

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

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DEC 17 2018

S.C. SUPREME COURT

DANIEL J. JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001050

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2006-GS-10-9254

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 DANIEL J. JENKINS,)
7 Defendant.)

8
9 DECEMBER 8TH, 2008
10 CHARLESTON, SOUTH CAROLINA
11 VOLUME 1

12 B E F O R E:

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
14
15
16

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

18 MR. CHAD SIMPSON, Assistant Solicitor
19 MR. CHRIS NEELEY, Assistant Solicitor
REPRESENTING THE STATE

20 MR. JASON T. KING, Assistant Public Defender
21 MR. REECE STIDHAM, Assistant Public Defender
REPRESENTING THE DEFENDANT
22
23

24 ANNE BOULEY MEYER, RPR

25 CIRCUIT COURT REPORTER

1 THE COURT: Is the state ready to proceed?

2 MR. SIMPSON: State is ready, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. KING: Yes, Your Honor.

5 THE COURT: And is the defense going to
6 require a formal arraignment of the defendant.

7 MR. KING: Yes, Your Honor, we would request
8 that.

9 THE COURT: Now, as regards to the pretrial
10 motions, that being the motion to suppress the
11 in-court ID, we can do the Neil versus Biggers before
12 the testimony is sought to be introduced.

13 The motion pursuant to the rape-shield statute
14 will be done before the testimony is sought to be
15 introduced. And I assume that would be introduced
16 through the medical expert?

17 MR. SIMPSON: I think we agreed it would be,
18 Your Honor.

19 THE COURT: So you all resolved that?

20 MR. SIMPSON: Well, I still contest the
21 admissability of the evidence. But would it be
22 admitted we would be doing it through the experts.

23 THE COURT: You are confusing me. Are you
24 saying that you do not agree -- close that door. Are
25 you saying that you agree to the motion or you don't

1 agree to the motion?

2 MR. SIMPSON: I do not agree to the motion,
3 Your Honor. But we will be taking that up through
4 the medical expert and not the victim.

5 MR. KING: Your Honor, he agreed if Your Honor
6 granted my motion then we would bring --.

7 THE COURT: Is that who you are seeking to
8 introduce this testimony through?

9 MR. KING: Correct, Your Honor. My medical
10 person who is the expert from the state I think would
11 maybe be the more appropriate person to bring that
12 up.

13 THE COURT: We will take that up in-camera
14 before the testimony is sought to be introduced. And
15 the motion to suppress regarding the DNA sample will
16 be taken up before any testimony is introduced
17 through that particular witness that is sought to be
18 introduced through.

19 Is there any exception with us proceeding in
20 that way from the state?

21 MR. SIMPSON: No, your Honor. I would just
22 note that the Neil v Biggers probably would have to
23 be done before the victim testifies to that ID. And
24 that would our first witness.

25 THE COURT: Did she identify him through a

1 line-up?

2 MR. SIMPSON: She identified him through a
3 showup ID.

4 THE COURT: How far into her testimony is
5 that?

6 MR. SIMPSON: It would be fairly far into the
7 testimony, near the end of her testimony.

8 THE COURT: Then we will take it up right
9 before you intend to introduce it. But you all need
10 to not bring up any of those matters in opening, any
11 matters that are subject to the motions.

12 Any exception from the defense?

13 MR. KING: No, Your Honor.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: Ladies and gentlemen, we are going
16 to select a jury for the case of the State of South
17 Carolina versus Daniel J. Jenkins which is an
18 indictment for criminal sexual conduct in the first
19 degree.

20 Is it correct that the defendant wishes to
21 have a formal arraignment; is that correct, Mr. King?

22 MR. KING: Yes, Your Honor.

23 THE COURT: You may proceed, Madam Clerk.

24 THE CLERK: Case number 2006-GS-10-9254 the
25 state of South Carolina, County of Charleston versus

1 Daniel Jerome Jenkins, indictment for criminal sexual
2 conduct first degree.

3 Daniel Jerome Jenkins, if you answer to that
4 name please raise your right hand. You may put it
5 down.

6 You stand indicted by the name of Daniel
7 Jerome Jenkins. And the court of general sessions
8 convened on September 11, 2006 the grand jurors of
9 Charleston County present upon their oath, that in
10 Charleston County on or about April 5th, 2006 with
11 use of aggravated force, Daniel Jerome Jenkins did
12 commit a sexual battery upon [REDACTED] H.M.
13 against her will and without her consent.

14 This being in violation of section 16-3-652 of
15 the South Carolina code of laws 1976 as amended.

16 How say you, are you guilty or not guilty?

17 THE DEFENDANT: Not guilty.

18 THE CLERK: How will you be tried.

19 THE DEFENDANT: By God and my country.

20 THE CLERK: May they send you a true
21 deliverance. Are you ready for trial?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Thank you.

24 Ladies and gentlemen, as I indicated we are
25 going to select a jury for the case of the State of

1 South Carolina versus Daniel Jerome Jenkins, an
2 indictment for criminal sexual conduct in the first
3 degree.

4 I'm going to go through a series of questions.
5 These questions are something that we call voir dire,
6 which is simply a complicated way of saying that we
7 are going to ask questions to give the attorneys a
8 better opportunity to exercise their preemptory
9 challenges in jury selection.

10 If a question applies I would ask that you
11 stand and in a loud, clear voice tell us your name,
12 your juror number and an answer to the question if
13 applicable. And remain standing until the Court has
14 completed questioning you.

15 Before we begin that process, I will ask
16 counsel for the state to stand and introduce himself
17 and anyone assisting him in the trial and publish the
18 names of the members of his office.

19 I'm going to ask for the defense to provide us
20 with the same information as well as introducing your
21 client to the panel.

22 You may proceed.

23 MR. SIMPSON: Thank you, Your Honor. My name
24 is Assistant Solicitor Chad Simpson. Assisting me in
25 this trial will be Assistant Solicitor Chris Neeley.

1 other members of our office that work in that
2 capacity are of course the Solicitor Scarlet Wilson.
3 Assistant Solicitor Adam Young. Trip Reason.
4 Stephanie Bianco. Greg Voight. Michael Nelson.

5 Kevin Hales. Jennifer Shealy. Amy Herrell.
6 Julie Cardillo. Burns Wetmore. Brian Byrd. Trip
7 Lawton. Rutledge Durant. Culver Kidd. Henry
8 Lavintas. Mike DeWaay. Tyler Schachte. Michael
9 Sahn. Dale Savage. Debbie Herring-Lash. Elizabeth
10 Gordon. And Nathan Williams.

11 THE COURT: You may proceed, Mr. King.

12 MR. KING: I'm Jason King with the Charleston
13 County Public Defender's Office. I'm representing
14 Daniel Jenkins along with Bruce Stidham, another
15 attorney in our office.

16 We also have Karen Barker, Beattie Butler,
17 Rodney Davis. Martha Mathis. Rhett Dunaway. Mary
18 Ford. Andrew Grimes. Cody Draper. Martha Kent
19 Jenkinson-Groom. Benjamin Lewis. Jason Mikell.
20 Marybeth Mullany. Ashley Pennington. Lori Proctor
21 Maryellen Rankin. Ted Smith. Kelly Solar. Michelle
22 Suggs. Tim Taylor. And Sandra Winslow.

23 THE COURT: Thank you, did you introduce your
24 client to the panel?

25 MR. KING: Yes, Your Honor.

1 THE COURT: Ladies and gentlemen, some of the
2 questions that we ask may be intensely personal to
3 you. And if you are uncomfortable standing in front
4 of your fellow jurors and answering those questions,
5 please make me aware of it so that I can speak with
6 you privately with the court reporter and the
7 attorneys.

8 We do not want any of you to suffer any
9 embarrassment. And certainly we will speak with you
10 privately if you do not feel comfortable speaking in
11 the presence of the panel.

12 Is there any member of the panel related by
13 blood or marriage to either Daniel Jerome Jenkins or
14 [REDACTED] H.M. if so please stand at this time.

15 Does any member of the panel have a close
16 personal or social relationship with either Daniel
17 Jerome Jenkins or [REDACTED] H.M. if so please
18 stand at this time.

19 The following are a list of potential
20 witnesses in this case. I would ask you to listen
21 very carefully. [REDACTED] H.M. Amanda Cone.
22 Detective Jennifer Antonio. Rene Charles. Officer
23 Charles Grill. Kalisha Gill. All of the Charleston
24 Police Department. Dr. Faye Lebeof of the MUSC
25 Children's Center -- Women's Center. I'm sorry.

1 Detective Lisa Altine. Randy Unterbrink.
2 Jennifer Wolley. All of the Charleston Police
3 Department. Adrienne Riley. Karonda M. Williams.
4 and Theresa Hooks of the South Carolina Law
5 Enforcement Division.

6 Dr. Betsy Gibbs. Dr. Ron Astroski. And
7 officer Steve Summers of the Charleston Police
8 Department.

9 Is there any member of the panel related by
10 blood or marriage to any of the people that I've just
11 listed, or does anyone have a close personal or
12 social relationship with any of these individuals, if
13 so please stand at this time.

14 Yes, sir.

15 PROSPECTIVE JUROR: My uncle works for the
16 Charleston Police Department.

17 THE COURT: And tell me his name, sir.

18 PROSPECTIVE JUROR: Danny Riccio.

19 THE COURT: Sir, your name and your juror
20 number.

21 PROSPECTIVE JUROR: Frank Riccio, 272.

22 THE COURT: Sir, as a result of this
23 experience do you feel that you can remain fair and
24 impartial, and render a fair and impartial decision
25 in this case based solely on the evidence as it will

1 be presented and on the law as the Court will
2 instruct?

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: Thank you, sir, you may take your
5 seat.

6 Has any member of the panel ever been
7 represented by any of the attorneys involved or
8 anyone with whom they practice law, if so please
9 stand at this time.

10 Does any member of the panel have a close
11 personal or social relationship with any of the
12 attorneys involved or -- with any of the attorneys
13 involved or anyone with whom they practice law with,
14 if so please stand at this time.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: I don't know if it fits
17 but I was in a case one time with Solicitor Debbie
18 Herring-Lash.

19 THE COURT: If you will tell me your name and
20 your juror number.

21 PROSPECTIVE JUROR: Shannalee Roan, 188.

22 THE COURT: Ma'am, as a result of this
23 experience do you feel that you can remain fair and
24 impartial, and render a fair and impartial decision
25 in this case based solely on the evidence as it will

1 be presented and on the law as the court will
2 instruct?

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: Thank you, ma'am, you may take
5 your seat.

6 Has any member of the panel formed or
7 expressed an opinion about any issue or matter
8 involved in this case, if so please stand at this
9 time.

10 Is there any member of the panel aware of any
11 bias or prejudice towards either the state or the
12 defense in this case, if so please stand.

13 Is there any member of the panel that was a
14 member of the grand jury which issued the indictment
15 in this case, if so please stand.

16 Is there any member of the panel who is a
17 member of contributor to any group which has as its
18 primary concern the promotion of law enforcement or
19 victim's rights. These groups would include but are
20 not limited to Mother's Against Drunk Driving,
21 Student's Against Drunk Driving, Citizen's Against
22 Violent Crime, People Against Rape, and Citizens
23 Advocating a Return to Decency and Ethics, if so
24 please stand at this time.

25 Is there any member of the panel who has had a

1 particularly bad experience with law enforcement that
2 would impair their ability to be fair and impartial,
3 if so please stand at this time.

4 Is there any member of the panel that belongs
5 to any organizations that specific deals with sexual
6 abuse or sexual assault, if so please stand at this
7 time.

8 Is there any member of the panel or anyone
9 close to you ever been accused of sexual misconduct,
10 if so please stand at this time.

11 Ma'am, do you feel comfortable speaking with
12 me openly?

13 PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: Okay, do you feel comfortable,
15 ma'am?

16 PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: And, ma'am, do you feel
18 comfortable speaking with me openly or do you want to
19 speak with me privately?

20 PROSPECTIVE JUROR: I can speak openly.

21 THE COURT: Yes, ma'am, tell me your name and
22 juror number.

23 PROSPECTIVE JUROR: Mary Edward 056.

24 THE COURT: Yes, ma'am.

25 PROSPECTIVE JUROR: My son was accused but he

1 was not the person, they identified the wrong person.
2 But I can be objective to this case.

3 THE COURT: I appreciate that. Ma'am, as a
4 result of this experience do you feel you can remain
5 fair and impartial, and render a fair and impartial
6 decision in this case based solely on the evidence as
7 the Court will charge on the evidence as it will be
8 presented?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Thank you, ma'am, you may take
11 your seat.

12 I need you each to line up right there for me
13 so that I can speak with you individually with the
14 attorneys.

15 (Whereupon, the following discussion was held
16 at the bench.)

17 THE COURT: Yes, ma'am.

18 PROSPECTIVE JUROR: I'm Patricia Thomas. Ron
19 Kerner (phonetic) was a state highway patrolman, I
20 think in 2000-whatever, he was accused of molesting a
21 girl in Lexington, South Carolina. At that time he
22 was my son-in-law.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: And he did end up
25 committing suicide over it.

1 THE COURT: Ma'am, as a result of this
2 experience do you feel you can remain fair and
3 impartial.

4 PROSPECTIVE JUROR: I don't want to go through
5 it, it's bringing up bad memories of it.

6 THE COURT: I know it's very difficult, but if
7 you could give me a yes or no answer. Do you feel
8 you can fair and impartial?

9 PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: I will excuse you from the trial
11 of this case only. If you take your seat and remain
12 with us.

13 (Whereupon, the juror is excused back to the
14 audience.)

15 (In open court.)

16 THE BAILIFF: Juror 121, Your Honor.

17 (Whereupon, the following discussion was held
18 at the bench.)

19 THE COURT: Yes, ma'am, tell us your name and
20 your juror number.

21 PROSPECTIVE JUROR: Anita Linder, 121.

22 THE COURT: Yes, ma'am.

23 PROSPECTIVE JUROR: My brother-in-law right
24 now is going through a trial being accused of sexual
25 assault.

1 THE COURT: Okay. Ma'am, as a result of this
2 experience do you feel you can remain fair and
3 impartial.

4 PROSPECTIVE JUROR: (Negative head shake.)

5 THE COURT: I need you to tell me yes or no.
6 I know it's difficult.

7 PROSPECTIVE JUROR: No.

8 THE COURT: I will excuse you from this panel
9 only. Ma'am we appreciate your candour, I know it's
10 difficult. Thank you.

11 (In open court.)

12 THE COURT: Number 121 will be excused from
13 this panel only as well as 216.

14 THE BAILIFF: Juror 140, Your Honor.

15 (Whereupon, the following discussion was held
16 at the bench.)

17 THE COURT: Yes, ma'am, tell me your name and
18 juror number.

19 PROSPECTIVE JUROR: Kira McFarland, 140. My
20 brother was accused of sexual assault.

21 THE COURT: Okay. As a result of this
22 experience do you feel you can remain fair and
23 impartial?

24 PROSPECTIVE JUROR: I do.

25 THE COURT: Do you feel you can render a fair

1 and impartial verdict based solely on the evidence
2 and the law as the Court will instruct?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you, ma'am, you may take
5 your seat.

6 (In open court.)

7 THE COURT: Ladies and gentlemen, if you would
8 just bear with us one moment, please, we appreciate
9 your patience.

10 Ladies and gentlemen, thank you for your
11 patience. Again I know this is an intensely personal
12 question, we don't want anyone to suffer any
13 embarrassment. So if you need to speak with the
14 Court privately, make me aware of it and we will
15 accommodate you immediately.

16 Has there been any member of the panel or a
17 member of your family ever been the victim of sexual
18 assault, if so please stand at this time.

19 Ma'am, do you wish to speak with me openly or
20 do you want to do it privately?

21 PROSPECTIVE JUROR: Privately.

22 THE COURT: If you would approach for me,
23 please.

24 (Whereupon, the following discussion was held
25 at the bench.)

1 THE COURT: Yes, ma'am. If you would tell us
2 your name and your juror number.

3 PROSPECTIVE JUROR: Shannalee Roan, 188.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR: My son was molested.

6 THE COURT: The victim?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Ma'am, as a result of this
9 experience do you feel you can remain fair and
10 impartial?

11 PROSPECTIVE JUROR: Honestly, I don't know.

12 THE COURT: Well there is no right or wrong
13 answer. I just need you to search yourself and to
14 the best of your ability tell me yes or no, again
15 there being no right or wrong answer.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Do you feel you can render a
18 verdict based solely on the evidence as it will be
19 presented and on the law as the Court will instruct?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: You may take your seat, ma'am. We
22 appreciate your candour. I know that was difficult.

23 (In open court.)

24 THE COURT: Is there any member of the panel
25 who currently has family member incarcerated in a

1 prison. If so please stand at this time.

2 THE COURT: Yes, ma'am. Tell me your name and
3 your juror number.

4 PROSPECTIVE JUROR: Mary Edwards, 56.

5 THE COURT: If you would remain standing.

6 Yes, ma'am.

7 PROSPECTIVE JUROR: Number 32, Joan Carter.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR: Pam Adams, 3.

10 THE COURT: As a result of these experiences,
11 do you all feel that you can remain fair and
12 impartial and render a fair and impartial decision in
13 this case based solely on the evidence as it will be
14 presented and on the law as the Court will instruct?

15 Number 56?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: Thank you, ma'am, you make take
18 your seat.

19 Number 32?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: Thank you, ma'am, you may take
22 your seat.

23 THE COURT: Number 3?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Thank you, ma'am, you may take

1 your seat.

2 Does any member of the panel know of any
3 reason whatsoever why he or she should not serve as a
4 juror in this case, with particular emphasis being
5 placed on your ability to be fair and impartial to
6 both the state and the defense, if so please stand at
7 this time.

8 Is there any member of the panel who for moral
9 or philosophical or religious reasons feels that it
10 would prevent them from being fair and impartial, if
11 so please stand at this time.

12 Are there any additional questions from the
13 state?

14 MR. SIMPSON: None, Your Honor.

15 THE COURT: From the defense?

16 MR. KING: Your Honor, I think I may have
17 additional questions in my voir dire.

18 THE COURT: Approach.

19 (Whereupon, a discussion was held at the bench
20 off the record.)

21 THE COURT: Anything further before we proceed
22 with the jury selection from the state?

23 MR. SIMPSON: Nothing from the state, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. KING: No, Your Honor.

2 THE COURT: Ladies and gentlemen, if you would
3 follow as my bailiff is going to demonstrate for me.
4 If your name is called, please bring all of your
5 personal belongings, come forward as he is doing, and
6 stand in front of the podium and then turn back
7 forward and face your fellow jurors.

8 If you are selected for the jury you will be
9 seated in the jury box, if not we will sent you back
10 into the panel. I know this is a small courtroom,
11 it's a little cramped. If you come from the middle
12 of the bench, if everyone else will slide down and
13 let that person be seated on the end of the pew so
14 that you won't have to be stepping over one another
15 again.

16 Madam Clerk. Strikes are 10 and 5. Madam
17 Clerk you may proceed.

18 THE CLERK: Juror number 78, Carol Greve.
19 What say you for the state?

20 MR. SIMPSON: Please seat the juror.

21 THE CLERK: What say you for the defendant?

22 MR. KING: Please seat this juror.

23 THE CLERK: Madam juror, if you would please
24 have a seat in the jury box you have been selected
25 for the trial of this case.

1 Juror number 91, David Hill.

2 What say you for the state?

3 MR. SIMPSON: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MR. KING: Please seat this juror.

6 THE COURT: Mr. Juror, please have a seat in
7 the jury box you have been selected for the trial of
8 this case.

9 Juror number 197 April Skinner.

10 What say you for the state?

11 MR. SIMPSON: Please seat this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please excuse this juror.

14 THE CLERK: Ma'am, please have a seat back out
15 in the audience, you have been excused from the trial
16 of this case.

17 Juror number 272, Frank Riccio.

18 What say you for the state?

19 MR. SIMPSON: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please excuse this juror.

22 THE CLERK: Please have a seat back out in the
23 audience, you have been excused from the trial in
24 this case.

25 Juror 149, Bradley Miller.

1 What say you for the state?

2 MR. SIMPSON: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MR. KING: Please seat this juror

5 THE COURT: Sir, please have a seat in the
6 jury box you have been selected for the trial of this
7 case.

8 Jury number 231. Laura Webb.

9 What say you for the state?

10 MR. SIMPSON: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. KING: Please excuse this juror.

13 THE CLERK: Please have a seat out in the
14 audience you have been excused from the trial in this
15 case.

16 Juror number 217, Michael Thompson.

17 What say you for the state?

18 MR. SIMPSON: Please strike this juror.

19 THE CLERK: Sir, please have a seat back out
20 in the audience. You have been excused from the
21 trial in this case.

22 Jury number 45, Sharon Costa (sic).

23 What say you for the state?

24 MR. SIMPSON: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MR. KING: Please seat this juror.

2 THE CLERK: Please have a seat in the jury
3 box, ma'am, you have been selected for the trial in
4 this case.

5 Juror number 219, Roger Trudeau.

6 What say you for the state?

7 MR. SIMPSON: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK: Please have a seat in the jury box
11 you have been selected for the trial of this case.

12 Jury number 71, Doreen Garrison.

13 What say you for the state?

14 MR. SIMPSON: Please seat this juror.

15 THE CLERK: What say you for the defendant?

16 MR. KING: Please excuse this juror.

17 THE CLERK: Please, ma'am, have a seat back in
18 the audience, you have been excused from the trial in
19 this case.

20 Jury number 55, Carolyn Dodd.

21 What say you for the state?

22 MR. SIMPSON: Please seat this juror.

23 THE COURT: What say you for the defendant?

24 MR. KING: Please seat this juror.

25 THE CLERK: Please, ma'am, have a seat in the

1 jury box, you have been selected for the trial of
2 this case.

3 Jury number 92, Timothy Hiott.

4 What say you for the state?

5 MR. SIMPSON: Please seat this juror.

6 THE CLERK: What say you for the defendant?

7 MR. KING: Please seat this juror.

8 THE CLERK: Please have a seat in the jury
9 box, you have been selected for the trial of this
10 case.

11 Juror Number 196, James Sickle.

12 What say you for the state?

13 MR. SIMPSON: Please excuse the juror.

14 THE CLERK: Please, sir, have a seat back in
15 the audience, you have been excused from the trial in
16 this case.

17 Juror number 63, Russell Floyd.

18 What say you for the state?

19 MR. SIMPSON: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please seat this juror.

22 THE COURT: Please, sir, have a seat in the
23 jury box, you have been selected for the trial of
24 this case.

25 Juror 207 Peter Spitz.

1 what say you for the state?

2 MR. SIMPSON: Please excuse this juror.

3 THE CLERK: Sir, please have a seat back out
4 in the audience, you have been excused from the trial
5 in this case.

6 Juror number 32, Joan Carter.

7 what say you for the state?

8 MR. SIMPSON: Please seat this juror.

9 THE CLERK: what say you for the defendant?

10 MR. KING: Please seat this juror.

11 THE COURT: Please have a seat in the jury
12 box, you have been selected for the trial of this
13 case.

14 Juror 128, Charlene Mahaffey.

15 what say you for the state?

16 MR. SIMPSON: Please seat this juror.

17 THE CLERK: what say you for the defendant?

18 MR. KING: Please excuse this juror.

19 THE CLERK: Please, ma'am, have a seat back in
20 the audience, you have been excused from the trial in
21 this case.

22 Juror number 22, Nathaniel Blake.

23 what say you for the state?

24 MR. SIMPSON: Please seat this juror.

25 THE CLERK: what say you for the defendant?

1 MR. KING: Please seat this juror.

2 THE CLERK: Please have a seat in the jury
3 box, sir, you have been selected for the trial of
4 this case.

5 Juror number 134, Sarah Masterson.

6 What say you for the state?

7 MR. SIMPSON: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KING: Please excuse this juror.

10 THE CLERK: Madam juror, please have a seat
11 back in the audience, you have been excused from the
12 trial in this case.

13 Jury number 70, Sarah Singleton.

14 What say you for the state?

15 MR. SIMPSON: Please seat this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KING: Please excuse this juror.

18 THE CLERK: Please have a seat back in the
19 audience, you have been excused from the trial in
20 this case.

21 Jury number 243, Sandra Wray.

22 What say you for the state?

23 MR. SIMPSON: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KING: Please seat this juror.

1 THE CLERK: Please have a seat in the jury
2 box, ma'am, you have been selected for the trial of
3 this case.

4 Juror number 277, Jeremy Medlin.

5 What say you for the state?

6 MR. SIMPSON: Please excuse this juror.

7 THE CLERK: Sir, please have a seat back in
8 the audience. You have been excused from the trial
9 of this case.

10 State has one strike remaining.

11 Juror number 8, Kimberly Austin.

12 What say you for the state?

13 MR. SIMPSON: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MR. KING: Please excuse this juror.

16 THE CLERK: Please, ma'am, have a seat back in
17 the audience, you have been excused from the trial in
18 this case.

19 Juror number 270, Jerilyn Muhlhausen.

20 What say you for the state?

21 MR. SIMPSON: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please excuse this juror.

24 THE CLERK: Please have a seat back in the
25 audience, you have been excused from the trial in

1 this case.

2 Defendant has one strike remaining.

3 Jury number 246, Bonnie Yon.

4 What say you for the state?

5 MR. SIMPSON: Please seat this juror.

6 THE CLERK: What say you for the defendant?

7 MR. KING: Please seat this juror.

8 THE CLERK: Please, ma'am, have a seat in the
9 jury box, you have been selected for the trial of
10 this case.

11 THE COURT: One alternate, strikes are one and
12 two. Is that acceptable to the state?

13 MR. SIMPSON: Yes, Your Honor.

14 THE COURT: To the defense?

15 MR. KING: Yes, Your Honor.

16 THE COURT: Please proceed.

17 THE CLERK: Juror number 161, Steven Nesbit.
18 What say you for the state?

19 MR. SIMPSON: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please seat this juror.

22 THE CLERK: Please have a seat in the jury
23 box, you have been selected for the trial of this
24 case.

25 THE COURT: Any motions regarding selection of

1 the jury from the state?

2 MR. SIMPSON: No, Your Honor.

3 THE COURT: From the defense?

4 MR. KING: No, Your Honor.

5 THE COURT: To the remainder of the panel, you
6 are excused for the rest of the day, however we need
7 you to call the jury information line after six
8 o'clock this evening for further instructions. I do
9 anticipate that I will be selecting another criminal
10 jury in the morning.

11 So it is likely that you all will have to come
12 in the morning for jury section. Although we will
13 not be starting that trial that I'm selecting the
14 jury for until Wednesday.

15 Have a wonderful day. We appreciate your
16 patience. You're excused with the Court's thanks.

17 (Whereupon, the prospective jurors exit the
18 courtroom.)

19 Ladies and gentlemen, you have been selected
20 for the case of the State of South Carolina versus
21 Daniel Jenkins. If you would bear with us a moment,
22 I need to talk with the attorneys about scheduling.
23 I anticipate we will be breaking for lunch and then
24 restarting after lunch with the Court's opening
25 instruction as well as the open arguments of the

1 attorneys.

2 I have another matter in a separate case that
3 I also need to deal with, it's probably going to take
4 about 30 minutes. We may start a little later than
5 we normally would. But if you all would bear with me
6 while I get that scheduling straight I would
7 appreciate it.

8 I would prefer that we wait for you all then
9 for you all to come back earlier than we need you and
10 for you all to have to wait. So if you would go with
11 the bailiffs for me please. Please don't discuss the
12 case in any manner whatsoever.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: How long do you anticipate your
15 first witness?

16 MR. SIMPSON: That's hard to tell.

17 THE COURT: I won't hold you to it. I need to
18 know for scheduling.

19 MR. SIMPSON: For our direct possibly up to an
20 hour. For our direct only.

21 THE COURT: I would assume the rest of your
22 witnesses are lengthy?

23 MR. SIMPSON: The rest of our witnesses are
24 rather quick, actually.

25 THE COURT: Do you plan to call all of them?

1 MR. SIMPSON: I do, but there's a substantial
2 number of witnesses that are chain type witnesses,
3 their testimony should be very quick.

4 THE COURT: Okay. And, Mr. King, do you plan
5 to call all of the witnesses that you have listed?

6 MR. KING: No, Your Honor. Two of them are
7 consultants that I don't anticipate calling. But I
8 put them on there out of an abundance of caution.

9 Obviously Mr. Jenkins may testify. That would
10 probably be lengthiest that I would put up if Mr.
11 Jenkins testifies.

12 THE COURT: Okay. I just needed to ask for
13 scheduling. You all aren't bound by that, I need to
14 have some idea.

15 (Whereupon, another matter was discussed in an
16 unrelated case.)

17 THE COURT: Any exception to swearing the
18 panel before I let them go to lunch from the state?

19 MR. SIMPSON: Not from the state.

20 THE COURT: From the defense?

21 MR. KING: No, Your Honor.

22 THE COURT: Please bring in the panel.

23 (Whereupon, the jurors enter the courtroom.)

24 THE COURT: Thank you, ladies and gentlemen,
25 if you would please stand and raise your right hand

1 to be sworn.

2 Madam Clerk, you may proceed.

3 (Whereupon, the jury panel is sworn in by the
4 Clerk.)

5 THE COURT: Thank you, you may take your
6 seats.

7 Ladies and gentlemen, we are going to go ahead
8 and break for lunch. As I indicated, I have another
9 hearing that I have to take care of prior to lunch --
10 prior to resuming your trial. It should take us
11 about 15 minutes, but we are going to resume your
12 trial at 2:30. We would ask that you be prompt in
13 returning.

14 When you return, please elect your foreperson.
15 Your foreperson is the person that fills out the
16 verdict form and writes out any questions during jury
17 deliberations. It is purely an administrative
18 function and your foreperson does not have any
19 greater voice or vote than you do. Again, I
20 emphasize it is merely an administrative function.

21 During that process, however, please do not
22 speculate about what you think this case may or could
23 be about. Don't speak about it in any manner
24 whatsoever, that would be improper. The alternate
25 may observe the election process but is not allowed

1 to vote.

2 Once you've elected that person, please write
3 their name and juror number down on the pad that is
4 provided in the jury room.

5 Also during the break please do not discuss
6 among yourselves or with anyone else what you think
7 this case may or could be about. When you return to
8 the courthouse, please don't allow yourselves to
9 speak to anyone other than someone you know to be a
10 fellow juror.

11 Again I would hate for someone to observe a
12 conversation between you and a third party and assume
13 that you're talking improperly about the case because
14 unwittingly you could be talking to a witness or a
15 party without again realizing it. People look very
16 different in the courtroom than they look in the
17 lobby or parking garage or restaurant.

18 Also please do not allow yourselves to be
19 exposed to any media coverage about this case. That
20 includes anything that could be found on the radio,
21 television, newspapers, Internet or otherwise. And,
22 please, you are strictly admonished not to do any
23 independent research of any type about any matter
24 involved in this case on the Internet. That includes
25 any kind of Google searches, ASK.com or otherwise.

1 You are strictly bound as the fact finders to
2 consider only the evidence that will be presented in
3 this courtroom. So I would ask that you strictly
4 abide by those instructions.

5 I hope that you have a good lunch and we will
6 see you at 2:30. You will return directly to your
7 jury room, the bailiff will show you how to do that.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Anything further before we break
10 for lunch from the state?

11 MR. SIMPSON: Your Honor, for purposes of
12 scheduling witnesses, would you think that having our
13 first witness as well as the Neil v Bigger hearing
14 would be sufficient?

15 THE COURT: I think you need to have enough
16 witnesses to take us through 5:00, 5:30.
17 Overestimate, don't underestimate.

18 MR. SIMPSON: Yes, Your Honor.

19 THE COURT: That hearing is not going to take
20 15 minutes.

21 MR. SIMPSON: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Okay, anything further from the defense before
24 we break for lunch?

25 MR. KING: No, Your Honor.

1 THE COURT: You all have a good lunch, see you
2 at 2:30.

3 MR. SIMPSON: Thank you, Your Honor.

4 MR. KING: Thank you, Your Honor

5 (Whereupon, a recess was taken.)

6 THE COURT: Is the State ready to proceed
7 regarding Daniel Jenkins?

8 MR. SIMPSON: We are, Your Honor.

9 THE COURT: Is the defense ready to proceed?

10 MR. KING: Yes, Your Honor.

11 THE COURT: The jury selected number 219, Mr.
12 Trudeau, as their foreperson.

13 (Whereupon, State's Exhibit Nos. 1 and 2 are
14 marked for identification.)

15 MR. SIMPSON: Your Honor, State's Exhibit 1 is
16 the overhead map of the incident area. I believe
17 that's going to be admitted without objection, we'd
18 like to go ahead and admit that.

19 THE COURT: Any objection?

20 MR. KING: No, Your Honor.

21 THE COURT: Marked and admitted without
22 objection.

23 (Whereupon, State's Exhibit No. 1 is admitted
24 into evidence.)

25 THE COURT: Is there anything else before we

1 proceed?

2 MR. SIMPSON: None from the State, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. KING: No, Your Honor.

5 THE COURT: Make sure all of the matters that
6 are subject of the motions, that being motion to
7 suppress the DNA analysis and motion to suppress the
8 identification and the motion regarding prior sexual
9 conduct, that you make me aware of so that we can
10 take it up in-camera and create a proffer before
11 proceeding. It's not to be mentioned in opening
12 arguments at all whatsoever.

13 MR. SIMPSON: Understood, Your Honor.

14 MR. KING: Yes.

15 THE COURT: Please bring in the panel.

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Thank you, ladies and gentlemen, I
18 hope you had a good lunch. We apologize. My
19 previous hearing ran over a little longer than we
20 anticipated.

21 Ladies and gentlemen, you have been selected
22 for the case of State of South Carolina versus Daniel
23 Jerome Jenkins, the defendant. What I will now say
24 is intended to serve as an introduction to the trial
25 of this case. My remarks are not an instruction on

1 the law, I will instruct you on the law applicable to
2 this case at the end of the trial before you retire
3 to deliberate, and to determine and consider your
4 verdict.

5 This is merely an explanation of the procedure
6 that we will follow in the trial of this case so that
7 you may better understand what is happening.

8 During the course of this trial you will be
9 given the opportunity to take notes, and I will give
10 you some instructions regarding that at the
11 conclusion of the case.

12 However, if you have a notebook go ahead put
13 your juror number on the sticker that is on the front
14 of that pad so that you will be able to identify your
15 notes. Again I will give some additional
16 instructions regarding note-taking at the conclusion
17 of the instruction.

18 The defendant is charged by an indictment
19 filed with this Court with the crime of criminal
20 sexual conduct in the first degree, the elements of
21 which I will you explain to you at the conclusion of
22 the trial. The indictment is simply the charge by
23 which this case is brought into court, and it is not
24 in any sense evidence of the allegations it contains.

25 The defendant has pled not guilty to the

1 indictment. The State therefore has the burden of
2 proving each of the elements of the indictment beyond
3 a reasonable doubt. And it will be your duty, ladies
4 and gentlemen, to decide whether the State has met
5 that burden or not.

6 Your purpose as jurors is to find and
7 determine the facts. You are the sole judges of the
8 facts in this case. If at any time I make any
9 comment regarding the facts, you must disregard it.
10 You are to determine the facts from the testimony you
11 hear and the other evidence introduced in court. It
12 is up to you to determine the inferences you feel may
13 be properly drawn from the evidence.

14 It is especially important that you perform
15 your duty of determining the fact diligently and
16 conscientiously because ordinarily there is no way to
17 correct an erroneous determination of facts made by a
18 trial jury.

19 On the other hand, and with equal emphasis,
20 the same law that makes you the judges of the facts
21 makes me the judge of the law. The law as given by
22 the Court is the only law you may consider. You must
23 accept and follow it, even though you may disagree
24 with me about what the law is or what the law should
25 be.

1 I cannot tell you what the facts are and you
2 cannot disagree with the Court as to what the law is
3 or what the law should be. Your responsibility is to
4 take the law as I instruct you and apply it to the
5 facts as you find them from the testimony of the
6 witnesses and any other evidence that is introduced.
7 After doing that you will render your verdict, a true
8 and just verdict under the solemn oath that you have
9 just taken as jurors in this case.

10 Until I advise you to begin your deliberations
11 you must not discuss this case with anyone, including
12 your fellow jurors, friends, family members and
13 anyone involved in the case. After the case is
14 submitted to you, you must discuss it only in your
15 jury room among your fellow jurors.

16 The attorneys and the parties have been
17 advised that they should not speak with you at all,
18 so if you should see them in the lobby or the garage
19 or otherwise and they do not speak with you, please
20 don't think they're being unfriendly, they're simply
21 strictly following the Court's instruction.

22 During the trial you are strictly instructed
23 that you are not to read, listen to or watch any news
24 reports about this case. This includes anything that
25 may be in the newspaper or on the Internet, radio or

1 television. As I instructed previously you are not
2 to do any independent research or any kind of
3 searches on the Internet on your own.

4 You must not consider anything that you may
5 have read or heard about this case outside of the
6 courtroom, whether before or during the trial. It is
7 important and essential that you keep an open mind
8 and not decide any issue in this case until all of
9 the evidence has been presented, the parties have
10 made their closing arguments, and I have instructed
11 you on the law applicable to this case.

12 It is your solemn responsibility to determine
13 the guilt or innocence of the defendant. And your
14 verdict must be based solely on the evidence as it is
15 presented to you in this trial, and on the law as I
16 will instruct you during and at the close of this
17 trial.

18 Now in just a moment the solicitor will make
19 an opening statement in which he will explain to you
20 what he believes the issues to be in this case. The
21 attorney for the defendant may also make an opening
22 statement, although he is not required to do so.

23 what the attorneys tell you during their open
24 statements is not evidence, it is only their
25 contention as to what they believe the evidence will

1 show in this case. I would ask that you give them
2 your undivided attention, but remember that what they
3 say is not evidence.

4 The evidence in this case will be presented to
5 you by the testimony of sworn witnesses from the
6 witness stand and/or by exhibits that may be
7 introduced into evidence. From time to time during
8 the trial you may hear one of the attorneys say, I
9 object. Just as in sports, business or any other
10 structured activity there are certain rules that we
11 must obey in the presentation of evidence.

12 These rules have a definite purpose. They
13 ensure that you receive the most trustworthy and
14 reliable evidence available to you. The objection is
15 a procedure that is used to call a possible violation
16 of these rules to my attention as the Judge of this
17 Court. And for this reason you should not hold an
18 attorney's objection against them, nor should you
19 conclude from the Court overruling or sustaining an
20 object that I favor one side or the other.

21 Also, from time to time you may hear one of
22 the attorney's say something like, Your Honor, we
23 have a matter of law, or they may ask me to approach
24 the bench, or I may ask them to approach the bench.
25 The reason we do this is because when we are

1 discussing matters of law, sometimes it might be
2 necessary for me to exclude you from the courtroom or
3 for us to have bench conferences.

4 And the reason we do this is because the law
5 does not allow me to have an opinion about the facts.
6 And sometimes when I am discussing matters of law
7 with the attorneys it may be necessary for me to
8 make a comment regarding the facts in conjunction
9 with ruling whether a particular statute, rule or
10 procedural rule or evidentiary rule applies. For
11 this reason we exclude you from the courtroom so that
12 in no way will you be influenced by anything the
13 Court may say or do in connection with the facts of
14 this case.

15 Ladies and gentlemen, in determining what the
16 true facts are in this case, you must decide whether
17 or not the testimony of a witness or witnesses is
18 believable. It will be my responsibility to rule as
19 a matter of law as to whether certain testimony is
20 admissible at all or not. But once the testimony is
21 admitted, whether or not you believe it is solely a
22 matter for you to determine as the fact-finders in
23 this case.

24 In deciding whether to believe a witness you
25 have the right to consider the interest of any

1 witness, the bias of any witness, the prejudice of
2 any witness, the opportunity for the witness to have
3 seen the matters and things about which the witness
4 may testify, and the way the witness acts on the
5 witness stand, what we commonly refer to as demeanor.

6 You have a right to consider anything that is
7 in the record that will help you evaluate the
8 testimony of the witnesses. That means that it is
9 your duty to pay close attention to the witnesses, to
10 listen to them, to pay close attention to the
11 attorneys and to the Court.

12 Although we know sometimes it is very
13 difficult, please do not allow your thoughts to
14 wander, but give strict attention to the testimony in
15 this case so that at the end of all of the testimony,
16 after arguments of counsel and the instructions on
17 the law as given by the Court, you will then be in a
18 position to determine what the true facts are and
19 thus apply the law to those facts and rendered a true
20 and just verdict in this case.

21 During the course of this trial you will be
22 given the opportunity to take notes. Note-taking is
23 a privilege that you may chose to exercise or chose
24 not to exercise. Please do not feel compelled to
25 take notes. Not everyone finds note-taking helpful

1 to them.

2 If you should decide to take notes, please
3 don't try to record everything that is said. Even a
4 slow speaking person speaks at the rate of 200 to 250
5 words a minute, so it's physically impossible for you
6 to take down what is being said. And as I indicated
7 as the fact-finder it is absolutely essential that
8 you rely on your powers of observation in observing
9 the witnesses. So if you should decide to take
10 notes, please do not allow note-taking to become a
11 distraction to you.

12 During breaks and recesses your notes will
13 have to be left in the courtroom, and the reason for
14 that is to ensure that there is no premature
15 deliberation regarding the facts of this case.

16 Also, you may want to try to keep an outline
17 of the main points that are being made, and the
18 general arguments that are being made to you so that
19 you can use them later to refresh your memory.

20 Please note that your notes are for your
21 individual and your specific purposes. They are not
22 to be shared with anyone else. They are only to be
23 used for the purpose of refreshing your own memory.
24 And please be reminded that notes taken by other
25 jurors should not be considered any more reliable

1 than the individual recollections of other jurors.
2 The other jurors' recollections should be considered
3 just as reliable as notes taken by any other juror.

4 Mr. Foreman, it will be your added duty to
5 make the Court aware of any questions that the jury
6 has during deliberation, and to fill out the verdict.
7 But I will give you further instructions regarding
8 that at the conclusion of the trial.

9 In order to preserve everyone's rights I will
10 take an opportunity to see if any of the attorney's
11 have any exception to what the Court has said by way
12 of opening instructions.

13 Any exceptions from the State?

14 MR. SIMPSON: None, Your Honor.

15 THE COURT: From the defense?

16 MR. KING: No, Your Honor.

17 THE COURT: Thank you very much, you may
18 proceed.

19 MR. SIMPSON: Thank you, Your Honor, may it
20 please the court.

21 THE COURT: Yes.

22 MR. SIMPSON: Good afternoon, ladies and
23 gentlemen. My name is Chad Simpson, along with Chris
24 Neeley I have the special honor in this case to
25 represent the State of South Carolina against Daniel

1 Jenkins, the defendant seated here, who is charged
2 with criminal sexual conduct in the first degree.

3 That is the charge. I will have more of an
4 opportunity later to talk about the elements of that
5 offense. It's a charge that we commonly refer to as
6 rape.

7 And because of the nature of that charge,
8 there is going to be some difficult things for you to
9 do during this trial. You are going to have to hear
10 the story of the young woman that I believe is going
11 to be very difficult for you to hear. We are going
12 to have to discuss some things that are going to be
13 difficult for you to think about.

14 One thing that I believe that is not going to
15 be difficult for any of you at the conclusion of this
16 trial is to find the defendant guilty as charged.

17 H.M. is a young woman, 31 years old,
18 that lived at . For those of
19 familiar with the downtown area Huger Street is over
20 near the Citadel, close to Hampton Park, just off
21 Rutledge near what used to be, although it's closed
22 now, the Jabbers Grocery Store which is a bit of a
23 Landmark in Charleston.

24 And she had lived there for about five years
25 when this incident took place. And that's important

1 because we all know when you have lived somewhere for
2 an extended period of time you get to know not only
3 your neighbors, but also the characters from the
4 neighborhood as well.

5 she would get rides to work, sometimes drive
6 to work, but also sometimes ride the bus. To do that
7 she would walk down to Rutledge Avenue which was a
8 place people walk and congregate on the street out
9 there.

10 It was through that that she got to know the
11 defendant. I use that word know very, very lightly.
12 They were not friends, they were not even
13 acquaintances, but she did recognize the defendant
14 and know who he was because from time to time they
15 would speak and exchange some words. You'll hear
16 about those from her testimony.

17 words like, how are you doing. Little
18 flirtations from time to time, let's go get a beer,
19 to which [H.M.] would be very polite with him, no,
20 no thanks, good to see you, and keep walking.

21 she even learned the defendant's name. And
22 when I say name I don't mean his actual name Daniel
23 Jenkins, I mean the nickname that he was referred to
24 on the streets and that nickname is Black. So the
25 defendant wasn't a big part of her life, wasn't a

1 friend, but she recognized him, she knew who he was.

2 On April 5, 2006, H.M. went about her
3 day. She went to work, she worked at that time
4 you'll hear at a bakery. She got off work late in
5 the afternoon, she did what myself and many of you
6 might do when you get off work she had a couple beers
7 to relax. She went home early in the evening, she'll
8 tell you around 8 o'clock. And after a long day at
9 work, having a couple of drinks, she laid down on the
10 couch and fell asleep.

11 Later on she was awoken by a knock at her
12 door. Wasn't uncommon for friends to stop by, so she
13 went and opened the door. And as she opened that
14 door, the defendant, someone she recognized stepped
15 in to her foyer as she opens the door.

16 H.M. will tell you that this made her
17 uncomfortable, but it didn't necessarily make her
18 afraid at this point because again she recognized the
19 defendant, assumed that he was just there to ask her
20 for beer money which in fact he did. He said, let's
21 go get a beer. She said no. He said, well why don't
22 you give me some money so that I can get a beer. She
23 said no.

24 And at that point, ladies and gentlemen, he
25 forced himself upon her. And you'll hear, the story

1 from here on out you will hear the things that he
2 said to her as he was doing just that. And I'll
3 leave it to [H.M.] to tell you that.

4 [H.M.] reacted how anyone would in that
5 situation. Initially she reached for her phone, it
6 was a white portable phone, she tried to call 911.
7 The defendant quickly grabbed that phone away from
8 her hand. Second thing she did is obviously try to
9 resist physically, resisted the defendant.

10 At that time the defendant grabbed a green
11 candle holder off of the coffee table, it was being
12 used as an ashtray, and began beating her on top of
13 the head with the ashtray. She tried trickery, which
14 woman are often taught to try in such a situation.
15 She said, you know, you better quit my boyfriend is
16 going to be home any minute. She did not have a
17 boyfriend at that time, but at that time she was
18 trying anything she could to get the defendant off of
19 her.

20 But all of those attempts were unsuccessful,
21 and the defendant ripped off her underwear, threw it
22 on the floor and forced himself inside her and
23 ejaculated.

24 After completing that act the defendant then
25 left. You will hear that he threatened her, if you

1 tell anyone about this I will tell kill you, and left
2 the residence. And as if that story wasn't sad
3 enough up to this point, here it gets even more
4 tragic and more horrific in the night of this young
5 girl.

6 H.M. reacted instantaneously after he left,
7 the way many of us would, I need to call the police,
8 I'm going to call the police; she was frantic, she
9 was hysterical. Looking about her apartment to call
10 the police, but as you recall she could not find her
11 phone, the phone is missing. The last time she had
12 seen it the defendant had ripped it from her.

13 Not being able to find her phone she threw on
14 the clothes that she grabbed that just happened to be
15 in her immediate area and fled the house and ran down
16 Huger Street for help. At this point she had been
17 beaten in the face with an ashtray, she had blood,
18 visible injuries on her face, she was dressed sort of
19 miss-matched. And as she ran down Huger Street, she
20 tried to flag down the cars as they passed but no one
21 stopped.

22 She made it all the way down Huger to
23 Rutledge, at this time it was the Jabbers parking
24 lot, and finally found someone who tried to offer
25 help and it was a lady she didn't know, a lady who

1 appeared to perhaps be homeless who came up to her
2 and said, oh my God, what happened to you, what
3 happened to you?

4 Before she could frantically explain to this
5 woman what had happened to her, she had to go through
6 almost an additional assault because someone else
7 came up. Someone else came up who saw her talking to
8 a stranger, and that person was the defendant.

9 And the defendant came up, pretended not to
10 know what happened to her, said, oh, what happened to
11 you? Grabbed her arm. She'll tell you he grabbed it
12 not in a way that anyone could tell, but grabbed it
13 from behind and held it quite firmly and pulled her
14 over to a house across the street on Rutledge.

15 At that point he went to a faucet, splashed
16 water on her face. She will tell you she was
17 obviously hysterical, could hardly speak, but I need
18 a phone, I just need a phone, I just need a phone.
19 And the defendant said, oh, here, I have a phone and
20 had her phone. She grabbed the phone from him,
21 immediately ran back to her house and called 911.

22 Ladies and gentlemen, that's the story.
23 That's the story that you'll hear from the witness
24 stand here from the person that experienced it,
25 H.M.. And that's one type of evidence that

1 is called testimonial evidence.

2 And time and again in this courtroom cases are
3 decided on nothing but testimonial evidence. It's up
4 to you, and often in those cases, to decide who you
5 believe and if you believe what you hear from the
6 stand.

7 In this case the testimonial evidence that you
8 will hear will be enough, I'm confident of that.
9 when you hear [H.M.] tell her story about that
10 night, that will be enough for you, you will believe
11 her, that will be enough to find the defendant
12 guilty.

13 Enough, but that's not all you're going to get
14 in the case. There is a second type of evidence as
15 well and we call that physical evidence. What
16 physical evidence does is make a jury's job easier.
17 Because rather than sit here and decide who you
18 believe and who you don't believe from the stand, you
19 get to look at physical evidence and ask yourself,
20 does this physical evidence match with the testimony
21 you heard and is the answer to that question of who's
22 telling the truth on the stand.

23 Ladies and gentlemen, at the conclusion of
24 this trial when you've heard the testimonial evidence
25 and matched it with the physical evidence, there will

1 be a lot of difficult things you will hear in this
2 trial, but it will not be difficult to find the
3 defendant guilty as charged. I thank you very much.

4 THE COURT: Mr. King, you may proceed.

5 MR. KING: Thank you, Your Honor.

6 I introduced myself before, I'm Jason King
7 from the public defender's office representing Danny
8 Jenkins, along with Mr. Reese Stidham in my office.

9 I guess through a chain of events you found
10 yourself sitting in this seat here. And through a
11 chain of events Mr. Jenkins has found himself sitting
12 in a seat over there.

13 And that's not a seat that you want to be
14 sitting in. It is a big deal sitting in that seat.
15 But when you are sitting in that seat, fingers
16 pointing at you, you have been accused of a crime,
17 and this is a particular serious crime he has been
18 accused of.

19 And in a case like this, or a charge like
20 this, it's particularly important that you listen to
21 the Judge on the law, and that you follow the law.
22 And one of the things the law requires is the
23 presumption of innocence. You are going to hear us
24 throw out some legal terms during the trial, but I
25 want you to listen to them carefully because they

1 have real meaning.

2 Sometimes you may have heard things, the
3 phrase the presumption of innocence a lot. So much
4 that you don't think about it so much anymore. Same
5 way as beyond a reasonable doubt. You hear that
6 phrase a lot, you have to think about what it really
7 means.

8 Presumption of innocence, I think of it like
9 if someone had accused a friend, a family member,
10 someone I knew of committing a crime and the initial
11 resistance you feel is that I don't believe that
12 until you prove that to me. There is resistance to
13 believe someone has committed a crime. And that's
14 what the presumption of innocence is. And you are
15 required to do that under the law.

16 Like I said, it's easy to see someone sitting
17 in that chair, hear the charge read, and think that's
18 the end of it. It's far from the end of it. At this
19 stage he is presumed innocent.

