And tell me their respective names and their sexes.
- 10 A Darryl Coleman, Jr. is 26. And Darren Coleman is 24.
11 Kaitlin Coleman, she's 18. And Kayla Coleman is nine --
12 excuse me, ten.
- 13 Q Ten years old.
- 14 A Yes, sir.
- 15 Q Okay. And do you have sisters?
- 16 A Yes, sir.
- 17 Q So you are a man who has not only daughters but you
18 have sisters.
- 19 A Yes, sir.
- 20 Q And how many sisters do you have?
- 21 A Five. Currently I have four.
- 22 Q You have four sisters but you had five.
- 23 A Yes, sir.
- 24 Q All right. Now, 11 years ago on December the 31st, am
25 I correct in saying that you were arrested?

DARRYL COLEMAN - DIRECT

1 A Yes, sir.

2 Q And is that the first time that you've heard anything
3 about this matter which we have been in trial with all
4 week --

5 A Yes, sir.

6 Q -- concerning the rape?

7 A Yes, sir.

8 Q Now, when you were arrested at that time you told
9 them -- you plead not guilty, didn't you?

10 A Yes, sir.

11 Q And today prior to this trial your plea was what?

12 A Not guilty.

13 Q Are you guilty?

14 A No, sir.

15 Q Now, Darryl, when you were arrested on the 31st of
16 December, did anyone -- you hired me as a lawyer; is that
17 correct?

18 A Yes, sir.

19 Q And since that time has anybody ever summonsed you or
20 told you to be in court?

21 A No, sir.

22 Q And have you been in court since that time?

23 A No, sir.

24 Q Has this matter been hanging over your head for 11
25 years?

DARRYL COLEMAN - DIRECT

- 1 A Yes, sir.
- 2 Q Now, do you know **Witness** (sic)?
- 3 A No, sir, I didn't know her.
- 4 Q When is the first time that you have ever seen her?
- 5 A When she came to my house.
- 6 Q And who did she come with?
- 7 A With Hoover and some other girl.
- 8 Q And so the three of them came together.
- 9 A Yes, sir.
- 10 Q Okay. And when they came to your house you let them
- 11 in?
- 12 A Yes, sir. The door was already opened, the screen
- 13 door.
- 14 Q Okay. And where did she sit?
- 15 A They come in the house and sat on the couch.
- 16 Q What did you do?
- 17 A Well, I went in the bathroom. I had to use the
- 18 bathroom when they got there. I was getting ready to use
- 19 the bathroom when they were pulling up.
- 20 Q Would I be correct that you're going to the bathroom to
- 21 took some period of time?
- 22 A Probably took about ten minutes.
- 23 Q About ten minutes. All right. And when you came out
- 24 of the bathroom, what did you see?
- 25 A I seen **Witness** sitting on the couch. And Hoover and I

DARRYL COLEMAN - DIRECT

1 guess his girlfriend were from driving down the driveway.

2 Q So she was left there by herself?

3 A Yes, sir.

4 Q And did you talk to her?

5 A No, sir. I just wanted to know what she was doing
6 there.

7 Q What did she do?

8 A She just looked at me smiling and pretty much took her
9 clothes off.

10 Q Took them all off?

11 A Well, yeah, pretty much.

12 Q Did you ask her to take them off?

13 A No, sir.

14 Q And when she took them off, what did you do?

15 A I didn't do anything, I just looked at her.

16 Q You looked at her. You had intentions to have sex with
17 her, didn't you?

18 A Well, I thought about it.

19 Q Did you know how old she was?

20 A No, sir.

21 Q When you say you thought about it, is that to say that
22 something changed your mind?

23 A Yes, sir.

24 Q What?

25 A She was bleeding everywhere.

DARRYL COLEMAN - DIRECT

- 1 Q And as a result of it, did you ever penetrate her?
- 2 A No, sir.
- 3 Q Did you put your penis in her?
- 4 A No, sir.
- 5 Q You didn't touch her at all.
- 6 A No, sir.
- 7 Q Okay. And what happened between the two of you then?
- 8 A Well, I pretty much start ejaculating myself and she
- 9 grabbed my penis.
- 10 Q Did she suck it?
- 11 A Yeah. She wanted to, yeah.
- 12 Q Did you let her?
- 13 A No, sir, I did not.
- 14 Q And what else did she do? Did you ejaculate? Did you
- 15 finish? Did you reach your climax?
- 16 A Well, I would say yes, sir.
- 17 Q And did you reach your climax while she was playing
- 18 with it?
- 19 A Yes, sir.
- 20 Q Okay. And did you ever penetrate her?
- 21 A No, sir.
- 22 Q You never put your penis in her?
- 23 A No, sir.
- 24 Q And as I understand your testimony you didn't know how
- 25 old she was.

DARRYL COLEMAN - DIRECT

- 1 A No, sir, I didn't.
- 2 Q Did she look like she was 14?
- 3 A No, sir.
- 4 Q Had you had any previous experience with her?
- 5 A No, sir.
- 6 Q Did you know her or had you ever seen her?
- 7 A I seen her around town probably but I didn't know her,
8 no, sir.
- 9 Q Did you know her father?
- 10 A No, sir.
- 11 Q Okay. Now, after you ejaculated, what did you do then?
- 12 A I went in the bathroom.
- 13 Q And what did you do then?
- 14 A Just wiped off my hand and come back out.
- 15 Q And did you ever take her home?
- 16 A Yes, sir.
- 17 Q And how far did she live from where you were living?
- 18 A I would say about maybe five miles.
- 19 Q About five miles?
- 20 A Yes, sir.
- 21 Q Okay. And when you reached a point of letting her out
22 of the car, what happened to you?
- 23 A Well, some man come out of nowhere and with a stick or
24 some kind of object, blunt object and started beating on the
25 car and I just pulled off.

DARRYL COLEMAN - DIRECT

1 Q Did they ever shoot at you?

2 A Well, somebody -- somebody else's car followed me down
3 the road and shots were fired.

4 Q Shots were fired.

5 A Yes, sir.

6 Q Did you report this to the police department?

7 A Yes, sir.

8 Q Did they have an incident report of it?

9 A They wouldn't write it out.

10 Q They didn't write it out?

11 A No, sir.

12 Q I'm not surprised.

13 MR. PRIDE: Excuse me. Strike that, Judge.

14 Q So when you let -- your testimony is that when you let

15 **Witness** [REDACTED] out of the car somebody came out of nowhere,
16 is that a fair statement?

17 A Yes, sir.

18 Q And they started beating on your car.

19 A Yes, sir.

20 Q And was she in or out at the time that they were
21 beating on the car?

22 A She was out.

23 Q And at the time that they were beating on the car were
24 you scared?

25 A Yes, sir.

DARRYL COLEMAN - DIRECT

1 Q Did you drive off?

2 A Yes, sir.

3 Q And was it in an effort to escape danger?

4 A Uh-huh.

5 Q And you say at that time you noticed a car following
6 you?

7 A Yes, sir.

8 Q And the car following you fired several shots?

9 A Yes, sir.

10 Q Darryl, I'm going to ask you, are you an innocent man?

11 A Yes, sir.

12 Q Did you ever penetrate this young lady?

13 A No, sir.

14 Q Did you ever know what her age was?

15 A No, sir.

16 MR. PRIDE: Thank you very much. Answer any questions
17 please. Take your time and answer any questions that the
18 solicitor has to ask you, okay?

19 THE COURT: Cross examination.

20 MS. HALL: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MS. HALL:

23 Q Did you ask her how old she was? Did you ask her how
24 old she was?

25 A No, ma'am.

DARRYL COLEMAN - CROSS

- 1 Q You were 37 at the time?
- 2 A Yes, ma'am.
- 3 Q You had a 14 year old son?
- 4 A At that time?
- 5 Q You said your son is 24 now?
- 6 A Uh-huh.
- 7 Q So he would be the same age as **Witness**, right?
- 8 A Pretty much.
- 9 Q Yeah. Where did he go to school?
- 10 A He go to school -- he went to school in Rock Hill.
- 11 Q He did? So did he live with you growing up?
- 12 A Yeah, for awhile when he was smaller.
- 13 Q But he was 14, too, in December of 2008, correct?
- 14 A Yes, ma'am.
- 15 Q And your other son, Darren, I would calculate was about
- 16 14 at that time -- I mean about 16 at the time. He's 26
- 17 years now.
- 18 A Darren now, he was younger, he's younger than Darryl.
- 19 Q I'm sorry. I thought on direct that you said that
- 20 Darren was 26 and Darryl was 24.
- 21 A Darryl was 26.
- 22 Q Okay. But you had kids the same age as **Witness**
- 23 and you were 37 at the time in 2008, correct?
- 24 A Yeah.
- 25 Q Okay. Do you know that Castleberrys?

DARRYL COLEMAN - CROSS

- 1 A Ma'am?
- 2 Q Do you know some people named Castleberry?
- 3 A Yes, ma'am.
- 4 Q How are you related to them?
- 5 A My cousins, aunts.
- 6 Q Do you live on their land?
- 7 A I live on the Sanders property.
- 8 Q I'm sorry?
- 9 A I live on the Sanders property.
- 10 Q You live on the Sanders property?
- 11 A Uh-huh.
- 12 Q At 591 Catawba Road?
- 13 A Yes, ma'am.
- 14 Q Are they related to the Castleberrys?
- 15 A Yes, ma'am.
- 16 Q How are they related?
- 17 A Sisters and brothers.
- 18 Q So exactly how are you related to Alberta Castleberry?
- 19 A That's my aunt.
- 20 Q She's your aunt?
- 21 A Yes, ma'am.
- 22 Q So the person -- you were in here the whole time
- 23 testimony was going on, the person the subpoena was served
- 24 on at 744 Catawba Road was, in fact, your aunt.
- 25 A Yes, ma'am.

DARRYL COLEMAN - CROSS

1 Q And this incident that you're describing that occurred
2 between you and **Witness** [REDACTED], where did that occur?

3 A At 591 Catawba Road.

4 Q Was that your house at the time?

5 A Yes, ma'am.

6 Q And that's where you still live?

7 A Yes, ma'am.

8 Q Who lives at 544?

9 A My aunt.

10 Q Or 744, I'm sorry.

11 A My aunt.

12 Q Is that Alberta?

13 A Yes, ma'am.

14 Q All right. And you state that Hoover and another girl
15 brought her there and dropped her off.

16 A Well, not dropped her off. All of them come in the
17 house.

18 Q Okay. But ultimately dropped her off. How do you
19 know -- what's Hoover's first name, or his real name?

20 A Javaris.

21 Q How do you know him?

22 A We grew up pretty much, I grew up with his brothers.

23 Q With his brothers?

24 A Uh-huh.

25 Q How old is he?

DARRYL COLEMAN - CROSS

- 1 A Javaris might be 37 or 38, somewhere in there.
- 2 Q So at the time he was about 24?
- 3 A I think so.
- 4 Q Okay. And was that somebody you had known all of your
- 5 life?
- 6 A Yes, ma'am.
- 7 Q And did you hang out with them all of the time?
- 8 A No, ma'am, not all of the time, just normal.
- 9 Q Do you still know him?
- 10 A Yes, ma'am.
- 11 Q And you still hang out with him?
- 12 A No, ma'am.
- 13 Q And this is -- is your address Great Falls, the Catawba
- 14 Road address?
- 15 A Yes, ma'am.
- 16 Q And Great Falls is a pretty small community.
- 17 A Yes, ma'am.
- 18 Q Did you ever see **Witness** before?
- 19 A I have seen her before.
- 20 Q Where? Just tell me about that. Where had you seen
- 21 her before?
- 22 A At the store but I don't know her. I just -- when I
- 23 saw her come in here then that's when I really --
- 24 Q Yeah. But I'm talking about before this incident
- 25 occurred, like before 2008?

DARRYL COLEMAN - CROSS

- 1 A Oh, no.
- 2 Q You had never laid eyes on her before.
- 3 A No, ma'am.
- 4 Q How far -- you said your house is about five miles from
5 hers?
- 6 A Yeah, five to six, somewhere in there.
- 7 Q How many stores would you say are in Great Falls, gas
8 station stores? In 2008 how many were there?
- 9 A Great Falls? Probably seven.
- 10 Q Seven stores?
- 11 A Probably.
- 12 Q How many stores are between your house and her house?
- 13 A Just one.
- 14 Q One?
- 15 A Uh-huh.
- 16 Q When you were answering Mr. Pride's questions you
17 stated that Javaris, Hoover, and some other girl you didn't
18 know came in your house, you went in the bathroom and you
19 came out and they were gone but **Witness** was still there,
20 right?
- 21 A Yes, ma'am.
- 22 Q What room was she in?
- 23 A She was in the living room.
- 24 Q Okay. And then you stated that she came in, sat on the
25 couch, you went in the bathroom and you came out and she was

DARRYL COLEMAN - CROSS

1 still in the living room at that point in time?

2 A Uh-huh.

3 Q And you stated that she -- you see them driving out of
4 the driveway and she's just looking at you and smiling and
5 takes her clothes off.

6 A Yeah.

7 Q And did you say anything to her?

8 A I asked her what was she doing.

9 Q Did she respond or anything?

10 A No.

11 Q Did you take your clothes off?

12 A No, ma'am.

13 Q Did she take your clothes off?

14 A No, ma'am.

15 Q How did your clothes get off?

16 A I didn't take them off.

17 Q Well then, how did you get your penis to ejaculate?

18 A Well, I just pulled my pants zipper down.

19 Q You did? All right. But you didn't do anything
20 with -- you admit to all these other things, but you just
21 don't admit to penetrating her; is that correct?

22 A No, we didn't have sex.

23 Q And you said that was because she was bleeding.

24 A Yes, sir. Yes, ma'am, sorry.

25 Q How did you know she was bleeding?

DARRYL COLEMAN - CROSS

1 A Because when she got her pants down blood was on my
2 couch.

3 Q So she was still sitting on the couch with her clothes
4 off.

5 A Yes, ma'am.

6 Q Did she ever get up?

7 A Yeah. That's when I saw the blood when she got up.

8 Q And when she got up, where did she go?

9 A She didn't go nowhere. She just pulled her stuff back
10 on, "Oh my God."

11 Q Oh my God?

12 A She was bleeding.

13 Q Okay. Was -- well, did she come towards you at
14 anytime?

15 A No, ma'am. No.

16 Q And you say that all of these things happened but you
17 never penetrated her, you never touched her.

18 A No, she touched me. I didn't touch her, no.

19 Q And you said she wanted to perform oral sex on you but
20 that you just said, "No, we're not doing that." You
21 wouldn't let her do that either, right?

22 A Well she -- yes, ma'am, she tried.

23 Q And you didn't want to do that?

24 A Well, no. I just -- when I jacked off she helped is
25 basically what happened.

DARRYL COLEMAN - CROSS

1 Q But she offered to give you oral sex and you said no,
2 according to your testimony, the things that you told Mr.
3 Pride.

4 A Yeah.

5 Q But you never asked for oral sex.

6 A No, ma'am.

7 Q Describe -- when you said -- you told Mr. Pride about
8 she tried to perform oral sex on you. Can you describe that
9 a little bit more in detail?

10 A It's just simple, when I pulled the zipper out she
11 grabbed my penis.

12 Q And put it in her mouth?

13 A Yes, ma'am.

14 Q And so your penis went in her mouth but you pushed her
15 off?

16 A No, I didn't -- I just stood there for a second.

17 Q Okay. Well then -- when your penis was in her mouth --
18 at some point how did you stop that?

19 A I just started jacking off just away from her.

20 Q So you pulled your penis out of her mouth and started
21 jacking off, is that what you're saying?

22 A Yes, ma'am.

23 MS. HALL: Nothing further.

24 MR. PRIDE: Come on down.

25 (Break in proceedings.)

