

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Roger E. Henderson, Circuit Court Judge

RECEIVED

Dec 14 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYREEK DASHAWN HAYES,

APPELLANT

APPELLATE CASE NO. 2019-001303

RECORD ON APPEAL

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1 always sit in the two seats where you're already sitting, I
2 believe, now. And those are the only assigned seats. The
3 rest of you can seat anywhere you want to throughout the
4 course of the trial. I always want the foreperson here and
5 the two alternates on the back row on the two seats.

6 Now, in order for me to preserve everyone's rights, I
7 will give the parties an opportunity to object to anything
8 that I have said and then at that point in time we will
9 begin the opening statements.

10 Any objections or any cause from the State?

11 MS. BURCHSTEAD: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: All right. Attorney General, you made
15 make your opening statement. Before I do - let me do one
16 thing and I always forget to do that, if you wonder who
17 this person is sitting beside this is my law clerk. People
18 sometimes wonder who this guy is, he does legal research
19 for me and helps me do things to keep things in order
20 during the course of the trials and, of course, works at my
21 office. So just so you know who he is and you won't have
22 to think about that anymore.

23 Thank you. Mr. Kozak?

24 **Opening Statement by Mr. Kozak:**

25 MR. KOZAK: May it please, the Court, Your Honor?

1 Over three hours, you'll hear that is how long the
2 defendant held Candace Simpson against her will in her own
3 apartment as he strangled and raped her.

4 Good afternoon. As you heard earlier, my name is Joel
5 Kozak and I along with Megan Burchstead represent the State
6 of South Carolina and its case against the defendant,
7 Tyreek Hayes.

8 Mr. Hayes stands before you today charged with crimes.
9 And it's our job to prove to you beyond a reasonable doubt
10 that he's, in fact, guilty of those crimes. And those
11 crimes are the charge of two counts of attempted murder,
12 criminal sexual conduct in the first degree also called CSC
13 first, for short, possession of a weapon during a violent
14 crime and kidnapping.

15 Now, at the conclusion of this trial Judge Henderson
16 is going to instruct you on the law, but I'd like to take a
17 moment just to introduce it to you right now. To prove our
18 case beyond a readable doubt for criminal sexual conduct
19 first degree, we have to prove to you two main things.
20 That a sexual battery occurred and a sexual battery is
21 defined as any sort of penetration no matter how slight.
22 And we have to show you that the sexual battery occurred
23 was accomplished using aggravated force.

24 Now, everyone has an idea of what kidnapping is from
25 movies and television. But it doesn't necessarily require

1 someone to be tied up and thrown in the back of the van.
2 The act of unlawfully confining someone also would be
3 considered kidnapping. Possession of a weapon during a
4 violent crime and attempted murder are fairly, fairly well
5 defined themselves. And at the end of this trial, the
6 judge will tell you the actual definition of all of these
7 crimes. But I just wanted to touch on it so you would know
8 what to look for through out the testimony of the trial.

9 Now, in order to meet our burden throughout this case,
10 we're going to call several witnesses to that stand right
11 there. But most importantly you're going to hear from
12 Candace Simpson and Ann Covington. They are sisters and
13 they are the two victims in this case. They're both going
14 to get on the stand and tell you what happened on the
15 morning of October 1, 2016. Candace is going to tell you
16 that she had been communicating with the defendant online
17 prior to the morning of October 1st and they were at the
18 same party the night before. She's going to tell you that
19 her and her cousin gave him a ride home and he asked to
20 come inside. She's going to tell you that she let him in
21 but when she turned down his advances he began to get
22 violent. She's going to tell you what happened and what
23 the defendant did to her over the next three to four hours.
24 Ann will then take the stand and tell you what she had
25 volunteered - and tell you that she had volunteered to

1 watch Candace's his kids that night. And when she came to
2 bring one of the children back the next morning, she'll
3 describe what she saw. What she saw when she walked into
4 Candace's apartment and how the defendant attacked both her
5 and her sister with a knife.

6 I know parts of this trial are not going to be easy to
7 hear but you'll hear a lot of it throughout the course of
8 this trial. You'll hear about it when Candace describes
9 what happened to her and you'll hear about it in clinical
10 terms. But the bottom line is that the evidence will show
11 that the defendant committed these crimes.

12 Now, during this trial you're going to hear about
13 forensic evidence such as DNA, serology, fingerprints. But
14 this is real life, this is not CSI or Law in Order as the
15 judge said earlier. I don't have a clear screen that's
16 gonna drop down from the roof and show holographic images
17 of fingerprints and DNA strands. There are limitations to
18 what forensic can be extracted from a scene and there are
19 limitations to what these forensics can show you. And
20 you're going to hear from the forensic technicians who
21 performed these test and did the research on these, on the
22 evidence that was submitted. And they're going to explain
23 the science and the realistic application of forensic
24 evidence found at the scene in this case. A reasonable
25 doubt is the highest burden in our judicial system, but it

1 doesn't mean it has to be a perfect case. It means that
2 the case has to be proven beyond any sort of reasonable
3 doubt and that's a burden we gladly accept in this case
4 because the evidence is clear. That's why at the end of
5 this trial we'll ask you to find the defendant guilty.

6 Thank you.

7 THE COURT: Mr. Swilley?

8 **Opening Statement by Mr. Swilley:**

9 MR. SWILLEY: Because I said so. Y'all probably
10 heard that growing up a good bit from your parents. You
11 know, when they told you to do something and you gave them
12 any kind of talk back, because I said so. You're going to
13 do this because I said so. Well, you all are adults here
14 and you've got to be over 18 to serve on a jury so those
15 days are over. The government is not your parents.

16 Because what happened in this case is someone made
17 some allegations, Candace Simpson and Ann Covington, about
18 some things that they accused Tyreek Hayes of doing and the
19 government adopted those accusations. So because I said so
20 became because we said so and that's that.

21 You see what happened in this case, it goes way -
22 you've got to look at what happened well before and after
23 what happened on the night of September 30th, early morning
24 of October 1, 2016. That's right 2016. This case or
25 these accusations are almost three years old. And what had

1 happened - and the Attorney General touched on it some -
2 Tyreek Hayes is a young man. He is from Dillon South
3 Carolina. He 25 years old. He's about ten years younger
4 than the lady, Ms. Simpson, who's accusing him of doing
5 these things. I'm not going to go into graphic details
6 about what the accusations are because you're going to hear
7 those accusations. But what happened was Tyreek grew up in
8 Dillon, he grew up around the City of Dillon in this area
9 and what happened was when he got to be oh, about twenty --
10 -

11 MS. BURCHSTEAD: Objection. Testimonial facts not
12 in evidence.

13 MR. SWILLEY: Judge, I think I can outline what I
14 believe the evidence is going to show.

15 THE COURT: I'll let you -- I'll let you continue.
16 Be careful.

17 MR. SWILLEY: Based on what I've I believe the
18 evidence is going to show you, Tyreek Hayes had known
19 Candace Simpson for a long time. I think somebody
20 commented about Dillon earlier is everybody knows
21 everybody. Well, that might not be exactly true. What
22 happened is Tyreek had grown up and the evidence is going
23 you that he had to grown up with her nephew, her brother,
24 they knew him. And they started having conversations weeks
25 before via Facebook. And it became very clear that Tyreek,

1 he liked Candace and it would appear that Candace liked
2 Tyreek. And what happened is on the night of September
3 30th they went out to a club called Strikers here in Dillon
4 and later on to a place called T. Lee's. What happened
5 then, is about 5 o'clock in the morning the evidence is
6 going to show that they all got a ride home, I think, it
7 was Tyreek that got a ride home from some of Candace's
8 friends back to the Maplewood Apartment Complex in Dillon
9 and he went home with her. And when he went home with her
10 he had consensual sex with her. What the evidence should
11 show you after that is that at some point - and let me back
12 up for a second - the evidence will show you the
13 conversations that were had between them were indicative of
14 them being singled and that's not true, neither one of
15 them. And at some point, someone walked in on this
16 encounter and it wasn't Ms. Covington. It was her
17 boyfriend. And that's where things got violent. And
18 that's when Ms. Covington, or excuse me, and that's when
19 Ms. Simpson and Ms. Covington were assaulted. There was no
20 rape. There was no criminal sexual conduct. The evidence
21 that Mr. Kozak mentioned is going to show you that there
22 was sex and nothing more. It's going to show you that
23 there was sexual intercourse between Tyreek Hayes and
24 Candace Simpson. He's accused of rape because she said so.
25 He's accused of attempted murder because they said so.

1 He's accused of kidnapping and possession of a weapon
2 during the commission of a violent crime because they said
3 so. The government is trying to take his freedom because
4 they said so and it's not true.

5 You see, like I said, this case has been going on for
6 three years but today, today is the first time this young
7 man has gotten to have any participation in the proceedings
8 against him. These allegations were made law enforcement
9 was called. Law enforcement did an investigation. Law
10 enforcement adopted the allegations of Ms. Simpson and Ms.
11 Covington and they went and they got a warrant on Tyreek
12 and he was charged and he was arrested and he was formally
13 accused. Today marks the first time he's gotten to have
14 any participation in these proceedings. This is the first
15 time he could have participation in these proceedings.

16 Ladies and gentlemen, this is the most - this is the
17 most important part of these proceedings because now it's
18 out of the government's hands, it's in your hands. What a
19 trial is, is a safety net for citizens like Tyreek that
20 don't have any power that stand accused. What I want
21 y'all to understand is this is the most, unless you get
22 elected some government office, a very powerful government
23 office, this is the most power you're ever going to have,
24 probably in your life. You have the power to say no to the
25 government. You have the power to say no that's not true.

1 You haven't proved your case beyond a reasonable doubt
2 because that young man is not guilty. And you should come
3 to that conclusion at the end of this case because that
4 young man is not guilty. He's not guilty of criminal
5 sexual conduct. He's not guilty of attempted murder on
6 Candace Simpson. He's not guilty of attempted murder on
7 Ann Covington. He's not guilty of kidnapping Candace in
8 any way. He's not guilty of possession of a weapon in
9 commission of a violent crime. Because what you'll see
10 after all of these things were taken into evidence and they
11 were processed by sled, based on that evidence you'll come
12 to the conclusion that there was a sexual encounter between
13 Tyreek and Candace after Tyreek was invited into the home
14 of Candace Simpson around 5 o'clock in the morning on
15 October 1st. At some point that morning that's when these
16 allegations happened. Find that young man not guilty
17 because he's not guilty.

18 THE COURT: All right. Counsel, I understand that
19 the State's first witness would be rather lengthy?

20 MS. BURCHSTEAD: Yes, Your Honor.

21 THE COURT: Okay. And I believe it's about 4:30 in
22 the afternoon so this being the first day and you not being
23 advised as to how our process would work, we're not gonna
24 get into the testimony until tomorrow morning. I'm going
25 to excuse you for the evening in just a few minutes and we

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1 whole truth, and nothing but the truth so help you God?

2 MS. SIMPSON: Yes, I do.

3 THE CLERK: Be seated in the witness box and state
4 your full name for the Court, spelling your last name.

5 MS. SIMPSON: You said spelling my last?

6 THE COURT: Yes.

7 MS. SIMPSON: My name is Candace Patrice Simpson.
8 Simpson is spelt S-i-m-p-s-o-n.

9 THE CLERK: Thank you.

10 THE COURT: Birthday?

11 MS. BURCHSTEAD: My birthday is [REDACTED].

12 CANDACE SIMPSON, first being
13 duly sworn, testified as follows:

14 **Direct Examination by Ms. Burchstead:**

15 Q. Good morning, Ms. Simpson.

16 A. Good morning.

17 Q. So I know you just gave your birth date, but I'm not
18 doing the quick math on that. How old are you?

19 A. I'm 35.

20 Q. And where do you live?

21 A. In Maplewood Apartments.

22 Q. Is that here in Dillon?

23 A. Yes, ma'am.

24 MS. BURCHSTEAD: We may need to adjust --

25 THE COURT: Can you hear into the jury box?

C. Simpson- Direct Examination by Ms. Burchstead

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1 MS. BURCHSTEAD: Okay.

2 THE COURT: Try to speak a little closer to the mic.

3 MS. BURCHSTEAD: There you go.

4 THE COURT: Get yourself comfortable.

5 MS. BURCHSTEAD: Just need to make sure the court
6 reporter can hear us and everybody in the jury.

7 Q. Okay. So you live in Maplewood Apartments, is that
8 right?

9 A. Yes, ma'am.

10 Q. That's in Dillon?

11 A. Yes, ma'am.

12 Q. Did you grow up in Dillon?

13 A. Yes, ma'am.

14 Q. How long have you lived in Maplewood Apartments?

15 A. All my life.

16 Q. Okay. And who lives with you?

17 A. My two sons.

18 Q. And how old are they?

19 A. I have an 11 year old and a 6 year old.

20 Q. Do you work?

21 A. Self-employed.

22 Q. What do you do?

23 A. I braid hair.

24 Q. How long have you been doing that?

25 A. About -- I'd say about 10 or 12 years.

C. Simpson- Direct Examination by Ms. Burchstead

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1 Q. Do you have a sister?

2 A. Yes, I have three sisters.

3 Q. Okay. Is one of your sisters named Ann?

4 A. Yes, ma'am.

5 Q. What's her last name?

6 A. Covington.

7 Q. And how old is she?

8 A. She's forty ---

9 Q. She's older than you ---

10 A. --- forty one or two. Forty is one of them.

11 Q. Yeah. So she's a little bit older than you?

12 A. Yes, ma'am.

13 Q. Okay. Does she sometimes help out and watch your
14 kids?

15 A. Yes, ma'am.

16 Q. I want to take you back to September 30th - October 1,
17 2016, so not quite three years ago. On the evening of
18 September 30th, were you going to go out somewhere?

19 A. Yes, ma'am.

20 Q. Okay. Where were you planning to go?

21 A. To a club, Strikers.

22 Q. Okay. And was that a Friday night, do you remember?

23 A. Yes, ma'am, it was because I had to do hair the next
24 morning.

25 Q. Now, before that Friday night had you been talking to

C. Simpson- Direct Examination by Ms. Burchstead

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1 any -- had you been talking with a guy on Facebook?

2 A. Yes.

3 Q. Okay. Who had you been talking to on Facebook?

4 A. His name on Facebook was Reedy Boss.

5 Q. Can you -- did you remember how that's spelled?

6 A. Reedy is spelled R-e-e-d-y. And I know it was
7 something in between but boss is spelled B-o-s-s.

8 Q. So y'all had been kind of talking a little bit on
9 Facebook?

10 A. Yes, ma'am.

11 Q. Okay. How would you do that on Facebook, like with
12 Messenger or what would you do?

13 A. Yes, ma'am, Messenger.

14 Q. About how long before September 30th had y'all been
15 talking on Facebook?

16 A. A couple of weeks, maybe a month. I'm gonna say, if
17 not a month, probably about three and a half weeks.

18 Q. Okay. Had you had any plans to meet up?

19 A. No, ma'am.

20 Q. Did you know -- is it fair to say Reedy Boss was sort
21 of a street name or a nickname?

22 A. Yes, ma'am.

23 Q. So going to September 30th I think you said you were
24 gonna -- plans were to go out to Strikers?

25 A. Yes, ma'am.

C. Simpson- Direct Examination by Ms. Burchstead

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1 Q. Can you spell Strikers for us?

2 A. I'm guessing it's spelled S-t-r-i-k-e-r-s.

3 Q. Okay. Had you been to Strikers before?

4 A. A while -- it's been a while ago but yes.

5 Q. Okay. All right. Who were you planning to go with?

6 A. My sister and my friends.

7 Q. Okay. Did you drive -- did you go to Strikers?

8 A. Yes, ma'am.

9 Q. Did you drive yourself?

10 A. I rode with someone.

11 Q. Who did you ride with?

12 A. I rode in with Rochelle and Demetris.

13 Q. So Rochelle and Demetris?

14 A. Yes.

15 Q. Do you remember what time you left? Well, let me back
16 up, did you leave from you apartment in Maplewood?

17 A. Yes, ma'am.

18 Q. Okay. Did somebody pick you up there, then?

19 A. Yes, ma'am.

20 Q. So did you actually go to Strikers?

21 A. Yes, ma'am.

22 Q. Do you remember about what time you left to go out
23 that night?

24 A. I'm going to say about in between ten and eleven.

25 Q. Okay. Ten or eleven p.m. on September 30th?

C. Simpson- Direct Examination by Ms. Burchstead

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1 A. Yes, ma'am.

2 Q. Okay. Now, you mentioned you had children. Did they
3 stay at home or

4 A. No. They was at my sister's - well, my mother house
5 but my sister lives there.

6 Q. Okay. And is that the sister we were talking about a
7 minute ago, Ann?

8 A. Yes, Ann Covington.

9 Q. So your boys were with your mother and your sister?

10 A. Yes.

11 Q. So what was -- what was the plan for the night? Was
12 it just a night out?

13 A. Yes, a night out. Someone we knew was having a party
14 at the club so we decided to go.

15 Q. And when you say the club, are you talking about
16 Strikers --

17 A. Yes.

18 Q. -- or a different club?

19 A. Strikers, yes, ma'am.

20 Q. Okay. So there was going to be a party at Strikers?

21 A. Yes, ma'am..

22 Q. And you're -- you're going with your friends?

23 A. Yes, ma'am.

24 Q. Okay. So I think you said between ten and eleven you
25 left.

C. Simpson- Direct Examination by Ms. Burchstead 110

1 A. Mmm, hmm.

2 Q. And did you go straight to Strikers?

3 A. Yes, ma'am.

4 Q. All right. And what did you do at Strikers? Just
5 hangout? What was it like at Strikers?

6 A. I had -- we danced and we hung out. I had one drink.

7 Q. Okay.

8 A. And we partied. We just danced and had fun.

9 Q. All right. Did you see people you knew there?

10 A. Yes, ma'am.

11 Q. All right. Now, prior to this evening, were you
12 dating anybody? Did you have a boyfriend?

13 A. No, ma'am.

14 Q. Okay. All right. Do you remember how long you stayed
15 at Strikers?

16 A. I'm going to say it was -- it was a couple of hours --
17 I'm gonna say about three hours. We probably stayed til
18 about two -- I'm trying to think what time they close --
19 I'm going to say about 2:30.

20 Q. So 2:30 going into the morning of October 1st ---

21 A. Yes, ma'am.

22 Q. --- going into Saturday morning? Okay. Now, you had
23 been chatting on Facebook with Reedy Boss.

24 A. Yes, ma'am.

25 Q. Did you -- when y'all were on Facebook, did you see a

C. Simpson- Direct Examination by Ms. Burchstead

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1 picture of him?

2 A. Yes, ma'am.

3 Q. Okay. Do you know if you saw him at Strikers that
4 night?

5 A. No, ma'am. I don't remember seeing him that night,
6 not at Strikers.

7 Q. Okay. So when you left Strikers, where did you go?

8 A. We went to - it's a club down the street in Newtown
9 called T Lees.

10 Q. Do you know how that's spelled?

11 A. I'm not sure.

12 Q. It's in Newtown?

13 A. Yes, ma'am.

14 Q. So you left Strikers and went to T Lees?

15 A. Yes, ma'am.

16 Q. Okay. And who'd you go with to T Lee?

17 A. Me and Tonya Moore.

18 Q. Tonya Moore. Okay. So you had originally gone with
19 Rochelle and Demetris --

20 A. Yes, but they went on home and I went with Tonya

21 Q. Okay. Who's Tonya?

22 A. Tonya Moore is a friend of mine.

23 Q. Okay. And how long have you known Tonya?

24 A. For years.

25 Q. Okay.

C. Simpson- Direct Examination by Ms. Burchstead 112

1 A. It's been a long time.

2 Q. All right. So just the two of y'all went to sort of
3 an after party ---

4 A. Yes, ma'am.

5 Q. --- something after Strikers? Okay. And that was at
6 T Lees?

7 A. Yes, ma'am.

8 Q. Do you have any idea what time that was?

9 A. What time we left or what time we went there?

10 Q. What time you got there? You think you left Strikers
11 about 2:30?

12 A. Yes, ma'am.

13 Q. And you went straight there?

14 A. We probably hung out at Strikers in the parking lot
15 for a little while and then we went.

16 Q. Okay.

17 A. So I'm gonna say probably about -- it had to be about
18 three something, I'm gonna say.

19 Q. Okay. So you went to Newtown, T Lees, 2:30, three
20 something like that?

21 A. Yes, ma'am.

22 Q. Okay. And that was you and Tonya?

23 A. Yes, ma'am.

24 Q. Okay. Were there a lot of people there?

25 A. It wasn't too many. I remember they were playing

C. Simpson- Direct Examination by Ms. Burchstead

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1 cards inside. It wasn't too many people there.

2 Q. Did you see Reedy Boss there?

3 A. Yes, ma'am.

4 Q. Did y'all talk?

5 A. Not really.

6 Q. Okay.

7 A. Only thing -- when we were going outside, we talked
8 for a second but that was really it until we -- he asked
9 for a ride.

10 Q. Okay. So he asked for a ride?

11 A. Yes, ma'am.

12 Q. Did he ask you for a ride?

13 A. He asked me and I asked Tonya because she was driving.

14 Q. Okay. Where did he want a ride to?

15 A. He -- he lived in Dover Village and we lived in
16 Maplewood.

17 Q. Okay. Is Maplewood next to Dover Village?

18 A. Yes, ma'am.

19 Q. And both of those are apartment complexes?

20 A. Yes, ma'am.

21 Q. So he asked you to get a ride to Dover Village?

22 A. Yes, ma'am.

23 Q. And because you weren't driving, you asked Tonya?

24 A. Yes, ma'am.

25 Q. All right. So did Tonya -- well, did y'all leave the

C. Simpson- Direct Examination by Ms. Burchstead

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1 T Lees together - T Lees together?

2 A. Yes.

3 Q. All right. So who all got in the car leaving T Lees?

4 A. Me, Tonya -- well, Tonya was in the car.

5 Q. Okay.

6 A. And I got in, and he got in.

7 Q. So you and Tonya and the person you knew as Reedy
8 Boss?

9 A. Yes, ma'am.

10 Q. And did she drive to Dover Village or Maplewood?

11 A. She drove to her apartment and we got out.

12 Q. Where is her apartment?

13 A. Right -- it was right across the street from me at the
14 time. She doesn't live out there anymore.

15 Q. Okay. So was she living at Maplewood at the time?

16 A. Yes, ma'am.

17 Q. Okay. So the three of y'all left. Do you remember
18 about what time you left the club or the - the after party?

19 A. I can't -- I can't remember the exact time. I know it
20 wasn't daylight yet.

21 Q. Okay. So you got to T Lees maybe around three. Do
22 you remember about how long you stayed?

23 A. I'm gonna say no longer than an hour.

24 Q. So you think you may have left around four?

25 A. Something like -- I'm gonna say -- I don't know the

C. Simpson- Direct Examination by Ms. Burchstead

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1 exact time --

2 Q. That's okay.

3 A. -- but I'm gone say something like that.

4 Q. Yeah. You just tell us what you remember. Okay. So
5 Tonya drove y'all to Maplewood, right?

6 A. Yes, ma'am.

7 Q. What happened after Tonya drove you guys to Maplewood?

8 A. Everyone got out and I assumed he was going home but
9 he was like can he come in for a while. I was like well,
10 sure but nothing's gonna happen.

11 Q. Okay. And when you're talking about him, we're
12 talking about Reedy Boss?

13 A. Yes, ma'am.

14 Q. Because it was the three of y'all in the car?

15 A. Yes, ma'am.

16 Q. So y'all -- did y'all talk about him coming in when
17 you were in the car?

18 A. No, that wasn't the plan.

19 Q. Okay. So y'all get out and he asked to come in?

20 A. Yes, as we -- as everyone was walking away, going
21 their separate ways he asked could he come in.

22 Q. And Maplewood is right next to Dover Village?

23 A. Yes.

24 Q. Okay. So did he come in?

25 A. Yes, ma'am.

C. Simpson- Direct Examination by Ms. Burchstead 116

1 Q. Tell us what happened after he came in.

2 A. When he came in, he sat - I cut on the TV, he sat
3 down. I told him I was going to wash to get the smoke and
4 stuff off me so I washed. I went in my room. I put my
5 clothes on. I came back out my single -- I got a sectional
6 and I had a single chair, a recliner. I sat down in the
7 recliner and he was in the sectional. He was like want you
8 come over here and sit beside me? I was like okay that's
9 fine. I went and sat beside him and then he tried to start
10 kissing on me. And I was like no, you know, so you got to
11 go. So, okay -- then so it was like he just kept trying to
12 kiss on me. So we was by the door by the kitchen - it's
13 the door beside the kitchen and he was just holding onto me
14 and I was like no you got to go, I got to do hair in the
15 morning anyway. So he wasn't leaving. He said no he's not
16 going anywhere. So when I -- he was trying to pull on me
17 so I held onto the wall because it's right there beside the
18 door and he ---

19 Q. So let me just stop you right there. So you'd asked
20 him to leave because you needed to do hair in the morning?

21 A. Yes. It was all ready going left anyway so, yes,
22 ma'am, I asked him to leave.

23 Q. So did he leave?

24 A. No, ma'am.

25 Q. What did he do instead of leave?

C. Simpson- Direct Examination by Ms. Burchstead

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1 A. He pulled me in the room.

2 Q. In your bedroom?

3 A. Yes, ma'am. I tried to scream and hit the wall for my
4 next door neighbor but he choked me instantly.

5 Q. How did he pull you in there? Do you remember?

6 A. It was by the waist. I remember it was like my feet
7 wasn't touching the ground. It was like he drug me in
8 there.

9 Q. Okay. And you called for help?

10 A. I tried to call for my next door neighbor because
11 she's very alert but he choked me.

12 Q. Okay. When you say he choked you, he put his hands
13 around your neck?

14 A. Yes.

15 Q. Okay. So he took you to your bedroom?

16 A. Yes, ma'am.

17 Q. When was he putting his hands around your neck?

18 A. Instantly. Soon as I tried to scream for help.

19 Q. Okay. Where were you when you were screaming for
20 help?

21 A. On the bed because it was right to the wall at the
22 time.

23 Q. Did you ask him to stop?

24 A. Yes, ma'am, but that wasn't an option.

25 Q. All right. So he puts his hands around your neck,

C. Simpson- Direct Examination by Ms. Burchstead 118

1 what happens after that?

2 A. And I just asked him to stop, you know, choking me,
3 but it was obvious that he just wanted what he wanted. And
4 I just plead -- I asked him I was like I don't know what
5 you have, it's all ready accurate that I don't have a
6 choice. I just begged him could he please get a condom
7 because I didn't know what he have. So that's when --
8 that's how we ended on the floor. The condoms was in my
9 bottom drawer where my - it's the TV stand where the - what
10 you call the chest. And I remember it beginning but I
11 don't know when it ended. I just remember waking up the
12 next and it was daylight.

13 Q. Okay. So you understood that he wanted sex and you
14 didn't have a choice?

15 A. Yes.

16 MR. SWILLEY: Objection to leading, Your Honor.

17 THE COURT: Don't lead the witness.

18 Q. Let me rephrase it. I believe you had said a minute
19 ago he wanted what he wanted. And what was your
20 understanding of that?

21 A. He wanted to have sex with me.

22 Q. And was it your request that he wear a condom?

23 A. Yes, I begged.

24 Q. All right. And you said something about getting on
25 the floor. Can you clarify what that was about?

C. Simpson- Direct Examination by Ms. Burchstead 119

1 A. It was the only - with the condoms was over there, he
2 wasn't going to let me go by myself to do it so we had, I
3 had to move with him in order to get it.

4 Q. To get the condom?

5 A. Yes.

6 Q. Okay. So did he wear the condom?

7 A. I'm thinking yes, ma'am.

8 Q. So did he use his -- did he penetrate your vagina?

9 A. Yes, ma'am.

10 Q. Okay. Did he use his penis to penetrate your vagina?

11 A. Yes, ma'am.

12 Q. So after you remember him penetrating you, what
13 happened next? What do you remember after that?

14 A. I don't remember too much, just waking up the next
15 morning.

16 Q. Okay. What do you remember when you woke up?

17 A. He was watching me when I woke up. I just seen him.
18 He was just standing there.

19 Q. Do you remember where he was standing?

20 A. Like, leaned against the dresser.

21 Q. Okay. Where were you?

22 A. On the bed.

23 Q. Did you have any clothes on?

24 A. No, ma'am.

25 Q. Do you remember how your clothes -- before you got in

C. Simpson- Direct Examination by Ms. Burchstead 120

1 the bedroom, did you have clothes on?

2 A. Yes.

3 Q. Do you remember how they got off?

4 A. No, ma'am.

5 Q. Do you remember if he had on clothes?

6 A. Before or after?

7 Q. Either one. Why don't you tell us both?

8 A. When he drug me in the room he had on clothes. When I
9 woke up when it was daylight, I remember him having on a
10 shirt, not sure about the pants, but I'm sure of the shirt.

11 Q. Okay. So after you woke up, what do you remember
12 happening?

13 A. When I woke up, I remember him -- he wanted to have
14 sex again and I was like no that's not what I wanted, but
15 like I said I didn't want to be choked again so he asked me
16 to do the oral sex and I didn't have a choice, I had to.
17 And it didn't last long because I remember my throat being
18 like parched so -- but that was pretty much it. And then I
19 remember waking up again -- it's like I woke up two times
20 slipping in and out of consciousness, I guess.

21 Q. So let me back up. When you say you woke up two times
22 -- now, was that before he asked for oral sex or after?

23 A. No. When I woke up the first time is when he asked to
24 have sex again and I just was - wasn't in the mood for
25 anything. I just wanted to be free.

C. Simpson- Direct Examination by Ms. Burchstead 121

1 Q. So a minute ago you said you didn't want to be choked
2 again, can you elaborate on what you mean by that?

3 A. I didn't want to be put out -- I didn't want him to
4 put his hands around my neck and put force on choking me.
5 I can't breathe -- I couldn't breathe.

6 Q. Did you ever -- let me back up. Did you start
7 performing oral sex?

8 A. Yes.

9 Q. And how did that stop?

10 A. I'm not sure. I'm not sure of how it stopped. I
11 remember -- I do remember -- no, this is how it stopped, I
12 didn't want to do it, that's when he choked me again.
13 That's -- yes, he choked me again and that's when I begged
14 him, I was like I have children, please. But he was
15 worried about me telling.

16 Q. What makes you say that?

17 A. Because he was like no you're gonna tell.

18 Q. So you were begging him -- what -- what were you
19 begging? What were you saying?

20 A. Begging for my life. Just pretty much I -- really I
21 was begging for my life but I was telling him I have kids.

22 Q. What happens next? What do you remember?

23 A. Waking up again. And I remember this time my legs
24 were so weak I could barely walk. I remember I needed to
25 use the bathroom. I told him I needed to use the bathroom

C. Simpson- Direct Examination by Ms. Burchstead 122

1 but I needed his help because I couldn't -- my legs was
2 real weak so he helped me to the bathroom. He held my arm
3 while I sat on the toilet but I couldn't use the bathroom
4 because he was in there with me but he wasn't leaving and
5 he -- he was going everywhere where I went.

6 Q. Okay. So did you ever go to the bathroom?

7 A. Yes, ma'am. He helped me to the bathroom.

8 Q. So after that what do you remember?

9 A. After leaving out the bathroom, like I said he helped
10 me to the bathroom, I sat down on the toilet but I couldn't
11 use it. He was holding my arm the whole time. I couldn't
12 use it so I pulled -- no, I didn't have on any clothes so I
13 didn't pull up anything. I walked out -- we walked back
14 out the bathroom to the room. He was holding my arm.

15 Q. This is to your bedroom?

16 A. Yes, ma'am.

17 Q. Okay.

18 A. And I remember being on the bed and him being on the
19 bed. But a few -- I'm going to say probably about a couple
20 of minutes later that's when someone walked in. I didn't
21 know who at the time. And he was like who is that and I
22 just ran out just to go see. And it was my sister. And I
23 fell to my knees and I told her he raped me.

24 Q. Where were you when you saw your sister?

25 A. Mid hallway.

C. Simpson- Direct Examination by Ms. Burchstead

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1 Q. How far is the hallway from your bedroom?

2 A. Not far.

3 Q. Do you have any idea what time of day it was at this
4 point?

5 A. I know it was daylight. I'm not sure of the time.

6 Q. Was it morning or afternoon?

7 A. It was morning.

8 Q. So your kids had not been home during all this, is
9 that right?

10 A. No, ma'am.

11 Q. Okay. You say you saw your sister. Which sister was
12 this?

13 A. Ann Covington.

14 Q. So after you see Ann, tell us what happened?

15 A. After I told her he raped me, she told him he had to
16 go. And all I remember after that is them fussing and I
17 thought he was punching her. I didn't know he was trying
18 to cut her. I jumped on him and when she got loose and ran
19 in the room with the kids, I tried to run to the front door
20 but he got a hold of me and he tried to cut my neck but I
21 put my hands up and he drug me in the kitchen and he just
22 started stabbing me.

23 Q. I'm going to back you up just a little bit. I think
24 you said, he and Ann started having a tussle?

25 A. Yes, because she asked him to leave.

C. Simpson- Direct Examination by Ms. Burchstead

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1 Q. Where -- where were y'all when that started?

2 A. Mid hallway.

3 Q. In the hallway?

4 A. Yes, ma'am.

5 Q. Is that near the bedroom?

6 A. The bedroom is in front. The hallway isn't long.

7 Q. Okay. Is it also near the kitchen?

8 A. Yes, ma'am.

9 Q. So tell us a little more about the struggle between
10 Ann and Reedy Boss.

11 A. He grabbed her. I thought, like I said, I thought he
12 was punching her. I didn't know that he had a knife at the
13 time. So I just jumped on him. At the time, you can't
14 think, you just do what comes first. I just jumped on him.

15 After they got loose -- when my sister got loose and ran
16 into my bedroom and closed the door, I tried run out the
17 front door but he got to me first before I could get out.
18 And he just was holding me like this (demonstrating) trying
19 to cut my neck but I put my fingers up and he drug me in
20 the kitchen and I fell on the floor and he started stabbing
21 me.

22 Q. So did Ann get away?

23 A. They was in the room, locked in the room.

24 Q. Say that again.

25 A. They were locked in the room, her and my son and my

1 nephew.

2 Q. So your son and nephew were there?

3 A. Yes, ma'am.

4 Q. So when Ann showed up, did she have your son and
5 nephew with her?

6 A. Yes, ma'am.

7 Q. Where were they?

8 A. They were standing right with her when I fell to my
9 knees and told her he had raped me.

10 Q. So did Ann leave with the kids?

11 A. No. She locked herself in the room because at that
12 time, we didn't know really what to do.

13 Q. So what happened after that?

14 A. After she -- after she got loose from him which is
15 because I jumped on his back, she locked herself in the
16 room with the kids. Q. Okay.

17 A. That gave me -- after I jumped - got off of him, I
18 tried to run to front door. I just wanted to make sure
19 they was safe. I ran to the front door and I -- and as
20 soon as I opened it, he closed it and he just drug me back
21 by my neck and was just trying to cut me and I put my
22 fingers up in front of, behind the knife so he couldn't go
23 straight across.

24 Q. Is the front door -- where's the front door in
25 relation to the kitchen and the bedrooms?

C. Simpson- Direct Examination by Ms. Burchstead 126

1 A. It's right -- it's not far.

2 Q. Okay. So what exactly happened when you got to the
3 front door?

4 A. I was -- I opened it. I did get to open it but barely
5 and he shot it back and just drug me and tried to cut my
6 throat.

7 Q. Okay. So did Ann and the kids get out of your
8 apartment?

9 A. While he was stabbing me, while I was down on the
10 floor and he was stabbing me, that gave her a chance to
11 run. And when he heard the door open, he ran to the front
12 door. That gave me a chance to escape out the back door
13 which was all ready open.