20 Evidence must be presented and you make your
21 decision on that based on evidence. There is another
22 thing, emotion can play a role in this as well. And
23 you cannot let emotions play any role in this case.
24 You cannot make any decision based on emotion or fear
25 or anything like that. You've got to use your reason

1 and the evidence.

2 And like I said, in a case or charge like this
3 it's particularly important that you not make a
4 decision based on emotions or make a decision ahead
5 of time. You have a duty to do. And the law
6 requires to you follow certain rules and the Judge
7 will instruct you on those.

8 And Mr. Jenkins, I and Mr. Jenkins, are asking
9 you to follow those rules and to presume innocence.
10 And the State must prove him guilty beyond a
11 reasonable doubt. So, you should not have any
12 preconceived ideas at this point. And that's all I'm
13 asking you. Thank you.

14 THE COURT: You may proceed.

15 MR. SIMPSON: Your Honor, State calls H.M.

16

17 THE COURT: If the witness would come forward
18 to be sworn.

19 MS. H.M.,

20 after having first been duly sworn to state the
21 truth, the whole truth and nothing but the truth,
22 testified on her oath as follows:

23 THE COURT: You may proceed.

24 MR. SIMPSON: Thank you, Your Honor.

25

DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q [REDACTED] H.M. how old are you?

3 A 34.

4 Q How old were you in April of 2006?

5 A 31.

6 THE COURT: Ma'am, could you speak directly
7 into the microphone for me, thank you. Can you
8 please repeat your last answer?

9 THE WITNESS: 31.

10 THE COURT: Thank you. You may proceed.

11 Q (By Mr. Simpson) Where do you currently live?

12 A Myrtle Beach, South Carolina.

13 Q Did you used to live here in Charleston?

14 A Yes.

15 Q How long did you live in Charleston?

16 A I have been in the Charleston area since '91.

17 I lived downtown Charleston.

18 Q And where did you live in April of 2006?

19 A [REDACTED]

20 Q Where is that, just in reference to like
21 landmarks, is that near the Citadel?

22 A Right -- right behind Hampton Park.

23 Q [REDACTED] H.M. I'm going to show you what has been
24 already been admitted into evidence as State's
25 Exhibit 1. I'm trying to position this where both

1 you and the jury can see it.

2 Can you recognize that and tell me what that
3 is?

4 THE COURT: Actually we need to put it up
5 there so that I can have a full view of the jury. It
6 will be easier also for her to see it.

7 Ma'am, you may get up if you need to make
8 reference to the map. Please speak clearly for us.

9 THE WITNESS: Okay.

10 Q (By Mr. Simpson) Is your residence on that
11 map, H.M.

12 A It is, yes.

13 Q And that's -- can you just point to that again
14 and hold it for the members of the jury.

15 A [REDACTED] is right here.

16 Q And did anyone live there with you?

17 A No.

18 Q You can sit back down.

19 A No, not at that time.

20 Q And how long did you live there approximately?

21 A Six years.

22 Q Where did you work at that time?

23 A Rising High Bakery, also downtown Charleston.

24 Q About how many days on average did you work a
25 week?

1 A Five.

2 Q How would you typically get back and forth to
3 work?

4 A Bicycle or CARTA.

5 Q When you say CARTA, do you mean the bus?

6 A Correct.

7 Q If you could, I hate to get you to hop up
8 again, could you indicate to the jury on that map
9 where you would generally catch the bus?

10 A Right here (indicating.)

11 Q A little off the map there?

12 A I'm sorry?

13 Q It's a little off the map you're saying?

14 A Right. The bus stop, there's one here all
15 along Hampton Park there are stops.

16 Q Okay.

17 A So I could pick up -- there are three stops on
18 that street I would use.

19 Q [REDACTED] before April 5, 2006 had you seen
20 this man sitting at the defense table?

21 A Yes.

22 Q Would you please describe to the jury the
23 circumstances that you had seen him before April 5,
24 2006?

25 A Sure. The grocery store was in walking

1 distance. You can see on the map.

2 Q Is that Jabbers?

3 A Jabbers.

4 Q That's the large building on the map?

5 A Right, even too close for me to ride a bike.

6 I would walk there any given day. And most of the
7 time there were people around the store, the front of
8 the store.

9 Not too much inside, but just people that
10 lived around there I guess hanging out there.

11 Q And had you ever spoken to the defendant
12 before? Had the defendant spoken to you?

13 A Sure, I'd say hello.

14 Q Did you know the defendant's name, by that I
15 mean Daniel Jenkins?

16 A No, I did not.

17 Q What name did you know the defendant as?

18 A They called him Black. And I don't know if he
19 told me himself or I don't know if he introduced me
20 as that. But I was comfortable calling him that. If
21 I saw him, hey, Black. I'm not sure if that's how he
22 introduced himself or if I just heard it from a
23 neighbor.

24 Q And would you say you knew him really well?

25 A No.

1 Q Would you say you were friends?

2 A No.

3 Q He was just someone you would see from time to
4 time and exchange pleasantries?

5 A Right.

6 Q [REDACTED] H.M. at this time we're going to talk
7 about April 5, 2006. I may interrupt you from time
8 to time if I feel I need more details from you. But
9 let's start about that day.

10 Did you work that day?

11 A I worked that day, probably went in my usual
12 time was 8 o'clock.

13 Q Okay.

14 A To between 3:00 and 4:00.

15 Q And what did you do that day when you got off
16 work?

17 A I went home and had a couple of beers with a
18 friend. They left. And I was still in my work
19 clothes. I just fell asleep in my work clothes. I
20 had ordered a pizza and so I was just waiting on that
21 when I fell asleep. And I think that was around 8
22 o'clock.

23 Q Okay. Now when you said, I had a couple of
24 beers, can you give us an idea of maybe how many?
25 From -- you said you got off from 3:00 or 4:00 to

1 8:00?

2 A It was probably four o'clock to eight o'clock,
3 not even a six-pack or somewhere around that.

4 Q Okay. Now you said you remember stopping
5 drinking around 8:00 p.m.?

6 A Yes.

7 Q And you fell asleep on your couch?

8 A Right.

9 Q And what woke you up from falling asleep?

10 A A knock on the door.

11 Q Did you answer it?

12 A Uh-hum. I did.

13 Q And who was it?

14 A It was the person that I had seen on the
15 street.

16 Q Was it the person you knew as Black?

17 A Yes.

18 Q Is that person in the courtroom today?

19 A Yes.

20 MR. KING: Objection, Your Honor.

21 THE COURT: Please approach.

22 (Whereupon, a discussion was held at the bench
23 off the record.)

24 THE COURT: Ladies and gentlemen, you are to
25 disregard the last question and answer. You are to

1 give it absolutely no consideration in your
2 deliberation.

3 You may proceed.

4 Q (By Mr. Simpson) The person who was at your
5 door, what did he say when you opened the door?

6 A Started with, hey, what's going on, that type
7 of thing. What do you say we go get a beer.

8 Q I'm sorry to interrupt you. But when you
9 opened the door, did he enter the residence?

10 A Just about a foot away. There was a foot
11 between us.

12 Q Okay. But did he step into your home?

13 A Not at that moment, no.

14 Q How did you respond when he said, Let's go and
15 get a beer?

16 A I said, no, you know, I'm trying to cut back.
17 I just, no. Pretty much.

18 Q And did he ask you something when you said no?

19 A He said, can you give me some money and I'll
20 go get it. And I said, no, I don't have any. I may
21 have said I even had to write a check for a pizza. I
22 really don't have any cash on me.

23 Q Now had you ever gone to get a beer with this
24 man before?

25 A No.

1 Q Now at what point during this conversation did
2 he enter your house?

3 A No more than a 10 to 20 second conversation
4 about going to go get a beer. And, no, not going to
5 go get a beer. And kind of gave me the impression,
6 you know, I got your back, you know, if you want to
7 walk don't the street and to make me feel safer.

8 Q He said that to you?

9 A He did say that. And as I continued to say
10 no, I stepped back into my living room, in no way
11 pushing him out, but, a little uncomfortable about
12 him coming in.

13 I didn't push him out. And he stepped in
14 somewhat aggressively. And at that point I sat down
15 on my couch and --

16 Q I don't mean to interrupt. How far would you
17 say your living room and the couch, how far are we
18 talking about from the front door?

19 A This podium is closer to me. To this wall,
20 about.

21 Q So if this would be your front door the sofa
22 would be right in here?

23 A Maybe not quite that far.

24 Q And you said your feeling at this time when he
25 entered the house was uncomfortable; is that correct?

1 A That's correct.

2 Q And how did he proceed once he was in your
3 house?

4 A There was no chitchat anymore. Went straight
5 to --

6 Q I know it's difficult. Straight to?

7 A Went straight to -- he just openly said, let
8 me see your pussy. If you don't, I'll kill you.
9 And I said, no. And more of that kind of talk. And
10 I felt I was going to be okay because pretty athletic
11 and I felt I could do this.

12 And I held on to, you know, where my button
13 was as tight as I could. And it didn't, it just
14 didn't work. So I told him, I said, I want to be
15 your friend. Please don't do this. I don't want you
16 to get in trouble. If you do this you will get in a
17 lot of trouble. My boyfriend is coming and he's big
18 and he's going to see through the window.

19 Q So, H.M. when you said you thought you
20 would be okay and you tried, what was the defendant
21 doing that you were trying to stop?

22 A Well, just I had a couple of things on my
23 coffee table and one just happened to be a solid
24 glass candle holder, like you said, that he used as
25 an ashtray. And then that's what he used on my head.

1 And --

2 Q Did you try to resist him when he --

3 A Right. Right, I used my legs. I used my legs
4 and I pulled them up to my waist and tried to push,
5 push with my feet while my hands were on the top of
6 my pants. And I was holding those really tight.

7 Q And at this point -- and I don't mean to
8 backtrack, I know it's difficult -- when he said
9 those words to you, I want to see your pussy, and
10 threatened you, he physically touched you at this
11 point?

12 A Yes.

13 Q And this is on --

14 A He just made his way closer, but he was
15 touching me with his bare hands not with the candle
16 holder.

17 Q Was he on top of you?

18 A I was -- still had my legs, both my feet on
19 the floor when he first approached me.

20 And then I guess I don't know exactly -- I
21 don't know if he pulled me or that part happened
22 really fast between my legs being on the floor and
23 then he was on top of me and continued to use the
24 candle holder on my head.

25 Q Was he hitting you with the candle holder?

1 A He was hitting.

2 Q Where --

3 A I could hear his voice but I could also just
4 hear the sounds of the --

5 Q Sort of the candle holder --

6 A -- candle holder on my head.

7 Q Where was he hitting you with the candle
8 holder?

9 A Mostly all over this part of my head here, and
10 a lot through here. I think that's what made my nose
11 bleed.

12 Q In the face and in the head area?

13 A Uh-hum, the upper head.

14 Q Including up here?

15 A Forehead and ears and mouth.

16 Q At any point did you try to call the police?

17 A I did. I reached for it. I think he threw it
18 on the floor.

19 Q When you say it, what are you referring to?

20 A The telephone. Sorry. It wasn't a cell
21 phone, it was a house phone. So it was pretty big
22 and it was right in sight. I looked right at it and
23 tried to grab it.

24 Q And at that point he took it?

25 A He took it. I didn't see where he threw it

1 but after that I didn't see it.

2 Q [REDACTED] H.M. did he get your clothing off?

3 A He got the lower part of my clothing off.

4 Q And how did that happen?

5 A He ripped it off.

6 Q He --

7 A The pants were like, I believe like a bottom
8 and drawstring. There was no zipper that -- I
9 haven't seen them since that night, but I'm pretty
10 sure they were like that. So they just sort of
11 pulled right off and I happened to be wearing like a
12 thong and he just popped that.

13 Q Popped it?

14 A With his hands like off.

15 Q Ripped?

16 A Yeah, ripped.

17 Q And you said a little earlier about different
18 things you said to try to get him to stop what he was
19 doing. Can you repeat those for the jury? The
20 things about your boyfriend?

21 A Please, please don't do this. My boyfriend is
22 on his way. He should be here any second. I didn't
23 have a boyfriend at that time, I just thought that
24 that would really help.

25 And I don't know if maybe it did help because

1 then he said, you're going to die, you are going to
2 die. And I didn't, so.

3 Q [H.M.] once he had removed the lower portion
4 of your clothing, did he force himself inside of you?

5 A Yes.

6 Q Did he say anything as he was doing that?

7 A Trying not to remember.

8 Q We all understand this is something he said
9 not something you would say.

10 A He made remarks about what is -- why is your
11 pussy so tight, what is wrong.

12 Q [H.M.] did he finish the sexual act that he
13 was performing?

14 A I did not know if he did. But he got up.

15 Q Did he say anything to you after he got up?

16 A He just kept saying, now you know don't tell
17 anyone or I will kill you, and just don't say
18 anything, as he got up. And I was still saying, no,
19 it's okay.

20 Q When he got up did --

21 A For a second I was just thinking, did this
22 really happen. And then I looked in my shirt I had
23 blood on it so I put on a sweatshirt.

24 Q Did he leave after he got up?

25 A He did leave.

1 Q What did you do after he left?

2 A That's when I put on a sweatshirt and shut my
3 two dogs up in my bedroom and locked them in there.
4 And had looked for the phone for maybe three minutes.

5 Q Did you find the phone?

6 A No, I didn't find the phone.

7 Q You described earlier a portable phone?

8 A Right.

9 Q It's not wires going into the wall?

10 A No, it was a portable phone.

11 Q And when you couldn't locate the phone, what
12 did you do?

13 A That's when I put on, you know, I put on my
14 sweatshirt and I went outside. And I kind of ran
15 down. I was almost to the end of, not to the end of
16 Huger Street but to Rutledge.

17 I tried to stop two to three cars, both -- one
18 was a girl probably about my age in a car by herself.
19 And I looked at her and said, help me, and she looked
20 scared to death and just pushed on the gas and sped
21 off. A second car, they didn't stop either.

22 So I thought, well, if I could just get to
23 Jabbers maybe they're still open. Because that was
24 the kind of store that didn't always close like right
25 at 10:00. So I was thinking maybe someone was still

1 there.

2 So that's where I was headed.

3 Q Was there anything on your face as you were
4 running down the street?

5 A There was blood all over it.

6 Q And do you know what part of your body was
7 bleeding at that point?

8 A No. I could feel it in my mouth but I did not
9 know if I had any -- I did not look at myself in the
10 mirror.

11 Q You say you ran towards Jabbers. Did you get
12 to Jabbers?

13 A Well, I looked and they were closed. I got to
14 that parking lot area. I got to where -- to my left.

15 Q And what happened when you got over in the
16 area of Jabbers?

17 A A female came from the right area, just came
18 walking up to me.

19 Q Did you know her?

20 A No.

21 Q Was it a complete stranger?

22 A It was a stranger.

23 Q What did she say to you?

24 A She said, oh, Lordy, what happened to you,
25 girl?

1 Q Did you tell her what had happened?

2 A Before I could get my words out someone else
3 came up.

4 Q And who was that person?

5 A That was Black. Black came up.

6 Q Was that the same person who had just
7 assaulted you in your apartment?

8 A Yes.

9 Q This might seem like a silly question, were
10 you afraid when you saw this person again?

11 A Very afraid.

12 Q And --

13 A I was kind of like a deer in headlights.
14 Again, I have never -- it just seems so surreal. I
15 really felt like, I was, is this really him? And he
16 asked me what happened.

17 Q He asked you what had happened?

18 A Right.

19 Q And what did he do?

20 A He said -- I just started crying. He didn't
21 say anything. He just, what happened to you. And
22 then I was confused on how to answer it so I didn't.
23 I just said I need to use a phone.

24 Q Did he take you somewhere?

25 A He did. He kind of took me by the arm and

1 kind of carried me, not carried me but guided me
2 across the street. And he said, I'll give you your
3 phone if you wash your face off.

4 Q And where were you going to wash your face
5 off?

6 A There was like a spigot, a faucet at the end
7 of some driveway, somebody's driveway.

8 Q And was that -- where was that, still in the
9 area of Jabbers?

10 A Right in front of Jabbers. Right in front,
11 across the street.

12 Q On Rutledge Street?

13 A On Rutledge.

14 Q I hate to have to ask you to step up again.
15 Can you point out on the map to the jury?

16 A Jabbers is right here, and right here is
17 Rutledge. And probably right here, one of these
18 three houses. Not the corner one but a couple down.

19 Q You can sit back down, H.M. thank you.
20 Did you wash your face off in that spigot?

21 A Uh-hum, he helped me. He helped me wash it
22 off. I leaned over and he held my head down and I
23 put the water on it.

24 Q And did he give you your phone back as
25 promised?

1 A He did.

2 Q And what did you do then?

3 A I ran. I think it took me two leaps and I was
4 home. I ran so fast. And then I made it home.

5 Q And what did you do when you got home?

6 A I went inside and instead of staying in there
7 I actually went on the side of my house, it was a
8 tarp covering some things on the side of the house,
9 and I got under the tarp.

10 The reason I did that I was thinking he would
11 return to the house so I hid under there and that's
12 when I called 911.

13 Q H.M. I have just handed you something that
14 has been marked for identification purposes as
15 State's Exhibit 2. Do you recognize that?

16 A Yes.

17 Q First of all, what is that that I just handed
18 to you?

19 A A cassette tape.

20 Q And did you and I listen to that tape prior to
21 your testimony here today?

22 A Yes.

23 Q And is that tape a recorded phone call made by
24 you to 911?

25 A Yes.

1 Q And how do you know that that tape is the tape
2 of your 911 phone call?

3 A I signed it.

4 Q Did I ask you to initial that if it was
5 your --

6 A After I listened to it. I just, you know,
7 saying that it was me on the tape.

8 MR. SIMPSON: Your Honor, at this point I'd
9 like to move State's Exhibit 2 into evidence.

10 THE COURT: Any objection?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Please approach.

13 (Whereupon, a discussion was held at the bench
14 off the record.)

15 THE COURT: Marked for ID only.

16 You may proceed.

17 Q (By Mr. Simpson) H.M. after you called
18 911, did the police arrive?

19 A They did.

20 Q And do you recall them taking some photographs
21 of you that night after they arrived?

22 A Yes.

23 MR. SIMPSON: Your Honor, may I approach?

24 THE COURT: You may.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: Mr. Forman, ladies and gentlemen,
3 I have a matter of law I need to take up with the
4 attorneys, it should be fairly brief.

5 During the break please do not discuss the
6 case in any manner whatsoever. Please leave your
7 notepads in your seats. If anyone wants to go
8 downstairs for a smoke break and or to get some air,
9 please let the bailiffs know. You all can take them
10 down for that purpose. Please do not go beyond 10
11 minutes or so with the actual being downstairs, not
12 altogether.

13 If you will go with the bailiffs for me,
14 please.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Okay, you may proceed.

17 IN-CAMERA EXAMINATION

18 BY MR. SIMPSON:

19 Q [REDACTED] H.M. going back to the assault, you
20 instantly recognized the person that came into your
21 house as the person you know as Black?

22 A Right.

23 Q And did you have a good opportunity to view
24 him as he entered your house?

25 A Yes.

1 Q Was there any doubt in your mind as to who
2 that person, that person was in fact the person you
3 knew as Black?

4 A No.

5 Q Now it's going to seem kind of like a silly
6 question, but what -- would you say you were paying
7 close attention to the person that was in your house?

8 A Definitely.

9 Q [REDACTED] H.M. is that person who entered your house
10 that day present in the courtroom today?

11 A Yes.

12 Q Can you tell the court who that person is?

13 A He is right there.

14 Q After the police arrived, did they let you
15 know that they had a person in custody?

16 A Yes.

17 Q And about how long, if you can remember, from
18 when they arrived did this happen?

19 A Sorry, do you mean the incident at the time
20 between?

21 Q From the time period where the police got
22 there to when they took you to view a suspect, about
23 how long?

24 A Not long at all. I don't think it was even 30
25 minutes.

1 Q And where did they take you to view the
2 suspect?

3 A Jabbers parking lot.

4 Q And as you've already indicated in the map,
5 that's not very far from your house, is it?

6 A No.

7 Q And did the person they have in custody, was
8 that the person who had assaulted you earlier?

9 A Yes.

10 Q And --

11 A They -- they showed me a -- they brought a
12 camera. It's a digital camera.

13 Q Did they also have him?

14 A Yes, they had him. They had him in front of
15 the police car.

16 Q Okay. Did you get a good opportunity to view
17 the person they had in custody?

18 A I did, yes.

19 Q Did you pay attention to that at that viewing
20 as well?

21 A Yes.

22 Q And you ID'd that person as the one who had
23 assaulted you?

24 A Correct.

25 Q And that's the same person that is at the

1 defense table here today?

2 A Right.

3 MR. SIMPSON: Your Honor, I have no further
4 questions of this witness as it relates to Neil v
5 Biggers hearing.

6 THE COURT: Any questions of the witness
7 limited to Neil versus Biggers?

8 MR. KING: Yes, Your Honor.

9 IN-CAMERA CROSS EXAMINATION

10 BY MR. KING:

11 Q H. [REDACTED], how many times would you say you
12 had seen Black before this date?

13 A I saw him probably once a week in passing from
14 the grocery store. But there were periods of time
15 where I didn't see him at all. So I don't mean every
16 week.

17 But it wasn't a -- how do I put it -- wasn't a
18 daily thing. There was no -- I don't know where he
19 lived. I don't know if he -- you know, when I saw
20 him I would say hey. I lived there for a long time
21 and I don't recall him being there the whole time I
22 lived there.

23 Q And you say --

24 A But I may have just not spoken to him before
25 or been introduced to him before, I don't know.

1 Q Can you estimate the number of times you may
2 have seen him?

3 A Nine. Nine, ten times.

4 Q It was always in passing?

5 A In passing, and he was on the porch of my
6 neighbor's house once. That was in passing. I think
7 I walked over and said hello, they were all outside.

8 Q Did you have brief conversations with him as
9 well?

10 A Right.

11 Q And that night you said you had been drinking?

12 A Right.

13 Q Six beers?

14 A Possibly six. That day. I had drank those
15 between 4:00 and 8:00. I wasn't drinking at the time
16 that he came over.

17 Q But that night you had six beers between 4:00
18 and 8:00?

19 A (Affirmative head shake.) Yes.

20 Q Were you taking any illegal drugs?

21 A No.

22 Q Any prescription medication?

23 A No.

24 Q You are diagnosed with mental illness,
25 correct?

1 A No.

2 Q You have been diagnosed with depression,
3 anxiety?

4 A That's not necessarily they give you a
5 diagnosis. I have gone and to a therapist before for
6 mild depression. And I suppose that is a diagnosis.

7 Q You've taken medications?

8 A Correct.

9 Q Prozac?

10 A Prozac.

11 Q What other medications have you taken?

12 A They were -- it was so many years ago I'm not
13 sure of the names. But it would have been for the
14 same thing.

15 Q Depression?

16 A Depression.

17 Q So you weren't taking those medications that
18 night?

19 A No.

20 Q Are you taking any medications now?

21 A No, I do not.

22 Q Do you know, were you supposed to be taking
23 medications back then?

24 A No. I don't -- I don't know if I guess I saw
25 doctors off and on. But I don't think that I was

1 taking, I don't think I was seeing a doctor at that
2 time. If I wasn't seeing a doctor then I wasn't
3 taking the medication.

4 Q You were taking medication at one point before
5 that?

6 A Uh-hum.

7 Q And you stopped, right?

8 A Yes.

9 Q Is that what you are saying?

10 A Yes.

11 Q Why did you stop?

12 A I wasn't depressed anymore.

13 Q So you on your own you stopped taking them?

14 A No, you take -- you start with the certain
15 amount of milligrams, then the next day you wean
16 yourself off, you take less milligrams the next day.

17 Q So you were following your doctor's
18 prescriptions when you stopped?

19 A Right.

20 Q So depression just comes and goes and you take
21 those medications as needed?

22 A Yes.

23 Q And you have had a drinking problem before?

24 A Yes.

25 Q When was that?

1 A I couldn't place the date. I have no idea on
2 the exact dates.

3 Q And you have been placed into emergency
4 protective custody before?

5 A Yes.

6 Q For one time for drinking too much downtown on
7 the Market Street near wild wings. Do you remember
8 that?

9 MR. SIMPSON: Objection, Your Honor.

10 THE COURT: Tell me how that's relevant to the
11 showup on this night.

12 MR. KING: Your Honor, I believe if she has
13 any sort of mental condition, if she has a drinking
14 problem I think it's relevant to her perceptions this
15 night on the identification.

16 THE COURT: Drinking problem is very different
17 from drinking that night. Drinking that night is
18 relevant. The course of drinking is not relevant.

19 I think you've already elicited what you
20 needed to regarding the amount of beer that she had
21 that night which would color any prescription,
22 ability to observe what she claims to have observed,
23 whether she was impaired on that evening.

24 Q (By Mr. King) Can you tell me when you
25 stopped taking the medication in relation to that

1 date, how long before April 5?

2 A Honestly I cannot remember.

3 Q No idea?

4 A I would have to go back to my doctor and find
5 out. I honestly don't know.

6 Q So that night he knocked on your door?

7 A Right.

8 Q And how long would you say he was in your
9 home?

10 A 10 minutes. 20 minutes at the most. It
11 seemed like probably five minutes before the
12 incident, probably five minutes during, and probably
13 another five after that as he left.

14 So now we are at 15. So like I said, between
15 10 and 20 minutes.

16 Q You all sat on the couch?

17 A We did.

18 Q And you said he smoked a cigarette? Used the
19 ashtray you said in your direct testimony?

20 A I -- well I saw the cigarette from the
21 pictures so he had to have. I don't smoke, so.

22 Q He smoked a cigarette?

23 A I assume so.

24 Q Now the next time you saw him was in Jabbers
25 parking lot, right?

1 A Not exactly in the parking lot but the street,
2 the intersection of Rutledge and Huger right in the
3 middle.

4 Q And you were in a police car?

5 A No.

6 Q Where were you?

7 A I was by myself. I was --

8 Q You were standing with -- I'm sorry. I'm
9 confused, this is my fault. You saw him again, this
10 is before the police had arrived?

11 A Right.

12 Q You saw him outside then for how long would
13 you say? would have been enough time for you to go
14 to a spigot to wash your face?

15 A Right. Two minutes. It was -- we didn't
16 talk. We didn't talk very long, but it was -- it was
17 definitely he knew who I was and I knew who he was.

18 Q And then now I want to talk about when the
19 police had arrived and the police told you -- do you
20 remember exactly what they told you? We have a
21 subject, we found someone or we found him? Do you
22 remember exactly?

23 A Along those lines. We have found someone, it
24 could possibly be the person. I gave them a name to
25 go by and a description.

1 Q Did you give them the name Black?

2 A (Affirmative head shake.)

3 Q Do you remember the description you gave them?

4 A That he was kind of like bigger but lean,
5 black male. I may have mentioned that he had scary
6 eyes. I don't know.

7 Q Did you describe his hair at all?

8 A It was, at that time it was black and gray.

9 Q Did you describe that to the police I mean?

10 A I believe I did.

11 Q Did you describe any facial features other
12 than you said scary eyes?

13 A Maybe hair on the face.

14 Q And then the police drove you over to Jabbers?

15 A Correct.

16 Q To the -- this was in the parking lot?

17 A Straight to Jabbers and pointed the car
18 directly in front of him. He was about not even 10
19 feet away. It seemed like he was really close
20 actually it seems.

21 But I did not want to look, but I did look.

22 So I had to look so they put bright lights on him and
23 I looked there directly at him. And then after that
24 they brought a picture from a digital camera into the
25 back seat of the police car so that I could look at

1 it closely.

2 Q okay.

3 A And that's when I -- I had already said,
4 that's him and broken down a little bit. I mean
5 crying and stuff, not say broken down. But I just
6 still wanted to be sure so I wanted to look at the
7 camera.

8 Q You were saying?

9 A And that's when I said yes. Yes, that's him.

10 Q You were sitting in the --

11 A Back seat of the police car.

12 Q And he was directly in front of you?

13 A In front of the car.

14 Q Was there a cage or anything between the
15 passenger and the driver's seat? Any kind of
16 anything blocking the --

17 A Not a cage. You can see through the middle.

18 Q So --

19 A If there was a cage I could see through the
20 middle part of the -- if it was a cage or if it was
21 plexiglass. I think there was something, but in the
22 middle you could see street through where I was
23 looking if I was looking through a hole or whatever.
24 I could see clearly.

25 Q You said he was about 10 feet away from the

1 car?

2 A I'd say that's what it seems like.

3 Q It could have been 15 feet, 20 feet?

4 A No.

5 Q 15 would you say?

6 A It seemed like 10 feet.

7 Q And you said before you were shown the
8 photograph, was it your idea to see a photograph or
9 did the police show you that? Did you say, can I see
10 a photograph?

11 A No, they -- I didn't suggest it, I thought it
12 was just part of something that the police do. So I
13 had no problem looking at it. I could look, you
14 know, I could look at it longer because it was a
15 picture. I felt a little less uncomfortable looking
16 straight at the person.

17 And so I could really look at the picture, but
18 it didn't feel like he was looking at me.

19 Q Before you looked at the picture, how long did
20 you look at the person that was -- that they had
21 standing in front of you?

22 A Long enough to know that it was him which
23 wasn't long.

24 Q Few seconds?

25 A That's about all it took.

1 Q was he handcuffed?

2 A I believe he was.

3 Q was he standing with police officers?

4 A There were a lot of police cars there. I was
5 in one, and then there were police cars on either
6 side of him. And there were officers standing outside
7 the car. And then, it's kind hard to see all right
8 around him because of the way the headlights were
9 shining you could see mostly him because the bright
10 lights were shining right on him.

11 I wasn't looking all around. I was looking at
12 his face most. Not so much his hands.

13 Q But he was -- police officers were standing by
14 him?

15 A He was standing straight up and staring
16 straight at the car. Straight up, straight ahead he
17 was.

18 Q And then you said the police showed you a
19 photograph?

20 A Not a printed photograph, just a digital
21 picture.

22 Q They showed you the camera with the LED
23 screen?

24 A They had just taken it of him.

25 Q So you are saying they showed you the camera

1 which had photograph on it?

2 A Right which was photographed just right before
3 they brought the camera back to the police car.

4 Q That would have been a small screen, maybe a
5 few inches?

6 A I can show it, about like this. (Witness
7 indicating.)

8 Q What did you tell the police? Do you remember
9 exactly what you told them?

10 A Yes, that's him. I think there was a lot of
11 sobbing. But I felt that they understood what I said
12 that, yes, that was the man.

13 Q Did they tell you anything about him? Did
14 they tell, other than we have a suspect did they tell
15 you anything else?

16 A No.

17 MR. KING: That's all the question I have,
18 Your Honor.

19 THE COURT: Any redirect?

20 MR. SIMPSON: Very briefly, Your Honor.

21 IN-CAMERA REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q H.M. so when you first saw the defendant
24 there in custody with your own eyes, you said you
25 were about 10 feet away, correct?

1 A Yes.

2 Q And were you certain that that was the person
3 who had assaulted you earlier?

4 A I was certain.

5 Q And then they went as an extra step and also
6 showed you the picture on the camera, correct?

7 A Correct.

8 Q And were you also certain when you saw that
9 picture that that was in fact the individual that had
10 assaulted you?

11 A Yes.

12 MR. SIMPSON: I have nothing further, Your
13 Honor.

14 THE COURT: Any argument?

15 MR. SIMPSON: I'm sorry, nothing further of
16 this witness, Your Honor.

17 THE COURT: Well, this is an in-camera hearing
18 to determine the admissability of her testimony.

19 MR. SIMPSON: Correct.

20 THE COURT: Did you plan to call another
21 witness?

22 MR. SIMPSON: We were going to call some brief
23 testimony from law enforcement dealing with the Neil
24 v Biggers proceeding.

25 THE COURT: Okay. Ma'am, you may step down.

1 You can have a seat in the chair right behind
2 counsel. Call your next witness.

3 MR. SIMPSON: State calls Jake Grill.

4 MR. CHARLES JAKE GRILL,
5 after having first been duly sworn to state the
6 truth, the whole truth and nothing but the truth,
7 testified on his oath as follows:

8 THE COURT: What is your name, sir?

9 THE WITNESS: Jake. J-A-K-E.

10 THE COURT: It's not Charles?

11 THE WITNESS: Charles Jake but I go by Jake.

12 THE COURT: You may proceed.

13 IN-CAMERA DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q Officer, what is your current job?

16 A I work in the narcotics unit at the City of
17 Charleston.

18 Q How long have you been there?

19 A About 18 months I would say.

20 Q What was your job back in April 2006?

21 A I was assigned patrol in Team One area.

22 Q Was one of your duties in that job to respond
23 to 911 calls in that area?

24 A Yes, sir.

25 Q Do you recall responding to such a call at [REDACTED]

1 [REDACTED] on April 5, 2006?

2 A Yes, sir, I do.

3 Q About what time of night was it when you
4 responded?

5 A I believe it was like around 11:00, 11:00 or
6 so. We were just responded there.

7 Q And what was the nature of the call you were
8 responding to?

9 A It was a call that went out to CSC, which is
10 criminal sexual conduct. Lady said that she was --
11 had been assaulted, sexual assaulted.

12 Q Did the victim that evening identify her
13 attacker by a nickname or a street name?

14 A Yes, sir, she gave us the name of Black.

15 Q And did that name mean anything to you at that
16 time?

17 A Yes, sir, it did. Actually, I have been
18 working that area for about a year I would say,
19 little over a year. And through experience I knew of
20 a guy named Black that frequents that area, he was
21 always out there in that area all the time of the day
22 and night.

23 Q So how did you respond when you learned that
24 that's the name she had identified her attacker as?

25 A Actually I responded to a call, a little --

1 not that same day but probably a week or two before.

2 Q Let's stick to this night, how did you respond
3 that night when you learned?

4 A It was myself and Officer Nabinette, we knew
5 where that party's residence was at 3 Middleton
6 Place. So we went over there, actually spoke to his
7 mother, she said she hadn't seen him.

8 And we know he frequents the area of Rutledge
9 and Huger which is right over there she pointed out.
10 And there are self abandoned buildings right there
11 across the street from Jabbers, I believe it's 628.
12 There are like two or three of them that are
13 abandoned. And I have seen the defendant there many
14 a-times.

15 So we decide to go over there and look in the
16 building and see if he was there.

17 Q Did you locate the suspect there?

18 A Yes, sir. We located him up in the upstairs
19 bedroom. He was just laying on the floor sleeping
20 and he was completely unclothed he was just.

21 Q About how long between when you arrived on the
22 scene to when you located the suspect, about how
23 long?

24 A About 30 minutes.

25 Q How did you proceed once you located the

1 suspect?

2 A Well, we detained him. I'm sorry, we woke him
3 up and we allowed him to get dressed and detained him
4 and then escorted him outside. We escorted him to
5 the parking lot of Jabbers.

6 Q Did you indicate to the other officers on the
7 scene that you had located a suspect?

8 A Yes, sir, we had over the radio.

9 Q And how did they proceed to the best of your
10 knowledge?

11 A They shortly arrived and said that they had
12 the victim in the vehicle and to do an ID match.

13 Q Was the victim given an adequate opportunity
14 to view the suspect?

15 A Yes, sir.

16 MR. SIMPSON: I have nothing further for this
17 witness.

18 THE COURT: Any cross-examination of the
19 witness?

20 MR. KING: Just briefly, Your Honor.

21 IN-CAMERA CROSS-EXAMINATION

22 BY MR. KING:

23 Q Officer Grill, you were present then at the
24 identification?

25 A Yes, I was.

1 Q where were you exactly?

2 A If I remember correctly I believe Officer
3 Nabinette was on the defendant's left, I was on the
4 right. I really wasn't next to the defendant, I was
5 just near him. Kind of over to the right a little
6 bit.

7 Q Did you talk to [H.M.] about the results of
8 her identification, or did you stay there the whole
9 time?

10 A I stayed there the whole time. I did not even
11 go speak with her in the vehicle. She -- she was in
12 the vehicle, we just stayed near the defendant.

13 Q He was handcuffed?

14 A Yes, sir, I believe so.

15 Q And there were -- how many police officers
16 would you say were right around there?

17 A Around the defendant or?

18 Q I guess in this whole area where [H.M.]
19 would have seen.

20 A If my memory serves me correct I would say
21 there were two around the defendant, another police
22 officer drove the defendant, I do believe our
23 sergeant showed up at the scene.

24 Q Police cars?

25 A Maybe four if I had to put a number.

1 Q How far away would you say he was standing
2 from the police car?

3 A Whenever myself and Officer Nabinette pulled
4 in we parked next to Rutledge Avenue. So those cars
5 were either on Rutledge Avenue or they were in the
6 parking lot right there next to Rutledge Avenue like
7 on the far side I guess could you say in the parking
8 lot. We pretty much were in the middle of the
9 parking lot I think.

10 Q Can you give your best guest distance?

11 A How far he was from the --

12 Q Well, the distance I'm trying to determine is
13 from [H.M.] to the defendant basically?

14 A Maybe 10 feet if that.

15 Q And you never talked to [H.M.] at that
16 point? After you went and located the suspect you
17 did not talk to [H.M.] any after that?

18 A No, sir, I don't think so.

19 MR. KING: That's all I have, Judge.

20 THE COURT: Any redirect of the witness?

21 MR. SIMPSON: Nothing from the State.

22 THE COURT: Sir, you may step down being
23 subject to recall.

24 THE WITNESS: Thank you, Your Honor.

25 MR. SIMPSON: State calls Officer Amanda Cone.

1 MS. AMANDA CONE,
2 after having first been duly sworn to state the
3 truth, the whole truth and nothing but the truth,
4 testified on her oath as follows:

5 THE COURT: You may proceed.

6 IN-CAMERA DIRECT EXAMINATION

7 BY MR. SIMPSON:

8 Q Ms. Cone, what is your occupation?

9 A I'm a police officer with the City of
10 Charleston.

11 Q How long have you been doing that?

12 A About four years.

13 Q Were you working in that capacity in April of
14 '06?

15 A Yes.

16 Q Would one of your duties be to respond to
17 911 call in your area?

18 A Yes.

19 Q Do you recall responding to a call at [REDACTED]
20 [REDACTED] on April 5th of '06?

21 A I do.

22 Q About what time of night was that?

23 A About 11 o'clock.

24 Q Were you one of the first officers on the
25 scene?

1 A I was. I was the first.

2 Q And what did you confront when you arrived on
3 the scene?

4 A I knocked on the door and when the victim
5 answered the door obviously visible blood on her
6 face, she was shaking, extremely agitated, scared,
7 nervous.

8 Q Did she describe to you what happened to her
9 that evening?

10 A Yes.

11 Q And did she indicate that she recognized the
12 suspect as soon as he entered the house?

13 A Yes.

14 Q Did she indicate that person was known by a
15 certain name in that area?

16 A Yes.

17 Q What was that name?

18 A She gave the name Black.

19 Q Did you at that point stay with the victim?

20 A I did.

21 Q Did you learn later that there was a suspect
22 in custody?

23 A I did.

24 Q And how long did it take approximately for
25 this word to come in that they had a suspect in

1 custody?

2 A You mean from the point that they had a
3 suspect from me?

4 A From when you arrived to when they had a
5 suspect?

6 A Oh, not even 30 minutes.

7 Q How did you proceed at that point when you
8 heard they had a suspect?

9 A I told [H.M.] that I would need to take her
10 over there so that she could ID or see if this
11 individual was the possible suspect.

12 Q Were you with [H.M.] when this viewing
13 occurred?

14 A I was.

15 Q Was the place where the viewing occurred far
16 from the crime scene?

17 A No, not at all.

18 Q About how far?

19 A I would say not even half a block.

20 Q Now was [H.M.] given an adequate chance to
21 view the suspect?

22 A Yes.

23 Q And what did she say to you when she viewed
24 the suspect?

25 A Immediately, yes, that's him.

1 Q Did she seem certain of that fact?

2 A Oh, yes.

3 Q Was she also shown a photo?

4 A Yes.

5 Q From a digital camera?

6 A She was.

7 Q What was the purpose of that?

8 A Just to double-check and make sure.

9 MR. SIMPSON: I have nothing further from this
10 witness, Your Honor.

11 THE COURT: Any questions?

12 MR. KING: Yes, Your Honor, briefly.

13 IN-CAMERA CROSS-EXAMINATION

14 BY MR. KING:

15 Q You were in the police car with H.M. ?

16 A I was.

17 Q Were you sitting beside her in the front?

18 A I was In the front, I was driving. She was in
19 the back.

20 Q And you agree with the other testimony it was
21 maybe 10 feet away, the suspect from her?

22 A Yeah.

23 Q And how long would you say, you said that H.M.
24 H.M. immediately identified him standing there?

25 A I would give it maybe three seconds. She

1 looked up, looked at him, saw him immediately and you
2 could tell she knew it was him.

3 Q And so why did you feel the need to show the
4 photograph after that? She's immediately identified
5 him and she is positively sure, why did you show the
6 photograph?

7 A Our sergeant felt that it was necessary.

8 Q The photograph would have been on a digital
9 camera?

10 A Yes, sir.

11 Q It's pretty small. Right?

12 A Uh-hum.

13 Q What did she say about the photograph?

14 A She again said, yes, that's him.

15 MR. KING: That's all I got.

16 THE COURT: Any redirect?

17 MR. SIMPSON: None, Your Honor.

18 THE COURT: Ma'am, you may step down subject
19 to being recalled.

20 Anything further from the State?

21 MR. SIMPSON: Nothing as far as testimony,
22 Your Honor.

23 THE COURT: Any witnesses from the defense?

24 MR. KING: No, Your Honor.

25 THE COURT: Any argument?

1 MR. SIMPSON: Well, Your Honor, as for the
2 State on the Neil V Biggers question I think the law
3 is pretty well settled. We have certain factors that
4 you need to consider whether a legal showup has been
5 established. One being the opportunity of the
6 witness to view the accused, I think both during the
7 assault and in the later showup that was
8 well-established that the victim had a good,
9 incredible opportunity to view the accused.

10 Also the witness's degree of attention. You
11 heard from the victim that she was of course paying
12 attention to both during the assault and at the later
13 show up.

14 There is the factor of the accuracy of the
15 witness's prior description. You heard some
16 testimony from the victim about a description she
17 gave, but you also heard from the law enforcement
18 officers that the description was a street name that
19 the defendant was known was at that time. So we
20 don't have a case where there was necessarily a
21 physical description which is very important in
22 weighing these factors.

23 Four, the level of certainty of the witness
24 demonstrated at the confrontation. You heard from
25 both the victim and the officer that that level of

1 certainty was high.

2 And five, the length of time between the crime
3 and confrontation. All involved testified it was
4 within 30 minutes.

5 Briefly I'd like to address the fact that this
6 was a showup and not a lineup, be it a photo or
7 in-person lineup. The law is clear that these types
8 of show-ups are not the ideal way to have an
9 identification, certainly they would prefer sort of a
10 lineup. But it also outlines situations, factors
11 when due to practical considerations of law
12 enforcement show-ups are nevertheless approved of and
13 lawful, Your Honor.

14 Those factors being when they happened shortly
15 after the crime; that is clearly established in the
16 case here. When it's near the scene; already in
17 evidence, Your Honor, is a map of the scene, They
18 were in Jabbers parking lot which is not far from the
19 crime scene.

20 When the witness's memory was fresh is another
21 factor when a showup procedure is proper; clearly
22 here the timeframe between the incident and the
23 showup the witness's memory would still be fresh.

24 The other factor is the suspect has no time to
25 alter his appearance; again we have a time factor and

1 all the testimony in this case has been that the
2 showup was done very quickly after the incident.

3 And then the last factor why showup's are
4 allowed in the law when these factors are met, when
5 the showup may expedite the release of innocent
6 parties. Clearly in this case had she not identified
7 the defendant it would have expedited the release had
8 it not been the person that assaulted her, Your
9 Honor.

10 In conclusion, I think both the showup
11 procedure and all factors favor our case under State
12 v Brown, that this is a circumstance in which the
13 showup procedure was proper. And going on to the
14 basic Neil v Biggers consideration, I think we have
15 certainly established all of those, Your Honor.

16 THE COURT: Mr. King.

17 MR. KING: Thank you, Your Honor. Your Honor,
18 I'm relying on State versus Moore, 343 S.C. 282.
19 Single person showup's are disfavored in South
20 Carolina because of the potential of the suggestive
21 aspect of it.

22 Mr. Jenkins being shown, he's handcuffed,
23 there are police officers on either side of him,
24 there are police officers around the area, there are
25 police cars in the parking lot, just that situation

1 when they could have done a lineup, they don't have
2 to arrest the suspect at that point, they can do a
3 photographic lineup without having placed anybody
4 under arrest to let them know they have the correct
5 suspect.

6 So I would rely on that, Your Honor, that the
7 single person showup was suggestive and the
8 identification was unreliable and it should be
9 excluded in the due process clause of the South
10 Carolina Constitution, United States Constitution and
11 the State versus Moore.

12 THE COURT: Anything further from the State?

13 MR. SIMPSON: Yes, Your Honor, I will reply
14 briefly. State versus Moore, the case itself
15 recognizes the factors under State v Brown which I
16 just went over with, Your Honor, in our initial
17 argument, Your Honor.

18 And in State v Moore you have a witness who
19 got a very brief view of the suspect. And State v
20 Moore even goes on to note in the case itself that
21 would the witness in that case, had that person been
22 the victim of the crime and gotten that adequate
23 opportunity to view the suspect, that they probably
24 would have upheld the showup procedure.

25 So State v Moore, while in that particular

1 case due to several facts very different from this
2 one, they did not approve of the showup procedure,
3 they did recognize all the factors in State v Brown
4 which have been recited to you. And State v Brown
5 can be found at 356 S.c. 496.

6 THE COURT: Without belaboring the issue, our
7 case law is very clear that there are procedures to
8 be followed in identification of any type, that being
9 whether the identification is unduly suggestive, and
10 whether that gives rise to an irreparable mistaken
11 identification.

12 However if the procedure is suggestive the
13 Court then looks to all of the attendant
14 circumstances to determine if considering all of the
15 circumstances that being reliability whether it
16 overcomes the unduly suggestive nature of the
17 identification such that it becomes reliable for the
18 purposes of admitting the testimony.

19 Of course the Court's burden at this point in
20 time -- well not the Court, the State's burden is a
21 preponderance of the evidence. Identification must
22 be proven by beyond a reasonable doubt to the jury.
23 The Court sits in this capacity only in a gatekeeping
24 function to determine preliminarily the admissability
25 of the identification.

1 Case law is also clear that not just South
2 Carolina Supreme Court precedent, but also U.S.
3 Supreme Court precedent disfavor showup
4 identification. However, there is an exception to
5 that rule. And I use the term rule loosely. But
6 there is an expectation, and the case law is very
7 clear regarding that. That notwithstanding the
8 inherent suggestiveness and general disfavoring of
9 one-on-one showup identifications, they may be proper
10 where they meet certain criteria.

11 One that they occurred shortly after the
12 alleged crime, that they happen near the scene of the
13 crime, as a witness's memory is still fresh, where
14 the suspect has not had time to alter his look or
15 dispose of evidence, and the showup may expedite
16 release of innocent suspects and enable the police to
17 determine where to be searching.

18 Also another factor to be considered -- can be
19 considered by the court, almost alternatively and I
20 think would be applicable to this case, where the
21 victim's in-court identification was reliable
22 independent of the showup identification. Where I
23 would find for purposes of the record that the state
24 has proven by clear and convincing evidence that her
25 identification of the defendant is reliable, and it

1 is independent of the showup identification.

2 And that based on her testimony, I'm referring
3 to the victim's testimony, of her contact with the
4 defendant, her knowledge of him, her prior knowledge
5 of him in an acquaintance capacity. Irregardless of
6 the showup identification, the state would have been
7 able to prove her in-court identification by clear
8 and convincing evidence. And it would be, and the
9 Court would find reliable, independent of the showup
10 identification.

11 And that based on the information that the
12 victim provided, the reliable information, reliable
13 identification information that she provided based on
14 information independent of the out-of-court
15 procedure.

16 And in determining those reliability factors
17 the Court looked to the reliability factors that we
18 rely on routinely; that being the opportunity of the
19 witness to view the criminal at the time of the
20 crime. There has already been testimony that she was
21 acutely aware and had more than ample opportunity to
22 have viewed him at the time of the crime.

23 Her degree of attention. I cannot -- I would
24 based on her testimony she was attune and acutely
25 attuned to what was happening at the time of the

1 event.

2 The accuracy of the witness's prior
3 conviction. She testified that he was a large man,
4 but lean black male, he had scary eyes, hair black
5 and gray, some hair on his face, but also she gave
6 the name of Black, that being the name that she knew
7 him to have over the time that she knew him in that
8 acquaintance capacity.

9 The level of certainty demonstrated by the
10 witness at the time of the confrontation. The
11 testimony of the officer as well as the witness was
12 that within 30 minutes of the event she immediately
13 identified him both at the Jabbers parking lot as
14 well as by the picture on the digital camera.

15 And the amount of time between the crime and
16 the confrontation has been testified to is 30
17 minutes, which was certainly very short period of
18 time.

19 Going back to the showup identification there
20 are clear criteria that our court has established in
21 determining whether a showup identification is
22 appropriate and may be proper. And those criteria
23 are as follows:

24 It may be proper where they occur shortly
25 after the alleged crime. This took place within 30

1 minutes of alleged crime which is certainly a very
2 short time period. Near the scene of the crime.
3 which we have established it occurred less than half
4 a block from where the incident took place. It's
5 clear that the witness's memory still would have been
6 fresh at that time as she was the victim of the
7 event.

8 Although there has been testimony that he was
9 undressed at the time he was found, 30 minutes is a
10 very short time and there is no indication in the
11 record that the suspect at that time had altered his
12 looks or disposed of evidence.

13 And that the showup may release -- expedite
14 the release of innocent suspect and enable the police
15 to determine whether to continue searching. I think
16 clearly that criteria has been met.

17 There has been some testimony, I was unclear
18 until the officers' testified as to the amount of
19 police vehicles that were present at the scene and
20 the amount of officers.

21 It appears that there were two at the most
22 three vehicles present, that the only vehicle in the
23 immediate vicinity would have been the police vehicle
24 carrying the victim and the police vehicle which had
25 the defendant standing in front and any other victims

1 would have been -- or vehicle would have been on the
2 far side of the parking lot outside of the immediate
3 view of the victim.

4 But even if they were not, she has testified
5 that her attention was not on those things, that it
6 was on the defendant. She also testified that while
7 he was handcuffed that her attention was not on the
8 handcuffs. And so the Court would find, even though
9 the light was shown on him she still had a picture to
10 look at of the defendant.

11 The Court would find that the procedure
12 employed was not unduly suggestive based on the
13 criteria set forth in State versus Govan which relies
14 on State versus Moore as well as State versus
15 Mansfield. Actually, they don't cite those cases on
16 -- I don't think, but they also have the same
17 reasoning. State versus Govan is found at 372 S.C.
18 552, 643 S.E.2d 92, 2007 Court of Appeal's decision.

19 And the Court would find that the showup ID
20 was not unduly suggestive based on the criteria set
21 forth in State versus Govan. But even if it was that
22 considering the reliability factors and surrounding
23 circumstances, that the identification was still
24 reliable.

25 And the Court would find that giving adequate

1 consideration to due process concerns that the
2 in-court identification, even if the out-of-court was
3 suggestive, did not produce or create a significant,
4 substantial likelihood of irreparable
5 misidentification.