JESSICA BURROWS - DIRECT

1 THE COURT: Is there an issue here?

2 MS. HALL: I forgot she was on the list. It's okay,
3 it's fine.

4 THE COURT: Swear her in, please.

5 The witness, JESSICA BURROWS, was first duly sworn and
6 Testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PRIDE:

9 Q Good morning.

10 A Good morning.

11 Q Tell me your name.

12 A Jessica Burrows.

13 Q And your address?

14 A 38 Nikki Road.

15 Q Where?

16 A Great Falls, South Carolina.

17 Q How long have you lived there?

18 A Nineteen years.

19 Q Where did you go to school?

20 A Lakewood, Washington.

21 Q How far did you go in school?

22 A GED.

23 Q And after high school, where did you work then?

24 A I moved to South Carolina.

25 Q You moved to South Carolina then. Okay. Are you

JESSICA BURROWS - DIRECT

1 married?

2 A No.

3 Q And tell me your last name again.

4 A Burrows.

5 THE COURT: Would you spell that for the record?

6 THE WITNESS: B-u-r-r-o-w-s.

7 Q Now, Ms. Burrows, do you know **Witness**?

8 A Yes, sir.

9 Q How do you know her?

10 A Her father, Russell.

11 Q Did you have any kind of relationship with **Witness** at
12 all?

13 A No, sir.

14 Q And on the 15th of December, did you see **Witness**?

15 A No, sir.

16 Q Were you with her?

17 A No, sir.

18 Q I'm going to show you a copy of the sheriff's
19 department, and I think I previously showed you these lines
20 right in here. Would you look at that for me? And that's a
21 statement from **Witness**. Would you read that, what she says
22 in reference to being with you?

23 MS. HALL: Objection, Your Honor, he's pitting
24 witnesses.

25 MR. PRIDE: It's already --

JESSICA BURROWS - DIRECT

1 THE COURT: Hang on, let her state her objection.

2 MS. HALL: She's already -- Ms. Waters has testified,
3 and then the other people have testified about what she
4 said. He's pitting witnesses against one another and State
5 objects to this testimony -- this line of questioning.

6 THE COURT: All right. Overruled. Go ahead.

7 A Read it?

8 Q Would you look at that report? And excuse me, before
9 you look at this report, looking at that report in the very
10 center of -- read that for me. Do you see your name your --

11 A Yes, I see my name.

12 Q Your name is not spelled correctly; is that right?

13 A Yeah. My name is spelled correctly but my last name
14 wasn't.

15 Q Okay.

16 A "The subject called his girlfriend, Stupu (James
17 Talford) and his girlfriend, Jessica. We met them at the
18 Debutary. Darryl and Stupu went fishing. Jessica and I
19 stayed in the car and talked. Later they came back and we
20 left. Darryl drove to his trailer and told me to get out.
21 We went inside and I sat on the couch. Darryl told me to
22 come in the bedroom and watch TV" --

23 Q That's sufficient. Did you see her at all that day?

24 A No, sir.

25 Q Were you down at Darryl's house that day?

JESSICA BURROWS - CROSS

1 A No, sir.

2 Q Were you fishing that day?

3 A No, sir.

4 Q Were you with your boyfriend down there that day?

5 A No, sir.

6 Q Have you ever been fishing with Witness [REDACTED]?

7 A No, sir.

8 Q And that's a statement that was given in relationship

9 to your being with her on the 15th of December, right?

10 That's what the statement says.

11 A Yes, sir.

12 MR. PRIDE: Answer any questions, please, the solicitor

13 has to ask you.

14 THE COURT: Cross examination?

15 MS. HALL: Thank you.

16 CROSS EXAMINATION

17 BY MS. HALL:

18 Q Who were you dating back in December 2008?

19 A James Talford.

20 Q And is this a report that you wrote?

21 A Ma'am?

22 Q Is this a report that you wrote?

23 A That I wrote?

24 Q Uh-huh.

25 A No, I read it.

JESSICA BURROWS - REDIRECT

1 Q Okay.

2 MS. HALL: I don't have anything else.

3 MR. PRIDE: Just one other question.

4 REDIRECT EXAMINATION

5 BY MR. PRIDE:

6 Q You were subpoenaed here today, is that not correct?

7 You were given a subpoena to be here today?

8 A Yes, sir.

9 Q Okay. And have you ever talked with anybody from the
10 sheriff's department about this case?

11 A No, sir.

12 MR. PRIDE: Come on down, please.

13 The witness, JAMES TALFORD, was first duly sworn and

14 Testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PRIDE:

17 Q State your full name.

18 A James Talford.

19 Q Mr. Talford, you are here because you were given a
20 subpoena to be here; is that correct?

21 A Yes, sir.

22 Q Did the Fairfield County Sheriff's Department or the
23 police or sheriff, anybody ever come and talk to you about
24 this incident on the 15th of December?

25 A No, sir.

JAMES TALFORD - CROSS

- 1 Q Nobody has ever been there. Where do you work?
- 2 A I work at Giti Tire in Richburg.
- 3 Q How long have you worked there?
- 4 A I've been there two years, since it opened.
- 5 Q Two years. And prior to that why did you work?
- 6 A I worked at Hatton House.
- 7 Q How long did you work there?
- 8 A Three years.
- 9 Q And who do you live with?
- 10 A I stay by myself, me and my girlfriend.
- 11 Q And who is your girlfriend?
- 12 A Jessica Burrows.
- 13 Q Okay. Now, do you know Darryl Coleman?
- 14 A Yes, sir.
- 15 Q How long have you been knowing Darryl?
- 16 A All of my life.
- 17 Q All right. I'm going to show you a copy of a police
- 18 report. You've seen that before because I showed it to you.
- 19 A Yes, sir.
- 20 Q Could you tell me, could you read that portion where
- 21 you see your name?
- 22 A "Subject called his friend, Stupu, (James Talford.)
- 23 Q Wait a minute, start over again. Pull the mic down
- 24 just a little bit. Go ahead.
- 25 A "The subject called his friend, Stupu (James Talford)

JAMES TALFORD - CROSS

1 and his girlfriend, Jessica. We met them at the Debutary.
2 Darryl and Stupu went fishing, Jessica and I stayed in the
3 car and talked. Later they came back and we left. Darryl
4 drove to the trailer and told me to get out and we went" --

5 Q That's fine. On the 15th of December, 2008, were you
6 at Darryl's house?

7 A No, sir.

8 Q Did Darryl ever call you about going fishing on
9 December 15th?

10 A No, sir.

11 Q Did you ever on the 15th of December see Witness [REDACTED]
12 Witness [REDACTED]?

13 A No, sir.

14 Q You said I think anybody -- nobody, SLED or nobody else
15 in law enforcement has ever been to talk to you about this
16 case.

17 A No, sir.

18 MR. PRIDE: All right.

19 THE COURT: Cross examination.

20 MS. HALL: Really quickly.

21 CROSS EXAMINATION

22 BY MS. HALL:

23 Q How long have you known Darryl Coleman?

24 A All of my life.

25 Q Okay. Do you hang out with him regularly?

1 A No.

2 Q Did you hang out with him regularly back in 2008?

3 A I seen him around, we talked, that's about it.

4 Q Where were you on December 15th of 2008?

5 A I really don't know.

6 MS. HALL: Thank you.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. PRIDE:

10 Q But as I understand your testimony, you do know that on
11 the 15th of December you were not and did not see **Witness**
12 **Witness**.

13 A Yes, sir. I never was with **Witness**.

14 MR. PRIDE: Thank you very much. Come down.

15 THE COURT: May he be excused?

16 MS. HALL: Yes.

17 THE COURT: Very good. Thank you, sir, you're free to
18 go.

19 MR. PRIDE: Your Honor, at this time the defense rests.
20 And, of course, I would like to discuss some matters with
21 you.

22 THE COURT: Yes, sir. All right. Madam Forelady,
23 ladies and gentlemen, the defense said it has rested its
24 case in chief, I have some administrative matters to attend
25 to. If you could go back to the jury room, leave your pads

1 here in the courtroom, we'll bring you back out and continue
2 the trial in just a few minutes.

3 (The jury left the courtroom.)

4 THE COURT: Yes, sir?

5 MR. PRIDE: Your Honor, at this time I would like to
6 renew all of my previous motions made before the Court in
7 this case as though they have been stated verbatim at this
8 time. I also would note to the Court that I had a motion
9 pending as it related to the rape kit, in my opinion that
10 motion is no longer -- that motion is now moot based on the
11 fact that I did consent in the chain of custody. I would at
12 this time, Your Honor, move you for a directed verdict or in
13 the alternative for the dismissal of this case based on the
14 fact that the facts and evidence heard by the Court in this
15 case, the Court should take it as opposed to sending it to
16 the jury.

17 THE COURT: Thank you, sir. I will deny the motions on
18 the same basis. And for the record, that would be a denial
19 of the speedy trial motion, motion for a directed verdict,
20 and I think you said that the rape kit motion to have it
21 excluded is now moot based on your stipulation, correct?

22 MR. PRIDE: That is correct.

23 THE COURT: Thank you so much, Mr. Pride. All right.
24 Anything from the State, Ms. Hall?

25 MS. HALL: No, sir.

1 THE COURT: Ladies and gentlemen, let me pass you my --
2 are you going to have any reply in this case?

3 MS. HALL: No, no reply evidence. Thank you.

4 MR. PRIDE: Judge, can I ask you now to grant at least
5 an hours recess before we argue before the --

6 THE COURT: I'm not very inclined to do that, Mr.
7 Pride, quite frankly. I'll give you some time to get your
8 thoughts together. But let me --

9 MR. PRIDE: I'll cut it shorter than that, but me give
10 me some time to get my thoughts together.

11 THE COURT: If you would share that with Ms. Hall.

12 MS. HALL: Your Honor, I do have one -- is Mr. Pride
13 going to ask for any lesser includeds? I have a question
14 about lesser included offenses if he's going to ask for
15 charges and stuff like that, if he's going to ask for
16 anything besides -- because that would pertain to my
17 closing.

18 MR. PRIDE: I'm sorry, I didn't understand you.

19 MS. HALL: Is he going to ask for any charges on lesser
20 included offenses.

21 MR. PRIDE: No.

22 MS. HALL: I was just making sure. The State takes a
23 the position that there is evidence that -- while there's
24 also evidence of CSC by the defendant's own admission,
25 there's evidence of lewd act, and the State would request a

1 charge on lewd act as well, it would be under the 2008 lewd
2 act. And if Mr. Pride doesn't want it obviously --

3 THE COURT: Well, what was the last comment, if he
4 doesn't want it you --

5 MS. HALL: I guess the Court could hear from him about
6 that, but the State takes the position there's evidence of
7 that.

8 THE COURT: I think if I understand the requirements of
9 me if there's any evidence in the record of lesser included
10 I'm supposed to charge it whether or not one side wants me
11 to. But if I understand you to say, Ms. Hall, if he doesn't
12 want it I don't need to charge it, or are you asking that I
13 charge it whether he wants it or not?

14 MS. HALL: I think it needs to be charged. Because the
15 penetration is what -- is the only issue that makes it a
16 lewd act and not a CSC. And there's evidence by his own
17 admission that it's a lewd act.

18 THE COURT: Well, just one second. Let me -- she's
19 pulling that up, bear with me one second. While she's doing
20 that if you would look --

21 (Break in proceedings.)

22 MS. HALL: I feel like there's evidence that has been
23 presented that a lewd act was committed and I believe it
24 needs to be charged.

25 THE COURT: Here is my understanding, guys. If there's

1 evidence in the record and I'm requested to charge it by
2 either side then I'm supposed to if it's appropriate, in
3 other words, if it fits the facts of the case regardless if
4 one side objects to it or not. I want to see that charge
5 right quick, please.

6 (Break in proceedings.)

7 MS. HALL: I had a question about mistake of age is not
8 a defense and I don't know how -- I guess I can address it
9 in closing but I don't know that there is necessarily a
10 charge on that. But there's defenses that you charge, but
11 if you don't charge -- anyway, I'm just thinking out loud
12 right now.

13 THE COURT: Well, in the charge I had it says consent,
14 willingness, indifference or ignorance on the part of a
15 minor.

16 MS. HALL: If it's on the part of the minor, yeah.

17 THE COURT: If you'll give me a proposed charge I'll be
18 glad to look at it. Let's do this -- my intent, Ms. Hall,
19 is to make a determination at this juncture about the lesser
20 included and whether or not it would be charged. Thereafter
21 we would take a break and let you and Mr. Pride get your
22 heads together around your closing and then come back, and
23 in that one little bit we can decide at that juncture as to
24 whether or not the mistake in age -- and I think that is a
25 correct statement of law, mistake of age is not a defense.

1 MS. HALL: And I'll come up with something in the
2 meantime and bring that back in here.

3 THE COURT: So I guess, Mr. Pride, the question really
4 falls on you. Looking at the statute and looking at the
5 charge it seems that there are sufficient facts in the
6 record that would warrant this charge being given. If you
7 think I am wrong, you know, I'm glad to be wrong, I just
8 want you to tell me where I am wrong.

9 MR. PRIDE: Judge, respectfully I raise a
10 constitutional issue about this. It is a tradition and
11 practice in South Carolina to include lesser offenses. It
12 is my position that when you do that you violate a
13 defendant's constitutional right to be fully informed of the
14 charges against him. You also violate the defendant's right
15 to competent representation, because I didn't come here
16 prepared to defend that. This is a surprise, it is brand
17 new and I take the position, and I have always taken the
18 position, that lesser included offenses are constitutionally
19 violating the defendant's right to a fair trial.

20 THE COURT: Let me ask you this, with that
21 understanding on your constitutional objection, and I'm
22 going to overrule that just for the record, do you agree
23 with me that there is sufficient facts in the record,
24 regardless of the constitutionality of the elements of lewd
25 act on a minor, that there's evidence in the record that

1 would comport with that charge, whether or not it's
2 constitutional or not, to give a lesser included?

3 MR. PRIDE: As a defense attorney do you think I'm
4 going to agree? No, I do not agree.

5 THE COURT: No, I don't. All right. That's a fair
6 answer. I'm going to go ahead and charge it. I have a new
7 verdict form. If you would take a look at that and then
8 we'll take a break. Meanwhile, Ms. Hall, if you would get
9 me the charge on mistake of age, or whoever, that way I can
10 look at it.

11 MR. PRIDE: Judge, this is the verdict. I would like
12 to see what your charge is on that. Oh, you're going to
13 just charge the statute.

14 THE COURT: Well, they say -- it's not the statute,
15 that's above the statute.

16 MR. PRIDE: I got you, I understand.

17 THE COURT: Okay. I know you object to it but as
18 written the objection follows the statute, I believe. Let
19 me just tell y'all this, too. I have plagiarized Judge
20 Hill's charge, and I did it shamelessly. But my charge has
21 three parts. The first part are the duties that define and
22 control the jurors' duties, which would include the charge
23 you requested yesterday, Mr. Pride, about the defendant's
24 good character, and I will certainly give that. But it
25 basically tells them they've got to determine the evidence

1 from the facts and they're not to be influenced by undue
2 sympathy, prejudice, dislikes, et cetera. I will go over
3 what is evidence. I will go over what is not evidence. I
4 then give the direct and circumstantial evidence charge,
5 that's State versus Clarence Logan. Then I go over
6 credibility of the witnesses. Expert testimony. The fact
7 that the indictment is not evidence of guilt or inference or
8 a presumption of guilt. Then I go over the presumption of
9 innocence. Reasonable doubt and intent. I think I have to
10 have an intent charge in this case. And after intent I
11 would do the defendant's good character and/or reputation.
12 And that would be the end of that section. I will then go
13 to criminal sexual conduct second degree with a minor, then
14 the lesser included charge of lewd act on a minor as you
15 have seen, after which I go over some concepts about the
16 deliberations with the jury. I will tell them that they are
17 represented by their express words or their silence so they
18 could be fair and impartial to both sides. They're not
19 partisans or advocates for one side or the other, but
20 they're judges of the facts of the case. And they are to go
21 back and discuss all of the evidence thoroughly. I define
22 deliberation as a careful review leading up to a decision,
23 listen to everybody's thoughts and points and the reason
24 they have their points of view. Let everybody discuss why
25 they have them and discuss the evidence very thoroughly.