14 Q. So let's make sure we got it right, Ann went out the
15 front door?

16 A. Yes, ma'am. Her and my nephew and son.

17 Q. And which door did you go out?

18 A. The back door.

19 Q. Where is that in relation to the front door?

20 A. It's in the kitchen.

21 Q. So how did you get away exactly?

22 A. When he ran to see who was going out the front door or
23 coming in, he ran and -- he ran in the living room to the
24 door because it opened which was my sister and them leaving
25 out. That gave me a chance to get up off the floor and run

C. Simpson- Direct Examination by Ms. Burchstead 127

1 out the back door. I had to bust down the screen because
2 he was coming after me.

3 Q. And when you said back door, is that -- that's next to
4 the kitchen?

5 A. Yes. It's a slide door.

6 Q. So after you got out the slide door in the kitchen
7 area, what did you do?

8 A. I just ran. I ran all the way around the building and
9 I came back up which is to my next door neighbor's house,
10 Elaine's house.

11 Q. Did you have on any clothes?

12 A. No, ma'am.

13 Q. Had you been wounded by, in the fight?

14 A. Yes ma'am. I had a lot of stab wounds.

15 Q. So you ran around building?

16 A. Yes, ma'am.

17 Q. To your neighbor, Elaine?

18 A. Yes, which is straight from out of my back door back
19 around to the front side.

20 Q. Do you know what he did while you ran?

21 A. No, ma'am. I didn't go back.

22 Q. So you made it to Elaine's?

23 A. Yes, ma'am.

24 Q. What happened after that?

25 A. I remember sitting down in the chair.

C. Simpson- Direct Examination by Ms. Burchstead 128

1 Q. This is at Elaine's?

2 A. Yes. And I thought she put a cold towel around me but
3 I'm not sure. She said that she didn't. Only thing I
4 remember sitting in there, then the ambulance, they came
5 in.

6 Q. So you remember an ambulance coming?

7 A. Yes.

8 Q. Do you remember if anybody had called 911 or how the
9 ambulance got there?

10 A. I know it's called from Elaine's house. I didn't know
11 if my sister or Elaine called.

12 Q. You just know somebody had called 911?

13 A. Yes.

14 Q. Okay. All right. So after the ambulance gets there,
15 what do you remember?

16 A. Them rolling me out and putting me in the ambulance.

17 Q. Did you go to the hospital?

18 A. Yes, ma'am.

19 Q. What happened at the hospital that you can remember?

20 A. They -- they brought me in the room. I sat there for
21 a while. They came in, they took pictures.

22 Q. Who took pictures?

23 A. It was -- it was -- I think it was the police -- it
24 was the police lady, I -- yes -- I can't remember her name.

25 Q. So you saw law enforcement at the hospital?

C. Simpson- Direct Examination by Ms. Burchstead

129

1 A. Yes.

2 Q. Okay. And you think they took pictures?

3 A. Yes. I know somebody took pictures. I remember --
4 I'm thinking it was a lady.

5 Q. Okay. Did you see nurses?

6 A. A lady came in to check me.

7 Q. Did you see a doctor?

8 A. Afterwards. After, because I don't know if they put
9 me to sleep or -- I just remember I'm waking up to Dr.
10 Mijalli afterwards.

11 Q. So is it fair to say you got treatment in the
12 hospital?

13 A. Yes, ma'am.

14 Q. Did you say you -- you woke up after?

15 A. Yes,. I was already stitched up and stapled up and
16 everything.

17 Q. What do you remember after waking up with your ---

18 A. I remember the police coming in, Mr. Jason, showing me
19 of photos on a piece of paper and I pointed out who was the
20 attacker.

21 Q. Did you learn the identity of Reedy Boss?

22 A. Excuse me?

23 Q. Did you learn the real name of Reedy Boss?

24 A. Yes, at the hospital. I only knew him as Reedy Boss.

25 Q. So you picked a photo out of him?

C. Simpson- Direct Examination by Ms. Burchstead 130

1 A. Yes.

2 Q. As the person that attacked you?

3 A. Yes, ma'am.

4 Q. What did you learn the name, the real name of Reedy
5 Boss to be?

6 A. My sister -- well, my brother's girlfriend, she told
7 me his name.

8 MR. SWILLEY: Objection to hearsay.

9 THE COURT: Okay. Don't tell us what somebody else
10 told you.

11 A. Okay.

12 A. Well, I learned at the hospital what his name was.

13 Q. And what did you learn his name to be?

14 A. Tyreek Hayes.

15 Q. Was that after you had the photos with law
16 enforcement?

17 A. Yes.

18 MS. BURCHSTEAD: I beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 (Whereupon, the State took a moment to go through exhibits)

21 MS. BURCHSTEAD: Okay. Referencing State's 1. If
22 I can have permission to approach, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. BURCHSTEAD: And I believe there's no
25 objection.

C. Simpson- Direct Examination by Ms. Burchstead 131

1 MR. SWILLEY: No objection.

2 MS. BURCHSTEAD: Thank you.

3 THE COURT: Okay, thank you.

4 Q. I'm going to show you State's 1 and we're going to
5 have a bigger one of this in a minute, can you just take a
6 look at that and tell us what I'm showing you?

7 A. She's showing me, it's a recreation field behind
8 Maplewood in Maplewood.

9 Q. So is that a picture of the apartments?

10 A. Yes, ma'am.

11 Q. And the field behind the apartments?

12 A. Yes, ma'am.

13 Q. Okay. So does that look like it's accurate?

14 A. Yes, ma'am.

15 Q. Okay.

16 MS. BURCHSTEAD: If I may, Your Honor, I'm just
17 going to have this marked for identification. It's a blow
18 up of State's 1.

19 THE COURT: All right. Yes, ma'am.

20 MS. BURCHSTEAD: Okay. If I may approach again,
21 Your Honor.

22 THE COURT: Yes, ma'am.

23 Q. I'm showing you a blow up of the picture you just
24 looked at, does that look like a bigger picture of what we
25 just saw?

C. Simpson- Direct Examination by Ms. Burchstead 132

1 A. Yes, ma'am.

2 Q. Okay.

3 THE COURT: Can you all see? If she needs to come
4 down from the stand it would be easier.

5 MS. BURCHSTEAD: Yeah. Do you want to do that?

6 THE COURT: You can step down.

7 MS. BURCHSTEAD: Come on down.

8 Okay. If you can, if you'll take this pin and just
9 however best you can see, can you find your apartment on
10 here and just stick that pin in there?

11 (Whereupon, the witness complies)

12 Q. So your apartment -- what's your apartment number?

13 A. ■.

14 Q. ■? Okay, so you're right here on ■.

15 A. Yes, ma'am.

16 THE COURT: Ma'am, you're gonna have to speak up now
17 since you don't have the microphone.

18 A. Yes, ma'am.

19 Q. So where did you run? Can you show us where you went
20 to Elaine's apartment?

21 A. Out the back door and around.

22 Q. Okay. So I'm going to get you another pin and we'll
23 put that in. Do you know the number of Elaine's apartment?

24 A. Hers is ■■■■■■.

25 Q. Did you say ■?

C. Simpson- Direct Examination by Ms. Burchstead

133

1 A. ■.

2 Q. Okay. Carefully hand that to you, can you just stick
3 that in there and show Elaine's apartment ■?

4 (Whereupon, the witness complies)

5 Q. Okay. All right. And if you can just show us where
6 Dover Village is.

7 (Whereupon, the witness complies)

8 Q. So this is Dover Village?

9 A. Yes.

10 Q. So this is Maplewood and this is Dover Village?

11 A. Yes.

12 Q. And that's your apartment and Elaine's?

13 A. Yes.

14 Q. So which way did you run?

15 A. I ran this -- going out the back door ---

16 THE COURT: Speak up now so they can hear you. You've
17 got your back to them. Speak up.

18 A. Oh, I'm sorry.

19 A. Out the back door and around the front.

20 Q. Okay. All right. Go ahead and have a seat.

21 A. Sorry about that.

22 MS. BURCHSTEAD: Beg your pardon while I put some
23 gloves on, Judge.

24 THE COURT: Was that first photograph marked as an
25 exhibit?

C. Simpson- Direct Examination by Ms. Burchstead 134

1 MS. BURCHSTEAD: State's 1 is evidence and then we
2 actually, I think, without objection moved that one into
3 evidence and then we -- we just have the blow up as an
4 exhibit.

5 THE COURT: What number is it, though?

6 MS. BURCHSTEAD: I'm sorry, Judge.

7 THE COURT: Do you want the blow up in evidence or
8 the small picture?

9 MS. BURCHSTEAD: Right. We'll do the blow up in
10 evidence. That will be fine.

11 THE COURT: And that's what --

12 MS. BURCHSTEAD: It's one. She has them both as
13 one, Judge.

14 THE COURT: All right. Plaintiff's Number 1 is
15 admitted into evidence. No objection?

16 MR. SWILLEY: No objection.

17 (Whereupon, the Photo has been marked and entered into
18 evidence as State's Exhibit No. 1)

19 Q. Okay. Let me take you back to after you get out the
20 hospital, did you go back home?

21 A. No. I went to my mother's.

22 Q. Did you ever go back home?

23 A. Yes.

24 Q. How long was it until you went back home?

25 A. Probably about a week.

C. Simpson- Direct Examination by Ms. Burchstead 135

1 Q. Okay. Was -- was there ever a knife or a blade or
2 anything recovered in your house after you went back home?

3 A. Yes. My son recovered it.

4 Q. What do you remember him finding?

5 A. It was a piece of knife. The handle was missing.

6 Q. Where did he find it?

7 A. Behind my dresser.

8 Q. So after he found it, what happened?

9 A. I didn't touch -- his fingerprints are probably on it
10 but I didn't touch it. I took it immediately to Jason.

11 THE COURT: I'm sorry I didn't hear what you said.

12 A. I said that when I got it from him, I didn't put my
13 hands on it. I picked it up with something and I
14 immediately took it to Jason.

15 Q. Okay.

16 MS. BURCHSTEAD: If I may approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 Q. I'm showing you State's 3. Let me just get my gloves
19 on. I'm just going to open this envelope up very
20 carefully. I'm just going to show this to you, okay? Is
21 this what your son found?

22 A. Yes, ma'am.

23 Q. You're sure?

24 A. Yes, ma'am.

25 Q. Okay. So you gave it to Jason?

C. Simpson- Direct Examination by Ms. Burchstead 136

1 A. Yes, ma'am.

2 Q. Do you know what happened to it after that?

3 A. No.

4 Q. All right.

5 MS. BURCHSTEAD: If I may approach again and show
6 State's 2 and, I believe, this is entered without
7 objection, Your Honor.

8 MR. SWILLEY: No objection.

9 THE COURT: All right.

10 MS. BURCHSTEAD: Thank you.

11 THE COURT: State's 2 is received into evidence
12 without objection.

13 (Whereupon, the Knife (part blade) has been marked and
14 entered into evidence as State's Exhibit No. 2)

15 Q. If you'll look at that and tell us what that is.

16 A. This is a Facebook profile, Reedy All Boss.

17 Q. Is that the person you were talking to?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BURCHSTEAD: Permission to publish, Your Honor.

21 THE COURT: Yes, ma'am.

22 Q. So that's the Facebook picture you remember of the
23 person that you were talking to that you knew as Reedy
24 Boss?

25 A. Yes, ma'am.

C. Simpson- Direct Examination by Ms. Burchstead 137

1 Q. And you later learned that person to be Tyreek Hayes,
2 is that right?

3 A. Yes, ma'am.

4 Q. And is that the person that went to your apartment?

5 A. Yes, ma'am.

6 Q. Is that the person who had sex act with you?

7 A. Yes, ma'am.

8 Q. And is that who put his hands around your neck?

9 A. Yes, ma'am.

10 Q. Was there any other adult male in your apartment that
11 night?

12 A. No, ma'am.

13 Q. Are you making this up?

14 A. No, ma'am.

15 Q. Do you have any reason to lie ---

16 MR. SWILLEY: Objection.

17 A. No, ma'am ---

18 THE COURT: Hang on. Wait a minute. Let him state
19 his objection.

20 MR. SWILLEY: She's bolstering the credibility of the
21 witness, Your Honor. It's improper bolstering.

22 THE COURT: All right. I'm going to overrule the
23 objection. It's appropriate.

24 Q. Do you have any beef with Tyreek Hayes prior to this?

25 A. No, ma'am.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Was the person you were talking to on Facebook the
2 person that wounded with you a knife?

3 A. Yes, ma'am.

4 Q. And wounded your sister with a knife?

5 A. Yes, ma'am.

6 Q. And held you against your will?

7 A. Yes, ma'am.

8 Q. Is that person in the courtroom?

9 A. Yes, ma'am.

10 Q. Can you please point him out and tell us where he is?

11 A. Right there.

12 (Whereupon, the witness points to the defendant at the
13 defense table)

14 Q. Are you pointing at defense counsel table?

15 A. Yes.

16 Q. So is it the defendant, Tyreek Hayes?

17 A. Yes, ma'am.

18 THE COURT: Let the record reflect she's pointing
19 in the direction of the defense table and the defendant is
20 sitting with Mr. Swilley.

21 MS. BURCHSTEAD: I beg the Court's indulgence.
22 Nothing further at this time, Your Honor.

23 THE COURT: Okay. Mr. Swilley?

24 **Cross-Examination by Mr. Swilley:**

25 Q. Now, Ms. Simpson, you've -- you've lived in Dillon

C. Simpson- Cross-Examination by Mr. Swilley

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1 your whole life, correct?

2 A. Yes, sir.

3 Q. All right. And it's true you've known Tyreek Hayes
4 for a long time, haven't you?

5 A. I've known him from hearsay.

6 Q. When you say hearsay, you've known him ---

7 A. That he played football with my brother.

8 Q. Played football with your brother and went to Dillon
9 High, right?

10 A. No. He didn't go to school with me.

11 Q. He played football with your brother ---

12 A. Yes.

13 Q. --- at Dillon High, right?

14 A. Yes.

15 Q. And you'd go to those games, right?

16 A. I had went to a few.

17 Q. All right. And you saw games where Tyreek was playing
18 with your brother, right?

19 A. The -- not really. I was focused on my brother.

20 Q. My question to you was, you saw games where Tyreek was
21 playing football with your brother, right?

22 A. I -- no, sir. May I explain that was not it? I just
23 known him from playing with him but I didn't see him at the
24 time. I was focused on my brother.

25 Q. Okay. And my question to you was, you saw games where

C. Simpson- Cross-Examination by Mr. Swilley

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1 Tyreek Hayes was playing football with your brother, is
2 that correct?

3 A. No. I never saw a game with him playing because I
4 wasn't focused on him, Your Honor -- sir, sorry.

5 Q. Okay. That's a no?

6 A. No, sir.

7 Q. Okay. And he's also good friends with your nephew,
8 Akeem Nelson, is that correct?

9 A. I wasn't aware of that.

10 Q. You weren't aware that he was friends with your nephew
11 ---

12 A. No. I ---

13 Q. --- Akeem Nelson?

14 A. No.

15 Q. All right. And Akeem Nelson is Ms. Covington's son,
16 is that correct?

17 A. Yes.

18 Q. All right. Now, Ms. Simpson, you had been talking
19 with Mr. Hayes on Facebook, is that correct?

20 A. Yes.

21 Q. Several weeks before, right?

22 A. Mmm, hmm.

23 Q. And during those communications you even made mention
24 of the fact that he was friends and grew up with your
25 nephew, right?

C. Simpson- Cross-Examination by Mr. Swilley

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1 A. My brother. I don't -- I never known him to grow up
2 with my nephew.

3 Q. Your nephew always lived with Ms. Covington, is that
4 correct?

5 A. Yes. My brother did too.

6 Q. So it's true to say that you've known Tyreek Hayes for
7 years, correct?

8 A. Not known him known him. I really interacted with him
9 more on Messenger and when I seen him outside of Maplewood.
10 And I have seen him around in Newtown before.

11 Q. So you'd see him outside of your apartment complex, is
12 that correct?

13 A. Yes, he would be hanging out there with some of his
14 friends, I guess.

15 Q. You say with some of his friends, yes, you would
16 communicate with him outside the apartment complex, is that
17 correct?

18 A. Only once. It was only once because he called me
19 over.

20 Q. Okay. He called you over and y'all had a
21 conversation, correct?

22 A. Yes, sir.

23 Q. Okay. And you had spoke with him a good bit via
24 Facebook, right?

25 A. Yes, sir.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Okay. And it's your -- it's your testimony that you
2 didn't know Mr. Hayes' first or last name at the time?

3 A. No, I didn't.

4 Q. It's your testimony that you didn't know his name,
5 first or last name, for several weeks, is that correct?

6 A. Yes, sir.

7 Q. And it's your testimony that, that Mr. Hayes made it
8 clear that he wanted to be in a relationship with you, is
9 that correct?

10 A. No, sir.

11 Q. Okay. And it's also clear that you told Investigator
12 Turner you didn't know his real name, is that correct?

13 A. Yes, it is.

14 Q. Okay. Just so I'm clear. You -- it's your testimony
15 that you had a conversation with someone electronically for
16 weeks, is that correct?

17 A. Yes.

18 Q. And that you'd also seen him in person, is that
19 correct?

20 A. Yes.

21 Q. And you didn't know his name, right?

22 A. No, sir.

23 Q. And this is also the same person that you went out
24 with that evening, is that correct?

25 A. No, sir.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. All right. And it's your testimony that you let
2 someone into your apartment in the middle of the night
3 without knowing their first and last name, is that correct?

4 A. Yes, sir.

5 Q. Okay. You would agree that is not something that is
6 not normally done by you, is that correct?

7 A. Yes.

8 Q. Okay.

9 MR. SWILLEY: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 Q. Ms. Simpson, your -- your apartment complex, it's --
12 it's -- there -- there are apartments next door to each
13 other, right?

14 A. Yes.

15 Q. On each side of each other, right? Those wall are
16 pretty thin, right?

17 A. I'm not sure.

18 Q. Well, I mean, you can hear what goes on -- you can
19 hear loud noises from next door, is that correct?

20 A. If they're loud enough, yes.

21 Q. Right. And you've had, I think, the same neighbors
22 for a good long while, haven't you?

23 A. One of them, yes.

24 Q. And that's Ms. Manning, is that correct?

25 A. Yes.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. And you got to know Ms. Manning pretty well, is that
2 correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. SWILLEY: Hold on for a second.

6 THE COURT: Okay.

7 Q. Ms. Simpson, you actually testified on direct that you
8 hadn't plan to meet Tyreek Hayes out that night, is that
9 correct?

10 A. No, I didn't.

11 Q. Okay. But you asked him that day via Facebook if he
12 was going to be at Strikers, didn't you?

13 A. I don't remember.

14 Q. You don't recall?

15 A. No, I don't recall.

16 Q. Okay. Is that something you would normally recall?

17 A. No, sir. I don't remember that.

18 Q. Okay. And you test -- you told Mr. Hayes that you
19 were single, is that correct?

20 A. Yes.

21 Q. And that's not true, was it?

22 A. Yes, it was.

23 Q. It was true at the time, is that your testimony?

24 A. Yes, sir.

25 Q. Okay. And, Ms. Simpson, going back, you and Mr. Hayes

1 both entered your apartment late that evening ---

2 A. Yes, sir.

3 Q. --- early that morning, is that correct?

4 A. Yes, sir.

5 Q. And it's your testimony that you left that door
6 unlocked, is that correct?

7 A. Yes.

8 Q. That front door was unlocked?

9 A. Yes, it was.

10 Q. And it's your testimony that all these things were
11 done to you while that front door was unlocked, is that
12 correct?

13 A. Yes, it was.

14 Q. And you don't typically leave your door unlocked in
15 the middle of the night, do you?

16 A. No, sir.

17 Q. Okay. But it was unlocked on this evening, is that
18 correct?

19 A. Yes, sir.

20 Q. And it's your testimony that you didn't really talk to
21 Mr. Hayes at T. Lees, is that correct?

22 A. Not really until after we walked outside.

23 Q. And it's your testimony that y'all weren't at Strikers
24 together?

25 A. No, sir.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Okay. And isn't it true that you were spending a lot
2 of time speaking with Mr. Hayes while you were out that
3 evening, is that correct?

4 A. Excuse me?

5 Q. You -- You were spending a lot of time speaking with
6 Mr. Hayes at the clubs that evening, is that correct?

7 A. No, sir.

8 Q. Okay. All right. Now, Ms. Simpson, today you
9 testified on direct examination that Mr. Hayes began to
10 kiss you, is that correct?

11 A. He tried to.

12 Q. Tried?

13 A. Yes.

14 Q. And that's the first time you've told that story, is
15 that correct?

16 A. First time I've told ---

17 Q. That's the first time you've said that he was trying
18 to kiss you that evening, is that correct?

19 A. In my apartment?

20 Q. Yes, ma'am.

21 A. No, sir.

22 Q. Okay. Now, you remember talking to Investigator
23 Turner at the hospital after the police were involved,
24 don't you?

25 A. Yes.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Okay. And you never mentioned anything about him
2 trying to kiss you, is that correct?

3 A. I'm not sure because I was in the hospital. I'm not
4 sure what all was talked -- I talked about certain things
5 but they didn't really get into everything.

6 Q. Okay.

7 A. They just wanted to really know what -- who did it.

8 Q. Okay. And that would be important to mention to the
9 police, is that correct?

10 A. Excuse me?

11 Q. You feel that would be important to mention to the
12 police, is that correct?

13 A. To mention?

14 Q. You stated he tried to kiss you, right?

15 A. Yes, sir.

16 Q. And that would be important to mention to the police,
17 is that correct?

18 A. Well, it would be, but at the time I just gave the
19 important facts.

20 Q. That's a yes?

21 A. Well, yes, it would have been at the time presentable.

22 Q. All right. So, you -- you -- you say you just wanted
23 to give the important facts at the time ---

24 A. That ---

25 Q. --- you talked to the police?

C. Simpson- Cross-Examination by Mr. Swilley

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1 A. Yes. Which was that I was stabbed and raped.

2 Q. Okay. And, Ms. Simpson, I think you testified on
3 direct you were forced to give oral sex that evening, is
4 that correct?

5 A. Yes.

6 Q. And you didn't mention anything about that to the
7 police at the hospital, is that correct?

8 A. I didn't. No, sir.

9 Q. And that's an important fact, right?

10 A. Yes, sir.

11 Q. I'm sorry, is that a yes?

12 A. Yes, sir.

13 Q. Okay. And you testified that Mr. Hayes forced himself
14 on you and drug you to the back, to the back bedroom by
15 your waist, is that correct?

16 A. Yes, sir.

17 Q. Okay. And it's your testimony that you tried to knock
18 on the walls for Ms. Manning?

19 A. Yes. I tried to scream and holler and knock but he
20 just choked me instantly.

21 Q. Okay. And Ms. Manning knows to come over when you
22 knock on that wall, right?

23 MS. BURCHSTEAD: Objection.

24 A. No, sir. Because I ---

25 MS. BURCHSTEAD: Objection.

C. Simpson- Cross-Examination by Mr. Swilley

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1 THE COURT: Wait a minute! Wait a minute!

2 MS. BURCHSTEAD: Objection. Calls for speculation.

3 THE COURT: I agree. Objection sustained.

4 Q. Now, Ms. Simpson, you yourself, you know to knock on
5 that wall for Ms Manning when you need help, right?

6 A. No, sir. That was the first time this ever happened.

7 Q. Okay. It's your testimony that you never knocked on
8 the wall before for Ms. Manning to come over before when
9 you were in trouble, is that your testimony?

10 A. I never had any trouble. This was the only time that
11 I had trouble. I would -- she was very alert so that's why
12 I would have done that at the time.

13 Q. Just so I'm clear. Your testimony is that you've
14 never had to knock on the wall for Ms. Manning to come over
15 because you were in trouble, is that correct?

16 A. No. I've never had any trouble other than this.

17 Q. You've never had any trouble other than this, is that
18 correct?

19 A. Not something that I needed help with.

20 Q. Not something that you needed help with, is that
21 correct?

22 A. Yes.

23 Q. And you testified on direct that Mr. Hayes actually
24 helped you to the bathroom, is that correct?

25 A. Yes, sir.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. And you never mentioned that to the police, as well,
2 is that correct?

3 A. Correct.

4 Q. Okay. And then you mentioned that you -- you stated
5 that you couldn't use the bathroom, is that correct?

6 A. No.

7 Q. Is that, I mean, is that a yes?

8 A. Yes. I couldn't. I couldn't use the bathroom.

9 Q. You couldn't use the bathroom, right?

10 A. No, sir.

11 Q. And you told the nurse at the hospital that you used
12 the bathroom before they examined you, is that correct?

13 A. I'm not sure.

14 Q. You don't know?

15 A. I'm not sure what all was said that day.

16 Q. Okay. You don't know -- just to make sure I'm clear,
17 you don't know whether or not you told the sexual
18 examination nurse that you'd used the bathroom, is that
19 correct?

20 A. I -- I don't remember using it because -- because when
21 he was in the bathroom, I just don't remember using it. I
22 couldn't so I don't -- I'm not sure.

23 Q. Just so I'm clear, based on your recollection -- based
24 on your recollection, you did not use -- you did not
25 urinate or defecate before being examined by the medical

1 staff, is that correct.

2 A. I didn't. I did see a little bit on the cover, it was
3 some but I didn't in the bathroom.

4 Q. Okay, That's what I was referring to.

5 A. Oh, okay.

6 Q. So that's a no, correct?

7 A. Not in the bathroom, yes, sir.

8 Q. All right. Now, Ms. Simpson, you also talked about or
9 you also stated on direct examination that Mr. Hayes or
10 that you -- based on your testimony Mr. Hayes -- you asked
11 Mr. Hayes to use a condom, is that correct?

12 A. Yes, I begged him.

13 Q. Okay. And you didn't mention anything about that to
14 the police, is that correct?

15 A. No. No, sir.

16 Q. Again, that's an important fact, right?

17 A. Yes, sir.

18 Q. Now, Ms. Simpson, isn't it true that it takes two
19 hands to open a condom, is that correct?

20 A. I'm not sure. I've never had to put one on.

21 Q. Okay. Is it your testimony that Mr. Hayes used two
22 hands to open a condom?

23 A. It was dark.

24 Q. Okay. Is that -- you don't know or you don't recall?

25 A. I don't know how many hands he used. I don't recall.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Okay. And based upon your testimony is Mr. Hayes
2 putting a condom on himself?

3 A. Yes.

4 Q. Okay. And you don't know whether or not -- and you
5 don't know in what fashion he did that, is that correct?

6 A. I don't.

7 Q. Okay. And, again, you're not aware of why you never
8 mentioned that to the police during your interview?

9 A. Well, no, sir, but I was in and out when Jason came
10 in. I was falling asleep on him. I do remember that.

11 Q. Okay. And also you testified on direct that you fell
12 asleep after that, right?

13 A. I don't really call it falling asleep. I call it
14 falling in and out of consciousness.

15 Q. Okay. And you also testified that he was watching
16 you when you woke up, right?

17 A. Yes, he was.

18 Q. And you hadn't told the police that at any time, is
19 that correct?

20 A. We never really got into all of that.

21 Q. Okay. And your testimony is that you don't know how
22 your clothes were off, is that correct?

23 A. No, I didn't take them off.

24 Q. Okay. So is it your testimony that you don't know how
25 your clothes were taken off?

1 A. No.

2 Q. And, Ms. Simpson, that evening you weren't intoxicated
3 at all, were you?

4 A. No.

5 Q. You testified you only had one drink, is that correct?

6 A. Yes, sir.

7 Q. And, I think you -- isn't it true you told the sex
8 assault examiner that you had three drinks or something of
9 that nature?

10 A. No, I don't recall that.

11 Q. Okay. But we can both agree that you weren't under
12 the influence of any drugs or alcohol?

13 A. No, not that would make me not know what I'm talking
14 about, no, sir.

15 Q. And you don't take any medication that affects your
16 ability to remember things, do you?

17 A. No, sir.

18 Q. Okay. And that morning you hadn't suffered any head
19 trauma had you?

20 A. No, but I was -- I suffered being choked.

21 Q. Okay. My question is, you didn't suffer any kind of
22 head trauma, did you?

23 A. No, sir.

24 Q. You don't suffer from any kind of amnesia from this,
25 do you?

C. Simpson- Cross-Examination by Mr. Swilley

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1 A. No, sir.

2 Q. Okay. And it's -- is it your testimony that when your
3 sister, Ann, came in through the unlocked door that you
4 were in the bedroom?

5 A. Yes, sir.

6 Q. Is that correct -- and I think you testified that you
7 came out of the back bedroom and then fell to your knees --

8 A. Yes.

9 Q. --- in front of Ann ---

10 A. Yes.

11 Q. --- is that correct?

12 A. Yes, sir.

13 Q. Is it your -- based on your observation, Ms. Covington
14 couldn't see Mr. Hayes when she walked into the room, she
15 just see you based on your observation?

16 A. No, sir. When I came and fell to my knees, he was
17 right behind me.

18 Q. Okay. Is it your testimony that he was -- he was
19 following you when he came out of the room?

20 A. He was right behind me.

21 Q. Okay. And you fell to your knees?

22 A. Yes.

23 Q. And told her and -- based on your recollection, there
24 would be no -- well, let me rephrase this. Are you telling
25 me that when she would have came the room and you came out,

C. Simpson- Cross-Examination by Mr. Swilley

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1 there would have been no confusion about what was going on,
2 right?

3 A. Excuse me?

4 Q. There shouldn't have been any -- well, you said you
5 fell to your knees and screamed that he had raped you,
6 right?

7 A. Yes.

8 Q. There shouldn't have been any confusion about what was
9 going on then, right?

10 A. Well, no, not -- not after I told my sister that
11 because I wouldn't lie.

12 Q. Well, I mean, my question is based on your observation
13 and recollection, there shouldn't have been any confusion
14 about what was going on for Ann, right?

15 A. Explain. Make that -- could you say that where I can
16 better understand?

17 Q. Yes, ma'am. Isn't it true that it would have been
18 readily apparent that what you testified to today was
19 occurring to your sister, is that correct?

20 A. What I --

21 MS. BURCHSTEAD: Objection. Calls for speculation
22 again.

23 MR. SWILLEY: Okay. I'll move on.

24 THE COURT: I'll sustain. I don't know how she can
25 know that.

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1 MR. SWILLEY: I'll move on.

2 Q. I think you testified also that Ann locked herself in
3 the room with children.

4 A. Yes.

5 Q. And you hadn't made any mention of that to anybody in
6 law enforcement as well, is that correct?

7 A. I don't recall.

8 Q. Okay. And you said -- and during direct, you do or
9 you do not recall someone calling 911?

10 A. Either my sister or Elaine, yes.

11 Q. You do recall them calling 911?

12 A. Yes, one of them because they came. The ambulance
13 came and got me.

14 Q. And that's the only person you recall calling 911?

15 A. Yes. At that the time, those were the only two adults
16 around me.

17 Q. The only two adults around you at the time?

18 A. And when I went to Elaine's house, yes.

19 Q. Okay. And it's your testimony you don't know whether
20 or not anyone else called 911, is that right?

21 A. No, I don't.

22 Q. Okay. Ms. -- Ms. Simpson, you also stated to the
23 police, though, that you were throwing up everywhere, is
24 that correct?

25 A. Throwing up? No, I don't recall that.

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1 Q. All right. Is it your testimony that did not tell the
2 police that you were throwing up?

3 A. I don't remember.

4 Q. Okay. So you don't remember if you told them that ---

5 A. I don't recall.

6 Q. Okay. And it's your testimony that -- or is it --
7 well, it's your testimony that he never drug you to the
8 kitchen, right?

9 A. He drug -- yes. He drug me from the door and he was
10 trying to cut my neck and I put my fingers ---

11 Q. It's your testimony that he drug you to the kitchen?

12 A. Yes.

13 Q. Okay. And you don't -- and you testified that this is
14 before or after you'd been stabbed?

15 A. This was before. He was trying to cut my neck at the
16 time when he drug me in the kitchen.

17 Q. He drug you into the kitchen, is that correct?

18 A. Yes.

19 Q. Okay. Now -- and you testified that he had taken a
20 knife from your bedroom, is that correct?

21 A. No, I never said that.

22 Q. Okay. Is it your testimony that he had taken a knife
23 from your kitchen?

24 A. I didn't see him go into the kitchen and get it but it
25 was obvious that he had to get it from the kitchen.

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1 Q. It's your testimony he had a knife in the bedroom, is
2 that correct?

3 A. I don't recall that.

4 Q. It's your testimony that he drug you in the kitchen
5 while he was trying to cut you with a knife, right?

6 A. Yes.

7 Q. Okay. And this is before Mr. Hayes had been in the
8 kitchen?

9 A. I don't recall him going into the kitchen before that.
10 The only thing I know is he drug me in the kitchen ---

11 Q. Okay.

12 A. --- trying to cut my neck.

13 Q. And Mr. Hayes didn't have -- we can agree that Mr.
14 Hayes didn't have a knife that evening when he came into
15 your home, did he?

16 A. Not that I recall.

17 Q. Okay. And you don't keep knives in your bedroom, do
18 you?

19 A. No, sir.

20 Q. Okay. Now, Ms. Simpson, in -- in your apartment that
21 evening there were some things that you didn't know, right?

22 A. Meaning?

23 Q. Right. For instance, I think there was a Playstation
24 game in your house, right?

25 A. My son has one.

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1 Q. It's your son's Playstation. And there were some Air
2 Jordans in your house, right?

3 A. Not laying around. If there was, they would have been
4 in the closet because my son he wears Jordans.

5 Q. There were some adult -- your sons are what ages, now?

6 A. He -- my oldest -- I have two, eleven and six.

7 Q. Okay. And they don't wear adult Air Jordans, do they,
8 at the time -- they didn't wear adult Air Jordans at the
9 time, did they?

10 A. No.

11 Q. Okay. And it's your testimony that there were, there
12 were not adult Air Jordans in your apartment?

13 A. I don't recall.

14 Q. Okay. And there were Playstation games, I believe, in
15 the drawer and a piece of furniture in your room, is that
16 correct?

17 A. Playstation games?

18 Q. Yes, ma'am.

19 A. I can't recall that.

20 Q. Okay. And, Ms. Simpson, you previously told law
21 enforcement that you had been bitten, is that correct?

22 A. No. I never said that I had been bitten.

23 Q. Never testified that, or excuse me, I think you
24 testified that you bit Mr. Hayes, is that correct?

25 A. I -- the only thing I -- I really don't really

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1 remember. The only thing I know is that something got him
2 off me. I don't recall biting.

3 Q. Okay.

4 A. But I could have.

5 Q. Okay. You don't know whether or not you bit Mr.
6 Hayes, is that correct?

7 A. I can't remember that.

8 Q. Okay.

9 A. I don't remember.

10 Q. And I think you told the police that you had scratched
11 somebody, is that correct?

12 A. I don't recall that.

13 Q. Okay. And you do recall them taking samples from your
14 fingernails, right, from under your fingernails?

15 A. I don't remember.

16 Q. Okay. So, Ms. Simpson, just so I'm clear, you don't
17 recall whether or not you vomited, right?

18 A. No.

19 Q. You don't recall whether or not Mr. Hayes put a condom
20 on, is that correct?

21 A. I know he did but I don't know how many hands he used.

22 Q. Okay. And you don't recall how you got undressed, is
23 that correct?

24 A. No. I just remember being naked the next morning.

25 Q. And you don't recall whether or not you bit anybody,

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1 is that correct?

2 A. No.

3 Q. Okay. You don't recall whether you scratched anybody,
4 is that correct?

5 A. No.

6 Q. And I think you said that you were in and out of
7 consciousness, is that correct?

8 A. Yes. Because ---

9 Q. And you told the doctors at the hospital that you
10 didn't lose consciousness, is that correct?

11 A. No, I doubt that, sir.

12 Q. Okay. Do you know -- do you know -- do you why
13 whether or not your medical records indicate that you said
14 you didn't lose consciousness?

15 MS. BURCHSTEAD: Objection. Cause for speculation.

16 A. No. No, sir.

17 THE COURT: Wait a minute.

18 A. No, sir.

19 MS. BURCHSTEAD: Outside her knowledge of the
20 medical records.

21 MR. SWILLEY: My question asked for a, based upon her
22 knowledge, if she knew whether or not -- if she knew why
23 whether or not something would be contrary to what she
24 said.