6 That is based on the fact that she has had
7 more than ample contact with this defendant prior,
8 and it is likely that independent of this showup
9 procedure she would have been able to make an
10 in-court identification of the defendant.

11 Motion to suppress the identification is
12 denied.

13 Are we ready to proceed from the State?

14 MR. SIMPSON: Yes, Your Honor, if I may just
15 one brief fact. I don't think it affects your ruling
16 at all. You mentioned the testimony from the
17 officer.

18 THE COURT: I cannot hear you.

19 MR. SIMPSON: You mentioned the testimony from
20 Officer Cone that it was half a block away. I
21 believe she is confused with where they found the
22 defendant it was actually about two blocks.

23 THE COURT: Half a block, two blocks, it's
24 close.

25 MR. SIMPSON: You relied upon that one.

1 THE COURT: It's close. The Court can take
2 judicial notice where Jabbers is located and where
3 Huger Street is located. Have been a resident of
4 Charleston all my life I had to walk those streets as
5 a child when it was Rodenberg's before it was
6 Jabbers. I'm well familiar of where it's located.
7 It's very, very close proximity. Okay.

8 Are we ready to proceed from the State?

9 MR. SIMPSON: Yes, Your Honor.

10 THE COURT: From the defense?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 Ma'am, retake the stand. I remind you that
14 you are still under oath.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Thank you, ladies and gentlemen,
17 we appreciate your patience.

18 You may proceed with the witness.

19 MR. SIMPSON: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q H.M. when we left we were discussing when
24 the police arrived on the scene that night. Do you
25 remember them taking any pictures of you that

1 evening?

2 A Yes. Of me?

3 Q Yes.

4 A Yes.

5 Q And what did they do when they arrived at the
6 scene; do you recall?

7 A They took pictures of the sofa, and
8 surrounding things I think.

9 Q Did they ask you questions about what happened
10 that evening?

11 A Yes.

12 Q After the police arrived, did you -- did they
13 let you know that they had had a suspect in custody?

14 A Yes.

15 Q And about how long was this from when they
16 arrived to when they had a suspect?

17 A Very -- it was shortly after, within -- I was
18 notified that they had someone less than 30 minutes.

19 Q And did they take you to view this person?

20 A Yes.

21 Q And where did they take you to view this
22 person?

23 A To the Jabbers parking lot.

24 Q Can you describe to the jury a little bit
25 about when you pulled up into the Jabbers parking

1 lot, what happened?

2 A We turned into the parking lot. The probably
3 high beams, bright lights on the police car that I
4 was in the backseat of, and pointed them on him. And
5 I was in the backseat and was asked to look.

6 Q Did you have a good view of the person, could
7 you see him?

8 A I could see him.

9 Q And what did you tell the police when they
10 asked you?

11 A I just said, that's him.

12 Q And was that the person that had assaulted you
13 earlier?

14 A Yes.

15 Q And is that person present in the courtroom
16 today?

17 A Yes.

18 Q Can you point that person out to the jury?

19 A He is right there.

20 MR. SIMPSON: Let the record reflect the
21 witness has identified the defendant.

22 THE COURT: Let the record so indicate.

23 MR. KING: Your Honor, I'll place an objection
24 on the record.

25 THE COURT: Your objection has already been

1 noted and ruled upon and preserved.

2 You may proceed.

3 Q (By Mr. Simpson) H.M. do you remember
4 after identifying the suspect, do you remember where
5 the police took you?

6 A Yes.

7 Q Where was that?

8 A Rivers Avenue. It's, I believe, Officer Cone
9 said it's the only place that handles rape victims.
10 So that's why we had to go all the way over there.

11 Q Was there an examination done on you at that
12 location?

13 A Yes.

14 Q Going to a couple of days after this assault,
15 do you remember being visited again by a female
16 detective?

17 A Yes.

18 Q And did she also take some photographs of you?

19 A She did.

20 Q And did she at that time take a written
21 statement from you?

22 A Yes.

23 MR. SIMPSON: Court's indulgence.

24 THE COURT: Uh-hum.

25 MR. SIMPSON: State has no further questions

1 of this witness.

2 THE COURT: Any cross-examination of the
3 witness?

4 MR. KING: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q H.M. you knew Mr. Jenkins, correct?

9 A By sight I knew him.

10 Q You knew him by the name Black?

11 A Right.

12 Q And you saw him about once a week?

13 A Not every week.

14 Q You saw him around 10 times?

15 A In my life. But, that could have been two in
16 one week. I saw him -- I would have to know how many
17 times I went to Jabbers because that's the place that
18 I saw him. And I went to the store very randomly.
19 So, I am just thinking once a week.

20 I know at least I went to the store once a
21 week. Sometimes I went three times, sometimes I did
22 not go at all. But almost every time I went I would
23 see him around that area.

24 Q So you would see him occasionally?

25 A Right. And we would say -- we were friendly,

1 hey, how's it going.

2 Q He would speak to you?

3 A Yes.

4 Q You spoke to him?

5 A Yeah. He would say, hey, how's it going. I
6 would say, good. A common passing chitchat. But he
7 knew that I lived on that street. Not by me telling
8 him but because a lot of times he was close to Huger
9 Street. And Jabbers, you know, the side of it is on
10 there so I would turn.

11 And I didn't think anything of saying, hey. I
12 think I had given him a quarter if I had it, spare
13 change when I come out of the store.

14 Q And he knew your name?

15 A Not right away. Over the time, over the years
16 that I lived there. I don't think he knew my name
17 until maybe a neighbor had told him.

18 So it wouldn't have been a surprise to me if
19 he had said, hello, Health. But I wouldn't have
20 thought that was strange. I knew what his name was,
21 what his nickname was. But it would just have been a
22 normal thing for him to say, hey, **H.M.** how are
23 you doing. I way say, hey, Black, I'm good. That
24 kind of thing.

25 Q Would you say he was flirting with you?

1 A No, I wouldn't. If it was flirting then that
2 was but I'm not accusing him of flirting.

3 Q Now this particular night you had six beers to
4 drink, right, between 4:00 and 8:00?

5 A At the most. And in my memory.

6 Q And you have --

7 A I say that because I purchased the six-pack
8 and nothing more. So if I had six then that's the
9 most I could have had. So I'm just being honest, it
10 could have been less.

11 Q Do you remember meeting with Ms. Lebeof when
12 you were examined?

13 A The name, I'm not sure I remember the name.

14 Q Do you remember being interviewed when you
15 went to be examined that you spoke about on direct
16 examination at the hospital?

17 A Yes.

18 Q And you spoke with a lady there?

19 A Right.

20 Q You didn't tell her you had six beers?

21 A I don't know what I told her.

22 Q You've also taken prescription medication,
23 right?

24 A Correct.

25 Q For depression?

1 A Mild depression, eating disorder.

2 Q You've taken Prozac?

3 A I have.

4 Q But you weren't taking any medication that
5 night?

6 A Not that I'm aware of. I -- like I said, I
7 have been to the doctor off and on, and when I feel
8 better I would tell them that I don't think I need
9 it, I'm doing good, and he would tell he how to wean
10 myself off.

11 So, that's how, I'm not aware right now taking
12 it daily or not taking it at all. If the question
13 has been asked two years ago, I would have been able
14 to tell you.

15 Q So you could have been taking it, maybe you
16 weren't taking it?

17 A Correct.

18 Q And you said you had mild depression; is that
19 how it's classified?

20 A That's -- I am just saying it the way the
21 doctors say it.

22 Q But you had to be taken to the hospital twice
23 in the past for trying to kill yourself, right?

24 MR. SIMPSON: Objection, Your Honor.

25 THE COURT: Basis.

1 MR. SIMPSON: Relevance.

2 THE COURT: Please approach.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: You may proceed.

6 Ma'am, do you need the question repeated or do
7 you understand the question.

8 THE WITNESS: I understand the question.

9 THE COURT: Please answer the question.

10 A If I was picked up and taken to the hospital
11 for trying to kill myself, then it's because I was
12 upset.

13 Q But that happened, right?

14 A No one has ever picked me up and found me with
15 gun against my head or my wrist bleeding or a lot of
16 pills. Verbally I probably could have said, I want
17 to kill myself.

18 Q But you have been taken into custody to
19 protect yourself, right?

20 A Not from killing myself but, yeah, to protect
21 myself from doing harm to myself. But not
22 necessarily killing myself.

23 Q So you had to be taken into custody --

24 A I didn't have to be, no, I did not.

25 Q You were?

1 A Correct. I was never forced.

2 Q In 2002, 2004 and 2005, three times, right?

3 A You seem to be more aware of it than I am. I
4 don't remember those dates. I don't recall the
5 dates.

6 Q Is there something affecting your memory back
7 then that you don't remember?

8 MR. SIMPSON: Objection, Your Honor.

9 A About eight years ago?

10 THE COURT: Basis.

11 MR. SIMPSON: Asked and answered.

12 THE COURT: I'm going to give him a little
13 latitude.

14 THE WITNESS: I'm sorry.

15 Q (By Mr. King) Is there something?

16 A Yes, there is something that would affect my
17 memory.

18 Q you were drinking a lot of alcohol back then?

19 A No, I'm saying it was a long time ago and
20 that's why I don't remember exactly.

21 Q So on this night.

22 A Yes.

23 Q You have been testifying about.

24 A Yes, sir.

25 Q You were expecting someone?

1 A Not expecting someone, expecting delivery a
2 pizza delivery. I have -- I wasn't expecting a
3 particular person.

4 Q And a person who was black knocked on your
5 door?

6 A Yes.

7 Q He asked you to go out and get a beer, right?

8 A Not go out and get a beer, walk to the store
9 and get a beer is what he was staying. Let's go get
10 a beer, which that's what it would mean.

11 Q But outside of your home, he asked you to go
12 outside of your home to go get at beer, right?

13 A Right.

14 Q And you said no?

15 A Right, yes.

16 Q You invited him in?

17 A No, not invited. I just stepped back, so I
18 guess that's enough of an invite for him. I did not
19 push him out the door.

20 Q Do you remember meeting with Officer Cone the
21 night that you called the police?

22 A Yes.

23 Q And Officer Antonio, you met with some police
24 officers and talked to them?

25 A Antonio was I think afterwards a couple days.

1 Q You did not tell both of those that -- both of
2 those officers that you invited him in, that you
3 offered for him to come in?

4 A probably the same way I did today. I did not
5 tell him he couldn't come in. But I didn't say, come
6 in, come in, please sit down.

7 I just kind of -- I was -- I didn't feel any
8 need for him not to step inside. He kind of forced
9 his way in.

10 He asked me -- the reason I know that is
11 because he said, can you please put your dogs away.

12 Q [REDACTED] H.M. --

13 A So it wasn't like a normal entry. The dogs
14 were right there at his feet. And the door next to
15 my door was like right next to the front door. And
16 he came in. And I still, I am nice person, and I
17 thought he just -- the conversation was very quick.
18 Was, hey, let's get a beer or give me some money so
19 that I can go get it.

20 I said I don't have any. And then he said,
21 put your dogs up, and I did. I was, no, they're
22 friendly they won't bother you. But he insisted on
23 putting them away. And I put them away. And that's
24 when I sat on my couch.

25 Q So you let him in?

1 A So I did, so I let him. I would not say I
2 invited him but I did let him in.

3 Q You are saying you didn't tell Officer Cone
4 and Officer Antonio that you invited him in or
5 offered for him to come in?

6 A I don't remember the word whether it was
7 invited or offered. I'm sorry, I don't remember.

8 Q You sat on the couch?

9 A Uh-hum.

10 Q He sat on the couch?

11 A Yep.

12 Q He smoked a cigarette?

13 A Uh-hum.

14 Q Used the ashtray?

15 A Uh-hum.

16 Q And this ashtray is the glass object?

17 A Right. It really, it's not an ashtray.

18 Q It's a candle holder?

19 A It's a candle holder.

20 Q And this is what you said he hit you in the
21 face with?

22 A Right.

23 Q It's heavy?

24 A Uh-hum.

25 Q Solid glass?

1 A Well, there is -- there were two of them. I
2 still have one of them but there were two. So, I
3 don't know if he was using one and ashing in the
4 other which I assume. But that is what he used.

5 Q He smoked a cigarette in your house?

6 A Because there were like cigarette stuff like
7 all on me and the sofa.

8 So I'm not sure if it was if he was smoking
9 during it or the ashes were falling from where he had
10 ashed on to me but there was cigarette stuff on me.

11 Q But you sat on the couch long enough for him
12 to smoke a cigarette?

13 A Right. He could have been smoking when he
14 walked in for all I know.

15 Q So this is 10 o'clock at night?

16 A Yeah, around 10 o'clock. And, yeah, he could
17 have definitely. We talked for two minutes, and you
18 know, it's like that was it.

19 Q So 10 o'clock at night, a guy you barely know
20 knocks on the door and you let him come in?

21 A Uh-hum.

22 Q Sit on the couch?

23 A Uh-hum.

24 Q He smokes a cigarette?

25 A (Affirmative head shake.)

1 Q You all talk?

2 A Uh-hum.

3 Q And then you say he raped you?

4 A Yes.

5 Q He hit you in the face with the glass -- we'll
6 call it ashtray, I guess, candle holder?

7 A Okay.

8 Q How many times?

9 A A lot of times. More than -- more than --

10 Q Five times?

11 A More than five.

12 Q More than five. With the glass object?

13 A I mean if I really wanted to -- just give me a
14 second, I want to think how much. About five times.
15 But then there was more during, you know, him just
16 like hitting and shouting things. Hitting my head
17 and shouting things during the rape.

18 Q He hit you on the left side of your mouth?

19 A I don't know what side it was.

20 Q He hit you in your mouth?

21 A I have scars on both sides of my mouth inside
22 from where my teeth hit. I don't know about on the
23 outside. I just inside.

24 Q You had no broken teeth?

25 A No. I mean my teeth hit my -- inside of my

1 cheek.

2 Q You had no broken facial bones?

3 A No.

4 Q He hit you in the --

5 A I have scars.

6 Q In the eye as well?

7 A Mostly the head.

8 Q You had no broken skull or anything like that?

9 A No. The only lacerations were all inside,
10 like inside my nose, corners of my lips were ripped,
11 and most of the blood came from inside of my mouth
12 and from the inside of my nose.

13 Q And --

14 A But at the time I did not know where the blood
15 was coming from. I thought it was coming from the
16 top of my head because that's what I felt the most.

17 Q You have neighbors?

18 A I do.

19 Q You screamed?

20 A Screamed. I more tried to scream, I know he
21 used his hand to cover my mouth, but a lot of it was
22 please, just please stop, please, you don't want to
23 get in trouble.

24 Q You told him that your boyfriend was coming
25 home?

1 A I did.

2 Q You had a boyfriend?

3 A No, I did not.

4 Q Todd Baker Jones?

5 A He was not a boyfriend.

6 Q Were you seeing him at the time?

7 A Sure.

8 Q He was abusive?

9 A Yes.

10 MR. SIMPSON: Objection, Your Honor,
11 relevance.

12 THE COURT: Basis.

13 MR. SIMPSON: Relevance.

14 THE COURT: Please approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: You may proceed.

18 Q (By Mr. King) As I was asking, you said he is
19 not your boyfriend? And you were saying --

20 A And --

21 THE COURT: Let her answer the question.
22 Ma'am you may answer yes or no and you may then
23 explain your answer.

24 Ask the question.

25 Q (By Mr. King) At the time you were seeing a

1 man named Todd Baker Jones?

2 A No. The more I think about it, I don't think
3 I was even speaking with him at all. I believe.

4 Q When did you meet him?

5 A I have no idea, but I knew --

6 Q Did you meet him before this?

7 A I had met him before, yes.

8 Q And you said just a minute ago that you were
9 seeing him at the time this happened, right?

10 A I did.

11 Q He was abusive?

12 A He was.

13 Q He has hit you in your face, right?

14 A Yes.

15 Q He has dragged you around by your hair, right?

16 A Yes.

17 Q You've called --

18 MR. SIMPSON: Your Honor, objection, may we
19 approach?

20 THE COURT: Please approach.

21 (Whereupon, a discussion was held at the bench
22 off the record.)

23 THE COURT: Redirect. You may proceed.

24 Q (By Mr. King) Todd Baker Jones, had he shoved
25 his hand inside of your mouth before, around that

1 time?

2 A I don't think I was seeing him at all around
3 that time.

4 Q Had he -- he has threaten to kill you, right?

5 A Yes.

6 Q He has kicked in your door in the middle of
7 the night, right?

8 A Yes.

9 Q And he was convicted of an assault on you,
10 right?

11 A All after this incident.

12 Q After. You've had to hide in the closet from
13 him before, right?

14 A Yes.

15 Q Now you said after this rape took place you
16 went outside and you were screaming?

17 A (Affirmative head shake.) Yes.

18 Not right outside my door. I went to -- I
19 knocked on two neighbor's doors and no one came out.
20 I knocked on -- I don't even know which house, I
21 think it was the one -- the house next to me has two
22 doors, one leads to the downstairs apartment and the
23 one on the right up.

24 So I honestly don't know which door it was.

25 But I could have knocked on both. No one came to the

1 door and that's when I ran down and was waving and
2 screaming at two cars going by.

3 Q Right. And there were people around?

4 A Because all the houses were really dark. And
5 for some reason I was embarrassed because I didn't
6 want my neighbors to see me all bloody. And I guess
7 because I knew them I think they would be scared.
8 You could tell with the lights out that they were
9 obviously probably asleep.

10 So I figured a car would be the next best
11 thing that I could get to. So I tried to flag down
12 two cars, two or three cars and they kept going.

13 Q Then you ran to Jabbers?

14 A That was -- yes. I did not go all the way to
15 the front door because you can look and tell when
16 they're closed. There is no cars and the lights,
17 there are less lights. So I ran and looked and they
18 were closed.

19 And then ended up right there at the
20 intersection still looking around for something, a
21 business that might be open, or just there is not any
22 pay-phones. I didn't have any money so if there was
23 I couldn't use it. I was just looking for anybody
24 that could help me.

25 Q And you found somebody, right, you found a

1 lady?

2 A She found me, yes, she did. But she was a
3 little taken back and she said, you know, oh, Lordy,
4 what happened. And as soon as he came over she
5 walked away. Because he said, I will help you.

6 Q So a lady came up to you?

7 A Uh-hum.

8 Q And she asked you what was wrong?

9 A Yeah, she -- go head.

10 Q She asked what's wrong, yes?

11 A She said what happened to you.

12 Q She asked what happened to you?

13 A Uh-hum.

14 Q And you didn't tell her to call the police?
15 You didn't scream to her?

16 A No because he was standing right there. And
17 she looked like someone that had come sort of like
18 out of the bushes. And to tell you the truth, I
19 don't think she looked like she could help me or
20 wanted to help me but she wanted to know what
21 happened. She didn't look like she wanted to help
22 me.

23 Q So you said Mr. Jenkins is there?

24 A And then he approached, I just did stair
25 straight ahead and thought, this is not really

1 happening. He is not really standing there. But he
2 was. He was.

3 Q And you went with him?

4 A He said, if you walk with me -- I was like, I
5 just need a phone, I just need a phone. That's all I
6 said over and over, I just need a phone. And he
7 said, if you walk with me and wash your face off I
8 will give you your phone. And I did. I went with
9 him.

10 And he helped me wash my face off and he gave
11 me my phone back and I ran really fast like I was
12 floating, I could not believe that I had my phone.
13 And I assumed it wouldn't work but I thought he maybe
14 had taken the battery or something but it didn't. I
15 got home and it worked.

16 MR. KING: That's all the questions I have.

17 THE COURT: Any redirect of the witness?

18 MR. SIMPSON: Briefly, Your Honor.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q [REDACTED] defense brought up an individual
23 named Todd Baker Jones?

24 A Yes.

25 Q This is someone who, would it be accurate to

1 say is an ex-boyfriend of yours?

2 A Yes.

3 Q Did you see Todd Baker Jones on April 5th,
4 2006?

5 A No.

6 Q Did you see him that week?

7 A No.

8 Q You testified on cross that you characterized
9 your relationship as not a boyfriend, correct?

10 A Correct.

11 Q At this time?

12 A Correct.

13 Q You said but you knew him and were seeing him
14 occasionally?

15 A I did see him occasionally.

16 Q But not on the day of this incident?

17 A No.

18 Q Not on the week of this incident?

19 A No.

20 Q You mentioned earlier, too, you had some
21 trouble with depression, correct?

22 A Correct.

23 Q And at certain times in your life have been on
24 Prozac?

25 A Prozac, that was the most recent and the most

1 consistent. I had samples, I never took anything for
2 any lengthy period of time. I had seen some previous
3 doctors who gave me samples of other anti-depressants
4 in the same Prozac family.

5 Now I don't know the exact names because it
6 has been 10 years. But Prozac was the first one that
7 I was actually prescribed.

8 Q And you are not on medication today, correct?

9 A No, I'm not.

10 Q And that has been at the direction of a doctor
11 that you are not on medication, correct?

12 A Correct.

13 Q And when on these drugs, do they cause you to
14 hallucinate?

15 A No.

16 Q Do they cause you to make up wild stories?

17 A No.

18 Q Do this just solve your issues with as you
19 described mild depression?

20 A Right.

21 MR. SIMPSON: I have no further questions,
22 Your Honor.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MR. SIMPSON: None from the State, Your Honor.

1 THE COURT: From the defense?

2 MR. KING: No, Your Honor.

3 THE COURT: Ma'am, you are excused, you may
4 step down.

5 Mr. Foreman, ladies and gentlemen, we are
6 going to take advantage of this break in testimony to
7 take your evening recess. During the break please
8 abide by the Court's instruction and have no
9 discussion about this case with anyone, including
10 your fellow jury members.

11 Please don't have any contact with anyone in
12 or about the courthouse when returning in the
13 morning. Please don't allow yourself to be exposed
14 to any media coverage regarding this case. And
15 please don't do any independent research of any kind
16 on the Internet.

17 If you'll leave your notepads in your seats,
18 we'll resume this trial at 9:30 in the morning. I'm
19 selecting another jury at 9:00. If we run a little
20 over please take my apologies up front. It should
21 only take 30 minutes for us to select that panel.

22 I anticipate that we will begin approximately
23 9:30. We appreciate your patience and we will see
24 you in the morning. Please leave your notepads in
25 your seats.

1 (Whereupon, the jurors exit the courtroom.).

2 THE COURT: Is there anything from the State
3 before we recess for the evening?

4 MR. SIMPSON: Nothing, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. KING: No, Your Honor.

7 THE COURT: Okay. You all have a good
8 evening. I'll see you at 9:30 in the morning.

9 (Whereupon, the proceedings in the matter
10 before the Court were adjourned for the evening.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of
all the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal,
in the Circuit Court for Charleston County, South
Carolina, in the general session court starting
December 8, 2008.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2006-GS-10-9254

3 STATE OF SOUTH CAROLINA)
4)
5 Plaintiff)

6 V.)

TRANSCRIPT OF RECORD

7 DANIEL J. JENKINS,)

8 Defendant.)
9 _____)

10 DECEMBER 9TH, 2008
11 CHARLESTON, SOUTH CAROLINA
12 VOLUME 2

13 B E F O R E :

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16

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

18 MR. CHAD SIMPSON, Assistant Solicitor
19 MR. CHRIS NEELEY, Assistant Solicitor
20 REPRESENTING THE STATE

21 MR. JASON T. KING, Assistant Public Defender
22 MR. REECE STIDHAM, Assistant Public Defender
23 REPRESENTING THE DEFENDANT

24 ANNE BOULEY MEYER, RPR

25 CIRCUIT COURT REPORTER

1 THE COURT: Is the State ready to proceed?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. KING: Yes, Your Honor.

5 THE COURT: Please bring in the panel.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: Ladies and gentlemen, we
8 appreciate your patience. We will now resume the
9 trial. If you all give them a moment to get their
10 notepads.

11 Please call your next witness.

12 MR. NEELEY: State calls Roneta Carter.

13 MS. RONETA CARTER,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on her oath as follows.

17 THE COURT: You may proceed.

18 MR. NEELEY: Thank you.

19 DIRECT EXAMINATION

20 BY MR. NEELEY:

21 Q Ms. Carter, where are you currently employed?

22 A City of Charleston dispatch.

23 Q How long have you been there?

24 A One and a half years.

25 Q Would you tell the jury what your current

1 duties are?

2 A We answer 911 and admin calls, dispatch units
3 to locations, let them know what the situation is
4 going on.

5 Q So you actually receive the calls?

6 A Yes.

7 Q And you actually maintain those calls?

8 A Yes.

9 Q When you say maintain calls, what do you mean
10 by that?

11 A Every call we receive is recorded on the
12 Dictaphone and logged word for word and you cannot
13 change it.

14 Q When it's recorded where is it stored?

15 A In the Dictaphone.

16 Q Computer?

17 A Computer base.

18 Q Okay. At some point can the information in
19 the computer be placed on a tape or a CD?

20 A Yes.

21 Q How does that process work?

22 A You just have to, you can record everything
23 that is recorded we can go ahead and put it on a CD.
24 Just depends on who calls it in.

25 Q Is there a procedure that you guys follow

1 office-wise?

2 A It is, but I'm not familiar.

3 Q But your office goes through channels as far
4 as recording calls and maintaining them?

5 A Yes.

6 Q Your job basically is to make sure that you
7 accept these calls and they're maintained?

8 A Yes.

9 MR. KING: Objection.

10 THE COURT: Basis?

11 MR. KING: Leading.

12 THE COURT: Sustained, leading.

13 MR. NEELEY: Thank you, Your Honor.

14 Q (By Mr. Neeley) Is it true you actually
15 maintain those documents?

16 A Yes.

17 Q When you are maintaining them, what are they
18 recorded on again?

19 A Dictaphone.

20 Q Will you tell the jury whether you received
21 any information involving this case we are here on
22 today?

23 A If I received the information?

24 Q Was there a call placed --

25 A Yes, a call was placed.

1 Q Were you subpoenaed to provide any type of
2 documents?

3 A 911 tape.

4 Q What was the date of the call that you
5 received concerning this case?

6 A It was April 5th.

7 Q Do you know the year of that?

8 A It was April 5th, 2006.

9 Q Do you know what time that call would have
10 been made?

11 A 11:50 -- 10:50, I'm sorry.

12 MR. NEELEY: May I approach the court
13 reporter?

14 THE COURT: You may.

15 Q (By Mr. Neeley) I'm going to show you what
16 has been marked State's Exhibit No. 2. Can you
17 identify that?

18 A Yes. This is the call that we received on the
19 same date, same time.

20 Q How do you know what that is?

21 A It's labeled as rape that just occurred at [REDACTED]

22 [REDACTED].

23 Q Would that be in the condition that it was
24 found in your office when you left your office in
25 response to the subpoena?

1 A Yes, sir.

2 MR. NEELEY: Judge, at this time we move
3 State's Exhibit 2 into evidence.

4 THE COURT: Any objection?

5 MR. KING: Yes, Your Honor, objection.

6 THE COURT: Please approach.

7 (Whereupon, a discussion was held at the bench
8 off the record.)

9 THE COURT: You may proceed.

10 MR. NEELEY: We would like to introduce as
11 evidence State's Exhibit 2. At this time may we
12 publish this to the jury?

13 THE COURT: You may. Marked and admitted
14 subject to the objection.

15 (Whereupon, State's Exhibit No. 2 is admitted
16 into evidence.)

17 (Whereupon, State's Exhibit No. 2 is played in
18 open court.)

19 MR. NEELEY: Judge, that's all the questions I
20 have.

21 THE COURT: Any questions for the witness from
22 the defense?

23 MR. KING: No, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused from the State?

1 MR. NEELEY: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. KING: No, Your Honor.

4 THE COURT: Ma'am, you are excused.

5 You may call your next witness.

6 MR. SIMPSON: State calls Officer Amanda Cone.

7 MS. AMANDA CONE,

8 after having first been duly sworn to state the
9 truth, the whole truth and nothing but the truth,
10 testified on her oath as follows:

11 THE COURT: You may proceed.

12 MR. SIMPSON: Thank you.

13 DIRECT EXAMINATION

14 BY MS. SIMPSON:

15 Q Ms. Cone, what is your current occupation?

16 A Police officer, City of Charleston.

17 Q How long have you been working there?

18 A Four years.

19 Q Were you working in that capacity in April of
20 2006?

21 A I was.

22 Q Were one of your duties to respond to 911
23 calls in your assigned area?

24 A Yes.

25 Q Do you recall responding to a call at [REDACTED]

1 [REDACTED] on April 5th, 2006?

2 A I do.

3 Q About what time of night was that?

4 A It was about 11:00.

5 Q [REDACTED], is that in Charleston
6 County?

7 A It is.

8 Q And what was the nature of the 911 call you
9 responded to?

10 A It came out as a criminal sexual conduct that
11 had just occurred.

12 Q Were you one of the first officers to arrive
13 at the scene?

14 A I was the first.

15 Q Can you explain to the jury what you
16 encountered when you arrived at the scene?

17 A When I knocked on the door [REDACTED] H.M. the
18 victim, [REDACTED] H.M. answered. She had visible blood on
19 her face. She was visibly shaken. She was nervous,
20 agitated. You could tell visibly she was scared.

21 Q Would it be fair to say her demeanor was very
22 emotionally?

23 A Extremely.

24 Q Would the word hysteric be accurate?

25 A Yes.

1 Q Did [REDACTED] H.M. then tell you what happened to her
2 that night?

3 A She did.

4 Q Did you take a written statement from her at
5 that time?

6 A I did.

7 Q Was a written statement taken that evening?

8 A Yes.

9 Q Now shortly after you responded to the scene,
10 was a suspect developed?

11 A Yes.

12 Q And how so?

13 A She had given us a nickname, Black.

14 MR. SIMPSON: Your Honor, may I approach?

15 THE COURT: You may.

16 (Whereupon, a discussion was held at the bench
17 off the record.)

18 Q (By Mr. Simpson) Officer Cone, after a
19 suspect was developed did you receive word that in
20 fact a suspect was in custody?

21 A I did.

22 Q About how long from when you arrived at the
23 scene was it when you received word that a suspect
24 was in custody?

25 A I would say approximately 30 minutes.

1 Q So based on your prior testimony would have
2 been 11:30?

3 A Yes.

4 Q You responded around 11:00, so around 11:30?

5 A Yes.

6 Q How did the officers proceed once you found
7 out that a suspect was in custody?

8 A I escorted [H.M.] from her residence over
9 to Jabbers parking lot, which was right there at the
10 corner of Huger and Rutledge, to view the individual.
11 Told her she needed to come see if this was the guy.

12 Q Did she have an opportunity to get a good look
13 at the person that was in custody?

14 A She did.

15 Q How did she react when she saw him?

16 A Scared obviously. She was shaking, crying,
17 didn't really want to look. But she ducked down
18 after she viewed him in the backseat because she
19 didn't want him to see her.

20 Q Did -- even though she didn't want to look,
21 did you advise her she had to?

22 A Yes.

23 Q Did she get that opportunity?

24 A She did.

25 Q Did she ID that person as the suspect?

1 A Yes.

2 Q And after getting that look at the suspect and
3 ID'ing him, did you take further steps?

4 A We did.

5 Q What were those?

6 A We took a photograph of the suspect and showed
7 it to her while she was still in the backseat of the
8 cruiser.

9 Q Was that -- what kind of device was that?

10 A It was a digital camera.

11 Q With an LCD screen?

12 A Yes.

13 Q When you took the camera -- she was in the
14 patrol car the entire time, correct?

15 A Yes.

16 Q When you showed her the camera, did she also
17 again identify the suspect?

18 A Yes.

19 Q Is that suspect present in court today?

20 A Yes.

21 Q Who is that?

22 A That would be the defendant.

23 MR. SIMPSON: Let the record reflect the
24 witness has pointed out the defendant.

25 THE COURT: Let the record so indicate.

1 Q (By Mr. Simpson) Following this
2 identification, did you stay with the victim H.M.
3 [REDACTED]?

4 A I did.

5 Q How did you proceed from there?

6 A I escorted her up to Rivers Avenue where a
7 medical exam was conducted.

8 Q What is the business, if you will, on Rivers
9 Avenue?

10 A I don't recall the name of it.

11 Q Did you stay with H.M. throughout that
12 medical exam?

13 A I did, yes.

14 Q Do you recall what person performed that
15 medical exam?

16 A Dr. Faye Lebeof.

17 Q Would evidence typically be taken at a medical
18 examination of this kind?

19 A Yes.

20 Q And would that be given to you to take with
21 you?

22 A No.

23 Q It would be left. Why would it be left there?

24 A Well, our crime scene technicians would be the
25 ones to pick up that evidence.

1 MR. SIMPSON: Court's indulgence.

2 THE COURT: Uh-hum.

3 MR. SIMPSON: No further questions, Your
4 Honor.

5 THE COURT: Any questions for the witness?

6 MR. KING: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. KING:

9 Q Officer Cone, were you the lead detective on
10 the case?

11 A No.

12 Q You were part of the investigation though?

13 A I was the responding officer and I took the
14 initial report.

15 Q And you responded to the scene and began
16 investigating the case obviously?

17 A Yes.

18 Q Were there any witnesses, or you didn't find
19 any witnesses that heard or saw anything, right?

20 A During that incident?

21 Q Right.

22 A No.

23 Q Nobody who said they saw her running down the
24 street?

25 A I do recall prior to receiving that, being

1 dispatched to that call, we received a call about a
2 white female running down Huger Street. I'm not sure
3 if dispatch advised she was half naked or naked, but
4 she was running in front of vehicles. I do recall
5 that.

6 Q No witnesses were ever interviewed?

7 A No, not to my knowledge.

8 Q And when you got there you met with [REDACTED] H.M.,
9 right?

10 A Yes.

11 Q And you talked to her?

12 A Uh-hum.

13 Q And asked her what happened?

14 A Yep.

15 Q And she told you that she -- Mr. Jenkins
16 knocked on the door?

17 A Uh-hum.

18 Q And that she invited him in?

19 A That was the information that I received that
20 night, yes.

21 Q She did not tell you he forced his way in?

22 A No.

23 Q She invited him in?

24 A Yes.

25 Q And this isn't the only time you have

1 responded to the address, right?

2 A Yes. No, that's not the only time.

3 Q You responded there --

4 MR. SIMPSON: Objection, Your Honor,
5 relevance.

6 THE COURT: Please approach.

7 (Whereupon, a discussion was held at the bench
8 off the record.)

9 THE COURT: You may proceed.

10 Q (By Mr. King) Had you responded before this
11 day that we are discussing today?

12 A I honestly do not recall.

13 Q Around that time had you responded there?

14 A I don't remember. I would have to go back to
15 my notes. I'm not sure when it was.

16 Q If I showed you your report would it refresh
17 your memory?

18 A Sure.

19 MR. KING: May I approach, Your Honor?

20 THE COURT: You may.

21 Q (By Mr. King) So you responded there in
22 December '06, right?

23 A Yes.

24 Q And when you responded [REDACTED] H.M. [REDACTED] was there
25 with injuries on her face?

1 A Yes.

2 Q She was bleeding from her face. And this was
3 a domestic violence call?

4 A Yes.

5 Q And --

6 A I don't believe that it was a domestic
7 violence because they weren't living together.

8 Q Okay. But it was a violent assault?

9 A Yes.

10 Q And you responded again in April of 2007?

11 MR. SIMPSON: Objection, Your Honor.

12 THE COURT: Please approach.

13 (Whereupon, a discussion was held at the bench
14 off the record.)

15 MR. KING: That's all the questions I have.

16 THE COURT: Any redirect for the witness?

17 MR. SIMPSON: Just briefly, Your Honor.

18 THE COURT: You may proceed.

19 REDIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q The dates you were questioned about in
22 December of?

23 A '06.

24 Q '06?

25 A Uh-hum.

1 Q And this happened, this incident happened in
2 April of '06, correct?

3 A Yes.

4 MR. SIMPSON: No further questions.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. SIMPSON: None from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. KING: No, Your Honor.

10 THE COURT: Ma'am, you are excused.

11 You may call your next witness.

12 MR. NEELEY: State calls officer Jake Grill.

13 MR. CHARLES JACOB GRILL,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on his oath as follows.

17 THE COURT: You may proceed.

18 MR. NEELEY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. NEELEY:

21 Q officer Grill, will you tell us what your
22 occupation is?

23 A I'm currently a narcotics investigator for the
24 City of Charleston Police Department.

25 Q How long have you been a narcotics

1 investigator?

2 A Over year and a half.

3 Q Were you in another department before then?

4 A Yes, sir, I was assigned to the Team One area
5 of Charleston, assigned to the patrol division.

6 Q What area is Team One?

7 A It's pretty much the north end of the
8 peninsula of Charleston.

9 Q Will you tell the jury about your previous law
10 enforcement experience?

11 A When I was on patrol?

12 Q Yes.

13 A Just taking calls, I responded to any calls
14 that you know assistance might be needed, 911 calls
15 to just simple questions.

16 Q And were you working in that capacity in April
17 5th, 2006?

18 A Yes, sir, I was.

19 Q Did you have an opportunity to work on a case
20 involving Daniel Jenkins?

21 A Yes, sir, I did.

22 Q How did you get involved in that case?

23 A Well, we were -- a 911 call came in for a
24 criminal sexual conduct that had just occurred. I
25 had responded to backup another officer that was on

1 the scene, Officer Cone.

2 Q Did you meet with the victim in this case?

3 A Yes, sir, I did. We arrived on the scene a
4 little after Officer Cone and just kind of met with
5 the victim, [REDACTED] H.M., and she gave us a brief
6 description of what happened. And obviously you
7 could see the blood on her face. She was roughed up
8 pretty good.

9 And she gave us further information on the
10 suspect. And from these --

11 Q So she gave you a lead in the case?

12 A Yes, sir, she did. She identified the
13 suspect. She said -- she gave us the street name of
14 Black.

15 Q What did you do with that information?

16 A From that information myself and Officer
17 Nabinette, we were familiar with this individual,
18 just through experience --

19 MR. KING: Objection.

20 Q (By Mr. Neeley) I'm sorry, just tell me what
21 you -- when you took that information did you go
22 anywhere with it?

23 A Yes, sir, we went looking for the suspect.

24 Q Did you --

25 MR. KING: May we approach?

1 THE COURT: Yes.

2 (Whereupon, a discussion was held at the bench
3 off the record.)

4 THE COURT: Ladies and gentlemen, you are to
5 disregard the last question and the last answer. You
6 are to give it absolutely no consideration in your
7 deliberations. You are to completely disregard and
8 disabuse it from your mind. You may proceed.

9 MR. NEELEY: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 Q (By Mr. Neeley) Did you go to a location
12 based on the information you received from the
13 victim?

14 A Again, like I was saying, myself and
15 Nabinette, we went to 3 Middleton Place I do believe
16 which is in the area.

17 MR. NEELEY: May I approach the witness?

18 THE COURT: You may.

19 Q (By Mr. Neeley) I'm going to show you a map
20 which has been labeled State's Exhibit 1. You may be
21 able to show the jury.

22 A Yes, sir.

23 Q I think this is the right way. You can stand
24 up if you need to. You were talking about some
25 locations, will you show us that on the map?

1 A Yes, sir. It's actually not on the map, it's
2 kind of over here it would be.

3 Q Just so that we are clear, will you point out
4 where the Jabbers Store would have been?

5 A This building right here.

6 Q Okay.

7 A And from there we spoke to -- Officer
8 Nabinette, he knew the defendant.

9 Q Will you just tell me --

10 A We went from there to 628 Rutledge Avenue
11 which was, I believe, one of these two buildings
12 right here.

13 Q And am I correct in assuming that's across the
14 street?

15 A Yes, sir. That is the parking lot, this is
16 Jabbers right here, the building right here is 628,
17 one of these two.

18 Q Okay. You can have a seat. When you got
19 there, what did you find?

20 A We knew that the defendant frequents this
21 area. And 628 Rutledge Avenue is an abandoned
22 building, just dilapidated and.

23 Q Was anyone inside when you got there?

24 A Yes, sir. The defendant was found upstairs in
25 a bedroom laying on the floor. He appeared to be

1 sleeping, however he was completely naked.

2 Completely unclothed.

3 Q what did you do once you saw him in there?

4 A First we woke him up, allowed him to get
5 dressed, and then escorted him outside to the parking
6 lot of the Jabbers.

7 Q Was he inside the car at that point or had you
8 taken him out?

9 A I don't think he was in the vehicle.

10 Q Well when you got to that parking lot, what
11 happened next?

12 A We notified Officer Cone that we had a person
13 detained. And then she brought the victim over to do
14 a positive identification.

15 Q And who did you stay with?

16 A I stayed with the suspect, the defendant.

17 Q From your knowledge was there a positive
18 identification?

19 A Yes, sir, there was.

20 Q What did you do after that?

21 A After that we then placed the defendant into
22 custody and escorted him, transported him to the
23 headquarters, police headquarters, then conducted the
24 booking procedure.

25 MR. NEELEY: Judge, that's all I have.

1 THE COURT: Any questions for the witness?

2 MR. KING: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. KING:

5 Q Officer Grill, so you were given this
6 information about the suspect, Black?

7 A Yes.

8 Q All right. And you said Officer Nabinette was
9 familiar with where he hung out, he hung around the
10 area?

11 A We both were.

12 Q So he was found pretty quickly?

13 A Yes, sir.

14 Q And he was found pretty close by?

15 A Yes, sir.

16 Q Where he was expected to be?

17 A Yes, sir.

18 Q He hadn't ran and left town, right?

19 A No, sir.

20 Q He was right there and he was asleep?

21 A Yes, sir.

22 Q Was he sleeping on a mattress?

23 A I believe he had just a blanket, or it might
24 have been the carpet on the floor.

25 MR. KING: That's all the questions I have.

1 THE COURT: Any redirect?

2 MR. NEELEY: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. NEELEY: None from the State.

6 THE COURT: From the defense?

7 MR. KING: No, Your Honor.

8 THE COURT: Sir, you are excused.

9 You may call your next witness.

10 MR. NEELEY: State calls Renee Charles.

11 MR. RENEE CHARLES,

12 after having first been duly sworn to state the
13 truth, the whole truth and nothing but the truth,
14 testified on her oath as follows:

15 THE COURT: You may proceed.

16 MR. NEELEY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. NEELEY:

19 Q Officer Charles?

20 A Yes, sir.

21 Q I'm right in saying that?

22 A Charles, Renee, that's fine.

23 Q Renee, let me ask what is your current
24 occupation?

25 A I work at the police department. I'm a crime

1 scene technician.

2 Q How long have you been there?

3 A Eleven years.

4 Q When you say you work in the crime scene
5 department, what does that mean?

6 A That means I respond to crime scene calls and
7 process the scenes collecting evidence, photographs.

8 Q So you respond to calls?

9 A Yes, sir.

10 Q Did you respond to a call on April 5th, 2006?

11 A Yes, sir, I did.

12 Q Do you know what type of call that was?

13 A On April 5th, 2006 I responded to [REDACTED]
14 [REDACTED] in reference to an aggravated assault that
15 took place at that location.

16 Q Just so that I am not getting ahead of myself,
17 you said you did respond to this particular incident?

18 A That's correct.

19 Q Went to the location. Did you take any
20 pictures?

21 A Yes, sir, I did. I took photographs.

22 Q What else did you do while you were there?

23 A I also processed the interior of the residence
24 for latent fingerprints and so on.

25 Q I'm going to show you some photographs and ask

1 if you can identify them. They are pre-marked
2 State's Exhibits, for identification, 5, 6, 7, 8, 9,
3 10, 11, 12, 13, 14, 15 and 16 and ask if you can
4 identify these?

5 A Yes, sir.

6 Q I actually want to talk about all but the last
7 three. Did you take these photographs?

8 A Yes, I did.

9 Q And where did you take these?

10 A That's the victim's residence, [REDACTED]
11 [REDACTED], that's at the location where I responded to.

12 Q Would you have taken these the night of the
13 incident?

14 A Yes, sir, that's right.

15 Q Are these the conditions of the photographs
16 when you took them?

17 A Yes, they are.

18 MR. NEELEY: Judge, we move to enter these
19 into evidence.

20 THE COURT: Did you show them to opposing
21 counsel?

22 MR. NEELEY: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. KING: Yes, Your Honor.

25 THE COURT: Please approach.

1 (Whereupon, a discussion was held at the bench
2 off the record.)

3 THE COURT: Overruled. Photos are marked and
4 admitted.

5 (Whereupon, State's Exhibit Nos. 5, 6, 7, 8,
6 9, 10, 11, 12, 13, 14, 15 and 16 are admitted into
7 evidence.)

8 Q (By Mr. Neeley) Mr. Charles, I'm going to
9 show you some photographs and ask you to identify
10 them for the jury. This is State's Exhibit 5. Can
11 you tell the jury what it is?

12 A That's the victim's underwear that was found
13 on the floor.

14 Q And is that where you found it?

15 A That's correct, sir.

16 Q This is State's Exhibit Number 6. What is
17 this a photograph of?

18 A That's the green ashtray that was also on the
19 floor. And then that was also used during the
20 altercation.

21 Q Let me ask you any indication as to what the
22 white stuff that would be in this area?

23 A They appear to be cigarette ash --

24 Q Like ashes?

25 A Yeah, ashes from the cigarette ash.

1 Q And just so that we are clear this part, I'm
2 pointing to the left side of the photograph, what is
3 this?

4 A Can you show me more, I can't see.

5 Q There may be a better photograph later, if not
6 we will come back to that.

7 A Yes, sir.

8 Q This is State's Exhibit No. 13. Once again if
9 you can identify what is in this photograph?

10 A This photograph showing the ashtray and that's
11 cigarettes and also some residue on the floor.

12 Q I'm going to show you State's Exhibit 12. If
13 you could tell the jury what that is?

14 A That's the sofa, and that's the living room
15 table, small table and that's pretty much.

16 Q Any idea what these things near the pillow may
17 actually be?

18 A I did a photograph of the strains that
19 appeared to be like blood, bloodstains.

20 Q I'm going to go back to State's 6 again, now
21 that we have looked at State's 12, and ask if you are
22 able to identify what this is on this side of the
23 photograph?

24 A That's part of the sofa. I can barely see
25 that.

1 Q And it appears this is an ashtray close to the
2 sofa?

3 MR. KING: Objection, leading, Your Honor.

4 THE COURT: Sustained, leading.

5 MR. NEELY: Thank you, Your Honor.

6 Q (By Mr. Neeley) How far would you say the
7 ashtray is from the sofa?

8 A It was pretty close. It wasn't that far I
9 would say a few.

10 Q Let me ask, Officer Charles, did you also take
11 some photographs of the victim in this case?

12 A Repeat for me, please.

13 Q Did you take some photographs of the victim in
14 this case?

15 A Yes, sir, I did.

16 Q I'm going to show you what has been marked as
17 State's Exhibit No. 11. Can you identify this?

18 A I photographed the victim's hands. That's the
19 victim's hands, palm of the hands.

20 Q And what is State's Exhibit No. 10?

21 A That's the victim's back of her hands also.

22 That's the victim's face, injuries to her nose
23 and lips.

24 Q And just for the record that's State's Exhibit
25 No. 7. Were you able to determine what was the

1 discoloration of her shirt?

2 A This appeared to be blood from her mouth and
3 her nose.

4 Q I'm going to show you State's Exhibit No. 8.

5 A That shows injuries from her upper lips, upper
6 lips.

7 Q And State's Exhibit No. 9?

8 A That's showing the injuries from lower lips of
9 the victim's mouth.

10 MR. NEELEY: And that's all the photographs I'm
11 going to show you at this time.

12 (Whereupon, State's Exhibit Nos. 3 and 4 are
13 marked for identification.)

14 Q (By Mr. Neeley) Officer Charles, did you have
15 a chance to take any physical evidence in this
16 particular case?

17 A Yes, sir, I did. I collected the green
18 ashtray, and also I did collect the victim's
19 underwear.

20 MR. NEELEY: May I approach the witness,
21 Judge?

22 THE COURT: You may.

23 Q (By Mr. Neeley) I'm going to show you what
24 has been marked for identification State's Exhibits 3
25 and 4 and ask if you can identify these. You may

1 have to open them to do that.

2 THE COURT: Bear with us, ladies and
3 gentlemen.

4 Q (By Mr. Neeley) Let me ask what while we're
5 here waiting on the gloves, did you have an
6 opportunity to lift any type of prints in this case?

7 A Yes, sir. I processed the green ashtray for
8 latent fingerprints, and I did recover three
9 fingerprint cards.

10 Q Let me ask, when you say you processed the
11 ashtray for prints, what does that mean?

12 A That means I used the black powder and
13 fingerprint latents to lift any latents on the object
14 and for fingerprints.

15 Q And you were able to pull some up?

16 A Yes, sir, I did lift three fingerprints. I
17 collected three cards.

18 Q Do you have those with you?

19 A Yes, sir, I do.

20 Q And are these the cards that you actually used
21 that night?

22 A Yes, sir, that's correct.

23 Q And just for the record, I assume they're in
24 the condition that they were when you lifted them?

25 A Yes, sir, they are.

1 Q Okay. What did you do with these after you
2 lifted those prints?

3 A I -- they were collected and they were sealed
4 and turned over to our latent examiner for
5 processing.

6 Q And when you sealed it, what is that process?

7 A The sealing process is using the sealing
8 machine and initialize and use the envelope with my
9 name and all the other information.

10 Q And then you gave them to who?

11 A I gave them to our latent examiner for further
12 processing.

13 Q Okay. Let's go back to the ashtray or the
14 item 35. If you could look at those?

15 A Yes, sir. Yes, sir, that's the --

16 Q Are you able to identify those?

17 A Yes, that's the underwear that was collected.

18 Q Did you collect those that night?

19 A Yes, that night I collected both items. It is
20 the same item that was collected that night.

21 MR. NEELEY: Judge, State would move State's 3
22 and 4 to be admitted into evidence.

23 THE COURT: Any objection?

24 MR. KING: Your Honor, may I see it?

25 THE COURT: Sure.

1 MR. KING: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit Nos. 3 and 4 are
5 admitted into evidence.)

6 Q (By Mr. Neeley) I want to show you just for
7 clarification the photographs we looked at earlier,
8 State's Exhibit No. 5. And it was your testimony
9 earlier, if I'm correct, that these were the
10 underwear that you found?

11 A Yes, that's correct.

12 Q Was this the location that you found them in?

13 A At that time they were on the floor, that's
14 the exact location where they were collected.

15 Q Do they appear to be ripped?

16 A Yes, sir, they appear to be ripped.

17 Q And I'm going to show you State's Exhibit
18 Number 6. Just for clarification, is this where the
19 ashtray was found when you took the photograph?

20 A That's correct, yes.

21 MR. NEELEY: Just one moment, Judge.

22 THE COURT: Uh-hum.

23 MR. NEELEY: That's all I have, Judge.

24 THE COURT: Any questions for the witness?

25 MR. KING: Court's indulgence one moment.

1 THE COURT: Uh-hum.

2 MR. KING: I have no questions for this
3 witness, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused from the state?

6 MR. NEELEY: None, Your Honor.

7 THE COURT: From the defense?

8 MR. KING: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 we are going to take advantage of this break in
13 testimony to give you a short morning recess. We
14 will break until 11:15 which is a little shy of 10
15 minutes. Probably more like 11:20 give you a full 10
16 minutes.

17 During this break please do not discuss the
18 case among yourselves. Please leave your notepads in
19 the seats. If you need anything, please let the
20 bailiffs know.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: We will be at ease until 11:20.

23 (Whereupon, a recess was taken.)