1 This is the only day in court for both sides and it's an
2 important case for both sides. And that if they are -- in
3 order for their verdict to stand they have to be unanimous.
4 However, with that being said -- and I tell them don't be
5 afraid to change your mind if your deliberations convinces
6 you it's the thing to do. On the other hand, don't change a
7 firmly held belief as to the weight of the evidence just to
8 appease your fellow jurors. I then go over the verdict form
9 with the forelady and I tell her how to fill out that
10 verdict form and what to do when they reach a verdict. And
11 I have it here on my desk, both you and/or either one of you
12 are more than welcome to come through and look at it all you
13 want to, it's sitting right here, okay? Now, let's take a
14 few minutes. How long do you think you're going to need --
15 I know you requested an hour, but --

16 MR. PRIDE: Give me 30 minutes.

17 THE COURT: All right. Let's do 30 minutes. That's
18 fine.

19 (A recess was taken.)

20 THE COURT: Since the defense testified and presented
21 evidence we need to get the proper lineup for the closing.
22 It's been my preference to have the parties agree to how
23 that works, in other words whether the State is going to be
24 required to open up on the law and then reply to you after
25 you do your closing, or let you go first and let her do her

1 entire closing afterwards. It doesn't really matter to me
2 but I wanted it either agreed upon other I am going to go by
3 the old formula, which would be opening up on the law, and
4 then you close and she replies to your closing.

5 MR. PRIDE: I am going to require that the State open
6 up on the law.

7 THE COURT: Do you understand -- I know you
8 understand --

9 MS. HALL: I'm going to open on the law only, no facts,
10 he's going to close and then I'm going to close.

11 THE COURT: Right. Any other issues about -- Ms. Hall
12 raised an issue to me so I want to put it on the record that
13 she is concerned based on some of the testimony this morning
14 that you may argue lack of knowledge of age as a defense and
15 it is not, so you can't argue that.

16 MR. PRIDE: I'm well aware of that.

17 THE COURT: I know you are. You're a lot smarter than
18 I am.

19 MR. PRIDE: No, I'm not. But I won't do that, I can
20 assure you of that.

21 THE COURT: Okay. So everybody is ready to go
22 otherwise?

23 MR. PRIDE: Yes.

24 THE COURT: Ms. Hall?

25 MS. HALL: Yes.

CLOSING ARGUMENT

1 THE COURT: Okay. Would you bring the jury in?

2 (The jury returned to the courtroom.)

3 THE COURT: Madam Forelady and ladies and gentlemen of
4 the jury, I know you're sitting back there wondering, "What
5 are they doing out there?" I actually served on a jury and
6 thought some of the thing same things. Let me just assure
7 you that we haven't been sitting around, there's some
8 matters I have to take up out of your presence. Is the
9 State ready to proceed with the closing argument, Ms. Hall?

10 MS. HALL: Yes.

11 THE COURT: Mr. Pride, is the defense ready?

12 MR. PRIDE: I'm ready.

13 THE COURT: Very good. Thank you, sir. All right.
14 Ms. Hall?

15 MS. HALL: Thank you, Your Honor. Ladies and gentlemen
16 of the jury, just give me one second, I'm going to put this
17 little thing up.

18 (Break in proceedings.)

19 MS. HALL: I told you earlier that I am the prosecutor
20 and I represented the State in this case. I'm going to talk
21 with you briefly about the law, Mr. Pride is going to speak
22 with you in his closing argument and I'm going to come back
23 at the end with regard to the facts of this case. And I
24 said this in my opening, it's important for you to have an
25 understanding of the law so as you go through the facts you

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1 know what you're looking for. And again, His Honor is the
2 sole judge of the law, so what he tells you at the end of
3 this case is the way that you take it. If I say anything
4 unintentionally that it doesn't completely jive with what he
5 says, he's the judge of the law. But having said that, the
6 defendant -- when you get the verdict form in this case
7 there's going to be two different things that you have to
8 consider. One is criminal sexual conduct with a minor,
9 which is what the defendant was originally charged with,
10 okay? Criminal sexual conduct with a minor is -- and this
11 is in the second degree. And what that requires -- and
12 again, I'm just talking about this in the beginning, is a
13 sexual battery. And you're going to hear His Honor talk
14 about intent as well, the intent to commit, the intent
15 applies to the sexual battery, you have to intend to commit
16 a sexual battery. Sexual battery can be -- it's penetration
17 of any kind, penetration of the mouth, penetration of the
18 anus, penetration of the vagina in this instance since this
19 is a female victim. So if you find that based upon
20 testimony that the defendant put his -- the defendant's
21 penis went in her mouth -- well, it's either -- sexual
22 battery is defined as any entry ever so slightly, so it
23 doesn't have to be full. It's just any entry ever so
24 slightly into the vagina, the mouth or the anus of another
25 person that constitutes sexual battery. The defendant has

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1 to intend, that's the intent part. And I would submit to
2 you -- well, I'm not going to submit to you right now, I'll
3 talk to you about that later. But sexual battery, that's
4 the first thing you have to find. The second thing you
5 consider is age, the age of the victim as well as age of the
6 defendant. The age of the victim, as the indictment says,
7 11 to 14, the age of victim at the same that this incident
8 occurred, and that would be what is required within the CSC
9 with a minor. And that the defendant -- the age of the
10 victim and that the defendant just be older than her. And
11 that's what is required from the statute. And the other
12 part that His Honor is going to charge you about the law is
13 it's impossible for a woman in the State of South Carolina
14 who is under the age of 14, or really under the age of 16,
15 but under the age of 14 years, and you're going to hear His
16 Honor say this, an unmarried woman under the age of 14
17 cannot legally consent to have sexual intercourse. It can't
18 happen, and that's the law. Now, you're going to have a
19 second -- based on the testimony, and again, we did talk
20 about this in opening because this is something new, this is
21 called a lewd act on a minor, okay? What this has -- the
22 State has to prove that the victim -- that the defendant --
23 again, it's an age element, the defendant is over the age of
24 14 -- and when I use this that means defendants, I was just
25 using shorthand. And then you have to prove that the victim

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1 is under the age of 14, or the age of 14 or under, it's 14
2 or under. And that's the same as this, basically 14 or
3 under. And then the State also has to prove one of the
4 elements of this crime is that the defendant committed a
5 lewd or lascivious act on the body or with the body of --
6 this isn't required for sexual battery like we talked about
7 before so that's not going to be an element of this. This
8 is a lewd or lascivious act or with the body of the victim
9 and then the age element, and I'll come back and discuss
10 that again. And there's a legal definition for lewd or
11 lascivious act, and His Honor is going to tell us what those
12 are. But it's defined as being an obscene, lustful
13 indecent, lecherous, to insight lust, lewd, indecent obscene
14 or tending to deprave the morals in respect to sexual
15 relations. And actually on this one the child is 16 or
16 under. And then we've already talked about -- sorry about
17 that, 16 or under. And then the State has to prove that the
18 defendant willfully and lewdly committed or attempted to
19 commit a lewd or lascivious act on or with the body or its
20 parts of the child under the age of 16 with the intent to
21 arouse, appeal to or gratify the lusts, passions or sexual
22 desires of the defendant or the child. So that is the law
23 in the case. Those are the things that you're going to have
24 to consider. And His Honor is going to charge you on other
25 elements of the law, but this is for what I was going to do

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1 right now, this is going to be it. Can we approach real
2 quick before I finish?

3 (A bench conference was held.)

4 THE COURT: Mr. Pride, are you ready with your closing?

5 MR. PRIDE: Are you ready for me?

6 THE COURT: Yes, sir.

7 MR. PRIDE: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. PRIDE: Ladies and gentlemen of the jury, the first
10 thing I want to do is thank you for your patience, for your
11 attendance, attention and for your presence. I know you've
12 got many, many other things to do, but discharging your
13 responsibility as a juror is a very, very important civic
14 responsibility and I thank you for it, and I know the State
15 joins with me in thanking you for your time and patience. I
16 want you to be patient with me, too. I've got a lot to
17 cover in this matter and I will do it as expeditiously as I
18 possibly can but it's going to take me some time. I want to
19 start off by telling you and reminding you that 3,811 days
20 ago this alleged sexual crime occurred. Since that time
21 Darryl Coleman has been present in this community. He
22 didn't go anywhere. They didn't even take his DNA in this
23 case until January of this year. Now, mind you, you heard
24 that he was arrested on the 31st of December, and he told
25 you when he was arrested he pled not guilty, he didn't do

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1 it. When he came before this trial started his plea was not
2 guilty. He has maintained his innocence for 3,811 days.
3 Now, ladies and gentlemen of the jury, it is important to
4 remember what I told you in my opening argument. I told you
5 that the burden of proof was on the State. All of these
6 charges that they have against this man they have got to
7 prove it, and they have got to prove it to your satisfaction
8 beyond a reasonable doubt. And I remind you, and I gave you
9 an example, I told you that it was like having a puzzle, and
10 all of the parts are given to you by the State, and if all
11 of the parts are there and you put that puzzle together then
12 you can see that picture clearly. But if they don't give
13 you all of the pieces to the puzzle you can't see that
14 picture and you can't make up pieces to go in where they did
15 not provide for. I would ask you in this case to please,
16 please, please don't make assumptions. Don't -- you know,
17 you walk outside and you see water on the ground, you can't
18 say it's rained. What you know for sure is that the ground
19 was wet, you don't know how that water got there. Don't let
20 the State make you have to make assumptions. If they leave
21 out clear and convincing facts, that's it. The Judge is
22 going to tell you, if they don't prove to you beyond a
23 reasonable doubt, and if you have a reasonable doubt that
24 you can't reach but one verdict and that's a verdict of not
25 guilty. Now, it's important to note that Darryl is 46 years

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1 old, he is a mason, he lays bricks, been in this community
2 all of his life. He has raised his family in this
3 community, he has two boys and two girls. And not only that
4 he's got five sisters. And why did I point that out? If
5 you have got two daughters and five sisters, you've got the
6 utmost respect for women, them five sisters are going to
7 make you have that. You've got the utmost respect for
8 women. You're not going to take advantage of a woman,
9 because the first thing you're going to think about is,
10 "I've got a sister, I've got a daughter and I wouldn't want
11 anybody to do that for me." Five sisters and two daughters.
12 Now, I put up two people as character witnesses, under the
13 law I am limited by what I can ask. I can simply show that
14 these two people know each other and have known each other
15 long enough for the person who is a character witness to
16 form an opinion about that person's character. I felt that
17 that was important so that you would know a little bit about
18 that. And Mr. Nelson came up there and said, "Yep. He's
19 worked for me. I know his reputation in the community for
20 honestly. Do you know his reputation in the community for
21 character? He's got good character." Behind that I put up
22 another gentleman, he came up and said, "We're childhood
23 friends. We live in the same community. I've known him all
24 of my life. He has good character and he's an honest man."
25 I point that out because you don't know Darryl, you never

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1 met him, he's brand new. I wanted some people that did know
2 him to come in and tell you about him. The State hasn't
3 done anything to tell you anything that's disparaging about
4 his character or conduct. He has lived in this community
5 for 46 years and has no prior criminal record, none
6 whatsoever. And the Judge is going to tell you before he
7 starts and instructs you that right now under our law he is
8 presumed to be innocent, and he will take that presumption
9 into your deliberations until you find otherwise. Now, I
10 tried my best to be respectful with **Witness** and not perhaps
11 examine her as I did with the young lady who was a police
12 officer. And the reason why is that I respect the fact she
13 undoubtedly had some experience that was devastating, but it
14 was not an experience that was caused by Darryl. You have
15 to acknowledge in your deliberations that she had no
16 credibility because she did not tell the truth. I didn't
17 have to prove -- I don't have to prove anything representing
18 Darryl, because the law does not place any responsibility,
19 legal or otherwise, on a defendant to prove his innocence.
20 But I brought witnesses in here that disputed and said, "I
21 didn't go down fishing with this lady, **Witness**. I didn't
22 go to the house with her. I didn't sit in the car with
23 her." In other words, I don't know where she got this story
24 from. Both of them denied being with her on that day. Now,
25 **Witness** says that she got to the house where Darryl lives

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1 because her cousin and another person brought her there. If
2 they brought her there and she didn't know Darryl, they
3 couldn't leave her there. They could not leave me there.
4 They might not bring me there but they won't leave me there.
5 There is no evidence that she made any effort to leave when
6 they left, none whatsoever. Now -- excuse me, **Witness**'s
7 version of what happened and how this event occurred was
8 preposterous. That's the only word I can think of to
9 describe, it was preposterous. And the State's
10 investigation of this case was -- I don't even know how you
11 could feel safe in this community for having a law
12 enforcement division as have come in this case and
13 testified. The little lady that sat up there acknowledged,
14 "I'm the chief." What does chief mean? Chief means in
15 charge. "I'm the chief investigating officer on this case."
16 Her testimony was incredulous. There is no way in the world
17 you can believe her. She took the search warrant and went
18 to the wrong house. Said that when she got to that house
19 she conducted a search. Said that part of her search was
20 that she took pictures, but said today she can't find them
21 pictures. She finally admitted on the stand that she didn't
22 go to the right house. That's incompetence. She knew from
23 the statement that she took that James and Jessica, who were
24 sitting in the back of that courtroom, were named by
25 **Witness** as people that she was with. If a crime is

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1 committed and an investigation is conducted, I know that you
2 will agree with me that law enforcement is going to try to
3 find those people. I found them and put a subpoena on them
4 and brought them to court, and they seemed to have been
5 available. They testified they had been available all the
6 time. They didn't investigate anything. So you cannot rely
7 on the physical investigation of law enforcement in this
8 case. She absolutely lied. She covered herself by saying,
9 "I lost my file." She even lied to the magistrate when she
10 told them that "I want to get a search warrant because I
11 want to get a red sheet." No one told her that, absolutely
12 no one told her that. She made that up. Her testimony is
13 just unbelievable and you cannot believe it, you cannot rely
14 upon it in judging this man whose liberty is at stake. You
15 can't do it. Now, let's examine **Witness**'s testimony, and I
16 say examine, talk about it. This is a case -- you can look
17 at my head and you can tell I'm an old man, been around a
18 long time, this is a case in which the State has just thrown
19 a whole bunch of facts up on the wall and hope that some of
20 them stick. They want you to find out what happened because
21 they sure didn't tell you what happened. They want you to
22 investigate this crime and come up with a solution, and the
23 solution that they want is to deprive this man of his
24 liberty. Please don't do that. Please abide by the Court's
25 ruling. The Judge is going to give good and adequate

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1 instructions easily definable, easily understandable. And
2 plus, he's going to tell you, too, that if you don't
3 understand him send him a note and he'll explain in
4 instances where he can even more about his instructions.
5 Please rely on those instructions. Let's examine **Witness**.
6 **Witness** says her version was that she went to the house,
7 she got left there. She says that Darryl came out and took
8 her in the bedroom, and then when he got in the bedroom she
9 says he took his pants off, and that he went over to the bed
10 and that he pulled her pants and panties down and that he
11 spread her legs and that he penetrated her. Darryl says
12 that, Yes, "I would have made a mistake by having sex with a
13 girl who was 14 years old," and says she didn't look to be
14 14, and I didn't think she was --

15 MS. HALL: Objection, Your Honor

16 THE COURT: Sustained.

17 MR. PRIDE: Excuse me, Judge.

18 THE COURT: That's all right. Ladies and gentlemen --
19 it's okay. Just to clarify, ladies and gentlemen, lack of
20 knowledge of the age is not a defense. So if you would go
21 forward from there, please.