25 THE COURT: Has she reviewed the medical records?

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1 MR. SWILLEY: I'm not aware of that, Your Honor.

2 THE COURT: If she hasn't reviewed the medical
3 records, she couldn't answer that question.

4 MR. SWILLEY: Okay.

5 THE COURT: I mean, you can ask her if she's
6 reviewed the records ---

7 Q. Ms. Simpson, have you reviewed your own medical
8 records today?

9 A. No.

10 Q. Or at any time?

11 A. No, sir.

12 Q. Okay. And don't remember or recall having
13 conversations with the doctors, right?

14 A. Couple of times, Dr. Mijalli.

15 Q. Dr. Mijalli, right? He's the doctor at McCleod that
16 did treated you, is that correct?

17 A. Yes, it is.

18 Q. Okay. And you don't recall -- you recall whether or
19 not you discussed anything about consciousness at the time?

20 A. No. Because he was just worried about my hands at the
21 time.

22 Q. Okay. You don't recall that?

23 A. No.

24 Q. Ms. Simpson, it's true to say you didn't, during your
25 Facebook conversations with Mr. Hayes, you didn't want Mr.

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1 Hayes to text your phone, is that right?

2 A. He didn't have my number.

3 Q. Okay. My question is you didn't want Mr. Hayes to
4 text your phone, is that right?

5 A. No. I didn't give him my phone number. No, sir.

6 Q. You didn't want him to text your phone?

7 A. No.

8 Q. Okay. And you just wanted to speak with him over
9 Messenger, is that correct?

10 A. Yes, that was better for me.

11 Q. Better for you?

12 A. Yes. It was better just to conversate -- it was still
13 a conversation.

14 Q. Okay. You didn't want any text messages showing up on
15 your phone from Mr. Hayes, is that correct?

16 A. No, it wasn't that. I just didn't want him to have my
17 number.

18 Q. Okay. You didn't want him to have your number?

19 A. No, sir.

20 Q. All right. But you did want him to have Facebook --
21 you did want to be connected on Facebook Messenger, right?

22 A. Excuse me?

23 Q. You did want to be connected with him on Facebook
24 Messenger, right?

25 A. That was fine.

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1 Q. Okay. And he knew where you lived, right?

2 A. Yes. Only because he seen me going there one day.

3 Not -- other than the night he came in.

4 Q. And he told you where he lived, right?

5 A. Yes.

6 Q. Okay. But you didn't want him to text you, right?

7 A. No, sir, but it still was texting on Messenger.

8 Q. I'm sorry. Say that again, please?

9 A. I said no, sir, but it still was called texting when
10 you're on Messenger.

11 Q. Okay. And, Ms. Simpson, based upon your recollection,
12 you don't recall any adult men being around Maplewood at
13 the time you were being or at the time that, that 911 was
14 called, is that correct?

15 A. No, sir, it was just me and my sister. When I ran
16 around the building, it was my sister, was the only person
17 I seen and I went inside Elaine's house.

18 Q. Okay. And during your Facebook conversations with Mr.
19 Hayes, you would tell him what you were doing, right?

20 A. Yes. Like I had to do hair or something like that.

21 Q. You told him where you were going, right?

22 A. I don't recall what all the messages was about.

23 Q. You recall telling him you were going down to Florence
24 to go to Sam's, right?

25 A. I could have.

1 Q. Okay. That's a yes or a no?

2 A. Like I said, I don't recall everything that was in the
3 messages, but I could have.

4 Q. Okay. You disclosed a lot of information to him about
5 what you were doing, right?

6 A. I could have, yes, sir.

7 Q. Right. And you told him about the kind of food you
8 were cooking, right?

9 A. I don't recall that. I could have, but I don't recall
10 all the messages.

11 Q. Okay. And that evening, I think, you had left your
12 children with, with Ann to take care of that night, right?

13 A. Yes.

14 Q. And y'all had a set time about when the children were
15 going to be brought back, is that correct?

16 A. Well, when they start getting on her nerves.

17 Q. When they start getting on her nerves?

18 A. That's when she'll bring them back. We really -- we
19 really didn't have a set time.

20 Q. So your testimony is you just drop your children off
21 with your sister and she would bring them back whenever
22 they get annoying?

23 A. Well, when they -- well, when she's tired, you know,
24 children can be a little active.

25 Q. Okay. And, Candace, when you got out of the hospital

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1 it wasn't long before you started going back out to
2 nightclubs, is that correct?

3 A. It took a little while.

4 MS. BURCHSTEAD: Objection. Relevance.

5 THE COURT: I'll overrule the objection. You can
6 ask the question.

7 Q. Ms. Simpson, my question was, it didn't take long
8 before you started going out to nightclubs again, is that
9 correct?

10 A. It took a while.

11 Q. A while meaning a couple of weeks?

12 A. I went to a tailgate.

13 Q. Okay. My question to you was, a while before you
14 started going out to nightclubs, that was a week or two?

15 A. When I -- no, I'm going to say a little bit longer
16 than that. I healed up. I was healed. My wounds weren't
17 -- they were healed up.

18 Q. When they healed up, you started going out to
19 nightclubs again, is that correct?

20 A. I did go.

21 Q. Okay.

22 A. I have went.

23 Q. And coming home about the same time, is that correct?

24 A. No. They didn't stay -- well, after I go out I would
25 come straight home because I didn't need another event to

1 occur.

2 Q. Okay. And you were doing this about every weekend ---

3 A. No, sir.

4 Q. --- you got a chance?

5 A. No, sir.

6 Q. Okay. Ms. Simpson, this isn't the first time you've -
7 - well, let me back up, you've -- you've had plenty of time
8 to discuss and prepare your testimony with the prosecution,
9 haven't you?

10 A. Yes, I have.

11 Q. Okay. You've talked to them multiple times about
12 testifying today, is that right?

13 A. Yes.

14 Q. You've done a lot of preparation, haven't you?

15 A. Yes. Yes, sir.

16 Q. Had a lot of time to refresh your memory, is that
17 correct?

18 A. Well, can I explain it? My memory didn't need be
19 refreshed, sir.

20 Q. Okay. Your memory didn't need to be refreshed, is
21 that correct?

22 A. No, sir. I just told them what all happened.

23 Q. Memory didn't need to be refreshed but you've added a
24 lot of stuff to your story that you didn't tell the police,
25 is that correct?

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1 A. Well, can I explain? At the time when -- after this
2 happened, I didn't really talk about it a lot. But I did
3 open up more with the attorneys because they asked every
4 question that needed to be, they needed to know.

5 Q. Okay. Just so I'm clear, you've added more facts the
6 longer time goes by, is that correct?

7 A. Well, that came back to me, yes, sir.

8 Q. Okay. And you added facts about the oral sex that you
9 say occurred, is that correct?

10 A. No. we always -- I always told them that.

11 Q. Okay. It's your testimony that you told everybody in
12 this investigation that you'd been forced to have oral sex,
13 right?

14 A. I told the, my attorneys.

15 Q. Okay. Never told that to the police, is that correct?

16 A. I don't recall. I could -- I don't recall.

17 Q. Okay. Now, this knife blade that you turned in to the
18 police or that you turned in to Mr. Turner, right, that
19 was, you said your son found that a week after?

20 A. I don't know the exact how long it was after. I just
21 remember him finding it and I took it to Jason.

22 Q. And it's your testimony that knife was used in an
23 assault against you?

24 A. I'm not sure. I just took the knife, you know,
25 because it could have been evidence.

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1 Q. Okay. So just so I'm clear, you didn't know whether
2 or not this knife blade that your son had found was
3 involved in any assault yet you took it to the police
4 anyway?

5 A. I did because I don't keep knives in my room and so I
6 took it because I don't keep knives in my room.

7 Q. Ms. Simpson, as far as it pertains to this knife, you
8 say it was about a week after you say this happened?

9 A. I don't recall the exact --

10 THE COURT: The microphones have gone out so you
11 need to speak a little bit louder, please for the jury.

12 A. Okay. I don't recall the exact time after it happened
13 when I took it.

14 Q. And your testimony is -- your testimony is that you
15 don't know whether or not this had any evidentiary value,
16 is that correct?

17 A. I didn't know.

18 Q. You didn't know? Okay. But you took this to
19 Investigator Turner, is that correct?

20 A. Yes, just to be on the safe side.

21 Q. And this -- this -- this knife blade was not given to
22 you by anyone other than your son, is that right?

23 A. No, sir.

24 Q. Okay. So as far as you're concerned, this knife blade
25 was recovered by your son after all the police had searched

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1 and done their investigation in your apartment, is that
2 right?

3 A. Yes.

4 Q. Okay. And do you know of any reason why the police
5 would have missed this particular knife blade in their
6 investigation?

7 A. Yes, because it was behind the dresser. Nothing was
8 really messed up in the apartment. That's probably a good
9 reason why.

10 THE COURT: I'm going to ask you to speak up just a
11 little bit and make sure everybody can hear you.

12 A. They probably missed it because nothing was really
13 messed up in the apartment so they probably didn't think
14 there was any need to look behind the dressers and stuff.

15 Q. Ms. Simpson, you testified that you invited Mr. Hayes
16 in and it was about twenty minutes before he made an
17 advance toward you, is that correct?

18 A. I don't know the exact time. Like I said before, he
19 sat down, I turned the TV on, I went and washed and got my
20 clothes on and I came back out. So it could have been
21 about thirty, about thirty minutes.

22 Q. And it's your testimony that you invited him in there
23 just to have a conversation?

24 A. Yes, sir. My intentions were not to have sex.

25 Q. Y'all had a conversation outside of your apartment

1 complex, is that correct?

2 A. Yes, he just -- he asked me to add him on Facebook.

3 Q. No, I'm talking about that evening. Y'all were having
4 a conversation out in the parking lot when y'all got
5 dropped off, is that correct?

6 A. Only conversation we had was when he asked me could he
7 come in and I said sure but nothing was going to happen.

8 Q. All right. When y'all got out in the parking lot,
9 y'all were standing around in the parking lot talking,
10 right?

11 A. Standing -- no, we just got out the car. Everybody
12 was about to go their separate ways and he asked could he
13 come in.

14 Q. Okay. And your testimony is that you weren't standing
15 around in the parking lot for a while talking before y'all
16 went in the house, right? Is that your testimony?

17 A. No, we walked to the door after that. After he asked
18 could he come in, we walked up to the door.

19 Q. It's your testimony that you got directly out of the
20 car and walked towards the apartment?

21 A. He asked could he come in. That was the only stand
22 around when he asked could he come in and then we walked to
23 the door.

24 Q. And this is, approximately, 5 o'clock in the morning?

25 A. In between -- it wasn't -- it wasn't later than six.

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1 It was in between there somewhere.

2 Q. All right. Now, just so I'm clear and I'm hard of
3 hearing, are you telling me it was between five and six
4 when this occurred?

5 A. It was -- I don't know the exact time but I know it
6 wasn't daylight outside.

7 Q. Okay.

8 A. So it was -- it was after four, I'm pretty -- it had
9 to be in between four and six.

10 Q. In between four and six?

11 A. Yes.

12 Q. So way past the time you ordinarily go to bed, right?

13 A. Excuse me?

14 Q. Way past the time you ordinarily go to bed, correct?

15 A. Yes. I go to bed earlier than that.

16 Q. You go to bed earlier than that, right?

17 A. Yes.

18 THE COURT: Speak up, please.

19 A. Oh, sorry about that. I'm sorry.

20 Q. It's way past the time you ordinarily go to bed,
21 right?

22 A. Meaning like, do I go to bed earlier than that? Is
23 that what you're trying to say?

24 Q. Ordinarily, is that past the time you go to bed?

25 A. Yes, six -- four, yes, sir, it's past the time.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. And it's your testimony that you had every intention
2 of going back to your house and going to sleep as soon as
3 possible?

4 A. Yes, if he was -- if he wasn't asked to come in, I
5 would have went to sleep because I had hair to do the next
6 day.

7 Q. Okay. So my question to you was, when you went back
8 home after y'all had been out to the nightclub, you
9 intended to go back to your apartment and go to sleep and
10 that's it --

11 A. Yes.

12 Q. -- is that correct?

13 A. Yes.

14 Q. And you invited Mr. Hayes into your home, is that
15 correct?

16 A. Yes, I invited him in.

17 MR. SWILLEY: One moment please, Your Honor.

18 THE COURT: Yes, sir.

19 Q. And, Ms. Simpson, it's your testimony that you don't
20 know how long you were in that apartment with Mr. Hayes
21 before your sister came to the door?

22 A. It was a couple of hours.

23 Q. Did you say a couple of hours?

24 A. Yes.

25 Q. It's your testimony that you didn't have the TV on?

C. Simpson- Cross-Examination by Mr. Swilley

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1 A. Not in my room. The TV was on in the living room
2 before.

3 Q. Okay.

4 A. Because he was sitting down watching it while I
5 washed.

6 Q. I'm sorry, what now?

7 A. He was sitting in the living room watching TV as I
8 washed.

9 Q. Okay. Ms. Simpson, do you agree if you had no
10 intention of having any kind of encounter with Mr. Hayes,
11 there was no reason for him to come in the house, right?

12 A. Excuse me? Well, I just feel like it's not all about
13 that.

14 Q. Ms. Simpson, it was well after four in the morning.

15 A. Yes, sir.

16 Q. You had to be up to do hair the next day, right?

17 A. Yes, sir.

18 Q. Do you agree with me there was no reason to bring Mr.
19 Hayes into your home -- well, let me -- let me stop myself.
20 Let me rephrase that. It's your testimony today that you
21 invited Mr. Hayes to come into your home just to have a
22 conversation?

23 A. And watch TV until I was ready --

24 THE COURT: Speak up, please.

25 A. And watch TV until I was ready to go to bed.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. And nothing more?

2 A. Nothing more.

3 Q. Between four and six in the morning?

4 A. Yes, sir.

5 Q. It's your testimony that subsequent to that he goes
6 into a rage and forces himself on you at that point?

7 A. Yes.

8 Q. And then it's your testimony that he commences to stab
9 your sister and you, that's your testimony?

10 A. Yes.

11 Q. And that no other individual was present, is that
12 correct?

13 A. Yes.

14 Q. And Mr. Hayes is the only person you've ever brought
15 into your home that late whose name you didn't know, is
16 that correct?

17 A. Yes.

18 Q. You're not in the habit of bringing men into your home
19 late night, early morning when you don't know their first
20 or last name, is that correct?

21 A. No, sir.

22 Q. Your testimony is that this is the first and only time
23 that you did that?

24 A. Yes, sir.

25 Q. You've never done it before?

C. Simpson- Cross-Examination by Mr. Swilley

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1 A. No, sir.

2 Q. It's your testimony that you don't know when Mr. Hayes
3 left your apartment that morning?

4 A. No, sir. He was still in the apartment when I ran
5 out.

6 Q. And during this time that you say that you were being
7 that you were being stabbed and that your sister was being
8 stabbed, there was a lot of commotion going on?

9 A. The only commotion that was going on at the time is
10 when I jumped on his back when, like I said, I thought he
11 was punching her. I didn't know he was trying to cut her
12 neck at the time.

13 Q. Okay.

14 A. And I jumped on his back and that gave them a chance
15 to make a run into my room.

16 Q. Okay. So it's your testimony that he assaulted your
17 sister first, is that correct?

18 A. Well, he assaulted her after the fact that he had done
19 raped me.

20 Q. Well, I mean, before -- you say he assaulted you, but
21 you say he assaulted your sister first, is that correct?

22 A. Yes, he assaulted her first.

23 Q. And you say he assaulted your sister without any
24 provocation?

25 A. Excuse me?

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. Without any provocation from Ms. Covington, is that
2 correct?

3 A. Explain that, like, break that word down to me.

4 Q. It's your testimony that he assaulted Ms. Covington
5 without her doing anything, is that correct?

6 A. She just was trying to get away.

7 Q. So it's your testimony that she walked in and then she
8 tried to leave and that Mr. Hayes assaulted, just began to
9 assault her?

10 A. No, she didn't try to leave. She asked him to leave.

11 Q. Okay.

12 A. And that's when he assaulted her.

13 Q. Okay.

14 A. And I jumped on his back.

15 Q. And, Ms. Simpson, you know the definition of
16 provocation, don't you?

17 A. No.

18 Q. Okay. And you said -- you said you saw him, it looked
19 like he was punching her?

20 A. Yes. I didn't know he had a knife at the time.

21 Q. And you say, you don't know where and when he got this
22 knife?

23 A. No, I'm not sure.

24 Q. Okay. And you testified that he drug you into the
25 kitchen while you were bleeding, is that correct?

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1 A. He drug me into the kitchen when he was trying to cut
2 my neck and I put my fingers up.

3 Q. Okay. When you were bleeding, is that correct?

4 A. I'm pretty sure I was bleeding, yes.

5 Q. Okay. And you were bleeding so that it would have
6 left a blood trail from the bedroom into the kitchen?

7 A. It wasn't from the bedroom. It was from the door in
8 the living room.

9 Q. The living room. So ya'll got out of the bedroom and
10 into the living room and that's when he drug you into the
11 kitchen?

12 A. We were in the hallway. When he -- when my sister
13 came in, I fell down in the hallway, mid hallway, to my
14 knees and I told her that he had raped me. So from there
15 we was pretty much in the hallway at first. That's when he
16 -- when she asked him to leave, he started on her. Like I
17 said, I thought he was punching her but I didn't know he
18 had a knife at the time. When I jumped on his back, that
19 got my sister and my nephew and my son free to run. And
20 then I ran, tried to get out the front door. I opened it
21 just a little bit before he shot it closed and he drug me
22 by the neck and tried to cut my neck but I put my fingers
23 up.

24 Q. So he drug you from the front door to the back or ---

25 A. It was just right here beside the kitchen sink and the

C. Simpson- Cross-Examination by Mr. Swilley

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1 stove. The stove is right here (demonstrating), my head
2 was where the stove was, and the kitchen sink is right here
3 (demonstrating).

4 Q. Now, based on your observation, Mr. Hayes wasn't under
5 the influence of any kind of drug or substance, was he?

6 A. I'm not sure.

7 Q. Okay. You don't know?

8 A. No, sir.

9 Q. Now, you testified that or you stated to Investigator
10 Turner that he was on the floor stabbing you and that's
11 when he went -- and that's when he went back to cut your
12 sister. You weren't sure, is that correct?

13 A. He went after my sister. When he was stabbing me on
14 the floor, he heard the door open which was my sister and
15 them run -- my sister running out with the kids. He went
16 to go see and that gave me a chance to get up and run out
17 the back door.

18 Q. Ms. Simpson, I asked you what you told Investigator
19 Turner at the hospital. You told Investigator Turner isn't
20 -- well, I mean, isn't it true that you told Investigator
21 Turner that he had you on the floor stabbing you and stuff
22 and then went back to the room so that's when he might have
23 tried to cut my sister, I'm not sure. Isn't that what you
24 told Investigator Turner?

25 A. I'm not sure about that.

C. Simpson- Cross-Examination by Mr. Swilley

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1 Q. You don't recall?

2 A. No. Only thing I know is what happened before when he
3 was -- like, he was cutting her at the time but I didn't
4 know that he was cutting her. I thought he was just
5 beating her.

6 Q. Okay.

7 A. I don't recall.

8 Q. And you don't know why you would've told Investigator
9 Turner differently?

10 A. No.

11 Q. And, Ms. Simpson, you testified that he, excuse me,
12 you told Investigator Turner differently that he drug you
13 in the kitchen and threw you on the floor of the kitchen,
14 isn't that correct?

15 A. Yes, he did.

16 Q. Okay. And then you said at that time, you said that
17 he had to get it out of my kitchen drain, isn't that true?

18 A. No.

19 Q. You didn't tell Investigator Turner that?

20 A. I don't recall that ---

21 Q. Okay. You did or you did not tell ---

22 A. --- at the kitchen ---

23 Q. --- Investigator Turner that?

24 A. I don't recall.

25 Q. Okay. Ms. Simpson, I'm going to ask you to read lines

C. Simpson- Cross-Examination by Mr. Swilley

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1 7 -- that sentence on line 7 and 8 right here.

2 A. You said 7 and 8?

3 Q. It's lines 7 and 8.

4 A. He got -- he get it out the kitchen in my drain.

5 Q. Okay. Thank you. And, Ms. Simpson, we can agree that
6 your -- we can agree that your memory would be a lot better
7 the day this happened than three years later. Can we agree
8 on that?

9 A. I'm not going to say that, sir.

10 Q. That's a no or yes?

11 A. I'm going to say that at the time, you know,
12 everything was just messed up so I'm not going to agree to
13 that, sir.

14 Q. Ms. Simpson, just so I'm clear, it's your testimony
15 that your memory is better three years later in front of
16 this jury than at the time you were talking to Investigator
17 Turner, is that correct?

18 A. I'm going to say a few weeks later. Because at the
19 time, you know, it wasn't all there. I didn't remember
20 everything.

21 Q. Okay. It's your testimony the day of, you didn't
22 remember as much as you remember afterwards?

23 A. Yes. Because I was on medications and stuff when he
24 came in and I talked to him.

25 Q. And these medications, you don't know whether or not

C. Simpson- Cross-Examination by Mr. Swilley

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1 they made you tell things that are different from the
2 truth, right?

3 A. No, I -- no, sir.

4 Q. All right. And based on your information these
5 medications didn't cause you to lie to anybody, did they?

6 A. No. No, sir.

7 Q. And you told Investigator Turner that when your sister
8 got there that Mr. Hayes told you -- that she came in, Mr.
9 Hayes told you, you better not scream. You told
10 Investigator Turner that, is that correct?

11 A. Uh, uh. I don't recall at the time.

12 Q. Okay. So just -- just so I'm sure, you testified
13 today that you ran directly into the living room and said -
14 -

15 A. It was mid hallway.

16 Q. -- into the hallway and said that he raped you, right?

17 A. Yes.

18 Q. And then, do you recall telling Investigator Turner
19 that Mr. Hayes said, shhhh you better not scream, do you
20 recall saying that?

21 A. I could have. I don't recall it at the moment.

22 Q. You don't recall that?

23 A. I could have.

24 Q. And you testified or, excuse me, you made no mention
25 in your direct testimony that Mr. Hayes threw you, is that

1 correct?

2 A. I do. I do remember -- I don't remember during direct
3 testimony, but I do remember that happening, him throwing
4 me down in the kitchen, stabbing me.

5 Q. Okay. And you stated that you recall him throwing you
6 in the kitchen, right?

7 A. Yes.

8 Q. And your testimony is that he didn't throw you in the
9 bedroom?

10 A. No. He didn't throw me, he just dragged me in the
11 bedroom.

12 Q. Okay. You told Investigator Turner that every time he
13 would just throw me like a rag doll ---

14 A. No, I don't ---

15 Q. --- when you said he was raping you, is that true?

16 A. I don't recall that.

17 Q. You don't recall?

18 A. No.

19 Q. Do you deny that you said that?

20 A. I don't recall saying that. I'm just -- I don't
21 recall.

22 Q. Ms. Simpson, you would agree that there's a lot of
23 difference between your testimony here today and what you
24 initially told the police, isn't there?

25 A. Some things that you said I didn't recall.

C. Simpson- Redirect Examination by Ms. Burchstead 184

1 Q. Just to clarify my question, you would agree with me
2 that there's a lot of difference between what you told the
3 police initially and your testimony here today, is that
4 correct?

5 A. Not too much difference.

6 Q. Not too much difference?

7 A. I -- no, sir.

8 Q. Okay.

9 MR. SWILLEY: Nothing further.

10 THE COURT: Ms. Burchstead?

11 MS. BURCHSTEAD: Thank you, Your Honor.

12 **Redirect Examination by Ms. Burchstead:**

13 Q. Okay. Ms. Simpson, going back to when you were
14 talking to Reedy Boss on Facebook, and whatever
15 interactions you had with him before this night, is it fair
16 to say you might have liked him a little bit?

17 A. Yes, he was okay.

18 THE COURT: All right. I'm going to ask you to
19 speak up again.

20 A. Oh, I'm sorry. I forgot about the mic. Yes, ma'am,
21 he was fine. He was okay.

22 Q. Mr. Swilley asked you about the walls being thin and
23 knocking on the walls, did you call for help that night?

24 A. Yes, I tried. I tried to scream but he choked me
25 instantly.

C. Simpson- Redirect Examination by Ms. Burchstead 185

1 Q. So did you quit screaming?

2 A. Yes.

3 Q. Okay. Why did you quit screaming?

4 A. His hands was around my throat.

5 Q. Did you feel like you could leave?

6 A. No.

7 Q. Why not?

8 A. Because I didn't have a plan.

9 Q. Were you afraid?

10 A. Yes.

11 Q. What were you afraid of?

12 A. I never been choked before so....

13 Q. And when he had put his hands around your neck, what
14 would happen?

15 A. I couldn't breathe.

16 Q. I think you had said to me and maybe Mr. Swilley that
17 you had lost consciousness, is that right?

18 A. Yes. It had to be because every time it just -- I
19 would just wake up like out and just wake up. And like I
20 said, he was standing there watching me when I ---

21 Q. You said every time, does that mean it happened more
22 than once?

23 A. Yes. It's two times I woke up like I -- when the rape
24 happened, I didn't recall when that finished. I just
25 remember waking up and it was daylight. And I fell out of

C. Simpson- Redirect Examination by Ms. Burchstead 186

1 consciousness again and like I told you that was when my
2 legs felt weak and he needed to help me to the bathroom.

3 Q. So to be clear, you remember passing out more than
4 once?

5 A. Yes.

6 Q. And every time you woke up, he was there, is that
7 right?

8 A. Yes.

9 Q. So when he put on a condom or when you remember him
10 putting on a condom, did you feel like you could leave?

11 A. No.

12 Q. Do you recall a condom during the oral sex?

13 A. No, it wasn't.

14 Q. So when you talked to law enforcement at the hospital,
15 was that right after surgery?

16 A. Yes.

17 Q. How did you feel at the time you were talking to law
18 enforcement?

19 MR. SWILLEY: Objection, Your Honor. Relevance.

20 THE COURT: She can testify to how she felt. It
21 was her and her condition so go ahead and answer the
22 question.

23 A. I felt relieved to be alive, but hurt that it
24 happened.

25 Q. And was everything you told law enforcement, at that

C. Simpson- Redirect Examination by Ms. Burchstead 187

1 time in the hospital, true?

2 A. Yes. Everything I told him was what happened. I
3 might didn't tell him in the exact order but it was what
4 happened.

5 Q. Did you tell him every single detail?

6 A. We didn't really get into everything at the hospital.

7 Q. Did you answer their questions?

8 A. Yes.

9 Q. So when you were in the hospital, was that right after
10 the attack?

11 A. Yes.

12 Q. So it was right after EMS had brought you to the
13 hospital?

14 A. Yes, ma'am.

15 Q. When you ran to the neighbor for help -- or let me
16 back up, what was -- why were you running to the neighbor?

17 A. Because I had been stabbed and I was bleeding.

18 Q. Did you know everything going on around you other than
19 the attack?

20 A. No.

21 Q. Did you know where Reedy Boss or Tyreek Hayes was when
22 you were running to the neighbor?

23 A. No. The only thing I know I ran and he was still in
24 there when I ran out.

25 Q. He was still in there?

C. Simpson- Redirect Examination by Ms. Burchstead 188

1 A. Yes.

2 Q. And which door did you go out?

3 A. The back slide door.

4 Q. And which door did your sister go out?

5 A. The front door.

6 Q. So the attack on your sister and you ---

7 A. Yes, ma'am.

8 Q. --- how fast was the attack?

9 A. I don't know. It was -- it didn't take long to
10 escalate from her to me.

11 Q. Is it fair to say whether you thought there might be a
12 sexual encounter or not, you certainly didn't intend on
13 getting stabbed and sliced with a knife that night?

14 A. No, ma'am, I didn't.

15 Q. When he was -- when Tyreek Hayes was fighting with
16 your sister, can you remind us where they were?

17 A. Mid hallway.

18 Q. Did anybody ever end up on the bed?

19 A. No, not during this time. No, ma'am.

20 Q. During the struggle and the attack, is it fair to say
21 the apartment is kind of small?

22 A. Yes, ma'am.

23 Q. And from the bedroom to the kitchen ---

24 A. It's not ---

25 Q. --- and the hallway is pretty tight?

C. Simpson- Recross-Examination by Mr. Swilley

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1 A. Yes, ma'am.

2 Q. Do you have permanent scars from this attack?

3 A. Yes, ma'am.

4 Q. Where are your scars?

5 A. Here (pointing), here (pointing), here (pointing), my
6 finger won't bend. My fingers was badly severed. My thumb
7 was hanging.

8 THE COURT: I'm sorry, what was the last thing you
9 said?

10 A. My thumb was hanging. I have -- I had to get staples
11 here (pointing), down on my legs. It's just mainly here in
12 the chest, my face, my neck and stuff.

13 Q. Do you have any question who did this to you?

14 A. No, ma'am.

15 MS. BURCHSTEAD: I beg the Court's indulgence.
16 Nothing further.

17 THE COURT: Mr. Swilley?

18 MR. SWILLEY: Just briefly, Judge.

19 **Re-cross Examination by Mr. Swilley:**

20 Q. Ms. Simpson, I may have misheard you, but did you
21 testify on redirect that this whole incident took thirty
22 minutes?

23 A. No, I said it was from her to me.

24 Q. From her to you?

25 A. Yes, from when it -- when he -- when I jumped on her,

C. Simpson- Recross-Examination by Mr. Swilley 190

1 his back to get him off of her, she ran into the room. I
2 didn't say the exact time.

3 Q. No. I was asking you when Ms. Burchstead had asked
4 you, how long this whole -- how long did this take, did you
5 say it was thirty minutes, that it took thirty minutes?

6 A. No, sir. I said it didn't take -- I don't remember
7 the exact words I used, but I know it didn't take a lot of
8 time. I didn't say thirty minutes.

9 Q. Okay.

10 MR. SWILLEY: Thank you.

11 MS. BURCHSTEAD: Nothing further.

12 THE COURT: All right. You can step down, ma'am.
13 Thank you.

14 A. Thank you.

15 THE COURT: Okay. We're going to take a short break
16 right now. Ladies and gentlemen, I'm going to give you a
17 chance to go freshen up, whatever we need to do. Go take a
18 short brea. Stretch your legs. As I've told you before do
19 not discuss anything about the testimony that you've heard
20 so far when you go back into your jury room amongst
21 yourselves. Everybody remain seated while the jury goes
22 out.

23 (Whereupon, the jury exits the courtroom at 11:29 a.m.)

24 THE COURT: Let me make sure the jury's gone down the
25 hall. Wayne, can you make and see if the jury's gone down.

C. Simpson- Recross-Examination by Mr. Swilley

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1 All right. We can take a break now.

2 (Whereupon, the court took a short break)

3 THE COURT: Counsel, you ready for the jury?

4 MR. KOZAK: Yes, sir, Your Honor.

5 MS. BURCHSTEAD: Yes, sir.

6 THE COURT: Bring them in.

7 (Whereupon, the jury enters the courtroom at 11:49 a.m.)

8 THE COURT: You may call your next witness.

9 MS. BURCHSTEAD: Thank you, Your Honor. The State
10 calls Ann Covington. We'll bring her in, Your Honor.

11 (Whereupon, the State retrieves the witness from the back)

12 THE CLERK: Place your left hand on the Bible and
13 raise your right hand.

14 MS. COVINGTON: Say my name?

15 THE COURT: Left hand on the Bible and raise your
16 right hand.

17 THE CLERK: --- raise your right hand. Do you
18 solemnly swear or affirm the testimony you're about to give
19 the Court and jury on this case is the truth, the whole
20 truth, and nothing but the truth so help you God?

21 MS. COVINGTON: Yes, ma'am.

22 THE CLERK: Have a seat in the jury box and state
23 your full name for the court, spelling your last first
24 please.

25 THE COURT: Ma'am, we don't have the benefit of the

A. Covington- Direct Examination by Ms. Burchstead 192

1 mic system now -- the sound system. You've got to speak
2 loudly and clearly when you answer questions and say
3 anything.

4 MS. COVINGTON: Okay.

5 ANN COVINGTON, first
6 being duly sworn, testified as follows:

7 **Direct Examination by Ms. Burchstead:**

8 Q. Good morning. Did she give her name?

9 THE COURT: Not --

10 A. Ann Covington.

11 Q. And spell your last name.

12 A. C-o-v-i-n-g-t-o-n.

13 Q. And what is your date of birth?

14 A. [REDACTED].

15 Q. So how old are you?

16 A. 41.

17 Q. And where do you live?

18 A. Medina Drive in Dillon.

19 Q. So you live in Dillon?

20 A. Uh-huh.

21 Q. Have you always lived in Dillon?

22 A. Yes, ma'am.

23 Q. Do you work?

24 A. Yes, ma'am.

25 Q. What do you do?

A. Covington- Direct Examination by Ms. Burchstead 193

1 A. A twister at Mohawk in Bennettsville.

2 Q. How long you been doing that?

3 A. Thirteen years.

4 Q. Do you have a sister named Candace?

5 A. Yes, ma'am.

6 Q. Is she older or younger?

7 A. Younger than me.

8 Q. She has children?

9 A. Yes, ma'am.

10 Q. Do you ever help out and watch her kids?

11 A. Yes, ma'am.

12 Q. And where do you live -- who do you live with?

13 A. My mother.

14 Q. I want to go back to 2016, the night of September of
15 30th, were you watching your sister's son?

16 A. Yes, ma'am.

17 Q. Or I guess both her kids, right?

18 A. Yes, ma'am.

19 Q. Okay. And that was with your mom?

20 A. Mmm, hmm.

21 THE COURT: Say yes or no please, ma'am, when you
22 answer these questions.

23 A. Yes, sir.

24 MS. BURCHSTEAD: Thanks, Judge.

25 Q. So you had the children on September 30th, was that a

A. Covington- Direct Examination by Ms. Burchstead 194

1 Friday night, do you remember?

2 A. A Friday night, yes, ma'am.

3 Q. And going into the morning of October 1st, were you
4 taking one or both of her children back to her?

5 A. I was taking one of them.

6 Q. Tell us about that.

7 A. After breakfast I went to go take her son -- well, I
8 had both my nephews, two small ones, and I went to go take
9 hers home first.

10 Q. Okay. Why were you taking him home -- nephew, right -
11 --

12 A. Yes.

13 Q. --- why were you taking him home first?

14 A. Because they were just getting on my nerves. They
15 were just playing in the house and I just wanted to take
16 them home to they mama.

17 Q. How old was he at the time, do you remember?

18 A. Two or three.

19 Q. Okay. Kind of that toddler age?

20 A. Yes.

21 Q. Pretty active one?

22 A. Yes, ma'am.

23 Q. Okay. So you took her son and your son, is that
24 right?

25 A. No, my -- my brother's son.

A. Covington- Direct Examination by Ms. Burchstead 195

1 Q. Your brother's son. Okay. Your nephew -- well, both
2 your nephews.

3 A. Yes, ma'am.

4 Q. So you go to take him back to Candace's?

5 A. Yes, ma'am.

6 Q. And where does she live?

7 A. Maplewood Apartments.

8 Q. And that was in the morning, do you remember what
9 time?

10 A. About 8:30, 9 o'clock, somewhere in that time.

11 Q. So you'd had the kids overnight --

12 A. Yes, ma'am.

13 Q. -- and you were taking them back in the morning?

14 A. Yes, ma'am.

15 Q. Did anybody else go with y'all, your mom or anybody
16 else with you?

17 A. No, ma'am.

18 Q. So you and two boys?

19 A. Yes, ma'am.

20 Q. Did you go inside Candace's apartment?

21 A. Yes, ma'am.

22 Q. What happened when you went inside -- did all three of
23 you go inside, let me ask you that first?

24 A. Yes, ma'am.

25 Q. So all three of you went inside?

A. Covington- Direct Examination by Ms. Burchstead 196

1 A. Yes, ma'am.

2 Q. What happened when you went inside?

3 A. I went in her bedroom and I saw she was laying across
4 the bed but the boy was laying across her and then I walked
5 out the room. I said excuse me and I walked out the room.
6 That's when she came out and dropped on the floor and said
7 he's tried to kill me. And that's when he was like no, I
8 wasn't, Candace. And that's when everything started.