24 THE COURT: Is the State ready to proceed?

25 MR. SIMPSON: Yes, Your Honor.

1 THE COURT: Is the defense ready to proceed?

2 MR. KING: Yes, Your Honor

3 THE COURT: please bring in the panel.

4 (Whereupon, the jurors enter the courtroom.)

5 THE COURT: Ladies and gentlemen, I hope you
6 enjoyed your break. We will now resume the trial.

7 You may call your next witness.

8 MR. NEELEY: State calls Kalisha Gill.

9 MS. KALISHA GILL,

10 after having first been duly sworn to state the
11 truth, the whole truth and nothing but the truth,
12 testified on her oath as follows:

13 THE COURT: You may proceed.

14 MR. NEELEY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. NEELEY:

17 Q Ms. Gill, what is your occupation?

18 A I'm a latent fingerprint examiner for the
19 Charleston Police Department.

20 Q And what does that mean?

21 A I analyze and compare latent fingerprints that
22 are taken from a crime scene to a known individual
23 for identification as well as elimination. I operate
24 the automated fingerprint identification system known
25 as AFIS. And I verify other latent examiners'

1 findings.

2 Q Let me ask, how long have you done that?

3 A It will be seven years next month.

4 Q What type of education do you have in order to
5 do that?

6 A I graduated from the University of Arizona
7 with a bachelor's of science degree in May of 2000.
8 And after that I enrolled in a course through the
9 United States Department of Justice which dealt with
10 fingerprint classification and pattern recognition.

11 Once I got hired at the police department they
12 sent me to a basic fingerprint course through the
13 South Carolina Criminal Justice Academy. I've also
14 been to ridgology science workshop, demystifying palm
15 print symposium, basic crime scene techniques for
16 investigators, forensic fingerprints identification
17 and testimony courses.

18 And my most recent accomplishment is becoming
19 a certified latent print examiner as well as a
20 certified crime scene investigator through the
21 International Association for Identification.

22 Q Okay. Let me ask on how many occasions have
23 you had to actually identify persons by comparing
24 their latent prints with ink prints?

25 A I would say probably more than 10,000

1 including my training.

2 Q Have you ever had occasion to be qualified as
3 an expert concerning fingerprint analysis?

4 A Yes, I have.

5 Q How many occasions?

6 A Roughly 15 times.

7 MR. NEELEY: Your Honor, at this time we offer
8 Ms. Gill as an expert in latent print identification.

9 THE COURT: Any objections or questions?

10 MR. KING: No, Your Honor.

11 THE COURT: So admitted.

12 MR. NEELEY: Thank you, Your Honor.

13 Q (By Mr. Neeley) Ms. Gill, will you tell the
14 court what an ink fingerprint is?

15 A If you look at the tips of your fingers, you
16 can see ridges or raised ridges which are called
17 friction ridges. When a thin layer of ink is applied
18 to these areas and pressed on a standard fingerprint
19 card it leaves behind a visible impression which is
20 called a known as an ink impression.

21 Q What is a latent fingerprint?

22 A Latent means hidden or something that can't be
23 seen with the naked eye. So a latent fingerprint is
24 an impression of the friction ridges that can be left
25 behind when an object is touched. The impression is

1 invisible and it's left in the form of perspiration
2 or dirt or contaminants that are left on the fingers.

3 And through the use of chemicals or
4 powders with the crime scene investigators the
5 impression becomes visible for comparison purposes.

6 Q Will you tell the jury how you make that
7 identification based on those two prints?

8 A Identifications are done using the AB
9 methodology, which AB stands for analysis,
10 comparison, evaluation and verification. The
11 comparison process is we use three levels of detail.
12 The first level being pattern type. When -- there
13 are three types of pattern for fingerprints, you have
14 loops, arches and whirls.

15 And you always start with the latent
16 fingerprint and ink fingerprint side by side with
17 magnifiers and pointers and additional light if you
18 need it. And the comparison process you look at the
19 latent fingerprint and see if you can find a pattern
20 type of that latent. If it is visible then you go to
21 the ink impression and find that same pattern type.

22 If they agree, then you move on to the second
23 level of detail which deals with points or minutia,
24 points being friction ridges that end just called
25 ending ridges, or bifurcations which are friction

1 ridges that split off, one friction ridge splits off
2 and forms two.

3 You start with the latent fingerprint and you
4 find a target group which is a cluster of points.
5 And you look for that same group of points in the ink
6 fingerprint in the same relative position. From that
7 point on it's a continuous process of going back and
8 forth between the latent fingerprint and the ink
9 fingerprint and counting the ridges to find more
10 points.

11 At the same time as using the second level of
12 detail, you also use the third level of detail which
13 is more specific and deals with the shapes and sizes
14 of the ridges, the distance between the ridges which
15 is called the furrows, and location of the whirls or
16 ridges when the ridges that aren't fully formed.

17 And once you feel there is enough of the
18 information agreeing between the latent fingerprint
19 and the ink fingerprint with no unexplainable
20 differences, then you can call it an identification.

21 Q Tell me this, and this can help me, can two
22 people have the same fingerprint?

23 A No.

24 Q Why not?

25 A Why don't people have the same fingerprints?

1 Q Yeah.

2 A Because each fingerprint is unique to each
3 individual, as well as each finger on that
4 individual.

5 Q Okay.

6 (Whereupon, State's Exhibit No. 17 is marked
7 for identification.)

8 Q (By Mr. Neeley) I'm going to show you what
9 has been marked State's Exhibit 17 for
10 identification. Are you able to identify those?

11 A I recognize these.

12 Q You've seen them before?

13 A Yes.

14 Q And tell me where did you see those?

15 A In my office in West Ashley.

16 Q Will you tell me what it actually is?

17 A This is an envelope containing three latent
18 fingerprint cards that were submitted by our crime
19 scene officer Renee Charles.

20 Q Were you able to receive enough detail of
21 value to make a comparison with those?

22 A Two of them three fingerprints, yes.

23 Q Were you asked to compare them with someone?

24 A Yes.

25 Q Who were you asked to compare them with?

1 A A Daniel Jerome Jenkins.

2 Q Did you do that?

3 A Yes, sir.

4 Q And would you tell the jury what the result of
5 that comparison was?

6 A The latent lifts number one and number two
7 were both identified to the number one finger, which
8 is the right thumb finger, of the ink card bearing
9 the name Daniel Jerome Jenkins.

10 MR. NEELEY: Judge, that's all we have for Ms.
11 Gill.

12 THE COURT: Any questions for the witness?

13 MR. KING: Yes, Your Honor. May I approach to
14 see Exhibit 17?

15 THE COURT: You may.

16 CROSS-EXAMINATION

17 BY MR. KING:

18 Q Ms. Gill, you said there were three prints
19 there?

20 A Yes, sir.

21 Q Three latents?

22 A Yes.

23 Q The one that wasn't tested, was that someone
24 else or?

25 A No, they were all compared to Daniel Jenkins,

1 however the third latent did not have enough detail
2 to be identified to anybody.

3 Q So you can't say whether it was him or whether
4 it was somebody else?

5 A Right.

6 Q You are a scientist, right?

7 A Yes.

8 Q So you are not involved in any other
9 investigation of the case?

10 A No.

11 Q You are just presented with some latent
12 fingerprints and fingerprint cards and asked if they
13 match?

14 A Yes, sir.

15 Q And you can't determine when the fingerprints
16 got there, can you?

17 A No.

18 Q And all this shows you is that Mr. Jenkins --
19 do you know where the latent fingerprints came from?

20 A Yes.

21 Q They came from a glass ashtray?

22 A They were -- it says round green crystal
23 ashtray.

24 Q So, this just tells you that Daniel Jenkins
25 touched the ashtray, right?

1 A Yes.

2 Q With his right thumb?

3 A That's correct.

4 Q And there are two of the same thumb, two
5 prints on the ashtray. Two separate?

6 A I'm not sure if they were two separate prints
7 or two lifts of the same print.

8 Q You can't determine whether or not Mr. Jenkins
9 hit someone with that ashtray; isn't that right?

10 A No, I don't know.

11 Q You cannot determine whether he was smoking
12 cigarettes and happened to touch the ashtray, right?

13 A I don't know.

14 Q You cannot give us that information?

15 A No, I cannot.

16 MR. KING: That's all the questions I have.

17 THE COURT: Any redirect of the witness?

18 MR. NEELEY: Just a moment, Judge.

19 REDIRECT EXAMINATION

20 BY MR. NEELEY:

21 Q Ms. Gill, will you tell me whether or not
22 prints always contain enough detail to do a
23 comparison?

24 A No, not always.

25 Q Is that unusual?

1 A Not unusual at all, no.

2 Q Can a print fade or disappear over time?

3 A Yes, they can.

4 Q What would make that happen?

5 A The main reason would be environmental factors
6 such as sunlight for -- fingerprints, latent prints
7 are usually made up of 99 percent water so in direct
8 sunlight or in circumstances where they could
9 evaporate, fingerprints would fade. If something is
10 cleaned or wiped off they could remove the
11 fingerprints on it.

12 Q So can you touch something and not leave a
13 print?

14 A Yes, depending on the surface.

15 Q But in this particular case you found a match?

16 A Correct.

17 MR. NEELEY: That's all the questions we have,
18 Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MR. NEELEY: None, Your Honor.

22 THE COURT: From the defense?

23 MR. KING: No, Your Honor.

24 THE COURT: You are excused.

25 You may call your next witness.

1 MR. SIMPSON: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 I have a brief matter of law I need to take up with
7 the attorneys. It should take probably about 15
8 minutes. During the break please do not discuss the
9 case. We appreciate your patience. If you need
10 anything please let the bailiffs know. If you would
11 like to go downstairs and walk around, you certainly
12 may do so.

13 Please leave your notepads in your seats.
14 Please do not discuss the case in any manner.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Call your witness.

17 MR. SIMPSON: State calls Jenny Antonio.

18 MS. JENNIE ANTONIO,
19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on her oath as follows:

22 THE COURT: Is it Jennifer or Jennie?

23 THE WITNESS: Jennie, J-E-N-N-I-E.

24 THE COURT: Thank you. You may proceed.

25 IN-CAMERA DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q Detective Antonio, what is your occupation?

3 A I'm a police officer with the City of
4 Charleston Police Department.

5 Q What is your rank?

6 A I'm a master police officer. I'm currently
7 assigned to the detective office.

8 Q Were you working in that capacity back in
9 April of 2006?

10 A Yes, sir.

11 Q And did you respond to the scene for which we
12 are in trial here today?

13 A Yes, sir, that's correct.

14 Q Were you one of the first officers on the
15 scene?

16 A I was the detective working the nightshift
17 that night. Supervisor advised me what had
18 transpired, that they had responded for a sexual
19 assault. And procedurally we respond to the crime
20 scene where the victim, victim was still at the crime
21 scene. So, yes, sir.

22 Q Did you speak with the victim?

23 A I did, yes, sir.

24 Q Did you get her story of what had occurred
25 that night?

1 A Yes, sir, I did.

2 Q Did you later learn that she had a sexual
3 assault kit performed on her later that evening?

4 A Yes, that's correct.

5 Q And you stated you were working the
6 nightshift, correct?

7 A Yes, sir.

8 Q Did you later learn also the suspect had been
9 taken into custody, identified and arrested?

10 A Yes, sir. I was present when the
11 identification was made, standing outside Officer
12 Cone's patrol car.

13 Q And how did you proceed after arrest of the
14 suspect and knowing that a sexual assault kit had
15 been performed on the victim, how did you then
16 proceed?

17 A What happened she was transported at the time
18 immediately for that kit to be completed due to the
19 nature of her injuries. So at that time I went ahead
20 and secured a search warrant to gain the defendant's
21 DNA for future comparisons.

22 Q And was that -- did you approach a magistrate
23 with that search warrant?

24 A That's correct, Judge Homes.

25 MR. SIMPSON: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 (Whereupon, State's Exhibit No. 18 is marked
4 for identification.)

5 Q (By Mr. Simpson) Officer, I'm handing you
6 what has been marked for ID purposes as State's 18.
7 Do you recognize that?

8 A Yes, sir. It's a search warrant that I
9 secured the night of April the 6th, 2006.

10 Q And did you set out probable cause in that
11 search warrant?

12 A Yes, I do.

13 Q Can you read that section for the record?

14 A Yes, sir. On probable cause states: On
15 4/5/06 at approximately 22:30 hours while at [REDACTED]
16 [REDACTED] Charleston, South Carolina, 29403, the
17 subject, Daniel Jerome Jenkins, parenthesis, black
18 male, date of birth [REDACTED] 60, did enter the victim's
19 residence and threatened to kill her if she did not
20 comply with his demand to perform oral sex on her.
21 The victim attempted to fight the subject, however he
22 overpowered her by striking her in and about her face
23 using a glass candle holder.

24 The subject then penetrated the victim's
25 vagina with his tongue and penis. The DNA samples of

1 blood, head hair and pubic hair will be retrieved
2 from the suspect by a trained medical personnel in a
3 medical facility. The collection of these samples
4 will be conducted in a noninvasive manner.

5 Q Detective, in a case where sexual assault is
6 alleged and the victim reports quickly as in this
7 case and a rape kit is done, is it relevant to
8 collect DNA samples from the suspect?

9 A It is, sir. It is used to compare, eliminate
10 or identify possibly if there were any questions in a
11 case like that this.

12 Q As you indicated previously you also did lay
13 out in the search warrant that how these items were
14 to be obtained?

15 A Yes, sir.

16 Q And was that by a medical professional?

17 A Trained medical personnel in a medical
18 facility. And it would be conducted in a noninvasive
19 manner.

20 Q And again once presented to the magistrate the
21 magistrate signed that search warrant?

22 A Yes, sir. She read it first and then she
23 signed it.

24 Q Did you execute that search warrant?

25 A No, sir, I did not.

1 Q why was that?

2 A I was working nightshift and I believe, I
3 can't remember, I think in '06 we were working 4:00
4 to midnight, so I would have gotten off at midnight.
5 Also, there is not a jail nurse or also Ms. Faye
6 Lebeof were not available to execute the search
7 warrant at that time. I asked my fellow detectives
8 to please execute it at their earliest convenience on
9 the following day.

10 Q okay.

11 MR. SIMPSON: I have no first questions, Your
12 Honor.

13 THE COURT: Any questions for the witness?

14 MR. KING: Yes, Your Honor.

15 IN-CAMERA CROSS-EXAMINATION

16 BY MR. KING:

17 Q Detective Antonio, this is the affidavit that
18 you just read out loud is what the magistrate saw,
19 there is no oral testimony or anything, it was just
20 based on this affidavit?

21 A No, sir, I just presented her with the search
22 warrant, she read it and it was signed it.

23 Q okay. So the first sentence, on April 5th,
24 2006 at approximately 22:30 hours while at [REDACTED]
25 [REDACTED] Charleston, South Carolina, 29403 the subject,

1 Daniel Jerome Jenkins, did enter the victim's
2 residence and threatened to kill her if she did not
3 comply with his demand to perform oral sex.

4 You did not witness that, right? You weren't
5 personally there to witness those events obviously?

6 A Correct.

7 Q You responded later. So the information you
8 are putting in here is hearsay from [REDACTED] H.M.?

9 A That was provided to me from her statements,
10 yes, sir.

11 Q You read her statement or interviewed her
12 personally?

13 A I did both. I interviewed her on scene, but
14 due to the fact of her injuries with her face and her
15 mouth and her nose, I took an actual written
16 statement the following day.

17 Q But you talked to her personally?

18 A Correct, yes, sir.

19 Q Next sentence I guess goes on the victim
20 attempted to fight the subject, however he
21 overpowered her by striking her in and about the face
22 using a glass candle holder. Again that's
23 information you got from [REDACTED] H.M.?

24 A Correct. That was provided to me from the
25 victim. Yes, sir.

1 Q And there is nothing in the affidavit about
2 where you got the information, right? It doesn't say
3 in here that you spoke to the victim and she told you
4 this?

5 A No, sir.

6 Q And it doesn't give any information about [REDACTED].
7 [REDACTED] H.M. credibility, right? Anything for the
8 magistrate to evaluate her credibility. For example,
9 you knew that [REDACTED] H.M. was emotionally upset when
10 you responded, right?

11 A She was hysterical, yes, sir.

12 Q She was hysterical?

13 A Bleeding from the face.

14 Q But that's not included in the affidavit, her
15 demeanor, right?

16 A No, sir.

17 Q She had injuries on her face that you saw, as
18 you said she was bleeding from her face?

19 A Yes, sir.

20 Q And that's not in the affidavit, right, that
21 you observed injuries to her face?

22 A No, sir.

23 Q It does not say anywhere in the affidavit that
24 there were photos of the injuries available, right?
25 And there were photos?

1 A Photos of what?

2 Q Of [REDACTED] H.M. injuries?

3 A Correct. No, there is no mention of any
4 photos.

5 Q And the magistrate didn't see any photos?

6 A Nor did she ask for any photos.

7 Q Or any photos of the scene which would have
8 shown her. You were in here earlier and you saw the
9 photos admitted into evidence of the couch?

10 A Correct.

11 Q The ashtray, those are not mentioned in the
12 affidavit, right?

13 A Correct.

14 Q Nor were they seen by the magistrate?

15 A No, sir.

16 Q And you were also you were aware from your
17 investigation that there was some physical evidence
18 collected at the scene. There was a pair of ripped
19 panties?

20 A Correct.

21 Q That's not in the affidavit?

22 A No, sir.

23 Q And there was photos of what appeared to be
24 blood on the couch, right?

25 A Correct.

1 Q But that's not in the affidavit, right?

2 A Right.

3 Q And you knew that [H.M.] had identified
4 Daniel Jenkins as the person who raped her, right?

5 A Yes, sir.

6 Q But that's not in the affidavit either?

7 A No, sir. It was based on what she had told
8 me, and based upon her identification, that's why
9 this is written this way.

10 Q Right. But it does not say in the affidavit
11 that [H.M.] identified Daniel Jenkins as the
12 suspect who assaulted her?

13 A No, sir. That's written in a manner that
14 states he was already identified, correct, from her.

15 Q A conclusion. It was written in a
16 conclusionary way?

17 A Correct, from the victim's statements and her
18 identification of Mr. Jenkins.

19 Q And you knew that there was a medical exam
20 that was performed on [H.M.]

21 A She was taken to have a medical exam
22 performed, correct.

23 Q And were you aware at that time --

24 A No, I wasn't aware of the findings of that
25 exam at the time this was written. It takes

1 approximately three to four hours for that exam to be
2 completed. This was done prior to.

3 MR. KING: That's all the questions I have of
4 the witness.

5 THE COURT: Any redirect of the witness?

6 MR. SIMPSON: No redirect, Your Honor.

7 THE COURT: Does the State have any further
8 witnesses to call on this issue?

9 MR. SIMPSON: Not on the issue of the search
10 warrant, Your Honor.

11 THE COURT: Defense have any witnesses it
12 wishes to call?

13 MR. KING: No, ma'am.

14 THE COURT: Okay. Any argument?

15 MR. SIMPSON: Yes, Your Honor. As outlined in
16 State versus Baccus, 357 S.C. 41, 2006, example case
17 because that case incorporates statutory law and the
18 requirements of Mervin versus California, U.S.
19 Supreme Court case resulting in a search warrant for
20 bodily fluids.

21 In that case as outlined that can be done by a
22 search warrant or court order and merely lays out
23 three requirements. One is probable cause to believe
24 the suspect has committed a crime as outlined in the
25 search warrant. I think based on the search warrant

1 itself and the testimony that has been offered to the
2 Court, the exhibits and the testimony you just heard
3 certainly probable cause is established.

4 Point two, clear indication that the relevant
5 evidence will be found. I think that's also outlined
6 before the magistrate and the facts given search,
7 warrant this is a sexual assault, reported recently
8 obviously, the presumption can be made from that
9 search warrant that relevant evidence could be found.

10 Third requirement that the method be used to
11 secure those items be safe and reliable. That's
12 outlined in the search warrant signed by the
13 magistrate.

14 This is not an incident where we have a CI
15 based search warrant. This is Ms. Antonio testified
16 she was speaking with the victim who had been beaten,
17 assaulted and based that search warrant on that
18 testimony. I think it's a reliable basis for that.
19 Certainly the requirements of State v Baccus have
20 been met and the search warrant should be upheld,
21 Your Honor.

22 We stress again as to defense counsel's
23 questioning obviously it's not required that you
24 prove a case in a search warrant, you merely have to
25 assert probable cause. The fact that she at that

1 point in the investigation didn't outline all the
2 later findings, photographs, things of that nature,
3 that is simply not required when applying for a
4 search warrant.

5 what is required for a search is probable
6 cause. I believe relevant evidence can be found, the
7 fact that items had been retrieved through a safe
8 method, all three are outlined in plenty of detail in
9 the detective's search warrant.

10 THE COURT: Mr. King.

11 MR. KING: Thank you, Your Honor. I'm also
12 relying on State versus Baccus as one of my cases.
13 Just to point out it does say that obtaining Mr.
14 Jenkins' blood is a search and the Fourth Amendment
15 applies and probable cause must exist.

16 And that's really what I am focusing on.
17 State versus Baccus lists three requirements.

18 THE COURT: What kind Supreme Court case or
19 Court of Appeals case?

20 MR. KING: That is a Supreme Court, Your
21 Honor.

22 THE COURT: What is the citation?

23 MR. SIMPSON: 367 S.C. 41

24 THE COURT: Thank you.

25 MR. KING: Three requirements, Your Honor.

1 Number one, there has to be probable cause to believe
2 the suspect has committed a crime, that's really
3 where my argument focuses in on.

4 I'm also relying on State versus Smith, which
5 is a pretty short case, Your Honor. If you need that
6 citation, State verse Smith, 301 S.C. 371. And State
7 versus Smith they lay out the probable cause that the
8 magistrate had before him or her. And in that case
9 the probable cause was that on May 12th at
10 approximately 11:45 p.m. criminal, Jerome Smith, went
11 into the Master Inn located at 1468 Savannah Highway
12 and then he robbed the manager at knife point.

13 And the Court ruled that the affidavit was
14 defective on its face, the affidavit must contain
15 sufficient underlying facts and information on which
16 a magistrate can make a probable cause determination.
17 Mere conclusion, any statements which gives the
18 magistrate no basis to make a judgment are
19 insufficient.

20 In this case, State versus Smith, the
21 affidavit sets forth no facts as to why the police
22 believe Smith robbed the Master Inn. I think this is
23 the exact same thing in the affidavit in this case,
24 Your Honor.

25 In this case, Your Honor, first sentence is:

1 On April 5th, 2006 -- I'll skipped over -- 22:30
2 hours [REDACTED] the subject does enter the
3 victim's residence, threatens to kill her if she does
4 not comply with his demand to perform oral sex on
5 her. That's a conclusion. It wasn't witnessed by
6 the officer, it's hearsay from [REDACTED] H.M. But it
7 does not explain how they know that.

8 Next sentence: Victim attempted to fight the
9 subject however he overpowered her by striking her in
10 and about the face using a glass candle holder.
11 Again it's a conclusion, doesn't explain how the
12 police know that or what evidence they have.

13 The suspect then penetrated the victim's
14 vagina with his tongue and penis. That's the same
15 thing, these are just conclusions. And the questions
16 I'm asking the officer are facts that the magistrate
17 could have known to make an independent determination
18 of probable cause.

19 The point is that the police officer is not
20 supposed to make the decision about probable cause,
21 it's supposed to be presented to the magistrate so
22 the magistrate can make an independent determination.
23 And in this case it doesn't give where the
24 information came from. Doesn't say the victim was
25 interviewed and said this.

1 And State versus Robinson, 335 S.C. 620, I
2 know this applies more to a confidential informant,
3 but there has to be some information to consider the
4 veracity of the person submitting the information.
5 That could have been supplied by, responded to the
6 scene and the victim was hysterical, the victim was
7 bleeding from the face, those -- that information
8 would have supplied some facts for the magistrate to
9 determine that she had been actually assaulted and
10 that she had been hit.

11 So it doesn't include anything about [REDACTED].
12 [REDACTED] H.M. credibility or who supplied the information.
13 Doesn't supply the demeanor of [REDACTED] H.M. when the
14 police arrived. The appearance of her, her physical
15 appearance, photos or photos of the scene, there were
16 photographs of her injuries have been admitted into
17 evidence.

18 There was physical evidence collected at the
19 scene, blood, ripped pants, that's not included in
20 the affidavit, it's not even included in the
21 affidavit that [REDACTED] H.M. identified Daniel Jenkins as
22 to the person who did it. So the magistrate wouldn't
23 have any idea how they know that Daniel Jenkins is
24 the right person. Because all it would have to say
25 is that [REDACTED] H.M. after being shown Daniel Jenkins

1 identified him as the suspect who assaulted her.

2 I'm telling she wasn't aware of the result of
3 the medical exam but that could have been included as
4 well. Results of the medical exam revealed there was
5 semen present and that there were vaginal abrasions.
6 So all these facts needed to be in the search warrant
7 so that the magistrate can make an independent
8 determination.

9 I'm submitting that what was presented to the
10 magistrate were conclusions in the same way that they
11 were presented to the magistrate in State versus
12 Smith.

13 And a slightly weaker argument, Your Honor,
14 there has to be clear indication of relevant material
15 evidence will be found. And there is no indication
16 in the search warrant that relevant evidence would
17 have been found. Again that would have been the fact
18 that there was a medical exam performed, and semen
19 was found in the victim, and that's not included in
20 the probable cause as well.

21 But the main argument, Your Honor, is that
22 there is no probable cause that Mr. Jenkins committed
23 the crime in this affidavit that was presented to the
24 magistrate.

25 THE COURT: The motion to suppress is denied.

1 There is more than substantial evidence in the record
2 to support a finding of probable cause. Probable
3 cause is a reasonable and articulable suspicion that
4 criminal activity. Clearly the affidavit meets those
5 elements and meets that standard.

6 It meets the element that probable cause to
7 believe the crime has been committed and probable
8 cause to believe it was committed by a particular
9 suspect.

10 The fact that the officer interviewed the
11 victim at the scene and she identified the defendant
12 is sufficient, and coupled with her independent
13 observations of the victim at the scene, and the fact
14 that he had been identified is more than sufficient
15 probable cause for the warrant to have been issued.

16 Frankly, the items that you indicate need to
17 be in the warrant, I mean in the affidavit, are not
18 necessary for there to be a finding of probable
19 cause. And the facts in the case that you have cited
20 are not similar to this case. It's really quite
21 different in the elements of the crime that were
22 charged and the facts as they were set out in that
23 particular affidavit.

24 The next element State must meet is to show
25 clear indication that material evidence relevant to

1 the question of the suspect's guilt can be found.
2 Clearly DNA or genetic material is material evidence
3 and material evidence relevant to the question of the
4 suspect's guilt on the crime of criminal sexual
5 conduct in the first degree.

6 The method used to secure this evidence is
7 safe and reliable. I don't think there is anybody
8 really contesting that, so that issue is moot. And
9 finally the Court must determine whether the
10 character of the request is appropriate balancing the
11 seriousness of the crime, the importance of the
12 evidence, and the importance of the investigation,
13 and the availability of alternative, less intrusive
14 means of obtaining the evidence against concern for
15 potential -- this is actually I'm looking at the
16 elements required for the Court to order a blood
17 sample being they're really quite similar with the
18 exception of this last element that is required when
19 the Court is making that decision.

20 In this case the Court would find for purposes
21 of this record that the affidavit submitted by the
22 officer in support of issuance of a warrant set forth
23 particular facts and circumstances underlying the
24 existence of probable cause and did in fact establish
25 probable cause.

1 In addition, the Court would find the
2 affidavit was supported by oath or affirmation.
3 There has been no issue regarding that before the
4 Court.

5 It appears the focus of the defendant's
6 argument, lack of probable cause, the Court has
7 already found that probable cause did exist for
8 issuing the warrant to take samples from the
9 defendant. The Court would find also that the other
10 requirements regarding such intrusion have been met.
11 And I think I have already addressed those regarding
12 probable cause, that material evidence be collected
13 with the method safe and reliable, and that the
14 character of the request was appropriate considering
15 the seriousness of the crime.

16 And also it's clear that when you take -- the
17 taking of his fluids in this case would be material
18 in that he was accused of a crime of criminal sexual
19 conduct in the first degree.

20 It is my understanding, however, that the
21 defendant, and his defense is consent, that he really
22 is not denying being there and having sex with the
23 victim in this case. Is that right, Mr. King?

24 MR. KING: That may end up being my defense,
25 Your Honor. Obviously I haven't made that argument

1 yet. I did not argue it in opening.

2 THE COURT: That was my understanding.

3 MR. KING: If the DNA comes in that looks like
4 where I am going, Your Honor.

5 THE COURT: I think clearly the requirements
6 of the case law have been met. The case you all had
7 cited, which is the Baccus case, while it speaks in
8 terms of probable cause particularly of an affidavit,
9 it really factually is not very similar to this case.
10 There are other cases that are far more similar, that
11 being State verse Register, and there are a few
12 others for the sake of time I'm not -- really set
13 forth the same elements that the Court must consider
14 in determining.

15 But, however, Baccus is relevant on the issue
16 of the establishment of probable cause. And that's
17 the crux and gravamen of the defendant's argument.
18 The Court has found that there is sufficient probable
19 cause for the issuance of the warrant, therefore the
20 motion is denied.

21 Anything further for the record before we
22 proceed with this witness from the State?

23 MR. SIMPSON: Nothing from the State, Your
24 Honor.

25 THE COURT: Anything from the defense?

1 MR. KING: Your Honor, just briefly, make sure
2 I made my record. Obviously I was objecting to the
3 search warrant, ultimately objecting to the admission
4 of the DNA evidence.

5 THE COURT: I think you covered it. The
6 gravamen of your argument was probable cause.

7 MR. KING: Right, Your Honor. In addition to
8 the case I cited I'll also cite 17-13-140, South
9 Carolina code which is the statute on search warrant
10 which states probable cause is required. And the
11 constitutional argument of Fourth Amendment.

12 THE COURT: I think you covered them.

13 MR. KING: Article Six of the South Carolina
14 Constitution.

15 THE COURT: I think you covered it.

16 MR. KING: Again --

17 THE COURT: I'm not eliciting additional
18 argument. The court has ruled. I think you covered
19 it more than amply, your record is preserved.

20 MR. SIMPSON: Your Honor, may we approach as
21 to scheduling?

22 THE COURT: Who's your next witness?

23 MR. SIMPSON: Ms. Antonio.

24 THE COURT: What time is her exam?

25 MR. SIMPSON: Four o'clock. She needs to be

1 out by 3:30.

2 THE COURT: Please bring in the panel.

3 (Whereupon, the jurors enter the courtroom.)

4 THE COURT: Ladies and gentlemen, we
5 appreciate your patience. We will now have the
6 State's next witness.

7 MR. SIMPSON: State calls Jennie Antonio.

8 MS. JENNIE ANTONIO,

9 after having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on her oath as follows:

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q Ms. Antonio, who's your employer?

16 A City of Charleston Police Department.

17 Q And how long have you done that job?

18 A I have been there for 10 years.

19 Q What is your current rank?

20 A Master police officer.

21 Q Were you working in that capacity on April
22 5th, 2006?

23 A Yes, sir, I was. I was assigned -- I have
24 been assigned to detective's office for the last
25 eight years.

1 Q And how did you become involved in the present
2 case?

3 A I was working nightshift that evening. And
4 the patrol supervisor advised me on the radio that a
5 sexual assault had just occurred. I responded to the
6 incident location where the victim happened to still
7 be at [REDACTED].

8 Q Would you have been the lead detective on the
9 scene?

10 A Yes, sir.

11 Q When you arrived on scene, did you speak with
12 the victim, [REDACTED] H.M. [REDACTED]?

13 A Yes, sir, I did.

14 Q Can you just describe the victim's demeanor
15 when you arrived?

16 A She was hysterical. She had a bloody nose,
17 her mouth was bleeding, blood all over her hands.
18 Inside her lips were bloody, she was shaking, crying.

19 Q And shortly after arriving did you learn that
20 a suspect was in custody?

21 A Yes, sir.

22 Q Did you accompany the victim to the location?

23 A I did, yes, sir. I was standing outside of
24 Officer Cone's vehicle when the victim made the
25 identification.

1 Q Could you see the victim when she made the
2 identification?

3 A Yes, sir, she was crouching down in the back
4 of the patrol car. She was very, very scared of the
5 defendant.

6 Q Did you take a written statement that night
7 from the victim?

8 A No, sir. She was too hysterical. I wanted
9 her to be transported to the medical facility as soon
10 as possible so that we could address any injuries
11 that she sustained. So I took it the following day.

12 Q The individual who the victim identified as
13 the man who assaulted her, is that individual in the
14 courtroom here today?

15 A Yes, sir, he is the defendant.

16 Q You mentioned before during April 2006, what
17 shift were you working again?

18 A It would have been the evening shift. I think
19 our time frames we were working 4:00 p.m. to
20 midnight.

21 Q And do you remember about what time you would
22 have responded to this scene?

23 A It would have been sometime after 11:00.

24 Q So you, after making sure that the victim was
25 transported to the medical center, how did you

1 proceed on this case?

2 A Since the victim identified the defendant as
3 the perpetrator, he was detained. And at that time I
4 went ahead and met with Magistrate Judge Homes to
5 secure a search warrant for the defendant's DNA to
6 compare it in the case as it came about.

7 Q And when you say defendant's DNA, what sort of
8 substances are you talking about?

9 A Typically back in 2006 we would request for a
10 head hair sample, a pubic hair sample, blood, and
11 sometimes saliva.

12 Q And does the law require you to obtain a
13 search warrant before that happens?

14 A Search warrant or court order.

15 Q About what time, if you remember, did you get
16 this magistrate to sign this search warrant?

17 A I know it was close to the end of my shift, so
18 I'm not -- I don't know exactly the time.

19 Q Did you execute that search warrant
20 personally?

21 A No, sir. Due to the hour it was there was not
22 a nursing staff available at the jail to execute the
23 search warrant. So I contacted my fellow detectives
24 that were working day shift to see if they could
25 execute it for me.

1 Q Detective, did you visit the victim after the
2 date of the incident?

3 A Yes, that's correct. I believe it was --
4 well, I know it was following day, I believe it was
5 approximately 5:00 p.m.

6 Q Did you take any further photographs of her?

7 A Yes, sir, I did. I had crime scene officer
8 Renee Charles respond to take more photographs of her
9 injuries as they had kind of appeared, the bruising.

10 MR. SIMPSON: Permission to approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 Q (By Mr. Simpson) Detective, I hand you what
14 has been pre-marked as State's 14, 15, and 16. Do
15 you recognize those photographs?

16 A Yes, sir, I do.

17 Q Are those the things you just referenced?

18 A Yes, sir, they are.

19 Q And are they the same shape as they were when
20 the photographs were taken?

21 A Yes, sir.

22 Q Can you describe that photograph to the jury?

23 A Typically we will have the crime scene
24 technician take just a picture of the victim's face
25 so that you can see it as normal, nothing pointed

1 out. She has a contusion under her left eye,
2 contusions, you can see the discoloration on both her
3 top and bottom lip on the left-hand side.

4 MR. SIMPSON: Your Honor, I'd like to move
5 State's 14, 15 and 16 into evidence.

6 THE COURT: Did you show them to defense?

7 MR. KING: Yes. I have no objection.

8 THE COURT: Marked and admitted without
9 objection.

10 (Whereupon, State's Exhibit Nos. 14, 15 and 16
11 are admitted into evidence.)

12 A This photograph, often if someone is struck in
13 the mouth their teeth will actually cause lacerations,
14 from the object, the force of the lips hitting their
15 teeth. So she had a large contusion that went all
16 the way up underneath her upper lip. And then as you
17 can see her lip where that was actually opened.

18 And this photograph is very similar, it just
19 shows the damage to the bottom lip on the interior
20 side.

21 MR. SIMPSON: I have no further questions for
22 you.

23 THE COURT: Any questions for the witness?

24 MR. KING: Briefly, Your Honor.

25 THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. KING:

Q Detective Antonio, you said you met with [REDACTED].
[REDACTED] H.M. and you interviewed her, right?

A I responded to the incident location, yes, sir. We did an interview verbal there. At the time the defendant had been located, we transported her over. And due to her physical condition I didn't see that it was the right time to take a written statement.

Q I understand, but you talked to her?

A Yes, I did.

Q And she talked to you?

A Yes, sir, she did.

Q And she told you that she -- that Black knocked on the door, right?

A Correct.

Q And that she offered for him to come in, right?

A Correct.

Q She did not say he forced his way in?

A No, sir.

Q And she told you she had been hit in the face with the glass ashtray. Are you familiar with the object I am talking about?

1 A Yes, sir. I believe the terminology she had
2 used it was a glass candle holder. It guess it has
3 been used as an ashtray.

4 MR. KING: If I may approach the witness?

5 THE COURT: You may.

6 Q (By Mr. King) You are familiar with the
7 candle holder she told you about?

8 A Yes, sir.

9 Q Did she say she had been hit in the face
10 several times with that?

11 A Correct.

12 Q And you met with her this was when? After you
13 responded on the first night?

14 A The night of the incident, and then the
15 afternoon directly following the incident.

16 Q So this is the afternoon of the next day?

17 A Correct.

18 Q And those are the injuries she had at that
19 time?

20 A That's what was seen here is what had already
21 appeared, I don't know, 12 to 15 hours.

22 Q From being hit in the face with that heavy
23 glass object?

24 A Correct. Yes, sir.

25 MR. KING: That's all the questions I have.

1 THE COURT: Any redirect of the witness?

2 MR. SIMPSON: Court's indulgence.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q Detective, we mentioned earlier that you had
7 taken [REDACTED] H.M. statement?

8 A Yes, sir.

9 Q Fair to say that what she told you about the
10 crime is what would --

11 MR. KING: Objection, Your Honor.

12 THE COURT: Basis.

13 MR. KING: Him bolstering.

14 THE COURT: Please approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 MR. SIMPSON: No further questions, Your
18 Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MR. SIMPSON: None, Your Honor.

22 THE COURT: From the defense?

23 MR. KING: No, Your Honor.

24 THE COURT: Thank you, you are excused.

25 You may call your next witness.

1 MR. SIMPSON: State calls Detective Altine.

2 MS. LISA ALTINE,

3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on her oath as follows.

6 THE COURT: You may proceed.

7 MR. SIMPSON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q Ms. Altine, what is your occupation?

11 A Police officer with the Charleston Police
12 Department.

13 Q How long have you been?

14 A 10 years.

15 Q What is your rank currently?

16 A I'm a master patrol officer.

17 Q Were you working in that capacity in April of
18 2006?

19 A I was assigned to the central investigative
20 unit.

21 Q And what shift were you working during that
22 time?

23 A Day shift.

24 Q Would your duties at that time include
25 executing search warrants?

1 A Yes.

2 Q Would these sometimes be left over from the
3 previous shift for you to execute?

4 A Yes.

5 Q Do you remember executing a search warrant in
6 the present case?

7 A Yes.

8 Q And what day was that?

9 A I believe it was April 7th.

10 Q And what was the nature of that search
11 warrant?

12 A Search warrant was to collect DNA blood
13 samples, hair, pubic hair.

14 Q From who?

15 A From the defendant.

16 Q And how did you proceed with the execution of
17 that search warrant?

18 A Myself and Detective Osborne went to the
19 detention center and took the defendant out of the
20 detention center, up to I believe it was 2070
21 Northbrook Boulevard which is the MUSC satellite
22 office where Faye Lebeof does her sexual exams.
23 She's a certified technician that can take DNA.

24 Q And did Faye Lebeof take the DNA sample in the
25 present case?

1 A She did.

2 Q Upon completion of taking those samples, would
3 you have taken the evidence with you when you left?

4 A No.

5 Q Those would be left at MUSC?

6 A It's normally left at the satellite office and
7 our crime scene technicians will come and retrieve it
8 and take it, do what they do with it, store it.

9 Q And following the execution of that warrant,
10 what was done with the defendant?

11 A He was taken back to the detention center.

12 Q Okay.

13 MR. SIMPSON: No further questions, Your
14 Honor.

15 THE COURT: Any questions for the witness?

16 MR. KING: Not for this witness. No, Your
17 Honor.

18 THE COURT: Any objection to the witness being
19 excused from the State?

20 MR. SIMPSON: None from the State.

21 THE COURT: From the defense?

22 MR. KING: No, Your Honor.

23 THE COURT: You are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

1 we are going to take a little earlier lunch break
2 today. I completely forgot that I have to speak at a
3 luncheon for the young lawyers which started at
4 12:30. But they will be all right.

5 We are going to break until -- I'm going to
6 say it takes about 15 minutes to get back into the
7 building, we are going to take until about a quarter
8 to 2:00, that's give you an hour and 15 minutes for
9 lunch. During the break please do not discuss this
10 case among yourselves or with anyone else. Again
11 please don't have any contact with anyone in or about
12 the courthouse.

13 Please leave your notepads in your seats.
14 Please don't allow yourselves to be exposed to any
15 media coverage regarding this case. Again we will
16 resume at a quarter to 2:00. And that gives you a
17 good hour and 10 minutes for lunch.

18 We will see you then. Have a good lunch.

19 (Whereupon, the jurors exit the courtroom.)

20 THE COURT: Is there anything from the State
21 before we adjourn for lunch?

22 MR. SIMPSON: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. KING: No, Your Honor.

25 THE COURT: Are there any witnesses that the

1 State will not be calling?

2 MR. SIMPSON: No, Your Honor.

3 THE COURT: You will be calling the remainder
4 of the witnesses that you have listed; is that
5 correct?

6 MR. SIMPSON: That is correct. Many of those
7 will be very brief --

8 THE COURT: I assume so.

9 MR. SIMPSON: -- chain witnesses, yes.

10 THE COURT: How long do you think it will take
11 you to finish those remaining witnesses?

12 MR. SIMPSON: Maybe two hours. That's
13 guessing long, Your Honor.

14 THE COURT: And will the defense be calling
15 any witnesses?

16 MR. KING: Your Honor, at this time I would
17 only anticipate calling Mr. Jenkins.

18 THE COURT: You will not be calling Dr. Gibbs
19 or Dr. Ostrowski or Officer Summers?

20 MR. KING: I will not be calling Officer
21 Summers. I am pretty sure I would not be calling Dr.
22 Gibbs or Dr. Ostrowski. Those are just consultant I
23 have already talked to about DNA.

24 THE COURT: The only witness you would
25 anticipate calling would be your client?

1 MR. KING: I believe so. Unless something
2 were to come up during testimony.

3 THE COURT: What record would the State be
4 seeking to introduce to impeach the defendant's
5 credibility so that Mr. King will have the luncheon
6 recess to discuss that with his client before I
7 question him regarding his right to testify?

8 MR. SIMPSON: Court's indulgence one moment.
9 Your Honor, we would be seeking the '93 car-jacking
10 conviction where the defendant served nine years on
11 the -- as far as distance conviction I believe the --

12 THE COURT: Yes, that would be distant. Did
13 you give them notice you were seeking to introduce
14 that?

15 MR. SIMPSON: I believe whether the conviction
16 date or when they were released from prison.

17 THE COURT: When was he released from
18 confinement?

19 MR. SIMPSON: It was a nine year sentence on a
20 most serious offense that is 85 percent conviction.
21 I think we can determine that was after 1998, but I
22 can consult with SCDC records in the break.

23 THE COURT: I think you have to tell me when
24 he was released.

25 Do you know when your client was released, Mr.

1 King?

2 MR. KING: Your Honor, he was arrested
3 November 14, '98 for public intoxication. So he was
4 at least out by November of '98 and that is outside
5 the 10-year period.

6 THE COURT: That would be outside the 10-year
7 period. Unless he was serving community supervision.
8 Was he on community supervision or probation?

9 MR. SIMPSON: Possibly. If I can consult with
10 SCDC on that. I would assume with a 9-year sentence
11 if he was out by 1998 certainly he was out on some
12 kind of parole or community supervision.

13 THE COURT: '93 might have been before the
14 statute was changed to 85 percent.

15 MR. SIMPSON: Possibly, Your Honor. We also
16 have a strong arm robbery.

17 THE COURT: It was long before the statute
18 changed. The statute did not change, it was shortly
19 before I went on the circuit court bench, maybe
20 halfway through my term of family court when we had
21 the truth in sentencing.

22 MR. SIMPSON: Your Honor, we also have a 2001
23 strong arm robbery conviction which he received a
24 10-year sentence on.

25 THE COURT: Okay, that comes in irregardless

1 of punishment. Case law says it goes to directly to
2 his credibility. So we should assume they will be
3 allowed to question him about the strong arm robbery.

4 I don't know about the car-jacking. You might
5 think about that.

6 All right, is there anything else that we need
7 to take up before we adjourn for lunch?

8 MR. SIMPSON: Nothing from the State, Your
9 Honor.

10 THE COURT: Anything from the defense?

11 MR. KING: No, Your Honor.

12 THE COURT: See you all at a quarter to 2:00.
13 Have a good lunch.

14 (Whereupon, a recess was taken.)

15 THE COURT: We are still missing one juror.
16 Is there anything we need to take up before we resume
17 the trial from the State?

18 MR. SIMPSON: Nothing from the State, Your
19 Honor.

20 THE COURT: From the defense?

21 MR. KING: No, Your Honor.

22 THE COURT: Please bring in the panel.

23 MR. SIMPSON: Your Honor, I apologize, there
24 is an issue we have to take up. Can we approach,
25 Your Honor?

1 THE COURT: Just tell me.

2 MR. SIMPSON: At this point we will be
3 beginning to discuss some issues having to do with
4 the DNA. And shortly we will have testimony that I
5 believe we are going to ask to be excluded under the
6 rape shield statute.

7 THE COURT: Okay. I have already ruled
8 regarding the DNA.

9 MR. SIMPSON: Okay. We should be okay then.
10 We will have to stop a little bit before one
11 witness --

12 THE COURT: What is the substance of the
13 testimony that's going to be elicited?

14 MR. SIMPSON: In her interview done by the
15 examining doctor, the doctor asked when was the last
16 time you've had consensual sex to which the defendant
17 (sic) replied three days prior.

18 I think that's -- our argument would be that
19 that's textbook inadmissible based on the rape shield
20 statute, Your Honor. 16-3-59.1 which states,
21 evidence of specific instances of the victim's sexual
22 conduct, evidence -- opinion evidence of sexual
23 conduct or reputation evidence of the victim's prior
24 sexual conduct is not admissible in prosecution
25 X-Y-Z, including CSC first.

1 There is an exception which in the plain
2 language of the statute says that, however, specific
3 instances of sexual activity with persons other than
4 the defendant introduced to show source or origin
5 gives three -- source or origin of three types of
6 evidence; evidence of semen, pregnancy or disease.

7 What the defendant, I believe, hopes to elicit
8 that some marks revealed, injuries revealed in the
9 pelvic exam could have been caused by sex that she
10 had three days prior. The marks revealed in the
11 examination are neither semen, pregnancy or disease.
12 My argument --

13 THE COURT: There is case law that expands it,
14 doesn't it? When it goes to credibility and other
15 things about the attack itself.

16 What concerns me, if there are other abrasions
17 and things the doctor is going to testify. If
18 they're attributed to this defendant, they're
19 entitled to inquire whether it came from him or
20 someplace else.

21 MR. SIMPSON: Okay.

22 THE COURT: But only to that extent. For what
23 purpose would you be eliciting testimony?

24 MR. KING: That's it, Your Honor, if there's a
25 possible source of the injuries that the expert

1 witness will be testifying to.

2 THE COURT: He is entitled to inquire about
3 that.

4 MR. SIMPSON: Your Honor, the State's position
5 as stated the purpose, the underlying purpose would
6 be to display the victim as being sexual active. We
7 believe this type of evidence is barred by --

8 THE COURT: This is a specific incident where
9 she had bruises and abrasions. Are you going to tell
10 your witness not to testify to the bruises and
11 abrasions? You cannot attribute them totally. If
12 there is any indication that they can be attributed
13 to somebody else it's proper.

14 MR. SIMPSON: The Court's ruling is
15 understood.

16 THE COURT: It's proper. The kind of
17 testimony that this statute is designed against is to
18 prevent testimony regarding basically the morals of
19 someone. Or to say that this person had sex with
20 several other people, otherwise trying to impugn that
21 person's character and cast them in a bad light.

22 And you really sort of make a comment on their
23 chastity, for lack of a better way of putting it. I
24 know that may seem like an antiquated term, but that
25 is basically the gist of it.

1 But however where you have a situation like
2 this where it would be very limited as to the source
3 of where the abrasions may have come from, I think it
4 goes directly to credibility. I think it would be
5 error not to inquire. And of course you can go into
6 it on redirect and deal with it.

7 But I do think, at least as far as what has
8 been represented to me would be appropriate. But if
9 there is a matter outside of which you all do not
10 think it's encompassed by this preliminary discussion
11 you need to make a contemporaneous objection so the
12 court can rule upon it.

13 I do need to let you all know I may have to
14 interrupt us to take a report of the Grand Jury and
15 pick my six carryovers.

16 MR. SIMPSON: One more housekeeping matter,
17 let the defense and Your Honor know about it. We are
18 going to be presenting DNA chain a bit out of order
19 due to a witness running a little behind.

20 THE COURT: Okay, not a problem.

21 (Whereupon, the jurors enter the courtroom.)

22 THE COURT: Thank you. Ladies and gentlemen,
23 I hope you all had a nice lunch. We will now resume
24 the testimony.

25 You may call your next witness.

1 MR. SIMPSON: State calls Jennifer Wooley.

2 MS. JENNIFER WOOLEY,
3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on her oath as follows;

6 THE COURT: You may proceed.

7 MR. SIMPSON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q Ms. Wooley, what is your occupation?

11 A I'm a police officer with the City of
12 Charleston Police Department.

13 Q What specific department do you work for
14 there?

15 A I work in the crime scene unit.

16 Q And how long have you been doing that?

17 A A little over four years.

18 Q What are some of your basic duties with the
19 crime scene department?

20 A Responding to crime scene, processing,
21 documenting and collecting evidence. Now I do mostly
22 latent fingerprint recovery.

23 Q Would some sort of your less exciting duties
24 sometimes be the transportation of evidence from one
25 place to another?

1 A Yes, sir. That's part of the job.

2 Q What would the general procedure be that you
3 follow when taking evidence from point A to point B?

4 A Collecting it, filling out the chain of
5 custody paperwork, placing it or transporting it
6 wherever it needs to go.

7 Q Would that paperwork indicate what date you
8 took a certain piece of evidence from point A to point
9 B?

10 A Yes, sir. It would indicate the location it
11 was collected and the date and time that it was
12 collected.

13 MR. SIMPSON: Permission to approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 If anyone has a cell phone on you need to
17 place it in the off position. It is understandable
18 sometimes we have cell phones and we forget that they
19 are on, however if it goes off it will be confiscated
20 by the sheriff and it will not be returned to you.

21 You may continue.

22 Q (By Mr. Simpson) Officer, I have handed you
23 what has been pre-marked State's Exhibit 19 for
24 identification purposes only. Can you describe that
25 to the jury?

1 A It is a copy of two forms, an evidence
2 processing and a chain of custody form.

3 Q Would those forms typically be filled out when
4 you did take evidence from one place to another?

5 A Right. In this case once it comes into the
6 custody of the crime scene unit or the Charleston
7 Police Department this form would be filled out.

8 Q Does that form indicate a piece of evidence
9 you picked up in this case?

10 A Actually there are two forms here; one for a
11 sealed sexual assault kit and one for a sealed
12 suspect kit.

13 Q Are there names associated with those?

14 A The sexual assault kit is [REDACTED] H.M., and
15 the suspect kit is Daniel Jenkins.

16 Q Where did you pick up that evidence from?

17 A From MUSC.

18 Q Would that be the woman's center?

19 A Yes.

20 Q On what date?

21 A It would be April 13th, 2006.

22 Q And is the evidence typically sealed when you
23 pick it up?

24 A Yes, sir.

25 Q What did you do with this piece of evidence,

1 these two pieces of evidence?