22 MR. PRIDE: All right. She says that he opened her
23 legs and that she -- that he had sex with her. Even the
24 examination at the hospital on the 17th of December -- now,
25 this happened -- supposedly happened on the 15th of

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1 December, the nurse said -- Darryl said, "Yeah, I'm with her
2 but her period was on and I didn't touch her." He admits
3 that he did take his penis out and that she tried to suck it
4 and he took it out of her mouth and said he ejaculated. He
5 didn't say where he ejaculated, but he did say he
6 ejaculated. I don't know how **Witness** got Darryl's sperm on
7 the pants that she had on. What I do know is they found no
8 sperm in her vagina. What I do know is that it's the
9 State's responsibility and has the burden to tell you how
10 that sperm got on the black pants. They've got to show you
11 that, I can't answer that part. And if they don't you have
12 only one obligation because you have only one verdict, and
13 that is a verdict to find the defendant not guilty. And
14 Darryl says after he ejaculated he went into the bathroom,
15 he washed his hands, he didn't say he had a cloth or
16 anything like that, he didn't say he gave her a cloth or
17 anything, and he told her "Let's go." He carried her up the
18 road to wherever she told him to get out of the car. And
19 then she says, and Darryl says, too, so you can take this as
20 uncontradicted facts, that Darryl was shot at. I think she
21 said her daddy shot. Darryl said somebody beat on the car.
22 How did they know that she was going to be left out at that
23 point? I suspect they must have been looking for her. I
24 don't know if she was promiscuous or not, but I know that
25 there was no reason for her father to shoot at Darryl other

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1 than the fact that he thought something was going on. There
2 might have been something going on with someone else with

3 **Witness** --

4 MS. HALL: Objection, Your Honor.

5 THE COURT: Sustained. Strike that from the record.

6 MR. PRIDE: The only way -- only where that any DNA
7 evidence was found as I understood it, and of course, you
8 heard the witness' testimony, but I understood the
9 technician to say it was down on this part and in the rear
10 of her pants, not in her panties. This is a case that is
11 highly suspicious because there are so many things that
12 can't be answered. First of all, the State has never given
13 you any kind of reasonable explanation of how an event like
14 this could have taken place December 15th, 2008, no
15 explanation whatsoever. None. Not even from the officer
16 who investigated the case. The only thing she says was that
17 she took her file and put it up, that she put the rape kit
18 up and the evidence room and stored it until it was sent to
19 SLED. SLED didn't send it back until 2010. What was the
20 procrastination about in this case? Was it the fact that
21 the State was still investigating this case and had some
22 doubts about whether or not they should bring it? It is
23 certainly suspicious and unanswered as to why it took that
24 long. Now, the DNA evidence -- not the DNA evidence, but
25 the nurse's examination of **Witness**, she says that when

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1 **Witness** was brought in -- and remember now, she was brought
2 in on the 17th, the alleged rape took place on the 15th.
3 She came in on the 17th and she was still on her period.
4 And when the nurse said that she swabbed her, she showed you
5 pictures and all, in her vagina and found no sperm that was
6 connected at all, or DNA with Darryl. She says that she
7 found some bruises and abrasions. Bruises and abrasions
8 come about as a result of having sex. The State has yet to
9 show you when that bruising and abrasions took place. Did
10 it take place before **Witness** came to the house? Did it
11 take place the day before she came or the day that she came
12 into somebody's house? It wasn't Darryl, that's for sure.
13 Ladies and gentlemen of the jury, I submit to you that this
14 is a case of more than reasonable doubt, and that based on
15 the frenzied, unbelievable case that the State has put
16 before you, there is only one verdict that you can reach and
17 that is not guilty on both offenses. And you must remember
18 on the offense of lewd conduct on a minor, there the State
19 attempts to charge Darryl for the first time today with lewd
20 act on a minor based on the testimony that Darryl said that
21 she tried to suck his dick, he said he pulled it back and
22 that he ejaculated. That does not constitute any kind of
23 penetration. That does not constitute a lewd act on a
24 minor. Ladies and gentlemen of the jury, you have heard
25 this case and you've listened, now you will get a chance to

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1 hear Mrs. Hall's version of this case. Please -- she gets
2 the last argument, please try and remember the facts that I
3 pointed out to you, please try and remember the facts that
4 are absent in this case and please remember whose
5 responsibility it was to prove those facts. Thank you.

6 THE COURT: Okay. Ms. Hall, thank you for your
7 patience.

8 MS. HALL: You were chosen because you are citizens of
9 this community, because you have vast life experience and
10 you have common sense and you're intelligent, and the State
11 is not here to insult your intelligence by bringing a
12 preposterous story. The State is here to present factual
13 evidence to you to give you the information you need in
14 order to render a true verdict in this case. We went over
15 the law when I got up here before, we're here now to apply
16 the facts to the law and to talk about things like
17 credibility of witnesses and intent and to think about the
18 evidence that has been presented to you. Again, you are the
19 triers of the fact, you are the only triers of the facts.
20 You're the people who have to judge the credibility of
21 witnesses, take all of that life experience and common sense
22 and intelligence we just talked about and think about what
23 you heard. You had the opportunity to see these people
24 testify and you had the opportunity to hear what they had to
25 say. You are the sole judges of their credibility. I would

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1 submit the things that you have to consider when you think
2 about whether people are credible, whether they are telling
3 you the truth is the opportunity that they've had to think
4 about their story, to -- their motivation to tell the truth.
5 Their motivation not to tell the truth. The way they act
6 when they're on the witness stand. Things they say,
7 consistent stories, whether the things make sense, whether
8 it makes sense to you. These are the factors that you would
9 consider, though, when you determine whether somebody is
10 telling you the truth, you do that all the time. You do it
11 in your life everyday trying to figure out if people are
12 telling you the truth, and that's what you have to do now.
13 And I submit to you that **Witness** came in here and
14 she told you nothing but the truth. She did not have the
15 opportunity to sit in this courtroom and listen to other
16 people testify. She was the first witness out of the gate.
17 She comes in here -- and Mr. Pride wants you to take pieces,
18 and you can take pieces of evidence and say, "I believe this
19 but I don't." I find it interesting that he's asking you
20 first of all to completely discount everything Maggie Boyd
21 said. Because she did -- and I forgot exactly what he
22 called her, but just -- an incompetent, I think, job. So
23 we're not going to listen to anything that she has to say
24 because she was -- she served the search warrant in the
25 wrong house. I submit that that might have been a little

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1 bit confusing, but the fact of the matter is she served a
2 search warrant on a house that we're not even using any
3 evidence from so it doesn't matter, that is irrelevant.
4 There is something in this world -- red herrings. I'm
5 assuming most of you know what they are, but in case you
6 don't, those are clues and things that are thrown about and
7 tossed about to confuse you. That doesn't make any
8 difference whether she served the search warrant on the
9 wrong house. He wants you not to believe her because she's
10 incompetent and she did a terrible job. But he wants you to
11 take her incident report and take that as the God's truth,
12 that everything that she says in her incident report about
13 Jessica and Stupu and whoever **Witness** says she was with
14 that day and say, "Oh, well, you need to believe that
15 because that's what Maggie Boyd says she said." But you
16 heard from **Witness**, she said, "No, that's not right.
17 I wasn't with Jessica and Stupu, I was with Catherine and
18 Hoover. Those are the people that took me to that house and
19 those are the people who left me there." And Mr. Pride
20 wanted you to believe -- he talked about in his closing just
21 a minute ago about how is it, you know, that she wanted to
22 be there. And I would submit, again, life experience. If
23 anybody has ever seen a 14 year old child watching a TV,
24 there's a little bit of this going on where they're just
25 sitting there hanging out and staring at the TV oblivious to

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1 everything that's going on. So it is entirely possible that
2 they left her there and she didn't even know they left and
3 that is her testimony. She got left. And not only -- and
4 you want to talk about consistencies? The defendant got on
5 the stand and told you the same thing, it wasn't Jessica and
6 Stupu, it was Catherine and Hoover. Hoover was there, he
7 didn't know Catherine's name. He said, "Hoover, they came
8 in, they talked, we were all there, **Witness** came in with
9 them," and then they left her there. So if you want
10 corroboration you got it from the defendant. He's saying,
11 "Yeah, what **Witness** told you is true, she came over with
12 Hoover." So I would submit to you that part of that is
13 settled. It doesn't really matter who she came with, the
14 fact is she was there. The defendant and the victim both
15 tell you the same thing, that she came with a guy named
16 Hoover or Catherine or a girl he didn't know and she got
17 left there. So I would submit that that is credible
18 information coming from the victim on the witness stand.
19 She also tells you -- and you saw the way -- Mr. Pride has
20 harped on the fact that it has been 3,809 days, it has been
21 3,811 days for the defendant. Well, I would submit that
22 it's also been 3,811 days for the victim. And you saw her
23 get on the stand and talk about at the tender age of 14
24 being raped, a virgin, to have her virginity taken by a 37
25 year old man. And I submit that that's not an easy thing

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1 for somebody, first of all, to live with for 3,811 days, but
2 much less to come into a courtroom and tell perfect
3 strangers in a courtroom full of people how her virginity
4 was taken from her. She was very, very upset. I would
5 submit she has been very, very upset for 3,811 days, and she
6 finally has gotten her day in court to come in here and tell
7 you what happened to her, and that's exactly what she did.
8 She said, "I was there, I was watching TV." He was like,
9 "Come in the back bedroom." She's like, "Okay," goes in the
10 bedroom and sits on the bed, continues to watch TV at his
11 insistence. And where the sex took place, the defendant
12 said, "Yeah, she was on the couch." The victim says, "Yeah,
13 I was in the bedroom." I would submit that she's telling
14 you the truth. She goes in the bedroom to watch TV, he goes
15 and takes a shower, comes back out, spreads her legs and
16 pushes his penis into her vagina causing bruising, which
17 you're going to have in evidence to look at while you're
18 back in the jury room. State's Exhibit 5 is a diagram that
19 was drawn by the nurse examiner who has no reason to tell
20 anything but the truth, and she was qualified as an expert
21 in sexual assault examination and she tells you that this
22 child had tearing on the interior lip of her vagina. She
23 had also bruising and a laceration, which is a rugged tear
24 is what she said, between her anus, or rectum, and the
25 vaginal area consistent with having been penetrated by an

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1 adult male penis. She talks about that in her -- and you're
2 going to have that in the jury room with you, that's State's
3 5, and you're also going to have State's 3, which again was
4 that sexual assault nurse exam form that she filled out that
5 she kept referring to during the time that she was on the
6 stand. And Mr. Pride brought up, "Well, she didn't have any
7 semen in her vagina." Well, the victim tells you, "Well,
8 the guy used a condom." That would be consistent with not
9 having semen in your vagina. She says, "Yeah, I used a rag
10 with soap on it." She even mentions Catherine and Hoover in
11 here at some point, and it's in the exam, "I met him through
12 my friend, Hoover and Catherine." She says all kinds of
13 things in here. "He put his arms around me, I looked away."
14 And then she says, "He takes off my pants," and she tells
15 you that in here, "He took off my pants. He came out
16 without his on, took mine off and they were on the floor.
17 Well, then she says -- and she tells the nurse this in this
18 report, I believe it's on page five twice, he tried to
19 masturbate himself when he was done having sex and he wiped
20 off. And in another spot it says, he wacked off in the
21 floor. I submit to you while he was careful to use a condom
22 not to leave any sperm in her vagina, he messed up when he
23 ejaculated on her pants. I want to show you the pants.
24 Those have been marked and entered into evidence as State's
25 Exhibit 8. And you're going to also have in the back with

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1 you when you go through this, and it's going to refer to
2 places on the pants on -- this is State's Exhibit 1, it's
3 from the DNA analysis that was performed back in January of
4 2010. Again, all of this stuff was taken down. And you
5 heard the -- I believe it was Jeff Talbert, somebody
6 testified to the fact that this evidence was taken down to
7 SLED between the time that the victim reported it and the
8 time that the defendant was arrested. I think it was
9 December the 17th when the stuff went to SLED. Why it took
10 them a period of time to -- I'm sure that they have a lot to
11 do down there and you just get in line. But in 2010 a
12 report was generated saying, yeah, there was some semen on
13 her tank top. Then it also says what you've got in
14 evidence, there's the tank top. And it also says there's
15 semen on her pants. And these are the pants she was wearing
16 when she went to the hospital. These were given to the same
17 nurse, entered into evidence and transported to SLED. It
18 has markings on here. You heard them talking about how they
19 take cuttings from things, and all of the markings --
20 they're marked about how they do it. So 4.3, which you can
21 tell, top left thigh, semen indicated. 4.2 -- all of the
22 cuttings on the pants, 4.1, semen indicated. 4.2, semen
23 indicated. 4.3, semen indicated. 4.4, semen indicated.
24 4.5. Semen indicated and identified. And you heard her
25 talk to you about how there's sperm fraction and non-sperm

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1 fraction and what they do when they get a -- they perform an
2 analysis. And she -- Catherine Leisy, the DNA analyst,
3 testified about we got -- Kimberly McGill got the stuff.
4 She doesn't work for SLED anymore, but she took in the
5 evidence. She took the semen off the pants and she had a
6 DNA profile that was developed at that point in time. What
7 she never had was anything to compare it to until I think
8 she said 2018 when the subject's, the defendant, Mr.
9 Coleman's buccal swab, Q-tip swab out of his mouth got to
10 SLED. Now she's got something to compare it to. And holy
11 moly, it's a hit. I forget -- let me see what she says
12 about the statistics because I don't want to misstate it.
13 One in 77 trillion chances of picking somebody else. And I
14 want to talk about statistics real quick, and I want to
15 write this down. Because I had to actually Google this in
16 order to see how many zeros were in a trillion. It's a lot.
17 You start out with sort out with 100, we all know what that
18 looks like, I didn't have to look that one up. Then you go
19 to a thousand. 10,000. And think of this in terms of the
20 number of people on the earth, think 10,000 people. 100,000
21 people. And then you get to a million people. 10 million
22 people. Actually wait, hang on, a billion people, we don't
23 want to skip over that. This is a million. This is a
24 billion. And that is a trillion. Holy moly, it's a match.
25 And if you look back -- if you think about that, too, in

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1 terms of lottery odds, that big huge power ball win that
2 just came up recently, I looked that up, too, that was --
3 the odds of winning that were one in 1.5 billion. A lot
4 better odds than finding somebody else who matches that
5 sperm. I would submit to you that that is absolutely
6 clearly Darryl Coleman's sperm all over her pants. And
7 again, the forensics -- you want evidence? Mr. Pride saying
8 I'm coming here and throwing up all this stuff on a wall and
9 expecting you to buy it, it don't get much better than this,
10 ladies and gentlemen. You've got vaginal injury to a victim
11 who was a virgin. And with all due respect to the
12 Mr. Pride, I believe in error, indicated, and it will
13 show -- during his closing, it will show on the same
14 nurse's -- and we call them sexual assault nurse examiners,
15 on the same program profile that the victim came to the
16 hospital on December 16th at 1:30 in the afternoon. This
17 was less -- probably about 17 hours after this rape
18 occurred, and that she had all kinds of injuries to her
19 vaginal area that were consistent with. And she also talked
20 about how long it takes to do a sexual assault exam, and how
21 many times she has to change gloves, that's 30 to 40 times.
22 And I would submit that if **Witness** is not telling
23 the truth, why would she have put herself through that? 14
24 years old. She talks about going to the gynecological table
25 with her legs spread wide open, having her pubic hairs

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1 combed, being poked and prodded. That doesn't make any
2 sense why somebody would put themselves through that if
3 something terrible hadn't happened to them, and I would
4 submit that that is exactly what did happen to her. Yeah,
5 there was no -- you'll see, too, on this serology report, it
6 talks about oral swabs, no semen identified. That's because
7 the preposterous thing is the defendant's story, the person
8 who had the chance to sit in the courtroom the entire time
9 and listen to all of the testimony and craft a story to fit
10 what he thought might help him, and I would submit that it
11 doesn't. Because, as the Judge told you just a minute ago,
12 you don't have to know how old somebody is, that ain't no
13 defense, you're still guilty. If you commit a sexual
14 battery on a child who is 14 years old and you are older
15 than that child -- 14 years old, two months shy, I believe
16 her birthday was in October of 2008, two months shy, I mean
17 not two months shy, she had just turned 14, this happened in
18 December. So she's still 14 years old, and he is 37 years
19 old with kids her age. And I would submit the fact that he
20 didn't know how old she was doesn't make a hill of beans
21 difference because it is not a defense, but he has kids her
22 same age. He knew. And the way that he crafts that, he's
23 like, "Well, I wasn't going to touch her because, you know,
24 I just didn't." I would submit to you he did everything
25 that she said he did. He put his penis inside her vagina,