9 Q. Okay. Do you remember if she had clothes on? Did you
10 say she had clothes on ---

11 A. She was naked.

12 Q. Do you remember if he had clothes on?

13 A. Seems like he had on a tee shirt and some shorts.

14 Q. Okay. And you say -- where do you recall seeing your
15 sister first when you got in there, where was she?

16 A. She was in her bedroom.

17 Q. And where was he when you first got there?

18 A. In the bedroom.

19 Q. Okay. And what did you do when you saw them?

20 A. I walked out the room.

21 Q. Okay. So when you walked out the room, where were
22 you?

23 A. In the -- I walked in the living room.

24 Q. Okay. Is the living room very far from the --

25 A. No, ma'am. It's right down the hallway.

A. Covington- Direct Examination by Ms. Burchstead 197

1 Q. So is it fair to say the hallway is kind of short?

2 A. Yes, ma'am.

3 Q. Okay. And is it close to -- is the bedroom close to
4 the living room, then?

5 A. Yes, ma'am.

6 Q. And is it kind of close to the kitchen?

7 A. Yes, ma'am.

8 Q. Where were the kids when you first got there?

9 A. In the living room.

10 Q. So you left them in the living room?

11 A. Yes, ma'am.

12 Q. And walked in the bedroom?

13 A. Uh-huh. Yes, ma'am.

14 Q. Okay. So what did you think you'd walked in on?

15 A. I -- I thought I walked in on them having sex.

16 Q. And then you exited the room, is that right?

17 A. Yes, ma'am.

18 Q. Okay. And then tell us exactly what happened after
19 that to the best you can remember.

20 A. That's when he came out and she came out and she
21 started crying and she dropped on the floor and she was
22 like he's trying to kill me and he's saying no I wasn't.

23 Q. So were you in the hallway at this point?

24 A. Yes, ma'am.

25 Q. Okay. So the three of y'all were in the hallway?

A. Covington- Direct Examination by Ms. Burchstead 198

1 A. Yes, ma'am.

2 Q. So what did you do?

3 A. I was in shock. I was just looking at her. And then
4 that's when he walked in the kitchen. And I'm -- then he
5 came to the door where we was standing by her bedroom and I
6 told him he wasn't going back in that room where my sister
7 was. And that's when he turnt to walk and then he turnt
8 toward me and pushed me. And that's when got on top of me
9 and started -- I thought he was hitting me but I never felt
10 anything -- that's when he started stabbing me.

11 Q. Okay. Did you know who this person was?

12 A. I knew him by name but I don't know him like....

13 Q. At the time that you encounter him in Candace's
14 apartment, did you know him? Did you know who she was
15 with?

16 A. When I walked in the room?

17 Q. Yeah.

18 A. No.

19 Q. Yes.

20 A. No, ma'am.

21 Q. Okay. So you said you felt -- did you know you were
22 getting stabbed?

23 A. No, ma'am. I thought he was hitting me but I never
24 felt anything.

25 Q. Where were you when that was happening?

A. Covington- Direct Examination by Ms. Burchstead 199

1 A. On her bed.

2 Q. So you're in -- is it fair to say you were in a fight
3 with him at that point?

4 A. Yes, ma'am.

5 Q. So are you saying you ended up on the bed?

6 A. Yes, ma'am.

7 Q. What happened after you were on the bed?

8 A. Me and him was tussling -- basically I'm trying to get
9 him off of me that's when Candace jumped on his back and
10 got him off of me. That's when I grabbed my nephews cause
11 they was -- they had came in standing to the bedroom door
12 and they was watching me and I grabbed them and ran out the
13 door.

14 Q. Okay. So you grabbed your nephews and ran out the
15 door?

16 A. Mmm, hmm.

17 Q. Which door did you go out?

18 A. The front door.

19 Q. Did you say Candace jumped on his back?

20 A. Yes, ma'am.

21 Q. Is that how you got away?

22 A. Yes, ma'am.

23 Q. At what point did you -- were you actually stabbed or
24 cut with the knife?

25 A. Yes, ma'am.

A. Covington- Direct Examination by Ms. Burchstead 200

1 Q. At what point did you realize that?

2 A. After I got out the house.

3 Q. And you said you ran out the front door ---

4 A. Yes, ma'am.

5 Q. --- with the kids?

6 A. Yes, ma'am.

7 Q. What did you do?

8 A. I went and knocked on the neighbor's door.

9 Q. Do you remember which neighbor?

10 A. Elaine.

11 Q. After you got out of Candace's, was Candace still in
12 there?

13 A. Yes, ma'am.

14 Q. Was the man with her still in there?

15 A. Yes, ma'am.

16 Q. Okay. Do you know -- why did you run to the neighbor?

17 A. To try to get the kids some help and get Candace some
18 help.

19 Q. Okay. So you say you went to Elaine's?

20 A. Yes, ma'am.

21 Q. Did you -- did you go inside Elaine's?

22 A. No. She didn't open the door all the way.

23 Q. So you knocked on the door, is that right?

24 A. Yes, ma'am.

25 Q. Okay. Do you know if 911 was called?

A. Covington- Direct Examination by Ms. Burchstead 201

1 A. I told her to call 911.

2 Q. Okay. So Elaine opened the door, did you ask her to
3 call 911?

4 A. Yes, ma'am.

5 Q. And is it your understanding that she called 911?

6 A. From my understanding, yes, ma'am.

7 Q. The time you were getting attacked with the knife with
8 the man, how long did it feel like to you?

9 A. It was happening kind of quick.

10 Q. Kind of quick?

11 A. Yes, ma'am.

12 Q. Is it accurate to say minutes?

13 A. Yes ma'am.

14 Q. Did you understand what was happening --

15 A. Not at --

16 Q. -- when you were tussling with him?

17 A. Not at first. I thought we was fighting but then I
18 never felt a hit. I just -- then I saw his hand going up
19 and down and I realized he was cutting me.

20 Q. Do you have any idea where he got a knife?

21 A. Probably out her kitchen because when we -- I was down
22 watching her, he had went in the kitchen.

23 Q. So you said when you were watching her, what do ---

24 A. When she had came out the room she was on the floor
25 crying, he had went in the kitchen.

A. Covington- Direct Examination by Ms. Burchstead 202

1 Q. After 911 was called or you asked Elaine to call 911,
2 what did you do?

3 A. I tried -- well, I knocked on her door again because
4 she had closed it. I was trying to get the kids in so they
5 could be safe.

6 Q. So the first time she opened the door, you asked for
7 911?

8 A. Yes, and she closed -- she said ok and she closed the
9 door. Then I knocked again for her to open it so I could
10 get the kids in.

11 Q. Okay. How were the kids acting?

12 A. They looked kind of scared.

13 Q. So did she let the kids in?

14 A. Eventually, yeah.

15 Q. Okay. Did you go in?

16 A. Yeah.

17 Q. So you and the kids have gone into Elaine's at this
18 point, is that right?

19 A. We were going in.

20 Q. Going in? Okay.

21 A. Mmm, hmm.

22 Q. Then what happened?

23 A. Then I saw him peep out the door at us -- as we was
24 going I seen behind me, he was peeping out the door.

25 Q. So from Elaine's you can see Candace's?

A. Covington- Direct Examination by Ms. Burchstead 203

1 A. Yes, ma'am.

2 Q. All right. And you saw the man you'd been fighting
3 with peek out the door?

4 A. Yes, ma'am.

5 Q. Which door?

6 A. The front door.

7 Q. And which door had you gone out of?

8 A. The front door.

9 Q. So after you see him peeking out the front door, what
10 do you remember?

11 A. Then I see Candace coming around the building.

12 Q. About how long was that? Any idea?

13 A. It was maybe a minute or two.

14 Q. Did Candace have any clothes on?

15 A. No, ma'am.

16 Q. Was she bleeding?

17 A. Yes, ma'am.

18 Q. Were you bleeding?

19 A. Yes, ma'am.

20 Q. Did you see the man do anything else?

21 A. No, ma'am.

22 Q. Did EMS arrive? Did you get help from an ambulance?

23 A. Yes, ma'am.

24 Q. Did law enforcement arrive?

25 A. Yes, ma'am.

A. Covington- Direct Examination by Ms. Burchstead 204

1 Q. What do you remember about the ambulance arriving and
2 law enforcement arriving? Just what you remember.

3 A. We just got in the ambulance and I rode -- both of us
4 rode in the same ambulance to the hospital.

5 Q. Okay. So EMS helped you?

6 A. Yes, ma'am.

7 Q. And you and Candace were in the same ambulance?

8 A. Yes, ma'am.

9 Q. And you did go to the hospital?

10 A. Yes, ma'am.

11 Q. What happened at the hospital?

12 A. We got -- we got treated and the police came and you
13 know....

14 Q. Did you see a nurse or a doctor?

15 A. Yes, ma'am.

16 Q. And you said the police came?

17 A. Yes, ma'am.

18 Q. Did you talk to law enforcement when you were at the
19 hospital?

20 A. Yes, ma'am.

21 Q. Okay. And you say you were treated, did you have
22 surgery?

23 A. I had to have stitches.

24 Q. And what did you have stitches for?

25 A. For the cuts I had.

A. Covington- Direct Examination by Ms. Burchstead 205

1 Q. Where were they?

2 A. I got one across my neck and the rest on my arm.

3 Q. So your neck and arm?

4 A. Yes, ma'am.

5 Q. Did you tell law enforcement what happened?

6 A. Yes, ma'am.

7 Q. Were you shown any photos of the potential man that
8 did it?

9 A. In the line up?

10 Q. Right.

11 A. Yes, ma'am.

12 Q. Did you pick somebody out?

13 A. Yes, ma'am.

14 Q. Did you later learn who that man was?

15 A. I knew him by name.

16 Q. So you did know him?

17 A. Yes, ma'am.

18 Q. Okay. How did you know him?

19 A. Just from around. I don't know him like
20 conversational wise but from seeing him.

21 Q. Okay. So you could recognize him by his face?

22 A. Yes, ma'am.

23 Q. So you weren't friends or anything but you knew his
24 face ---

25 A. Yes, ma'am.

A. Covington- Cross-Examination by Mr. Swilley

206

1 Q. --- is that right?

2 A. Yes, ma'am.

3 Q. So the police showed you some pictures and you picked
4 him out, is that right?

5 A. Yes, ma'am.

6 Q. And who is it that attacked you with the knife?

7 A. Him.

8 Q. Are you pointing at defense counsel table?

9 A. Yes, ma'am.

10 Q. And what is his name?

11 A. Tyreek Hayes.

12 Q. Had you ever heard him called Reedy Boss?

13 A. Yes, ma'am. That's what ---

14 Q. Is that what you actually know him by?

15 A. Mmm, hmm.

16 Q. Okay.

17 THE COURT: Say yes or no please.

18 A. Yes. Yes, ma'am.

19 MS. BURCHSTEAD: I beg the Court's indulgence.

20 Nothing further on direct.

21 THE COURT: Okay. Mr. Swilley?

22 **Cross-Examination by Mr. Swilley:**

23 Q. Ms. Covington, you've lived in Dillon all your life,
24 haven't you?

25 A. Yes, sir.

A. Covington- Cross-Examination by Mr. Swilley

207

1 Q. And all your family lives in Dillon, all your close
2 family?

3 A. Yes, sir.

4 Q. And I think you grew up in the Newtown area?

5 A. No, sir.

6 Q. Well, your -- you got -- you children, don't you?

7 A. Yes, sir.

8 Q. All right. And one of your children is Akeem Nelson,
9 right? That's your son?

10 A. Yes, sir.

11 Q. Okay. And you knew Tyreek Hayes from growing up and
12 being friends with your son, Akeem, didn't you?

13 A. I didn't know they was friends.

14 Q. You didn't know they were friends at all?

15 A. Uh, uh.

16 Q. You had no idea?

17 A. Not like that, no, sir.

18 Q. Okay. Now, I wanna go back to what you said on - on
19 direct -- now, initially you did -- you spoke with a
20 policeman, right, and gave your account of what happened,
21 is that correct?

22 A. Yes, sir.

23 Q. And you recall doing that?

24 A. Yes, sir.

25 Q. And you recall what you told him?

A. Covington- Cross-Examination by Mr. Swilley

208

1 A. Yes, sir.

2 Q. You recall pretty well what you told him, is that
3 correct?

4 A. Pretty much.

5 Q. That's a yes?

6 A. Yes.

7 Q. Yes, ma'am. And I think you were the first to
8 actually talk with the police about what had happened, is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And I think you were first -- I think you met
12 with Investigator Lorie Murray, was it Lorie Tyler?

13 A. I'm not sure who it was.

14 Q. A female lady from the Dillon police, is that correct?

15 A. Yes, sir.

16 Q. Okay. It's a female - the woman from the Dillon
17 police. And, I think, that you -- you testified and told
18 law enforcement that when you walked in, it appeared that
19 you were walking into a sexual encounter, is that correct?

20 A. Yes, sir.

21 Q. Okay. That's what you believed you had saw?

22 A. Yes, sir.

23 Q. All right. And then you went to quickly exit ---

24 A. Yes, sir.

25 Q. -- is that correct?

A. Covington- Cross-Examination by Mr. Swilley

209

1 A. Yes, sir.

2 Q. And then I think you testified that Candace came in
3 and then said he's trying to kill me ---

4 A. Yes, sir.

5 Q. --- at that time. Now, Ms. Covington, she didn't say
6 or exclaim anything about any kind of rape, did she, at
7 that time?

8 A. Not at that particular time, no, sir.

9 Q. Okay. And at that time no one in the apartment had
10 been stabbed, had they?

11 A. No, sir.

12 Q. Okay. And based upon your observation, no one had
13 been assaulted at that time in the apartment, is that
14 correct?

15 A. Not that I could tell, no, sir.

16 Q. At that time, correct?

17 A. Correct.

18 Q. Yes, ma'am. And I think you testified that Candace
19 was not wearing any clothes, is that right?

20 A. No, sir.

21 Q. If you could, um, wait until I'm done asking the
22 question ---

23 A. Okay.

24 Q. --- before you answer please ---

25 A. I'm sorry.

A. Covington- Cross-Examination by Mr. Swilley 210

1 Q. Thank you. And I think you testified that Mr. Hayes
2 was wearing a tee shirt and shorts?

3 A. Yes, sir.

4 Q. Okay. And at that point, I think you say that you had
5 a confrontation with Mr. Hayes, is that correct?

6 A. Yes, sir.

7 Q. All right. And then you say that he pushed you, is
8 that correct?

9 A. Yes, sir.

10 Q. Okay. And then you said that you believed he started
11 hitting you but he was stabbing you, is that correct?

12 A. Yes, sir.

13 Q. All right. Now, you never went and locked yourself in
14 the bedroom with the children, did you?

15 A. No, sir.

16 Q. Okay. And while you were in the apartment you said
17 you never saw Mr. Hayes -- you testified you never saw Mr.
18 Hayes grab a knife, is that correct?

19 A. I never saw -- no, sir, I never saw him grab it.

20 Q. Okay. But at some point you said he began -- you said
21 he stabs you first, is that correct?

22 A. Yes, sir.

23 Q. Okay. All right. Now, at the time, you said you saw
24 -- when Candace started to exclaim that he was trying to
25 kill her, you were between Candace and Mr. Hayes at this

A. Covington- Cross-Examination by Mr. Swilley

211

1 time in the bedroom, is that correct?

2 A. Yes, sir.

3 Q. In the bedroom?

4 A. In the doorway.

5 Q. The doorway. All right. And you told law enforcement
6 that this was in the bedroom, is that correct?

7 A. It was right there in her bedroom by the doorway.

8 Q. Okay. And then you told -- isn't it true that you
9 told law enforcement that at that time Mr. Hayes started
10 poking you, is that correct?

11 A. Not in the doorway.

12 Q. Okay. What I'm asking you is what you told law
13 enforcement or what you told the Investigator Tyler, you
14 said that the - said the person started poking you and
15 that's when Candace jumped on his back, is that correct?
16 Is that what you told them?

17 A. Yes, when I was on the bed, yes, sir.

18 Q. Okay. And that's not what you told today, is that
19 correct?

20 A. That is what I told today.

21 Q. Okay. You didn't say anything about anybody poking
22 you, is that correct? On your direct examination, is that
23 correct?

24 A. I said stabbing.

25 Q. Okay. And you stated that and then you told law

A. Covington- Cross-Examination by Mr. Swilley 212

1 enforcement then at that time, he started stabbing Candace,
2 is that correct?

3 A. In the kitchen.

4 Q. All right. Now, you told law enforcement at that time
5 after you were in the bedroom that, that's when he started
6 stabbing Candace, is that correct?

7 A. Can you repeat that?

8 Q. All right. Ms. Covington, just to recall, you
9 remember what you told the police when they got there,
10 right?

11 A. Yeah. Yes, sir.

12 Q. And that's true, right? What you told them is the
13 truth, is that correct?

14 A. Yes, sir.

15 Q. --- what you were telling them -- and you're telling
16 me that, that was shortly thereafter people had been - you
17 and Candace had been stabbed, right?

18 A. Yes, sir.

19 Q. Okay. Now, is it or is it not true that you told
20 Investigator Murray that you were in the bedroom when Mr.
21 Hayes or when - when the person started stabbing Candace,
22 is that true?

23 A. We wasn't in the bedroom -- I don't know. Candace got
24 stabbed in the kitchen.

25 Q. Okay.

A. Covington- Cross-Examination by Mr. Swilley

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1 A. I got stabbed in the bedroom.

2 Q. You told law enforcement that Candace was stabbed in
3 the bedroom, is that correct?

4 A. No, sir.

5 Q. Oh, you didn't tell law enforcement that?

6 A. She got stabbed in the kitchen.

7 Q. Okay. Do you know of any reason why law enforcement
8 would have that as what you told them?

9 A. No, sir.

10 Q. Okay. You don't know. And you say at that time, you
11 grabbed the two children and ran out of the apartment.

12 A. Yes, sir.

13 Q. Okay. And then you say you went next door for help,
14 is that correct?

15 A. Yes, sir.

16 Q. And it's your testimony that you told law enforcement
17 that you saw the person peeping out of the door like you
18 said in direct?

19 A. Yes, sir.

20 Q. Okay. You told them that, is that correct?

21 A. Yes, sir.

22 Q. And you wouldn't -- you don't -- you yourself don't
23 know of any reason why that wouldn't be documented, do you?

24 A. No, sir.

25 Q. Okay. And you -- you testified on direct examination

A. Covington- Cross-Examination by Mr. Swilley

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1 that you knew Mr. Hayes, right?

2 A. By sight, yeah.

3 Q. And you told law enforcement that you didn't know the
4 person, is that correct?

5 A. Not as holding a conversation with him, no.

6 Q. Okay. My question to you, Ms. Covington, is you told
7 law enforcement that you didn't know the person, is that
8 correct? Is that a yes or no?

9 A. No.

10 Q. You're telling me that you never told law enforcement
11 that you didn't know the suspect, is that correct?

12 A. I know him by face, not by ---

13 Q. I'm not asking ---

14 A. No.

15 Q. Okay. You never -- you never told law enforcement you
16 didn't know him, is that correct?

17 A. No. I didn't say it like that.

18 Q. Okay. So it's true you told law enforcement that you
19 knew the person?

20 A. By name, yes.

21 Q. Okay. You did -- okay you told them that. You don't
22 know why they would have it documented that you said you
23 didn't know the suspect? You don't know why?

24 A. No, sir.

25 Q. Okay. And on direct you stated that Mr. Hayes was

A. Covington- Cross-Examination by Mr. Swilley

215

1 wearing a tee shirt and shorts, correct?

2 A. Yes, sir.

3 Q. All right. And you told law enforcement he was only
4 wearing a pair of basketball shorts, is that correct? Did
5 you tell them that?

6 A. I'm not sure.

7 Q. Okay. And, Ms. Covington, at the time that this
8 happened, Candace was seeing somebody romantically, isn't
9 that correct? She had a boyfriend at the time?

10 A. I don't know.

11 Q. You don't know?

12 A. No.

13 Q. Based on your recollection, was Ms. Elaine Manning the
14 only person that called 911?

15 A. From my recollection.

16 Q. Okay. From what you remember there was no one else -
17 no adults around who would have called 911?

18 A. I -- no. I just told Elaine to call them.

19 Q. Okay. So at the time that law enforcement was being
20 summoned there was -- you were present, right?

21 A. Mmm, hmm. Yes, sir.

22 Q. And Candace was present?

23 A. No. Candace -- when I told Elaine that, she wasn't
24 there.

25 Q. And you were with the kids, right?

A. Covington- Cross-Examination by Mr. Swilley

216

1 A. Yes.

2 Q. No other adults around other than you and Ms. Manning?

3 A. Yes, sir.

4 Q. Okay. Now, Ms. Manning, (sic) certainly you would
5 want the individual - you would want to tell the police the
6 individual who stabbed you, you would want to identify
7 them, right?

8 A. Yes, sir.

9 Q. All right. So you certainly would have gave them the
10 best description identity you could to the police, is that
11 correct?

12 A. Yes, sir.

13 Q. All right. And you didn't leave Ms. Manning's
14 apartment until EMS got there, is that correct?

15 A. That's correct.

16 MR. SWILLEY: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 Q. And, Ms. - Ms. Covington, do you remember you gave
19 your statement to law enforcement with, ah, while you were
20 being videoed on the body camera, do you remember that?

21 A. I could have. I don't remember.

22 Q. You don't remember?

23 A. No.

24 Q. Okay. And when you were giving your statement to law
25 enforcement, were they taking down notes on what you said,

A. Covington- Cross-Examination by Mr. Swilley

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1 the lady policeman?

2 A. In the hospital or when they came to the house? I
3 don't know ---

4 Q. When you first -- when you first told what happened to
5 law enforcement, were they recording what you were telling
6 them?

7 A. Not at the hospital. Now, when they came to the
8 house, they was.

9 Q. Okay. So when they came -- when they got there, to
10 the scene, right?

11 A. Yes.

12 Q. When you first told your story of what happened ---

13 A. Yes.

14 Q. --- was law enforcement making notes or recording you
15 on a camera?

16 A. They did do that.

17 Q. They did?

18 A. At my house.

19 Q. Okay. You told them everything that happened, right?

20 A. Yes.

21 Q. You told them all the information you could remember,
22 isn't that correct?

23 A. Yes, sir.

24 Q. Okay. Ms. Covington, is it your testimony that there
25 was no other male, adult male in the area at the time?

A. Covington- Redirect Examination by Ms. Burchstead 218

1 A. No, sir, there wasn't no male.

2 Q. Okay.

3 THE COURT: Ms. Burchstead?

4 MS. BURCHSTEAD: Thank you, Your Honor.

5 **Redirect Examination by Ms. Burchstead:**

6 Q. Ann, when you -- when y'all were going through that
7 attack at Candace's, were you looking in detail at your
8 sister's body?

9 A. No, ma'am.

10 Q. You weren't there to see if anybody had strangled her
11 before you got there, right?

12 A. No, ma'am.

13 Q. Is it fair to say it was pretty hectic during the
14 struggle?

15 A. Yes, ma'am.

16 Q. And when you talked to law enforcement was that back
17 in 2016?

18 A. Yes, ma'am.

19 Q. Was there any other adult male in that apartment
20 during that attack?

21 A. No, ma'am.

22 Q. Was there any question about who attacked you and your
23 sister?

24 A. No, ma'am.

25 MS. BURCHSTEAD: Nothing further, Your Honor.

J. Lestser- Direct Examination by Mr. Kozak

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1 THE COURT: Anything else, Mr. Swilley?

2 MR. SWILLEY: There's not, Your Honor.

3 THE COURT: All right. You may step down, Ms.

4 Convington. Thank you.

5 MS. BURCHSTEAD: Your Honor, may we approach for
6 just a minute?

7 (Whereupon, a bench conference was held off the record)

8 MR. KOZAK: The State calls Johnny Lester.

9 THE COURT: Come on up here, Mr. Lester.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right hand. Do you solemnly swear or affirm the
12 testimony you are about to give the Court and jury on this
13 case is the truth, the whole truth, and nothing but the
14 truth so help you God?

15 MR. LESTER: So help me God.

16 THE CLERK: Be seated in the witness box. State
17 your full name for the court, spelling your last.

18 MR. LESTER: Johnny Lester. Last name L-e-s-t-e-r.

19 JOHNNY LESTER, first being
20 duly sworn, testified as follows:

21 **Direct Examination by Mr. Kozak:**

22 Q. Mr. Lester, where were you employed on October 2016?

23 A. Dillon Rec -- Dillon City Rec. Department.

24 Q. And what was your job title there?

25 A. Cutting grass and keeping the fields maintained.

J. Lestser- Direct Examination by Mr. Kozak

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1 Q. And what were some of your duties involved in that?

2 A. Cutting grass, lining the fields up, cleaning
3 bathrooms, making sure everything is clean around the
4 department.

5 Q. Did you mow the lawn behind Maplewood Apartments?

6 A. Yes, I -- well, I mow the fields and outside the
7 fields.

8 Q. Okay. And what happened on October 5, 2016?

9 A. I was out cutting grass as normal and I was taking out
10 the zero turn and I was turning to my left and I seen a
11 knife. And so I picked it up with my grabber and I took it
12 to the guy that I was working with.

13 Q. I'm going to show you State's Exhibit 1. Let's just
14 go over some of the locations here. What -- what are we
15 looking at here?

16 A. We're looking at the football field and behind the
17 football field, I mean, behind the baseball fields,
18 softball fields.

19 Q. And what is this area over here?

20 A. That's the apartments.

21 Q. All right. What is this line, it looks like a really
22 thin line right here, what is that?

23 A. That's a fence.

24 Q. All right. And what -- so this looks like a really
25 big baseball diamond?

1 A. It is.

2 Q. But what is this here, this line?

3 A. That's the fence for the outfield.

4 Q. All right. And what is this area outside the
5 outfield?

6 A. That's the outside of the fence where we cut grass at
7 for the, basically, for kids to go out there and they play,
8 they be like, you know, for softball toss and stuff like
9 that.

10 Q. So on October 5th, where were you cutting grass,
11 about? Just, what areas did you cut on October 5th?

12 A. I cut the front, up in here, this area, then I came
13 around and cut this area.

14 Q. Okay. And how often do you mow the lawn in those
15 areas?

16 A. Mondays and Thursdays. Sometimes we do it on
17 Wednesdays. It just all depends if we have a tournament.

18 Q. All right. So if October 5th was a Wednesday, when
19 would you have probably mowed the lawn before that?

20 A. Monday.

21 Q. And if you would have found anything irregular in the
22 lawn, would have you have reacted the same way you reacted?
23

24 A. Yes, I would because we have a lot of kids be out
25 there. And then we was -- at that point in time, we was

J. Lestser- Direct Examination by Mr. Kozak

222

1 getting ready for a big tournament also.

2 Q. Okay. So on October 5th, you said you found the
3 knife?

4 A. Yes.

5 Q. What did you do once you found the knife?

6 A. I just grabbed it with my grabber. And I held it up
7 and I went to the front to throw it away but then the guy
8 was like, you know, where you find the knife and I was
9 telling him where I found it at and he was like there's an
10 incident went on and I'm like what incident?

11 Q. So at the time you found the knife, did you know the
12 incident had happened?

13 A. No, sir.

14 Q. Okay. Now, once you found the knife who did you give
15 it to?

16 A. I just took it up there towards Kevin Scott. And I
17 didn't give it to him, I just held it up and he said I
18 think we need to call the detective ---

19 Q. Did you call the detective ---

20 A. --- or the cops to come get it.

21 THE COURT: Don't talk over each other. Let him
22 answer the question. Let him finish asking before you
23 answer.

24 Q. Did you call the detective?

25 A. Yes, we called the detective.

J. Lestser- Direct Examination by Mr. Kozak

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1 Q. And did a detective come up to the scene?

2 A. Yes, he did.

3 Q. And did you give the detective that knife?

4 A. Yes.

5 Q. Did you ever touch the knife?

6 A. No, sir.

7 Q. Do you know the name of the detective you gave the
8 knife to?

9 A. I can't remember his name.

10 Q. Okay. We're going to look at State's Exhibit 1 one
11 more time. I'm going to give you a push pin. Will you put
12 it in the map whereabouts you found the knife?

13 A. All right. Should be right in here.

14 Q. Okay. All right. So once you gave this knife to the
15 detective, did anyone take a photo of you showing where you
16 found the knife?

17 A. Yes.

18 MR. KOZAK: Approaching with State's Exhibit 5.

19 Q. Will you tell me what this is? What am I showing you?

20 A. You're showing me grabbing ---

21 Q. Okay.

22 A. --- right there. That was the knife, the point where
23 the knife was at ---

24 Q. And ---

25 A. --- and that's me using the grabber.

J. Lestser- Direct Examination by Mr. Kozak

224

1 Q. Who is this?

2 A. That's me.

3 Q. Okay.

4 MR. KOZAK: At this time, I'd like to move State's
5 Exhibit 5 into evidence.

6 MR. SWILLEY: No objection.

7 THE COURT: Okay. State's Exhibit 5 admitted into
8 evidence.

9 (Whereupon, the Photo has been marked and entered into
10 evidence as State's Exhibit No. 5)

11 MR. KOZAK: All right. Let's show this to the
12 jury.

13 Q. What is -- what are they looking at?

14 A. They're looking at me with the grabber with them
15 grabbing the knife.

16 Q. Okay. And what are these in the back of this photo?

17 A. Those are apartments.

18 Q. And is there a fence between ---

19 A. Yes.

20 Q. --- those apartments?

21 A. Yes.

22 Q. All right.

23 MR. KOZAK: Approaching with State's Exhibit 4.

24 Q. What am I showing you here?

25 A. That's the knife I picked up.

J. Lestser- Direct Examination by Mr. Kozak

225

1 Q. Okay. Why are you sure that's the knife you picked
2 up?

3 A. Because I remember the, the bent blade on it.

4 MR. KOZAK: I'd like to move State's Exhibit 4 into
5 evidence and publish to the jury.

6 MR. SWILLEY: No objection.

7 THE COURT: All right. State's Exhibit 4 is
8 admitted into evidence. You may publish.

9 (Whereupon, the Knife has been marked and entered into
10 evidence as State's Exhibit No. 4)

11 Q. So the bend you're talking about, is, is that what
12 you're talking about?

13 A. Yes, sir.

14 Q. All right. So this is the knife that you picked up in
15 the field?

16 A. Yes, sir. That's the knife.

17 Q. Never touched it?

18 A. Never touched it.

19 Q. Okay. And the field is behind Maplewood apartments?

20 A. Yes.

21 Q. And you mowed that same lawn, approximately, a week
22 before, correct?

23 A. Yes, I did.

24 Q. Did you find a knife then?

25 A. No.

J. Lester- Cross Examination by Mr. Swilley

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1 MR. KOZAK: No further questions.

2 **Cross-Examination by Mr. Swilley:**

3 Q. Mr. Lester, when you found that knife is it true,
4 based on your recollection nobody else came in contact with
5 the knife until it got to the police, right?

6 A. Right.

7 Q. Thank you, sir.

8 THE COURT: Anything else, Mr. Kozak?

9 MR. KOZAK: No further questions, Your Honor.

10 THE COURT: All right. You can step down, Mr.
11 Lester. Thank you.

12 MR. LESTER: You're welcome.

13 MR. KOZAK: The next witness is Anika Sellers.

14 THE COURT: Is Mr. Lester under supbeona?

15 MR. KOZAK: Yes, sir. He can be released.

16 THE COURT: Does he need -- he need ---

17 MR. SWILLEY: No objection, Your Honor.

18 THE COURT: You may be excused, Mr. Lester. Thank
19 you.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand please, ma'am. Do you solemnly swear
22 or affirm that the testimony given the Court and jury on
23 this case is the truth, the whole truth, and nothing but
24 the truth so help you God?

25 MS. SELLERS: I do.

A. Charles- Direct Examination by Mr. Kozak

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1 THE CLERK: Be seated in the witness box and state
2 your full name for the Court, spelling your last.

3 MS. SELLERS: My name is Anika Sellers Charles.

4 THE COURT: Spell your last name.

5 MS. SELLERS: S-e-l-l-e-r-s hypen C-h-a-r-l-e-s.

6 THE COURT: All right. Please speak loud and clear
7 because that microphone's not working.

8 MS. SELLERS: Okay.

9 THE COURT: Thank you, ma'am.

10 ANIKA SELLERS-CHARLES, first
11 being duly sworn, testified as follows:

12 **Direct Examination by Mr. Kozak:**

13 Q. Where'd you work in 2016?

14 A. 2016, I was at the -- nah, I had just left the 911
15 office. I was a previous dispatcher ---

16 Q. Okay.

17 A. --- at Dillon County 911 Office.

18 Q. And what apartment complex do you live in?

19 A. Dover Village.

20 Q. Did you live there in 2016?

21 A. Yes, sir.

22 Q. Are you familiar with -- do you know the victims in
23 this case?

24 A. I know them, both of them.

25 Q. Are you familiar with the defendant in this case?

A. Charles- Direct Examination by Mr. Kozak

228

1 A. Yes.

2 Q. How do you know the defendant?

3 A. Just from playing sports and going to school. My son
4 was a few years under him in school and I knew that they
5 played football.

6 Q. Are you familiar with the defendant's girlfriend ---

7 A. Yes.

8 Q. --- at the time?

9 A. Yes.

10 Q. What was her name?

11 A. I think it's Shalanda, Sholanda, Shalonda.

12 Q. How are you familiar with her?

13 A. Just from the streets. I know the family and she
14 lives in the same apartment complex that I live in.

15 Q. Which is what apartment complex?

16 A. Dover Village.

17 Q. Is that next to Maplewood Apartments?

18 A. Yes, it is.

19 Q. I'm going to show you State's Exhibit 1.

20 MR. KOZAK: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 Q. Where -- so this is an above look at the apartments.

23 A. Mmm, hmm.

24 Q. Where is Dover Apartments in relation to Maplewood
25 Apartments?

A. Sellers- Cross-Examination by Mr. Swilley

229

1 A. Dover Village -- how am I looking at this now -- okay
2 -- is this Maplewood?

3 Q. Mmm, hmm.

4 A. If that's Maplewood, then this is Dover Village right
5 here. Q. Okay. And can you tell by where this is
6 whereabouts your apartment is?

7 A. I stay in this building right here beside the dumpster
8 and she stays in this building directly across from my
9 building.

10 Q. So Tyreek's -- the defendant's girlfriend lives where?

11 A. Directly across from my building. Across the parking
12 lot from my building.

13 Q. And where was the dumpster again?

14 A. The dumpster is right beside my building.

15 Q. So on October 1, 2016, the date of this incident, what
16 did you see?

17 A. Once everything calmed down or whatever, I saw
18 officers out, like, riding through the softball field and
19 stuff just looking around for something. And, like I said,
20 I was a previous dispatcher. I saw the girlfriend come out
21 the house, walk across to the dumpster and throw something
22 in the dumpster. So I got in touch with one of the
23 officers and told them they need to come check the
24 dumpster.

25 Q. Okay. So at the time you were aware that, that was

A. Sellers- Cross-Examination by Mr. Swilley

230

1 the defendant's girlfriend?

2 A. Yeah.

3 Q. Do you remember who you called?

4 A. Mark Vereen.

5 Q. Okay. And to your knowledge did they come check the
6 dumpster?

7 A. Yes, they did.

8 MR. KOZAK: Beg the Court's indulgence. Your
9 Honor, I'm gonna approach one more time?

10 THE COURT: Yes, sir.

11 Q. Actually, let me get two of these. I'm going to hand
12 you a pushpin and I'd like you to mark where Shalanda's
13 apartment on here is.

14 (Whereupon, the witness complies).

15 Q. I'm going to hand you one more and ask you to mark
16 where the dumpster is.

17 (Whereupon, the witness complies).