2 A Once I collect them and sign the necessary
3 paperwork, I transport them to our office and put
4 them in a storage facility; in this case it would be
5 a refrigerator.

6 Q Why is that a refrigerated storage facility?

7 A To protect the DNA and any damage that could
8 be done from heat.

9 Q Who has access to that refrigerator?

10 A Other crime scene techs that work for the City
11 of Charleston.

12 Q Just officers?

13 A Just the crime scene techs.

14 Q It's the same facility. But at any point when
15 you were transporting the sealed evidence did you
16 tamper with that evidence in any way?

17 A No, sir.

18 MR. SIMPSON: No further questions, Your
19 Honor.

20 THE COURT: Any questions for the witness?

21 MR. KING: None for this witness, Your Honor.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MR. SIMPSON: None from the State, Your Honor.

25 THE COURT: From the defense?

1 MR. KING: None, Your Honor.

2 THE COURT: Ma'am, you are excused.

3 You may call your next witness.

4 MR. SIMPSON: State calls Randy Unterbrink.

5 MR. RANDY UNTERBRINK,

6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on his oath as follows:

9 THE COURT: You may proceed.

10 MR. SIMPSON: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SIMPSON:

13 Q officer Unterbrink, what is your occupation?

14 A I work for the crime scene unit of the
15 Charleston Police Department.

16 Q How long have you worked there?

17 A At the crime scene unit almost six years.

18 Q And as I asked Ms. Wooley, is one of your
19 duties also to transport evidence from one place to
20 another?

21 A That's correct.

22 Q And what procedure do you generally follow
23 when you are transporting that evidence?

24 A I will indicate on the chain of custody the
25 dates and the time that I have it in my possession.

1 And also of course the location. And then I will
2 transport it and hand it off to somebody else.

3 MR. SIMPSON: Permission to the approach the
4 witness, Your Honor.

5 THE COURT: You may.

6 Q (By Mr. Simpson) Officer Unterbrink, do you
7 recognize what I just handed you that has been
8 pre-marked State's 20 for ID only?

9 A Yes.

10 Q What is that?

11 A This is a SLED laboratory forensic service
12 request.

13 Q would that often accompany dropping off
14 evidence to SLED?

15 A Yes, sir.

16 Q And does that sheet indicate evidence involved
17 in this present case?

18 A It does.

19 Q What is that evidence?

20 A One is a criminal sexual conduct kit for the
21 victim. Second is a criminal sexual conduct kit for
22 the suspect.

23 Q Ask would that sheet indicate that you
24 transport that evidence?

25 A Yes, sir.

1 Q On what date?

2 A That would have been September 20th.

3 Q 2006?

4 A Yes, sir.

5 Q From where and to where did you transport that
6 evidence?

7 A It would have come from the crime scene
8 office, which is located in West Ashley off of Wapoo
9 Road in Wapoo Business Park.

10 Q Is that the same office that Officer Wooley
11 referenced in her testimony?

12 A Yes, sir. And then from there to SLED in
13 Columbia.

14 Q Is evidence typically sealed when you
15 transport it?

16 A Yes, sir.

17 Q And why is it sealed?

18 A To prevent contamination.

19 Q For what purpose did you take this evidence to
20 SLED?

21 A So that the laboratory up in Columbia could
22 exam the evidence.

23 Q Did you tamper with this evidence in any way
24 while transporting it?

25 A No, sir.

1 MR. SIMPSON: I have no further questions,
2 Your Honor.

3 THE COURT: Any questions for the witness?

4 MR. KING: No, Your Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. SIMPSON: No, Your Honor.

8 THE COURT: From the defense?

9 MR. KING: No, Your Honor.

10 THE COURT: Sir, you are excused.

11 You may call your next witness.

12 MR. SIMPSON: State calls Faye Lebeof.

13 MS. FAYE LEBEOF,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on her oath as follows:

17 THE COURT: You may proceed.

18 MR. SIMPSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q Ms. Lebeof, what line of work are you in?

22 A I'm a certified nurse midwife at the Medical
23 University.

24 Q Are you currently employed by the Medical
25 University?

1 A Yes, I am.

2 Q What is your educational background?

3 A I have an associates degree in nursing that I
4 received in 1975 from the University of Vermont. I
5 have a certificate in nursing midwifery that I
6 received in 1987 from the Medical University of South
7 Carolina.

8 I have a master's in nursing that I received
9 from the Medical University of South Carolina in
10 1992.

11 Q And since your formal education have you had
12 an opportunity to take part in any seminars or
13 further training in your area of medical practice?

14 A Yes, I do.

15 Q Do you remember any of those specifics?

16 A I do yearly conferences that our department
17 puts on. I also have taken a course in sexual
18 assault nurse examiner.

19 Q What would you say your area of specialty
20 currently is in the medical profession?

21 A My area of specialty is women's health.

22 Q How long have you been practicing in this area
23 of medicine?

24 A I have been employed as a certified nurse
25 midwife for 21 years.

1 Q Do your current and past duties sometimes
2 include you performing sexual assault examinations on
3 a female victim, suspected victims of sexual assault?

4 A Yes, they do.

5 Q If you had to approximate, how many such exams
6 have you done over the course of your career?

7 A I have done approximately 1,000 sexual assault
8 examinations.

9 Q Does your formal education also qualify you in
10 the area of basic diagnoses?

11 A Yes, it does.

12 Q Have you ever been qualified as an expert in
13 the court before?

14 A Yes, I have.

15 Q Approximately how many times?

16 A Approximately 10.

17 Q In what area?

18 A Sexual assault.

19 MR. SIMPSON: Your Honor, at this point the
20 State would move to qualify the witness as an expert
21 in female health, general medical practice
22 specifically related to sexual assault.

23 THE COURT: Any questions or objections?

24 MR. KING: No, Your Honor.

25 THE COURT: So admitted.

1 Q (By Mr. Simpson) Ms. Lebeof, do you recall
2 becoming involved with an alleged sexual assault from
3 a victim named [REDACTED] H.M. back in April of 2006?

4 A Yes, I do.

5 Q Under what circumstances did you become
6 involved in the case?

7 A She presented to our clinic with the -- that
8 she had been sexually assaulted.

9 Q Can you explain to the jury the standard
10 procedure that you would go through when performing a
11 sexual assault examination?

12 A When a woman presents to the clinic for a
13 sexual assault examination, we do a history with them
14 about the sexual assault, what happened, where it
15 happened, to gain some insight into what to check for
16 evidence.

17 There is a protocol set out by SLED up in
18 Columbia that we follow which tells us what evidence
19 we need to collect, from the top of the head to the
20 bottom of the toes. We need to do vaginal
21 examinations, photography of the injuries, and we
22 also give them medication.

23 Q Does that generally involve an interview
24 process as well?

25 A The first thing we do is an interview, yes,

1 sir.

2 Q Did the victim in this case indicate to you
3 that she had consumed alcohol that day?

4 A May I refer to my --

5 Q certainly.

6 A She had said that she had ingested some
7 alcohol on the 5th of April.

8 Q Did she appear to you to be intoxicated?

9 A Not at the time, no.

10 Q What was her demeanor like when you spoke to
11 her?

12 A She was very upset and she was crying.

13 Q Now would the first stage of doing a sexual
14 assault exam include basic obvious injuries to the
15 body, not necessarily involving the genital area?

16 A Yes, it would.

17 Q Would you note those in your report?

18 A Yes, I do.

19 Q What injuries did you note in this report?

20 A Her face was quite bruised when I saw it. She
21 had her left eye was quite swollen, it had bruising
22 above the eyelid, below the eyelid. Her lips were
23 swollen. There was bruising in her lip. Lacerated
24 on the inside of the lip, what we call the gutter
25 down at the bottom of her teeth.

1 There was blood on her face. There was blood
2 on her legs. She had bruising on her arms which were
3 anywhere from five centimeters, which would be about
4 this big (indicating), to one that was ten
5 centimeters, which would have been that big
6 (indicating), on both of her shoulders.

7 Q Did you also conduct a pelvic examination in
8 this case?

9 A Yes, I did.

10 Q What were your observations regarding the
11 pelvic examination?

12 A She had some abrasions in the area just before
13 you go into the vagina which were similar to taking
14 off the top layer of skin. She also had redness on
15 the hymen which is the opening that goes into the
16 vagina from about 3 o'clock to 9 o'clock.

17 And a small laceration just a little bit
18 further down from the opening the vagina.

19 THE COURT: I'm sorry, I did not hear the last
20 answer.

21 A A small laceration just below the opening of
22 the vagina in the perineum.

23 Q Ms. Lebeof, were these injuries consistent
24 through your experience and expertise with a sexual
25 assault?

1 A They were consistent with [REDACTED] H.M. history.

2 Q Did the vaginal examination also reveal to you
3 bodily fluids?

4 A Yes, it did.

5 Q And when you say [REDACTED] H.M. history, what are
6 you referring to?

7 A Her history of her being sexually assaulted.

8 Q The story she told you about what had happened
9 to her previously?

10 A Yes, sir.

11 Q What type of bodily fluids did you observe?

12 A To do the genital exam we have to put a
13 plastic what is called a speculum -- kind of looks
14 like duck bills -- inside the vagina and we open it
15 up so that you can look and see if there is any
16 internal trauma and also any body secretions.

17 There was a lot of clear fluids in her vagina
18 which I took some Q-tip swabs to send to the lab up
19 in SLED. But I also took a swab that I looked at
20 underneath the microscope.

21 Q When you say Q-tip swab, you are not referring
22 to just when you pull out a normal Q-tip from a box,
23 are you?

24 A No, sir.

25 Q Explain that to the jury?

1 A SLED up in Columbia sends a box that is
2 sealed. When I get it I unseal the box myself and I
3 date and time when I unseal it. When I open it up
4 they have small envelopes in there, and in each
5 envelope that they need secretions or evidence
6 collected they have a sealed Q-tips which there are
7 two in each envelope.

8 The envelopes are labeled with the victim's
9 name, labeled with the date and time, and I also sign
10 that I am the one that collected the evidence. And
11 it will be sealed after I have everything dry.

12 Q Was that procedure followed in the present
13 case?

14 A Yes, it was.

15 Q Is evidence typically then just handed over to
16 the officers or is it stored at your office?

17 A It's usually stored at my office.

18 Q Until what point?

19 A Until the evidence collection guys come and
20 meet up with you.

21 Q Is it the officers typically from the crime
22 scene unit?

23 A Yes, sir.

24 Q According to your report, about what day and
25 time did this examination take place of H.M.

1 [REDACTED] H.M. ?

2 A It happened on April 6th about 10 minutes to
3 1:00 in the morning.

4 Q Ms. Lebeof, your involvement in this case did
5 not end with [REDACTED] H.M., did it?

6 A No, it did not.

7 Q Were you also involved in taking DNA samples
8 from the defendant in this case?

9 A Yes, I did.

10 Q And where would that have taken place?

11 A I don't have the paperwork. I think it took
12 place there at our same clinic.

13 Q Would it be unusual for officers of CPD to
14 bring an inmate from the jail to your clinic to
15 perform this procedure?

16 A At that time, no, it was not.

17 Q when you take DNA samples, how are they taken?

18 A Again SLED has a sample kit that is set up for
19 what they call the suspect testing. And there are
20 sealed envelopes in there. And what it includes for
21 the suspect is a tube of blood, it includes mouth
22 swabs, it includes head hair, it also includes pubic
23 hair combings and pulling.

24 Q And when you take samples of things like that
25 blood, do you follow the proper medical procedures in

1 doing so?

2 A Yes, I do.

3 Q Did you do so in this case?

4 A Yes, I did.

5 Q As with the victim's rape kit and the
6 defendant's samples are those typically stored at
7 your office?

8 A Yes, they are.

9 Q Until what point?

10 A Until the crime scene personnel came and
11 picked them up.

12 MR. SIMPSON: No further questions, Your
13 Honor.

14 THE COURT: Any questions for the witness?

15 MR. KING: Yes, Your Honor.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q You are not a medical doctor you are a nurse,
20 right?

21 A Right.

22 Q And you work with -- main part of your job is
23 to work in sexual assault cases or sexual assault
24 allegations?

25 A No the main part of my job is a certified

1 nurse midwife. Sexual assault nursing cases are a
2 part-time job that I do.

3 Q And you said you've been qualified to testify
4 about 10 times as an expert witness?

5 A I think it's about 10 time, yes, sir.

6 Q Have those been for the prosecution or for the
7 defense?

8 A Prosecution.

9 Q All for the prosecution?

10 A Yes.

11 Q Do you lecture or give any kind of classes or
12 anything, teach?

13 A I did. I haven't in a few years.

14 Q Did that teaching involving prosecutors?

15 A They have attended a course, but they usually
16 come and talk to the course when I would teach the
17 course.

18 Q But fair to say that generally in these types
19 of cases you work with the prosecution?

20 A Yes, sir.

21 Q Have you ever testified for the defense in a
22 case?

23 A No, sir.

24 Q Now you testified about some things you found
25 when you did the pelvic examination, right?

1 A Yes, sir.

2 Q And from your experience, is it possible for
3 there to be a sexual assault and there be no signs;
4 is that right?

5 A That's true, yes, sir.

6 Q And it's also possible that there could be
7 consensual sex and there can also be signs, there can
8 also be abrasions, right?

9 A Yes, sir, there could be.

10 Q And there are some things that can -- I mean
11 let me give you a list of things and see if you agree
12 that may contribute to I guess we'll call them
13 abrasions. If a person who has sex has had little or
14 no sexual experience, is that something that can
15 contribute to more likely to have injury or
16 abrasions?

17 A It could, yes.

18 Q And I'm talking about consensual sex?

19 A It's could, sir, yes.

20 Q And if someone has never had children before,
21 that's one of the things as well?

22 A Right.

23 Q If someone has had multiple sex events, I
24 guess had sex more than once during a short time
25 period, can that lead to increased chance of injury

1 or abrasions?

2 A There is a possibility, yes.

3 Q If someone has had more than one sex partner
4 in a short period of time, is that possible?

5 A It could be possible, yes, sir.

6 Q And in this case you interviewed [REDACTED] H.M.,
7 right?

8 A Yes, sir.

9 Q And she told you that she had sex with someone
10 else three days before?

11 A She told me she had had sexual activity on the
12 2nd of April.

13 Q And the incident that you were performing work
14 on took place on the 5th, right?

15 A Yes.

16 Q So it had been three days before?

17 A Three days.

18 Q And it's also possible during consensual sex
19 to have abrasions or injury if there is an anatomical
20 mismatch?

21 A There is a possibility.

22 Q If the man is large and the woman is small,
23 that that could contribute to it as well?

24 A Yes, sir.

25 Q And it's also possible during consensual sex

1 if it's rough sex, right?

2 A Yes.

3 Q There could be more likely to be injury or
4 abrasions?

5 A Yes, sir.

6 Q If you are having sex with someone who's not
7 your typical sex partner, could that also contribute
8 to abrasions during consensual sex?

9 A Yes, sir, it could.

10 Q And the reason is maybe it's clumsier if it's
11 not someone that you are familiar having sex with, is
12 that kind of the explanation for that?

13 A It could be clumsier, it could be that there
14 is no lubrication.

15 Q And if someone is using drugs or alcohol, that
16 could contribute to having abrasions, right?

17 A Possibility. But usually with drugs and
18 alcohol the person is much more relaxed and they
19 shouldn't be -- there should not usually be as much
20 trauma.

21 Q What about the man using alcohol?

22 A Since men are not my specialty, but it would
23 be the possibility that he either could or could not
24 maintain or keep an erection would be dependant on
25 that.

1 Q Would that make him more likely if he does not
2 have a full erection that there could be abrasions?

3 A If he is really trying to force himself into
4 the woman's vagina, yes.

5 Q And H.M. told you she had had six beers
6 that night, right?

7 A Yes, sir, she did.

8 Q Let's talk about what you found in your
9 examination, pelvic examination.

10 You said there were -- there was redness on
11 the hymen?

12 A Yes, sir.

13 Q Now it is possible for that to happen during
14 normal sexual intercourse, consensual sex, right?

15 A Yes, sir.

16 Q And there was an abrasion at the posterior
17 fourchette?

18 A Yes.

19 Q Am I saying that right?

20 A You did, yes, sir.

21 Q Can you explain a little bit about that, the
22 posterior fourchette?

23 A The posterior fourchette is just before the
24 entrance into the vagina. It's like a little well
25 where it typically if there is going to be trauma

1 that's the place that most people will look to see if
2 there is trauma in that area.

3 Q And that skin can tear easily, right? It's
4 like the skin inside your mouth; is that a good
5 analogy?

6 A Yeah.

7 Q So it can be torn just by pulling the skin
8 apart a little bit, right?

9 A Yes, sir.

10 Q So having that injury could happen during
11 consensual sexual intercourse?

12 A Yes it could, uh-hum.

13 Q And the third thing you found was there was an
14 abrasion on the perineum?

15 A Uh-hum.

16 Q Can you explain that a little bit?

17 A It could have been from -- an abrasion is like
18 rubbing your knee or skin across a rug and taking off
19 that top layer. It could have easily been from him
20 not quite aiming right.

21 Q During normal sex, consensual sex that could
22 happen?

23 A Yes, it could.

24 Q A fingernail, this is outside the vagina,
25 right?

1 A Right. A fingernail would leave more of a
2 scratch or a cut, I would think, than an abrasion
3 because you are going to go a little bit deeper on
4 the layer of skin.

5 Q So this abrasion on the perineum could happen
6 during consensual intercourse?

7 A Yes, sir.

8 Q So, everything that you found in your pelvic
9 examination could be consistent with consensual
10 intercourse, right?

11 A Yes, sir.

12 Q And you also did examination of her other
13 injuries to her head, right?

14 A Yes, I did.

15 Q And there was a diagram, part of your
16 protocol, where you drew. And you found there were
17 -- the injuries you found were, as far as above the
18 neck, where on her eye?

19 A Uh-hum

20 Q And on her lip?

21 A Yes, sir.

22 Q No injuries on the top of her head or around
23 her head?

24 A Not that I noted, no, sir.

25 Q And you examined her, right?

1 A Yes, sir.

2 Q And if there had been injuries you would have
3 noted them?

4 A Yes, I would have.

5 Q So she had no injuries on the top of her head,
6 only on her eye and on her lip?

7 A That I noted, yes, sir.

8 MR. KING: That's all the questions I have.

9 THE COURT: Any redirect of the witness?

10 MR. SIMPSON: Yes, Your Honor.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q Ms. Lebeof, Mr. King pointed out that you do
15 often testify for the prosecution, right?

16 A Yes, sir.

17 Q Is that because your job involves collecting
18 evidence from sexual assaults?

19 A Yes, it does.

20 Q Has the fact that you often testify for the
21 prosecution ever influenced how you testify in any
22 way?

23 A No, sir, it does not.

24 Q You testify as a professional?

25 A Yes, I do.

1 Q Honest?

2 A Honestly, yes, sir.

3 Q Mr. King also pointed out the injuries you
4 observed during this pelvic exam could be consistent
5 with consensual sex, correct?

6 A That is true, yes, sir.

7 Q But that would tend to be consistent with
8 rough sex?

9 A It could be consistent with rough sex.

10 Q Ms. Lebeof, would these type of injuries and
11 your observations of the injuries, does the body heal
12 over time?

13 A Yes, it does.

14 Q Would three days prior, consensual sex three
15 days prior tend to shows these type of injuries still
16 remaining on the way you observed them that evening?

17 A The type of injuries in the vaginal area could
18 have easily been healed within three days by the time
19 I saw her.

20 MR. SIMPSON: No further questions, Your
21 Honor.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MR. SIMPSON: None, Your Honor.

25 THE COURT: From the defense?

1 MR. KING: No, Your Honor.

2 THE COURT: Thank you, you are excused.

3 You may call your next witness.

4 MR. NEELEY: State calls Koranda Williams.

5 MS. KORANDA WILLIAMS,
6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on her oath as follows.

9 THE COURT: You may proceed.

10 MR. NEELEY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. NEELEY:

13 Q Ms. Williams, what is your current position?

14 A I am an Environmental Health Manager for the
15 Department of Health and Environmental Control.

16 Q And in '06 were you working at SLED?

17 A Yes.

18 Q I'm assuming that's not the same place you are
19 in now?

20 A Different agency.

21 Q When you were at SLED, what was your job
22 description or title?

23 A When I was employed with SLED I was a forensic
24 technician.

25 Q what does that mean?

1 A A forensic technician, depends on what
2 department you are in. In my particular department I
3 was an evidence control forensic technician.

4 Q As part of your job there, were you required
5 to handle evidence?

6 A Yes.

7 Q Would you check-in evidence when you received
8 it?

9 A Yes.

10 Q Let me ask, did you receive any evidence in a
11 case concerning Daniel Jenkins?

12 A Yes.

13 Q What date did you receive that?

14 A On September 20th, 2006.

15 Q And who did you receive it from?

16 A Randall Unterbrink from Charleston City Police
17 Department.

18 Q Now when you received that evidence, did you
19 inspect it to make sure that it's sealed?

20 A Yes. If the evidence comes sealed we inspect
21 to make sure there is -- we inspect for the integrity
22 of the seal.

23 Q Would you have made any notations if that
24 wasn't sealed?

25 A Yes.

1 Q Would you have accepted it?

2 A No.

3 Q The evidence that you received in this case,
4 did you accept it?

5 A Yes.

6 Q Will you tell the jury what that was?

7 A Well in our department we recognize container
8 labels. So if you could show me the evidence.

9 Q Well, let me show you.

10 (Whereupon, State's Exhibit No. 20 is marked
11 for identification.)

12 Q (By Mr. Neeley) I'm going to show you what
13 has been marked State's Exhibit 20 for
14 identification. Can you identify this?

15 A This is a standard chain of custody.

16 Q Okay. On that particular -- will you tell the
17 jury what that is?

18 A This is a chain of custody form that -- it's
19 created with every case that comes into our agency,
20 every case has a lab number and chain of custody
21 unique to it.

22 Q And when you receive the evidence, did you log
23 that in the computer?

24 A I don't log in the chain of custody per se, I
25 log in the evidence. The computer system

1 automatically generates the chain of custody.

2 Q All right. From that can you tell what you
3 actually logged in? What was it titled?

4 A Item one was logged in as one sealed,
5 heat-sealed pouch containing CSC kit described as

6 [REDACTED] H.M.

7 Q And I think you received an item two based on
8 the chain of custody; is that true?

9 A Yes. Correct.

10 Q Can you tell the jury what that item was?

11 A Yes. If I can refer to the chain. Item two
12 is listed as one sealed, heat-sealed pouch containing
13 suspect kit described as Daniel Jerome Jenkins.

14 Q After you received those items, what did you
15 do with them?

16 A Item one, the CSC kit, once I logged it in it
17 was transferred into the DNA evidence intake storage.
18 And item two, the suspect kit, was also transferred
19 to DNA evidence intake storage.

20 Q And did you have any other contact with them
21 at that point?

22 A No.

23 Q Is that locked or is that free access?

24 A In the evidence room we have an intake storage
25 area where we store the evidence for each particular

1 department. That evidence room the only people that
2 have access are the four technicians that work in
3 that department.

4 MR. NEELEY: That's all the questions I have
5 for the witness.

6 THE COURT: Any questions for the witness?

7 MR. KING: No, Your Honor.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. SIMPSON: No, Your Honor.

11 THE COURT: From the defense?

12 MR. KING: No, Your Honor.

13 THE COURT: Thank you, ma'am, you are excused.
14 You may call your next witness.

15 MR. NEELEY: State calls Theresa Hooks.

16 MS. THERESA HOOKS,
17 after having first been duly sworn to state the
18 truth, the whole truth and nothing but the truth,
19 testified on her oath as follows:

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. NEELEY:

23 Q Ms. Hooks, where are you currently employed?

24 A I'm currently employed with the South Carolina
25 Law Enforcement Division, more commonly known as

1 SLED.

2 Q Are you an evidence tech also?

3 A At the time of this case I was. I am now
4 currently a forensic scientist in the DNA Department.

5 Q Let me ask, in this particular case do you
6 remember having any contact with evidence?

7 A Referring back to the chain of custody, yes, I
8 did.

9 Q What did you do?

10 A In this particular case I handled items, SLED
11 item number one which is a heat-sealed pouch
12 containing a CSC kit described as [REDACTED] H.M.
13 [REDACTED]. And I also had contact with an item -- SLED
14 item 1.14.

15 Q Let me ask, did you have an contact with SLED
16 item two?

17 A Yes, I did. SLED item number two is a
18 heat-sealed pouch containing a suspect kit described
19 as Daniel Jerome Jenkins.

20 Q What -- how did you come in contact with that
21 particular item?

22 A Forensic technicians in the DNA Department,
23 one of our core responsibilities is to go down and
24 get evidence from the evidence control department.
25 Therefore when I go down I receive the evidence from

1 them, I bring it back upstairs to the DNA Department,
2 and I determine if the case needs to be assigned or
3 not.

4 So in this case I went down, got the case,
5 brought it back up, determined this should be
6 assigned, and in this particular case it was
7 assigned.

8 Q what did you do with it after that?

9 A Once I received the case and realized that it
10 does meet our standards to be assigned, I transferred
11 it to the DNA refrigerator on the 4th floor, put it
12 in a secured refrigerator inside of the DNA lab that
13 only DNA personnel have access to.

14 Q And we're talking about item two, what did you
15 do with item one?

16 A Item number one I also transferred that to the
17 DNA Department -- DNA refrigerator on the 4th floor
18 as well.

19 Q And you got that from what part of the
20 department?

21 A According to the chain of custody it says that
22 I received it from the DNA evidence intake storage.
23 we, as technicians in the DNA Department, do not
24 actually physically go into that area. So we go down
25 and the evidence, one of the forensic technicians in

1 the evidence control department will then give the
2 evidence to us. we do not physically go back there
3 and get it, we don't have access to it.

4 Q Let me ask this, did it appeared to be
5 tampered with?

6 A No. If any seals are broken or if it's not
7 sealed, if it's not initialed and dated by the
8 sealing officer, we will not take it into our
9 custody.

10 Q What was the purpose of moving this from the
11 intake storage to the 4th floor DNA refrigerator?

12 A Well DNA evidence intake storage is an area
13 downstairs in evidence control where they store the
14 DNA evidence. Again that's something where we do not
15 have access to it, we have to get that from one of
16 the evidence control technicians.

17 So in order for the analyst to receive the
18 case, one of the technicians from a particular
19 department, in this case it was a DNA technician,
20 myself, I had to go down and physically get that
21 evidence and transfer it upstairs so that the analyst
22 could work on the case.

23 Q Okay.

24 MR. NEELEY: Judge, that's all the questions I
25 have.

1 THE COURT: Any questions for the witness?

2 MR. KING: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: From the defense?

7 MR. KING: No, Your Honor.

8 THE COURT: Ma'am, you are excused.

9 You may call your next witness.

10 MR. SIMPSON: State calls Adrienne Riley.

11 MS. ADRIENNE RILEY,

12 after having first been duly sworn to state the
13 truth, the whole truth and nothing but the truth,
14 testified on her oath as follows:

15 THE COURT: You may proceed.

16 MR. SIMPSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q Ms. Riley, where are you employed?

20 A With the South Carolina Law Enforcement
21 Division, more commonly known as SLED.

22 Q In what capacity are you employed at SLED?

23 A As a forensic DNA analyst.

24 Q What would some of your duties be as a
25 forensic DNA analyst?

1 A My primary duty is the analysis of biological
2 evidence that may have been left behind at a crime
3 scene, and comparison and interpretation to known
4 standards that are received from the victim and/or
5 subject in a case.

6 Q And what educational background do you have
7 that prepared you for your position?

8 A I have a bachelor's of science degree in
9 biology from the University of South Carolina. I
10 also have post-graduate courses in the field of
11 genetics, statistics and bio -- molecular biology.

12 Q And since your formal schooling have you had
13 an opportunity to take part in any seminars or
14 further training?

15 A Yes, we are required to attend a seminar at
16 least once a year. And I also have received training
17 as well as a DNA advisory board auditor.

18 Q How many years have you been performing
19 forensic DNA analysis?

20 A I have been with SLED for 11 years, and I have
21 been performing analysis for almost 10.

22 Q If you had to guess over that time period
23 approximately how many individual DNA comparisons
24 have you made?

25 A Well into the thousands.

1 Q Have you ever given testimony in a court of
2 law regarding forensic DNA analysis?

3 A Yes, sir, I have.

4 Q About how many times would you approximate?

5 A About 40 times.

6 Q So you were qualified as an expert in forensic
7 DNA analysis in each of those occurrences?

8 A Yes, sir.

9 MR. SIMPSON: Your Honor, at this time I'd
10 like offer this witness as an expert in forensic DNA
11 analysis.

12 THE COURT: Any objections or questions?

13 MR. KING: No, Your Honor.

14 THE COURT: So admitted without objection.
15 You may proceed.

16 Q (By Mr. Simpson) Ms. Riley, what is DNA?

17 A DNA stands for Deoxyribonucleic Acid. What it
18 is is a genetic material that is found in all the
19 nucleated sells of our body. And nucleated means
20 cells with a nucleolus like red blood cells and white
21 blood cells.

22 And it is genetic material we receive from
23 each of our parents that make us who we are. No two
24 people have the same DNA with the exception of
25 identical twins. A lot of our DNA however is the

1 same, and that's the DNA code for us to have two
2 arms, two legs and two eyes.

3 You look around the courtroom and everyone
4 looks different. Everyone's DNA is different and
5 unique to the individual.

6 Q And how is DNA used for forensic purposes?

7 A We take that uniqueness and when a stain or
8 biological evidence is left behind in a crime scene,
9 such as blood, semen, saliva, we will do a DNA
10 comparison or develop a DNA profile from that stain.

11 We will also develop a DNA profile from a
12 known standard, which is blood or a swab from the
13 inside of your cheek that is received from the
14 subject and victim, and we make a comparison to the
15 evidence that is left behind.

16 Q And what type of DNA analysis do you perform
17 at SLED?

18 A Currently we perform DNA analysis known as
19 PCR. And what PCR is is called polymerase chain
20 reaction. That's where we can have a small amount of
21 DNA and we can amplify it or multiply it to where we
22 can develop a DNA profile from it.

23 And if you think of it just like a Xerox
24 copier, we have one piece of paper and we make a
25 million copies of it. It doesn't change that paper

1 at all, but we're now able to make a profile from
2 that, and that's what PCR is.

3 Q And you mentioned a little bit before, but
4 what specific types of parts of the human body can
5 give you a DNA profile?

6 A You can get it from blood, from semen, from
7 hair, from bones, saliva. And DNA that's from
8 different parts of the body it doesn't make a
9 difference. The DNA that's in your hair is the same
10 DNA that's in your blood and the same DNA that's in
11 your saliva.

12 Q Ms. Riley, did you have an opportunity to
13 examine and analyze evidence from this particular
14 case?

15 A Yes, sir, I did.

16 Q What type of evidence was submitted to you?

17 A I received a sexual assault evidence
18 collection kit from [REDACTED] H.M. As well as
19 a suspect evidence collection kit from Daniel
20 Jenkins.

21 Q And what form was this evidence submitted to
22 you?

23 A Swabs and tubes of blood.

24 Q And what were the results of that analysis?

25 A When I first receive the kit, what I'm going

1 to do is inventory it to see what types of swabs and
2 hair samples and blood that we have.

3 In this case I received vaginal swabs, oral
4 swabs, rectal swabs, miscellaneous body fluid swabs
5 as well -- and those were the ones I performed the
6 analysis on. We also had fingernail scrapings and
7 debris.

8 And in this case I analyzed vaginal swabs,
9 rectal swabs, miscellaneous body fluid. I also
10 received cuttings from T-shirts, two cuttings from a
11 T-shirt and cuttings from jeans, as well as the blood
12 standards from both [REDACTED] H.M. and Daniel Jenkins.

13 There was semen present on the vaginal swabs,
14 the rectal swabs and semen indicated on the
15 miscellaneous body fluid swab. I was able to develop
16 a profile from the semen on the vaginal swabs, which
17 is known as our item 1.6. I'm going to read directly
18 from my report the results of what that analysis was.

19 The DNA profile developed from the semen on
20 item 1.2 matches the DNA profile of Daniel Jenkins.
21 The probability of randomly selecting an unrelated
22 individual matching the semen on this item is
23 approximately 1 in 8.6 quintillion.

24 MR. KING: Your Honor, I renew my objection
25 based on the search warrant.

1 THE COURT: Overruled.

2 Q (By Mr. Simpson) Ms. Riley, I'm not a math
3 wiz, but quintillion, that's a pretty large number,
4 correct?

5 A Yes. That's a 1 followed by 18 zeroes.

6 Q And that probability statistic is based on the
7 probability that the DNA found on the vaginal swab
8 may not match the defendant?

9 A What it is is the probability that if you were
10 to look at 8.6 quintillion people, you should only
11 expect to see that DNA profile one time.

12 Q And that number again is 1 with how many
13 zeroes following it?

14 A 18.

15 MR. SIMPSON: I have no further question, Your
16 Honor.

17 THE COURT: Any questions for the witness?

18 MR. KING: Yes, Your Honor.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MR. KING:

22 Q Ms. Riley, I will be brief. You just did a
23 scientific test, right?

24 A That's correct.

25 Q Of evidence that was given to you?

1 A Yes.

2 Q You didn't investigate any other aspect of the
3 case?

4 A No, sir.

5 Q Basically your conclusion is that the fluids
6 that you were given match Daniel Jenkins' blood?

7 A The evidence swabs that had semen on it
8 matched Daniel Jenkins, yes, sir.

9 Q And the DNA results, none of your tests can
10 determine whether or not the semen was there from
11 consensual sex or nonconsensual sex, right?

12 A That's correct.

13 Q So it is possible that the semen that you had
14 tested could have been deposited there from
15 consensual sex?

16 A That's correct.

17 MR. KING: That's all the questions I have.

18 THE COURT: Any redirect of the witness?

19 MR. SIMPSON: None, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MR. SIMPSON: None from the State.

23 THE COURT: From the defense?

24 MR. KING: No, Your Honor.

25 THE COURT: You are excused. Thank you.

1 State may proceed.

2 MR. SIMPSON: Your Honor, at this time the
3 State rests.

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 the State has rested their case. There are some
6 matters of law I need to take up with the attorneys.
7 It should be fairly brief, however I need to let you
8 know that I anticipate I have to take the report of
9 the grand jury and they let me know that they would
10 be ready about an hour from when we started.

11 So I'm not certain -- we will see. The report
12 of the grand jury does take five minutes, and I need
13 to select the holdovers which takes -- actually the
14 whole process takes about five or six minutes. So if
15 you are out a little longer than we anticipate,
16 please know that I am taking care of that.

17 It's sort of a fluid concept. I don't know if
18 they will be ready or not. And if not we may have to
19 take a break after we resume, but we'll have to play
20 it by ear.

21 During the break please do not discuss the
22 case and please leave your notepads in your seats.
23 Please go with your caretakers.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Are there any motions?

1 MR. SIMPSON: None from the State, Your Honor.

2 MR. KING: Your Honor, I would renew my
3 previous motions Neil v Biggers, the motion to
4 exclude the evidence DNA that was based on the search
5 warrant. I move for a directed verdict.

6 I'm sure Your Honor is familiar with the
7 directed verdict language, but I will make that
8 motion at this time.

9 THE COURT: Anything from the State?

10 MR. SIMPSON: Your Honor, just briefly we
11 think the evidence rises more than enough to survive
12 a direct verdict motion, Your Honor.

13 THE COURT: When considering a motion for
14 directed verdict, the Court's concerned with the
15 existence or nonexistence of evidence and not its
16 weight. If there is direct or substantial
17 circumstantial evidence reasonably tending to prove
18 the guilt of the accused, the motion for directed
19 verdict is not appropriate.

20 The Court would find that there is direct
21 evidence in the form of the victim in this case, as
22 well at substantial circumstantial evidence
23 reasonably tending to prove the guilt of the accused
24 which rises above mere suspicion. The Court finds
25 that there is evidence from which the defendant's

1 guilt could be fairly and logically deduced and
2 therefore the motion for directed verdict is denied.

3 Sir, please stand and raise your right hand to
4 be sworn.

5 (Whereupon, the defendant is placed under oath
6 by The Court.)

7 THE COURT: Sir, state your full name for the
8 record.

9 THE DEFENDANT: Daniel Jerome Jenkins.

10 THE COURT: Sir, at this time I'm going to
11 advise you of certain of your rights. If you do not
12 understand anything that I say, please let me know.
13 If you need me to repeat anything, please let me
14 know.

15 Sir, do you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Sir, we have reached the stage of
18 the trial where you may present your defense. You
19 have a right to claim the protections given to you by
20 the Fifth Amendment of the United States
21 constitution.

22 And that amendment reads in part that no
23 person shall be compelled in any criminal case to be
24 a witness against himself. You have the right to
25 testify, however no one can make you testify. This

1 means that you cannot be required to testify.

2 It is a personal right, and no one can waive
3 this right except you. If you decide to testify you
4 will be subject to the same rules that govern other
5 witnesses, and you may be examined and cross-examined
6 on any relevant issues in this case.

7 In addition, if you have any convictions
8 involving dishonestly or false statements or for
9 crimes punishable by imprisonment for more than one
10 year and this Court determines that the probative
11 value of admitting this evidence outweighs its
12 prejudicial affect to you, the solicitor will be able
13 to introduce your record to attack your credibility.

14 At this point what would be allowed would be
15 the strong-arm robbery because that involves a crime
16 of dishonesty, and pursuant to the rules it is
17 admissible irregardless of punishment and it is
18 mandatory that it be admitted on the issue of your
19 credibility pursuant to rule 609(A)(2). So they
20 would be allowed to produce that conviction to attack
21 your credibility.

22 Sir, if you decide to testify this decision on
23 your part must be freely and voluntarily and
24 intelligently made with knowledge of the protections
25 given to you by the 5th Amendment and the

1 consequences of your decision to testify.

2 If you decide not to testify, I will instruct
3 the jury that they are to give the fact that you did
4 not testify any consideration whatsoever, and that
5 there is to be absolutely no prejudice to you because
6 you did not testify. In fact, they will be
7 instructed that they cannot discuss it in any manner
8 whatsoever during jury deliberations.

9 It is left entirely up to you whether or not
10 you testify. You may talk to your attorney, your
11 family members, your friends or anyone else, but the
12 final decision will be left entirely up to you.

13 Sir, do you understand your rights as I have
14 just explained them to you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you any questions about what I
17 have just explained to you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Have you discussed with your
20 lawyer whether you should or should not testify?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Sir, do you need to speak with him
23 anymore at this time?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay, we will give you a few

1 moments and I'll go check and see if the grand jury
2 is ready. We will be at ease for about 5 or 10
3 minutes.

4 (Whereupon, a recess was taken.)

5 THE COURT: We are back on the record in State
6 versus Jenkins.

7 Mr. Jenkins, please stand.

8 Have you had a full opportunity to discuss
9 whether you should or should not testify with your
10 attorney?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Did you need to speak with him
13 anymore at this time?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Sir, do you wish to testify?

16 MR. KING: No, ma'am.

17 THE COURT: Okay. And does the defense have
18 any other witnesses?

19 MR. KING: No, Your Honor.

20 THE COURT: Okay. What we will do then
21 because it is 3:24, is that I will allow you to rest
22 in the presence of the jury. I will excuse the jury
23 for the remainder of the afternoon. We will do
24 charge conference and then we will close and charge
25 in the morning.

1 Is that acceptable to everyone?

2 Because by the time we do charge conference it
3 will be 4:00 or 5:00, and by the time we get to the
4 argument it will be 5:00. And that's just too much I
5 think for the panel to be waiting while we do that.

6 Is there any exception to that from the State?

7 MR. SIMPSON: None, Your Honor.

8 THE COURT: From the defense?

9 MR. KING: No, ma'am.

10 THE COURT: Wonderful. You all take your
11 seats, please bring in the panel.

12 (Whereupon, the jurors enter the courtroom.)

13 THE COURT: Okay. Defense may proceed.

14 MR. KING: Your Honor, the defense rests.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 both the State and the defense have rested their
17 cases. The next stage of the process involves
18 closing arguments and the Court's instruction on the
19 law.

20 There are several matters of law that I need
21 to take up with the attorneys that probably will take
22 us an additional 30 minutes. And then by the time we
23 do closing arguments and charge it will be way beyond
24 5 o'clock. So I have determined that for purposes of
25 scheduling we will resume in the morning at 9:30 at

1 which time we will have closing arguments and the
2 Court's instructions on the law.

3 During this break is it absolutely essential
4 that you have no discussion of this matter among
5 yourselves or with anyone else. While you have heard
6 all of the evidence in this case, you have not heard
7 closing arguments, nor have you heard the Court's
8 instructions on the law.

9 I know it may seem innocent and oftentimes I
10 have to catch myself when people tell me they're
11 serving on jury duty, it's natural human curiosity
12 for someone to say to you, gosh, what kind of case
13 are you hearing? And it's natural human curiosity to
14 want to respond.

15 But I ask that you strictly abide by my
16 instructions and not do that. Because for you to
17 even begin to discuss what you've heard requires you
18 to begin to process the information that you've
19 heard, it requires you then to draw conclusions based
20 upon it. And that by its very nature is jury
21 deliberations.

22 And you are only allowed to do that once
23 you've heard all the arguments of counsel, the
24 Court's instructions, and then you are only allowed
25 to do that among yourselves in your jury room.

1 So I would ask that you strictly abide by that
2 instruction. I would also ask that you not allow
3 yourselves to be exposed to any media coverage or do
4 any sort of independent Internet searches for
5 articles or other things or involving any subject
6 matter in this case.

7 You are bound by the evidence that you have
8 heard from the lips of the sworn witnesses in this
9 case. And it is essential that you not consider
10 anything outside of the record in this case in making
11 a decision or reaching a verdict in this case.
12 In this case.

13 It is also essential that you have no contact
14 with anyone in or about the courthouse. Again I
15 would hate for an innocent conversation about the
16 weather or something to be observed by someone from
17 afar and they make an assumption that you are
18 discussing the case inappropriately.

19 You'll return directly to the jury room and I
20 anticipate that we will begin closing arguments and
21 charge promptly at 9:30. If you'll leave your
22 notepads in your seats, I hope you all have a great
23 afternoon. We will see you in the morning at 9:30.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: I will give the jury a general

1 instruction regarding their responsibility and my
2 responsibility. How they are to judge witness
3 credibility and believability. How they're to judge
4 expert witness testimony. And I will -- were there
5 any witnesses who testified who had a criminal
6 record?

7 MR. SIMPSON: No, Your Honor.

8 THE COURT: I didn't think there was. I
9 wanted to make sure that my memory was accurate.

10 I will give them a general charge regarding
11 direct and circumstantial evidence. I will charge
12 them that the arrest and the indictment are not
13 evidence. Also instruct them regarding the
14 presumption of innocence. I will also instruct them
15 regarding the defendant's failure to testify, meaning
16 that they cannot give that any emphasis whatsoever
17 and that it cannot be discussed in any manner
18 whatsoever during jury deliberations.

19 I will instruct Victor versus Nebraska on
20 reasonable doubt. I am going to charge lack of
21 defendant testifying, I'm going to charge that after
22 I give the instruction on the expert witness
23 testimony. I may put it in another place wherever I
24 think it fits more appropriately. Actually, I will
25 charge it after the presumption of innocence.

1 Then I'll give the elements of criminal sexual
2 conduct in the first degree. I will instruct the
3 elements of criminal sexual conduct in the first
4 degree. Are there any requests for any lesser
5 included charges?

6 MR. SIMPSON: None from the State, Your Honor.

7 THE COURT: Any from the defense?

8 MR. KING: Yes, Your Honor. We would request
9 ABHAN and CSC third.

10 THE COURT: I don't think -- can you do it
11 that way? I think you want to charge lesser included
12 you have to go the all way down. I don't know, I
13 need to look and see which of the facts would support
14 the facts in this case.

15 CSC third is not a lesser included offense of
16 criminal sexual conduct in the first degree. This is
17 based on State versus McFadden which is a 2000
18 Supreme Court pending, 344 S.C. 629, 539 S.E.2d 837.

19 MR. KING: McFadden was expressly overruled by
20 Gentry.

21 THE COURT: And I stand corrected. My chart
22 has not been updated. I apologize.

23 MR. SIMPSON: Your Honor, I would point out
24 that Gentry refers to several cases on indictment
25 charge --

1 THE COURT: I need to look at that because our
2 charge has been updated. I need to look at that.

3 MR. KING: Part of my argument would be that
4 after --

5 THE COURT: Wait one second for me, please. I
6 don't see the language in Gentry. Mr. King, point me
7 to it.

8 MR. KING: The footnote 18.

9 THE COURT: A footnote is not a finding.

10 MR. KING: The appendix lists all the cases
11 that are overruled.

12 THE COURT: Yeah, but it deals with an
13 indictment not with the issue as to whether a CSC is
14 a lesser-included offense. Gentry is the seminal
15 case on sufficiency of the indictment.

16 MR. KING: Right, and it's also about subject
17 matter jurisdiction.

18 THE COURT: When you raise it. But it's not
19 about whether a CSC second is a lesser included
20 offense of CSC first.

21 MR. KING: If Your Honor would listen to an
22 argument, it may be a novel argument. I think Gentry
23 argues that this Court doesn't need subject matter
24 jurisdiction to try a case.

25 THE COURT: Right, no, Gentry found that an

1 indictment was a notice document.

2 MR. KING: Right and that this is a court of
3 general jurisdiction. And the indictment does confer
4 subject matter to your jurisdiction before the Court,
5 it just provides notice.

6 And the argument for lesser included's before
7 Gentry was you cannot present this charge to the jury
8 because it hasn't been presented to a grand jury.

9 THE COURT: That's not the argument. The
10 argument in the lesser included's is the elements
11 test. And that is every case, and that is the
12 analysis that our Supreme Court has always followed
13 in determining whether something is a lesser included
14 offense, not about the indictment.

15 And the cases that I have relied upon, every
16 case when we deal with whether something is a lesser
17 included offense, the Supreme Court takes great pains
18 to go through the elements. And it either tells us
19 that generally and conditionally to be considered a
20 lesser included offense in common law -- for example
21 ABHAN is really not a lesser-included offense of CSC
22 because it doesn't include the same elements except
23 maybe one or two -- but it is traditionally in common
24 law considered that and the Supreme Court says, well,
25 based on the common law for consistency we rule that

1 that's a lesser included offense.

2 But other than that, those types of offenses,
3 they go through it very painstakingly and tell us
4 whether it meets the elements test. And Gentry is
5 about the sufficiency of an indictment, it is not
6 about whether something meets the elements test to be
7 a lesser included offense.

8 And absent you being able to tell me some
9 language in this holding from the Supreme Court that
10 says we find that criminal sexual conduct is a lesser
11 included offense of criminal sexual conduct --
12 criminal sexual conduct second is a lesser included
13 of criminal sexual conduct in the first degree, I
14 think we are still bound by -- I've never known them
15 to be shy about saying what they mean. Especially
16 when it's something that pivotal.

17 MR. KING: Your Honor, I think that any charge
18 that fits the facts can go the jury after Gentry.

19 THE COURT: Not unless it's a lesser included
20 offense. Gentry does not negate the elements test.

21 MR. KING: The reason for the lesser included
22 is that if a grand jury has found the greater
23 offense, then they have also found the lesser
24 included.

25 THE COURT: The purpose of the lesser included

1 is almost like conforming to the proof. And but it
2 still has to meet the elements test.

3 There is no case law from the Supreme Court
4 that says you still do not have to apply the elements
5 test to determine if something is appropriately a
6 lesser included offense. If that's the case, I could
7 charge anything I want as a lesser included offense
8 if it fits the facts.

9 MR. KING: I agree. As long as I have notice
10 of it.

11 THE COURT: That's not black letter precedent.

12 MR. KING: I think that you can after Gentry.
13 This Court has jurisdiction to hear any charge.

14 THE COURT: Until you tell me the Supreme
15 Court has said that we no longer apply the elements
16 test, we will be applying the elements test to
17 determine if something is a lesser included offense.

18 You would like to request the lesser included
19 of ABHAN and what else?

20 MR. KING: CSC third. One other -- I'm sorry,
21 Your Honor, if you'll indulge me. There are two
22 kinds of CSC third. And I believe that McFadden
23 might have dealt with --- one type deals with sexual
24 battery, I believe it's without coercion. And the
25 other type is someone who is incapacitated. So there

1 is part A and B of CSC third.

2 I think one of those was ruled out as a lesser
3 included offense if I'm not mistaken.

4 MR. SIMPSON: Your Honor, the State would also
5 present the arrangement that the facts under any
6 interpretation in this case don't comport to CSC
7 third, incapacitated. Incapacitated in CSC third
8 statute references specifically almost comatose or
9 unconscious state.

10 I don't think there is any testimony or any
11 evidence in the record that that would apply. That
12 doesn't mean that applies from drinking two hours
13 before, it means you were incapacitated. And I don't
14 think there was any evidence presented in this trial
15 that the victim in this case was incapacitated.

16 MR. KING: Well, I would argue under the part
17 A of CSC third, actual uses force, authority to
18 accomplish sexual battery --

19 THE COURT: I've already ruled that CSC third
20 is not a lesser included offense of CSC first, so I
21 would not be charging it. I don't think the case law
22 supports it and absent you showing me some case law
23 that supports that criminal sexual conduct in the
24 third degree is a lesser included offense pursuant
25 to the elements test of CSC first.

1 The case law supports that criminal sexual
2 conduct in the first degree and the lesser included
3 are criminal sexual conduct second, ABHAN, AHAN and
4 attempted criminal sexual conduct in the first degree
5 as well as simple assault and battery. No, that has
6 been changed. Simple assault and battery is no
7 longer -- I need to look that up again.

8 I think the case that originally held that was
9 overruled by the Supreme Court it was originally a
10 Supreme Court decision.

11 And any of those that would be supported by
12 the facts the Court would certainly -- the evidence
13 as it stands, well the evidence, uncontroverted
14 evidence is that -- that would be supported by the
15 facts in this case would be a threat to accomplish a
16 battery, violence to accomplish the battery, I don't
17 think there is any testimony she was incapacitated in
18 any way except that to the extent that it meets the
19 elements of her being restrained in some way.

20 The inference from her testimony is that she
21 was, as she tried to keep her pants up and keep her
22 legs out she was restrained and forced into the
23 sexual act.

24 MR. KING: Your Honor, I think the jury could
25 find that the sex was consensual but that he didn't

1 beat her up.

2 THE COURT: Go ahead. I'm sorry.

3 MR. KING: I think the jury could find the sex
4 was --

5 THE COURT: I hadn't gotten to that part yet.

6 MR. KING: -- it may have been not consensual,
7 but that he didn't beat her up. I think there is a
8 possibility because there is evidence about the
9 abusive boyfriend.

10 THE COURT: There's no evidence that he was
11 there in the vicinity on this night. The only
12 evidence in the record now is that your client
13 committed a battery upon her for the purpose of
14 committing sexual battery.

15 And I don't think under the facts you can
16 argue to the jury that somebody else did it. You did
17 not establish that the boyfriend was there that
18 night. You only established it happened in some
19 month before. Now you can argue that months before
20 her boyfriend hit her. But you cannot argue that he
21 hit her that night because there was no evidence.