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1 he ejaculated on her pants, and this is exactly what
2 happened. You've got -- this is not throwing stuff at a
3 board. This is bringing somebody in to tell you their story
4 about what happened to them when they were 14, a traumatic
5 event that she remembers very clearly, giving you evidence
6 that was taken, her clothes, her -- what she put herself
7 through at the hospital, what the nurse did to collect
8 evidence, what Maggie Boyd sent her there to do and went and
9 got and took to SLED to get it analyzed to bring to you to
10 show you that there is proof here beyond a reasonable doubt,
11 and that what the defendant is telling you he's just trying
12 to, I would submit, skew the facts to try to make it seem a
13 little bit more palliative to you. But even if you take
14 what he said as true, which I would submit it is not, even
15 if you take what he got on the stand under oath and
16 testified to, it's still CSC with a minor second degree.
17 His penis was in her mouth. And Mr. Pride stated that we
18 are bringing in new charges. Well, there is such a thing in
19 South Carolina that called lesser included offenses, that's
20 what this is. So if you cannot find that there was a sexual
21 battery committed, which I would submit there was, this was
22 a vaginal sexual battery committed based on all the evidence
23 presented, and the vaginal injury, what the victim testified
24 to, that's a sexual battery, and I would submit that that's
25 exactly what happened. But if you find that his penis was

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1 in her mouth even for a second no matter high slightly,
2 that's still a sexual battery. And if for some reason you
3 can't wrap your head around any of that and you find that he
4 lewdly touched her and she assisted him in what he called
5 jacking off, that's a lewd act. And then we talked -- Mr.
6 Pride was talking about the character witnesses. And I'm
7 not going to spend a lot of time on that because I really
8 don't think it merits much comment. They came in and we
9 said, "Yeah, we know him. He's our friend. We've known him
10 since we were born basically, known him all of our lives,
11 and, you know, he tells the truth." Well, I would submit
12 that that maybe -- you know people, you can judge
13 credibility maybe. They don't tell you the truth all the
14 time. They weren't there, they don't know. They weren't
15 there on the 15th of December of 2008, they have no clue
16 what he was doing. I would submit that's not something he's
17 going to go around bragging about either. I believe that
18 they do believe he's good but it's just sort of an
19 irrelevant thing that you don't even necessarily -- it
20 doesn't really go to prove anything. And Mr. Pride talked
21 about the fact that the defendant has sisters and daughters,
22 and that what he wants you to presume is that because
23 somebody has a sister or a daughter that they respect women,
24 but that's not necessarily true. And that again, your
25 common sense and your ability to know what goes on in the

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1 world would lend itself, I would submit, to that conclusion.
2 That's not indicative of anything in the case. This is a
3 snapshot of these people's lives. He raped her, he injured
4 her, it's on her pants, one in 77 trillion. And the State
5 is not asking you to make assumptions in this case as
6 Mr. Pride would have you to believe. His Honor is going
7 to -- he talked about the rain and wet and ground, we know
8 the ground is wet, we don't know it has rained. His Honor
9 is going to give you a charge about circumstantial and
10 direct evidence, and I don't know that he'll say this, I
11 have heard other judges say this in the past, and I think it
12 is an interesting way to look at circumstantial evidence.
13 First I want to talk about direct and then I am going to
14 come back. The State has given you direct evidence. The
15 State has given you direct testimony from the victim that he
16 sexually assaulted. They've given you pants with sperm on
17 them and we've given you DNA analysis. It doesn't get much
18 more direct than that. But if you have to put
19 circumstantial around it, the way that I've heard it
20 explained to juries in the past is that if somebody -- if
21 you get up on a winter morning and you look outside and you
22 see snow on the ground, that's circumstantial evidence. You
23 didn't watch it snow but you know it snowed. The next
24 thing, you turn around and you see out of the window is
25 footsteps, or footprints in the snow that go across. The

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1 other thing that we can infer from that is that somebody
2 walked across the snow. You don't have to see it happen in
3 order to know it happened, that's what circumstantial
4 evidence is. And you heard from the victim directly that
5 she was sexually -- there was a sexual battery committed
6 upon her. People don't do this in public, they don't do it
7 with witnesses present. But you can take that comment and
8 if you have to apply evidence to that to know that it's
9 true, the injury and the DNA on the pants is proof enough.
10 Those are footprints in the snow. Mr. Pride talked about in
11 his opening that, you know, there's a puzzle and that you --
12 the State has got to give you every single piece and you've
13 got to fit it altogether, and I would submit that the State
14 has given you a lot of puzzle pieces. And I would also
15 submit that we don't have to give you every piece. We have
16 to give you enough to get the picture of what's going on.
17 You've got -- in this case you know the ages, you know that
18 **Witness** [REDACTED] was 14 at the time this happened, you've got
19 a date of birth. You know the defendant was older than her,
20 that he was 37 when this happened. And you know her -- I
21 would submit that there's evidence that she's had
22 penetration to her vaginal area. The defendant says, "Yeah,
23 I put my penis in her mouth for a minute and then I got her
24 to help me jack off." So those are some puzzle pieces right
25 there. And you don't have to have -- the fact that he

CLOSING ARGUMENT

1 doesn't know how old she is, which I would submit is not at
2 all true, that's not a defense. There's no defense. It's
3 what the law refers to as a strict liability crime. So all
4 of these age factors are present, those are pieces of the
5 puzzle. And I would submit that you have enough pieces of
6 this puzzle -- I would submit you have all of them, but if
7 you're missing a couple you can still get a picture of what
8 happened. And again, I'm going to go back just one second
9 and talk about how long it's been. The victim has been
10 around, you know -- and Mr. Pride has said this is, a long
11 time ago, and I agree with him, it was a long time ago.
12 That does not in any way reflect on the importance to the
13 State of this case, the importance to the defendant of this
14 case, and the importance to the victim of this case. And I
15 would submit in those 3,011 (sic) days the defendant has
16 been getting on with his life, and I would submit that
17 within those 311 (sic) days the victim has been trying.
18 She's lost both of her parents. She has come to court
19 without much of a support system, has told you everything
20 that happened to her at the tender age of 14 when she lost
21 her virginity to somebody who sexually assaulted her. And I
22 would submit that based on all of the evidence that you've
23 heard, that is a consistent reliable statement, and all of
24 this evidence that's been presented to you, there is no
25 reasonable doubt. That should leave you, as His Honor will

JURY CHARGE

1 instruct you, firmly convinced of the defendant's guilt and
2 that's all that it requires. Thank you.

3 THE COURT: Madam Forelady, I anticipate my charge will
4 be in the neighborhood of 25 minutes more or less, check
5 with your jury and see if y'all want to take a quick break
6 and come back. I see somebody shaking their head yes and so
7 let's take about a ten minute break and come back here and
8 I'll charge you on the law you must apply in this case. If
9 you'll leave your notepads here in the courtroom.

10 (The jury left the courtroom and a recess was taken.)

11 THE COURT: Bring the jury back in.

12 (The jury returned to the courtroom.)

13 THE COURT: All right. Madam Forelady, ladies and
14 gentlemen of the jury, now that you've heard all of the
15 testimony, you've heard the opening and closing statements
16 by the attorneys, it's my job to charge you on the law. I
17 apologize in advance, some of this will be read to you. I'm
18 not intelligent enough just to do it off the top of my head
19 and these are very important points of law that I'm scared
20 to try to do that. So to the extent it's read to you and
21 it's fairly dull because I understand that it is, just bear
22 with me. Also, I go all over South Carolina, do trials in
23 all of the counties, frequently juries will ask for
24 additional evidence to be presented. At this juncture all
25 of the evidence that's going to be submitted has been

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1 submitted. There will be no more evidence submitted in the
2 case, okay? You'll have to determine whether or not the
3 State met its burden of proof based on what has been
4 presented and any inference from the evidence that you have.
5 The exhibits will be back with you. As I told at the
6 beginning, the indictment will not be back with you, nor is
7 the charge. If you want to have any law charged to you
8 again, I'll bring you back out here and charge it to you as
9 many times as you would like. But I want you to concentrate
10 on what the facts of this case are and the evidence you have
11 before you, okay? Now, with that being said, ladies and
12 gentlemen, my charge will be in three parts. The first part
13 will be the general rules that define and control your
14 duties as jurors. Then I will give you the substantive law
15 that you must apply in this case, in other words, what the
16 State must make out to prove its case, and that will be the
17 law of criminal sexual conduct with a minor second degree,
18 and the lesser included charge of lewd act upon a minor.
19 Then I'll go over some considerations that I'll ask you to
20 consider during your deliberations. Madam Forelady, I'll go
21 over the verdict form with you and go over some other
22 instructions for you, okay? If at any time you cannot hear
23 me, raise your hand. I generally don't have much of a
24 problem with people hearing me, but in the event you can't
25 please let me know. Now, ladies and gentlemen, if you

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1 recall at the beginning of this case I told you that it is
2 your job to be the sole judges of the facts, and you will
3 determine what the facts are based on the testimony and
4 evidence that you've heard so far in this case, and you'll
5 apply the law as I give it to you now. You must follow the
6 law as I give it to you now, and you may not and you shall
7 not be concerned with what you think it should be, but only
8 what it is. If I'm incorrect there's a court of appeals and
9 the supreme court that will correct my errors of law, but
10 you must follow them. That's part of your oath that you
11 took when you became jurors in this matter. Also, ladies
12 and gentlemen, you must not be influenced by any personal
13 likes, dislikes, opinions, prejudice or undue sympathy that
14 you may have for one side of this case or the other. And
15 what that simply means is this, that you will decide this
16 case based on the testimony and evidence presented during
17 this case and according to the law as I give it to you now.
18 And that was -- I'll remind you that that was, in fact, part
19 of your oath when you took it at the beginning of this case.
20 Also, ladies and gentlemen, everything that I tell you now
21 is equally important. You can't pick out certain aspects of
22 what we call the charge of the law and apply certain aspects
23 of it and disregard others you may not like as much. Also,
24 if I have said or done anything throughout the course of
25 this trial that indicates to you how you are to find facts

JURY CHARGE

1 in this case, in other words, the verdict you are to reach,
2 I'm going to ask you but I'm also going to instruct you that
3 you are to disregard that. Our constitution does not allow
4 any trial judge to comment on the facts or have an opinion
5 on the facts of the case. You and you alone are the sole
6 judges of what the facts are and what your verdict will be
7 in this matter, and then you'll determine what that verdict
8 or what the facts are by evaluating and weighing the
9 evidence that you've heard in this case. Now, when you say
10 weighing the evidence, you can't weigh evidence in a literal
11 sense. You are to use your common sense, your life
12 experiences, your good sense and sound judgment and discuss
13 all of the evidence and hopefully reach a unanimous verdict
14 in this matter. Now, this is what you may consider as
15 evidence when you go back to consider what your facts are.
16 The sworn testimony that you heard from the witness while on
17 the witness stand, whether it's direct evidence -- or direct
18 examination or cross examination. These exhibits that I've
19 allowed into evidence is also evidence, and that's it. The
20 comments by the attorneys is not evidence, their opening
21 statements, and I'll say a little bit more about that in a
22 minute. That's the only evidence you may consider as
23 evidence. So what is not evidence? Again, the opening and
24 closing statements by these attorneys is not evidence. I'm
25 not minimizing their role because it's critical, but

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1 technically it is not evidence. Also, any questions that
2 are asked by the lawyers or objections made by the lawyers
3 is not evidence. I remind you, Madam Forelady, that if
4 someone tries to insert the fact of objections in this case
5 during your deliberations, it will be your job not to allow
6 that to become part of the deliberations. Just suffice it
7 to say, ladies and gentlemen, that's part of the process
8 that goes on in every trial. I know at times you felt like
9 you were cattle coming out here, but that is what a court
10 process is about. Also, evidence or argument that I struck
11 from the record is not evidence and you may not consider it,
12 and that happened in this case. And finally anything that
13 you heard when court was not in session is not evidence in
14 this matter. So that leads me to the types of evidence that
15 we recognize in South Carolina. We recognize two types.
16 First there is direct evidence, and there is also
17 circumstantial evidence, and this is the definition of what
18 these are. Direct evidence directly proves the existence of
19 a fact and does not require deduction, okay? So if the
20 issue is whether or not I threw a rock and my law clerk says
21 I saw him throw that rock, that would immediately establish
22 that fact of issue. You don't have to infer anything, you
23 don't have to deduce anything, it immediately established
24 it. Circumstantial evidence is this, it's proof of a chain
25 of facts and circumstances indicating the existence of a

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1 fact. In other words, it does require that an inference be
2 drawn or a deduction made. The only prohibition is that you
3 can't -- the inference drawn or reached by you, the jury,
4 can't be speculation, it can't be conjecture, it can't be
5 surmise. So again, I heard it used earlier but it's the
6 same example that I've used throughout, if you were to go to
7 bed at night and there would be a fresh sheet of snow in
8 your front yard, if you were to wake up and there are tracks
9 in a snow, you can infer that someone or something walked
10 through your yard during the night although you did not see
11 it. The conclusion that you draw cannot be conjectural,
12 speculative or surmise. Now, ladies and gentlemen, crimes
13 may be proven by circumstantial evidence, and the law makes
14 absolutely no distinction between the weight or the value to
15 be given either direct evidence or circumstantial evidence.
16 However, to the extent that the State relies on
17 circumstantial evidence, all of the circumstances must be
18 consistent with each other, and when taken together point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt. If the circumstances merely portray the defendant's
21 behavior as suspicious then the proof has failed. The State
22 has the burden of proving the defendant guilty by proof
23 beyond a reasonable doubt, whether it uses direct evidence,
24 circumstantial evidence or a combination of both of the
25 direct and circumstantial evidence. Now, ladies and

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1 gentlemen, in determining what the facts are in this case or
2 what your verdict is going to be, you must consider all of
3 the evidence, and all of that includes all of the testimony
4 in this case. You collectively have a right to believe or
5 disbelieve all or part of any witness' testimony who came
6 before you. You have a right to believe all of any witness'
7 testimony. In making this determination of what we call the
8 credibility of the witnesses, or the credibility of the
9 evidence, you may take into account the following factors,
10 and this certainly is not an exclusive list. You can ask
11 yourself was the witness able to see or hear or know about
12 the things which the witness testified about. How well were
13 they able to recall and describe the subject of their
14 testimony. You can consider how they acted while they're on
15 the witness stand, what was their demeanor. You can ask
16 yourself whether they had any interest in the case or any
17 bias or prejudice for or against any party in this matter,
18 that would make them more favorable to one side or the
19 other. Whether or not they had an interest in the outcome
20 of this case. You can consider how reasonable the witness'
21 testimony was in light of all of the other testimony, and
22 also whether that witness' testimony had been contradicted
23 by what that witness had said at another time or what
24 another witness said or other evidence in this case. Now,
25 ladies and gentlemen, this is just some of the factors that

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1 you may consider in engaging in the exercise of judging the
2 credibility of the evidence in this matter. You do not
3 check your common sense when you're sworn in as a juror, and
4 you should not in this case. You should use those things in
5 your day to day lives that you find indicative of
6 truthfulness, and also indicative of lack of truthfulness
7 when you make this determination of the credibility or the
8 believability of the witnesses and the evidence in this
9 case. One thing you may not do, however, is add up the
10 number of witnesses that appeared on one side or the other
11 in making this determination. Ladies and gentlemen, you
12 have heard expert testimony in this case. I will remind you
13 that a person who because of their educational experience
14 who has an expertise in the certain field and it's helpful
15 to you, the jury, is allowed to give their opinion in the
16 case. I also remind you that expert testimony should be
17 judged like any other testimony in this case. You may
18 accept it, you may reject it or give it as much as you think
19 it deserves considering the witness' education and their
20 experience, their reasons for their opinion and all of the
21 other evidence presented in this case. Ladies and
22 gentlemen, I also remind you that this indictment is not
23 evidence of the defendant's guilt. The fact that he was
24 arrested and charged and indicted does not raise an
25 inference nor a presumption of guilt. This is simply the