18 Q. All right.

19 MR. KOZAK: No further questions, Your Honor.

20 THE COURT: Mr. Swilley?

21 **Cross-Examination by Mr. Swilley:**

22 Q. Now, Ms. Sellers, you're friends with Candace Simpson,
23 aren't you?

24 A. I wouldn't say friends. I'm associates with all of
25 them. I know all of them from the streets.

A. Sellers- Cross-Examination by Mr. Swilley

231

1 Q. You're friends with Ms. Covington too, aren't you?

2 A. Covington?

3 Q. You're friends with her sister too, aren't you? Ann?

4 Neese, Nina?

5 A. I'm not friends with Ms. Covington, I'm friends with
6 her son.

7 Q. Okay. Her son is Akeem Nelson?

8 A. Yes.

9 Q. You're friends with him? And you're friends with
10 Candace, right?

11 A. We went to school together. I wouldn't say friends
12 we're associates.

13 Q. Okay. And you work at 911, you worked at the 911
14 office, right?

15 A. I used to.

16 Q. You worked at the 911 office at the time, is that
17 correct?

18 A. Not at the time. I had left. I was -- I was let go
19 before this incident happened.

20 Q. You worked at the 911 office -- so you were fired from
21 there?

22 A. Yes.

23 Q. What day were you fired?

24 A. I can't -- I don't know.

25 Q. You said it was before October the 1st ---

A. Sellers- Cross-Examination by Mr. Swilley

232

1 A. Yes.

2 Q. --- is that correct?

3 A. Uh, huh.

4 THE COURT: Say yes or no please when you answer
5 questions.

6 A. Yes.

7 Q. And you were fired for what?

8 A. They said I was a liability.

9 Q. Okay. So ---

10 A. Personal reasons.

11 Q. Personal reasons? Okay. Poor job performance, is
12 that correct?

13 A. No.

14 Q. Okay. All right. Now, Ms. Sellers, you testified you
15 saw Shalanda Livingston throwing stuff away in the garbage?

16 A. Yes.

17 Q. And it was more than one item, right?

18 A. I don't know what it was. I just saw her with the
19 stuff balled up in her hand and she walked to the dumpster
20 and threw it in the dumpster.

21 Q. She was throwing items away, correct, is that right?

22 A. Yes.

23 Q. Okay. And you couldn't see what they were, right?

24 A. No.

25 Q. All right. And at -- and you didn't stand there and

A. Sellers- Cross-Examination by Mr. Swilley

233

1 watch her continue to throw stuff away, did you?

2 A. She only went to the dumpster one time. There weren't
3 no reason to stand there and continue.

4 Q. All right. I didn't hear what you said.

5 A. I said she only went to the dumpster once so there was
6 no reason to stand there and continue to watch her because
7 once she went to the dumpster, she went back in her house
8 and I went back in mines.

9 Q. Okay. And you didn't see any, any activity over at
10 the dumpster after that, right?

11 A. Uh, uh. When the police came and got the stuff out
12 the dumpster.

13 Q. You didn't -- so once you saw her walk to the dumpster
14 and walk back, you went back in your house, right?

15 A. Not right then. I saw her walk back in her house and
16 then I walked back in my house.

17 Q. Then you walked back in your house?

18 A. Yes.

19 Q. Okay. And then you didn't go back out there until the
20 police got there?

21 A. My son went out there but I don't know what he went
22 out there to do.

23 Q. I'm asking you.

24 A. No.

25 Q. You didn't go back out there until the police got

A. Sellers- Cross-Examination by Mr. Swilley

234

1 there, right?

2 A. No.

3 Q. Okay. And that's all you know about -- and you know

4 Ms. Livingston, right?

5 A. Yeah.

6 Q. And you've conversated with Ms. Livingston after this?

7 A. No.

8 Q. And your testimony is that all this is the extent of

9 the -- all of which you testified is the extent of the

10 information you know about the situation, is that correct?

11 A. Yes.

12 Q. Okay. By first hand, right?

13 A. Yes.

14 Q. Okay.

15 MR. SWILLEY: One moment please, Your Honor.

16 THE COURT: Yes, sir.

17 Q. All right. Well, Ms. Sellers, I'm going to go ahead

18 and ask you. When you were working at the 911 place, I

19 mean, you know, part of your duties were to preserve 911

20 calls, right?

21 A. Yes.

22 Q. And before you were discharged you were tasked with

23 preserving 911 calls quite frequently, right?

24 A. Yes.

25 Q. All right. And you had preserved 911 calls whenever

A. Sellers- Cross-Examination by Mr. Swilley

235

1 there was certain types of emergency situations, right?

2 A. Mmm, hmm. Yes, sir.

3 Q. Okay. And particularly if there was, if there was any
4 police involvement or investigation, you had to preserve
5 those calls, right?

6 A. Yes.

7 Q. And that was important, right?

8 A. Yes.

9 Q. The police would want to come and recover these calls
10 for their investigations, right?

11 A. Yes.

12 Q. And that happened pretty frequently in Dillon?

13 A. Yes.

14 Q. Okay. And y'all didn't -- y'all never intentionally -
15 - y'all are not supposed to intentionally erase calls
16 before anyone told you to, right?

17 A. No.

18 Q. Okay.

19 MR. SWILLEY: Thank you, Ms. Sellers.

20 THE COURT: Anything else, Mr. Kozak?

21 MR. KOZAK: No.

22 THE COURT: All right. You can step down. Thank
23 you, ma'am.

24 MR. KOZAK: We can have her released from her
25 subpoena too, Your Honor.

1 THE COURT: Any objections, counsel?

2 MR. SWILLEY No, Your Honor.

3 THE COURT: All right. You may be excused, ma'am.
4 Thank you. Okay, Counsel, approach the bench again,
5 please.

6 (Whereupon, a bench conference was held off the record)

7 THE COURT: All right, ladies and gentlemen, at
8 this point in time we're going to stop and break for lunch.
9 The next witness may be lengthy and might get into more of
10 the lunch hour so. And I've got a couple of matters I need
11 to take up during the lunch with the solicitor. So I'm
12 going to release you at this point in time and have you and
13 ask you to be back at 2 o'clock, ready to start back for
14 the afternoon session. Again, I caution you. Please don't
15 talk about the testimony that you've heard. I know you're
16 going to get tired of me saying this, but please don't talk
17 about the testimony that you've heard so far, don't discuss
18 it. You can talk about anything else. And if somebody
19 bothers you when you're out on lunch and they say, hey
20 you're on the jury, what are y'all doing this week? Tell
21 him that you can't talk, the judge told me not to talk to
22 you, okay? Thank you. You may be excused. Remain seated
23 while the jury goes out.

24 (Whereupon, the jury exits the courtroom at 12:41 p.m.)

25 THE COURT: All right. We will break for lunch at

L. Tyler- Direct Examination by Kozak

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1 a few minutes after two getting started but we been
2 working. We had a couple of legal matters to take up
3 outside of your presence so we went ahead and took care of
4 that rather than bring you in and send you back out. We
5 are now ready to proceed. The State may call its next
6 witness.

7 MR. KOZAK: The State calls Lorie Tyler.

8 THE CLERK: Place your left on the Bible and raise
9 your right hand. Do you solemnly swear or affirm that the
10 evidence and testimony that you're about to give this court
11 and jury on this case is the truth, the whole truth, and
12 nothing but the truth so help you God?

13 MS. TYLER: I do.

14 THE COURT: Sit in the witness box. Give us your
15 full name and spell your last please.

16 MS. TYLER: My name is Lorie Tyler. My last name
17 is T-y-l-e-r.

18 LORIE TYLER, first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. Kozak:**

21 Q. Ms. Tyler, where are you currently employed?

22 A. Dillon Police Department.

23 Q. And what is your current position there?

24 A. My current position is investigator.

25 Q. And how long have you been employed there?

L. Tyler- Direct Examination by Kozak

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1 A. I've been employed since 2011.

2 Q. And what are some of the duties and responsibilities
3 of that position?

4 A. As an investigator our duties is to arrive on a crime
5 scene, processed the scene, speak to the complainant, the
6 witnesses, the victims, suspects and follow the evidence
7 until an arrest.

8 Q. And what capacity were you employed on October 1,
9 2016?

10 A. I was a patrol officer.

11 Q. And what are some duties and responsibilities of that
12 job?

13 A. Answer calls, patrol neighborhoods.

14 Q. Throughout the course of the investigation into this
15 case, what position were you employed as?

16 A. A patrol officer.

17 Q. Okay. So how did you become involved in this case?

18 A. On October 1, 2016 we had a 911 call to Maplewood and
19 myself along with Sergeant Mike Yoder and Officer Genwright
20 we all arrived on scene, we were the first responders.

21 Q. Were you the first person to arrive on the scene?

22 A. I think Sergeant Yoder actually pulled in before me
23 but we all were like right behind each other. We all
24 arrived at the same time.

25 Q. Did you arrive before the EMTs?

1 A. Yes.

2 Q. And about what time estimate did you arrive at the
3 scene?

4 A. Around 9:30 that morning.

5 Q. And what was the scene like when you arrived?

6 A. There were already people gathering. You could see
7 like blood prints on the sidewalk. You could hear people,
8 like, they were upset, hollering, and directing us to
9 apartment ■ and they were saying the victims were in ■.

10 Q. Okay. And did you go into ■?

11 A. I did.

12 Q. Who did you speak with inside ■?

13 A. I spoke to Candace and Ann.

14 Q. And where were they?

15 A. They were -- Candace was sitting in a chair. The
16 people in the apartment had, like, towels and paper towels
17 up to the wounds. And Ann was just walking around in the
18 apartment.

19 Q. Was Candace wearing any clothes?

20 A. I think she had, like, a sheet around her, a bedsheet.

21 Q. Okay. And what was -- what did Candace look like?

22 A. She was bloody. Her face was bloody and swollen. Her
23 eyes were, like, the whites of her eyes were red. She had
24 blood dripping everywhere.

25 Q. Okay. And did she say who had done this to her?

L. Tyler- Direct Examination by Kozak

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1 A. She did.

2 MR. SWILLEY: Objection, Your Honor. It's a hearsay.

3 MR. KOZAK: Excited utterness, Your Honor.

4 THE COURT: Sir?

5 MR. KOZAK: Excited utterness.

6 THE COURT: I agree and it's the victim herself.

7 I'll overrule the objection.

8 A. She did. She said that "Reedy All Boss" was all she
9 knew that he went by on Facebook.

10 Q. And where, at that time in the investigation, where
11 was it understood that he was?

12 A. I'm sorry, I couldn't ---

13 Q. At that point in the investigation, where - where did
14 people think he was?

15 A. At that time, the people in the apartment was saying
16 they thought he was still inside Candace's apartment.

17 Q. Okay. So what -- so what you do from there?

18 A. Myself and Genwright go to Candace's apartment which
19 is ■ and the door is locked. So I go back into ■ and get
20 a key.

21 Q. Now, let me stop you right there, what door did you go
22 to?

23 A. I went to the apartment ■ which is Candace's
24 apartment ---

25 Q. Mmm, hmm.

1 A. --- and the door was locked, the front door was
2 locked.

3 Q. Okay.

4 A. So I go back into ■ and asked for a key. They give
5 us a key and then I unlocked the door and we make entry.

6 Q. Now, when you say locked, what locked did you have to
7 unlock to get in?

8 A. The deadbolt.

9 Q. And what was the number of Candace's apartment?

10 A. Candace's apartment is ■

11 Q. And where was ■-- oh, geez -- where in relations is
12 ■ to ■?

13 A. ■ and ■ is sitting in a corner, is like an L-shape
14 corner. This would be ■ and ■ would be on the side.

15 Q. Now, what did you notice once you enter Candace's
16 apartment?

17 A. There were signs of a struggle. There was blood. We
18 saw hair laying on the floor. A broken door.

19 Q. And once you entered was anyone else in there?

20 A. Once we cleared the residence there was no one in
21 there.

22 Q. So what -- once you were inside the apartment, what
23 did you do for your investigation?

24 A. Once we maintain that there was no, no one still in
25 the apartment, we put tape up, police take so nobody could

L. Tyler- Direct Examination by Kozak

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1 come in or out of the scene. There was officers position
2 on the front side and the backside. Photos were taken and
3 the investigator was notified.

4 Q. So you said you secured the scene, how long once you
5 secured the scene does it stay secured?

6 A. Until the investigator states that we can release it.

7 Q. All right. So what else did you do in the apartment?

8 A. We took photographs. And then we waited on the
9 investigator to arrive on the scene.

10 Q. Did you also go see Candace and Ann in the hospital?

11 A. I did.

12 Q. What did you do at the hospital?

13 A. I took photos of the wounds for each individual lady
14 and I took video statements.

15 Q. Now, you said you took video statements, did you take
16 a video statement of Ann's statement at the hospital?

17 A. Yes, sir.

18 Q. Did that record?

19 A. I don't think -- no, sir. My battery was dead.

20 Q. Okay. Now, can you explain a little bit more about
21 that?

22 A. In 2016 we had just gotten our body camera system and
23 we were not accustomed to using them and whenever I tried
24 it the battery died. So I took her statement and then I
25 went and replaced my body cam.

L. Tyler- Direct Examination by Kozak

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1 Q. You said you took photos of the scene and the injuries
2 at the hospital?

3 A. Yes.

4 Q. I'm going to approach with State's Exhibits 6 through
5 78, these have already been shown to opposing counsel, the
6 photos.

7 MR. SWILLEY: That's correct.

8 Q. I'm going to approach with these, can you identify
9 what these are, 6 is on top, 78 is on bottom?

10 A. Yes, sir.

11 Q. What are those?

12 A. These are the photos that I took that day.

13 Q. Have they have been edited or altered in any way?

14 A. No, sir.

15 MR. KOZAK: At this time I like to move State's
16 Exhibit 6 through 78 into evidence and publish.

17 MR. SWILLEY: Same objection made *in limine*, judge,
18 to the photographs that I objected to.

19 THE COURT: All right. And as I've previously
20 ruled, I overrule the objection. They are admitted into
21 evidence as State's 6 through 78.

22 (Whereupon, the Photos has been marked and entered into
23 evidence as State's Exhibits Nos. 6 through 78)

24 Q. I'm going to leave those copies up there with you and
25 I'm gonna show copies to the jurors on the TV. Let's look

L. Tyler- Direct Examination by Kozak

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1 at State's Exhibit 6 -- can everyone see from over there?

2 (Whereupon, the jurors indicates yes)

3 Q. We're looking at State's Exhibit 6, what are we
4 looking at here?

5 A. That's -- this is the front door to Ann's apartment.

6 Q. You mean, Ann?

7 A. I meant Candace's apartment, I'm sorry.

8 Q. Okay. And what's the number up there on the door?

9 A. Apartment [REDACTED]

10 Q. Now, is this after it's been roped off and secured?

11 A. Yes, sir.

12 Q. And what's this hanging from the deadbolt?

13 A. The key.

14 Q. Is that the key you use?

15 A. Yes.

16 Q. Okay. So when you arrived that door was locked?

17 A. Yes, sir.

18 Q. State's Exhibit 7, another photo, what are we looking
19 at here?

20 A. Candace's apartment door [REDACTED] with the key in the lock.

21 Q. And what room is just inside that door?

22 A. The living room.

23 Q. Okay. State's Exhibit 8, what are we looking at here?

24 A. That is the backside of the front door of apartment

25 [REDACTED]

L. Tyler- Direct Examination by Kozak

249

1 Q. And what are these smudges and things on there, do you
2 know what those are?

3 A. It's like smeared blood.

4 Q. All right. State's Exhibit 9, what are we looking at
5 here?

6 A. This is Candace's bedroom.

7 Q. All right. And is this from -- where is this photo
8 taken, what's the angle? Where are you standing?

9 A. From outside the door looking in.

10 Q. And what would you call that area outside the door?

11 A. The hallway.

12 Q. All right. State's Exhibit 10, what is this?

13 A. I'm still outside the door in the hallway, but I got a
14 close up of the blood droplets on the carpet and the hair.

15 Q. Okay. And from your experience in this case, who does
16 that hair belong to?

17 A. Candace.

18 Q. State's Exhibit 11, what are we looking at?

19 A. Candace's bed.

20 Q. All right. And what's to the right of the bed on the
21 ground?

22 A. A used condom, more blood and some clothing.

23 Q. I think we're going to zoom in on that. State's
24 Exhibit 12, similar view?

25 A. Yes, sir.

L. Tyler- Direct Examination by Kozak

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1 Q. All right. State's Exhibit 13, is that the condom
2 that you're talking about?

3 A. Yes, sir.

4 Q. Fourteen and then, 15, now, where is this from the,
5 let's put together the big picture and the smaller picture,
6 where is this in the room?

7 A. It's beside the bed on the floor.

8 Q. And who collected that at the scene?

9 A. Investigator Christian Hensley I do believe.

10 Q. But you didn't collect it, correct?

11 A. No. No.

12 Q. Okay. State's Exhibit 16, what are we looking at
13 here?

14 A. This is a photo of me standing in the hall facing the
15 living room and you can see blood droplets on the wall.

16 Q. Now, when you take this photo are you, basically,
17 standing in the bedroom?

18 A. I'm in the hallway.

19 Q. Okay. But if you're -- what's right behind you?

20 A. The bedroom door is right beside me.

21 Q. So on State's Exhibit 17, we're gonna zoom in on what
22 you're talking about, what is that?

23 A. It's - it's blood on the wall.

24 Q. And is that in the hallway?

25 A. It's in the hallway.

L. Tyler- Direct Examination by Kozak

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1 Q. Now, the way you're going right now ---

2 A. It's towards ---

3 Q. --- when you're looking at these, you're going from
4 the bedroom to the kitchen?

5 A. Yeah. To the living room and the kitchen.

6 Q. All right. State's Exhibit 18, what are we looking at
7 here?

8 A. This is a picture where I'm standing in the living
9 room facing the kitchen. You can see the blood in the
10 floor in the kitchen. There's a piece of hair and paper
11 towel.

12 Q. All right. Now, is this -- this little alleyway on
13 the left side of the photo, is that where we just saw the
14 blood droplets?

15 A. Yes, sir.

16 Q. All right. And so the bedroom is further down that
17 hall?

18 A. Yes, sir.

19 Q. State's Exhibit 19, what are we looking at here? What
20 is this - what is this right here in front of the kitchen?
21 The chair? What room is that in?

22 A. That's the living room.

23 Q. Okay. So what are we looking at here in the kitchen?

24 A. It's the blood on the floor. There's hair on the
25 floor. If you can see the table behind it, it's like got a

L. Tyler- Direct Examination by Kozak

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1 knocked over flower vase like there was a struggle.

2 Q. So State's Exhibit 21, is that -- the next photo 21?

3 It's on the back, what's that exhibit number?

4 A. I've got 20.

5 Q. Okay. State's Exhibit 20 is the next one, what's

6 that?

7 A. It's a - it's a closer view of the kitchen floor where

8 you can see the blood droplets, the hair.

9 Q. Now, when you're taking these photos, how close is the

10 living room to the bedroom? Just an estimate.

11 A. The living room is probably about five to ten feet

12 from the bedroom.

13 Q. And the kitchen is directly off the living room?

14 A. Yes.

15 Q. How far you think it is from the front door to the

16 kitchen? Like how big is the living room?

17 A. Not big. It's probably the same. Probably about ten

18 feet to the kitchen.

19 Q. State's Exhibit 21, what is this?

20 A. That's a close, close up view of the hair and the

21 blood that was on the kitchen floor.

22 Q. Okay. So this is a different piece of hair that was

23 found in the bedroom?

24 A. Yes.

25 Q. State's Exhibit 22, what are we looking at here?

L. Tyler- Direct Examination by Kozak

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1 A. We're looking at blood and, um, in the kitchen floor.

2 Q. State's Exhibit 23, now, where are you standing when
3 you take this photo?

4 A. When I take this photo I'm standing in the kitchen
5 facing the living room.

6 Q. So also what would be through the living room?

7 A. The front door.

8 Q. Okay. So what do we have in this photo?

9 A. This photo shows blood, the hair, more hair. There's
10 also blood all over the counters running down the doors.
11 The carpet is kicked up like there was a scuffle in there.

12 Q. Okay. State's Exhibit 24, what is this?

13 A. This is a picture of the kitchen table with everything
14 knocked over which indicates a struggle.

15 Q. Now, you guys have not touched anything at this point
16 ---

17 A. No.

18 Q. --- in the investigation, correct?

19 A. No.

20 Q. Okay. State's Exhibit 25, what are we looking at
21 here?

22 A. It's a different view of the table. You can also see
23 the blood on the floor in the background. This is the
24 kitchen.

25 Q. Now, this is -- this curtain ---

L. Tyler- Direct Examination by Kozak

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1 A. That's the ---

2 Q. --- looks like it's blowing in the wind ---

3 A. It's a sliding glass door that was left opened.

4 There's also blood if you look, like somebody grabbed that
5 on the way out.

6 Q. Okay. State's Exhibit 26, it's just a different angle
7 of the cabinets?

8 A. Yes, sir.

9 Q. Now, earlier we were just looking at one floor mat,
10 correct?

11 A. Yes, sir.

12 Q. Now this other floor mat is also in the kitchen, has
13 it been moved?

14 A. No.

15 Q. Okay. State's Exhibit 27, what are we looking at
16 here?

17 A. This is the counter in the kitchen.

18 Q. Mmm, hmm.

19 Q. That also had blood all over.

20 Q. Now, if you can look closely, what's in the sink?

21 A. There's blood in the sink.

22 Q. All right. What is actual, from your picture, what
23 actually looks like is in the sink?

24 A. A knife.

25 Q. What's all in this drying rack?

L. Tyler- Direct Examination by Kozak

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1 A. All kind of dishes, knives, utensils.

2 Q. Okay. State's Exhibit 28, what are we looking at
3 here?

4 A. This is a picture of the sliding glass door that's in
5 the kitchen with blood on the doorframe in the wall also on
6 the floor.

7 Q. State's Exhibit 29, it's just a closer view?

8 A. Yes, sir.

9 Q. State's Exhibit 30, it's still ---

10 A. It's a closer view.

11 Q. All right. What is this, State's Exhibit 31?

12 A. That is the curtain in the kitchen, the back, from
13 where I guess it was pushed to get the door opened.

14 Q. And, now, is this the same blind you saw in the last
15 photo?

16 A. Yes.

17 Q. Okay. State's Exhibit 32, now, as we just saw in a
18 photo earlier, was that screen down outside of the sliding
19 door when you arrived?

20 A. Yes.

21 Q. And was the sliding door still opened when you
22 arrived?

23 A. Yes, it was.

24 Q. State's Exhibit 33, is this -- what are we looking at
25 here?

L. Tyler- Direct Examination by Kozak

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1 A. It's a closer view of the blinds on the sliding doors
2 in the kitchen.

3 Q. Okay. State's Exhibit 34, is this a screen I was
4 describing earlier?

5 A. Yes, sir.

6 Q. And what is -- what else is outside that door?

7 A. This is the patio outside of the sliding glass doors
8 and it has blood droplets on it.

9 Q. Now, when you go outside of that patio door, what are
10 you looking at? What's outside that door?

11 A. The apartments across.

12 Q. Where is the baseball field in respect to this sliding
13 glass door?

14 A. The baseball field would be on your left.

15 Q. Okay. State's Exhibit 35, what are we looking at
16 here?

17 A. This is the sidewalk in front of Candace's apartment.

18 Q. And what's the door all the way at the end there, the
19 end of that walkway?

20 A. That's Candace's apartment.

21 Q. Okay. State's Exhibit 36, why did you feel you needed
22 to zoom in here, what are we looking at?

23 A. This is the sidewalk and you can see the blood that
24 goes up the sidewalk to the apartment.

25 Q. State's Exhibit 37, what is that right at the bottom?

L. Tyler- Direct Examination by Kozak

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1 A. That is a bloody footprint.

2 Q. All right. And so are each of these big blotches
3 footprints?

4 A. Yes, sir.

5 Q. State's Exhibit 38?

6 A. It's the same as, I mean, it's the sidewalk with
7 bloody footprints.

8 Q. So where did these footprints lead?

9 A. To apartment [REDACTED]

10 Q. Okay. State's Exhibit 39, more footprints?

11 A. Yes, sir.

12 Q. State's Exhibit 40, what are we looking at there?

13 A. That is apartment [REDACTED]

14 Q. Whose apartment is that?

15 A. That was the next-door neighbor's apartment.

16 Q. Okay. State's Exhibit 41, what are we looking at
17 here?

18 A. That is the apartment [REDACTED] that's the entrance with
19 blood going into the apartment.

20 Q. State's Exhibit 42, just a closer view of the same ---

21 A. Yes, sir.

22 Q. --- doorway -- forty-three?

23 A. It's a close review in front of apartment [REDACTED]

24 Q. Forty-four, what are we looking at here?

25 A. This is apartment [REDACTED] That is the chair Ms. Candace

L. Tyler- Direct Examination by Kozak

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1 was sitting in when I spoke to her when I arrived on scene.

2 Q. Mmm, hmm. And what are these blotches on the floor?

3 A. They are bloody footprints.

4 Q. Where are you standing when you take this photo?

5 A. At the front door.

6 Q. Forty-five?

7 A. It's apartment [REDACTED] with bloody footprint.

8 Q. Forty-six, what are we looking at here?

9 A. We're looking at a chair sitting in the apartment [REDACTED]
10 that Candace has sat in. In the background you can see
11 blood in the floor.

12 Q. So when you arrived at the scene where was Candace?

13 A. She was sitting in that chair ---

14 Q. Okay.

15 A. --- in apartment [REDACTED]

16 Q. And what was she wearing?

17 A. She had like, like a sheet or something over her.

18 Q. What's -- State's Exhibit 47, where is this?

19 A. This is apartment [REDACTED] in the kitchen.

20 Q. All right. So where is the chair in this photo?

21 A. It's like right at the bottom of the photo.

22 Q. All right. State's Exhibit 48, is it just a closer
23 view of kitchen in [REDACTED]

24 A. Yes, sir.

25 Q. State's Exhibit 49, who we looking at here?

L. Tyler- Direct Examination by Kozak

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1 A. This is Ms. Ann.

2 Q. And where was this photo taken?

3 A. McLeod Medical Center.

4 Q. And how long after the attack, estimate, did you take
5 this photo?

6 A. I'd say maybe thirty minutes.

7 Q. All right. So after you were at the scene you
8 responded to the hospital?

9 A. Yes.

10 Q. Okay. Fifty, what is this a close up of?

11 A. This is a close up of Ann's throat.

12 Q. And what does that appear to be to you?

13 A. A cut marked.

14 Q. State's Exhibit 51, what are we looking at?

15 A. That's Ms. Ann.

16 Q. Okay.

17 A. We're looking at her shirt with all the blood on it
18 and she has a bandaged arm.

19 Q. State's Exhibit 52, what -- whose hand is this?

20 A. That's Ms. Ann's hand.

21 Q. State's Exhibit 53, what are we looking at here?

22 A. That's Ms. Ann's pants.

23 Q. State's Exhibit 54, who is this?

24 A. Fifty-four is Ms. Ann's arm.

25 Q. State's Exhibit 55?

L. Tyler- Direct Examination by Kozak

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1 A. That is Ms. Ann's arm.

2 Q. All right. What do those appear to be?

3 A. It looks like a stab wound through and through.

4 Q. State's Exhibit 56, is this another stab wound?

5 A. Yes, sir.

6 Q. State's Exhibit 57?

7 A. A stab wound.

8 Q. All right. State's Exhibit 58, who are we looking at?

9 A. We are looking at Ms. Candace.

10 Q. Okay. Now, when did you respond to the hospital to
11 take these photos?

12 A. I'd say about thirty minutes after I arrived on scene.
13 Once the investigator got to the scene I was advised to go
14 to the hospital with the victims.

15 Q. All right. State's exhibit -- where was she at the
16 hospital when you responded, do you remember?

17 A. She was in the emergency room.

18 Q. Okay. State's Exhibit 58, whose hand is this?

19 A. That's Ms. -- 58 or 59?

20 Q. Oh, 59, sorry. State's Exhibit 59?

21 A. That's Ms. Candace's hand.

22 Q. State's Exhibit 60, it's just a closer view of her
23 hand?

24 A. Yes, sir.

25 Q. Now, were there any injuries to her hand when you were

1 photographing it?

2 A. Yes, sir. She had a lot of cuts on the hand which
3 appeared to be defensive wounds.

4 Q. Okay. State's Exhibit 61, whose -- what are we
5 looking at?

6 A. That is a cut on Ms. Candace's arm.

7 Q. State's Exhibit 62, what are we looking at?

8 A. We're looking at Ms. Candace's face. You can see the
9 lacerations on her throat. You can see the bruising and
10 swelling on her neck and you can see the redness in her
11 eyes.

12 Q. Now, you can see her hair very well here, is that the
13 hair that matched the hair on the floor in the apartment?

14 A. Yes, sir.

15 Q. Okay. Now, what does the red in the eyes indicate to
16 you?

17 A. Petechial hemorrhaging. It's like it appears someone
18 was strangling her.

19 Q. And what -- do you notice anything else about this
20 photo that would look like strangulation?

21 A. Her throat.

22 Q. What about her throat?

23 A. It's red and discolored. It's bruised.

24 Q. Okay. State's Exhibit 63, what are we looking at?

25 A. We're looking at Ms. Candace....

L. Tyler- Direct Examination by Kozak

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1 Q. And what's -- well, I think we'll zoom on the next
2 one. State's Exhibit 64, what are we looking at?

3 A. We're looking at her face, the bruising on her face.
4 You can also see some of the lacerations on the side of her
5 neck.

6 Q. State's Exhibit 65, what are we looking at in this
7 photo?

8 A. We're looking at Ms. Candace's leg.

9 Q. And what -- what about that injury? What does that
10 injury look like to you?

11 A. It's a deep injury.

12 Q. Sixty-six, State's Exhibit 66, is this just a further
13 out photo of that same injury?

14 A. It is.

15 Q. State's Exhibit 67, now, which -- this is the other
16 side of Candace's face, correct?

17 A. Yes, sir.

18 Q. What are we looking at here?

19 A. It appears to be a laceration to her face.

20 Q. All right. And where, I mean, ---

21 A. Up under her eye.

22 Q. What looks like caused that injury?

23 A. A knife.

24 Q. State's Exhibit 68, is this Candace's other hand?

25 A. It is.

L. Tyler- Direct Examination by Kozak

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1 Q. And what is knife wounds on both hands consistent with
2 in your experience?

3 A. Defense. It would be a defense.

4 Q. State's Exhibit 69, these similar defensive wounds?

5 A. Yes, sir.

6 Q. State's Exhibit 70, what are we looking at?

7 A. It's a close up of Candace's neck area.

8 Q. And what did you notice, let's go over again what you
9 noticed about her neck now that we've got a good zoomed in
10 picture?

11 A. Her neck has been cut more than once. There's
12 bruising. There's swelling.

13 Q. And all of that in your experience is indicative of
14 what?

15 A. Choking.

16 Q. State's Exhibit 71, are these more defensive wounds on
17 her hands?

18 A. Yes, sir.

19 MR. KOZAK: I beg the Court's indulgence real fast.

20 THE COURT: Yes, sir.

21 MR. KOZAK: Sorry about that.

22 Q. State's Exhibit 72, what are we looking at here?

23 A. It's a picture of Candace's face and her eyes that are
24 bloody.

25 Q. State's Exhibit 73, that's a closer of this one, what

L. Tyler- Direct Examination by Kozak

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1 do you notice about her eyes?

2 A. That they have a lot of blood where the white of the
3 eye should be.

4 Q. And in your experience what is that indicative of?

5 A. Choking.

6 Q. State's Exhibit 74, what are we looking at here?

7 A. This is Candace's chest.

8 Q. And just more knife wounds?

9 A. Yes, sir.

10 Q. State's Exhibit 75, what are we looking at here?

11 A. This is, um, Candace's leg.

12 Q. And what is that ---

13 A. It's a knife wound, stab wound.

14 Q. State's Exhibit 76, what are we looking at here?

15 A. Candace's arm.

16 Q. State's Exhibit 77?

17 A. That's a picture of Candace's arm with a deep wound.

18 Q. All right. Um ---

19 MR. KOZAK: I beg the Court's indulgence. I don't
20 want to get one photo in that's not in yet.

21 Q. State's Exhibit 78, did you have a chance to look up
22 the defendant's Facebook account?

23 A. I did.

24 Q. And what information led you to that Facebook account?

25 A. Candace telling me that it was "Reedy All Boss" is the

L. Tyler- Direct Examination by Kozak

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1 name that he goes by on Facebook. So I searched Facebook
2 using "Reedy All Boss" and it was the defendant's page.

3 Q. All right. And you were able to visit that account.
4 I'm showing State's Exhibit 2, tell us what's on this?

5 THE COURT: If you need to step down to get a
6 better ---

7 Q. Oh, sorry. Yeah, you don't have the number. Here you
8 are, I'll hand you State's Exhibit 1, sorry about that. Is
9 this the account you went to look at?

10 A. Yes, sir.

11 Q. And once you were on that account were you able to
12 look at any photos of his?

13 A. Yes, sir.

14 Q. Okay.

15 MR. KOZAK: I they the court's indulgence. It's --
16 he went to get another exhibit. It was not in the pile.

17 THE COURT: What is the number of that exhibit,
18 ma'am, that you're referring to?

19 A. Number 2.

20 THE COURT: Number 2.

21 MR. KOZAK: We'll bypass and come back to that.

22 Q. Do you know if fingerprints were taken off the front
23 door of [REDACTED]

24 A. I do not.

25 Q. Okay.

L. Tyler- Cross Examination by Mr. Swilley

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1 MS. BURCHSTEAD: Apologizes, judge, pictures have
2 been moved around.

3 MR. KOZAK: Your Honor, we can't find the hard copy
4 right now but it will be marked, it is in the electronic
5 form, it will be marked as State's Exhibit seventy or
6 State's Exhibit 80.

7 COURT REPORTER: Which one?

8 MR. KOZAK: It's going to be electronic so we can't
9 mark it yet. We're going to bring it in.

10 COURT REPORTER: Is this another one? A different
11 one?

12 MR. KOZAK: Mmm, hmm, a different photo.

13 COURT REPORTER: Yes, sir, it would be Number 80.

14 MR. KOZAK: Okay. Your Honor, if there is no
15 objection to it coming in?

16 THE COURT: All right. State's Exhibit Number 80
17 is admitted into evidence.

18 (Whereupon, the Photo has been marked and entered into
19 evidence as State's Exhibit No. 80) (sic)

20 MR. KOZAK: Do you want to step down so you can see
21 it ---

22 THE COURT: A hard copy will be ---

23 MR. KOZAK: --- it's gonna be electronic.

24 THE COURT: A hard copy will be provided.

25 MR. KOZAK: Yes, sir. It's just not -- don't know

1 where it went missing.

2 Q. If you'll look at -- so you had a chance to review
3 this Facebook account, correct?

4 A. I did.

5 Q. Now, when you reviewed his account, did he have any
6 photos from the night before the incident?

7 A. He did.

8 Q. And is this photo from the night before the incident?

9 A. Yes.

10 Q. And why do you know it from that date? If you want to
11 come read the date from the Facebook photo. Stand over
12 there so you're not blocking that photo.

13 A. The date has September 30, 2016.

14 Q. And what was the incident date of this incident?

15 A. October 1, 2016.

16 Q. Now, was this shirt ever recovered?

17 A. Yes, sir.

18 Q. Okay.

19 MR. KOZAK: No further questions, Your Honor.

20 THE COURT: All right. Mr. Swilley?

21 **Cross-Examination by Mr. Swilley:**

22 Q. Now, Ms. Tyler, you're an investigator now, right?

23 A. Yes, sir.

24 Q. And you were a road officer at the time, right?

25 A. Yes, sir.

L. Tyler- Cross Examination by Mr. Swilley

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1 Q. And those -- the difference is road officer respond,
2 the investigators come in and investigate, right?