22 MR. KING: There would be no way to know.

23 THE COURT: There is a way to know if you
24 present evidence of that. You could have asked her,
25 did your boyfriend beat you that night, and you

1 didn't.

2 MR. KING: Obviously she would have said no.

3 THE COURT: You still could have argued
4 something different based on her credibility. There
5 is nothing that would have precluded you from doing
6 that.

7 But you have to stay within the confines of
8 the evidence, what evidence has been produced. And
9 that would really almost amount to third-party guilt
10 you are talking about. And that -- so that opens a
11 whole 'nother door and set of requirements that you
12 are required to establish. You don't simply get to
13 say somebody else did it. You have to have some
14 proof somebody else did it.

15 And clearly you can argue liberally within the
16 facts as they have been presented. The facts as they
17 have been presented is that her boyfriend beat her up
18 at unspecified times, either months before or months
19 after this incident and that she was in an abusive
20 relationship.

21 But I think in order to argue to the jury that
22 her boyfriend beat her that night you'd have to have
23 some evidence that he was in the vicinity and beat
24 her that night, or the day before, or a couple days
25 before.

1 MR. KING: I think if she admitted she was
2 seeing him at that time --

3 THE COURT: She didn't admit --

4 MR. KING: She admitted that he was abusive.

5 THE COURT: She admitted that he was abusive
6 months before when you asked if the police had been
7 to her house for a criminal domestic violence, or a
8 violent altercation.

9 MR. KING: I think it's a fair inference that
10 she is dating an abusive person, she had consensual
11 sex.

12 THE COURT: You are not going to be able to
13 argue that without evidence. You have to have some
14 evidence in the record regarding -- that almost
15 amounts to -- I have to think about that a little
16 bit. That almost amounts to you pointing to somebody
17 else as the perpetrator of this crime. The case law
18 is very clear, you can't just speculate about
19 something like that, you have to produce evidence of
20 third-party guilt.

21 MR. KING: But those arguments are not
22 evidence, Your Honor. The evidence is already out
23 there.

24 THE COURT: You still have to argue within the
25 confines of the evidence. You are still bound by the

1 black letter precedent and the rules.

2 MR. KING: I think it's a fair inference that
3 the boyfriend could have beaten her up. I have to be
4 able to argue -- if I'm arguing that he didn't do it,
5 then there is already evidence of somebody else who
6 could have done it.

7 I'm not speculating that anybody could have
8 done it. I have a specific person that she was
9 seeing --

10 THE COURT: You can argue whatever you want,
11 you just have to color within the lines and stay
12 within the evidence that you presented. If you
13 presented evidence that he was there that night and
14 beat her, you can argue that, or if the State
15 presented evidence you certainly can argue that.

16 If there was any evidence he was there within
17 days and beat her, you can argue that. Right now the
18 only evidence that has been presented is that the
19 police went there a few months before for a violent
20 altercation.

21 I'm not going to tell what you can and cannot
22 argue. The State is going to have make a
23 contemporaneous objection and I'll rule on it. But
24 I'm telling you very strictly, stay within the
25 evidence. Stay within whatever inferences you may

1 draw from the evidence either by direct evidence or
2 circumstantial evidence. But we all know what the
3 rules are. We all have to abide by them.

4 MR. SIMPSON: Your Honor, just wanted to
5 clarify what my memory of that testimony was and make
6 sure me and Mr. King are on the same page.

7 THE COURT: We are all bound by the
8 transcript, our memory is not -- it's almost like
9 trying to remember the right shade of green, you
10 remember it differently than it actually was.

11 Yes, sir.

12 MR. SIMPSON: Right. I think the testimony
13 was that the CDV incident happened December of '06, 8
14 months following this incident. Is that correct?

15 THE COURT: Actually what the officer
16 testified to was there was no CDV because they were
17 not living together. She responded to a violent
18 incident.

19 MR. SIMPSON: Prior to?

20 MR. KING: No, it was after.

21 MR. SIMPSON: After, eight months following
22 the incident.

23 MR. KING: Exactly. But she admitted that she
24 was seeing him at the time and that he was abusive.

25 MR. SIMPSON: She said they were not boyfriend

1 but we are seeing --

2 THE COURT: You can argue she was seeing
3 somebody abusive at the time, unless you have got
4 some evidence he hit her that night. I think you are
5 in dicey territory.

6 We are all bound by the evidence that is in
7 the record, and any inferences that can be drawn from
8 the evidence in the record. We don't just get to say
9 -- you could have asked her that question. I thought
10 you were going follow the train, you know, he found
11 out you were having consensual sex with somebody so
12 he beat you.

13 MR. KING: Your Honor, I know she would have
14 said no.

15 THE COURT: That does not matter whether she
16 said no then you could have argued her credibility,
17 she wasn't telling the truth.

18 MR. SIMPSON: The testimony on that point she
19 had not seen him that day, that night, or within that
20 week of the incident.

21 MR. KING: There is no way that I would know
22 if she denied it.

23 THE COURT: Does not matter.

24 MR. KING: I don't have to put up a defense.

25 THE COURT: You don't have to say a word. It

1 doesn't matter whether she denies it or not, it opens
2 the door for you to argue her credibility. That's
3 the whole purpose of cross-examination, show the jury
4 what you want them to hear, doesn't matter what the
5 witness says consistent or inconsistent. It's your
6 opportunity to elicit from them your theory of the
7 case. And there is nothing that precluded you from
8 asking her those questions.

9 I certainly did not restrict you from asking
10 them, I allowed you to ask any questions about that
11 prior relationship as they were relevant. Now
12 anything that happened after six or seven months
13 after was not relevant to the date and time of this
14 particular incident.

15 Bear with me one moment, please.

16 Is there any exception to charging criminal
17 sexual conduct second degree as a lesser included
18 offense from the State?

19 MR. SIMPSON: Not from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. KING: No, Your Honor. I believe that's a
22 most serious crime as well that would result in life
23 without parole so I'm not asking for that one.

24 THE COURT: There is a request to charge the
25 lesser included of ABHAN; is that correct?

1 MR. KING: Yes, Your Honor.

2 THE COURT: Is there any request to charge any
3 other lesser included offenses from the State?

4 MR. SIMPSON: Not from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. KING: No, Your Honor.

7 Except, I'm sorry, except for the CSC third,
8 Your Honor.

9 THE COURT: I've already dealt with that. I
10 am going to study it a little more tonight, but we
11 have looked. The only portion of that case dealt the
12 sufficiency of the indictment. The elements test, as
13 far as we can tell, is still case law regarding that
14 case. That case was not overturned in its totality,
15 only as it relates to the sufficiency of the
16 indictment as I understand our reading of it.

17 And again I will study it some more before I
18 leave tonight to make sure that I'm accurate. But
19 McFadden case is very clear regarding the elements
20 test and whether it meets that test in forming a
21 lesser included offense.

22 MR. KING: I am going to read it as well. I
23 still may ask you to consider part A of CSC third.
24 McFadden deals with part 1-B.

25 THE COURT: I'm going to have to read it

1 again.

2 MR. KING: I still think Part 1-A would still
3 be a lesser included, CSC third part A would be a
4 lesser included of CSC first.

5 Your Honor, there is language Maxnix
6 (phonetic) if Your Honor gives that any weight, part
7 A CSC third is still a lesser included.

8 THE COURT: What year is that case?

9 MR. KING: That's the Maxnix textbook, Your
10 Honor, not a case but the criminal law textbook

11 THE COURT: Is there any exception from the
12 state regarding the defense's request?

13 MR. SIMPSON: As it relates to ABHAN or CSC
14 third?

15 THE COURT: CSC third.

16 MR. SIMPSON: Yes, Your Honor, it will be
17 based on what I said earlier that I don't think even
18 taking the facts as presented in the light most
19 favorable to the defendant, almost to an extreme
20 degree, we don't have any facts that support even the
21 CSC third A which says, sexual assault accompanied by
22 force with no aggravating factor.

23 I interpret aggravating factors to be the same
24 if not similar to those that will be present in
25 ABHAN, several of those being differences in size,

1 difference in sex, the use of a weapon, certainly the
2 glass ashtray could be interpreted as a weapon in
3 this case.

4 I don't think there is any interpretation of
5 the evidence presented that would support that
6 charge. I do understand that perhaps that's a
7 decision for the jury to make and Your Honor may
8 charge that regardless. But that would be the
9 State's position.

10 THE COURT: So in theory you don't have a
11 problem with charging CSC third, the first part, from
12 a legal standpoint, you just feel it is not supported
13 by the facts of this case. Is that what you're
14 telling me?

15 MR. SIMPSON: By no interpretation of the
16 facts of this case, Your Honor, correct.

17 THE COURT: Those are two different questions
18 that I just asked. Are you telling my in theory --

19 MR. SIMPSON: I understand the question. In
20 theory I would not object to that as it not being a
21 lesser included offense. I think if you look at the
22 element of the CSC A they match up with the elements
23 minus one of the CSC first.

24 However under the facts and evidence of this
25 case I do object to that being charged.

1 Your Honor, may I make one more point
2 regarding the charge?

3 THE COURT: Uh-hum.

4 MR. SIMPSON: We would ask --

5 THE COURT: I'm not finished with the charge
6 conference, I'm dealing with the lesser included
7 offense.

8 MR. SIMPSON: I would ask that in the
9 circumstances you were going to charge CSC third that
10 the elements -- the aggravated circumstances be
11 charged as well that constitute aggravated force
12 under CSC first.

13 THE COURT: Let me be clear. The State takes
14 CSC third subsection one of the statute there's a
15 lesser included offense of criminal sexual conduct in
16 the first degree; is that correct?

17 MR. SIMPSON: The State takes the position
18 that there is no case law directly addressing the
19 subject, but from the State's view and reading of
20 that statute here with Mr. King it would seem to me
21 that that subsection in CSC first minus the element
22 of aggravated force.

23 Under the element tests that you've already
24 referred to, Your Honor, that would mean that every
25 element in that subsection is also present in CSC

1 first minus one, aggravated force.

2 THE COURT: So you don't -- but your argument
3 is that it is not supported by facts of this case.

4 MR. SIMPSON: Correct, Your Honor. I guess
5 what I am saying, were I on an appellate court I
6 would probably rule it's a lesser included but I'm
7 not and nor has it been ruled that way by an
8 appellate court. That would be my interpretation of
9 the statute, Your Honor.

10 THE COURT: I would imagine there is no
11 exception to assault and battery of a high and
12 aggravated nature as a lesser included offense from
13 the State?

14 MR. SIMPSON: None, Your Honor.

15 THE COURT: From the defense?

16 MR. KING: No, Your Honor.

17 THE COURT: I will then instruct consent which
18 is -- actually he did not testify to that.

19 MR. SIMPSON: No.

20 THE COURT: There is no indication there was
21 consent so I would not charge that. I will then
22 charge the forms of the verdict, which would at this
23 time include -- I'm inclined since the State does not
24 contend that CSC third, and I need some time to
25 review State versus McFadden, that the first portion

1 of that statute is not a lesser included offense.

2 Whether -- and the elements of CSC third are
3 the defendant used force or coercion without any
4 aggravating circumstances to accomplish a sexual
5 battery, using force or coercion means making the
6 victim follow prescribed and dictated force to
7 inflict or impose or to force one's will on someone.
8 Then I would charge that as a lesser included
9 offense.

10 So the verdict form would include guilty of
11 criminal sexual conduct in the first degree or
12 criminal sexual conduct in the third degree or
13 assault and battery of a high and aggravated nature
14 or not guilty. Actually to add the lesser included
15 offenses between each of those.

16 Is there any exception to the charges proposed
17 from the State?

18 MR. SIMPSON: Just to note again that if Your
19 Honor charge with regards to the aggravated
20 circumstances. We now have a jury issue of was there
21 aggravated force, and I would like if Your Honor
22 would charge what constitutes --

23 THE COURT: Aggravated force is not aggravated
24 circumstances. I'm not aware of any case law
25 defining aggravated force. I think it's a factual

1 issue for the jury to decide. And you can argue what
2 he did is aggravated force or you can argue what he
3 did was aggravated force -- let me rephrase that.

4 Aggravated force means the use of physical
5 force or physical violence of a high and aggravated
6 nature to overcome the victim, this includes the
7 threat or use of a deadly weapon. I would instruct
8 that, that's what aggravated force means. That's
9 support by case law.

10 MR. SIMPSON: We would be fine with that, Your
11 Honor, thank you.

12 THE COURT: Because when you charge first
13 degree criminal sexual conduct you do not charge
14 circumstances of aggravation, and that is the only
15 charge and it's only applicable to assault and
16 battery of a high and aggravated nature.

17 And the list that we use is not exhaustive.
18 And I will instruct the jury that they can consider
19 it or not consider it as a factual matter for them to
20 weigh and decide, those are only examples. And
21 they're to give it the evidentiary value they think
22 it should have.

23 But I will charge aggravated force, definition
24 of aggravated force supported by case law within the
25 elements of the third degree criminal sexual conduct.

1 Is there any exception from the defense?

2 MR. SIMPSON: Your Honor, I would request the
3 consent charge. I think there is some evidence, even
4 though my client didn't testify, there is some
5 evidence the jury could find it was consensual.
6 There was evidence --

7 THE COURT: I think you have to present a
8 defense to be entitled to a defense charge, or have
9 some evidence to support it. I don't recall any
10 evidence in this record that she consented to sex.
11 The only question was asked of whether she consented
12 and she answered no.

13 There is no other evidence in the record of
14 consent. There were some of the questions asked of
15 the doctor, but I have to think on that.

16 MR. KING: I would argue that she invited him
17 in, the circumstances surrounding that encounter,
18 plus, which my understanding was Faye Lebeof said
19 that any of these injuries are perfectly consistent
20 with consensual sex. I think there is enough
21 evidence for a jury to find that there was consent,
22 or inferred.

23 THE COURT: Any exception from the State?

24 MR. SIMPSON: Yes, Your Honor. I agree with
25 your initial ruling. There is no interpretation of

1 the facts presented in the evidence that would
2 indicate this was some kind of consensual act and we
3 would object.

4 THE COURT: I'm going to have to think on that
5 overnight. I will have to do a little studying on
6 that.

7 Are there any other exceptions to the charges
8 proposed from the State?

9 MR. SIMPSON: None from the State.

10 THE COURT: From the defense?

11 MR. KING: No, Your Honor.

12 THE COURT: If you all will give me a moment
13 so that you can review the verdict forms before we
14 adjourn.

15 MR. KING: Your Honor, cleaning everything up
16 I think after I rest I'm supposed to renew my motions
17 and I renew my motion for directed verdict. I just
18 want to make sure to get that on the record.

19 THE COURT: Yeah, we will do that in a moment.
20 If you bear with us just a moment as we print that
21 up.

22 Please come approach and review the verdict
23 forms.

24 MR. SIMPSON: No objection from the State.

25 THE COURT: Any from the defense?

1 MR. KING: No, none, Your Honor.

2 THE COURT: Thank you.

3 I'm going to charge CSC third because you all
4 are not objecting. But my cursory review of State
5 versus McFadden does not support criminal sexual
6 conduct in the third degree as a lesser included
7 offense of CSC first. In order to be a lesser
8 included it has to contain all of the elements of the
9 greater, the greater offense must contain all of the
10 elements of the lesser offence.

11 There's nothing in CSC third that says you
12 pick and choose what you charge. You don't get to
13 charge section one without charging section two.
14 It's not one of those statutes where you charge only
15 the part that's applicable. You have to prove one or
16 more of the following, but I don't get to just charge
17 one part of the statute. But I'm going to do it
18 because you all agreed to it.

19 MR. SIMPSON: Your Honor, the State has --

20 THE COURT: Just for the record I think -- I
21 don't know it's a lesser included offense, but I will
22 study it some more tonight.

23 MR. SIMPSON: Could the State request leave to
24 review McFadden overnight and take a new position in
25 the morning?

1 THE COURT: I think we all should review
2 McFadden. I think we should all give it another look
3 see over tonight. Summer's only -- Summer's
4 originally said CSC third was a lesser included of
5 CSC first, and that was overruled by McFadden.

6 But then there is real convoluted language
7 that says Summer's is overruled only to the extent
8 that it may be read that third degree CSC under
9 16-3-654(1)(B) is a lesser included of CSC first. So
10 we are still bound by the elements test.

11 And the test for determining if a crime is a
12 lesser included offense is whether the greater of the
13 two offenses includes all the element of the lesser
14 offense, and it doesn't. CSC first does not include
15 all the elements of CSC third. It only includes the
16 aggravated force, it does not include the -- let me
17 make sure before I speak.

18 CSC first requires that the defendant engage
19 in a sexual battery with the victim, that aggravated
20 force was used; that the victim submitted to sexual
21 battery while the victim of forceful confinement;
22 defendant caused the victim without the victim's
23 consent to become mentally incapacitated or
24 physically helpless by administering, distributing,
25 dispensing, delivering or causing be to be et cetera,

1 et cetera, et cetera, a controlled substance, analog
2 or intoxicating substance.

3 CSC third requires that the defendant used
4 force or coercion without aggravating circumstances.
5 Let me back up, I'm sorry, that the defendant engaged
6 in a sexual battery; that the defendant used force or
7 coercion without any aggravating circumstance; and
8 the defendant knew or had reason to know that the
9 victim was mentally defective, mentally incapacitated
10 or physically helpless; and that aggravated force or
11 aggravated coercion was not used to accomplish the
12 sexual battery.

13 I have to think about that. We will all think
14 about it overnight. See what we think in the
15 morning.

16 Anything further before we adjourn for the
17 evening from the State?

18 MR. SIMPSON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. KING: No, Your Honor, just about putting
21 on the renewal of the objection.

22 THE COURT: Go right ahead, renew your
23 objection.

24 MR. KING: That's it, Your Honor, I'm renewing
25 my same objections that I renewed at the close of the

1 State's case, I'm renewing those for my directed
2 verdict.

3 THE COURT: Any response from the State?

4 MR. SIMPSON: None, Your Honor.

5 THE COURT: The motions are denied based on
6 the court's previous ruling.

7 All right. See you all in the morning at
8 9:30. Get some rest.

9 MR. SIMPSON: Thank you, Your Honor.

10 (Whereupon, the proceedings in this matter
11 before the Court were adjourned for the evening.)

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C E R T I F I C A T E

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I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the general session court starting December 8, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer
Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2006-GS-10-9254

3 STATE OF SOUTH CAROLINA)
4)
5 Plaintiff)

6 V.)

TRANSCRIPT OF RECORD

7 DANIEL J. JENKINS,)
8)
9 Defendant.)
10 -----)

11
12 DECEMBER 10TH, 2008
13 CHARLESTON, SOUTH CAROLINA
14 VOLUME 3
15

16
17 B E F O R E :

18 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
19
20

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

22 MR. CHAD SIMPSON, Assistant Solicitor
23 MR. CHRIS NEELEY, Assistant Solicitor
24 REPRESENTING THE STATE

25 MR. JASON T. KING, Assistant Public Defender
MR. REECE STIDHAM, Assistant Public Defender
REPRESENTING THE DEFENDANT

ANNE BOULEY MEYER, RPR

CIRCUIT COURT REPORTER

1 THE COURT: Is the State ready to proceed?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MR. KING: Yes, Your Honor.

5 THE COURT: Out of an abundance of caution,
6 I'm going to charge the CSC third. Although there
7 really -- I found no case law that supports for just
8 charging one part of the statute and not charging the
9 entire statute. I'm going to defer to your request
10 and I'm going to charge it.

11 And I'm also going to charge consent. But I'm
12 going to caution Mr. King to stay within the
13 parameters of what the evidence has shown. And you
14 cannot argue that your client said there was consent
15 or anything like that because he did not testify. Of
16 course he does not have to testify, he doesn't have
17 to say anything, doesn't have to present anything, he
18 has no burden in this case.

19 But you are bound by what the evidence has
20 shown. And I expect all of you to stay within the
21 parameters of the evidence.

22 Anything else before we proceed from the
23 State?

24 MR. SIMPSON: Yes, Your Honor. We just wanted
25 to request as to the charge of CSC first, as you know

1 CSC first has the element of sexual battery and then
2 an option of 3, A B and C, it's kind of an and/or
3 scenario.

4 THE COURT: I'm only going to charge the ones
5 that are applicable.

6 MR. SIMPSON: We would understand that's just
7 A, the sexual battery with the use of aggravated
8 force. And B and C, it is our understanding of the
9 evidence, don't apply.

10 Your Honor, do you have an objection to us
11 sending a cassette player back?

12 THE COURT: You need to make sure that's the
13 only thing that's on the tape.

14 Is there any exception to the State's request
15 I only charge subsection 1 of the CSC first statute
16 which is that the defendant used aggravated force to
17 accomplish the battery?

18 MR. SIMPSON: None, Your Honor.

19 THE COURT: From the defense?

20 MR. KING: No, Your Honor.

21 THE COURT: Anything else before we proceed
22 from the State?

23 MR. SIMPSON: Nothing from the State, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. KING: No, Your Honor.

2 THE COURT: Have you all made sure everything
3 is in order? Is the evidence and everything in
4 order, Anne?

5 THE COURT REPORTER: It is.

6 THE COURT: State ready to proceed?

7 MR. SIMPSON: Yes, Your Honor.

8 THE COURT: Defense ready to proceed?

9 MR. KING: Yes, Your Honor.

10 THE COURT: Please bring in the jury.

11 (Whereupon, the jurors enter the courtroom.)

12 THE COURT: Ladies and gentlemen, I hope that
13 you all had a restful evening. As I indicated on
14 yesterday when we broke, we have now reached the
15 stage of the trial where the State -- where each
16 party -- where we have completed the presentation of
17 evidence. And we have now reached the stage of the
18 trial where we will hear closing arguments.

19 You will hear from the State followed by the
20 defense after which you will hear the Court's
21 instructions on the law. I would ask that you give
22 the attorneys your undivided attention.

23 Mr. Simpson, you may proceed.

24 MR. SIMPSON: Thank you, Your Honor. Ladies
25 and gentlemen of the jury, I'd like to start by

1 saying thank you for your time and attention over the
2 last couple of days. I understand this is probably
3 not how you would prefer to spend your week, but your
4 service is invaluable and we appreciate it. As well
5 as I'm sure Mr. King does.

6 Ladies and gentlemen, the defendant is on
7 trial for the crime of criminal sexual conduct in the
8 first degree. As you will hear from the Judge in her
9 instructions, the criminal charge has things we
10 commonly refer to as elements, the things that the
11 State is required to prove to find the defendant
12 guilty.

13 To prove the crime of CSC in the first degree,
14 the State must prove, one, that a sexual battery
15 occurred. Sexual battery is defined, a rather long
16 definition that you will hear later, but it includes
17 of course sexual intercourse. It also refers to any
18 penetration whatsoever of the sexual organ however
19 slight.

20 We submit to you that that has most certainly
21 been proven in this case through the evidence we will
22 be reviewing later.

23 The second element that the State must prove
24 for criminal sexual conduct in the first degree is
25 that that sexual battery was accomplished by the use

1 of aggravated force. And again we will be reviewing
2 the evidence slowly with you, but with regard to the
3 purpose of now I will say that the ripping off of the
4 young woman's underwear, repeated beating about the
5 head and the face with the glass ashtray, and the
6 forceful penetration of her sexual organ is certainly
7 aggravated force.

8 As I told you in the beginning of this trial
9 is that your job involves two types of evidence;
10 testimonial evidence, what you hear on the stand, and
11 the physical evidence presented to you. And your job
12 becomes much easier when the testimonial evidence, as
13 I stated in my opening, fits with the physical
14 evidence. And I submit to you in this trial that it
15 certainly does.

16 But first let's talk about the testimonial
17 evidence. You heard from [H.M.] [REDACTED] on the stand.
18 The young woman who endured a complete nightmare on
19 the night of April 5th, 2006. There were times,
20 ladies and gentlemen, when her testimony was
21 emotional. There were times when it was a bit slow,
22 scared, disjointed. And as to that fact, ladies and
23 gentlemen, I say to you of course it was. Of course
24 it was. If it was anything else you would be asking
25 why.

1 H.M. endured pure hell on that
2 evening. And our justice system, I firmly believe in
3 it and I believe it's the best in the world, now
4 requires her to walk within feet of the man that
5 caused that hell, to stand on this stand in front of
6 12 strangers in this courtroom and talk about the
7 absolute lowest point of her life; including personal
8 details like what this man said to you, sexual exams
9 later on. I submit to you that of course there were
10 times when that testimony was emotional. Of course
11 there were times when the testimony was slow.

12 But, ladies and gentlemen, you still heard her
13 testimony. And you still heard her story of April
14 5th, 2006. And it is the same story she gave to the
15 police in the frantic moments directly following the
16 assault. It's the same story she gave to Faye Lebeof
17 during the medical exam. It's the same story she has
18 given all the times since. And it's the exact same
19 story that you heard on the stand.

20 And when hearing that story from the stand, it
21 is part of your job to determine what you believe,
22 what you believe to be the truth. And when
23 determining that, one of the things you use is your
24 common sense. And one of the common sense things
25 that you ask yourself is motive. Does this person

1 have a reason to lie? And I submit to you, ladies
2 and gentlemen, that one of the sad realities of our
3 system, although it's necessary, is that the victim
4 of a crime has to go through years before we get to
5 this point of reliving and reliving the worst moment
6 of their life.

7 why on earth would someone do that? what
8 possible motive would H.M. have to go
9 through all of this if it was a made up story? She
10 has no motive whatsoever to lie to you.

11 Not only does she not have a motive, more
12 importantly we know she is telling the truth because
13 of the physical evidence. As I repeated several
14 times what we do is we look at the physical evidence,
15 does it match up to her testimonial evidence, and
16 that establishes the truth of her testimony.

17 I'd like a few minutes to go through that
18 testimony and go through the physical evidence in
19 this case.

20 On April 5th, 2006 H.M. was asleep on
21 her couch. She heard a knock at the door, went out
22 to answer the door, and there was the defendant. The
23 person she recognized, not a person she knew, not a
24 friend, not a person she hung out with, but a person
25 she recognized through a few encounters down the

1 street from the store.

2 There were some questions by the defense that
3 she invited him in, I submit to you that [REDACTED] H.M.
4 [REDACTED] was very direct with you on the stand on this
5 point. She said, look, I'm not going to tell you
6 that I slammed the door on his face, that I pushed
7 him away. I opened the door, he came in, I felt
8 uncomfortable but I didn't tell him to leave, I
9 didn't shove him out.

10 I submit to you, ladies and gentlemen, if this
11 story that she was telling was made up, do you think
12 that would be her version of the facts? That this is
13 just some crazy concoction in her head? No, she'd
14 say he forced his way at the door. She'd say he
15 broke in through a window. But, no, she's being
16 direct and being honest with you. She said, look, he
17 came in the house. We had chatted before, so he came
18 in. I didn't invite him in but I did not force him
19 out.

20 As he entered the room, they began a
21 conversation. And this conversation went just how
22 their encounters would on the street. You know,
23 let's go get a beer. No, I don't want to go get a
24 beer. why don't you give me the money and I'll go
25 get us some beer? No, I don't have any.

1 Quite quickly when that more subtle approach,
2 I suppose, didn't work, things began to get physical.
3 You heard from [H.M.] [REDACTED] that the defendant
4 leaned over to her and said, and I apologize for the
5 language but it needs to be said, show me your pussy.
6 Show me your pussy or I'll kill you. Intentions made
7 known right then. Threats of harm right from the
8 get-go and at this point things did get physical.

9 You heard that [H.M.] [REDACTED] reached for the
10 phone. The defendant swatted the phone away from
11 her. You heard that as she physically resisted,
12 pushing her legs together, kicking with her legs to
13 get away, that physical resistance was met with
14 physical force, aggravated force, an element of CSC
15 first.

16 And at this point you might ask yourself,
17 well, if it happened as [H.M.] [REDACTED] said it
18 happened and the defendant grabbed an ashtray and hit
19 her across the head, common sense would say, well,
20 shouldn't there be ashes and cigarette butts around
21 where this happened? And that's where we pause for
22 State's Exhibit 6, the sofa in [H.M.] [REDACTED]'s living
23 room.

24 The ashtray is right next to the couch after
25 being used for these purposes. And as you see around

1 the top of the sofa cigarette ash and cigarette
2 butts. The physical evidence matching the
3 testimonial evidence.

4 You might ask yourself also, if the defendant
5 did use this ashtray to hit the victim on the head,
6 wouldn't there be fingerprints? Wouldn't the
7 defendant's fingerprints be on this ashtray? You
8 heard the testimony from Officer Renee Charles and
9 Kalisha Gill from the Charleston Police Department
10 that two lifts matching the defendant were lifted
11 from that ashtray. The physical evidence matching
12 the testimonial evidence.

13 You would also think, using your common sense,
14 that after beating her about the head and the face
15 with the ashtray it would have been located in close
16 proximity to the couch. Obviously on top of the
17 couch, it would have been right next to it. Again
18 State's Exhibit, where the ashtray was found, right
19 next to the couch. Physical evidence matching the
20 testimonial evidence.

21 Someone was beaten to this degree on the sofa
22 you would expect to find, you might naturally ask
23 were there any bloodstains on the sofa if this in
24 fact happened as [H.M.] [REDACTED] said it did?. State's
25 Exhibit 12, stains on the sofa identified by crime

1 scene as bloodstains. Once again the physical
2 evidence matching the testimonial evidence.

3 Probably most disturbing if beat about the
4 head and face with the green ashtray, you would
5 naturally expect injuries to occur. State's 7, 8 and
6 9, these will be back with you in the jury room,
7 photographs taken from that evening of the victim
8 showing the injuries to her upper lip, lower lip and
9 additional picture of the injuries to her face.
10 Physical evidence matching the testimonial evidence.

11 After [H.M.] [REDACTED] resisted physically and
12 the defendant responded by beating her about the head
13 and face with the ashtray, she switched gears, as you
14 heard, when she said, my boyfriend will be here any
15 minute. He's big, he'll hurt you. I'm your friend.
16 You're going to get in trouble. These are the
17 tactics that women are taught to use during a sexual
18 assault.

19 There was no boyfriend. We heard a reference
20 on the stand that [H.M.] -- I'm not quite sure, I
21 think she may have been seeing some individual at the
22 time, but that's not who she was referring to. There
23 was no boyfriend. Those are desperate pleas to get
24 her assaulter off of her. But they didn't work.

25 The defendant, you heard, ripped off her

1 pants. She described them as being sort of
2 drawstring pants, pulled off her pants and ripped off
3 her underwear. Natural question would be, if that
4 happened as you heard, wouldn't there be ripped
5 underwear? State's Exhibit 5, [H.M.] [REDACTED]'s
6 underwear ripped in half as it was ripped off her
7 body by the defendant.

8 The actual underwear will also be back with
9 you in the jury room. The physical evidence again
10 matching the testimonial evidence that you heard.

11 You would expect someone who underwent this
12 type of assault to have injuries of the pelvic
13 region. And you heard from Faye Lebeof who performed
14 that pelvic exam that those injuries were present;
15 tears, abrasions.

16 You heard about one injury where [H.M.] [REDACTED]
17 described by Ms. Lebeof, that apparently -- I hate to
18 use these graphic terms -- but apparently someone
19 had, quote, missed and hit the outer area of her
20 vagina with such force as to cause an abrasion. The
21 physical evidence that you heard from Faye Lebeof
22 matched the testimonial evidence that you heard from
23 [H.M.] [REDACTED].

24 The defense on cross on this point presented
25 the fact that [H.M.] [REDACTED] had had consensual sex, which

1 of course is not a crime, a few days before. But you
2 also heard from Ms. Lebeof that those types of
3 injuries heal, and would have attempted to heal over
4 the time period between.

5 And, ladies and gentlemen, on the issue of the
6 injuries observed by Ms. Lebeof, again we are here to
7 use common sense, common sense. Did this sort of
8 severe injuries happen from rough sex allegedly
9 occurring three days before, or did they occur from a
10 violent sexual assault which all of the other
11 evidence supports? The physical evidence matches
12 the testimonial evidence.

13 And finally probably the most conclusive
14 evidence of the entire trial, you heard from Adrienne
15 Riley from SLED that the semen found in [H.M.] [REDACTED]
16 matched the semen of the defendant, Daniel Jerome
17 Jenkins. I believe she gave the number of the
18 chances of that semen not being his as 1 in
19 quintillion. It's a number I've never heard before,
20 but she described is as 1 with 18 zeros. Physical
21 evidence which matches the testimonial evidence you
22 heard on the stand.

23 Following the assault, as if the assault
24 wasn't bad enough, [H.M.] [REDACTED] fled her residence
25 because she didn't have a phone, the defendant had

1 taken it. [H.M.] [REDACTED] fled from her home down
2 Huger Street to the Jabbers parking lot where she was
3 again confronted by the defendant.

4 Almost as if a second assault occurs at that
5 point. Moments after being sexual assaulted by the
6 defendant, she is forced to confront him again. And
7 you've heard that story and you can visualize it.
8 she is frantic, she is hysterical, she is looking for
9 help. She said she just was repeating, God, please
10 give me a phone, I need a phone, please give me a
11 phone.

12 You can visualize it in your head. Now we are
13 in public. Now we already heard that another female
14 was present asking her what happened. So the
15 defendant plays nice at this time. You know, grabs
16 her arm, just shut up, I'll give you a phone. Let me
17 wash your face, I will give you your phone. Doing
18 whatever he can to get her off the street, to get her
19 back in private.

20 [H.M.] [REDACTED] pointed out to you that this
21 occurred in front of the houses adjacent to the
22 Jabbers parking lot on Rutledge Avenue. That this
23 was the last point that she saw the defendant, Daniel
24 Jerome Jenkins. Right here.

25 when she got her phone back she said she ran

1 back to her house at [REDACTED], called 911.
2 Ladies and gentlemen, the 911 tape will be going back
3 with you in the deliberation room. And I invite you
4 to listen to it, more than once if you need to. If
5 you're like me, you are not going to understand a lot
6 of what said on that tape. But you will hear a
7 hysterical, frantic, emotional person behaving in a
8 manner consistent with being raped just a short time
9 before.

10 [REDACTED] H.M. testified on the stand that when she
11 got back she was so afraid, the defendant obviously
12 knowing where she lived, that she -- and this is very
13 sad -- didn't go back in her apartment, went around
14 to the side of the apartment, crawled up, got under a
15 tarp, crawled up and got under a tarp at her own
16 house to call 911.

17 Now you heard from the arriving officer that
18 once 911 was called they arrived on the scene, she
19 was inside. But you will hear on this tape, and one
20 of the few moments you can understand, the 911
21 operator said where you are, and her saying I'm
22 outside. I'm outside. The physical evidence
23 matching the testimonial evidence you heard.

24 And the police arrived, they developed a
25 suspect, and that suspect was located. Where was

1 that suspect located? In an abandoned house right
2 next to where the victim said she last saw the
3 defendant on Rutledge Avenue. Physical evidence
4 matching the testimonial evidence.

5 And once [H.M.] had her phone back and went
6 back to the house the defendant, having nowhere to
7 go, did what? Went into an abandoned house, got
8 completely naked in an abandoned house. And why is
9 that? Doing as much as he can do to get rid of any
10 physical evidence of this. And he was found in that
11 house asleep. And I submit to you, I doubt he was
12 asleep. But according to the police when they
13 arrived he appeared to be asleep naked in the house.

14 Officer Grills said he threw on some clothes
15 around there. I seriously doubt they were the ones
16 he had on before. I would imagine he did something
17 with those. But there he was, trying to do all he
18 could in a short amount of time to rid the case of
19 any physical evidence on him.

20 Ladies and gentlemen, again the elements we
21 have to prove are that a sexual battery that
22 occurred, accomplished by aggravated force. I don't
23 think there is any doubt that in this case the
24 evidence overwhelming proves a sexual battery and
25 overwhelming proves it was accomplished with

1 aggravated force.

2 But those aren't the only options that you
3 will have in the jury room. Your decisions are not
4 going to be as simple as guilty or not guilty because
5 the defendant is entitled to give you, the jury, the
6 option to other crimes that may occur.

7 Now this decision isn't going to be pick two,
8 it's going to be either criminal sexual conduct in
9 the first degree, which has been proven to you each
10 element in that beyond a reasonable doubt. But you
11 will have other options under that.

12 The second will be criminal sexual conduct in
13 the third degree. Ladies and gentlemen, to find him
14 guilty of criminal sexual conduct in the third degree
15 you would have to determine that, yes, a sexual
16 battery occurred, but no, it wasn't accomplished with
17 aggravated force. It was a sexual battery but no
18 aggravated force.

19 Ladies and gentlemen, that makes no sense
20 considering the evidence. You'll have the pictures
21 of the photographs, you've heard about the
22 fingerprints, you've heard about the DNA. Of course
23 aggravated force was used. Criminal sexual conduct
24 third degree is not an appropriate verdict in this
25 case. The appropriate verdict is guilty of criminal

1 sexual conduct in the first degree.

2 You will have another option as well, it's
3 called ABHAN. It's an abbreviation for assault and
4 battery of a high and aggravated nature. In order to
5 find ABHAN you would have to conclude that, yes, he
6 did beat [REDACTED] H.M. [REDACTED] with the ashtray. Yes, there
7 was clearly an aggravated assault in this case, but
8 no sexual battery occurred.

9 Ladies and gentlemen, you have heard the
10 evidence about the DNA. You've heard the evidence
11 about the pelvic exam. You've heard the testimony.
12 Of course there was a sexual battery in this case.
13 The only reasonable, appropriate verdict for you to
14 render considering the evidence and the testimony
15 you've heard is guilty of criminal sexual conduct in
16 the first degree.

17 I'd like to briefly address the defense's
18 case. I've had the pleasure of working with Mr. King
19 for over two years now. He is not only a great
20 lawyer, he is a fine person and great human being.
21 But he is before you today, ladies and gentlemen,
22 with a job to do. I'm not asking you to blame him
23 for that job, but recognize it. Recognize it.

24 Because his job under the constitution is to
25 stand before you and do anything he can to serve his

1 client's interest in this case. And what are his
2 client's interest? Obviously it's not guilty.

3 And he has got a tough job in this case.
4 Because when confronted with all of the evidence
5 which matches all of the testimony, he has to come up
6 with some way, some theory to serve that client. And
7 he accomplishes this in several ways.

8 One, get your attention somewhere else. When
9 I say somewhere else I mean the classic way since
10 time began to attack a case like this is to attack
11 the victim. Shift the blame to the one person who
12 has no blame, who should never had to live through
13 this. And what's the big revelation on that point?
14 That H.M. 's life has not been perfect, nor
15 has mine, nor I imagine any of yours.

16 She has had some mental issues in her life as
17 the defense pointed out. What are those, ladies and
18 gentlemen? Depression, extreme sadness. Not
19 schizophrenia, not bipolar disorder, not any sort of
20 condition that would cause her to make up stories,
21 cause her to be dishonest, cause her anything to that
22 degree but depression.

23 H.M. 's life has not been perfect.
24 What bearing does it have on this case? None. But
25 it does serve a purpose, it serves a purpose to

1 distract you to pay attention to her rather than pay
2 attention to what the defendant did on April 5th
3 which is why we are here today.

4 He also has to present some theory of the case
5 to consider his client's interest. Ladies and
6 gentlemen, I anticipate that theory to be, wow,
7 shocking considering the evidence, the only thing
8 left, consent. She wanted it. She agreed to it.
9 Consent.

10 Now Mr. King said something to you in his
11 opening statement that I agree with wholeheartedly
12 and I want to repeat right now. He said, don't rely
13 on your emotion in this case, rely on the evidence.
14 And, ladies and gentlemen, on this point I invite you
15 do not rely on your emotion, rely on the evidence
16 because this trial is about evidence.

17 Consent? The ripped underwear. The photo of
18 the ripped underwear. Consent? Really? Pictures of
19 her injuries. Consent? The 911 call, listen to it.
20 Ask yourself, is this the voice of a woman who has
21 just consented to sexual intercourse. Consent is
22 nothing but the desperate plea from a desperate man
23 trying to avoid responsibility for his actions.

24 This case isn't about a emotion, ladies and
25 gentlemen, it's about evidence. Criminal sexual

1 conduct in the first degree requires the State to
2 prove sexual battery with aggravated force. We have
3 proven those elements beyond a reasonable doubt to
4 you.

5 On April 5th, 2006, [H.M.] [REDACTED] endured a
6 living nightmare. She endured hell. She had to
7 endure that again as she tried to seek help and see
8 the defendant and ran into the defendant. She had to
9 endure that again and again through medical exams,
10 through interviews from several officers, through
11 interviews with myself, each time reliving the hell
12 of that night. She had to relive it again as she
13 stood on this stand in front of a full courtroom and
14 12 strangers, and here still two years out still
15 reliving that event.

16 And the sad truth, ladies and gentlemen,
17 she'll probably have to live with that event for the
18 rest of her life. But it can end today as much as we
19 can make it. And it can end for her in one manner,
20 with the guilty verdict of the only inescapable truth
21 to this case, criminal sexual conduct in the first
22 degree.

23 Thank you for your attention.

24 THE COURT: Mr. King.

25 MR. KING: The law in ancient times, and still

1 today, was that you don't bear false witness against
2 anybody. One of the 10 Commandments. Of the 10
3 that's one. Of all the things that it could have
4 been that's one of them.

5 The reason is is because that happens. It's
6 why there was a Commandment, that's why we have jury
7 trials. Because people do take the stand and they
8 don't tell the truth.

9 You know, the world is more interesting, crazy
10 than we could make up. Things happen in the world
11 that are much stranger than what happens on
12 television, than we see. And we know that from
13 personal experience. People do steal. People commit
14 adultery. And people lie. It's a fact.

15 Now, **H.M.** **████████** took the stand and
16 testified. And really the whole case kind of boils
17 down to her credibility. We don't know her. We saw
18 her for maybe an hour or two on Monday afternoon.
19 And that's what we know. What we saw from that
20 stand.

21 Every detail in this case is important. I'm
22 not trying to distract you from that. But I'm asking
23 you to look at all the details, look at everything.
24 What do we know about her? Well, you know, I know
25 everybody has problems. I'm not here to beat

1 somebody up because they have problems. But it's
2 something we should know, it's something we should
3 consider.

4 I'm not saying it's because someone has
5 problems that they're a liar, they would make
6 something like this up. But, if somebody was going
7 to take the stand and make something like this up, I
8 believe they would have some problems.

9 2002, 2004, 2005 she said that she had to be
10 taken in to protect her from harming herself. And I
11 think that is something that is important to know
12 when you are evaluating what she said on that stand.

13 The solicitor said she didn't have a reason to
14 lie. I think she does. She is dating a man named
15 Todd Baker Jones that I brought out and got
16 information from her so that you could hear. And
17 this is a man that she is seeing at the time. He's
18 abusive. She has had to hide in the closet from him.
19 She told you that. He has hit her, hit her in the
20 face. He has dragged her by her hair. He shoved his
21 hand inside her mouth. He kicked in her door in the
22 middle of the night. She told you all that.

23 But the prosecution, we need to know
24 everything to evaluate her and what she is saying.
25 so I think it's important to know all of these facts.

1 So she may have a reason to lie. Was she going to
2 tell him if she had consensual sex with Mr. Jenkins?
3 Is she going to tell him, the guy who beats her?

4 And I think she misrepresented the problems
5 that she had, and I think that's important for her
6 credibility too. She said she had mild depression,
7 and that's not really true. I think that's important
8 to know that she -- that's one thing she has
9 misrepresented to you the jury. Until I -- she
10 realized that I knew more about her than she thought.
11 When I asked her the questions she provided that
12 information.

13 I think that another thing she misrepresented
14 is I think she knows Mr. Jenkins better than she
15 says. She says she passed him every now and again on
16 the street. Knew him by a street name. He would
17 speak to her occasionally.

18 But, so this person knocks on her door at 10
19 o'clock at night, and she let's him in. I don't know
20 if I would let someone in that I barely knew at 10
21 o'clock at night. This is a single woman living
22 alone. She let's him in at 10 o'clock at night.

23 And she invited him in. She -- I believe she
24 is trying to change what she said on the stand. She
25 is trying to make it sound more like he came right

1 in, but she told Detective Antonio and she told
2 officer Cone that she invited him in. She had that
3 night drank, she said, six beers. And I believe she
4 talked about she was expecting a pizza. So she had
5 drank six beers, she had fallen asleep or passed out
6 about 8 o'clock waiting on the pizza.

7 She gets a knock on the door, and here's
8 someone that she barely knows, she invites them in,
9 they sit on the couch.

10 And referring to State's Exhibit No. 6, he
11 smokes a cigarette. You can look at the picture and
12 see, you got to look at all the details in the
13 picture too. He smokes a cigarette. She said that,
14 he used the ashtray. Touched the ashtray. Maybe he
15 smoked two cigarettes. There is a cigarette butt
16 right here, and there is one still actually in the
17 ashtray. Maybe two cigarettes that were smoked.

18 And she is not being forthright about that.
19 And all these details are important. She said she
20 was raped and she was hit five times, that's what I
21 was trying to get her to say a number, five times
22 with a heavy glass candle holder.

23 You are going to have this back in the jury
24 room. But I want you to feel this when you go back
25 there. I want you to feel the size and the weight of

1 this object. This is big and it's heavy. And she
2 claims -- and this is where, if you think about it,
3 is it true, does the physical evidence match the
4 testimony? I'm saying that it doesn't. Because if
5 she were hit five times in the head and face with
6 that object, then there would have been more damage.

7 You can look at the photos. I will refer to
8 State's No. 14. Now I think this one is important
9 because the other photos there is blood. And it
10 always looks worse when you see blood. This picture
11 is not that far from that night. I think it was
12 maybe a day and a half, you may remember the
13 testimony, but it wasn't that long afterwards.

14 And you see this one there is no blood. So I
15 think you get a clearer picture because like I said
16 it's just instinctive when you see blood it looks
17 worse. But we see this not too long afterwards and
18 she has a bruise under her eye and a bruise here on
19 her inner lip and a cut lip.

20 And there is no way she could have just these
21 injuries by being beat in the face five times with
22 that heavy object. Just pick it up and feel it.
23 Obviously according to her testimony he wasn't
24 tapping her with it. If he is hitting her with that,
25 she would have looked a lot worse than that.

1 The nurse, Faye Lebeof, she did exam her and
2 she didn't find any other injuries on her head or the
3 top of her head or anything else. And also remember
4 she is fair skinned as well. So, you know, when you
5 bruise it's certainly going to show up pretty
6 clearly. So, think about whether the physical
7 evidence matches the testimony.

8 She had no concussion, no evidence of that. I
9 don't think there is any evidence really about her
10 being really treated for any facial injuries or head
11 injuries. Faye went through the trouble of getting
12 DNA. They had a crime scene, but she is being beat
13 with this glass object and there is none of her DNA
14 on that, no blood or any kind of body fluids of DNA
15 on that glass candle holder. Seems like there should
16 be if she is being repeatedly hit and bleeding and
17 hit in the mouth, saliva.

18 And she told us that he used the ashtray. So
19 of course his fingerprints would be on that. There's
20 an easy explanation for that that she gave us. He
21 used the ashtray. And if he is holding the ashtray
22 -- you know, some of this we've got to use our common
23 sense when we are trying to figure out what happened
24 -- but, you know, he did not pick it up with his
25 thumb. Or he did not pick it up like that. It would

1 have been held in his palm, and there is not a palm
2 print, it's a thumbprint. It seems more consistent
3 with smoking a cigarette, that it would be touched
4 with the thumb as opposed to being cupped in the hand
5 and using it to hit someone. So, another example of
6 where the physical evidence may not match the
7 testimony.

8 And she said she's outside and she is looking
9 for help and she finds someone. She finds a woman
10 who comes up to her and asked her what's wrong. But
11 she goes with Mr. Jenkins, the guy she says raped
12 her. She leaves with him. She was running around,
13 she says, trying to find somebody because she's just
14 been raped and she finds someone but she doesn't
15 scream to them to call the police or help or
16 anything, she leaves. She says she leaves with Mr.
17 Jenkins.

18 There is no other witness who saw any of this
19 that has testified. So it really all boils down to
20 her. You know, the police just tell you what they
21 saw when they got there. And fingerprint experts
22 will tell you that his fingerprints were there, but
23 can't tell you what was done with the glass object.

24 The DNA, all they can do is tell you that they
25 had sex. That's all that tells you. It does not say

1 whether it was consensual or not consensual.

2 Faye Lebeof was an expert that testified for
3 the prosecution. I actually started off saying, well
4 you testify for the prosecution, you know, I was
5 going to argue that she's biased. Turns out she is
6 not, she is pretty fair. She said these injuries are
7 consistent with the version that H. [REDACTED] gave.

8 And I stood up and asked her, well, gave her
9 some samples of how consensual sex can cause these
10 same manifestations, physical manifestations and she
11 said yes. She said, in her pelvic exam it was
12 consistent with consensual sex, so that doesn't tell
13 us anything. And she didn't say no, no, no, I have
14 just a little experience examining, she said I have
15 done thousands of sexual assault cases.

16 And she didn't say, you know, it's my opinion
17 that these were caused by forced sexual intercourse,
18 that's not what she said. She said it was consistent
19 with what she said. She said, but it's also
20 consistent with just consensual sex. So she doesn't
21 give us anymore information than we know. That's the
22 state's expert and she's an expert in sexual assault.

23 Mr. Jenkins, if he is supposed to have raped
24 her he didn't run. He is down the street where he is
25 usually found, where he is expected to be. They

1 found him quickly, within 30 minutes, they knew where
2 he was and they went and found him. So he is not
3 running, not hiding.

4 And, you know, if you are staying in an
5 abandoned house he doesn't have a closet full of
6 clothes to go change into. The clothes are there,
7 and there is not a drop of her blood on his clothes.
8 Because they had the clothes.

9 They didn't say there was closet full of other
10 clothes there, this was an abandoned house, that he
11 could have changed into. So he is wearing the same
12 clothes, or the same clothes that are in the room.
13 Again if he is beating her repeatedly, and she is
14 testifying about all the blood, and there is not a
15 drop of blood on him or his clothes. Physical
16 evidence doesn't match the testimony.

17 This is a big decision for the 12 of you.
18 This is the duty that we as citizens do. And it's
19 important. It's not just you sitting at home giving
20 your opinion, this is something where you are sitting
21 in a role that's defined by the law. The Judge is
22 going to give you the law on that. I told you a
23 little bit about it in my opening about the
24 presumption of innocence and reasonable doubt.

25 So this is a big decision for you. Probably

1 the biggest decision of Mr. Jenkins life. And I told
2 you about the presumption of innocence. So the law
3 requires you to have a resistance to believe he is
4 guilty. You have to do that. This is not about your
5 personal beliefs or your emotions, fears, this is
6 about what the evidence is.

7 And the law tells you you have a resistance to
8 believe that someone committed a crime unless you
9 believe after all of the evidence, beyond a
10 reasonable doubt -- and that phrase is important too,
11 we hear it a lot but it's really important. It's a
12 high burden. It's the highest burden we have in our
13 court system.

14 Civil cases, when you are suing over money,
15 it's called the preponderance of the evidence. It's
16 really which one is more likely. If you believe the
17 person suing 51 percent more than the other person
18 than you award that person the money. Well, this is
19 a lot more than that. This is a higher burden than
20 that. This is beyond a reasonable doubt.

21 And it doesn't have to be the same doubt, all
22 12 of you wouldn't have to have the same doubt. Just
23 individually each one of you has a vote, each one of
24 your votes is equal. And you just have to think
25 about looking at the evidence, is it reasonable that

1 she is not telling the truth based on some things
2 that have come out?