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1 charging mechanism by which the State brings this defendant
2 before the Court for a trial and determination by you of
3 guilt or innocence. In this case the defendant has pled not
4 guilty, and that plea puts the burden on the State of South
5 Carolina to prove his guilt by proof beyond a reasonable
6 doubt. I will tell you that a person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself or herself innocent, and it is an
9 important rule of law that a defendant in a criminal trial,
10 no matter what the seriousness of the charge may be, will
11 always be presumed innocent of the crime for which an
12 indictment has been issued unless the State has satisfied
13 you of guilt beyond a reasonable doubt. Now, ladies and
14 gentlemen, this presumption of innocence does not end when
15 you begin your deliberations, but it accompanies the
16 defendant throughout this trial until you, the jury, reach a
17 verdict of guilt based on proof beyond a reasonable doubt.
18 It is said in the law that the presumption of innocence is
19 like a robe of righteousness that is placed about the
20 shoulders of the defendant where it remains until it has
21 been stripped by evidence satisfying you, the jury, of guilt
22 beyond a reasonable doubt. Now, ladies and gentlemen, this
23 presumption of innocence is not a mere legal theory, it's
24 not just a legal phrase, it's a substantial right that every
25 defendant and every citizen is entitled unless you, the

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1 jury, are collectively satisfied of the guilt beyond a
2 reasonable doubt. So that leads me to what is the
3 definition of reasonable doubt. A reasonable doubt, ladies
4 and gentlemen, is the kind of doubt that would cause a
5 reasonable, sincere, honest and conscientious person to
6 hesitate to act in an important matter in their own affairs.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt. Now, ladies and
9 gentlemen, with that being said, there are very few things
10 in this world that we know with absolute certainty, and in
11 criminal cases the law does not require proof that overcomes
12 every possible doubt that may exist. If based on your
13 consideration of all of the evidence you are firmly
14 convinced of the defendant's guilt then it will be your
15 sworn duty to find him guilty. On the other hand, if you
16 think there's a real possibility that the defendant is not
17 guilty, then you must give the defendant the benefit of the
18 doubt and find him not guilty. A reasonable doubt may arise
19 from the evidence or from the lack of evidence. And I
20 further instruct you, ladies and gentlemen, that a defendant
21 is entitled to every reasonable doubt that may appear in a
22 case. And what that simply means is this, that if upon a
23 issue of fact essential to a conviction and a verdict of
24 guilty, if you have any reasonable doubt as to how that
25 issue should be resolved, it is your duty to resolve it in

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1 favor of the defendant. Ladies and gentlemen, in order to
2 establish criminal liability, criminal intent is required.
3 For example, the mental state required to be proven by the
4 State for a particular crime might be purpose, intent,
5 knowledge, recklessness or criminal negligence. Criminal
6 intent must be proven by the State by proof beyond a
7 reasonable doubt. Criminal intent, ladies and gentlemen, is
8 always a matter that must be determined by you, the jury,
9 from the circumstances shown to have been existing around
10 the situation. Ladies and gentlemen, there's no way to
11 prove intent to a mathematical certainty. There's no way to
12 dissect a person's brain to determine what they had in mind,
13 so the law allows -- says that in criminal cases intent may
14 be inferred from the circumstances shown to have existed.
15 Ladies and gentlemen, that is how you make the determination
16 of whether the element requiring intent was present. It is
17 not necessary to establish intent by direct and positive
18 evidence, but intent may be established by inference in the
19 same way as any other fact by taking into consideration the
20 acts of the parties and all of the facts and circumstances
21 of the case. Criminal intent is a mental state, it is a
22 conscious wrongdoing, and it is up to you, ladies and
23 gentlemen, to determine what the defendant intended to do
24 based on the circumstances shown to have existed. Ladies
25 and gentlemen, criminal intent can arise from action or a

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1 failure to act. It may arise from negligence, recklessness
2 or an indifference to duty or to the consequences that is
3 considered by the law to be the equivalent of criminal
4 intent. Finally, ladies and gentlemen, the defendant has
5 presented evidence of his good reputation and character to
6 show that it would be inconsistent with the defendant
7 committing the crime. The weight that you give to that
8 testimony, like all other testimony in this case, is for you
9 to decide in your good judgment. You may consider testimony
10 of the defendant's good character along with all the other
11 evidence in deciding whether or not the defendant committed
12 this crime. Now, ladies and gentlemen, that concludes the
13 first aspect of my charge, and thankfully that's the longest
14 part of it. I'm going to the substantive law that applies.
15 Again, that is the law of second degree criminal sexual
16 conduct with a minor, and also the lesser included charge of
17 lewd act on a minor. This is the law of second degree
18 criminal sexual conduct with a minor. The defendant is
19 charged with second degree criminal sexual conduct with a
20 minor. The State must prove beyond a reasonable doubt that
21 the defendant engaged in a sexual battery with the victim.
22 A sexual battery is defined as this, it is sexual
23 intercourse, cunnilingus, fellatio, anal intercourse or any
24 intrusion, however slight, of any part of a person's body or
25 of any object into the genital or anal openings of another

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1 person's body except when the intrusion is accomplished for
2 medically recognized treatment or diagnostic purposes. The
3 State must then prove beyond a reasonable doubt that the
4 victim was at least 11 years old but not more than 14 years
5 old at the time of the sexual battery. Ladies and
6 gentlemen, consent, willingness, indifference or ignorance
7 on the part of the minor, if any, as to what was taking
8 place does not in any way affect the charge of criminal
9 sexual conduct with a minor, because an unmarried woman
10 under the age of 14 cannot legally consent to sexual
11 intercourse. Also, included within that charge is the
12 lesser included charge of lewd act on a minor, this is the
13 law on that. The defendant is -- if you do not find the
14 defendant guilty of the lesser included charge -- of the
15 charge of criminal sexual conduct with a minor in the second
16 degree, you may consider the lesser included charge of lewd
17 act on a minor. The State must first prove beyond a
18 reasonable doubt that the defendant was over the age of 14.
19 Next the State must prove that the defendant willfully and
20 lewdly committed or attempted a lewd or lascivious act on or
21 with the body or its parts of a child under the age of 16
22 years with the intent to arouse, appeal to or gratify the
23 lusts, passions or sexual desires of the defendant or the
24 child. Willfully means voluntarily and intentionally with
25 the specific intent to do something the law forbids. Lewd

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1 means obscene, lustful, indecent or lecherous. Lascivious
2 means tending to insight lust, lewd, indecent, obscene or
3 tending to deprave the morals and respect to sexual
4 relations. And again, Madam Forelady, I will charge the law
5 in this case as many times as the jury may ask me to do so.
6 So that leads me to the final part of my charge and that is
7 considerations for your deliberations. You are not
8 partisans, you're not advocates for one side of this case or
9 the other. You are the judges of the facts in this case.
10 When you went through the voir dire process and jury
11 selection process, either you expressly or by your silence
12 impliedly represented to both the State and to the defense
13 that you could be fair and impartial to both sides of this
14 case, and that you would make your decision based on the
15 testimony and evidence presented during this trial, and
16 according to the law as I give it to you now, and we would
17 expect you to do just that. Now, when you go back and begin
18 your deliberations, I'm going to ask that you listen to the
19 views of your fellow jurors, that you let them tell you why
20 they had those views, and let you -- they're going to let
21 you express your views and why you have your views. You
22 need to discuss thoroughly all of the evidence in this case.
23 Do not be in a hurry to reach a decision. This is the
24 State's and this defendant only day in court, they don't get
25 a second bite at the apple and it's an important case to

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1 both sides. The definition of deliberation is this, it's a
2 careful consideration weighing up with a view to a decision.
3 Now, ladies and gentlemen, in order for your verdict to
4 stand all 12 of the jurors will have to agree on the
5 verdict. Don't be afraid to change your view of the weight
6 of the evidence in this case if deliberations in this matter
7 convince you that it is the right thing to do. On the other
8 hand, do not change a firmly held belief as to the weight of
9 the evidence in this case simply to appease your fellow
10 jurors. Now, Madam Forelady, once the jury reaches a
11 unanimous verdict you will have to fill out the verdict
12 form, and it will be sent back to you along with the
13 exhibits in just a moment, and until that time and until you
14 are instructed to begin your deliberations please do not
15 start. But the options that appear on here have to be in
16 some order, the order which they appear is of no consequence
17 to you, the jury. But you will first consider the charge of
18 criminal sexual conduct with a minor in the second degree.
19 If the jury determines that the defendant is not guilty of
20 that charge, you will check box A because that provides that
21 he is not guilty of that charge. Then you would go down and
22 consider the lesser included, okay? And that's only if you
23 find the defendant not guilty, and the other under item B
24 the option is for guilty. If you, the jury, finds that the
25 defendant is guilty of the charge of criminal sexual conduct

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1 with a minor in the second degree you will check that box
2 and you will stop your deliberations, you will sign the
3 verdict form, you will then fold it over and crease it and
4 hold it in your hands until we come in the courtroom to
5 receive it. You just let the bailiff know and we will
6 receive your verdict. If it's not guilty then you will go
7 down and consider the lesser included charge of lewd act on
8 a minor. And again, the first option will be not guilty, if
9 you find him not guilty you would check that box and then go
10 sign the verdict form and follow the same steps. Or if he
11 is found guilty you check B, and then sign the verdict form
12 and let us know that you have a unanimous verdict. Never
13 let anyone know where the jury stands numerically in its
14 deliberations, it's no one's business, not mine, not the
15 bailiffs, not the parties, no one to this case. That is
16 simply your business. If you have a question about anything
17 write it out and give it to the bailiff and we'll react here
18 in the courtroom accordingly, okay? Now, any additions or
19 exceptions from the State to my charge?

20 MS. HALL: None from the State.

21 THE COURT: From the defense?

22 MR. PRIDE: None.

23 THE COURT: Very good. Thank you. I'm going to ask
24 that our bailiff get the verdict form, that the attorneys
25 they look at all of the exhibits. I'm going to ask that the

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1 alternates go back and get their personal belongings, come
2 back to the courtroom and that the jury go back to the jury
3 room, and then once you get word to begin your deliberations
4 please do. We have lunch ordered for you, it should be
5 here -- well, it may be here from now from what I can tell,
6 but anyway shortly. Y'all can eat first, you can deliberate
7 over lunch, that is entirely up to you, okay? If you would
8 go back with the bailiff, please.

9 (The jury left the courtroom.)

10 (The jury began deliberations.)

11 THE COURT: I guess the jury has three things they're
12 asking for, and I'm not totally sure what one of them is.
13 It says, "We would like to have clarification on the CSC
14 charge, insertion, him putting his penis in her mouth versus
15 her putting his penis in her mouth." I'm not really sure
16 what they mean by that. "Clarification on specific
17 differences between charges." It seems to me --

18 MS. HALL: All you can do is recharge them, I guess.
19 Would you just recharge them at that point?

20 THE COURT: That's not a problem. And they want to
21 hear the defendant's testimony.

22 MR. PRIDE: They want to hear the defendant's
23 testimony?

24 THE COURT: Uh-huh, yes, sir.

25 MR. PRIDE: Okay.

1 THE COURT: They said they wanted a copy of it but we
2 just can play it. I don't really understand what they're
3 asking for in number one quite frankly.

4 MR. PRIDE: Would you read it again?

5 THE COURT: Yeah. It says, "We would like to have
6 clarification on the CSC charge, insertion, him putting his
7 penis in her mouth versus her putting his penis in her
8 mouth." It sounded like to me they're asking about intent
9 but I don't know. I'm going to ask them to clarify it.
10 Here is what my thought is, bring them in, just respond to
11 what we can respond to and then have her tell me what she is
12 asking for more clearly on the first one, and then send them
13 back out and we'll come up with a course of attack. Now, I
14 agree with Ms. Hall, just simply re-reading the charges
15 would be the best way of showing the differences between the
16 two, or just say one involves sexual battery and one doesn't
17 involve sexually battery, it's more of a conduct.

18 MR. PRIDE: That's a good definition.

19 MS. HALL: That's fine with me. One does involve
20 sexual battery and the other one doesn't.

21 THE COURT: Right. Just give them the definition of
22 sexual battery.

23 MR. PRIDE: Judge, on that question of whether or not
24 he put it in her mouth or she put it in his (sic) mouth I
25 would ask the Court to answer that by saying that if he put

1 it in his (sic) mouth then you could consider that as a
2 penetration.

3 THE COURT: I am not going to do that, you ain't
4 getting me to do that. It's commenting on the facts.

5 (The jury returned to the courtroom.)

6 THE COURT: Madam Forelady, the jury has three things
7 they're asking for, and I'm going to do a little bit -- not
8 in the order that you ask them, okay? First the
9 clarification on the specific differences between the
10 charges, okay? What I'm going to do is re-read you the
11 charge, not my whole charge, just the specific law on those
12 and make a comment about that. Next it will take a moment,
13 then we will tee up the recorded -- the audio version of the
14 defendant's testimony. We don't really have a method by
15 which we can print it off and send it back, but we're going
16 to let you listen to it here in the courtroom, okay? Then
17 what I'm going to do is get you to clarify a little bit more
18 for me what you're asking in the first issue. After we get
19 clarification of that I'm going to send you back to the jury
20 room, I'm going to meet with the lawyers, we'll bring you
21 back here and we'll respond to it as well, okay? So ladies
22 and gentlemen -- can everybody hear me okay? This is the
23 law of second degree criminal sexual conduct with a minor.
24 The defendant is charged with second degree criminal sexual
25 conduct with a minor. The State must prove beyond a

1 reasonable doubt that the defendant engaged in a sexual
2 battery with the victim. A sexual battery is defined as
3 this, a sexual intercourse, cunnilingus, fellatio, anal
4 intercourse, or any intrusion, however slight, of any part
5 of a person's body, or of any object into the genital or
6 anal openings of another person's body, except when the
7 intrusion is accomplished for medically recognized treatment
8 or diagnostic purposes. The State must then prove beyond a
9 reasonable doubt that the victim was at least 11 years old,
10 but not more than 14 years old at the time of the sexual
11 battery. Ladies and gentlemen, consent, willingness,
12 indifference or ignorance on the part of the minor, if any,
13 as to what was taking place does not in any way affect the
14 charge of criminal sexual conduct with a minor, because an
15 unmarried woman under the age of 14 years cannot legally
16 consent to sexual intercourse, okay? That is the law of
17 criminal sexual conduct with a minor second degree. This is
18 the law of lewd act on a minor. The defendant -- excuse me,
19 if you do not find the defendant guilty of second degree
20 criminal sexual conduct with a minor, you may consider the
21 lesser included charge of lewd act on a minor. The State
22 must first prove beyond a reasonable doubt that the
23 defendant was over the age of 14. Next, the State must
24 prove that the defendant willfully and lewdly committed or
25 attempted a lewd or lascivious act on or with the body or

1 its parts of a child under the age of 16 years with the
2 intent to arouse, appeal to or gratify the lust, passions or
3 sexual desires of the defendant or the child. Willfully
4 means voluntarily and intentionally with the specific intent
5 to do something the law forbids. Lewd means obscene,
6 lustful, indecent, or lecherous. Lascivious means tending
7 to insight lust, lewd, indecent, obscene or tending to
8 deprave the morals in respect to sexual relations. All
9 right. Centrally, ladies and gentlemen, with criminal
10 sexual conduct in the second degree with a minor there's a
11 sexual battery with that component, it's absent with the
12 lewd act of a minor. Now, does the State or the defense
13 object to my explanation after the charge I just read?

14 MS. HALL: No, sir.

15 MR. PRIDE: None, Your Honor.

16 THE COURT: Okay. Now, this is going to take a minute.
17 First, does that respond to the first part of the charge
18 difference? Remember, if you need it more I will give it to
19 you as many as you want. It's going to take a minute but we
20 will then play the audio version of the defendant's
21 testimony, okay? If you can't hear it let me know.

22 (Break in proceedings.)

23 (A jury smoke break was taken.)

24 (The requested testimony was played.)

25 THE COURT: Now, does that respond to your question for

1 that?

2 FOREPERSON: Yes, sir, it does.

3 THE COURT: And I just need you to tell me a little
4 clarification, if you don't mind, "We would like to have
5 clarification on the CSC charge, insertion, him putting his
6 penis in her mouth versus him putting his penis in his (sic)
7 mouth." I'm not sure what you're asking.