3 A. Yes, sir.

4 Q. Okay. And you were the first to arrive it looks like
5 on, at the scene of the road officers, right?

6 A. Yes, sir.

7 Q. Okay. And when you got there you assess the
8 situation, talked to people, find out what happened, right?

9 A. Yes, sir.

10 Q. Okay. And now, Investigator Tyler -- well, let's go
11 back, even though you were a road officer you'd gone to the
12 Criminal Justice Academy, right?

13 A. Yes, sir.

14 Q. Graduated, correct?

15 A. Yes, sir.

16 Q. And you learn how to do a lot of stuff at the Criminal
17 Justice Academy pertaining to police were, right?

18 A. Yes, sir.

19 Q. Learn how to be a cop, is that correct?

20 A. Yes, sir.

21 Q. Okay. And one of the things you had to do -- well,
22 it's true to say one of the things you do as an
23 investigator and as a road officer is you produce an
24 incident report, right?

25 A. Yes, sir.

1 Q. And anytime you responded to a situation that need
2 police assistance you would generally type up a police
3 incident report, right?

4 A. Yes, sir.

5 Q. Okay. And you had an incident report as a road
6 officer in this case, right?

7 A. Yes, sir.

8 Q. Now, when you have -- when you put together an
9 incident report that incident report it's got to be
10 detailed, right?

11 A. Yes, sir.

12 Q. It's got -- because it's an important document, isn't
13 it?

14 A. Yes, sir.

15 Q. And everything in there has got to be correct, right?

16 A. Yes, sir.

17 Q. And it's got to be precise, right?

18 A. Yes, sir.

19 Q. And specific, correct?

20 A. Yes, sir.

21 Q. Okay. And that so you can remember what happened,
22 right?

23 A. Yes, sir.

24 Q. And that so prosecutors can know what's going on,
25 right?

L. Tyler- Cross Examination by Mr. Swilley

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1 A. Yes, sir.

2 Q. And they have to have an accurate detail of, of the
3 incident, right?

4 A. Yes, sir.

5 Q. Okay. And you reviewed your incident report before
6 you produce it, right?

7 A. Yes, sir.

8 Q. Go through it and make sure everything is correct,
9 right?

10 A. Yes, sir.

11 Q. Make sure everything makes sense, right?

12 A. Yes, sir.

13 Q. You review your notes before you make it, right?

14 A. Yes, sir.

15 Q. And you made notes in this case too, right, didn't
16 you?

17 A. I think so.

18 Q. You think so. Okay. Any kind of notes she would make
19 would be accurate, right?

20 A. Yes, sir.

21 Q. All right. And also you -- you, yourself went and
22 typed up it looks like a page and a half of notes, right?

23 A. Yes, sir.

24 Q. Okay. And you testified on direct earlier that you
25 had made contact with Ann Covington and attempted to record

1 her version of events in your body camera, right?

2 A. Yes, sir.

3 Q. Okay. And afterwards you found that the battery was
4 dead?

5 A. Yes, sir.

6 Q. And none of that was recovered, right?

7 A. No, sir.

8 Q. All right. And it's a good thing -- well -- and you
9 didn't go back and record it again, did you?

10 A. No, sir.

11 Q. Okay. So there's no -- so there's no audio or video
12 recording of this interview with Ann Covington that exists,
13 is that correct?

14 A. Not to my knowledge.

15 Q. Okay. I'm sorry, now?

16 A. Not to my knowledge.

17 Q. Okay. But you were able to do that with Candace
18 Simpson, right? Make a body cam video?

19 A. Yes, sir.

20 Q. And that was recorded and preserved, correct?

21 A. Yes, sir.

22 Q. Okay. Now, you didn't have one of Ann Covington but
23 it's a good thing you produce an incident report, right?

24 A. Yes, sir.

25 Q. All right. And that was that you were able to

L. Tyler- Cross Examination by Mr. Swilley

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1 memorialize your interview with Ann Covington, isn't that
2 correct?

3 A. Yes, sir.

4 Q. Okay. And your memorialization of that interview in
5 your answer report that's correct, right?

6 A. Yes, sir.

7 Q. And it's accurate?

8 A. Yes, sir.

9 Q. It's detailed, isn't it?

10 A. Yes, sir.

11 Q. And it's precise, right?

12 A. I would hope so.

13 Q. That's a yes?

14 A. Yes.

15 Q. Okay. I mean, like you testified you wouldn't put
16 anything in there that's not those four things, right?

17 A. Yes, sir.

18 Q. Okay. And before you release it I think it has to be
19 -- well, in this case it was actually reviewed and approved
20 by chief of police, right?

21 A. Yes, sir.

22 Q. Chief David Lane?

23 A. Mmm, hmm.

24 Q. I'm sorry?

25 A. Yes, sir.

L. Tyler- Cross Examination by Mr. Swilley

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1 Q. Okay. I'm sorry, that mic is not working. You've got
2 to speak up for me.

3 A. Okay.

4 Q. It's all good. Now, in your -- during your interview
5 or your notes with Ms. Covington it states that you
6 recorded that Ms. Covington did not know the suspect, is
7 that correct?

8 A. Yes, sir.

9 Q. Okay. And it also states that - give me one moment -
10 it doesn't mention anything, in your report it doesn't
11 mention anything about Ms. Covington locking herself in the
12 bedroom, does it?

13 A. No, sir.

14 Q. Okay. And your report makes mention that Ms.
15 Covington said that she was poked, is that correct?

16 A. Yes, sir.

17 Q. Okay. And it makes mention that -- it makes mention
18 that Ms. Covington then grabbed the children and ran out of
19 the apartment, is that correct?

20 A. Yes, sir.

21 Q. And at that point she went next door to the apartment
22 of Ms. Elaine Manning for help, is that correct?

23 A. Yes, sir.

24 Q. And it states that before Ms. Covington could go back
25 to the apartment for Ms. Simpson, Ms. Simpson was walking

L. Tyler- Cross Examination by Mr. Swilley

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1 towards her down the sidewalk?

2 A. Yes, sir.

3 Q. Okay. And then at that point it states that when she
4 was walking down the sidewalk Ms. Covington helped Ms.
5 Simpson in the apartment at that point, is that correct?

6 A. Yes, sir.

7 Q. Okay. And investigator or now Investigator Tyler, you
8 didn't process the scene for prints or DNA or anything like
9 that, that wasn't your job, was it?

10 A. No, sir.

11 Q. Okay. Your job was mainly to gather information from
12 the people involved, right?

13 A. Yes, sir.

14 Q. Right. And that was your sole, I guess, as a road
15 officer that was your sole duty, that was your particular
16 duty in this case, right?

17 A. Yes, sir.

18 Q. All right. That was your emphasis?

19 A. Yes, sir.

20 Q. Right. And other people had to go and try to collect
21 prints, right?

22 A. Yes, sir.

23 Q. Other officers - other road officers?

24 A. No.

25 Q. Or ---

1 A. Investigators.

2 Q. Oh, okay. Excuse me, investigators. And other
3 officers had to go and rope off, rope off the scene, right?

4 A. Yes.

5 Q. That was part of the other people's duties -- you've
6 got several officers that were involved in this
7 investigation, right?

8 A. Yes, sir.

9 Q. Each with specific things that they had to do?

10 A. Yes, sir.

11 Q. Okay. And I guess that's delegation of task for
12 several different officers, right?

13 A. Yes, sir.

14 Q. And yours was to basically collect information
15 initially from the people involved, right?

16 A. Yes, sir.

17 Q. Okay. And you're fairly certain that you did a good
18 job of this, correct?

19 A. Yes, sir.

20 Q. Okay. And you -- you didn't write anything down in
21 your report that you didn't, that you didn't take in,
22 right?

23 A. No, sir.

24 Q. Okay.

25 MR. SWILLEY: Give me one moment, Ms. Tyler.

L. Tyler- Redirect Examination by Mr. Kozak

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1 Q. Okay. And during your interview, your recording, you
2 recorded that according to your interview with Ms.
3 Covington, the individual had on just a pair of basketball
4 shorts, right?

5 A. Yes, sir.

6 Q. Okay. All right.

7 MR. SWILLEY: Thank you, Ms. Tyler.

8 THE COURT: Mr. Kozak?

9 MR. KOZAK: Briefly, Your Honor.

10 **Redirect Examination by Mr. Kozak:**

11 Q. So when you arrived on scene that night Candace is in
12 the chair ---

13 A. Yes ---

14 Q. --- freshly injured?

15 A. Yes, sir.

16 Q. And immediately who did she say did this to her?

17 A. Reedy All Boss.

18 Q. And at any time throughout all of your interactions
19 asking Candace or Ann about the story, did Candace ever say
20 she wasn't raped?

21 A. No, she did not.

22 Q. Did she ever say she wasn't stabbed?

23 A. No, she did not.

24 Q. And did she ever say anyone else did it?

25 A. No, she did not.

B. Bryant- Direct Examination by Mr. Kozak

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1 MR. KOZAK: No further questions.

2 MR. SWILLEY: No re-cross.

3 THE COURT: All right. You can step down, Ms.

4 Tyler. Thank you.

5 MS. TYLER: Thank you.

6 MR. KOZAK: The State calls Bridget Bass.

7 THE CLERK: Place your left on the Bible and raise
8 your right hand for me. Do you solemnly swear or affirm the
9 evidence and testimony that you're about to give the Court
10 and jury on this case is the truth, the whole truth, and
11 nothing but the truth so help you God?

12 MS. BRYANT: I do.

13 THE CLERK: Have a seat in the witness box. State
14 your full name for the court spell your last.

15 MS. BRYANT: Bridget Bass Bryant, B-r-y-a-n-t.

16 BRIDGET BRYANT, first being
17 duly sworn, testified as follows:

18 **Direct Examination by Mr. Kozak:**

19 Q. Good afternoon, Ms. Bass. Where are you currently
20 employed?

21 A. McLeod Dillon ER.

22 Q. And what is your role there?

23 A. I'm a staff nurse.

24 Q. All right. How long have you been there?

25 A. Since 2006.

B. Bryant- Direct Examination by Mr. Kozak

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1 Q. And what are some of your duties as a staff nurse
2 there?

3 A. Take charge, triage patients, implement nursing from
4 the time they enter until the time they're transfer from
5 our department.

6 Q. And were you working October 1, 2016?

7 A. Yes, sir.

8 W. All right. And what role were you working that day?

9 A. I was the primary nurse.

10 Q. Do you recall a Ms. Candis Simpson coming in needing
11 treatment?

12 A. I do.

13 Q. And in what regard did she come in?

14 A. She came in, if I'm not mistaken, she came in by EMS.
15 She went straight to one of our trauma rooms and I began
16 care from there.

17 Q. Did she come in as a possible rape?

18 A. She come in with an assault. She was an assault. She
19 had lacerations. We didn't get into all the rape stuff
20 until I got in the room. My first primary goal was to
21 stabilize her.

22 Q. And what did -- what was her appearance like? What
23 did she look like?

24 A. She had lacerations, multiple lacerations. Unless I
25 look at the chart I could not tell you everywhere they were

B. Bryant- Direct Examination by Mr. Kozak

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1 at but I do remember them being all over her body.

2 Q. Is there anything particular that stood out to you
3 about this case?

4 A. The only thing that I recalled from my memory until
5 this come up was I remember being worried about her hands
6 because she was a hairdresser and I was worried about the
7 function of her hands. That was the only thing I recalled
8 before reviewing the chart.

9 Q. Why would you be -- what made you worry about her
10 hands?

11 A. Because there were so many lacerations on her hand,
12 deep lacerations and I just worried about her afterwards.
13 I knew she was a hairdresser so ---

14 Q. Now, when there's a ---

15 A. That was the only thing I recalled after the fact of
16 taking care of her.

17 Q. Okay. And when it's a possible rape situation what's
18 the protocol? What do you -- how do you guys handle that?

19 A. We have a rape kit that we are in charge of collecting
20 and being responsible for and handing over to the officer
21 in charge.

22 Q. Okay. And what goes into -- well, is this called a
23 sexual assault examination protocol?

24 A. Yes, sir.

25 Q. And what goes into that?

B. Bryant- Direct Examination by Mr. Kozak

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1 A. A lot. A lot of time. A lot of time. Preparation.
2 Sealing. We pretty much assess them from their head to
3 toe. We collect samples. Documentation.

4 Q. And have you performed sexual assault examinations
5 protocols in the past?

6 A. Yes, sir.

7 Q. About how many do you think? Just an estimate.

8 A. Probably too many to count.

9 Q. Okay. And in this case did you perform one?

10 A. Yes, sir.

11 Q. Let me have this marked as State's Exhibit 81.

12 MR. KOZAK: I've showed opposing counsel this
13 already.

14 Q. I'm going to hand you what's been marked as State's
15 Exhibit 81, can you tell me what this is?

16 A. This right here is the South Carolina Law Enforcement
17 Division sexual assault examination protocol.

18 Q. Okay. And is that -- did you perform the sexual
19 assault or were you involved in the sexual assault
20 examination protocol in this case?

21 A. Yes, sir.

22 Q. And is that your report?

23 A. Yes, sir.

24 Q. Has it been edited or altered in any way?

25 A. No, sir.

B. Bryant- Direct Examination by Mr. Kozak

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1 MR. KOZAK: At this time I'd like to move State's
2 Exhibit 81 into evidence and published to the jury.

3 MR. SWILLEY: One moment please, judge, just one
4 moment. No objection.

5 THE COURT: All right. State's Exhibit Number 81
6 is received into evidence.

7 (Whereupon, the Sled Protocol Report From Hospital has been
8 marked and entered into evidence as State's Exhibit No. 81)

9 Q. Okay. We're gonna kind of walk through this. So when
10 she comes in, what happens?

11 A. She is triage.

12 Q. Okay.

13 A. Stabilized.

14 Q. And then - and then how do we get to the sexual
15 assault examination protocol?

16 A. Once she stabled, then we actually, we have the kit
17 that comes in a box. It has all of the necessary paperwork
18 inside the kit. All the collection, envelopes, seals,
19 everything that we need. We get the kit. We go to the
20 room. We collect the samples that it ask for and we stay
21 in the room with the patient with the samples until it is
22 sealed up and given to the officer.

23 Q. Okay. So your present ---

24 A. The whole entire time ---

25 Q. --- in the room the entire time this is done?

B. Bryant- Direct Examination by Mr. Kozak

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1 A. Yes. The kit is my baby until it's handed over to the
2 officer.

3 Q. Okay. So it looks like there's a questionnaire, is
4 that correct?

5 A. Yes.

6 Q. And one of the questions is if the patient ingested
7 alcohol that's on page 2, is that one of the questions?

8 A. Yes.

9 Q. And did she have a response in this case?

10 A. She responded, yes.

11 Q. And there's a described label, what did she say there?

12 A. She said that she had three mixed drinks.

13 Q. All right. Now, what - what are you looking for with
14 some of these questions? Like what is the purpose for the
15 sexual assault examination protocol?

16 A. To collect any evidence. To get a questionnaire from
17 the patient. To show assessment information on the
18 patient.

19 Q. And did she give a description to you of what happened
20 ---

21 A. Yes, she did ---

22 Q. --- I guess, a brief synopsis of what happened?

23 A. Mmm, hmm.

24 Q. What did she say in this case?

25 A. I stated here patient reports she was raped more than

B. Bryant- Direct Examination by Mr. Kozak

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1 once. She was held against her will while trying to escape
2 she was attacked by a knife.

3 Q. All right. Now, when you're looking at her injuries
4 are you supposed to mark down what injury she has to her?

5 A. Yes, we do.

6 Q. And what did you mark down in this case?

7 A. I put multiple lacerations to arms, legs, chest,
8 hands. She was strangulated and now has blood "bloodshot
9 eyes."

10 Q. Is there anything you added after that?

11 A. Bruising to the neck.

12 Q. Now, in your experience, you said you've done more
13 than you can count of sexual assault protocols, when you
14 see bloodshot eyes and bruised neck what does that indicate
15 to you?

16 A. Strangulation.

17 Q. Now, there said on page 4, we go into other acts, what
18 are you looking for here at the bottom of page 4?

19 A. That is -- here we're looking for other acts like
20 oral, masturbation, ejaculation, anything there.

21 Q. All right. Now, how soon after the attack is this
22 questionnaire filled out by you with the patient?

23 A. With the patient after the attack?

24 Q. Yeah.

25 A. If they come in directly after the attack we tried to

B. Bryant- Direct Examination by Mr. Kozak

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1 get it as soon as possible.

2 Q. Okay.

3 A. We like to have the same clothes and everything.

4 Q. Now, in this questionnaire it looks like you have
5 answers, I mean, questions for penetration of vagina by
6 multiple things which you ask everyone these questions,
7 correct?

8 A. Yes.

9 Q. Now, what are -- she said penetration by vagina of
10 penis, what is her answer to that question?

11 A. Yes.

12 Q. And a finger?

13 A. Yes.

14 Q. And then an object, what is her answer?

15 A. She was unsure.

16 Q. And was she sure of anything else according to this
17 questionnaire that happened that morning from the boxes you
18 checked?

19 A. Would you rephrase? I'm sorry.

20 Q. So the possible answers are no, yes, attempted, and
21 unsure ---

22 A. Mmm, hmm.

23 Q. --- on the questionnaire. Now, you have the next
24 question is, penetration of an anus by penis, finger, or
25 object, what was her answer to those three?

B. Bryant- Direct Examination by Mr. Kozak

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1 A. She was unsure of everything else.

2 Q. And does that include -- is there a section for oral
3 sex on there?

4 A. Yes.

5 Q. And her answer to that was?

6 A. Unsure.

7 Q. And at the bottom there's a description because she
8 told you something, what's does that stay at the bottom
9 right?

10 A. She said that she was unsure because she had passed
11 out multiple times from being strangled.

12 Q. Okay. Now, there is a strangulation assessment on
13 this, correct?

14 A. Yes, sir.

15 Q. What kind of questions and what are the answers to
16 those and what are you looking for? It's on page 6.

17 A. Thank you.

18 Q. No problem.

19 A. The strangulation assessment it ask what did he
20 strangle you with and she said his hands, with both hands.

21 Q. All right. Is there a place for her to say how many
22 times she was strangled?

23 A. She said she was strangled multiple times, four times.

24 Q. And did she say she lost consciousness?

25 A. Yes.

B. Bryant- Direct Examination by Mr. Kozak

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1 Q. Why would you ask if a throat -- why would you ask if
2 she has a hoarse voice?

3 A. Because anytime someone is strangled, any trauma to
4 the neck would cause you to be hoarse.

5 Q. And what did -- did she have a hoarse voice and did
6 you note that?

7 A. She did. Very hoarse vocally is what I stated or
8 noted.

9 Q. Now, tell me what a Woods light is?

10 A. A Woods light it's like a black light if anyone's ever
11 seen a black light before. You can turn the lights off and
12 it glows purple and you can see stuff you wouldn't normally
13 see with the lights on. Lint, anything white it would
14 show.

15 Q. Okay. And what is the purpose of using a Woods light
16 in a sexual examination protocol?

17 A. Body fluid. To see if there's any body fluid
18 anywhere.

19 Q. And did you use a Woods light in this examination?

20 A. Yes, it was used.

21 Q. And did it show any body fluids ---

22 A. Yes ---

23 Q. --- present on Ms. Simpson?

24 A. Yes, sir.

25 Q. Okay. Now, you said you took samples in this case?

B. Bryant- Cross-Examination by Mr. Swilley

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1 A. Well, we assist. The physician actually collects the
2 samples from the cervix.

3 Q. Okay.

4 A. But we assist him in handing him the device and seal
5 it and label it ourself.

6 Q. And when you seal it and label it what is the purpose
7 of doing that?

8 A. It's so whenever it's sent off no one knows that it's
9 been tampered with.

10 Q. Okay. And in this case did you take samples?

11 A. Yes.

12 Q. Did you seal them and ---

13 A. And initial ---

14 Q. --- I mean, what you do with them after you seal them?

15 A. We put them in the box. We put them in the kit
16 through the officer.

17 Q. And then, what happens to the box?

18 A. It goes to the officer, sealed. We seal it as well.

19 Q. Okay.

20 MR. KOZAK: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. KOZAK: No further questions, Your Honor.

23 THE COURT: All right. Mr. Swilley?

24 **Cross-Examination by Mr. Swilley:**

25 Q. Ms. Bass, you still got that copy ---

B. Bryant- Cross-Examination by Mr. Swilley

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1 A. Yes, sir.

2 Q. --- of your sexual assault examination ---

3 A. Yes, sir.

4 Q. --- up there with you? Okay. Now, this thing when
5 you said, again, you've done a numeral amounts of these,
6 right?

7 A. Yes, sir.

8 Q. And this is the same one every time, right?

9 A. Yes, sir.

10 Q. And you're the one that is taking all -- this is
11 actually in your handwriting, right?

12 A. It is in my handwriting. Actually, I had a charge
13 nurse in with me and she did fill out some parts of it and
14 there's a physician's part where he fills out his questions
15 in this exam.

16 Q. Okay. And the other nurse is Janis Rogers, right?

17 A. Yes, sir.

18 Q. Okay. And she's - she's got the same credentials as
19 you have ---

20 A. Yes, sir.

21 Q. --- the same training, right?

22 A. Mmm, hmm. She's been there fifteen -- yeah, we've
23 been there together pretty much.

24 Q. And, yes, ma'am, these microphones are dead.

25 A. I'm sorry.

1 Q. If you could speak up for me.

2 A. Okay.

3 Q. Now, Ms. Bass, there's eight pages and a lot of the
4 stuff, you get these answers to these questions directly
5 from the - directly from the person, is that correct?

6 A. Yes, sir.

7 Q. Okay. And I noticed, you know, you took down, it
8 would've been three mixed drinks that was informed to you,
9 is that correct?

10 A. Yes, sir.

11 Q. Now, later on -- and that's on page 2. Now, you go
12 down and it says post assault hygiene/activity, it's marked
13 he yes for urinated, is that correct?

14 A. Had she urinated since the assault? Yes.

15 Q. And it was marked defecated too, is that correct?

16 A. Yes.

17 Q. And then you go down a little further and it also is
18 marked yes for vomiting, is that correct?

19 A. Yes.

20 Q. Okay. And moving on it says on page 4, describe the
21 types of penetration and the first one is penis and it's
22 marked yes, is that correct?

23 A. Yes.

24 Q. And then after that it's marked finger, is that
25 correct?

B. Bryant- Cross-Examination by Mr. Swilley

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1 A. Yes.

2 Q. Okay. And that's a positive indication that she said
3 happened?

4 A. Yes.

5 Q. Okay. And you move on and you go and there was, I
6 don't know if this was covered in direct, but as far as
7 oral copulation and that's oral sex, correct, that third
8 one down?

9 A. Yes, sir.

10 Q. And that's marked unsure, is that correct?

11 A. Yes, sir.

12 Q. She would've answered that she was unsure at the time?

13 A. Yes.

14 Q. Okay. And you go down to the non-genitals acts it's
15 marked kissing and it also says unsure, is that correct?

16 A. Yes, sir.

17 Q. And you go down to biting, I think, that's also marked
18 unsure?

19 A. Yes.

20 Q. And -- move on and then you actually -- and you were
21 the one that actually did the, the actual vaginal exam, is
22 that correct?

23 A. No, I did not. The physician did the vaginal exam. I
24 just took the specimens.

25 Q. Okay. A physician -- and you were present during that

1 exam?

2 A. Yes, sir.

3 Q. Okay. And I think there were several methods that you
4 could do the vaginal exam with, is that correct? I think
5 it's on page 6, top.

6 A. Yes, I see it.

7 Q. Okay. I'm sorry.

8 A. Oh, no, you're fine.

9 Q. And there were several exam methods that could be
10 employed, is that correct?

11 A. Right.

12 Q. Well, four, four to be exact.

13 A. Mmm, hmm.

14 Q. Okay.

15 THE COURT: Please say yes or no when you answer
16 these questions.

17 A. Yes. I'm sorry.

18 Q. And that chart on page 7 which you are referring to
19 that was conducted by the physician, is that correct?

20 A. It was. Although, on seven I actually wrote on there
21 laceration, like I tried to mark where all her lacerations
22 were and then it was my handwriting, it was me that done it
23 at the bottom.

24 Q. Okay. But as far as G through K, or I guess in this
25 particular instances subsection G ---

B. Bryant- Cross-Examination by Mr. Swilley

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1 A. Mmm, hmm, that was the physician.

2 Q. Okay. And a Woods light was employed to look for body
3 fluids only, right?

4 A. Correct.

5 Q. Okay. And body fluids -- and, if this is true, body
6 fluids are present usually in any sexual encounter whether
7 it's consensual or not non-consensual, is that correct?

8 A. Yes, sir.

9 Q. Okay. And you can determine by using that Woods light
10 or well, let me put it this way, there's no indicator by
11 that Woods light whether or not the sexual encounter was
12 forced or consensual, is there, it's just that there was
13 one?

14 A. It just says that's where he -- where it circled is
15 where he found ---

16 Q. Body fluid?

17 A. Body fluid, yes, sir.

18 Q. Okay. And -- I'm sorry, you said you were present
19 during the inspection of the vaginal area?

20 A. The whole entire time, yes.

21 Q. Okay. But you weren't the one who did the inspection,
22 right?

23 A. No.

24 Q. Okay.

25 A. He did.

B. Bryant- Redirect Examination by Mr. Kozak

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1 Q. Okay.

2 MR. SWILLEY: Thank you, Ms. Woods, I mean, Ms. Bass.

3 THE COURT: Any redirect, Mr. Kozak?

4 MR. KOZAK: Briefly, Your Honor.

5 **Redirect Examination by Mr. Kozak:**

6 Q. So Mr. Swilley ask the answers to these questions are
7 coming from Candace?

8 A. Yes, they are.

9 Q. But the observations about ---

10 A. Are coming from me.

11 Q. Okay. And so your observations about the
12 strangulation are coming from you?

13 A. Yes.

14 Q. So when she comes in, did you ask her if she was
15 strangled?

16 A. Yes.

17 Q. And then through your observations did you confirm?

18 A. Yes, sir.

19 Q. Okay. Now, in the description of contact between
20 where we're talking about all of the penetration and oral,
21 all the unsure's she gave an explanation for that at the
22 bottom?

23 A. It was because she was passing out. She was
24 disoriented from being strangled.

25 Q. Okay. And when you said you marked all the

B. Bryant- Recross-Examination by Mr. Swilley 294

1 lacerations on her body, what are you referring to when you
2 say lacerations?

3 A. There is a diagram on here that has pretty much just a
4 picture of a body and then you just, you mark on there
5 where the lacerations are. You just ---

6 Q. You're -- go ahead.

7 A. No, you go ahead. I'm sorry.

8 Q. You're a nurse. You've been working for a long time.
9 You've seen lots of lacerations. In your opinion, what
10 does these appear to be?

11 A. Defensive wounds.

12 Q. And ---

13 MR. KOZAK: No further questions, Your Honor.

14 MR. SWILLEY: Your Honor, just very briefly on re-
15 cross.

16 **Re-cross Examination by Mr. Swilley:**

17 Q. The -- refer back to page 4, Ms. Bass, for
18 explanations, that's under the, and this is in evidence,
19 it's under where it says the explanation is under other
20 acts masturbation, photographs, other the explanation is
21 off to the right side of that, is that correct?

22 A. Yes.

23 Q. And all the explanations of the other previous
24 questions described of sexual assault are left blank, is
25 that correct?

B. Bryant- Recross-Examination by Mr. Swilley

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1 A. They're blank but it was in reference to all.

2 Q. Okay. But the explanations is next to the other?

3 A. It's only next to the other acts, yes, sir.

4 MR. SWILLEY: Thank you.

5 THE COURT: All right. You can step down, ma'am.

6 Thank you.

7 MS. BASS: Thank you.

8 MR. KOZAK: Your Honor, may she be excused from her
9 subpoena?

10 THE COURT: Any objection, Mr. Swilley?

11 MR. SWILLEY: No objection, Your Honor.

12 THE COURT: You may be excuse, ma'am.

13 MS. BASS: Thank you.

14 THE COURT: Thank you. Okay.

15 MS. BURCHSTEAD: May we approach, Your Honor?

16 THE COURT: Yeah.

17 (Whereupon, a bench conference is held off the record)

18 MS. BURCHSTEAD: Thanks for your patience, Your
19 Honor. The State now calls Dr. Mijalli, Mamdough Mijalli.
20 I'll ask him to pronounce it correctly when he gets on the
21 stand.

22 THE CLERK: If you'll place your left hand on the
23 Bible and raise your right hand. Do you solemnly swear or
24 affirm that the evidence and testimony you're about to give
25 the court and the jury on this case is the truth, the whole

M. Mijalli- Direct Examination by Ms. Burchstead 296

1 truth, and nothing but the truth so help you God?

2 DR. MIJALLI: Yes.

3 THE CLERK: Be seated and state your full name for
4 the court and spelling your last for us.

5 DR. MIJALLI: My name is Mamdouh Mijalli. I'm a
6 general surgeon. And I covered trauma in the ER in Dillon.

7 THE CLERK: How do you spell your last name for the
8 court?

9 DR. MIJALLI: Mijalli, M-i-j-a-l-l-I.

10 MAMDOUH MIJALLI, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Ms. Burchstead:**

13 Q. Good afternoon, doctor.

14 A. Good afternoon.

15 Q. Thanks for coming. Let's just get some background,
16 doctor. You went to medical school, right?

17 A. Yeah.

18 Q. Okay. Where did you go to medical school?

19 A. I went to medical school in Cairo University.

20 Q. Okay.

21 A. When I came to Yale University, I did my fellowship
22 and I did my residency at Yale.

23 Q. Your residency here?

24 A. Yeah, Yale -- Yale University.

25 Q. Oh, at Yale?

M. Mijalli- Direct Examination by Ms. Burchstead

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1 A. Yeah, at Yale

2 Q. Residency at Yale. And when did you finish residency?

3 A. That's a good point, twelve years ago.

4 Q. Twelve years ago, time flies, huh?

5 A. Yeah.

6 Q. Do you now live in Dillon or work in Dillon?

7 A. Yeah, I live in Dillon, yeah.

8 Q. Okay.

9 A. I came as a general surgeon for a few years and have
10 been there for twelve years now.

11 Q. So twelve years you've been here?

12 A. In Dillon, yes.

13 Q. Okay. And where do you currently work? Are you with
14 the hospital?

15 A. McLeod, yeah.

16 Q. And are you a surgeon with McLeod?

17 A. Yeah, I'm a general surgeon and I cover trauma too.

18 Q. Okay. I assume you're licensed and board certified?

19 A. Yeah. Board certified, yes.

20 Q. Have you ever testified in court?

21 A. Never.

22 Q. This is your first trip to court, huh?

23 A. Yeah.

24 MS. BURCHSTEAD: All right. Your Honor, at this

25 time the State offers Dr. Mijalli as an expert in general

M. Mijalli- Direct Examination by Ms. Burchstead 298

1 surgical medicine.

2 MR. SWILLEY: I don't object to his qualifications.

3 THE COURT: All right. I find him to be qualified
4 as an expert in the area of general surgeon and also
5 trauma.

6 MS. BURCHSTEAD: Thank you.

7 Q. Doctor, were you -- you said you've been at the
8 hospital for about twelve years, is that right?

9 A. Yes.

10 Q. So presumably you were working there back in October
11 of 2016?

12 A. Yeah.

13 Q. As a surgeon?

14 THE COURT: Say yes or no please.

15 A. Yes. Yes.

16 Q. And also we have to keep reminding everybody that the
17 microphones are not working well.

18 A. Okay.

19 Q. So as much as you can project would be appreciated. I
20 assume you've treated a lot of patients over the years?

21 A. I do. I have many traumas.

22 Q. It has been a little time since 2016. Have you had an
23 opportunity to review the medical records in relation to a
24 Candace Simpson?

25 A. Yeah, I did. Operative notes.

M. Mijalli- Direct Examination by Ms. Burchstead 299

1 Q. All right. So you had operative notes for Candace
2 Simpson?

3 A. Yeah.

4 Q. And that was from October 1, 2016?

5 A. Yes.

6 THE COURT: Speak up a little bit louder.

7 A. Yes.

8 THE COURT: It's not working ---

9 A. Yes. Oh, yes. Sorry.

10 THE COURT: --- so just speak loud ---

11 A. Yes.

12 Q. It's a constant battle for everybody. If at sometime
13 you don't remember or if you need to refer to something let
14 me know, we do have copies for you. Do you recall what
15 injuries you treated with Ms. Simpson?

16 A. I mean, she had multiple injuries. She had multiple
17 cuts around her neck and the thumb. I remember lift her
18 hands like multiple -- there was some superficial cuts and
19 the thumb was a little bit deep ---

20 Q. Okay.

21 A. --- deeper. I remember she had conjunctiva hemorrhage
22 and I remember -- I took care multiple areas. It's all
23 over.

24 Q. When you talk about the hemorrhage, what you mean?
25 Can you explain that?

M. Mijalli- Direct Examination by Ms. Burchstead 300

1 A. Bleeding, like bleeding under the conjunctiva, like
2 around the eye. Her eyes were like raccoon eyes where you
3 have like bruising around the eye and all this stuff.

4 Q. So bruising in the eye and petechial hemorrhage?

5 A. Petechial hemorrhage, yeah. You can say that, yeah.

6 Q. And you said, I believe, did you said they were cuts
7 on her neck?

8 A. There was a cut -- I remember cuts and her thumb and
9 hands because I took care of everything. I put everything
10 back together. So I did.

11 Q. Right. And when you say you put it back together,
12 what did you do?

13 A. I mean, suturing. If this is superficial we suture it
14 and if it's a tendon, we just proximate the tendon just for
15 the hand mobility to be able to move it. So I remember it
16 took me a while because taking care of all -- you have to
17 clean the wound the, the first. You have to do it again.
18 And then you have to proximate the wound -- you can't close
19 it tight because of the infection from the injury so you
20 have to be very careful in how to clean it, yeah.

21 Q. Okay. And you've used the term superficial, can you
22 explain what that means?

23 A. Superficial meaning involving the superficial parts of
24 the skin. It doesn't have to be deep down involving the
25 muscles or tendons so it's more in the sub-continuous

M. Mijalli- Direct Examination by Ms. Burchstead 301

1 tissue in the skin. You have the skin, you have fat under
2 the skin, and then you have deeper structures.

3 Q. So if you strike a major organ that's not superficial?

4 A. No, that's not superficial. If you hit that organ
5 that's not superficial.

6 Q. So if you don't hit an organ, it is or it could be
7 superficial?

8 A. Deep, yeah. It could be, yeah.

9 Q. Okay. Do you remember any notes about lots of
10 consciousness or any general condition of when you treated
11 her?

12 A. No. I do remember when I took care of her she was
13 very conscious, like, she was talking to me.

14 Q. Okay.

15 A. Like she was very, I would say, cooperative. Because
16 I was talking to her and we told her what we were going to
17 do to get her to the operating room, clean the wounds and
18 everything. So I do remember she was talking to me like
19 that.

20 Q. Okay.

21 A. Maybe she was a little bit - have changed of voice. I
22 don't remember exactly how she was but she was like I was
23 talking to her because I try to get some information on how
24 she's doing.

25 Q. Right. Now, you mentioned the petechial hemorrhage,

M. Mijalli- Direct Examination by Ms. Burchstead 302

1 is that the redness in the eyes, is that right?

2 A. Yes. Under the conjunctiva, the superficial under the
3 eye.

4 Q. Okay. And do you remember any bruising or swelling in
5 the neck?

6 A. There was a little like around her eye ---

7 Q. Okay.

8 A. --- I remember in the face, yeah, it was.

9 Q. Okay. And so if you have the redness in the eye, and
10 a hoarse voice, bruising to the neck, in your medical
11 opinion, is that consistent with possible strangulation?

12 A. Yeah, it can be. Is anything that can increase your
13 pressure in the head and neck can cause this change. So
14 anything that is strained, strangulation, pressure,
15 straining. You try to strain, pushing and that if somebody
16 who is having heavy weight you can injury the body with
17 straining and by all this bleeding and bruising, yeah.