3 Look at every detail, because every detail is
4 important. Because we had such a short time with
5 her, we didn't spend a week living with her and
6 seeing what kind of person she is, you just saw an
7 hour or two of her on the stand testifying.

8 So every detail is important. So is it
9 reasonable that she is not telling the truth? And if
10 she is not telling the truth then you cannot find the
11 guilt because you just cannot trust her. If you
12 can't be sure, if you are not firmly convinced, than
13 he is not guilty.

14 THE COURT: Ladies and gentlemen, stand up for
15 me and move around a little bit, stretch a little,
16 you all have been sitting. Does anyone need to use
17 the restroom?

18 We are going to take a short break to give you
19 an opportunity to go to the restroom. During the
20 break do not discuss the case and please leave your
21 notepads in your seats. As soon as you have
22 completed that process, knock on the door and let the
23 bailiffs know and we will resume instructions.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: We will be at ease for about 10

1 minutes. I think that's about how long it will
2 probably take. Let's be back at 10:30 just to be on
3 the safe side.

4 (Whereupon, a recess was taken.)

5 THE COURT: State ready to proceed?

6 MR. SIMPSON: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. KING: Yes, Your Honor.

9 THE COURT: Please bring in the jury.

10 (Whereupon, the jurors enter the courtroom.)

11 THE COURT: Ladies and gentlemen, I hope that
12 you enjoyed your break. As I have indicated we have
13 now reached the stage of the trial where you will
14 hear the Court's instructions on the law.

15 During this trial, ladies and gentlemen, you
16 and I have certain duties to perform. As the trial
17 judge it is my responsibility to preside over the
18 trial of this case. And I also have the duty to rule
19 upon and pass upon the admissability of evidence that
20 has been offered during the course of this trial.

21 You are to consider only the competent
22 evidence that is before you. And you are to
23 disregard and disabuse from your mind any testimony
24 ordered stricken from the record in this case during
25 the course of this trial.

1 You are to consider only the evidence which
2 has been presented to you from this witness stand,
3 together with any exhibits which have been made a
4 part of the record in this case. I have the
5 additional duty, ladies and gentlemen, to charge you
6 or to instruct you on the law applicable to this
7 case.

8 As the presiding Judge I'm the sole Judge of
9 the law of this case. And it is your duty as jurors
10 to accept and apply the law as I now state it to you.
11 If you have a preconceived idea as to what the law is
12 or what the law ought to be in a case, or in this
13 case, and it should not agree with what I now tell
14 you the law is, you are obligated under the oath
15 which you have taken to abandon this preconception on
16 your part because you are sworn to accept the law and
17 apply the law precisely as I now state it to you.

18 In every case tried in this Court before a
19 jury, the jury becomes the sole and exclusive judges
20 of the facts in a case. You are the judges of the
21 facts in this case. The Court is the judge of the
22 law.

23 The constitution of our state has declared
24 that a trial judge shall not intimate, state, comment
25 upon or make any statement to a trial jury about the

1 facts in a case. Since you the jury are the sole
2 judges of the facts in this case, you are not to
3 infer anything from what I have said during the
4 progress of this trial in ruling upon the
5 admissability of evidence or otherwise, or anything
6 that I say now during the course of this instruction
7 to you that I have any opinion about the facts in
8 this case. The law does not permit me to have an
9 opinion about the facts. This is a matter solely for
10 you the jury to determine.

11 As jurors, then, it is your duty, as I have
12 instructed, to determine the effect, the value, the
13 weight, and the truth of the evidence that has been
14 presented during this trial.

15 Necessarily you must assess the credibility of
16 the witnesses who have testified in this case.
17 Credibility is simply a legalistic term meaning the
18 believability of each witness who has testified. It
19 becomes your duty as jurors to analyze and to
20 evaluate the evidence, and determine that evidence
21 which convinces of you its truth.

22 I instruct you that in determining the
23 question of the credibility or believability of
24 witnesses who have testified in this case, you may
25 believe one witness as against several witnesses, or

1 several witnesses as against one witness. You may
2 believe a part of the testimony of a witness and
3 reject the remaining part of the testimony of that
4 same witness.

5 If you have a good and sound reason, you may
6 believe the testimony of a witness in its entirety or
7 reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited to
9 you any interest, any bias, any prejudice or other
10 motive in this case.

11 You may consider the demeanor of the witness,
12 that is the appearance and manner of the witness from
13 the witness stand. You can believe as much or as
14 little of each witness's testimony as you think
15 proper. Or just as you think proper.

16 Throughout this process, ladies and gentlemen,
17 you have but one objective, to seek the truth
18 regardless of its source.

19 Our rules of evidence ordinarily do not permit
20 witness to testify to opinions or conclusions. An
21 exception to this rule exists for witnesses we call
22 expert witnesses. A witness who by education,
23 training and experience has become an expert in some
24 art, science, profession or calling, may state an
25 opinion as to relevant and material matters in which

1 the witness claims to be an expert, and may also
2 state the reasons for that opinion.

3 You should consider any expert opinion
4 received in evidence in this case like any other
5 evidence. Give it the weight you think it deserves.
6 If you decide that the opinion of an expert witness
7 is not based on sufficient education and experience,
8 or if you conclude that the reasons given in support
9 of the opinion are not sound, or that the opinion is
10 outweighed by other evidence, you may disregard the
11 opinion entirely.

12 An expert witness's testimony is to be given
13 no greater weight than that of other witnesses simply
14 because the witness is an expert. Further, you are
15 not required to accept an expert's opinion even
16 though it is not contradicted.

17 Ladies and gentlemen, there are two types of
18 evidence that are presented during a trial; direct
19 evidence and circumstantial evidence. Direct
20 evidence is the testimony of a witness who asserts or
21 claims to have actual knowledge of a fact, such as an
22 eyewitness.

23 Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact. The law makes absolutely no distinction

1 between the weight or value to be given to either
2 direct or circumstantial evidence. Nor is a greater
3 degree of certainty required of circumstantial
4 evidence than of direct evidence.

5 You should weigh all of the evidence in this
6 case. After weighing all of the evidence, if you are
7 not convinced of the guilt of the defendant beyond a
8 reasonable doubt, then you must find the defendant
9 not guilty. Conversely, if you are convinced of the
10 guilt of the defendant beyond a reasonable doubt,
11 then you must find him guilty.

12 Ladies and gentlemen, I instruct you that the
13 fact that the defendant was arrested, charged and
14 indicted is not evidence in this case, and cannot be
15 considered by you as evidence of guilt in this case.
16 Nor does it create any presumption or inference of
17 guilt.

18 This documentation, ladies and gentlemen, is
19 simply the formal written instrument which contains
20 the charge or charges made against the defendant.
21 The indictment serves as a formal document by which
22 this case is processed or brought into this court.

23 The defendant has pled not guilty to the
24 indictment. And that plea casts the burden on the
25 state to prove the defendant guilty. Because a

1 person charged with committing a criminal offense in
2 South Carolina is never required to prove himself or
3 herself innocent.

4 I instruct you that it is a cardinal and
5 important rule of the law of evidence that the
6 defendant in a criminal trial, no matter what the
7 seriousness of the charge made against him may be,
8 will always be presumed to be innocent of the crime
9 for which he is indicted, unless his guilt has been
10 proven by evidence satisfying you of that guilt
11 beyond a reasonable doubt.

12 This presumption of innocence does not cease
13 when you retire to deliberate, but it accompanies the
14 defendant from the time of his appearance, throughout
15 the trial, until you reach a verdict based upon
16 evidence satisfying you beyond a reasonable doubt.

17 Our Supreme Court has said that the
18 presumption of innocence is like a robe of
19 righteousness placed about the shoulders of the
20 defendant. And it remains with him and assigns him
21 to that class, the innocent, until that presumptive
22 robe of righteousness has been stripped from his
23 person by evidence satisfying you of that guilt
24 beyond a reasonable doubt.

25 Mr. Foreman and ladies and gentlemen of the

1 jury, the presumption of innocence is not mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which every defendant is
4 entitled, unless you the jury are satisfied from the
5 evidence of his guilt beyond a reasonable doubt.

6 Ladies and gentlemen, I instruct you and
7 emphasize that the fact that the defendant did not
8 testify is not a factor to be considered by you in
9 any manner whatsoever in your deliberations, and in
10 your consideration on the question of the guilt or
11 the innocence of the defendant. It must not be
12 considered by you in any manner whatsoever.

13 A defendant has the constitutional right to
14 remain silent. And the assertion of this right must
15 not be considered by you in your deliberations in any
16 manner whatsoever. I repeat, under your oath, you
17 are to draw no conclusion whatsoever from the fact
18 that the defendant in this case did not testify.

19 The fact that this defendant did not testify
20 should not even be discussed in the jury room. And
21 in fact I'm instructing the foreperson that if it is
22 discussed in any manner that he's to report it to the
23 Court immediately. I repeat, it is not to be
24 discussed or considered by you in any manner
25 whatsoever in your deliberation.

1 The defendant is not required to prove his
2 innocence. The burden of proof remains on the State
3 to prove guilt beyond a reasonable doubt. You may
4 ask, what is a reasonable doubt in the law? The
5 State has the burden of proving the defendant guilty
6 beyond a reasonable doubt. Some of you may have
7 served as jurors in civil cases, where you were told
8 that it is only necessary to prove that a fact is
9 more likely true than not true.

10 In criminal cases the State's proof must be
11 more powerful than that. It must be beyond a
12 reasonable doubt. Proof beyond a reasonable doubt is
13 proof that leaves you firmly convinced of the
14 defendant's guilt.

15 There are very few things in this life that we
16 know with absolute certainty. And in criminal cases
17 the law does not require proof that overcomes every
18 possible doubt. If based on your consideration of
19 the evidence you are firmly convinced that the
20 defendant is guilty of the crime charged, you must
21 find him guilty. If on the other hand you think
22 there is a real possibility that he is not guilty,
23 you must give him the benefit of the doubt and find
24 him not guilty.

25 The defendant is charged with criminal sexual

1 conduct in the first degree. The first element which
2 the State must prove beyond a reasonable doubt is
3 that the defendant engaged in a sexual battery with
4 the victim. A sexual battery is sexual intercourse,
5 cunnilingus, fellatio, anal intercourse, or any
6 intrusion, however slight, of any part of a person's
7 body or of any object into the genital or anal
8 opening of another person's body except when the
9 intrusion is accomplished for medically recognized
10 treatment or diagnostic purposes.

11 If you find that the State has not shown
12 beyond a reasonable doubt that a sexual battery
13 occurred, you would stop deliberating and your
14 verdict would have to be not guilty.

15 If you find that a sexual battery did occur,
16 you must then decide whether the State has proven
17 beyond a reasonable doubt that the defendant used
18 aggravated force to accomplish the sexual battery.
19 Aggravated force means the use of physical force or
20 physical violence of a high and aggravated nature to
21 overcome the victim. This includes the threat of
22 using a deadly weapon.

23 If you find that the State has failed to prove
24 beyond a reasonable doubt that the defendant is
25 guilty of first degree criminal sexual conduct, you

1 may then consider whether the State has proven beyond
2 a reasonable doubt that the defendant is guilty of
3 third degree criminal sexual conduct.

4 In order to prove third degree criminal sexual
5 conduct, the State must prove beyond a reasonable
6 doubt that the defendant engaged in a sexual battery
7 with the victim as I have explained.

8 A sexual battery is sexual intercourse,
9 cunnilingus, fellatio, anal intercourse or any
10 intrusion, however slight, of any part of a person's
11 body or of any object into the genital or anal
12 openings of the another person's body except when the
13 intrusion is accomplished for a medically recognized
14 treatment or diagnostic purposes.

15 If you find that a sexual battery did occur,
16 you must then decide whether the State has proven
17 beyond a reasonable doubt that the defendant used
18 force or coercion without any aggravating
19 circumstances to accomplish the sexual battery.
20 Using force or coercion means to make the victim
21 follow a prescribed and dictated course to inflict or
22 impose or to force one's will on someone.

23 If you find that the State has not proven that
24 the defendant is guilty of criminal sexual conduct
25 first degree, you must then determine whether the

1 State has proven that the defendant is guilty of
2 assault and battery of a high and aggravated nature.
3 Assault and battery of a high and aggravated nature
4 is included within the offense of criminal sexual
5 conduct first degree.

6 Assault and battery of a high and aggravated
7 nature is an unlawful act of violent injury to the
8 person of another accomplished by circumstances of
9 aggravation. An assault occurs when a person
10 unlawful attempts or offers to commit a violent
11 injury upon another person, and has the present
12 ability to complete the attempted injury.

13 An assault is the intentional creation of a
14 reasonable fear of immediately bodily harm. It is
15 not necessary that the attempted injury or harm
16 actually takes place. For example, if I walk up to
17 you and when we are within arms reach I draw back to
18 hit you, that is an assault.

19 A battery is the unlawful touching of another
20 person by a person who has committed the assault. An
21 lawful touching can be caused by part of you accused
22 body or by any object the accused puts in motion. A
23 battery is the completion of the assault by using or
24 applying force to another person, however slight, in
25 a rude, angry or resentful manner, without legal

1 justification for doing so. Using my earlier
2 example, if I carry through the assault by hitting
3 you, then that is a battery.

4 The State must also prove a circumstance of
5 aggravation. Circumstances of aggravation include
6 the use of a deadly weapon, the intent to commit a
7 felony, the infliction of serious bodily injury, a
8 great disparity between the ages or physical
9 conditions of the parties, a difference in the
10 genders of the parties, the taking of indecent
11 liberties or familiarities with a female through the
12 use the force, the purposeful infliction of shame and
13 disgrace, and the resistance of a lawful authority.
14 These are only examples of circumstances of
15 aggravation.

16 Ladies and gentlemen, the defendant has raised
17 the defense that the victim voluntarily consented to
18 the sexual intercourse. The defendant does not have
19 to prove that the victim consented, instead the State
20 must prove beyond a reasonable doubt that the victim
21 did not consent. If you find that the victim
22 consented to the sexual intercourse, you must find
23 the defendant not guilty.

24 Ladies and gentlemen, there are four possible
25 verdicts which you may find in this case. There is

1 no significance whatsoever to the order in which I
2 state these possible verdicts, it is simply that one
3 must be stated first. And this will go into the jury
4 room with you so you don't have to really focus on it
5 and it is fairly self-explanatory. Don't try to
6 write this down.

7 Again there is no significance to the order in
8 which I state these possible verdicts. And they are
9 as follows: As to indictment 2006-GS-10-9254, we the
10 jury by unanimous consent find the defendant guilty
11 of criminal sexual conduct first degree; or as to the
12 lesser included offense, guilty of criminal sexual
13 conduct third degree; or as to the lesser included
14 offense, guilty of assault and battery of a high and
15 aggravated nature; or not guilty.

16 Again there is absolutely no significance
17 whatsoever to the order of the these potential
18 verdicts. It is simply that I must state one first.

19 Ladies and gentlemen, your verdict must be a
20 unanimous one, which means that all 12 of you must
21 agree in order to reach a verdict. Mr. Foreman, once
22 the jury has reached a verdict it will be your
23 responsibility to fill out the verdict form and to
24 sign and date the form. It will also be your
25 responsibility to knock on the door and advise the

1 bailiffs that the jury has reached a verdict.

2 Also if the jury has any questions during
3 deliberations it will be your responsibility to write
4 those out in longhand, knock on the door and advise
5 the bailiffs that there is a question. They will in
6 turn present that to the Court.

7 Ladies and gentlemen, if you have any
8 questions during deliberations and there is a delay
9 in our response, please don't think we are ignoring
10 you. There is a procedure that we have to follow in
11 answering your questions. So if there is a question
12 I tell you in advance that there will be a delay, but
13 that is because we are following that procedure.

14 I'm going to ask that you return to your jury
15 room at this time, but please don't yet begin your
16 deliberations. There are matters of law I need to
17 take up with the attorneys that may require me to
18 clarify an instruction or to give further
19 instructions.

20 However, if there are no further instructions
21 we will send in the evidence, your notepads, and at
22 that time we will excuse the alternates and then we
23 will advise you that you can begin your
24 deliberations. If you will leave your notepads in
25 your seats. And again do not begin your

1 deliberations. And if you will go with the bailiffs.

2 (Whereupon, the jurors exit the courtroom.)

3 THE COURT: Any exceptions from the State?

4 MR. SIMPSON: None from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. KING: No, Your Honor.

7 THE COURT: Okay. You all make sure all of
8 the evidence is in place for me so that I can have
9 the bailiffs marshal it so that we can excuse the
10 alternates.

11 We can collect the evidence, the notepads,
12 here are the verdict forms.

13 Please bring the alternate out for me.

14 (Whereupon, the alternate jurors enter the
15 courtroom.)

16 THE COURT: On behalf of the State and the
17 defendant and defense counsel, we'd like to thank you
18 for your time and attention to this case. Being an
19 alternate is such a -- not a thankless job, I always
20 think about Cinderella getting dressed for the ball
21 and you know not getting to go.

22 But you have been attentive, you have been
23 punctual, and we've appreciated it. Alternates are
24 very useful to us because sometimes during the course
25 of a trial someone may get ill or something may come

1 up and we have to seat the alternate, it happens all
2 the time. I think the alternate is the main person
3 in the panel.

4 So you have served a very useful purpose to
5 this week and we appreciate it. I'm going to excuse
6 you for the week. So that you can -- I feel like
7 you've met your responsibilities to us and we
8 appreciate it.

9 If you need a work excuse we can provides
10 those to you on the first floor. If you don't need
11 one it will be mailed to you along with your check at
12 the end of the week. I would ask that you not
13 discuss this case until the entire panel is free to
14 leave, at least on Friday.

15 If you however don't want to discuss the case
16 and someone should persist in trying to talk to you,
17 please call the clerk's office so that we can take
18 the appropriate action to protect your privacy.

19 You can stick around if you like and see how
20 the jury verdict comes out, or you're welcome to
21 leave. You don't have to stick around with us if you
22 have work you want to do today, you're welcome to go
23 about your business. You are excused with the
24 Court's thanks. I hope it has been educational for
25 you.

1 ALTERNATE JUROR: It has been.

2 THE COURT: Thank you, sir, you are excused.

3 We will be at east. The record should reflect
4 that the jury has begun its deliberations at 11:00
5 a.m.

6 Please make sure you leave cell phone numbers
7 and be in a place where I can reach you in the event
8 we need you for a question or otherwise.

9 (Whereupon, a recess was taken.)

10 THE COURT: The jury has reached a verdict.
11 Is there anything before we bring the jury in from
12 the State?

13 MR. SIMPSON: Your Honor, the victim in this
14 case is on the way. We just ask --

15 THE COURT: I'm so very sorry. It's her
16 choice to leave the courthouse. I already had the
17 jury waiting for everyone to reassemble, I'm not
18 inclined to have them wait any longer.

19 Is there anything from the defense?

20 MR. KING: No, Your Honor.

21 THE COURT: Please bring in the panel.

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Thank you. Mr. Foreman, is it
24 correct that the jury has reached a verdict?

25 A JUROR: Yes.

1 THE COURT: Please give the verdict form to
2 the bailiff for me, please.

3 Sir, if you would stand for publication of the
4 verdict.

5 Madam Clerk, you may proceed.

6 THE CLERK: State of South Carolina, County of
7 Charleston versus Daniel Jerome Jenkins, defendant.
8 In the court of general sessions of the Ninth
9 Judicial Circuit indictment 2006-GS-10-9254. As to
10 indictment number 2006-GS-10-9254, we the jury by
11 unanimous consent find the defendant guilty of
12 criminal sexual conduct first degree. Signed Roger
13 Trudeau, 12/10/2008.

14 Mr. Foreman, ladies and gentlemen, if this is
15 your verdict please raise your right hand.

16 Thank you.

17 THE COURT: The verdict stands.

18 Is there any request to poll the jury from the
19 State?

20 MR. SIMPSON: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. KING: Yes, Your Honor.

23 THE COURT: Madam Clerk. Ladies and
24 gentlemen, please give the Clerk your attention.

25 You may proceed when you are ready.

1 THE CLERK: Ladies and gentlemen, I will ask
2 you two questions. Please, as I call your name and
3 juror number, if you would stand and answer those two
4 questions.

5 Juror number 219, Roger Trudeau. Is this your
6 verdict?

7 A JUROR: Yes.

8 THE CLERK: Is this still your verdict?

9 A JUROR: Yes.

10 THE CLERK: You may have a seat.

11 Juror number 22, Nathaniel Blake.

12 Is this your verdict?

13 A JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 A JUROR: Yes.

16 THE CLERK: Thank you, sir.

17 Juror number 32, Joan Carter.

18 Is this your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Thank you, ma'am.

23 Juror number 45, Sharon Costa (sic).

24 Is this your verdict?

25 A JUROR: Yes.

1 THE CLERK: Is this still your verdict?

2 A JUROR: Yes.

3 THE CLERK: Juror number 55, Carolyn Dodd.

4 Is this your verdict?

5 A JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 A JUROR: Yes.

8 THE CLERK: Juror number 63, Russell Floyd.

9 Is this your verdict?

10 A JUROR: Yes.

11 THE CLERK: Is this still your verdict?

12 A JUROR: Yes.

13 THE CLERK: Juror Number 78, Carol Greve.

14 Is this your verdict?

15 A JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 A JUROR: Yes.

18 THE CLERK: Thank you. Juror 91, David Hill.

19 Is this your verdict?

20 A JUROR: Yes.

21 THE CLERK: Is this still your verdict?

22 A JUROR: Yes.

23 THE CLERK: Thank you, sir.

24 Juror 92, Timothy Hiott.

25 Is this your verdict?

1 A JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 A JUROR: Yes.

4 THE CLERK: Thank you, sir.

5 Juror 149 Bradley Miller.

6 Is this your verdict?

7 A JUROR: Yes.

8 THE CLERK: Is this still your verdict?

9 A JUROR: Yes.

10 THE CLERK: Thank you, sir.

11 Juror number 243, Sandra Wray.

12 Is this your verdict?

13 A JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 A JUROR: Yes.

16 THE CLERK: Thank you, ma'am.

17 Juror number 246, Bonnie Yon.

18 Is this your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Thank you, ma'am.

23 The jury has been polled and the verdict
24 stands.

25 THE COURT: Thank you, sir, you may take your

1 seat.

2 Ladies and gentlemen, on behalf of the State
3 and the defendant and defense counsel we thank you
4 for your time and your attention to this case. We
5 know jury service is a great sacrifice to you.
6 However, as you heard me say during jury
7 qualification, in my estimation it really is the
8 highest form of civic service. Our system is the
9 only system where 12 individuals are the fact finders
10 and find the facts and really apply a very
11 complicated set of laws to those facts and render
12 verdicts in a case.

13 I hope it has been educational for you. I
14 hope you learned it's nothing like television. I
15 hope you have learned how indispensable and integral
16 you are to the system. We couldn't do our job every
17 day, we couldn't have jury trials, without
18 individuals being willing to sacrifice time from
19 their jobs and their other responsibilities to be
20 here with us.

21 We have selected another jury that I'm going
22 to begin at two o'clock. We have already started
23 another civil case, so I am going to excuse you all
24 for the remainder of the week.

25 If you need a work excuse, please go to the

1 first floor to the civil side of the clerk's office
2 on the first floor one of those windows a lady or
3 gentleman at the window will be happy to give you a
4 work excuse. However, if you don't need one today we
5 will mail those out on Friday along with your check.

6 You are welcome to stay for sentencing if you
7 would like. If you want to, please let the bailiffs
8 know and you can remain seated and they will bring
9 you back into the courtroom. You can remain seated
10 in the jury box if you like or we can place you in
11 the gallery of the courtroom. Just let the bailiffs
12 know.

13 Mr. Forman, if you would remain as you exit so
14 that the clerk can show you how to sign and fill out
15 the actual indictment. You are all excused with the
16 Court's profound thanks.

17 In a moment we are going to hear post trial
18 motions and sentencing. Please prepare the
19 sentencing sheet.

20 (Whereupon, a recess was taken.)

21 THE COURT: Are there any post trial motions?

22 MR. SIMPSON: None from the State, Your Honor.

23 THE COURT: Any from defense?

24 MR. KING: Yes. I would like to renew my
25 previous motions and move for a new trial;

1 identification motion, search warrant motion
2 specifically.

3 THE COURT: Anything from the State in
4 response?

5 MR. SIMPSON: Nothing, Your Honor. Our
6 assertion about the previous ruling stands.

7 THE COURT: The motions are noted for the
8 record and they are denied based on the Court's
9 previous ruling. With regards to a motion for a new
10 trial, it's well founded that the grant or refusal of
11 a new trial is within the discretion of the Court and
12 will not be disturbed on appeal absent a clear abuse
13 of discretion. And we know abuse of discretion is a
14 lack of evidentiary support or error of law.

15 However, if there is -- where there is
16 competent evidence to sustain the jury's verdict the
17 Judge may not substitute his or her judgment for that
18 of the jury. That's Based on State versus Trent, 316
19 S.C. 57, 447 S.E.2d. 177, 1993 Supreme Court
20 decision; as well as State versus Smith, 316 S.C. 53,
21 1993; and State versus Holmes, 320 S.C. 259, 1995.

22 This was a credibility case. Either the jury
23 believed the version of events as advanced by the
24 State or those advanced by the defense which was
25 there was evidence of consent. Case law is very

1 clear that where there is competent evidence to
2 sustain a jury's verdict, which I will find for the
3 record there is competent evidence to sustain the
4 jury's verdict, there is no basis for the Court to
5 substitute its judgement for granting a new trial.

6 The Court would find the motion for new trial
7 is denied.

8 Is there anything further before we proceed
9 with sentencing from the State?

10 MR. SIMPSON: No, Your Honor.

11 THE COURT: From the defense?

12 MR. KING: No, Your Honor.

13 THE COURT: Do we have a sentencing sheet?

14 MR. SIMPSON: If I may approach with the
15 sentencing sheet.

16 THE COURT: Anything further from the State as
17 regards to sentencing?

18 MR. SIMPSON: Yes, Your Honor, briefly. Under
19 accounting of the defendant's prior record in July
20 1978 criminal sexual conduct first degree which the
21 defendant first --

22 THE COURT: I'm sorry, repeat that. 1978
23 there was a CSC?

24 MR. SIMPSON: CSC first, Your Honor, which
25 the defendant received a sentence of 24 years.

1 THE COURT: Okay.

2 MR. SIMPSON: In October of 1993 a
3 car-jacking, also categorized as a most serious
4 offense, Your Honor, which the defendant received a
5 sentence of nine years. November of 1998 failure to
6 register, first offense, 90 days.

7 2001 strong arm robbery as well as assault and
8 battery of a high and aggravated nature which the
9 defendant was given a 10-year sentence. 2005 an
10 additional failure to register as a sex offender,
11 Your Honor.

12 THE COURT: That would have been a second or
13 treated as a first?

14 MR. SIMPSON: It was treated as a first, Your
15 Honor. I have here copies of our notice of intention
16 to seek life without parole under 17-25-45.

17 These copies also show proof of service on
18 both the defendant and the defense counsel, Your
19 Honor.

20 THE COURT: If you make that part of the
21 record. You may approach.

22 MR. SIMPSON: Thank you.

23 THE COURT: Is there anything further from the
24 State regarding sentencing?

25 MR. SIMPSON: No, Your Honor.

1 THE COURT: Mr. King, is there anything you'd
2 like to present to the Court as regards sentencing?

3 MR. KING: No, Your Honor.

4 THE COURT: Okay. Sir, is there anything that
5 -- you do not contest that this would be the second
6 most serious offense, correct?

7 MR. KING: I have seen what was served by the
8 solicitor.

9 THE COURT: Mr. Jenkins, is there anything
10 that you would like state for the record on your own
11 behalf?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Sir, the Court is left without any
14 discretion as regards to your sentencing. You are
15 sentenced to life without the possibility of parole.
16 You will get credit for any time that you've served.

17 Thank you very much. Thank you all very much.
18 Gentlemen, it was a pleasure to try this case with
19 you. I hope you all have a good holiday.

20 (Whereupon, the proceedings in this matter
21 before the Court were adjourned.)

22 * * * * *

23

24

25

I N D E X

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the general session court starting December 8, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONDANIEL J. JENKINS
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

JULIE J. HENNING
CLERK OF COURT
2016 APR -4 PM 4:41

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Inst.
2. Name and location of Court which imposed sentence CHARLESTON County Courthouse.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-10-9254
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) LIFE WITH PAROLE ON 12/10/08
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE SUPREME COURT of South Carolina - DIRECT APPEAL
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. DENIED.
- iii. _____
- (c) the date of each such result:
- i. DENIED.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OPINION No. 27537
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) _____
- (c) H
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (A) Notice of Life Without Parole, Probation, and Sentence, Invalid and Void.
- (a) (2) Prior Conviction - NOT MOST SERIOUS OFFENSE. 93-GS-10-6617
- (b) (3) Prior Conviction - NOT MOST SERIOUS OFFENSE. 7/06/1978
- (c) (4) THERE IS NOT "A CHALLENGING CONVICTION" (5) 11-25-45 of Henry F. 1996 IS PROSPECTIVE
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (1) ILLEGAL SENTENCE AND CONVICTION. (4) THERE IS NO CHALLENGING CONVICTION SENTENCE OR CONVICTION.
- (b) (2) ILLEGAL USE OF PRIOR CONVICTIONS OF 7/06/1978 - WAS NOT "MOST SERIOUS" OFFENSE. 1978.
- (c) (3) CHALLENGING NOTICE OF LIFE WITHOUT PAROLE - LEFT COURT WITHOUT JUDGMENTS TO PROCEED TO TRIAL.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. A

iv. N/A

(d) the date of each such disposition:

i. _____ N/A

ii. _____ N/A

iii. _____ N/A

iv. _____ N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ N/A

ii. _____ N/A

iii. _____ N/A

iv. _____ N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____ N/A

ii. _____ N/A

iii. _____ N/A

(b) the proceedings in which each ground was raised:

i. _____ N/A

ii. _____ N/A

iii. _____ N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____ N/A

(b) _____ N/A

(c) _____ N/A

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. TRIAL ATTORNEY - JASON T. KENZ.
 - ii. DIRECT ATTORNEY - KATHARINE Haggard-Hudgens.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL ATTORNEY - JASON T. KENZ.
 - ii. DIRECT APPEAL KATHARINE Haggard-Hudgens.
 - iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE AND CONVICTION.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, DARRELL J. JENKINS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 31
day of March 2016

J. C. Hankins (L.S.)
Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, DANIEL J. JENKINS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

31 day of March, 2016


Notary Public

My Commission Expires: 12-16-2019

March 31, 2016

DANIEL JACKSON #274033

386 REDEMPTION WAY

McCOMBIE CORNERS INST.

McCOMBIE, SC 29899

DEAR ^{Mrs} Hon. Ann Strong,

PLEASE STAMP AND FILE THIS APPLICATION, AND
LEAVE A COPY BACK TO ME.

Thank you.

4 Daniel J. Jackson

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Daniel J. Jenkins, #274033,

2016-CP-10-1700

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 4, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the September 2006 term of the Charleston County Grand Jury for one (1) count of Criminal Sexual Conduct, First Degree (2006-GS-10-9254). Jason T. King, Esquire, represented him. On December 8, 2008, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for life without parole.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals remanded Applicant's case, finding that the trial court erred in finding that the search warrant for samples of Applicant's DNA was valid. State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012). Applicant proceeded to petition for writ of certiorari to the South Carolina Supreme Court, in

which the Court reversed the Court of Appeals ruling and reinstated Applicant's conviction and sentence. State v. Jenkins, 412 S.C. 643, 773 S.E.2d 906 (2015). The Remittitur was issued on July 17, 2015.

II.

In his application for post conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Notice of life without parole, was and still today, invalid and void (sic)."
a. "Illegal sentence and conviction."
2. "Prior Conviction- Not Most Serious Offense. 93-GS-10-6617. (sic)"
a. "Illegal use of prior conviction of 7-06-1978- was not most serious offense in 1978 (sic)."
3. "Prior Conviction- Not Most Serious Offense. 7-06-1978. (sic)."
a. "Carjacking- no notice of life without parole- left court without jurisdiction to proceed to trial."
4. "There is not a carjacking conviction"
a. "There's no carjacking indictment, sentence, or conviction."
5. "17-25-45 of January 1, 1996 is "prospective" (sic)"
a. "Offense before June 1986 was not classified as violent."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. The Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal

defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that his sentence was illegal. Respondent submits that this allegation is entirely without merit. Applicant's sentence was well within statutory limits. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits.

The record shows that before sentencing Applicant the sentencing judge was apprised of all the facts related to Applicant's conviction as well as Applicant's prior criminal record. The record further shows that Applicant did not object to the court's sentence. Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981).

V.

Applicant also alleges that the absence of a carjacking conviction left the court without jurisdiction to proceed to trial. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). Therefore, Respondent submits that this allegation is without merit and requests an evidentiary hearing to fully resolve this issue.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective and whether Applicant's appellate counsel was ineffective.

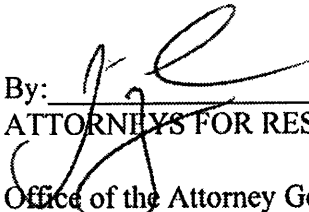
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 24, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-1700
	)	
DANIEL J. JENKINS, #274033	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Post Office Box 1058
Charleston, South Carolina 29402

DATED this 24th day of June, 2016.


Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Daniel J. Jenkins, #274033,	)	Case No. 2016-CP-10-1700
	)	
Applicant,	)	
	)	
v.	)	AMENDED RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In an amended response¹ to the post-conviction relief application filed on April 4, 2016, Respondent would show this Court:

I. Procedural History

Daniel J. Jenkins (Applicant) is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. In April of 2006, Applicant was arrested following an investigation into a sexual assault. In September of 2006, the Charleston County Grand Jury indicted Applicant for one count of first-degree criminal sexual conduct. Assistant Public Defender Jason T. King represented Applicant. The case was prosecuted by Assistant Solicitor Chad Simpson. On December 8, 2009, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Applicant as indicted. Following the verdict, the trial judge sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on Applicant's two prior convictions for "most serious" offenses.

¹ While reviewing the pleadings previous filed in this case, undersigned counsel noticed procedural inaccuracies in the previously filed return and is filing this amended return and motion for more definite statement o correct these inaccuracies and clarify the record.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. The State was represented by Assistant Attorney General Mark R. Farthing. Subsequently, following briefing and oral argument, the South Carolina Court of Appeals reversed the trial judge's ruling on the validity of a search warrant issued in Jenkins' case and remanded the matter to the trial court for an evidentiary hearing on the applicability of the inevitable discovery doctrine. State v. Jenkins, Op. No. 4958 (S.C. Ct. App. filed Mar. 28, 2012) (Shearouse Adv. Sh. No. 11 at 48). Thereafter, the State petitioned the Court of Appeals for rehearing, and the Court of Appeals granted the State's petition, withdrew its previous opinion, filed a substituted opinion that contained an additional footnote but was otherwise consistent with its previous opinion, and dispensed with further argument and briefing. State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012).

In reaching that decision, the Court of Appeals determined the search warrant affidavit was deficient because it did not demonstrate the police had probable cause to believe Applicant raped Victim or Applicant's D.N.A. was relevant to the investigation. (App'x pp. 264-268). Furthermore, the Court of Appeals determined any error in the admission of the D.N.A. evidence was not harmless, stating:

Without the DNA in this case, . . . the State would have been forced to rely heavily on the credibility of the victim. Applicant' fingerprint in the victim's home proved he was there, the presence of fluids in her body proved someone had sex with her, and the facial injuries proved someone violently assaulted her. However, removing the DNA leaves only the victim's credibility to prove two key facts necessary for a conviction: that Applicant was the person who had sex with her, and that the sex was not consensual. We cannot find beyond a reasonable doubt that the DNA comparison results in this case, which the DNA analyst testified had a one-in-8.6 quintillion likelihood of error, did not contribute to or affect the verdict.

(App'x pp. 269-270) (citations and footnotes omitted). Finally, the Court of Appeals concluded there was insufficient evidence in the "blank" appellate record to establish Applicant' D.N.A. would inevitably have been discovered and remanded the matter for an evidentiary hearing on that issue. (App'x pp. 270-274).

The State then filed a petition for a writ of certiorari in the South Carolina Supreme Court, and the petition was granted on September 24, 2014. Following briefing and oral argument, the Supreme Court reversed the Court of Appeals and reinstated Applicant's conviction, finding the trial judge's error in admitting DNA evidence that was collected pursuant to an invalid warrant was harmless. State v. Jenkins, 412 S.C. 643, 773 S.E.2d 906 (2015). The Remittitur was returned to the circuit court on July 17, 2015.

II. Summary of Facts Adduced at Trial

In April of 2006, thirty-one-year-old [REDACTED] H.M. ("Victim") lived alone in downtown Charleston, South Carolina, and worked at a local bakery five days a week. (App'x pp. 3-5). Frequently, when Victim headed to work or went to a grocery store near her home, she would encounter Applicant, who regularly hung around outside of the entrance to the grocery store. (App'x pp. 5-6). When she did so, Victim would greet Applicant, who she knew as "Black," and sometimes exchange pleasantries with him. (App'x pp. 5-7; pp. 27-28). However, other than briefly addressing Applicant when she passed him, Victim did not have a relationship with Applicant, did not know Applicant well, did not consider Applicant to be a friend, and was not even aware of Applicant's real name. (App'x pp. 6-7; pp. 27-28).

On the morning of April 5, 2006, Victim reported to her job at the bakery at approximately 8:00 a.m. and worked throughout the day. (App'x pp. 3-4; p. 7). At around 3:00 p.m. to 4:00 p.m., Victim finished working for the day and returned to her home. (App'x p. 7). After she did so, one of

her friends came over to visit, and the two drank several beers together while they socialized. (App'x pp. 7-8). Then, Victim's friend left for the evening, Victim ordered a pizza for dinner, and Victim fell asleep on her couch around 8:00 p.m. while she waited for her pizza to arrive. (App'x pp. 7-8).

Subsequently, at around 10:00 p.m., Victim was awakened by the sound of someone knocking on her door and went to open the door in response. (App'x p. 8). When she opened her door, Victim found Applicant standing on her doorstep, and he asked her if she wanted to go get a beer with him. (App'x p. 9). However, Victim declined Applicant's invitation. (App'x p. 9). Applicant then asked Victim for money so he could go get a beer for himself, and Victim again declined. (App'x p. 9). After that, Applicant abruptly entered Victim's home "somewhat aggressively," and Victim responded by backing away into her living room and sitting down on her couch. (App'x pp. 10-11).

Thereafter, Applicant followed Victim to her couch, immediately began making lewd sexual demands, and threatened to kill her if she did not comply with his demands. (App'x p. 11; p. 35). In response, Victim pleaded with Applicant not to do anything, warned him of the potential consequences of his actions, and did everything she could to dissuade him from doing anything further. (App'x p. 11). However, Applicant was undeterred by Victim's pleas and started touching her. (App'x p. 12). Then, Applicant grabbed a glass candle holder from Victim's coffee table and began repeatedly striking Victim in her head, face, nose, forehead, ears, and mouth. (App'x pp. 11-13). Stunned, Victim tried to physically resist Applicant while also trying to hold onto her pants and reach her portable house phone to call for help. (App'x pp. 12-13). However, Applicant grabbed the phone away from Victim and forcibly ripped off her pants and underwear. (App'x p. 14). After that, Victim repeatedly begged Applicant to stop, warned Applicant her boyfriend was on the way in an effort to frighten him into stopping, and attempted to scream. (App'x p. 14; p. 38). However,

Applicant was not dissuaded, and he told Victim she was going to die, covered her mouth with his hand, and forced himself inside of her while continuing to make sexual remarks. (App'x p. 15; p. 38). Applicant then continued to sexually assault Victim until he ejaculated. (App'x p. 15; p. 132).

Once Applicant was finished, he climbed off of Victim, threatened to kill her if she told anyone about the assault, and quickly fled from her home. (App'x p. 15). Injured, frightened, and in disbelief of what had occurred, Victim put on a sweatshirt to cover her blood-soaked clothes and began looking for her phone inside of her house. (App'x p. 16). When she could not find it, Victim ran into the street looking for help, but several passing cars would not stop for her. (App'x p. 16). Victim then ran towards the grocery store near her home, and a woman approached her to find out what had happened. (App'x pp. 16-18). However, before Victim could tell the woman, Applicant approached them and inquired about what had occurred. (App'x p. 18). Terrified, Victim began to cry and asked to use a phone, and Applicant responded by grabbing her by the arm, leading her across the street, and offering to let her use her phone if she would wash the blood off of her face. (App'x pp. 18-19). Applicant then helped Victim wash her face with water from a nearby spigot before returning Victim's own phone to her. (App'x pp. 19-20). After that, Victim took the phone and immediately ran to her house. (App'x p. 20). However, fearing Applicant would return, she ran back outside and hid under a tarp on the side of her home before calling 911 to report the sexual assault. (App'x p. 20).

Shortly thereafter, law enforcement officers from the Charleston Police Department arrived at Victim's house and spoke with Victim, who was shaking, crying, bleeding, and appeared to have been "roughed up pretty good." (App'x p. 21; pp. 23-24; pp. 49-51; p. 100). At that time, Victim advised the officers she had been sexually assaulted by a man she knew as "Black," and, based on his familiarity with "Black," Officer Jake Grill immediately headed to an abandoned building across

from the grocery store located near Victim's house. (App'x p. 24; p. 51; pp. 53-54). Inside, he found Applicant, who was completely naked and appeared to be sleeping. (App'x p. 24; pp. 53-54). Officer Grill then woke Applicant up, allowed him to get dressed, and escorted him to the parking lot of the grocery store while Detective Jennie Antonio quickly brought Victim to that location to see if Applicant was the person who had sexually assaulted her. (App'x pp. 24-25; p. 52; p. 54; pp. 99-101). Upon seeing Applicant, Victim quickly identified him as her assailant. (App'x p. 25; p. 54). Applicant was then arrested, and Victim was transported to a clinic for a sexual assault examination. (App'x p. 26; p. 79; p. 111).

At the clinic, Faye Lebeof, a certified nurse midwife and an expert in sexual assaults, interviewed Victim and performed a sexual assault examination on her. (App'x pp. 108-111). During the examination, Lebeof discovered Victim's face, eyes, and mouth were bruised and injured, Victim had abrasions and lacerations in her vagina, and Victim's hymen had signs of redness, and Lebeof located fluids inside of Victim's vagina, which were collected as evidence. (App'x pp. 112-114). Based on her examination, Lebeof concluded Victim's injuries were consistent with Victim's report of a sexual assault. (App'x pp. 113-114).

Meanwhile, officers processed the crime scene, located blood stains on Victim's sofa, collected Victim's ripped underwear and a glass candle holder from the floor, and recovered several fingerprints from the candle holder, which were subsequently determined to belong to Applicant. (App'x p. 55; pp. 59-61; p. 63; pp. 72-73). Additionally, as part of the investigation, Detective Antonio prepared a search warrant affidavit for the recovery of Applicant's D.N.A. based on the information Victim reported to her about the assault. (App'x pp. 78-79; p. 83; p. 86; p. 148). The probable cause section of the warrant affidavit stated:

On 4-5-06 at approximately 2230 hrs while at [Victim's address], the subject, Daniel

Jerome Jenkins . . . did enter the victim's residence and threatened to kill her if she did not comply with his demand to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about her face using a glass candle holder. The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair and pubic hair will be retrieved from the suspect by a trained medical personnel in a medical facility. The collection of these sample will be conducted in a noninvasive manner.

(App'x pp. 80-81; p. 147). After preparing the warrant affidavit, Detective Antonio presented the affidavit to a magistrate judge, and the magistrate judge issued a search warrant without taking any supporting oral testimony. (App'x pp. 81-82; p. 102). Subsequently, pursuant to the search warrant, Lebeof collected a D.N.A. sample from Applicant. (App'x p. 116). Thereafter, Applicant's D.N.A. sample was compared to the semen located in the rectal and vaginal swabs collected from Victim after the sexual assault, and an expert in forensic D.N.A. analysis determined Applicant's D.N.A. profile conclusively matched the D.N.A. profile developed from the evidence collected during Victim's sexual assault examination. (App'x p. 129; pp. 131-132).

Subsequently, Applicant was indicted for first-degree criminal sexual conduct, and he proceeded to trial. (App'x pp. 143-144). During trial, Victim recounted the details of the sexual assault and identified Applicant in the courtroom as her attacker. (App'x pp. 11-21; p. 25). Additionally, the officers and other personnel who were involved in investigating the sexual assault testified about the results of their investigation. (App'x pp. 50-51; p. 57; pp. 72-73; pp. 78-79; p. 100; pp. 111-112; p. 131). Then, prior to the introduction of the evidence establishing Applicant's D.N.A. profile matched the D.N.A. profile of Victim's assailant, defense counsel moved to suppress the D.N.A. evidence, arguing the search warrant used to gather the evidence was insufficient because the accompanying affidavit did not establish probable cause and contained no indication relevant information would have been found through the search. (App'x p. 87; pp. 90-91; p. 93). However, the trial judge denied the suppression motion. (App'x p. 94-97).

Thereafter, as the trial continued, Adrienne Riley, a forensic D.N.A. analyst and expert in forensic D.N.A. analysis, testified Applicant's D.N.A. profile matched the D.N.A. profile developed from the semen collected from Victim's body. (App'x p. 127; p. 129; pp. 131-132). Riley further explained the odds of randomly finding an individual with a matching D.N.A. profile were one in 8,600,000,000,000,000,000. (App'x p. 132). Defense counsel then renewed his objection to the admission of the D.N.A. evidence, and the trial judge again overruled the objection. (App'x pp. 132-133).

Subsequently, at the conclusion of trial, Applicant was convicted as indicted. (App'x p. 137). During the ensuing sentencing proceedings, the solicitor informed the trial judge of Applicant's prior criminal record, which consisted of convictions for first-degree criminal sexual conduct in 1978, carjacking in 1993, failure to register as a sex offender in 1998, strong-arm robbery and assault and battery of a high and aggravated nature in 2001, and failure to register as a sex offender in 2005. (App'x pp. 140-141). Based on Applicant's prior "most serious" convictions for first-degree criminal sexual conduct and carjacking, the trial judge sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. (App'x pp. 140-142).

III. Allegations Raised in Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Notice of life without parole, was and still today, invalid and void (sic)."
 - a. "Illegal sentence and conviction."
2. "Prior Conviction- Not Most Serious Offense. 93-GS-10-6617. (sic)"
 - a. "Illegal use of prior conviction of 7-06-1978- was not most serious offense in 1978 (sic)."
3. "Prior Conviction- Not Most Serious Offense. 7-06-1978. (sic)."
 - a. "Carjacking- no notice of life without parole- left court without jurisdiction to proceed to trial."
4. "There is not a carjacking conviction"

- a. "There's no carjacking indictment, sentence, or conviction."
- 5. "17-25-45 of January 1, 1996 is "prospective" (sic)"
 - a. "Offense before June 1986 was not classified as violent."

Attached and incorporated into this amended return are the records from the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and all appellate records related to this conviction. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations

Respondent construes Applicant's allegations as alleging his trial counsel was ineffective for failing to challenge the use of his prior convictions for enhancement for sentencing purposes. Respondent submits these allegations are without merit and that counsel rendered effective and proficient performance in his representation of Applicant.

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI. Response as to all other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

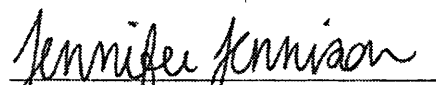
11/8, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2016-CP-10-1700
	)	
DANIEL J. JENKINS, #274033	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this the 8th day of November, 2017.


 Jennifer Jeanison, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
3 COUNTY OF CHARLESTON) Case No. 2016-CP-10-1700
4)
5 DANIEL J. JENKINS,)
6)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 STATE OF SOUTH CAROLINA,)
11)
12 Respondent.) DATE: February 1, 2018
13)
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25)

A P P E A R A N C E:

THE HONORABLE MAITE MURPHY

A P P E A R A N C E:

JAMES KRISTIAN FALK
Attorney for the Applicant

MEGAN HARRIGAN JAMESON
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

INDEX

EXAMINATION

Witness Name

Page

JASON KING

DIRECT BY MR. FALK..... 5

DANIEL JENKINS

DIRECT BY MR. FALK..... 19

1 MS. JAMESON: May it please the Court. Your Honor,
2 this is Daniel Jenkins vs. the State of South Carolina, Docket
3 No. 2016-CP-10-1700.

4 In September of 2006, the Charleston County Grand Jury
5 indicted Mr. Jenkins for one count of first-degree criminal
6 sexual conduct. Jason King of the public defender's office
7 represented Mr. Jenkins.

8 On December 8th, 2009, he proceeded to a jury trial
9 before Judge Jefferson. At the conclusion of the trial, he was
10 convicted as indicted. And Judge Jefferson sentenced him to
11 life imprisonment based on his two prior most serious
12 convictions pursuant to 17-25-45.

13 He filed a timely notice of appeal. And an appeal was
14 perfected on his behalf by Appellate Defender Katherine
15 Hudgins.

16 Following briefing and oral argument, the South
17 Carolina Court of Appeals reversed the trial court's ruling on
18 the validity of the search warrant issued in Mr. Jenkins's
19 case, and remanded the matter back to general sessions for an
20 evidentiary hearing on the applicability of the inevitable
21 discovery doctrine.

22 Thereafter, the State petitioned the Court of Appeals
23 for rehearing. The Court of Appeals granted the petition,
24 withdrew its previous opinion, and filed a substituted opinion
25 that contained an additional footnote that was otherwise

1 consistent with this previous opinion, and remanded the case to
2 general sessions.

3 The State then filed a petition for certiorari with
4 the South Carolina Supreme Court. And petition was granted.

5 Following briefing and oral argument, the South
6 Carolina Supreme Court reversed the Court of Appeals and
7 reinstated Mr. Jenkin's conviction, finding the trial judge's
8 error in admitting DNA evidence that was collected which led to
9 an invalid search warrant was harmless.

10 The remittitur was returned to the circuit court on
11 July 17th, 2015. Thereafter, Mr. Jenkins got a timely
12 application for post-conviction relief on April 4th, 2016,
13 alleging various reasons why his life sentence was illegal.

14 The State made its return on June 24th, 2016, and
15 filed an amended return on November 8th, 2017.

16 He is represented by James Falk. He hasn't formally
17 amended his application, but Mr. Falk indicated four grounds he
18 will be proceeding on in PCR:

19 First, is trial counsel should have moved for a
20 mistrial when the solicitor asked the State's witness, the
21 victim, to make an in-court identification of the defendant;
22 that trial counsel should have moved for a mistrial following
23 an objection on page 155 about whether law enforcement knew
24 Mr. Jenkins previously; third, that trial counsel should have
25 sought a curative instruction after the solicitor sought to

1 bolster the victim's prior testimony; and finally, that trial
2 counsel should have challenged the credentials of the SANE
3 nurse as an expert sexual assault examiner.

4 And I believe those are the only four grounds that we
5 move forward on today.

6 THE COURT: Mr. Falk.

7 MR. FALK: Yes, Your Honor.

8 THE COURT: Ready to proceed?

9 MR. FALK: I call Mr. King to the stand.

10 JASON KING,

11 having been duly sworn, testifies as follows:

12 THE COURT: Your witness.

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q. Mr. King, you work with the public defender's office?