8 FOREPERSON: Right. So in his testimony he said that
9 she put his penis in her mouth versus him putting his penis
10 in her mouth. So we're trying to clarify on that point,
11 does that -- does that distinction make a difference with
12 the law.

13 THE COURT: Okay. I'm going to ask you to go back to
14 the jury room and then I'll respond, okay?

15 FOREPERSON: Okay. In addition to that -- this
16 actually came up when you re-read the charge the -- I guess
17 any intrusion, however slight, would that also apply in that
18 particular situation.

19 THE COURT: If you found actual malice -- I mean not
20 actual malice, sexual battery?

21 FOREPERSON: Right.

22 THE COURT: Then under the criminal sexual conduct in
23 the second degree with a minor?

24 FOREPERSON: Right.

25 THE COURT: Then it would apply.

1 FOREPERSON: It would. All right. Thank you.

2 (The jury left the courtroom.)

3 THE COURT: Okay. As to the explanation I just gave,
4 any additions or exceptions?

5 MS. HALL: None from the State.

6 MR. PRIDE: I have. I object to the Court's
7 explanation, it's a comment on the facts. When the foreman
8 of the jury asked you, in affect, if the penis is in her
9 mouth is that -- does that constitute guilt, that's exactly
10 what she asked. She didn't --

11 THE COURT: That's not exactly what she asked.

12 MR. PRIDE: She paraphrased it, but that's exactly what
13 she meant, that's exactly what she meant. And your comment
14 was yes, and I -- I don't think that's proper, Judge.
15 That's a comment on the facts.

16 THE COURT: Well, I note your objection for the record
17 and --

18 MR. PRIDE: Could you hear me on -- when you get some
19 time would you hear me on one other thing?

20 THE COURT: Yeah, but I want to get this done first.
21 You guys keep trying to sidetrack me and I'm not going to
22 let you. Now, let me ask you this, I'm not quite sure how
23 to respond to what they're saying. She's saying to me if
24 she did it is he guilty, if he did it does it make a
25 distinction, and I think that goes to intent myself and I

1 don't know how to respond to that. So I want to get some
2 idea -- and also it's really not what the testimony was.
3 The testimony was he stood there, but I'm definitely not
4 going to say that.

5 MS. HALL: Well, it seems like in my -- well, I'll wait
6 if you wanted to hear from me.

7 THE COURT: I'm sorry?

8 MS. HALL: I said if you want me to say anything but
9 you might not.

10 THE COURT: Yeah. No, I'm asking you to.

11 MS. HALL: Okay. Thank you. I would just take the
12 position that if they want to re-hear the testimony that
13 that would be -- the rehearing of the testimony and the
14 recharging on the law I think is the only thing we can do.
15 I don't think that we can in any way directly answer that
16 question.

17 THE COURT: Well, that's basically what Mr. Pride is
18 saying, too.

19 MR. PRIDE: That's exactly what my opposition is.

20 MS. HALL: I understand your comment about -- and I
21 would take a different stance from what you said to the
22 forelady, because all they asked was is a sexual battery a
23 slight intrusion to which you responded yes, it is.

24 THE COURT: That's what I thought.

25 MS. HALL: And I don't agree with his interpretation.

1 THE COURT: I don't either but he's doing his job. So
2 the consensus is I'll offer to recharge them on the law and
3 allow them to listen to his testimony one more time if they
4 want to. Does everybody agree with that approach?

5 MR. PRIDE: I don't agree with that approach.

6 THE COURT: Okay.

7 MR. PRIDE: I think that's overemphasizing a point, to
8 let them hear the testimony again when they have not asked
9 to hear the testimony again.

10 THE COURT: Okay. Then --

11 MR. PRIDE: Judge, I have a motion whenever, let me --

12 THE COURT: Let me finish this, please, Mr. Pride.
13 Hang on, guys, please let me finish this. I want to see if
14 everybody's consensus then with me just charging them on the
15 law and then stopping and say that I can't comment further
16 on that charge on the law. Do you agree with that?

17 MS. HALL: That's what I was going to say, any other
18 comment would be a comment on the facts.

19 THE COURT: So I take that as a yes. Mr. Pride, do you
20 agree?

21 MR. PRIDE: I think it would be proper for you to tell
22 them that this is the law and whatever facts you find
23 applicable to it's incumbent upon you to apply it.

24 THE COURT: What I'm going to do is charge them on the
25 law and leave it there. You had another matter you wanted

1 it take up?

2 MR. PRIDE: Judge, respectfully I want to move for a
3 mistrial. I think that your comments were so biased that
4 it's now impossible for this jury to reach a fair and
5 impartial trial. I think the Court commented on the facts
6 and I think that those comments are so pungent until it will
7 persuade the jury -- it will have the jury mischaracterize
8 your comments to the extent that they will find -- bring
9 back a verdict of guilty on that.

10 THE COURT: All right. I note that and that's denied.
11 I think there is no manifest necessity. Now, if you want me
12 to fashion a charge that would be curative to what you
13 perceived to be a nil to me commenting on the facts I will
14 be glad to.

15 MR. PRIDE: Yes, sir, Judge. I would like for you to
16 charge the jury that if they find that the defendant did not
17 put his penis in her mouth --

18 THE COURT: I will not charge that. I know that's
19 what -- I'm not saying -- I don't think that's really
20 necessarily the law. Because it's certainly not consistent
21 with the testimony and evidence but I will not do that,
22 okay? Bring the jury in.

23 (The jury returned to the courtroom.)

24 THE COURT: All right. Madam Forelady, ladies and
25 gentlemen of the jury, we've debated back and forth and I

1 agree, there's really not a way for me to answer your
2 question without me commenting on the facts. In fact, as I
3 told you, I'm not allowed to comment on the facts or have an
4 opinion about the facts. So to the extent in responding to
5 a question, which I thought was a legal question earlier, if
6 you are interpreting that as me commenting on factually
7 what's going on in the case, please disregard that. I have
8 no intention of doing that nor will I ever, okay? Now, with
9 that being said, just listen very closely and I'm going to
10 go through this again, okay? This is the law on criminal
11 sexual conduct in the second degree with a minor. Can
12 everybody hear me okay? The defendant is charged with
13 second degree criminal sexual conduct with a minor. The
14 State must prove beyond a reasonable doubt that the
15 defendant engaged in a sexual battery with the victim. A
16 sexual battery is sexual intercourse, cunnilingus, fellatio,
17 anal intercourse, or any intrusion, however slight, of any
18 part of a person's body, or of any object into the genital
19 or anal openings of another person's body, except when the
20 intrusion is accomplished for medically recognized treatment
21 or diagnostic purposes. The State must then prove beyond a
22 reasonable doubt that the victim was at least 11 years old
23 but not more than 14 years old at the time of the sexual
24 battery. Consent, willingness, indifference or ignorance on
25 the part of the minor, if any, as to what was taking place

1 does not in any way affect the charge of criminal sexual
2 conduct with a minor. Because an unmarried woman under the
3 age of 14 cannot legally consent to sexual intercourse. If
4 you do not find the defendant guilty of the charge of
5 criminal sexual conduct with a minor in the second degree
6 you may consider the lesser included charge of lewd act on a
7 minor. The State must first prove beyond a reasonable doubt
8 that the defendant was over the age of 14. Next, the State
9 must prove that the defendant willfully and lewdly committed
10 or attempted a lewd or lascivious act on or with the body or
11 its parts of a child under the age of 16 years with the
12 intent to arouse, appeal to or gratify the lust, passions or
13 sexual desires of the defendant or the child. Willfully
14 means voluntarily and intentionally with the specific intent
15 to do something the law forbids. Lewd means obscene
16 lustful, indecent or lecherous. Lascivious means tending to
17 insight lust, lewd, indecent, obscene or tending to deprave
18 the morals and respect to sexual relations. All right.
19 Madam Forelady, if you would go back to your jury room, but
20 do not resume your deliberations until we send word back, I
21 need to have a brief conference but we will be very brief,
22 okay? Thank you.

23 (The jury left the courtroom.)

24 THE COURT: All right. Any additions or exceptions?

25 MS. HALL: No.

1 THE COURT: Without raising your motion for a mistrial,
2 any additions or exceptions?

3 MR. PRIDE: None, Your Honor.

4 THE COURT: Would you tell them to resume their
5 deliberations?

6 (The jury resumed deliberations.)

7 (The jury returned with a question.)

8 THE COURT: Here is what they asked. It says, "Can we
9 receive a written copy of the charges? There's still some
10 concern regarding the differences." I normally do not send
11 my charge back, but if y'all are agreeable I will. That
12 seems to me -- if we do we just need to do the substantive
13 charges, if not I'll simply -- I can hand them out and let
14 them look at them here in the courtroom and get them back
15 up, or I can read them to them. I'm basically open to
16 whatever y'all want to do. Ms. Hall?

17 MS. HALL: I've never really had this -- I've never
18 seen anybody send them back or give them a printed copy
19 of --

20 THE COURT: There's some that do it every time. I did
21 it once over advice from Judge Miller not to and I had them
22 back there until 10:00 at night debating over legal terms,
23 so I'm not going to send it back to the jury room for sure,
24 okay?

25 MS. HALL: And I don't really take a position, I'm just

1 going to leave it to the Court and Mr. Pride with regard to
2 whether we pass them out. I don't really have a position
3 one way or the other.

4 MR. PRIDE: I don't even want to pass them out, Judge.
5 I mean, I think the Court in this instance has fully done as
6 much as you're allowed to do in terms of trying to explain
7 that to them.

8 THE COURT: Well --

9 MR. PRIDE: That would be the third time.

10 THE COURT: What I'm going to do is ask her to tell me
11 what the concerns are and have her articulate it for me,
12 maybe we can get a better feel for the response, okay? But
13 I am --

14 MS. HALL: If they want to hear you say it 50 times we
15 can say it 50 times. I know you don't want to.

16 THE COURT: I don't care --

17 MR. PRIDE: Judge, when you find out what they want
18 before you respond, could you let them go out and then I
19 talk to you?

20 THE COURT: Sure.

21 (The jury returned to the courtroom.)

22 THE COURT: All right. Madam Forelady, I've got the
23 message from the jury. First, the answer to your first
24 question is no, I'm not going to send back my charges, and
25 I'll tell you why. It's my job to try to teach you what the

1 law is, if I send it back there I've had experience when I
2 have done that years ago and the jury focuses on a word or a
3 phrase and they're not looking at the facts of the case, but
4 I will try to do something else. First, you say there is
5 some concern regarding the differences between second degree
6 criminal sexual conduct with a minor and lewd act on a
7 minor. Can you articulate what these concerns are?

8 FOREPERSON: So we have a couple of people who are
9 thinking that lewd act and second degree are so similar, I
10 guess the difference between two is so minor that we're
11 having difficulty coming to an agreement on which charge.
12 And the folks that are --

13 THE COURT: Don't tell me where you are in your
14 deliberations, just tell me what the concerns are.

15 FOREPERSON: Right. I'm trying to figure out how to
16 word this.

17 THE COURT: Right.

18 FOREPERSON: So tell me if I word this incorrectly. So
19 I guess the concern is that they are so similar that there
20 might be some -- if I get too far into it --

21 THE COURT: Just don't tell me where you are
22 numerically, but you can tell me what the concerns are
23 certainly.

24 FOREPERSON: That if the -- I guess the concern is that
25 it seems that the difference in second degree and lewd is

1 essentially penetration of any kind, and that penetration --
2 if there was penetration that would be second degree, if
3 there was not that would be lewd.

4 THE COURT: Okay. Stop. I think I got you. Go back
5 to your jury room, let us talk for a minute, stop your
6 deliberations, please.

7 FOREPERSON: Okay.

8 (The jury left the courtroom.)

9 THE COURT: She stated it right. She said, you know,
10 that the difference is penetration versus no penetration. I
11 would say that the more correct way is sexual battery versus
12 there not being a sexual battery. But what would be your
13 proposed response, Ms. Hall?

14 MS. HALL: Out of an abundance of caution again, I
15 think only appropriate response is to recharge them the two
16 statutes. I don't know that -- or I mean, what you've
17 already said --

18 THE COURT: I don't think I run afoul on instructing
19 them on law if it's a legal issue. If I start commenting on
20 facts like Mr. Pride says, I agree, if I do that it's a
21 problem. But saying to her that the distinction between the
22 charge -- the greater charge and the lesser included charge
23 is the definition of sexual battery which is as follows, and
24 that's only applicable to criminal sexual conduct in the
25 second degree and not to lewd act on a minor.

1 MS. HALL: And I think that that does clarify. And
2 quite frankly I think that that's already been said and so I
3 don't see that there's any harm in doing that.

4 THE COURT: Okay, sir?

5 MR. PRIDE: I like your first statement, and that was
6 to tell them that one has a sexual battery -- you didn't say
7 it like I'm saying it, okay, that one has a battery in it
8 and the other one doesn't, that's in essence what you said.
9 And that is a clear distinction.

10 THE COURT: So let me ask y'all this, if I came out and
11 said in response to your question that the distinction
12 between criminal sexual conduct in the second degree is that
13 it contains the element of sexual battery as I have defined
14 it to you and the charge -- and the lesser included charge
15 of lewd act of a minor does not contain that element, and if
16 you want me to I will recharge you on the definition of
17 sexual battery or does that respond? I'll give them the
18 chance and they can ask me, if they don't want it they'll
19 tell me they don't want it.

20 MR. PRIDE: If you go that far that's fine with me and
21 I have no objection to that. I really don't want re-reading
22 --

23 MS. HALL: That's fine. That's something that -- I
24 think that's completely appropriate so I'm happy with that.

25 THE COURT: Okay. With her statement the penetration

1 versus no penetration really is technically correct, but
2 it's not hyper-technically correct. All right. Bring them
3 back in, please.

4 (The jury returned to the courtroom.)

5 THE COURT: All right. Ladies and gentlemen, let me
6 answer your question about the differences between the two.
7 The charge of second degree criminal sexual conduct with a
8 minor is the greater charge, the lewd act on a minor is a
9 lesser included charge. The element requiring sexual
10 battery as I defined it for you only applies to second
11 degree criminal sexual conduct with a minor, it does not
12 apply to lewd act on a minor, okay? Now, if the jury would
13 want me to define sexual battery again, I will read the
14 definition to you, or do you feel like you've heard it
15 enough?

16 FOREPERSON: Yes. But go ahead one more time just to
17 see if that helps.

18 THE COURT: You tell me.

19 FOREPERSON: You never know. One more time.

20 THE COURT: Okay. And this only is applicable to
21 second degree criminal sexual conduct. A sexual battery is
22 sexual intercourse, cunnilingus, fellatio, anal intercourse
23 or any intrusion, however slight, of any part of a person's
24 body, or of any object into the genital or anal openings of
25 another person's body except when the intrusion is

1 accomplished for medically recognized treatment or
2 diagnostic purposes. That is the definition of sexual
3 battery, okay? Any additions or exceptions from the State?

4 MS. HALL: No, sir.

5 THE COURT: From the defense?

6 MR. PRIDE: None, Your Honor.

7 THE COURT: Would you go back to the jury room and
8 resume your deliberations?

9 (The jury resumed deliberations.)

10 THE COURT: All right. Ladies and gentlemen, the jury
11 says "We are deadlocked between second degree and lewd act."
12 So I take that as a time for a Batson charge unless you
13 disagree.

14 MS. HALL: An Allen charge?

15 THE COURT: Allen charge. I said Batson.

16 MR. PRIDE: We know what you mean. Judge, I'm not
17 trying to get too far ahead of you, but --

18 THE COURT: This is not an easy case.

19 MR. PRIDE: Okay. But if they -- this would be the
20 Allen charge. The law is if they come back the second time
21 you grant me a mistrial.

22 THE COURT: That's right.

23 MR. PRIDE: We're good.

24 THE COURT: You only go back once. Now, what I always
25 normally do -- y'all be seated if you want. I always ask do

1 you feel like any further deliberations to make the
2 distinction between these two, and if they tell me no
3 they're just deadlocked then I give them the Allen charge to
4 try to coax them into going back and doing some other work,
5 that's what I normally do.