18 Q. Okay.

19 A. It can be consistent with it.

20 Q. Okay. Now, it if someone is sliced on the neck deep
21 enough what could happen or if it was a deep laceration to
22 the neck what could happen?

23 A. It depends. I mean, you can cut the trachea so this
24 is where breathing is.

25 Q. Right.

M. Mijalli- Direct Examination by Ms. Burchstead 303

1 A. You can cut the carotid artery, two carotid and you
2 can cut the vein and you can cut even the C spine. You can
3 just cut the whole neck.

4 Q. And if that happened in any of those incidences would
5 death result? Could it result?

6 A. Yeah. It depends, too. I mean, if you save somebody
7 fast enough to do pressure you can save their life.

8 Otherwise, if you wait with bleeding you can bleed to
9 death, fast. Because this is a carotid coming from the
10 aorta and that's big artery, considerably.

11 Q. So in this case the slice of the neck did not go that
12 deep, is that correct?

13 A. As I remember it was superficial. I didn't remember
14 it was deep because I just close it with the stitches. I
15 didn't go deep.

16 Q. Okay. And do you remember if there was more than one
17 ---

18 A. Yeah, they were multiple. I do remember there were
19 multiple there. I can't count because I was taking care of
20 everywhere so I was not, you know ---

21 Q. Right.

22 A. --- I didn't count them like

23 Q. I understand.

24 MS. BURCHSTEAD: I beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

M. Mijalli- Cross-Examination by Mr. Swilley

304

1 Q. Do you recall anything about her hands?

2 A. Yeah, the hand - the thumb, there was cuts in the
3 thumb but it was deeper a little bit in the tendon. I think
4 I -- and there was multiple cuts in most of the hands, the
5 fingers too.

6 Q. And in your opinion, could that be defensive wounds?

7 A. Oh, yeah. You can just try to defend yourself and you
8 can have multiple cuts on your hands, yeah.

9 MS. BURCHSTEAD: Nothing further on direct, Your
10 Honor.

11 THE COURT: Mr. Swilley?

12 **Cross-Examination by Mr. Swilley:**

13 Q. Dr. Mijalli?

14 A. Hey, how are you?

15 Q. How are you? You along with, I think, Nurse Bass
16 conducted the sexual assault examination protocol, is that
17 correct?

18 A. Yeah. I don't remember which nurse was there but my
19 job was focusing -- remember I work with the OR Team.

20 Q. Right.

21 A. So I just come in as a surgeon and take the patient to
22 the OR. So about the sexual assault I don't know any of
23 that. I'm not involved with -- I didn't even know what
24 exactly about that.

25 Q. You didn't -- you didn't examine the ---

M. Mijalli- Cross-Examination by Mr. Swilley

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1 A. No. No. No.

2 Q. You didn't examine the vaginal area?

3 A. I'm a surgeon. No. No.

4 Q. Make sure I ask -- please let me finish my question.

5 THE COURT: Let him ask the questions fully.

6 A. I'll try again. Yeah.

7 Q. Dr. Mijalli, you didn't examine the genital area?

8 A. No.

9 Q. Okay.

10 A. Just the -- you treated Ms. Simpson just for the
11 wounds, is that correct?

12 A. Yeah, for the surgical wounds.

13 Q. Okay. Thank you.

14 A. Thank you.

15 MR. SWILLEY: Nothing further.

16 THE COURT: Anything else, Ms. Burchstead?

17 MS. BURCHSTEAD: Not from the State. We asked that
18 he be excused?

19 MR. SWILLEY: No objection.

20 THE COURT: Thank you, sir. You may be excused.

21 DR. MIJALLI: Thank you very much. Thank you.

22 MS. BURCHSTEAD: May we approach?

23 THE COURT: Yes, ma'am.

24 (Whereupon, a bench conference was held off the record)

25 THE COURT: Ladies and gentlemen, we can keep going as

M. Mijalli- Cross-Examination by Mr. Swilley

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1 we are now but if you need a break I'll certainly give you
2 one now. What's the jury's pleasure, do you want a break or
3 do you want to keep going?

4 (Whereupon, the back row of the jury states to keep going)

5 THE COURT: The back row says to keep going, how
6 about the front row?

7 (Whereupon, the front indicates the same thing)

8 THE COURT: Keep going.

9 MS. BURCHSTEAD: Okay. The State calls Anitra
10 Clark-Jones.

11 THE COURT: If you'd come forward please, ma'am.

12 THE CLERK: Place left and on the Bible and raise
13 right hand for me. Do you solemnly swear or affirm that
14 the evidence and testimony you're about to give the court
15 and the jury on this case is the truth, the whole truth,
16 and nothing but the truth so help you God?

17 MS. CLARK-JONES: I affirm.

18 THE CLERK: Have a seat in the jury box. Give us
19 your full name spelling your last.

20 THE COURT: We do not have the use of the
21 microphone so I am going to go ahead and tell you speak
22 loudly and clearly please, ma'am.

23 MS. CLARK-JONES: Anitra Clark-Jones, C-l-a-r-k- -J-
24 o-n-e-s.

25

A. Clark-Jones- Direct Examination by Ms. Burchstead 307

1 ANITRA CLARK-JONES, first being
2 duly sworn, testified as follows:

3 **Direct Examination by Ms. Burchstead:**

4 Q. Good afternoon.

5 A. Hello.

6 Q. You prefer to Ms. Clark-Jones, right?

7 A. Correct.

8 Q. Okay. Where are you employed?

9 A. Dillon E-911.

10 Q. And how long have you been there?

11 A. Since April 26, 2001.

12 Q. And what are your primary duties? Let me say back in
13 -- well, in the last few years, what have been your duties
14 at 911?

15 A. The training coordinator there. I'm responsible for
16 all certifications for the new hires in the current
17 employees.

18 Q. Okay. And in your experience at the 911 call center,
19 are you aware where the records are kept when 911 calls are
20 placed and come in?

21 A. Yes.

22 Q. And what -- what type of records are kept? What are
23 they called?

24 A. CAD, computer-aided dispatch and recordings.

25 Q. And how are they, how are they logged?

A. Clark-Jones- Direct Examination by Ms. Burchstead 308

1 A. By computer.

2 Q. So whenever a call comes in the information is put
3 into the computer?

4 A. Correct.

5 Q. And it's kept there so reports can be generated from
6 that information, is that right?

7 A. Yes.

8 Q. Do y'all have a system in place to make sure that
9 information is not changed?

10 A. Yes. And if it's change it's logged on the CAD.

11 Q. Okay. So anything surrounding a 911 call, a 911 call
12 that comes in it's going to be in the report?

13 A. That's correct.

14 Q. And are you aware whether a report was done in this
15 particular case from October 1, 2016?

16 A. Yes.

17 MS. BURCHSTEAD: I beg the Court's indulgence. I
18 need to get the exhibit marked. It has previously been
19 shown to defense counsel referencing State's 82 and I
20 believe it's going to be admitted without objection?

21 MR. SWILLEY: That's correct.

22 THE COURT: All right. Admitted into evidence ---

23 MS. BURCHSTEAD: All right.

24 THE COURT: --- State's Number 82.

25 (Whereupon, the EMS-CAD Report has been marked and entered

A. Clark-Jones- Direct Examination by Ms. Burchstead 309

1 into evidence as State's Exhibit No. 82)

2 MS. BURCHSTEAD: State's 82, if I May approach,
3 Your Honor?

4 THE COURT: Yes, ma'am.

5 Q. I'm gonna show you State's 82, can you tell us what
6 that is?

7 A. This is a CAD detail report.

8 Q. Okay. And what sort of information is on this CAD
9 report just in general? Does it give you like the type of
10 call that comes in?

11 A. Mmm, hmm. It tells the actual incident location. The
12 time the incoming call came in. The time the officers were
13 dispatched. It also has narratives that whoever may have
14 taken the call might've put in. And just a general log of
15 the officers or the ambulance services that responded.

16 Q. Okay. So in this case what type of call came in?

17 A. A stabbing.

18 Q. A stabbing, okay. And can you tell us when that call
19 came in?

20 A. It says the incoming call came in at 9:26 that
21 morning.

22 Q. So 9:26 a.m. on October 1st?

23 A. Yes, 2016.

24 Q. 2016, okay. Does it tell us anything about the
25 caller, the person that calls into 911?

A. Clark-Jones- Direct Examination by Ms. Burchstead 310

1 A. Well, on here it has the callers name but a lot of
2 times whenever someone is calling in the caller name could
3 have been added later after they found out who the actual
4 person was that was stabbed. It does said that Elaine
5 called this and that the male party left and that was at
6 9:29.

7 Q. Okay. So does it give dispatch times on there?

8 A. It does.

9 Q. Okay. So the incoming call came in at 9:26 and what's
10 the dispatch time?

11 A. The dispatch time that it is showing is 9:31.

12 Q. Okay. And you have an en route time?

13 A. Well, it has en route time for law enforcement and an
14 en route time for the ambulance services so it would depend
15 on which en route time.

16 Q. Oh, can you give us both?

17 A. It's showing en route time for the ambulance services
18 at 9:32 and en route time -- well, you don't show -- it
19 gives an en route and on scene time for law enforcement at
20 9:36.

21 Q. Okay. And what is a clear time or a clear date or a
22 clear time mean?

23 A. The time that the actual CAD was cleared from our
24 system.

25 Q. And what is that in this case?

A. Clark-Jones- Direct Examination by Ms. Burchstead 311

1 A. 14:32.

2 Q. So is that 2:32 p.m.?

3 A. That's correct

4 Q. Now, I believe a minute ago you said there was a place
5 for remarks, is that right?

6 A. Yes.

7 Q. Are there just notations regarding the call, is that
8 correct?

9 A. Yes.

10 Q. Okay. And do you have remarks in this particular case
11 that are on this report?

12 A. Yes.

13 Q. Okay. And if you could we're just gonna walk line by
14 line on some of these here. Directing your attention to
15 the 9:29:52 time, what is the remark?

16 A. "Stabbed everywhere. Losing blood. Elaine called this
17 in. Male party left."

18 Q. Okay. And then the next line 9:32:04, what's the
19 notation there?

20 A. "Stabbed everywhere. Losing blood. Elaine called this
21 in. Male party left. Unknown direction of travel. It is
22 very hard to understand female party because she was
23 yelling in the phone."

24 Q. Okay. Let me ask you this, are you the one that
25 actually took this call?

A. Clark-Jones- Direct Examination by Ms. Burchstead 312

1 A. No.

2 Q. Okay. But your familiar with reports and know how to
3 interpret the reports, right?

4 A. Yes.

5 Q. So what is the notation of 9:37:22?

6 A. "Advised 120 Unit 9 that law enforcement is on scene."

7 Q. And then at 9:38:32?

8 A. "Male party called in to advise that there was an
9 emergency at Maplewood Apartments. He advised that
10 apartment [REDACTED]"

11 Q. And then at 9:40:11?

12 A. "Per 206 notify 205.

13 Q. You know what that means?

14 A. Um, 206 is the officer that responded that was on
15 scene.

16 Q. Okay.

17 A. And 205 is normally whenever they go to this kind of
18 call it's like an investigator.

19 Q. All right. And then at 9:41:22, what notation do we
20 have?

21 A. "Call this male party back and got no answer."

22 Q. And at 9:43:47?

23 A. "Went back to listen to voice recorder to see if I
24 could get the name of the male party. It sounded like it
25 was some guy named Radio on Facebook."

A. Clark-Jones- Direct Examination by Ms. Burchstead 313

1 Q. Okay. And 9:44:16, what is the remark?

2 A. "Called 205 and he advised that he has been out of
3 work for over a month."

4 Q. 9:44:29?

5 A. "Per 215 advised to call 204."

6 Q. And 9:45:88 (sic), should be your next page?

7 A. "Male party call back advised his name was James. He
8 was asked did he know the victim's name because it was hard
9 to understand the original caller and if he knew the guy
10 that had did the stabbing. He stated that he didn't know.
11 He had just pulled up and was advised to call 911."

12 Q. Okay. And what is the notation at 9:45:59, the next
13 line?

14 A. "Called 204 and advised him of this and he advised
15 that 206 has already called him and he's on the way.

16 Q. Okay. 10:11:26, what's the remark?

17 A. "130 advised per 126 to let the city know that they
18 are standing by until they get there."

19 Q. And at 10:13:27, again this is still October 1st, you
20 can read that line?

21 A. "Per 120 unit 9 called by 21 to get the times for the
22 call. Advised times for dispatch and on scene. They did not
23 advise when they were en route to the hospital or what time
24 they had arrived at the hospital."

25 Q. And at 10:48:03, what is the notation?

A. Clark-Jones- Direct Examination by Ms. Burchstead 314

1 A. "Late entry. Played the IRR back again and it sounded
2 like she said the male party that did it was "Reedy All
3 Boss" on Facebook."

4 Q. And then on the last couple of lines, the parties are
5 clear from the scene?

6 A. Yes.

7 Q. Okay. And the remarks that you just read, did you
8 input any of that data yourself?

9 A. No.

10 Q. Okay. Are there a couple of individuals that would've
11 been put that information?

12 A. Yes.

13 Q. Okay. The line that you read at 10:48:03 "late entry
14 played the IRR back and it sounded like "Reedy All Boss",
15 what is IRR?

16 A. The instant recorder retrieval.

17 Q. Okay. So when the call came in it was recorded and
18 based on this notation it fair to say they went back to
19 that original recording and listen to it?

20 A. Yes.

21 Q. Okay. And then page 3 of the CAD detail, the viewed
22 activity, is that just the individuals that arrived on
23 scene?

24 A. Yes.

25 Q. Okay.

A. Clark-Jones- Cross Examination by Mr. Swilley 315

1 MS. BURCHSTEAD: Nothing further on direct.

2 THE COURT: Mr. Swilley?

3 **Cross-Examination by Mr. Swilley:**

4 Q. Ms. Clark-Jones, you know Ms. Simpson, don't you?

5 A. I know of her.

6 Q. Well, my question was you know Ms. Simpson, don't you?

7 A. No.

8 Q. All right. And you know Ms. Covington, is that
9 correct? Her sister Ann Covington?

10 A. No.

11 Q. Okay. Now, I guess, you are, I guess, what could be
12 referred to as the second-in-command over the E-911, is
13 that correct?

14 A. Correct.

15 Q. I think Sonny McRae, is ahead of it right?

16 A. Correct.

17 Q. Okay. Now, I think you been working there since April
18 26, 2001?

19 A. Correct.

20 Q. Okay. And you are -- your agency or your office,
21 rather, is tasked with maintaining these 991 calls, is that
22 correct?

23 A. That's correct.

24 Q. Okay. And your task is not only with maintaining
25 them, but your task is preserving these calls as well, is

A. Clark-Jones- Cross Examination by Mr. Swilley 316

1 that correct?

2 A. That's correct.

3 Q. And anytime that there is law enforcement interaction
4 in a situation you want to preserve these calls, is that
5 correct?

6 A. If requested.

7 Q. Okay. So -- well, let me back up, in this situation -
8 and just to clarify - in this case there was no 911 call
9 preserved, was there?

10 A. It -- well, it was held for a year. I recorder only
11 keeps it for a year.

12 Q. It was held -- your testimony is that this call is
13 held for a year?

14 A. On the instant recorder, yes.

15 Q. And then it was erased?

16 A. Correct.

17 Q. Okay. And never to be retrieved again?

18 A. Not that recorder, no.

19 Q. my question is, though, the recording of any 911 calls
20 that were made are never to be retrieved again, is that
21 correct?

22 A. That's correct.

23 Q. And that goes for all the 911 calls that were made
24 regarding this incident, is that correct?

25 A. All calls that's made over a year ago or during this

A. Clark-Jones- Cross Examination by Mr. Swilley 317

1 time.

2 Q. Okay. All calls made during this incident have been
3 erased by your report, is that correct?

4 A. Yes.

5 Q. All right. So my question to you is whose fault is it
6 that we don't have this called or any of these calls,
7 rather?

8 A. I don't know, sir.

9 Q. Okay. Now, is it your testimony that no matter what
10 kind of call it is from a murder to an alleged attempted
11 murder you don't automatically preserve those unless you're
12 told to?

13 A. Correct.

14 Q. Okay. You don't take - nobody over there takes it
15 upon themselves to make sure that calls like these don't
16 get erased, is that correct?

17 A. Correct.

18 Q. Okay. Now, I think you were not the person who
19 actually answered this, any of these 911 calls, is that
20 right?

21 A. That's correct.

22 Q. And you weren't working at the time, is that why?

23 A. I'm not sure if I was working that day.

24 Q. Okay. So would it be -- and on the remarks to the
25 left side when it says, "crichards and dwalters", would

A. Clark-Jones- Cross Examination by Mr. Swilley 318

1 those be the individuals that were answering the phone or
2 just that they were entering this information in the
3 system?

4 A. Just that the ones that were entering the information.
5 The one that created the call was "crichards." It's got it
6 on the CAD as well.

7 Q. You said by the one that created the call that's the
8 one that recorded in the system or the one that created
9 this entry in the CAD?

10 A. Created the initial entry in the CAD.

11 Q. Okay. And you don't know who answered the 911 call?

12 A. Crichards.

13 Q. Okay.

14 A. The original 911 call.

15 Q. And that's who?

16 A. "Crichards."

17 Q. All right. So she answered the phone and said, "oh,
18 this is 911 and what's your emergency?"

19 A. Correct.

20 Q. Okay. And it looks like for the -- well, when a male
21 party called in that was "dwalters" that answered that
22 call?

23 A. I -- yes, I guess.

24 Q. Well, I mean, you testified that it was "crichards"
25 that answered the call because her name is next to the

A. Clark-Jones- Cross Examination by Mr. Swilley 319

1 entry. Wouldn't it -- isn't it true that "dwalters" is the
2 one that answered the call for the male party?

3 A. Yes.

4 Q. All right. And that call was in regards to this
5 incident from a male party, is that correct?

6 A. I guess, yes.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Yes, ma'am. Now -- and again, it looks like there was
10 another individual whose answering 911 calls as well during
11 this time, is that correct?

12 A. Yes.

13 Q. And that's, "sfore", f-o-r-e?

14 A. Yes.

15 Q. And that's the one that answered the phone, "a male
16 party called back and advised his name is James?"

17 A. Yes.

18 Q. Okay. And then it looks like after that there's some
19 other entries that were made by "richards and walters" as
20 well, is that correct?

21 A. Yes.

22 Q. Okay. And, Ms. Clark-Jones, the way entry is the
23 person who comes back and listens, that's an individual,
24 right?

25 A. Yes.

A. Clark-Jones- Redirect Examination by Ms. Burchstead 320

1 Q. Okay. That's a person. And those are the ones that
2 playback the recording and, in this situation that Ms.
3 Burchstead talked about, the way the entry came back looks
4 like at 10:50 and played the incident recorder retrieval
5 again at that time, right?

6 A. Yes.

7 Q. All right. And that's because it was important at the
8 time to make sure that all this, at least this CAD report
9 was correct, is that right?

10 A. Yes.

11 Q. Okay. Now, it's your testimony that nobody from law
12 enforcement told you to preserve any of these calls?

13 A. They did not request the call.

14 Q. That's -- okay. So no one asked you to preserve any
15 of these calls, is that correct?

16 A. No.

17 Q. Okay. Isn't it true to say that's not typical in
18 situations like this?

19 A. No.

20 Q. That's not typical?

21 A. It's not typical.

22 Q. Okay. Usually, for emergency such as this, you can
23 request for the calls to be preserve, right?

24 A. They request the tape, yes.

25 Q. And then you can put that tape on a disc or some sort

A. Clark-Jones- Redirect Examination by Ms. Burchstead 321
and preserve that for however long you need to?

A. Yes.

Q. Okay. And that's one calendar year that it's
preserved before it's erased?

A. That's correct.

Q. Okay. Three hundred and sixty-five days?

A. Thirty hundred and sixty-five days.

MR. SWILLEY: Thank you, Ms. Clark-Jones.

MS. BURCHSTEAD: Redirect ---

THE COURT: Ms. Burchstead?

MS. BURCHSTEAD: Okay. Thank you.

Redirect Examination by Ms. Burchstead:

Q. Just for clearing purposes, is it fair to say the
purpose of the CAD or at least one purposes of the CAD is
to document the information received from the 911 call?

A. Yes.

Q. So if we were to play a 911 call that information
presumably could be heard in a recording?

A. And reflect what's on the CAD.

Q. Have y'all gone through in changing your system at the
911 call center in the last couple of years?

A. No.

Q. Okay. And there are procedures in place not to change
the information once his input into the computer, is that
right?

A Clark-Jones- Recross-Examination by Mr. Swilley

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1 A. That's correct.

2 MS. BURCHSTEAD: Nothing further.

3 THE COURT: Mr. Swilley?

4 MR. SWILLEY: Just briefly, judge.

5 **Re-cross Examination by Mr. Swilley:**

6 Q. Ms. Clark-Jones, this is not a transcript of the call,
7 is that correct?

8 A. It's ---

9 Q. My question is, this doesn't have every single word
10 that was said during the 911 calls, does it?

11 A. No. It just basically ---

12 Q. Summarizes it?

13 A. Yeah.

14 Q. Not -- but the calls -- and typically your department
15 doesn't record in the CAD every single word that is said in
16 the 911 calls that come in, right?

17 A. Not in the CAD detail but in the recorder it does.

18 Q. I'm talking about the CAD, it doesn't record that in
19 the CAD, right? Or else there would be no reason to have
20 the actual audio recording, right?

21 A. Right.

22 Q. All right.

23 MR. SWILLEY: Thank you.

24 THE COURT: All right. You can step down, ma'am.

25 MS. CLARK-JONES: Thank you.

J. Turner- Direct Examination by Mr. Kozak

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1 MR. KOZAK: May she be excused from her subpoena,
2 Your Honor?

3 MR. SWILLEY: No objection.

4 THE COURT: All right. You may be excused from
5 your subpoena, Ms. Clark-Jones.

6 MR. KOZAK: Jason Turner.

7 THE CLERK: Do you solemnly swear or affirm that
8 the evidence and testimony you're about to give the court
9 and the jury on this case is the truth, the whole truth,
10 and nothing but the truth so help you God?

11 MR. TURNER: Yes, ma'am.

12 THE COURT: Have a seat in the witness box and
13 state your full name for the court.

14 MR. TURNER: My name is Jason Turner. Spelling last
15 name T-u-r-n-e-r.

16 THE COURT: I don't have to tell this witness to
17 speak up.

18 MR. KOZAK: We're good. No microphone.

19 (Whereupon, laughter in the courtroom)

20 JASON TURNER, first being
21 duly sworn, testified as follows:

22 **Direct Examination by Mr. Kozak:**

23 Q. Mr. Turner, where are you currently employed?

24 A. City of Dillon Police Department.

25 Q. And what is your current position?

J. Turner- Direct Examination by Mr. Kozak

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1 A. I'm an investigator.

2 Q. And how long have you been employed there?

3 A. Twenty-four, a little over twenty-four years.

4 Q. And what are some of the duties and responsibilities
5 in that position?

6 A. We follow-up on reports that are filed by citizen
7 complaints. We respond to crime scenes. Processed crime
8 scenes. Collect evidence. Turn evidence over to evidence
9 custodian. We analyze data when it comes to financial type
10 cases. Just different investigative functions depending on
11 the type of complaint that's filed by the citizen.

12 Q. And what capacity were you employed on October 1,
13 2016?

14 A. I was an investigator at that time and I would've been
15 the investigator on call, the primary investigator on call
16 that weekend.

17 Q. And how did you become involved in this case?

18 A. I was called to the scene by first, by the supervisor
19 Mike Yoder, and then I was called by the 911 center also.

20 Q. And about what time in the morning do you think it
21 was?

22 A. It would've been after 9 o'clock, 8:30, 9 or 9:30, I'm
23 not exactly sure. It was - it was a Saturday morning so
24 it would've been a day I typically gotten up to be at work
25 at 8 o'clock and Saturday is the only day I get to sleep

1 late. So it would've been 8:30, 9, 9:30 that morning.

2 Q. And where were you called to?

3 A. I was called to Maplewood Apartments the ■ building,
4 to the ■ building.

5 Q. And is that in Dillon County?

6 A. It is in Dillon County.

7 Q. And what did it look like when you got there?

8 A. Well, when I arrived on scene there were patrol
9 officers on scene. The scene was roped off. I met with
10 the supervising officer and officers that were on scene. I
11 got a briefing of what they have learned prior to beginning
12 there. We discussed the next plan of action of what we
13 needed to do whether, you know, processed the scene, get
14 someone to go to the hospital to make sure the that the
15 attacker doesn't go to the hospital to try and attack the
16 victim again and just discuss the next plan of action on
17 how we would carry out processing the scene.

18 Q. Okay. And what are some of the things you did in your
19 investigation of this case?

20 A. Photos were taken, were already taken. So we had a
21 team of people come out whenever we have a major event. So
22 myself and Christian Hensley went into the actual apartment
23 ■ which we would call the primary crime scene, to try and
24 collect and preserve any evidence from inside that primary
25 crime scene. We had another officer go to the hospital,

J. Turner- Direct Examination by Mr. Kozak

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1 like I said earlier, to standby with the victim's for
2 safety purposes and to see if there's any information they
3 can gather from them to help us. Also, while I was
4 standing outside staging and going through the crime scene,
5 I was approached that there was an individual who needed to
6 talk to me about, they needed to talk to me about the
7 event, about some information regarding what may or may not
8 have happened.

9 Q. Okay. Did you receive a call about clothing?

10 A. I did receive a call about clothing. Yes, sir.

11 Q. What, just without saying exactly what was said, what
12 -- what did the call refer to?

13 A. In the course of investigating this event, we got
14 information that there may or may not have been some
15 clothing that belonged to a possible person of interest in
16 the case in Dover Village Apartments in the trash can, in
17 the trash dumpster. We were already canvassing and working
18 the scene so while we were out we actually went over there
19 to follow up on that information.

20 Q. And did you go obtain the clothing items?

21 A. I did. I did. I went to the trash dumpster at Dover
22 Village. And when you look in the trash dumpster there was
23 a piece of clothing readily on the top surfaces of the
24 trash inside.

25 MR. KOZAK: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 Q. Let's just look at the over head showing State's
3 exhibit 1, where about did you find the clothes in the
4 dumpster?

5 MR. TURNER: Can I stand?

6 THE COURT: Yes, sir. If you need to step down do
7 so.

8 A. Okay. So this is Maplewood, this is Dover Village,
9 um, this pin is actually on top of the dumpsters, if that
10 was your question.

11 Q. Mmm, hmm.

12 A. This is the dumpster. That pin is actually on top of
13 that dumpster.

14 Q. And how long after the incident did you go and recover
15 that whatever you recover from that dumpster?

16 A. It would've been in the time of the initial crimes
17 scene response somewhere between, you know, 10:30, ah, 9,
18 10, 10:30 until 1 o'clock or 2 o'clock, whatever the
19 primary time from the crime screen. Because when you're
20 working an active investigation it's not a A,B,C,D process.
21 As good or hot information comes in, you may, if your
22 fingerprinting something you may have to actually stop
23 fingerprinting something to actually go follow-up on a
24 piece of information that may be more vital in the way you
25 gage that is if it's something that could deteriorate or be

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1 moved before you can finish what you're doing. That scene
2 was already preserved. We had tape around it and we had
3 officers at front and back doors. So anything inside that
4 apartment wasn't going to go anywhere. But something in
5 the dumpster could get dumped so we went while we were on
6 the primary crime scene to go over to the next department
7 complex to get it.

8 Q. And when you went to the dumpster, what did you see?

9 A. That there was a shirt inside. We found a piece of
10 clothing inside on the top surface area.

11 Q. Was it in a bag or anything?

12 A. No. It was just sitting right there.

13 Q. So it was touching all the other garbage in the
14 dumpster?

15 A. Yes, sir.

16 Q. All right. I'm gonna show you what's been marked as
17 State's Exhibit 83. State's Exhibit 83 with some gloves,
18 all right, can you tell me what's in this box?

19 A. Can I pull them out?

20 Q. Yeah.

21 A. So this would be the bag that I would've used to, this
22 is my handwriting, this would've been what I used to bag
23 this particular piece of evidence. I marked it with a case
24 number. We assigned an internal agency item number that
25 way when you look at it later on and you have a listing of

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1 what you've got.

2 Q. While you are looking at it, do you know who you
3 received the call from?

4 A. I do.

5 Q. Who did you receive a call from concerning the shirt?

6 A. I got the information from Mark Vereen.

7 Q. Okay.

8 A. That's who the ---

9 Q. Who was the original caller?

10 A. Anika Sellers was the original one to call in this
11 information.

12 Q. And what is that, that you're looking at right now?

13 A. It's a black colored T-shirt with a design on the
14 front, a logo, a picture on the front.

15 Q. And is this the shirt that you recovered from the
16 dumpster?

17 A. It is, yes, sir.

18 Q. All right.

19 MR. KOZAK: At this time I'd like to move State's
20 Exhibit 83 into evidence and publish?

21 MR. SWILLEY: No objection.

22 Q. Let's hold that shirt up.

23 THE COURT: State's Exhibit 83 is admitted into
24 evidence. You may publish it to the jury.

25 (Whereupon, the Shirt has been marked and entered into

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1 evidence as State's Exhibit No. 83)

2 Q. Now, once you -- so, it looks like there's cuttings in
3 the shirt, to your knowledge were those cuttings present
4 when you first recovered the shirt?

5 A. No, sir.

6 Q. Do you know what those are for?

7 A. That would've been part of the processing that sled
8 lab would've done or a lab would have done.

9 Q. When you recovered this shirt was there any damage or
10 cuts to it that you saw when you recovered?

11 A. Not that I recall.

12 Q. If they were, would you have noted it or would you
13 have put that on an incident report or something somewhere?

14 A. Yes, sir.

15 Q. All right. Now, what did you do with the shirt after
16 you recovered it?

17 A. I would've -- we carry bags in our vehicles, we
18 would've packaged it in a bag. You would not have sealed
19 it on the scene. You would've sealed it. You would've
20 folded the bag over. Secured it in a vehicle. Went back
21 to, went back to the primary crime scene and finish that
22 primary crime scene.

23 Q. Okay. Now, was this bag eventually sealed?

24 A. It was, yes, sir.

25 Q. And then where was it sent after it was sealed?

1 A. To the sled lab.

2 Q. All right. Now, did you -- were there prints
3 attempted to be taken at the scene?

4 A. There were, yes, sir.

5 Q. And did you take these prints?

6 A. I -- I was standing there -- I assisted Corporal
7 Christian Hensley. He was, he actually processed the front
8 door, the inside of the front door and - can I tell why?
9 We process the interior of the front door based on the fact
10 that the door was locked when we got there and we had to
11 unlock the door when we got in and when Ann would have run
12 out the door, she would not have stopped to turn and lock
13 the door. So in theory, we felt like it would've been good
14 evidence to swab the lock and fingerprint and see if we can
15 get whoever the potential person of interest is maybe
16 fingerprints or touched DNA.

17 Q. So when did you try and take these prints?

18 A. Immediately at the primary crime scene that morning.

19 Q. So would you document trying to attempt to take these
20 prints?

21 A. Yes, sir.

22 Q. Handing the defendant or the witness what's been
23 marked as State's Exhibit 79, what am I showing you here?

24 A. This is a crime scene sketch form that we use in
25 criminal investigations. What we do is whenever we try to

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1 list something it's easier for me to show you a drawing
2 instead of saying we process the interior side of the front
3 door to the apartment in the upper left quadrant six and
4 half feet or centimeters from the top. I can show you on a
5 drawing about where we got it from. It's just -- it makes
6 the going back a lot easier to -- it's easier to look at
7 than it is to read.

8 Q. And has that been altered or edited in any way?

9 A. It has not.

10 MR. KOZAK: I'd like to move State's Exhibit 79
11 into evidence and published to the jury?

12 MR. SWILLEY: No objection.

13 THE COURT: All right. State's Number 79 is
14 admitted into evidence.

15 (Whereupon, the Diagram of Apartment From Dillon Police
16 Department has been marked and entered into evidence as
17 State's Exhibit No. 79)

18 Q. I want you hold this up and explain to the jury what
19 you did?

20 A. So this is just a rough sketch not the scale.

21 THE COURT: Hang on. Can you see very well?

22 (Whereupon, the court was talking to the jury)

23 MR. KOZAK: You can come down here.

24 A. So and I apologize I'm going to hold it like this if
25 that's okay. So this is a rough sketch not the scale.

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1 What we do is we draw the interior as best we can, because
2 I'm not a artist and this is my handwriting and I
3 apologize, but fortunately there are blocks. So what we do
4 is we draw the interior side of the door and everywhere
5 that you see a mark that's where we tried to take, like
6 this here says, "swab number 23", whenever you're at the
7 scene - so let me explain how that works so to keep - when
8 you take multiples swabs and multiple fingerprints at a
9 scene, the way you keep from getting them mixed up or
10 confused is while you're on scene and while you're taking a
11 swab you actually mark the box. You mark it with the case
12 number and you mark it with an item number. You draw a
13 sketch and on that sketch you put where you made that
14 particular swab from. You'll assigned it a number. That
15 way when you get back to the office you can look at your
16 sketch. And when I look at my swab number 23 I know swab
17 number 23 came from this spot right here on the door. That
18 way if there some type of match later on in the future I
19 can say, oh, well, this match came from the lock on the
20 inside door. I'm not saying that happened I was just
21 giving you that for example. So what we draw is the
22 interior door. We drew the sliding door which would've
23 been the point of exit at the back. And it shows where we
24 tried to swab and fingerprint each one of these particular
25 areas because that would've been where the person of

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1 interest would've shut the door behind, Ann leaving. And
2 also after Ms. Covington run out the person was not,
3 clearly not in the apartment when we got there and cleared
4 the apartment, so we process that point of exit out the
5 back door just to make sure if there was any touch of
6 touched DNA or fingerprint, just trying to be thorough on
7 that part.

8 Q. And what you do with the prints after you obtain them
9 from the scene or the samples, sorry?

10 A. The samples we would package them -- we take swabs,
11 they come in a protective cover, we put them in a box where
12 you can label them. Once you put them -- once you label
13 them they can air dry in that box. You put them in a paper
14 bag and you seal them to be given to the evidence custodian
15 so that you can submit them to sled for testing.

16 Q. Now, is Maplewood Apartments equipped with security
17 cameras?

18 A. It is, yes, sir.

19 Q. And did you try to obtain security footage from the
20 scene?

21 A. We did. This incident happened on Saturday morning.
22 I went back on Monday, two days later. Even to this
23 present day we have issues, there's issues that we have at
24 the apartment, at the apartment complex. There are two
25 sides to Maplewood. There's Maplewood I and Maplewood II.

1 The camera's DVR system is in the office which is by the A
2 and B building. What happens is, is guys, I say guys,
3 unknown persons will unplug the camera systems and they
4 mess up the cords so. We've had several events where we
5 try to go to Maplewood to pull video from what we call
6 Maplewood II which would be where the P building is and
7 where they connect, people will unplug the cameras.

8 There's just issues with the camera system at Maplewood.

9 Q. And so were you able to obtain any?

10 A. We were not. There were no videos for that particular
11 spot.

12 Q. And so there was a condom on the scene from the photos
13 we looked at earlier?

14 A. Yes ---

15 Q. Were ---

16 A. I'm sorry.

17 Q. Who collected that condom?

18 A. That would've been me in the master bedroom.

19 Q. And how do you go about collecting that and was it
20 sealed?

21 A. It would be, of course, you would glove up, you don't
22 touch anything without gloves. You would photograph it
23 first to show it in its original location and once it's
24 photographed in its original location then you would just
25 simply collect it and put it in a paper bag and, you know,

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1 seal it so that it can be submitted to the evidence
2 custodian and then submitted to sled for potential
3 evidence.

4 Q. And in this case you are the one that did that and
5 sealed it?

6 A. Yes, sir.

7 Q. All right. Now, you received a knife from Candace in
8 this case?

9 A. I did.

10 Q. And you also received a knife from Johnny Lester?

11 A. Yes, sir.

12 Q. You are the person, in person, received both of those
13 knives?

14 A. I am for both.

15 Q. Did you -- when you received the knife from Johnny
16 Lester, the one found in the field without the handle, were
17 you able to compare that to any of Candace's knives?