16 A. Yes.

17 Q. And were you appointed to represent Mr. Jenkins in
18 this case?

19 A. Yes, I was.

20 Q. And is it your recollection you were his only lawyer
21 through the whole process?

22 A. I believe so.

23 Q. As you were going through, about how many times did
24 you meet with him?

25 A. Seven times.

1 Q. All right. And was he in custody the whole time?

2 A. Yes.

3 Q. Can you just tell us a little bit about what your
4 theory of defense in this case was?

5 A. Well, in this case, the victim alleged that she was
6 familiar with Mr. Jenkins from the neighborhood, I think by a
7 street name, and said he knocked on her door one night. There
8 was some dispute whether she let him in, but he came in. They
9 talked. And then she claims that he sexually assaulted her.

10 They had his DNA. They had his fingerprints. Oh, and
11 she also alleged that he beat her about the face with a glass
12 candleholder. It was also referred to as an ashtray in the
13 trial transcript. There was ash in it, but he beat her with
14 this glass object in the head and sexually assaulted her.

15 And there was DNA evidence that was collected from her
16 that matched Mr. Jenkins. There was a fingerprint on the glass
17 candleholder that matched Mr. Jenkins.

18 Mr. Jenkins told me that it was -- he had consensual
19 sex with her, but none of the rest happened that she alleged.
20 I think she alleged after the sexual assault, that she left her
21 apartment and was trying to find help and nobody would help
22 her. And then Mr. Jenkins came up to her again and helped her
23 wash her face off. And I think he had maybe taken her phone
24 and gave her phone back, but he disputed any of that stuff and
25 said that the sex was consensual.

1 Q. There was a *Neil v. Biggers* -- did you ask for a *Neil*
2 *v. Biggers* hearing in this case?

3 A. Yes. I think there was a show-up identification. So
4 as part of the standard pretrial, I did ask for that.

5 Q. Who was this trial in front of?

6 A. Jefferson.

7 Q. Judge Jefferson? And was there a pretrial *Biggers*
8 hearing; was that done?

9 A. A lot of times, she likes to just proceed forward and
10 deal with the issues like that as they come up. So sometimes
11 she doesn't have very many pretrial hearings. I think in this
12 stage, we just proceeded forward.

13 Q. And if you look -- proceeding forward, when was she
14 going to address the identification issue?

15 A. When the victim took the stand and testified, when
16 that issue came up.

17 Q. Okay. You have a copy of the transcript there?

18 A. Yes.

19 Q. Who was testifying on page 60 of the transcript?

20 A. I think that is the victim, [REDACTED] H.M. .

21 Q. Okay. Now she's testifying. Was there a *Biggers*
22 hearing?

23 A. No. There hadn't been a *Biggers* hearing. And the
24 solicitor asked her, was it the person you knew -- was it the
25 person you knew as Black? And she said yes. And then he said,

1 is that person in the courtroom today? And she said "yes"
2 before I could stand up and object.

3 Q. What was the understanding between Mr. Simpson in this
4 case and you as to allowing the witness to make an
5 identification?

6 A. When he got to that point, when he was going to ask
7 that question, we were going to take a break and conduct the
8 *Biggers* hearing at that point.

9 Q. So that didn't happen in this case?

10 A. Right.

11 Q. And I see that you objected to that. What was the
12 next -- what was your next thought to do trying to cure that
13 problem?

14 A. We approached the bench. So that's not on the record,
15 the discussion. So after that, it looks like she gave me an
16 instruction to not consider that, a curative instruction.

17 Q. Were you satisfied with that curative instruction?

18 A. I was. My thought on that was I had no grounds to
19 keep out the identification. I didn't think I was going to be
20 able to keep that show-up identification out. Didn't have any
21 really good issues. DNA evidence was going to come in and his
22 fingerprint was going to come in. So identity was really just
23 not the issue in the case. So it wasn't -- you know, I didn't
24 see it -- or I guess you could say it was, like, harmless,
25 whatever it was was harmless. I.D. was going to come in. DNA

1 was going to come in and a fingerprint.

2 Q. But it was a show-up identification, right?

3 A. It was, I believe.

4 Q. And what was your recollection of the facts for the
5 show-up?

6 A. I believe that they had -- they found him nearby in,
7 like, an abandoned house. They detained him. They drove the
8 victim over in a patrol car and had her make the
9 identification.

10 Q. He was homeless at the time? Was he living in that
11 abandoned house? Wasn't that an issue?

12 A. I believe so, right. He was staying in, like, an
13 abandoned house. I think that's right.

14 Q. Then when you get to page 155 of the transcript --

15 A. Yes.

16 Q. -- who is testifying on this page?

17 A. That is Officer Jake Grill.

18 Q. Let me just backup for a minute. He got a life
19 sentence. Were you all given LWOP notice?

20 A. Yes.

21 Q. So you had an LWOP notice prior to going in to the
22 trial?

23 A. Yes.

24 Q. What was the basis of the LWOP?

25 A. I believe it was a prior conviction for criminal

1 sexual conduct, first.

2 Q. In South Carolina or in another state?

3 A. It may have been out of state. I can go through his
4 rap sheet. Do you want me to find his rap sheet?

5 Q. Do you mind?

6 A. No. That was a South Carolina conviction.

7 Q. For?

8 A. It was out of Charleston County. It has an arrest for
9 sexual assault, first degree. And then at the disposition it
10 says convicted -- it says criminal sexual conduct, convicted 24
11 years confinement.

12 Q. What was the date of that?

13 A. 3/21/79.

14 Q. So it was amended to criminal sexual conduct?

15 A. Right. It says criminal sexual conduct. It doesn't
16 say first, second or third. But he did 24 years on it, so it
17 had to be a criminal sexual conduct, first. And the original
18 arrest says sexual assault, first degree.

19 Q. Okay.

20 A. And there was also a carjacking conviction in '93.

21 Q. And it's your recollection or understanding, is that
22 one or is that a two-strike?

23 A. Carjacking? I think it's a most serious, but I would
24 have to look it up.

25 Q. Did you go through an analysis whether or not the LWOP

1 was justified?

2 A. Yes, I believe it was, based on those two convictions.
3 I thought the LWOP was -- he was eligible for LWOP.

4 Q. Okay. Going back now, let me ask you, on page 155 --

5 A. Yes.

6 Q. -- who was testifying at that point?

7 A. That was Officer Jake Grill. He was the, I believe,
8 one of the responding officers who located Mr. Jenkins.

9 Q. Okay.

10 A. Yeah.

11 Q. And what was the basis for your objection on line 19?

12 A. I knew that, reading from the police reports or from
13 preparing the case, that when -- I think he was known by that
14 street name Black. And I believe when the victim stated
15 that -- Officer Grill, I believe he knew who that was. He was
16 familiar with this area, had seen him around, and knew where he
17 stayed, basically, knew where to find him. So when I hear the
18 officer start testifying about how they are familiar with him,
19 I objected, because I didn't want the jury to think that the
20 officer was familiar with him because he had a criminal record
21 or because of any prior bad acts.

22 Q. And the officer did say he was familiar with that
23 individual?

24 A. Yes.

25 Q. And did Officer Abinant (ph) investigate this case as

1 well?

2 A. I believe he was involved, but I can't specifically
3 remember his involvement.

4 Q. I'm just curious, is that the same officer who's
5 gotten into trouble down in Colleton County --

6 MS. JAMESON: Your Honor, I would object.

7 MR. FALK: I'm sorry. Just curiosity. I apologize.

8 THE COURT: Sustained.

9 BY MR. FALK:

10 Q. All right. So law enforcement has already testified
11 that, yeah, they know him from past experience. And you
12 objected. And your objection, what was the result?

13 A. Discussion at the bench. And then the judge gave a
14 curative instruction not to consider that last question.

15 Q. Were you satisfied with the curative instruction?

16 A. Yes. But the main point was to stop him from going
17 too much into that. And then a few pages later, on page 159,
18 line 8, I kind of loop back around to that and said, all right,
19 when you said Officer Abinant (ph) was familiar with where he
20 hung out - I hung out around the area, I was trying to clear
21 that up, saying they knew him just because he was in the area,
22 that he was kind of a fixture in the area, but not because he
23 was involved in crime or anything bad.

24 Q. So now at this point in the trial, Mr. Simpson has
25 already kind of sidestepped Judge Jefferson's order on the --

1 not to do the identification until there was a *Biggers* hearing.
2 And now you've got a police officer who probably should know
3 better not to say --

4 MS. JAMESON: Your Honor, objection. Counsel is
5 testifying.

6 MR. FALK: I will withdraw the question.

7 BY MR. FALK:

8 Q. Did you consider a motion for mistrial by this time?

9 A. I didn't. Just like the identification issue that
10 came out, identification wasn't really an issue in the case.
11 And I didn't think he had said enough at that point for it to
12 be prejudicial. I think -- I tried to clarify it in my
13 question that they knew him because they were familiar with
14 this area and because Mr. Jenkins was hanging out in the area.
15 So nothing came out about them being familiar with him because
16 of a prior record or anything like that. There was no
17 indication that he had any sort of prior record or anything
18 like that.

19 Q. Then if you could go to page 211.

20 A. Yes.

21 Q. Who was testifying at this point in the trial?

22 A. That was a detective in the case, Antonio, Detective
23 Antonio.

24 Q. And what was the basis for your objection there; do
25 you recall?

1 A. Bolstering. And I don't think --

2 Q. What was he testifying about?

3 A. I guess I had brought up an inconsistency in the
4 victim's statement. I think it had to do with whether or not
5 she let him in. I think she told Detective Antonio that he
6 knocked on the door and she let him in. And when she testified
7 at trial, I believe she said he kind of pushed his way in. So
8 I brought up that inconsistency about her statement.

9 Sometimes when you do that, the solicitor's office
10 will try to bolster that statement by bringing out a prior
11 consistent statement, by getting the police officer to repeat,
12 you know, what they told them or something like that. So I was
13 trying to stop any sort of bolstering like that.

14 But the question -- he never really got the question
15 out. So to be honest, looking back on it, I wasn't really sure
16 what the question was going to be. I think I stopped it
17 before -- I just maybe objected out of abundance of caution
18 before it even got there.

19 Q. Okay. My other concerns are with Mrs. LeBoeuf, Ms.
20 LeBoeuf. And I believe her testimony starts on page 211 -- no,
21 231. I'm sorry, 231.

22 A. Okay. Yes.

23 Q. And had you been in a trial before where she had
24 testified?

25 A. I think so. I remember her name around that time as

1 being -- I want to say I at least had one other case where she
2 was involved. I couldn't name the case, but I was familiar
3 with her from at least one other case as being a sexual assault
4 nurse examiner in Charleston.

5 Q. Her testimony was she had only been admitted as an
6 expert on ten prior occasions?

7 A. I think that's right.

8 Q. Did you do -- in your preparation for this case, you
9 knew that she was giving a report, did you not?

10 A. Yes.

11 Q. You had gotten a copy of the report as part of the
12 Rule 5?

13 A. Yes.

14 Q. Did you investigate her qualifications?

15 A. I had my own expert, Dr. Betsy Baker-Gibbs, who was a
16 physician that -- she was from Columbia. I knew her from when
17 I was a public defender in Columbia. We used her as an expert
18 up there. She had done work on rape trauma victims. And she
19 was very generous with helping out defense. Sometimes you
20 could call her without retaining her and she would answer some
21 questions. But I retained her to review that and give me some,
22 I guess, some guidance on cross-examining Faye LeBoeuf. I
23 remember she was familiar with Faye LeBoeuf because she told me
24 she thought Faye LeBoeuf would be fair in her testimony,
25 because she was familiar with her. But I didn't think she

1 wasn't qualified. I think she was doing a lot of the sexual
2 assault nurse examinations in Charleston around that time.

3 Q. You didn't have a copy of her CV prior to the trial?

4 A. I can't recall. Give me one second. I don't recall.
5 I don't know if I had that. I don't see it right away in my
6 file, but she testified -- she took the sexual assault nurse
7 examiner course. She had done a thousand sexual assault
8 examinations and qualified as an expert ten times.

9 Q. But she's a nurse midwife; is that correct?

10 A. I think that's what she testified to.

11 Q. Was there a reason for not conducting a voir dire on
12 her or challenging her qualifications as an expert?

13 A. Well, Dr. Gibbs had told me she thought that she would
14 be fair on the stand. And if you read her testimony, I think
15 it was -- I think the end result was fairly neutral.
16 Typically, in those cases, it is. If the sexual assault nurse
17 examiner testifies that they found nothing, then the State can
18 argue, well, just because someone is sexually assaulted doesn't
19 mean it leaves to physical manifestation. And if there is a
20 physical manifestation, the defense can argue, even sexual
21 assault can leave a physical manifestation. So there's always
22 both ways you can go with it.

23 So when she testified, she testified those injuries
24 were consistent with a sexual assault. But on
25 cross-examination, when I went through the same injuries and

1 things that could cause those injuries, she testified it was
2 also consistent with consensual sex. So she really -- her
3 testimony really, I think, in the end, was kind of neutral.

4 Q. Did you feel that -- certainly one part of the process
5 would be for her to evaluate the physical symptoms that the
6 person has, see what kind of markings, bruising and that kind
7 of stuff, to notate that in her report. But her report does go
8 beyond that to make a decision about causation, does it not?
9 And what I mean is, what is the cause of what she was saying?

10 A. Right. But I think her conclusion was that it was
11 consistent with sexual assault.

12 Q. Exactly.

13 A. As opposed to saying these injuries were caused by
14 sexual assault and that's her opinion. She didn't give that
15 opinion, just that those injuries are consistent with a sexual
16 assault, but they are also for consensual sex as well.

17 Q. Did you consider objecting that her testimony as to
18 the cause of the symptoms that she had seen, I mean, one thing
19 about as going beyond the scope of her expertise?

20 A. No, because, like I said, I don't think she
21 testified -- she didn't testify that these injuries were caused
22 by a sexual assault. She just testified that they were
23 consistent with a sexual assault.

24 Q. Part of her qualifications say that she's done
25 approximately one thousand sexual assault evaluations.

1 A. Right. That's what she testified to.

2 Q. Is there any way to know how accurate she was over
3 those thousands? Is she subject to any type of peer review?

4 A. Honestly, I don't know.

5 Q. And the ten times she was admitted, do you know how
6 many of those times were in general sessions and how many were
7 in family court?

8 A. No.

9 Q. Do you know if a rape kit was actually -- did you see
10 the results of the rape kit? Was that part of the Rule 5
11 materials?

12 A. You mean the DNA analysis?

13 Q. Yeah.

14 A. Yes. Yeah, I had the DNA analysis. I had the
15 underlying data. And I retained the DNA expert, Dr. Ragowski
16 (ph) to review it.

17 Q. And those were consistent with the State's
18 witnesses?

19 A. Right. He didn't disagree with the finding that it
20 was Mr. Jenkins.

21 MR. FALK: I have no further questions.

22 THE COURT: Cross-examination.

23 MS. JAMESON: No questions of this witness, Your
24 Honor.

25 THE COURT: You may step down, sir. Thank you.

1 MR. FALK: I call my client to the stand.

2 DANIEL JENKINS,

3 having been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. FALK:

6 Q. Will you please state your name for the record.

7 A. Daniel Jerome Jenkins.

8 Q. Mr. Jenkins, about how many conversations about this
9 trial did you have with Mr. King?

10 A. I had approximately seven to ten different
11 conversations with him.

12 Q. And what was your idea -- what was the idea for a
13 trial strategy?

14 A. Well, that I told him couple guys that he needed to
15 talk to, but he never found neither one of them, because
16 H.M. she was, she was a -- she was using drugs. You know,
17 I know about that. But then I find out later, through
18 Mr. King, that she was also taking psychotic medication and
19 drinking and doing drugs at the same time. And I asked her
20 psychiatrist at the county jail --

21 MS. JAMESON: Your Honor, I would object. These are
22 beyond specific allegations that we are here to go forward on
23 today.

24 THE COURT: Sustained.

25 BY MR. FALK:

1 Q. So you wanted him to follow up on some other
2 witnesses, potential witnesses. But what else? What was the
3 basis for your defense? Was it that --

4 A. That it was consensual sex, that I did not do anything
5 wrong to H.M. .

6 Q. That would be consistent with your fingerprint being
7 in the house?

8 A. My fingerprint was found on this ashtray due to the
9 fact that I smoke cigarettes. When I smoke cigarettes, the
10 average person would grab an ashtray and pull it to them and
11 push them away. Me, I always hooked the ashtray with my thumb
12 and pull it to me when I'm smoking. When I got through
13 smoking, I take my thumb and I push it away. It was two thumb
14 prints of mine, right thumb prints found on this alleged
15 weapon. I can't hold a piece, a sheet of paper with my thumb,
16 let alone a 5 1/2 pound object, and beat somebody across the
17 face or head repeatedly.

18 My attorney asked her, did this man beat you
19 repeatedly or what? And she stated, yes.

20 So you only got two right thumb prints of mine on this
21 alleged weapon that's supposed to beat this person with. Well,
22 I must have been God if I could beat somebody with that, if I
23 can hold a 5-pound object with my thumb.

24 Q. The other evidence that they found would all be
25 consistent with you being in the house because she invited you,

1 right?

2 A. Yeah.

3 Q. And --

4 A. She invited me earlier that afternoon. I told her,
5 look, I just got off work, I will come by later on that night.
6 I came by her house later on that night, approximately 8:30,
7 nine o'clock, something like that, you know. And as far as the
8 DNA, when the officer arrested me, you know, first thing he
9 asked me, did I know her. I said, yeah, I know H.M. I
10 said, we were at her house, we had sex, we were drinking and we
11 had sex.

12 They were talking about charging me with an ABHAN at
13 first, from the very beginning. And when they realized after
14 dusting this alleged weapon that I can't hold with a thumb and
15 beat somebody or coerce or whatever, they said I raped her.
16 Because you are going to find my semen in her if you did DNA.
17 But if the State wanted my DNA, all they had to do --

18 MS. JAMESON: Again, Your Honor, this was all fleshed
19 out. His direct appeal is not alleged here today and has
20 nothing to do with these allegations.

21 MR. FALK: Just that it was consistent with his
22 defense that they had a consensual sexual encounter.

23 THE COURT: Mr. Jenkins, stick to the questions that's
24 asked. We don't need to go into all of the factual scenarios
25 that have already been litigated. Make sure you listen to the

1 question and that question specifically, and don't go beyond
2 that.

3 You may proceed.

4 BY MR. FALK:

5 Q. Did you have a conversation -- what was your prior
6 offenses?

7 A. Prior offenses was criminal sexual conduct in 1978. I
8 got convicted of in '79.

9 And second one was for -- it was in '01. I got
10 convicted for possession of motor vehicle, not carjacking.

11 Q. And did you --

12 A. Because I pleaded guilty to a lesser offense.
13 Carjacking was dropped to motor vehicle. So carjacking should
14 never have been used to enhance this charge.

15 Q. Did you realize that you were eligible -- were you put
16 on notice that -- did anyone tell you if you got convicted, you
17 could get life without parole?

18 A. No, not from the beginning. Later on, I was told.

19 Q. Prior to trial starting, were you?

20 A. I was told approximately a few months by Mr. King that
21 they were seeking life, they were talking about seeking life
22 without parole.

23 Q. Did he explain to you how that was going to come
24 about?

25 A. Yeah, he explained it to me.

1 Q. Is there anything else you want to add?

2 A. Just ask the judge in the court would do what is
3 right. That is all I'm asking; nothing more.

4 MR. FALK: I have no further questions.

5 THE COURT: Cross-examination?

6 MS. JAMESON: No, Your Honor. Thank you.

7 THE COURT: You may step down, Mr. Jenkins. Thank
8 you.

9 Any other witnesses, Mr. Falk?

10 MS. JAMESON: No, Your Honor.

11 THE COURT: Anything from the State?

12 MS. JAMESON: Just argument, Your Honor.

13 MR. FALK: Your Honor, I think this was a case where
14 there was no -- I don't really think this was probably an
15 identity case as much as it was that there was consensual
16 sexual conduct in this case. And it was alleged at some point
17 that the sexual conduct was nonconsensual. So I think that
18 highlights the importance of the testimony of Faye LeBoeuf in
19 this case, because the other forensic evidence would really
20 have been consistent with what his story was from the
21 beginning, that it was consensual conduct.

22 I believe that Mr. King should have made the more
23 vigorous objection to Ms. LeBoeuf's testimony and to her
24 qualifications as an expert. As I said, she's a nurse midwife.
25 And I am not necessarily impressed by the fact that she had

1 done a thousand examinations, unless there's some kind of proof
2 that those examinations have been peer-reviewed or some kind of
3 feedback as to whether -- how accurate those examinations were.
4 You could do a thousand examinations and get 800 of them wrong.

5 Without knowing anything more about her, if they are
6 relying on her practical experience, without any type of
7 knowledge whether or not that practical experience was subject
8 to any kind of peer review, I think that that is an issue that
9 should have been addressed, at least preserved to be brought up
10 on appeal.

11 I think that he could have challenged whether or not
12 her opinions had gone beyond the scope of what a SANE nurse is
13 allowed to testify to, and that it's one thing to acknowledge
14 that -- a nurse could acknowledge that there was sexual
15 conduct. But, you know, as to the causation of it and whether
16 or not it was, you know, nonconsensual, which is, in fact, what
17 she was testifying to -- you know, specifically, I will point
18 to the line 236 of the transcript. The question is asked on
19 lines 23 through 25 and it's answered on 237, line 1, is, were
20 her injuries consistent with a sexual assault, nonsexual
21 conduct -- nonconsensual conduct?

22 And, again, when she made another similar opinion on
23 page 249 of the record whether or not the injuries were
24 consistent -- let me just -- I will stick with my comments on
25 line 236. On page 236, line 23, again, I think her testimony

1 went beyond the scope of what a SANE nurse can testify to. And
2 I'm not sure that she's qualified to be giving those opinions
3 in the first place. And I think those were issues that should
4 have been preserved for appellate review.

5 Again, I'm making my same analogy to the *Kromah* case
6 as to have somebody who, for a long period of time, we all
7 thought was proper procedure, and once it's finally brought
8 before the court, it's realized that that person can maybe play
9 a role in this type of scenario, but the extent of what that
10 person is allowed to testify to possibly goes beyond what
11 should be admissible.

12 THE COURT: Thank you, Mr. Falk.
13 Counsel.

14 MS. JAMESON: Your Honor, this is -- the record will
15 reveal that there's overwhelming evidence that Mr. Jenkins
16 committed this crime and that's why he was convicted. We have
17 his DNA that was found from the rape kit from the victim. His
18 fingerprints were on a candlestick that was used to violently
19 beat the victim in the face and head, so much so that when she
20 was found afterwards, she was bleeding profusely from the mouth
21 and face.

22 He was identified by the victim within 30 minutes of
23 reporting the assault. And she knew him previously, so the ID
24 was almost immediately after.

25 The victim's physical injuries to her genitalia and

1 her face and head corroborated her statement of the sexual
2 assault. Blood was found on her couch where she was sexually
3 assaulted. And her underwear was found nearby.

4 There's overwhelming evidence of his guilt here. And
5 the Supreme Court also relied on finding overwhelming evidence
6 of guilt when they found that any defects in the search warrant
7 were harmless error based on the overwhelming evidence of
8 guilt.

9 So the State submits this application should be denied
10 based on the overwhelming evidence of guilt. However, I would
11 like to go through the four issues that were raised.

12 The first issue regarding whether Mr. King should have
13 moved for a mistrial when the solicitor asked for the victim to
14 make an in-court identification, Mr. King timely objected. It
15 was sustained. And, ultimately, the identification was allowed
16 to come in after a *Neil v. Biggers* hearing.

17 Additionally, Mr. King said that there was no reason
18 to keep the -- he had no valid basis to keep the identification
19 out. Although it was a show-up lineup, the victim knew
20 Mr. Jenkins from around the neighborhood. And the
21 identification was made shortly after. And she was certain in
22 her identification. So there's no valid basis to challenge or
23 keep the identification out.

24 Also, as Mr. King testified the record reveals
25 identity was not at issue here. DNA and fingerprints were

1 found in the victim's home shortly after the crime. And the
2 defense was that this was a consensual encounter. So, again,
3 identification is not really an issue here.

4 To the second ground that was raised, that Mr. King
5 should have moved for a mistrial following the comment from law
6 enforcement that they knew Mr. Jenkins, Mr. King timely
7 objected. His objection was sustained. And then on
8 cross-examination, he had that same witness -- he elicited
9 testimony from that witness that he knew Mr. Jenkins from the
10 neighborhood and not from prior arrests or negative encounters
11 with law enforcement.

12 As to the third allegation that Mr. King should have
13 sought a curative instruction after the solicitor sought to
14 bolster witnesses testimony on page 211, again, Mr. King timely
15 objected. The objection was sustained. And then the
16 questioning ceases. The redirect examination by the solicitor
17 ends. So there's no deficiency there. He timely addressed the
18 issue and then the testimony stops. So there's certainly not
19 going to be prejudice from that, the State would submit.

20 Turning to the final allegation about Faye LeBoeuf's
21 credentials to testify as an expert, she was properly
22 qualified. She has an associate's degree in nursing, a degree
23 in nurse midwifery. And she also has a master's in nursing.
24 So although applicant wants to classify her as a nursing
25 midwife who shouldn't be performing or testifying regarding

1 sexual assault, she has a master's degree in nursing. She took
2 the SANE course work. She passed the exam. And she's
3 performed over a thousand sexual assault examinations and has
4 testified many times in court.

5 To the comments of counsel that we don't know if these
6 thousand sexual assaults were peer-reviewed, we know in this
7 case, her work was peer-reviewed, because Mr. King sought his
8 own expert from Columbia who reviewed her report and testified
9 she didn't find any problems with her report. So here alone,
10 it was peer-reviewed, and there weren't any problems.

11 Additionally, Mr. King did get his own expert who
12 agreed with her report. And Mr. King elicited testimony from
13 Ms. LeBoeuf on cross-examination that her findings were
14 consistent with consensual sex as well, which was the entire
15 defense here. So there can be no prejudice.

16 So the State would ask the Court to deny this
17 application in whole.

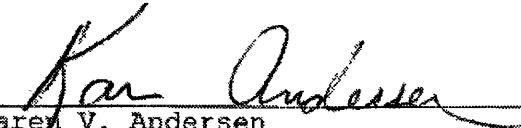
18 THE COURT: Thank you, Counsel. I will take the time
19 to review all the documentation submitted and consider the
20 evidence, and advise of my decision.

21 (Whereupon, proceedings are adjourned.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Daniel J. Jenkins, #274033,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-1700

ORDER OF DISMISSAL

FILED
2018 MAY 15 PM 2:28
JULIE J. JAMESON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on April 4, 2016, by Daniel J. Jenkins (Applicant). The State (Respondent) filed a return on June 24, 2016, and an amended return on November 8, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened February 1, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. In April of 2006, Applicant was arrested following an investigation into a sexual assault. In September of 2006, the Charleston County Grand Jury indicted Applicant for one count of first-degree criminal sexual conduct. Assistant Public Defender Jason T. King

represented Applicant. The case was prosecuted by Assistant Solicitor Chad Simpson. On December 8, 2009, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Applicant as indicted. Following the verdict, the trial judge sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on Applicant's two prior convictions for "most serious" offenses.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. The State was represented by Assistant Attorney General Mark R. Farthing. Subsequently, following briefing and oral argument, the South Carolina Court of Appeals reversed the trial judge's ruling on the validity of a search warrant issued in Jenkins' case and remanded the matter to the trial court for an evidentiary hearing on the applicability of the inevitable discovery doctrine. State v. Jenkins, Op. No. 4958 (S.C. Ct. App. filed Mar. 28, 2012) (Shearouse Adv. Sh. No. 11 at 48). Thereafter, the State petitioned the Court of Appeals for rehearing, and the Court of Appeals granted the State's petition, withdrew its previous opinion, filed a substituted opinion that contained an additional footnote but was otherwise consistent with its previous opinion, and dispensed with further argument and briefing. State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012).

In reaching that decision, the Court of Appeals determined the search warrant affidavit was deficient because it did not demonstrate the police had probable cause to believe Applicant raped Victim or Applicant's DNA was relevant to the investigation. (App'x pp. 264-268).

Furthermore, the Court of Appeals determined any error in the admission of the DNA evidence was not harmless, stating:

Without the DNA in this case, . . . the State would have been forced to rely heavily on the credibility of the victim. Applicant' fingerprint in the victim's home proved he was there, the presence of fluids in her body proved someone had sex with her, and the facial injuries proved someone violently assaulted her. However, removing the DNA leaves only the victim's credibility to prove two key facts necessary for a conviction: that Applicant was the person who had sex with her, and that the sex was not consensual. We cannot find beyond a reasonable doubt that the DNA comparison results in this case, which the DNA analyst testified had a one-in-8.6 quintillion likelihood of error, did not contribute to or affect the verdict.

(App'x pp. 269-270) (citations and footnotes omitted). Finally, the Court of Appeals concluded there was insufficient evidence in the "blank" appellate record to establish Applicant' DNA would inevitably have been discovered and remanded the matter for an evidentiary hearing on that issue, (App'x pp. 270-274).

The State then filed a petition for a writ of certiorari in the South Carolina Supreme Court, and the petition was granted on September 24, 2014. Following briefing and oral argument, the Supreme Court reversed the Court of Appeals and reinstated Applicant's conviction, finding the trial judge's error in admitting DNA evidence that was collected pursuant to an invalid warrant was harmless. State v. Jenkins, 412 S.C. 643, 773 S.E.2d 906 (2015). The Remittitur was returned to the circuit court on July 17, 2015.

SUMMARY OF FACTS ADDUCED AT TRIAL

In April of 2006, thirty-one-year-old [REDACTED] H.M. ("Victim") lived alone in downtown Charleston, South Carolina, and worked at a local bakery five days a week. (App'x pp. 3-5). Frequently, when Victim headed to work or went to a grocery store near her home, she would

encounter Applicant, who regularly hung around outside of the entrance to the grocery store. (App'x pp. 5-6). When she did so, Victim would greet Applicant, who she knew as "Black," and sometimes exchange pleasantries with him. (App'x pp. 5-7; pp. 27-28). However, other than briefly addressing Applicant when she passed him, Victim did not have a relationship with Applicant, did not know Applicant well, did not consider Applicant to be a friend, and was not even aware of Applicant's real name. (App'x pp. 6-7; pp. 27-28).

On the morning of April 5, 2006, Victim reported to her job at the bakery at approximately 8:00 a.m. and worked throughout the day. (App'x pp. 3-4; p. 7). At around 3:00 p.m. to 4:00 p.m., Victim finished working for the day and returned to her home. (App'x p. 7). After she did so, one of her friends came over to visit, and the two drank several beers together while they socialized. (App'x pp. 7-8). Then, Victim's friend left for the evening, Victim ordered a pizza for dinner, and Victim fell asleep on her couch around 8:00 p.m. while she waited for her pizza to arrive. (App'x pp. 7-8).

Subsequently, at around 10:00 p.m., Victim was awakened by the sound of someone knocking on her door and went to open the door in response. (App'x p. 8). When she opened her door, Victim found Applicant standing on her doorstep, and he asked her if she wanted to go get a beer with him. (App'x p. 9). However, Victim declined Applicant's invitation. (App'x p. 9). Applicant then asked Victim for money so he could go get a beer for himself, and Victim again declined. (App'x p. 9). After that, Applicant abruptly entered Victim's home "somewhat aggressively," and Victim responded by backing away into her living room and sitting down on her couch. (App'x pp. 10-11).

Thereafter, Applicant followed Victim to her couch, immediately began making lewd

sexual demands, and threatened to kill her if she did not comply with his demands. (App'x p. 11; p. 35). In response, Victim pleaded with Applicant not to do anything, warned him of the potential consequences of his actions, and did everything she could to dissuade him from doing anything further. (App'x p. 11). However, Applicant was undeterred by Victim's pleas and started touching her. (App'x p. 12). Then, Applicant grabbed a glass candle holder from Victim's coffee table and began repeatedly striking Victim in her head, face, nose, forehead, ears, and mouth. (App'x pp. 11-13). Stunned, Victim tried to physically resist Applicant while also trying to hold onto her pants and reach her portable house phone to call for help. (App'x pp. 12-13). However, Applicant grabbed the phone away from Victim and forcibly ripped off her pants and underwear. (App'x p. 14). After that, Victim repeatedly begged Applicant to stop, warned Applicant her boyfriend was on the way in an effort to frighten him into stopping, and attempted to scream. (App'x p. 14; p. 38). However, Applicant was not dissuaded, and he told Victim she was going to die, covered her mouth with his hand, and forced himself inside of her while continuing to make sexual remarks. (App'x p. 15; p. 38). Applicant then continued to sexually assault Victim until he ejaculated. (App'x p. 15; p. 132).

Once Applicant was finished, he climbed off of Victim, threatened to kill her if she told anyone about the assault, and quickly fled from her home. (App'x p. 15). Injured, frightened, and in disbelief of what had occurred, Victim put on a sweatshirt to cover her blood-soaked clothes and began looking for her phone inside of her house. (App'x p. 16). When she could not find it, Victim ran into the street looking for help, but several passing cars would not stop for her. (App'x p. 16). Victim then ran towards the grocery store near her home, and a woman approached her to find out what had happened. (App'x pp. 16-18). However, before Victim

could tell the woman, Applicant approached them and inquired about what had occurred. (App'x p. 18). Terrified, Victim began to cry and asked to use a phone, and Applicant responded by grabbing her by the arm, leading her across the street, and offering to let her use her phone if she would wash the blood off of her face. (App'x pp. 18-19). Applicant then helped Victim wash her face with water from a nearby spigot before returning Victim's own phone to her. (App'x pp. 19-20). After that, Victim took the phone and immediately ran to her house. (App'x p. 20). However, fearing Applicant would return, she ran back outside and hid under a tarp on the side of her home before calling 911 to report the sexual assault. (App'x p. 20).

Shortly thereafter, law enforcement officers from the Charleston Police Department arrived at Victim's house and spoke with Victim, who was shaking, crying, bleeding, and appeared to have been "roughed up pretty good." (App'x p. 21; pp. 23-24; pp. 49-51; p. 100). At that time, Victim advised the officers she had been sexually assaulted by a man she knew as "Black," and, based on his familiarity with "Black," Officer Jake Grill immediately headed to an abandoned building across from the grocery store located near Victim's house. (App'x p. 24; p. 51; pp. 53-54). Inside, he found Applicant, who was completely naked and appeared to be sleeping. (App'x p. 24; pp. 53-54). Officer Grill then woke Applicant up, allowed him to get dressed, and escorted him to the parking lot of the grocery store while Detective Jennie Antonio quickly brought Victim to that location to see if Applicant was the person who had sexually assaulted her. (App'x pp. 24-25; p. 52; p. 54; pp. 99-101). Upon seeing Applicant, Victim quickly identified him as her assailant. (App'x p. 25; p. 54). Applicant was then arrested, and Victim was transported to a clinic for a sexual assault examination. (App'x p. 26; p. 79; p. 111).

At the clinic, Faye Lebeof, a certified nurse midwife and an expert in sexual assaults,

interviewed Victim and performed a sexual assault examination on her. (App'x pp. 108-111). During the examination, Lebeof discovered Victim's face, eyes, and mouth were bruised and injured, Victim had abrasions and lacerations in her vagina, and Victim's hymen had signs of redness, and Lebeof located fluids inside of Victim's vagina, which were collected as evidence. (App'x pp. 112-114). Based on her examination, Lebeof concluded Victim's injuries were consistent with Victim's report of a sexual assault. (App'x pp. 113-114).

Meanwhile, officers processed the crime scene, located blood stains on Victim's sofa, collected Victim's ripped underwear and a glass candle holder from the floor, and recovered several fingerprints from the candle holder, which were subsequently determined to belong to Applicant. (App'x p. 55; pp. 59-61; p. 63; pp. 72-73). Additionally, as part of the investigation, Detective Antonio prepared a search warrant affidavit for the recovery of Applicant's D.N.A. based on the information Victim reported to her about the assault. (App'x pp. 78-79; p. 83; p. 86; p. 148). The probable cause section of the warrant affidavit stated:

On 4-5-06 at approximately 2230 hrs while at [Victim's address], the subject, Daniel Jerome Jenkins . . . did enter the victim's residence and threatened to kill her if she did not comply with his demand to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about her face using a glass candle holder. The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair and pubic hair will be retrieved from the suspect by a trained medical personnel in a medical facility. The collection of these sample will be conducted in a noninvasive manner.

(App'x pp. 80-81; p. 147). After preparing the warrant affidavit, Detective Antonio presented the affidavit to a magistrate judge, and the magistrate judge issued a search warrant without taking any supporting oral testimony. (App'x pp. 81-82; p. 102). Subsequently, pursuant to the search warrant, Lebeof collected a DNA sample from Applicant. (App'x p. 116). Thereafter,

Applicant's DNA sample was compared to the semen located in the rectal and vaginal swabs collected from Victim after the sexual assault, and an expert in forensic DNA analysis determined Applicant's DNA profile conclusively matched the DNA profile developed from the evidence collected during Victim's sexual assault examination. (App'x p. 129; pp. 131-132).

Subsequently, Applicant was indicted for first-degree criminal sexual conduct, and he proceeded to trial. (App'x pp. 143-144). During trial, Victim recounted the details of the sexual assault and identified Applicant in the courtroom as her attacker. (App'x pp. 11-21; p. 25). Additionally, the officers and other personnel who were involved in investigating the sexual assault testified about the results of their investigation. (App'x pp. 50-51; p. 57; pp. 72-73; pp. 78-79; p. 100; pp. 111-112; p. 131). Then, prior to the introduction of the evidence establishing Applicant's DNA profile matched the DNA profile of Victim's assailant, defense counsel moved to suppress the DNA evidence, arguing the search warrant used to gather the evidence was insufficient because the accompanying affidavit did not establish probable cause and contained no indication relevant information would have been found through the search. (App'x p. 87; pp. 90-91; p. 93). However, the trial judge denied the suppression motion. (App'x p. 94-97).

Thereafter, as the trial continued, Adrienne Riley, a forensic DNA analyst and expert in forensic DNA analysis, testified Applicant's DNA profile matched the DNA profile developed from the semen collected from Victim's body. (App'x p. 127; p. 129; pp. 131-132). Riley further explained the odds of randomly finding an individual with a matching DNA profile were one in 8,600,000,000,000,000,000. (App'x p. 132). Defense counsel then renewed his objection to the admission of the DNA evidence, and the trial judge again overruled the objection. (App'x pp. 132-133).

Subsequently, at the conclusion of trial, Applicant was convicted as indicted. (App'x p. 137). During the ensuing sentencing proceedings, the solicitor informed the trial judge of Applicant's prior criminal record, which consisted of convictions for first-degree criminal sexual conduct in 1978, carjacking in 1993, failure to register as a sex offender in 1998, strong-arm robbery and assault and battery of a high and aggravated nature in 2001, and failure to register as a sex offender in 2005. (App'x pp. 140-141). Based on Applicant's prior "most serious" convictions for first-degree criminal sexual conduct and carjacking, the trial judge sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. (App'x pp. 140-142).

ALLEGATIONS RAISED

In his application and amended application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Notice of life without parole, was and still today, invalid and void (sic)."
 - a. "Illegal sentence and conviction."
2. "Prior Conviction- Not Most Serious Offense. 93-GS-10-6617. (sic)"
 - a. "Illegal use of prior conviction of 7-06-1978- was not most serious offense in 1978 (sic)."
3. "Prior Conviction- Not Most Serious Offense. 7-06-1978. (sic)."
 - a. "Carjacking- no notice of life without parole- left court without jurisdiction to proceed to trial."
4. "There is not a carjacking conviction"
 - a. "There's no carjacking indictment, sentence, or conviction."
5. "17-25-45 of January 1, 1996 is "prospective" (sic)"
 - a. "Offense before June 1986 was not classified as violent."

While he did not formally amend his application, Applicant proceeded forward on the following grounds at the evidentiary hearing without objection from the State:

1. Counsel should have moved for a mistrial when the State asked the victim to make an in-court identification of Applicant prior to a ruling on the admissibility of the identification
2. Counsel should have moved for a mistrial following his objection to the officer's testimony that he was familiar with Applicant
3. Counsel should have sought a curative instruction after State sought to bolster the victim's prior testimony
4. Counsel should have challenged Faye Leboef's credentials to testify as an expert in sexual assault examination

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441,

334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and had not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

Allegation: Ineffective assistance of counsel for failing move for a mistrial when the State asked the victim to make in court identification of Applicant prior to a ruling on the admissibility of the victim's identification

Applicant asserts counsel was ineffective for failing to move for a mistrial when the victim made an in-court identification of Applicant prior to a ruling on the admissibility of the victim's identification. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

The record reflects the trial court decided to conduct a Neil v. Biggers hearing on the admissibility of the victim's identification of Applicant prior to the introduction of the

identification during the victim's testimony rather than before trial. See Tr. 1-3. The court instructed counsel not mention the identification in opening statements. See Tr. 3. However, during the State's examination of the victim, the prosecutor asked the victim if the person she knew was Black was present in the courtroom today, to which the victim answered affirmatively. See Tr. 60. Counsel immediately objected, and following a bench conference, the trial court instructed the jury to disregard this testimony and "to give it absolutely no consideration in [their] deliberations." See Tr. 60-62.

Regarding this allegation, counsel testified the victim had identified Applicant by his street name, "Black" and had also identified him to law enforcement shortly after reporting her assault to law enforcement. He testified Applicant was found in an abandoned house nearby the victim's home and victim was brought to identify him in person. He testified law enforcement did not present a photographic lineup to the victim, but instead, brought the victim to view Applicant for a show-up lineup. He testified he moved to suppress the victim's lineup prior to trial. Counsel testified he moved to suppress the identification because of the show-up procedure, but conceded he did not have any valid ground on which to argue the identification should be suppressed. Moreover, counsel testified Applicant's identify was not at issue because Applicant's DNA and fingerprints already conclusively linked him the victim and her apartment. Moreover, he testified his defense was that the victim and Applicant had consensual sex, and therefore, the victim's identification was not prejudicial to his defense theory. He testified that rather than holding a suppression hearing before the trial began, the trial court decided to start the trial and break for a motions hearing on the identification's admissibility immediately before the intended introduction of the identification. He testified the trial court advised the State not to

mention the identification during its opening statement or otherwise mention the identification until a ruling on the admissibility. He testified that despite this warning from the court, the State elicited an identification from the victim prior to the motions hearing or ruling from the court. Counsel testified he immediately objected, and after a brief discussion at the bench, the trial court instructed the jury to disregard the last question and response. He testified the trial court later ruled the identification was admissible following an in-camera hearing on his motion to suppress.

This Court finds trial counsel was not defective in regards to this allegation, as he timely objected to the premature identification from the victim and he did not think a mistrial was necessary following the trial court's curative instruction to the jury based on the likelihood the identification would ultimately be admissible. This Court finds counsel performed reasonably and his decision not to move for a mistrial was reasonable based on the circumstances presented in this case.

Moreover, this Court finds Applicant cannot show any requisite prejudice as to this allegation, as the trial court sustained this objection, instructed the jury to not consider this testimony at all during its deliberations, and later ruled the identification was admissible. Additionally, Applicant's identification was not at issue, as his DNA and fingerprints linked him to the victim and her apartment. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to move for a mistrial following his objection to the officer's testimony that he was familiar with Applicant

Applicant asserts counsel was ineffective for failing to move for a mistrial following counsel's objection to Officer Cone's testimony that he was familiar with Applicant. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

The record reflects that during the State's examination, Officer Cone testified that he and a fellow officer were familiar with Applicant. See Tr. 155. While Officer Cone was still answering a question, counsel objected and asked to approach for a bench conference. See Tr. 155-156. Thereafter, this trial court instructed the jury to disregard the last question and last answer and "to give it absolutely no consideration in [their] deliberations." See Tr. 156.

Regarding this allegation, counsel testified one of the law enforcement officers testified he was familiar with Applicant based on his prior experience with Applicant. He testified he immediately objected, and following a bench conference, the court instructed the jury to disregard the officer's statement. Counsel testified he clarified this cross-examination by eliciting testimony that this officer knew Applicant because he was a fixture in this community, not based on any prior criminal acts or encounters. Counsel testified he did not consider asking the trial court for a mistrial because Applicant's identification was not at issue, this testimony was not prejudicial to Applicant, and he was able to clarify this comment on cross-examination.

This Court finds trial counsel was not defective in regards to this allegation, as he timely objected to Officer Cone's testimony that he knew the Applicant and thereafter, the trial court sustained the objection and gave a curative instruction.

“Generally, a curative instruction is deemed to have cured any alleged error.” State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) (quoting State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct.App.2005)); see also 75B Am.Jur.2d Trial § 1284 (1992) (“By striking the evidence and instructing the jury to ignore it, the court may often cure its error in admitting the evidence, or render such error harmless, even in criminal cases.”). “A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.” State v. Walker, 366 S.C. at 658, 623 S.E.2d at 130; see also Kelsey, 331 S.C. at 70, 502 S.E.2d at 73 (instruction to disregard inadmissible evidence is usually viewed as having corrected the error in its admission). If the trial judge sustains a timely objection to evidence and gives the jury a curative instruction that it be disregarded, the error is deemed to have been cured by the instruction. State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996).

This Court finds counsel’s his decision not to move for a mistrial was reasonable based on the proper curative instruction given by the trial court that cured any possible error. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to request a curative instruction following bolstering testimony

Applicant asserts counsel was ineffective for failing to request a curative instruction following the re-direct examination of State’s witness Detective Antonio based on bolstering. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

The record reflects that during the State's re-direct examination of Detective Antonio, the State asked, "Fair to say that what [the victim] told you about the crime is what would --." See Tr. 211. Before the State could finish asking its question, counsel objected on the basis of bolstering. See Tr. 211. The court asked counsel to approach, and thereafter, the State ended its examination without asking any additional questions. See Tr. 211.

Counsel testified he objected during the State's re-direct examination of its witness Detective Antonio based on bolstering. He testified the State was still in the middle of asking its question when he objected, and the trial court immediately asked counsel to approach for a bench conference. Thereafter, the State abruptly ended its questioning of this witness. He testified that he objected out of an abundance of caution, but is not sure if the State was attempting to elicit testimony to bolster the victim's account of events.

This Court finds counsel properly and timely objected before any testimony that could have potentially bolstered the victim's testimony could be elicited. Therefore, as counsel timely objected and no testimony was given, Applicant can establish neither deficiency of counsel nor prejudice. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to object to the expert qualifications of the SANE nurse who examined the victim

Applicant asserts counsel was ineffective for failing to object to the qualifications of admission of Faye Lebeof, the SANE nurse who examined the victim, as an expert in sexual assault examinations. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

The record reflects the State moved for the admission of Lebeof as an expert in female health with a specialty in sexual assault examination. See Tr. 233. Lebeof was a certified nurse midwife, had completed a course and passed an examination to become as a Sexual Assault Nurse Examiner (SANE), had done a thousand sexual assault examinations, and had been qualified as an expert 10 times. See Tr. 231-33. Counsel did not voir dire Lebeof or object to her qualifications as an expert witness and Lebeof was admitted as an expert. See Tr. 233. Lebeof testified the vaginal injuries were consistent with a sexual assault, but also testified during cross that the injuries were consistent with consensual sex. See Tr. 248-49.

Counsel testified he did not object to the admission of Faye Lebeof, the SANE nurse who evaluated the victim, as an expert in female health with a specialty in sexual assault. He testified he had experience with Lebeof in a prior case and noted she had performed over a thousand sexual assault examinations and had testified as an expert ten times prior. He testified he thought she was qualified in the area of expertise in which the State sought to introduce her, and therefore, did not question her about her qualifications or object to her admission as an expert. He testified he had received a copy of Lebeof's report prior to trial and had retained his own expert, Dr. Betsy Gibbs, to review Lebeof's report. He testified Dr. Gibbs reviewed Lebeof's report and thought it was fair and supported her conclusions. Counsel testified he also did not object to Lebeof's testimony because she was unable to conclusively state that a sexual assault had occurred and admitted the victim's examination was also consistent with consensual sex.

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co.,

389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). “Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.” *Id.* at 445-46, 699 S.E.2d at 175. “The qualification of a witness as an expert falls largely within the discretion of the trial judge.” State v. Myers, 301 S.C. 251, 255, 391 S.E.2d 551, 554 (1990).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE; see also State v. Irick, 344 S.C. 460, 465, 545 S.E.2d 282, 285 (2001) (explaining an expert’s testimony is admissible where “it is relevant and based on some factual predicate in the record”). Before admitting expert testimony, the trial court must find (1) the expert’s testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) (“Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.”).

A witness can properly be qualified as an expert where “the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury’s good judgment and common knowledge.” State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 467 (Ct. App. 1998). In determining whether a witness’s knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. Henry, 329 S.C. at 274, 495 S.E.2d at 467; see State v. Peer, 320 S.C. 546, 554-555, 466 S.E.2d 375, 380 (Ct. App. 1996) (“The criteria for admitting the testimony of an expert is not whether the expert holds a degree in the specialty field he seeks to testify about, but whether he has such expertise in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.”). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the jury in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). Significantly, “[t]he test for qualification [as an expert] is a relative one that is dependent on the particular witness’s reference to the subject[.]” and “defects in the amount and quality of education and experience go to the weight of the expert’s testimony and not its admissibility.” Lee v. Suess, 318 S.C. 283, 285-86, 457 S.E.2d 344, 346 (1995).

This Court finds Lebeof was properly admitted as an expert and therefore, counsel was not ineffective for failing to object to her qualifications. Moreover, this Court finds Applicant cannot establish any requisite prejudice from the admission of Lebeof as an expert witness, as her testimony was ultimately neutral and never went beyond the scope of her expertise. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing challenge the State's notice of intent to seek life without parole

Applicant asserts counsel was ineffective for failing to challenge the State's notice of intent to seek life without parole based on his prior convictions. Applicant argued there is no evidence that he was convicted of carjacking in 1993, and therefore, the State's notice was improper. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

Counsel testified and the record reveals that Applicant was convicted of first-degree criminal sexual conduct in 1979 and carjacking in 1993. Counsel testified he believes the State's notice of its intent to seek life without parole based on those convictions and his investigation into those convictions was proper. Therefore, this Court finds Applicant has failed to establish any ineffectiveness of counsel. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this allegation is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 7 day of May, 2018.

Maite Murphy
MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

J. Gray, South Carolina

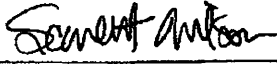
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

At a Court of General Sessions, convened on September 11, 2006, the Grand Jurors of Charleston County present upon their oath:

That in Charleston County on or about April 5, 2006, with the use of aggravated force, Daniel Jerome Jenkins did commit a sexual battery upon [REDACTED] against her will and without her consent. This being in violation of Section 16-3-652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

SAW 2006-04-01958

WITNESSES

JEFF OSBURN AND/OR
MATT CASEY

CPD, GRILL

OCA#: 0606855

ARREST WARRANT NUMBER
K121479
April 5, 2006

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-10-

9254

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE

v.

DANIEL JEROME JENKINS

06-1998(1)

FILED
2006 SEP 26 PM 3:50
JULIE A. STRONG
CLERK OF COURT
BY SAC

Indictment for

**CRIMINAL SEXUAL CONDUCT
FIRST DEGREE**

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.DANIEL JEROME JENKINS

AKA: _____

Race: B Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
CHARLESTON, SC 29403

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS109254A/W#: K121479Date of Offense: 4/5/2006S.C. Code § : 16-03-0652CDR Code #: 0160

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct - 1st Degreein violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Simpson, Benjamin Chad[Signature]
Defendant[Signature]
Attorney for Defendant68630
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCA Surcharge) \$5 \$ 5.00TOTAL \$ 133.75[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: Ann Meyer

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2 / 1 / 02 / 8Sentence Date: 12-10-2008

SCCA/217 (07/2008)