6 MR. PRIDE: Right.

7 THE COURT: But you're right, Mr. Pride, after the
8 Allen charge is done if they come back deadlocked again, the
9 case is over.

10 MR. PRIDE: Judge, in that Allen charge, I always ask
11 the Court to go a little further with that admonition that
12 if you've made up your mind and you're convinced you're
13 right you don't have to change it and you can stick. I'm
14 not saying it verbatim, but I'm trying to convey to you --
15 do you understand what I'm saying?

16 THE COURT: I do understand what you're saying and I
17 understand what you're hoping to accomplish. Do you want to
18 look at my Allen charge?

19 (Break in proceedings.)

20 MR. PRIDE: Judge, the second page at the top, I like
21 it, I have no problems with it. But I ask you to just go
22 one step further and say -- emphasize -- it says that if you
23 have your opinion you've got a right to stick to it. But I
24 want just another admonition to say that you don't have to
25 change your mind if you're dead set. And I'm not saying it

1 verbatim like you would -- I'm simply conveying to you what
2 I would like, not in a right word. I'm not suggesting how
3 you should say it.

4 THE COURT: I've got you. You know, this is one I've
5 used a million times and I think it conveys it. I think if
6 I go forward to -- I think it clearly says, look, everybody
7 has a right to their own opinion and you shouldn't change
8 your firmly held belief. But if I start going further than
9 that it sounds like I'm saying to people become entrenched
10 and what I'm really asking them to do is come to a decision.
11 Bring out the jury.

12 (The jury return to the courtroom.)

13 THE COURT: All right, Madam Forelady. You had sent a
14 note saying the jury is deadlocked between second degree
15 criminal sexual conduct with a minor and lewd act on a
16 minor.

17 FOREPERSON: Yes, sir.

18 THE COURT: Now, let me ask you this first, has there
19 been open and honest -- do you feel like if I send you back
20 you can get some open and honest deliberations further on
21 this issue?

22 FOREPERSON: No, sir, I don't. I think we are stuck
23 with where we are.

24 THE COURT: Well, okay. I want each of you to listen
25 to this and listen to it very closely, okay? This is what

1 we call an Allen charge in the law but it's applicable to
2 this case. Ladies and gentlemen, you have stated that you
3 have been unable to agree on the verdict in this case. As I
4 instructed you earlier, the verdict in order to stand must
5 be unanimous. When a matter is in dispute it isn't always
6 easy for even two people to come to a decision and agree on
7 something, but when you have 12 people out there trying to
8 do the same thing it becomes even more difficult to do. In
9 most cases, ladies and gentlemen, absolute certainty cannot
10 be reached or expected. However, you have a duty to make
11 every reasonable effort to reach a unanimous verdict. In
12 doing this you should consult with one another and express
13 your own views and listen to the opinions of your fellow
14 jurors, tell each other how you feel and why you feel that
15 way, discuss your differences with open minds. Although the
16 verdict of the jury must be unanimous, every one of you has
17 the right to your own opinion. The verdict you would agree
18 on must be your own verdict, the result of your own
19 convictions and you should not give up a firmly held belief
20 to be in agreement with your fellow jurors. The majority
21 should consider the minority's position and the minority
22 should consider the majority's position. You should
23 carefully consider and respect the opinions of each other
24 and reevaluate your position for reasonableness, correctness
25 and impartiality. You must lay aside all outside matters

1 and reexamine the questions before you based on the law and
2 evidence in this case. If you do not agree on a verdict in
3 this case I will have to declare a mistrial. In that case
4 it does not mean that anyone wins, it just means that at
5 some future time I will try this case again with some other
6 jury sitting where you sit now. The same participants will
7 come and the same lawyers will ask basically the same
8 questions and get basically the same answers, and we will go
9 through the whole process again. You were selected in the
10 matter -- you were selected in the same manner and from the
11 same source as any future jury will be, and there is no
12 reason for me to suppose that the case will ever be
13 submitted to 12 more intelligent, impartial, conscientious
14 and competent jurors than yourself, or that more clearer
15 evidence will be produced on one side of the case or the
16 other. Therefore, Madam Forelady, I am going to ask you to
17 go back to your jury room and attempt to reach a unanimous
18 verdict, if it can be done. Please go back to your jury
19 room and do not resume your deliberations for one minute,
20 okay?

21 FOREPERSON: Yes, sir.

22 (The jury left the courtroom.)

23 THE COURT: Any additions to or exceptions from the
24 State?

25 MS. HALL: Not from the State.

1 THE COURT: From the defense?

2 MR. PRIDE: None, Your Honor.

3 (The jury resumed deliberations.)

4 THE COURT: All right. Ladies and gentlemen, the jury
5 reports it is still dead locked. I have no choice then but
6 to declare a mistrial.

7 MR. PRIDE: I so move.

8 THE COURT: And it's granted --

9 (Bailiff approached the bench with a note.)

10 THE COURT: Nope. It says, "Ignore last, I think we're
11 going to have a verdict." So that order is not issued at
12 this juncture. I will give them a chance to go, if they
13 want to do it that's good.

14 MR. PRIDE: Judge, you know, the deadlock note came in
15 first.

16 THE COURT: I know it, but they got it right before I
17 was about to declare it, so -- and my procedure is to bring
18 them in here and have her announce on the record that she's
19 hopelessly deadlocked, but they didn't get that.

20 (The jury resumed deliberations.)

21 THE COURT: All right. They say there's a verdict,
22 ladies and gentlemen. If you're out in the gallery in the
23 courtroom, please maintain appropriate decorum as the
24 verdict is read, please.

25 (The jury returned to the courtroom.)

SENTENCING HEARING

1 THE COURT: All right. Madam Forelady, I have been
2 handed your verdict form. Has the jury reached a unanimous
3 verdict?

4 FOREPERSON: Yes, sir, we have.

5 THE COURT: Thank you so much. Madam Clerk, would you
6 publish the verdict, for me, please, ma'am? Thank you.

7 THE CLERK: As to the charge of criminal -- excuse me.
8 "The State of South Carolina versus Darryl Eugene Coleman.
9 As to the charge of criminal sexual conduct with a minor in
10 the second degree, indictment number 2009-GS-20-085, we, the
11 jury, unanimously find the defendant guilty."

12 THE COURT: Madam Forelady, ladies and gentlemen of the
13 jury, if that was your verdict in the jury room and that is
14 your verdict here in the courtroom, would you raise your
15 right hand? Let the record reflect that -- well, your right
16 hand. Let the record reflect that all 12 jurors raised
17 their right hand. Thank you so much.

18 (The jury was released at this time.)

19 THE COURT: Come around, please, Mr. Coleman.

20 (Break in proceedings.)

21 THE COURT: What's going on, Mr. Pride, it shows it
22 being a violent and most serious, which is correct, but it
23 also shows it as being a lesser included offense. And what
24 I'm going to do is manually X-out the lesser included
25 offense, initial it. I'll let you look at the sentencing

SENTENCING HEARING

1 sheet and make sure it otherwise comports with what your
2 understanding of what this charge is about, okay, sir?

3 Mr. Coleman, you may come around, please, sir.

4 MR. PRIDE: Judge, I have motions that I would like to
5 make before you sentence.

6 THE COURT: Do you care if he's standing by your side?

7 MR. PRIDE: No, that's fine.

8 THE COURT: All right, sir.

9 MR. PRIDE: Judge, I move at this time that the Court
10 direct a verdict notwithstanding the fact that the jury has
11 reached a verdict, and I would also move you for a motion to
12 dismiss. Those motions will be made in the record verbatim
13 as previously stated.

14 THE COURT: So you're reiterating your prior motions?

15 MR. PRIDE: That's correct.

16 THE COURT: Quite frankly I think there is evidence in
17 this case to support the jury's verdict. I think there's
18 ample evidence, more than ample evidence to support the
19 jury's verdict, including Mr. Coleman's own testimony in
20 this case. I'm going to deny your motions, okay, sir, with
21 all due respect. All right. Mr. Coleman, I want to tell
22 you now that you have ten days to appeal this verdict. This
23 is -- my understanding from the State is there's no criminal
24 record that you have up until now, but this will go down as
25 a most serious strike on your record, which means that after

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1 you finish the sentence I'm about to impose, unless they
2 change it on appeal, that you will have one more most
3 serious strike, if you pick that up you will go to jail
4 without the possibility of parole, okay, sir? This also is
5 considered a violent offense, it will affect your max out
6 date. Anything that you want to add or that you want to
7 state on his behalf, Mr. Pride? Whatever you want to do.

8 MR. PRIDE: Yes. Your Honor, would you hear from one
9 of his relatives?

10 THE COURT: I will. Come around, please, sir. What is
11 your name for the record, sir?

12 SPEAKER: My name is Martin Copeland, Jr., I'm Darryl's
13 uncle. I'm a deacon in the church, notary, retired two
14 jobs, married, and I have known him pretty much all of his
15 life.

16 THE COURT: Right.

17 SPEAKER: Darryl has never been in any serious trouble.
18 He's always been an upstanding person, most respect when I
19 first met him as a little child. He's the type of guy that
20 said yes, ma'am and yes, sir and hopped to it right away.
21 He has no problems following directions. He has no problem
22 with authority. When things happen to you in life, and I
23 counsel a lot in the church, when things happen to you in
24 life certain things come upon you your reaction time is one
25 of the things that makes you make your decision. When you

SENTENCING HEARING

1 make those decisions, good or bad, they seem to follow you.
2 If they're good decisions, people are proud of you. If
3 they're bad decisions, people may be angry with you, but
4 altogether you learn from your mistakes. You learn from
5 your growing in life. Darryl is 47 years old with kids of
6 his own. He has two young daughters he's trying to raise,
7 and there's just a lot going on right now to speak positive
8 about him. As you make your decision, and I can't tell you
9 what to do, but as you make your decision know that he's
10 just a good guy, you know, the community counseling and
11 things that he does. He's done work in Rock Hill, he's done
12 work building homes, a campground, he's built shelters. You
13 know, he's just that type of guy that's always out there
14 doing his best to help someone else. But that's pretty much
15 all I have to say.

16 THE COURT: Well, thank you so much, I appreciate it.

17 MR. PRIDE: Your Honor, at this time I will let you
18 hear from my client and then after that I would like to talk
19 with you.

20 THE COURT: Okay. All right. Mr. Coleman?

21 THE DEFENDANT: Your Honor, these charges that I'm
22 being presented with, I did not have sex with that girl.
23 But like I said and I got -- like I say, I got kids,
24 daughter in college that just made the Deans list. I
25 definitely need to be there so I could take care of them,

SENTENCING HEARING

1 you know, they need me as well.

2 THE COURT: You know, Mr. Coleman, quite frankly, I
3 think you did. I listened to the testimony and I was here.
4 I saw the reaction of that girl, the victim in this case,
5 it's very visceral. But, you know, what kind of sealed it
6 for me was your own testimony. When you said -- described
7 the things that happened, it was clear to me that what the
8 allegations were were true. I don't weigh the facts, that's
9 never my job, but that was my impression of what I heard
10 quite frankly. And, you know, as I was saying to Ms. Hall,
11 this is classified as a most serious charge, and it is -- we
12 don't have that many in our laws that are most serious. And
13 it's never easy for me sitting here to sentence somebody, in
14 fact, it's hard, especially somebody who looks like he's
15 otherwise led a model life. It's not easy. But this again
16 is a most serious charge and there's consequences that have
17 to be done. Does the State have any position? I'll hear
18 from you, Mr. Pride, last, but anything you want to say?

19 MS. HALL: Just a couple things. I spoke with the
20 victim, or actually our victim advocate spoke with the
21 victim earlier today, she's unable to be here for this
22 portion, which the intention originally was to have her here
23 simply because she had to go to the doctor because her blood
24 pressure is really high. She's had -- and Your Honor stated
25 that you saw her reaction on the stand yesterday, this has

SENTENCING HEARING

1 greatly affected her life awhile. And I appreciate what
2 Mr. Coleman's uncle said about him, at the same time
3 there's things that you do in your life, and while people
4 may be not proud of you for them, some things that you do
5 have profound affects on other people. And when you're 37
6 years old and you have sex with a 14 year old that has
7 profound affects on a person, and you saw that. She is
8 profoundly effected. Ever since, which just has been in the
9 last four months that I've come into contact with her, I can
10 state as an officer of the court she is profoundly effected.
11 And this has followed her for -- 3,811 days she's dealt with
12 this. She's processed it, she's been -- and finally has
13 closure. She asked me to ask the Court to give him every
14 day he can get, and that was her request.

15 THE COURT: Mr. Pride?

16 MR. PRIDE: Your Honor, first of all I respect the
17 sanctity of the jury's verdict notwithstanding the fact
18 that I disagree with it. Second of all, Judge, when
19 sentencing a defendant who has been found guilty the Court
20 has a number of factors that you look to to determine what
21 the sentencing should be, and I know you know that, but I
22 just want to go over them with you. Judge, you have heard
23 the testimony. This man has no prior criminal record. He
24 has a family, and though he probably did not respond to you
25 with remorse, and the Court always looks for remorse in a

SENTENCING HEARING

1 defendant who has been found guilty, and I know that and I
2 realize that. I would ask you, Judge, for mercy. I've had
3 justice in the courtroom. You have given me a good trial,
4 you have given him a fair trial, okay, I appreciate that, so
5 we've had justice. Judge, I would ask you for mercy. This
6 man has a family. He's always had a meaningful employment.
7 He's not been a problem to the local authorities. And from
8 what his uncle said, he has made a yeoman contribution to
9 others in his community. Please, Judge, take all of those
10 factors under consideration, as I know you will, and I beg
11 you for leniency and I beg you for mercy.

12 THE COURT: All right. Thank you, sir. I will say
13 this, that I am taking into consideration he has a family
14 and I am taking into consideration that he has led otherwise
15 a decent life from what we can tell. I'm also taking into
16 consideration that it was a 37 year old man that under our
17 former terms raped a 14 year old girl, and so that doesn't
18 go without notice. I'm going to give you some benefit of
19 the doubt but I'm going to sentence you to 12 years. You
20 have ten days to appeal. Good luck to you.

21 (End of trial proceedings.)

22

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Fairfield County, South Carolina, on
9 the 21st and 22nd days of May, 2019.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

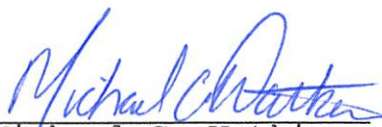
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August 19, 2019

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Michael C. Watkins

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Court Reporter

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DOCKET NO. 2009-GS-20-085

The State of South Carolina

County of Fairfield

2009 FEB 24 P 12:59

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

WITNESSES

FCSO-BOYD ✓

ARREST WARRANT NUMBER/DOA

K310649 (DOA-12-30-08)

ACTION OF GRAND JURY

TRUE BILL 2-24 20 09

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Indictment for

Criminal Sexual Conduct with a Minor
Second Degree

SC Code: § 16-3-655(B)(1), (C)(3)

CDR Code: 0396

Class: Felony C

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on February 24, 2009, the Grand Jurors of Fairfield County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

That Darryl Eugene Coleman did in Fairfield County, on or about December 15, 2008, engage in sexual battery with **Witness**, a minor 14 years of age or less but at least 11 years of age, in violation of Section 16-3-655(B)(1), (C)(3) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

RECEIVED

JUN 21 2019

PROSECUTION

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

329

COUNTY OF Fairfield
STATE VS.Darryl Eugene Coleman

AKA:

Race: BLACK Sex: M Age: 47DOB: [REDACTED] SS#: [REDACTED]Address: 591 CATAWBA ROADCity, State, Zip: GREAT FALLS, SC 29055DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hall, Julie Gamburg

SC Bar#

Defendant

Pride, Hemphill
Attorney for DefendantSCB00293
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Mike Watkins

SCCA/217 (07/2016)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2158Sentence Date: 5-22-19

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.”

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Apr 30 2020
SC Court of Appeals

Respectfully Submitted,

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of April, 2020.