18 A. Do you mean like walking to her house and compare it?

19 Q. Or just -- was there any evidence that this was a
20 knife similar to Candace's?

21 A. Just from looking at it, it appeared to be similar to
22 the knives that were at Candace's, just similar.

23 Q. Okay. And I'm going to hand you State's Exhibit 3,
24 what did I just hand you? What is that?

25 A. That is the -- the knife end of, of a knife. It is

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1 the knife end of what, maybe, like a steak knife type. I
2 say steak knife, it's a -- it's one that you would use at
3 the table. It's not like one that you would use to cook
4 with or I wouldn't use it. But this is the one that was
5 brought to me by Ms. Simpson.

6 Q. And there was never a handle found for that knife,
7 correct?

8 A. There was -- no, sir.

9 Q. All right. You received another knife from Mr.
10 Lester?

11 A. Yes, sir.

12 Q. I'm approaching with State's Exhibit 4, is that the
13 knife you received from Mr. Lester?

14 A. It is, yes, sir.

15 Q. And where was that knife found once again?

16 A. This knife was found where, where Maplewood Apartments
17 in the City of Dillon Parks and Recreation meet. There's
18 an area from where, I called the home run fence where the
19 fence is in the outfield - there's probably several I don't
20 know how many feet - between the fence and the baseball
21 field where there's just a grassy area, opened area, and it
22 was in between the fence where Maplewood is to the baseball
23 diamond on the outside.

24 Q. And the knife that Candace brought you was found
25 where?

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1 A. She found it.

2 Q. Mmm, hmm.

3 A. She told me she found it in her bedroom.

4 Q. Okay.

5 A. It was found in her bedroom.

6 Q. Is there any logo on the knife found inside of her?

7 A. The one that she brought has "diamond cut" logo
8 engraved in it.

9 Q. Is the one found in the field have a logo on it?

10 A. It has "diamond cut" engraved into it, into the knife
11 itself.

12 Q. Okay. All right. So one of these were found inside
13 of her house the other was found in the field?

14 A. Yes, sir.

15 Q. All right. Now, did you ever show Ms. Simpson or Ms.
16 Covington lineups?

17 A. Yes, sir.

18 Q. Now, let's just walk through, just a second, how do
19 you do a lineup?

20 A. I personally don't do them. I don't have the ability
21 to do them. So when we have the necessities for doing a
22 photo lineup there's a couple of things involved. You've
23 got time frame and you've got access to databases. So what
24 we do is we send an email to the Sled Fusion Center and
25 that's their computer center where they have access to all

1 these databases and we just simply put in a request by name
2 and date of birth for the person for which we're looking
3 for a photo lineup from and then they process it. They
4 have no knowledge of the case or what we're doing. They
5 just know we need a photo lineup with this particular
6 person in it for whatever reason. And then they email it
7 back to us. We print it out in color. And then we show it
8 to the victim or witness that we're trying to see if they
9 can identify someone in a photo lineup.

10 Q. And in this case were they both able to identify
11 anyone?

12 A. Yes, sir.

13 Q. And were you present during the identification?

14 A. I was on both with both victims.

15 Q. Now, when they identify someone do you make them mark
16 the identification in any way?

17 A. I like to do that, yes, sir. I do.

18 Q. In this case, did you have them mark the lineup?

19 A. I -- yes, sir.

20 Q. Was Candace able to mark the lineup?

21 A. So Candace was a little different because we had to go
22 to the hospital. You've got to remember she was, had all
23 these wounds on her hand so her hands were bandaged up. So
24 we did it on body cam that way we would have a record of
25 who was in the room. So we went in with a body cam and we

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1 did a photo lineup and we were able to have one of her
2 family members who was present while we were on body cam
3 witness and sign it because her hands were unable to hold a
4 pen or sign.

5 Q. Okay. I'm going to approach with State's Exhibit 84,
6 85, and 86, I believe without objection?

7 MR. SWILLEY: That's correct.

8 Q. Would you tell me what these are starting with 84?

9 A. Eighty-four is a photo lineup that is unmarked with
10 six people in it.

11 Q. All right. Has this been altered or edited in any
12 way?

13 A. It does not appear to. No, sir.

14 Q. Okay.

15 MR. KOZAK: At this time I'd like to move State's
16 Exhibit 84 into evidence?

17 THE COURT: All right. State's Number 84 is
18 admitted into evidence without objection.

19 MR. KOZAK: And published to the jury.

20 (Whereupon, the Photo Lineup has been marked and entered
21 into evidence as State's Exhibit No. 84)

22 Q. So is this the lineup that you showed Candace and Ann?

23 A. It is, yes, sir.

24 Q. Okay. So you actually don't create this lineup?

25 A. I don't, no, sir.

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1 Q. All right. Was this just a copy of the same ones you
2 showed them.

3 A. Yes, sir.

4 Q. Look at State's Exhibit 85, what am I showing you
5 here?

6 A. Eighty-five is a photo lineup from, we showed Ann
7 Covington. This would've been around 6:50 p.m. that same
8 afternoon October 1st. It would've been at her house on
9 Madania Drive she was, she was home by this point.

10 Q. Has it been altered or edited in any way?

11 A. It has -- when you say altered, the photo lineup
12 itself is in its original form from sled. The only
13 alterations is where we, where I hand written the witness.
14 The witness who is actually looking at the photo lineup and
15 I wrote the date and the time and I signed it. The other
16 alteration would be where we handed it to Ms. Covington and
17 she would've, she was instructed to if she -- we always
18 instruct, the person may or may not be in this photo
19 lineup, and we show them the photo lineup and when they
20 point to a photo we asked them to mark it and sign it.

21 Q. So this has not been altered or edited since she
22 identified Tyreek Hayes?

23 A. No, sir.

24 Q. Now, walk me just -- walk me through real fast the
25 language you use when you telling someone about an

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1 identification?

2 A. So you got to be careful when you're doing a photo
3 lineup because you could have a good photo lineup but if
4 you use bad wording you could really be subjective with the
5 photo lineup. So you try not to suggest anything to the
6 person in which you're showing the photo lineup to. So I
7 keep my comments extremely generic but I also put an
8 exclaimer whenever I show a photo lineup that the person -
9 that the person may or may - that the person who committed
10 whatever crimes we're showing you the photo lineup for, may
11 or may not be in this photo lineup. If you see the person
12 point to it or circle the number under the person or if you
13 don't see the person don't point to anything. So we try
14 not to make it suggestive to either way.

15 Q. Okay. And did Ms. Covington make an identification in
16 this case?

17 A. She did.

18 Q. And who did she identify?

19 A. She pointed to cell number 3 which would be Mr. Tyreek
20 Hayes.

21 Q. Look at Exhibit 86 please and tell me what that is?

22 A. This would be the photo lineup that we showed Candace
23 at the hospital. This would have been at 5:55 p.m. This
24 would've been the same, which would be the same day as the
25 event. We got a family member to sign for her because she

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1 couldn't sign because of her hands. We presented the same
2 photo lineup to Candace.

3 Q. Has this been altered or edited after the
4 identification in any way?

5 A. It has not.

6 MR. KOZAK: Move for State's Exhibit 86 to be
7 admitted.

8 MR. SWILLEY: No objection.

9 THE COURT: State's 86 is admitted into evidence
10 without objection.

11 (Whereupon, the Photo Lineup has been marked and entered
12 into evidence as State's Exhibit No. 86)

13 Q. And did Candace make an identification?

14 A. She did.

15 Q. And who did she identify?

16 A. She identified Mr. Tyreek Hayes as her attacker.

17 Q. And both of these identifications are on the same day
18 as the incident?

19 A. It was, yes, sir.

20 Q. All right.

21 THE COURT: Mr. Kozak, did you move number 85 in?

22 MR. KOZAK: I think I moved all three of them, Your
23 Honor. But 85 - 84, 85, and 86 all permission to move into
24 evidence.

25 THE COURT: All of them are admitted into evidence.

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1 (Whereupon, the Photo Lineup has been marked and entered
2 into evidence as State's Exhibit No. 85)

3 Q. Have you investigated a lot of knife attacks?

4 A. Sadly, in almost twenty-five years, I have.

5 Q. Is it often for a person who was attacked with a knife
6 to have no damage to the clothing they're wearing in your
7 experience?

8 A. I'll have to say, no, because the actual concept of
9 being cut with a knife in order for it to break the skin
10 it's got to break the clothes to get to it so....

11 Q. Okay. And were you present when the defendant was
12 arrested on these charges?

13 A. I was, yes, sir.

14 Q. And did you have a chance to examine him for injuries?

15 A. I did.

16 Q. And did he say he had any injuries on his body?

17 A. He showed me a place on his hand or arm, you know, hand
18 and arm.

19 Q. Approaching with what's been marked as State's Exhibit
20 87, can you tell me what that is?

21 A. This is a body cam still shot of Mr. Hayes' hand and
22 wrist area where he said he had a mark.

23 Q. Now, in your experience -- first of all, how long
24 after the incident did this examination take place?

25 A. This would've been, the incident happened October 1st

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1 which was a Saturday. This would've been Sunday, October
2 2nd right around lunchtime, around 12 o'clock. So roughly
3 twenty-four hours from the event, the actual event, the day
4 before.

5 Q. Did the injury he showed you look fresh?

6 A. It didn't.

7 MR. KOZAK: I'd like to move what's been marked as
8 State's Exhibit 87 into evidence and published to the jury.

9 MR. SWILLEY: No objection.

10 THE COURT: All right. State's Number 87 is
11 admitted into evidence.

12 (Whereupon, the Photo has been marked and entered into
13 evidence as State's Exhibit No. 87)

14 Q. So after, after - when he was being arrested he
15 showed you one injury?

16 A. Yes, sir.

17 Q. And this was it?

18 A. Yes, sir.

19 MR. KOZAK: I beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Yes, sir.

22 Q. So Candace said her son found that knife in the
23 bedroom, why would you guys not find that knife in the
24 bedroom?

25 A. So when we process the primary scene in the master

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1 bedroom where you saw the photos earlier, we didn't move
2 any furniture. We didn't move anything out of place. When
3 you examine the scene as it is, the closest thing that I
4 can say to that would be at one point after, of course, the
5 condom and everything that was on the floor beside the bed
6 was collected and move. There's a point in time where I
7 actually lay on the floor to pan and see if there's
8 anything under the dressers and the night stand and I
9 didn't see anything. And based on where she found it I
10 would not have seen it. But we did not move any furniture
11 out from the wall or behind anything to search for
12 evidence. Everything was immediately right there in the
13 spot. There was nothing to suggest to do it either.

14 Q. Based on your investigation, was there any evidence
15 that someone else did this attack?

16 A. No, sir.

17 MR. SWILLEY: Objection, Your Honor.

18 THE COURT: State the question again?

19 Q. Based on your investigation, was there any evidence
20 that someone else did the attack?

21 THE COURT: He can answer that. It's his
22 investigation. He can tell what his result are. I'll
23 overrule the objection. You can answer the question.

24 A. No one else.

25 MR. KOZAK: No further questions, Your Honor.

1 THE COURT: All right. Let's bring the jury in.

2 (Whereupon, the jury enters the courtroom at 4:52 p.m.)

3 THE COURT: Mr. Kozak?

4 MR. KOZAK: At this time there was some confusion
5 on whether State's Exhibit 3 was ever moved into evidence
6 formally. At this time we'd like to move states Exhibit 3
7 as evidence.

8 MR. SWILLEY: No objection.

9 THE COURT: All right. State's Number 3 is
10 admitted into evidence.

11 (Whereupon, the Knife Blade has been marked and entered
12 into evidence as State's Exhibit No. 3)

13 MR. KOZAK: Thank you, Your Honor.

14 THE COURT: Mr. Swilley, you may conduct your cross
15 examination.

16 **Cross-Examination by Mr. Swilley:**

17 Q. Now, Investigator Turner just to clarify, you were the
18 lead investigator in this case, right?

19 A. Yes, sir.

20 Q. I think I guess you were the only investigator at the
21 time involved in this case, right?

22 A. Yes, sir.

23 Q. That means you're in charge of the investigation?

24 A. Yes, sir.

25 Q. Now, just to go over your duties and I think you

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1 glossed over them on direct. You, as the investigator,
2 it's your -- there are several things that have to be done
3 throughout the investigation, that's correct?

4 A. Yes, sir.

5 Q. And you have to make sure the evidence gets gathered
6 correctly, right?

7 A. Yes, sir.

8 Q. And you have to make sure everything gets -- it gets
9 down to sled that needs to get down to sled, right?

10 A. Yes, sir.

11 Q. To make sure that all relevant interviews are
12 conducted, right?

13 A. Yes, sir.

14 Q. Okay. And you gotta make sure you follow up on all
15 leads, right?

16 A. Yes, sir.

17 Q. And make sure you procure any relevant evidence,
18 right?

19 A. Yes, sir.

20 Q. Like the 911 recording?

21 A. Yes, sir.

22 Q. Okay. And in this case, also as the lead
23 investigator, you're basically the supervise and authority
24 over this case, right?

25 A. Yes, sir.

1 Q. And you went, as like an investigator, to the Criminal
2 Justice Academy as well, right?

3 A. Yes, sir.

4 Q. And on the job, right?

5 A. Yes, sir.

6 Q. For twenty-five years?

7 A. Yes, sir.

8 Q. All right. And at the Academy, initially, when you
9 went you learn how to create incident reports too, right?

10 A. Yes, sir.

11 Q. And like we talked about with Investigator Tyler the
12 gotta be truthful, right?

13 A. Yes, sir.

14 Q. They gotta be detailed, right?

15 A. Yes, sir.

16 Q. They have to be precise, right?

17 A. Yes, sir.

18 Q. And it has to be complete, right?

19 A. Yes, sir.

20 Q. And that so that you can recall what you did, correct?

21 A. Yes, sir.

22 Q. And that's so you can recall also what happened,
23 right?

24 A. Yes, sir.

25 Q. And that's so that the prosecutors can know what's

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1 going on as well, right?

2 A. Yes, sir.

3 Q. Okay. Wouldn't want anything in there that's not
4 true, right?

5 A. Yeah. Right. Yes, sir.

6 Q. And you wouldn't want anything in there that's not
7 complete, correct?

8 A. Yes, sir.

9 Q. Okay. And in this case you did, you did create
10 several pages of supplemental incident reports to the
11 original that Ms. Tyler produced, right?

12 A. Yes, sir.

13 Q. Okay. And that outlined what you did, right?

14 A. Yeah, yes, sir.

15 Q. And what you saw, correct?

16 A. Yes, sir.

17 Q. And what evidence you collected, is that correct?

18 A. Yes, sir.

19 Q. Okay. And throughout, you know, the case even after
20 the arrest was made, you still, you still came out with
21 subsequent supplemental reports, right?

22 A. Yes, sir.

23 Q. Okay. So it's true and accurate to say, you know,
24 once the arrest is made you're not, you're not done, right?

25 A. No, sir.

1 Q. You still got work to do sometimes?

2 A. Actually, we always teach the paperwork. That's when
3 the paperwork actually starts once the arrest is made.

4 Q. Right.

5 A. Yes, sir.

6 Q. And you made, like I said, you made sub, throughout
7 the coming months and even over a year later, you made some
8 other subsequent incident reports as well, right?

9 A. Yes, sir.

10 Q. Right. True to say we can agree that you don't stop
11 investigating until the case is over, right?

12 A. Yes, sir. You're right. That's right.

13 Q. Now, Investigator Turner, you're convinced that in
14 this particular case, you know, you did -- these incident
15 reports, excuse me, they were everything they were supposed
16 to be, detailed, accurate, precise, and complete, right?

17

18 A. Yes, sir.

19 Q. And you submitted everything to sled that you needed
20 to submit, correct?

21 A. Yes, sir.

22 Q. Okay. During the time, it looks like you were
23 conducting your investigation you went into Elaine
24 Manning's house, is that right?

25 A. I did go. Yes, sir, I did.

J. Turner- Cross Examination by Mr. Swilley

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1 Q. And based upon your report I believe you took into
2 evidence, a kitchen knife in her house, is that correct?

3 A. A Paula Dean kitchen knife, yes, sir.

4 Q. A Paula Dean kitchen knife.

5 A. Yes, sir.

6 Q. And that was laying next to some blood, is that
7 correct?

8 A. Yes, sir.

9 Q. And you took that into evidence at the Dillon Police
10 Department?

11 A. I -- yes, sir.

12 Q. All right. And I think that was marked as item number
13 30?

14 A. Thirty, 30 sounds right. Yes, sir.

15 Q. Right. And that was actually, I guess, the third, if
16 you count the blade that Candace brought to you a week
17 later, that's actually the third knife that was collected
18 in the investigation of this case, right?

19 A. Yes, sir.

20 Q. Now, that knife, number 30, that was never sent to
21 sled, was it?

22 A. No, sir.

23 Q. Okay. The knife that -- well, I'll point to it, I'm
24 pointing to State's Exhibit Number, looks like number 3,
25 the knife blade that was sent to sled, wasn't it?

1 A. Yes, sir.

2 Q. And the knife that, whose gentleman's name I can't
3 recall found at the field, that was sent to sled too,
4 wasn't it?

5 A. Yes, sir.

6 Q. All right. Based on your information those were
7 analyzed by the sled technician, is that right?

8 A. Yes, sir.

9 Q. Okay. And going back to the interviews that were
10 recorded, you were present for the interview that was
11 recorded of Candace Simpson, right, at the hospital?

12 A. I was not. I was on scene. That would've been ---

13 Q. The interview that I am referring to is the interview
14 that was recorded on Officer Tyler's body cam?

15 A. Oh, yes, sir. Yes, sir. I'm sorry.

16 Q. And I think you were also -- well, you weren't present
17 for the interview with Ann Covington that was supposed to
18 be recorded, is that correct?

19 A. I was not, no, sir.

20 Q. That's when you were on the scene, right?

21 A. Yes, sir, I was on the scene. Yes, sir.

22 Q. And I think you found out later that, that interview
23 was actually not recorded because of the battery issue?

24 A. We had -- we were having issues with the L3 camera
25 system that we're using, yes, sir.

J. Turner- Cross Examination by Mr. Swilley

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1 Q. Okay. And no one ever went back to try to re-record
2 an interview with Ms. Covington, did they?

3 A. Not to my knowledge. No, sir.

4 Q. Okay. And also there was never an interview recorded
5 with Elaine Manning, was there?

6 A. No, sir.

7 Q. Okay.

8 A. Not by me. No, sir.

9 Q. Okay. To your knowledge at all?

10 A. Unless, it was on body cam at the initial response
11 there would've been -- but when you say interview if you're
12 talking about a formal sit down interview, no, sir. The
13 answer to that question is no.

14 Q. Okay. And Ms. Manning is the actual occupant of the
15 ■ the neighbor, right?

16 A. She is.

17 Q. Okay. And you never went and spoke with anybody in
18 apartment ■ did you?

19 A. No, sir.

20 Q. Okay. And I think that based on your report you
21 didn't, you weren't able to get to the E-911 center within
22 a year to get the recordings, is that correct?

23 A. Yes, sir, that's right.

24 Q. Okay. However, you were able to obtain the CAD
25 report, weren't you?

1 A. Yes, sir.

2 Q. And you read through the CAD reports, didn't you?

3 A. Yes, sir.

4 Q. Okay. And when you read the CAD report after that you
5 didn't interview anybody else, did you?

6 A. Um, it's kind of an open-ended question.

7 Q. I'll -- I'll -- I'll try to break it down. You didn't
8 interview any of the individuals that were mentioned in
9 that CAD report, did you?

10 A. No, sir. No, sir.

11 Q. All right. And without telling me what was said, you
12 interviewed Mr. Hayes, right?

13 A. We did. I did. Yes, sir.

14 Q. All right. And that Sunday you mention you met with
15 Mr. Hayes, he voluntarily came to the Dillon Police
16 Department, didn't he?

17 A. He did.

18 Q. Right. Well, I guess, he was brought up there. He
19 had somebody drive him.

20 A. Yes, sir, you're right. He was brought up.

21 Q. Okay. And that was around noon time, is that correct?

22 A. Yes, sir.

23 Q. All right. And he sat down with you, is that correct

24 A. Yes, sir.

25 Q. Again, without telling me what was said, he spoke with

J. Turner- Cross Examination by Mr. Swilley

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1 you, is that correct?

2 A. He did, yes, sir.

3 Q. Okay. He didn't terminate the interview, did he?

4

5 A. He did not terminate the interview.

6 Q. You terminated that interview when you were finished?

7 A. I did, yes, sir.

8 Q. He didn't ask for an attorney, did he?

9 A. He did not ask for an attorney.

10 Q. I think that interview lasted about twenty minutes, is
11 that correct?

12 A. That's about right. Yes, sir.

13 Q. Okay. And during that time -- let me go back -- let
14 me go back to some of these forms. You had several forms,
15 whole pages documenting each item that was taken into
16 custody, right?

17 A. Yes, sir.

18 Q. And that was to make sure, you know, they were
19 documented and you knew what was what and what corresponded
20 to what, is that correct?

21 A. Yes, sir.

22 Q. All right. And agree you're pretty organized in your
23 investigation in this case?

24 A. I feel like I am. But you can always go back and look
25 and I'm always very critical of my own work so. I would

1 say yes it's good but when you go back and look at it I
2 promise you I can find ten flaws in it.

3 Q. Yes, sir.

4 A. That I could've done better for the next time.

5 Q. Yes, sir.

6 Q. I think -- and during the interview with Tyreek you
7 told Tyreek that you would follow up on his side of the
8 story, is that correct?

9 A. Yes, sir.

10 Q. Okay. And you had already -- and then you served an
11 arrest warrant on him at that time, is that correct?

12 A. Yes, sir.

13 Q. Okay. And after you interviewed Tyreek you didn't go
14 back and re-interviewed Ms. Simpson or Ms. Covington again,
15 did you?

16 A. No, sir.

17 Q. Okay. And I don't think, as far as -- correct me if
18 I'm wrong, but I don't think after you -- I think Tyreek
19 was the last interview, formal interview you conducted, is
20 that right?

21 A. Yes, sir.

22 Q. Okay. I think you communicated to Tyreek that you
23 were gonna go back and speak with them about what he spoke
24 with you about?

25 A. Yes, sir.

J. Turner- Cross Examination by Mr. Swilley

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1 Q. Okay. And you made sure that all of these latent
2 lifts that were lifted from the scene of the, I think it
3 was apartment ■ Ms. Covington's apartment, you made sure
4 those got to sled, right?

5 A. Yes, sir.

6 Q. Okay. And I think there were also some items
7 pertaining DNA that you made sure got to sled too as well,
8 right?

9 A. Yes, sir.

10 Q. Okay. And you conducted these lineups -- the photo
11 lineups that Mr. Kozak threw into evidence earlier, you
12 felt that they were necessary, is that correct?

13 A. Yes, sir.

14 Q. Okay. And that was because, it was your understanding
15 that they, that these women didn't know this individual, is
16 that correct?

17 A. That's not really a yes or no -- I'm leery whenever a
18 witness tells me a name or a nickname. I like to have -- I
19 don't want to arrest the wrong person, does that make
20 sense?

21 Q. Yes, sir.

22 A. So if someone gives a nickname or even if they give a
23 nickname and a real name or part of a real name, even if
24 they described him to a 't', their family members and they
25 can describe it to a point where I can say that they know

J. Turner- Cross Examination by Mr. Swilley

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1 who John Doe is even though they might not know John Doe's
2 full name, I prefer to do a photo lineup because I just
3 don't want to arrest the wrong person ---

4 Q. Okay.

5 A. --- based on a nickname or a partial name.

6 Q. Okay. And just to clarify, so it was your
7 understanding at the time that neither one -- based on your
8 investigation, it is your understanding at the time that
9 neither one of these women knew Tyreek Hayes' real name?

10 A. Right. Yes, sir.

11 Q. That's what they told you?

12 A. Yes, sir.

13 Q. And I think you conducted -- before you conducted an
14 interview with Ms. Simpson you conducted an interview with
15 Tanya Moore, is that correct?

16 A. Yes, sir.

17 Q. I don't think you conducted any other interviews with
18 anybody else in that vehicle other than Ms. Moore?

19 A. No, sir.

20 Q. Okay. I think the last question Mr. Kozak ask you, is
21 based on your investigation you didn't find any evidence
22 anybody committed this act, did you? Excuse me, I think
23 the last question that Mr. Kozak ask you, is based on your
24 investigation there's no other evidence that anybody else
25 committed this act, is that correct?

J. Turner- Cross Examination by Mr. Swilley

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1 A. Yes, sir, that was the question.

2 Q. Okay. And after you spoke with Mr. Hayes, you didn't
3 interview anybody else, is that right?

4 A. Yes, sir.

5 Q. And just to clarify, Investigator Turner, what you
6 told Mr. Hayes was that you were going to go back and put
7 Candace and Ann on the spot about it and see what they had
8 to say?

9 A. Yes, sir.

10 Q. Okay. And that didn't transpire, did it?

11 A. I'm sorry, say ---

12 Q. That didn't -- that didn't happen, did it?

13 A. I did go back and talk but there was not an interview.

14 Q. Okay.

15 A. If you're -- it was not on camera.

16 Q. Okay. You did go back and speak with them about your
17 interview with Mr. Hayes?

18 A. I asked them if there was any -- I went back and asked
19 them was there anybody else in the apartment or was there
20 anything else that I didn't know that I needed to know
21 about and they said no.

22 Q. Okay. And that was not documented in any of your many
23 supplementals?

24 A. No, sir.

25 Q. Okay. And there was nothing preventing you from

J. Turner- Redirect Examination by Mr. Kozak

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1 documenting that in your supplementals, was there?

2 A. No, sir.

3 MR. SWILLEY: Thank you, Investigator Turner.

4 THE COURT: Mr. Kozak?

5 **Redirect Examination by Mr. Kozak:**

6 Q. So the third knife that was found in Elaine Manning's
7 apartment, why did you send that for testing?

8 A. The Paula Dean knife ---

9 Q. Yes.

10 A. --- item 30? So you've got to go back to the October
11 1, 2016, we didn't have any information. When you work a
12 scene although people talk and say things you've got to
13 examine the evidence as it is. In Elaine Manning's
14 apartment ■■■, where when you looked at the photos and I
15 don't know what number it is, but you saw a photo of a
16 chair where the, where Candace would've been sitting in,
17 there was blood in the kitchen behind it. There was a
18 counter. On that counter, apparently, whether she touched
19 it or braced on it or what, but that Paula Dean knife was
20 there and there was blood on it. And at the time, you've
21 got to remember this was the initial response, the
22 ambulance was either on the way to the hospital with them
23 or had just got there, it would've been as soon as I got
24 there I collected it not knowing. I even told Ms. Manning
25 because she got really upset with me because I took her

J. Turner- Redirect Examination by Mr. Kozak

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1 Paula Dean knife. She really did not want me to take the
2 knife. She said it had nothing to do with it. But at the
3 time I didn't know if it had any significant so I took it
4 under the promise that as soon as the case completed and
5 the State would allow me I would give her, her Paula Dean
6 knife back. That's why I know it's a Paula Dean knife
7 because it's a Paula Dean knife.

8 Q. So it's your understanding that, that knife was Elaine
9 Manning's?

10 A. Yes, sir.

11 Q. And it was found in Elaine Manning's apartment?

12 A. Yes, sir.

13 Q. That knife, from your understanding, was never in [REDACTED]?

14 A. It was not from my understanding.

15 Q. Okay. Now, in this case did you do any buccal swabs?

16 A. I did. Yes, sir.

17 Q. Who did you do buccal swabs on?

18 A. We did -- I know, Mr. Hayes gave me one and we got
19 some from the victims for elimination purposes.

20 Q. Okay. And what is a buccal swab?

21 A. So when we talked about touched DNA earlier so the way
22 labs process now they like for you to have what's called
23 elimination standards. So when you work a scene anyone in
24 that apartment that could've possibly touched the place or
25 could or should have been in there you have to submit

1 what's called a non-standard for the victim or anyone who
2 is known inside the location. In this particular case, you
3 know, you would have Ms. Candace Simpson and Ms. Ann, they
4 needed elimination standards and that's why we actually got
5 one for Mr. Hayes also to see if any of the DNA would've
6 been his or would not have been his for known standards.

7 Q. And after you take these swabs what do you do with
8 them?

9 A. So we package them just like we do a touched DNA swab,
10 you package them. You put them in -- they come in a --
11 buccal swabs are a little different. We buy kits, buccal
12 swab kits. It comes with its own box. It's in a pre-heat
13 sealed package so we break the seal in front of you. It
14 comes with its own gloves. We glove up. We swab the
15 inside of your cheek because all you need is inner cheeks,
16 we refer to it as an inner cheek swab, we take it and we
17 swab it. We cap it. We put it in a box. We label it. We
18 seal it right in front of you. That way there's no issue
19 of us playing around with your DNA.

20 Q. Okay. And after you spoke with the defendant, what
21 was -- what did you do at the end of that time?

22 A. The day of the arrest, is that day you're talking
23 about?

24 Q. Yeah. What did you do after speaking with him?

25 A. It was -- he was taken -- a warrant was served on him

J. Turner- Re-cross Examination by Mr. Swilley

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1 and he was taken to jail.

2 Q. Thank you.

3 MR. KOZAK: No further questions.

4 THE COURT: Mr. Swilley?

5 MR. SWILLEY: Just a couple of follow-ups.

6 MR. TURNER: Yes, sir.

7 **Re-cross Examination by Mr. Swilley:**

8 Q. All right. Investigator Turner, I think you mentioned
9 those buccal swabs, Mr. Hayes voluntarily gave you a swab,
10 right?

11 A. Yes, sir.

12 Q. And you didn't have to go through that process of
13 getting a court order for it, did you?

14 A. No, sir. He was cooperative and willing.

15 Q. I think he gave it to you in two different occasions,
16 didn't he?

17 A. Two different occasions, yes, sir.

18 Q. Okay.

19 MR. SWILLEY: And I think that's all I have.

20 THE COURT: Okay. All right. Mr. Turner, you can
21 step down. Thank you, sir.

22 MR. TURNER: Thank you.

23 THE COURT: All right, ladies and gentlemen, we're
24 going to stop here for the evening. If we were to take
25 another witness it'd take us somewhat past 5:30 and I don't

T. Darnell- Direct Examination by Mr. Kozak

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1 THE CLERK: Good morning.

2 MR. DARNELL: Good morning.

3 THE CLERK: Place your left hand on the Bible and
4 raise your right hand. Do you solemnly swear or affirm
5 that the evidence and testimony you're about to give the
6 court and the jury on this case is the truth, the whole
7 truth, and nothing but the truth so help you God?

8 MR. DARNELL: I do.

9 THE CLERK: Be seated in the witness box. State
10 your full name for the court, spelling your last please,
11 sir.

12 MR. DARNELL: My name is Thomas Edward Darnell. It's
13 spelled D-a-r-n-e-l-l.

14 THE COURT: Mr. Darnell, we don't have the use of
15 the sound system. You've got a good voice it sounds like
16 so I'm gonna ask you speak loudly and clearly. Please
17 answer the questions with yes or no response. And if
18 somebody makes an objection, you've probably testified
19 before you know to stop and wait for the objection to made,
20 don't answer the question.

21 MR. DARNELL: Yes, sir.

22 THE COURT: All right. Thank you. Mr. Kozak?

23 THOMAS DARNELL, first being
24 duly sworn, testified as follows:

25 **Direct Examination by Mr. Kozak:**

T. Darnell- Direct Examination by Mr. Kozak

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1 Q. Mr. Darnell, where are you currently employed?

2 A. I work at sled, the State Law Enforcement Division in
3 Columbia, South Carolina.

4 Q. And what is your current position there?

5 A. I am a latent print or a forensic examiner in the
6 crime laboratory.

7 Q. For how long have you been working at sled?

8 A. A total of twenty-five years or so. Eight, actually,
9 eight years prior to that at the sheriff's, at the sheriff
10 department in Columbia, but about twenty-fives years total
11 at sled.

12 Q. And have you always been a latent prints expert?

13 A. Well, when I was at the sheriff's department for eight
14 years in Richland County I was not in forensics but I
15 started at sled in 1990. I am -- my time has pretty much
16 been spent in that area of latent print in forensic work.

17 Q. All right. And what's your educational background?

18 A. I have a Bachelor of Science Degree in Criminal
19 Justice from the University of South Carolina where I
20 graduated in 1982. I started at sled in 1990 and I
21 completed in-house training at sled that was monitor by
22 court trained and trained professionals in that, in the
23 field of latent prints in forensic science. I've attended
24 a number of courses in state as well as out-of-state that
25 deals with latent print work, forensic work crime scene

T. Darnell- Direct Examination by Mr. Kozak

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1 type work. In addition to all of the in-house or the in-
2 house in the state and the out-of-state training at
3 different academies, I've also trained at the FBI Academy
4 in Quantico, Virginia.

5 Q. Now, are there any certifications that go into this?

6 A. There are your certifications. I have -- I have taken
7 a number of competency test at sled and we also have to
8 take annual test for proficiency to demonstrate that you
9 are certified and that you are competent in the field of
10 latent prints.

11 Q. All right. And is there any continuing education for
12 ---

13 A. Yes, sir. Yes, sir. There are lots of opportunities
14 to further your knowledge, you know, sometimes the
15 different processes and different techniques might change
16 somewhat so we have to keep up with that. We're actually
17 expected to.

18 Q. Have you ever testified in court?

19 A. Yes, I have.

20 Q. About how many times?

21 A. Probably around hundred and forty, hundred and fifty
22 times all over the state. I've been out-of-state as well,
23 but primarily in state.

24 Q. And what do you usually qualify as?

25 A. Normally, it's in the field of latent print analysis.

T. Darnell- Direct Examination by Mr. Kozak

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1 Latent print, it has to deal with latent print processing,
2 latent print comparisons and also anything to do with crime
3 scene. But primarily in the field of latent print
4 processing and analysis.

5 MR. KOZAK: At this time we'd like to offer him as
6 an expert in latent prints?

7 MR. SWILLEY: No objection to that.

8 THE COURT: All right. I find him to be qualified
9 as an expert in the field of latent prints.

10 Q. Mr. Darnell, how did you become involved in this case?

11 A. I received some evidence in our department back in
12 2017 or the first part of 2017. As part of our job we
13 receive evidence from outside departments and we're asked
14 to perform certain test to determine if we can develop any
15 prints or any other types of evidence. So I was asked to
16 process this evidence for Dillon Police Department.

17 Q. Okay. And, I guess, what is a latent print?

18 A. Well, the word latent means "hidden or invisible" so
19 you have to, you have to do some sort of processing or
20 development to try to enhance it but, you know, we all have
21 fingerprints. We all have those areas of skin on our
22 fingers that form different patterns. And a latent print
23 is what is a result of perspiration that comes out of your
24 pores in your skin. Whenever you touch an item you may or
25 may not leave an impression depending on several different

1 factors. But the word latent actually means "hidden or
2 invisible" so I have to develop so that I can be able to
3 see it.

4 Q. Now, you said may or may not leave a print, will you
5 elaborate a little bit of why you may not leave a print?

6 A. Yeah. You know, unlike on a television shows that we
7 all like to watch, you know, where they always seem to get
8 fingerprints, in the real world that just doesn't, that
9 just doesn't always happen. And the reason for that is, is
10 that you have to consider how someone perspired first of
11 all. We all perspired differently. You have to consider
12 the time of year. Obviously, this time of year when it's
13 hot and humid outside most of us tend to perspire
14 profusely. You also have to consider the surface that's
15 touched, whether the surface is contaminated with something
16 or, and you also have to consider how you touch something
17 and how long you might touch something. You know, for
18 example, if I'm touching a doorknob and someone, you know,
19 and the doorknob is something that's always used to open a
20 door for most cases, someone could come behind me and open
21 the same door, using the same door and they can damage or
22 cause the print that I might have left behind, they can
23 actually damage that print. So latent prints are very
24 fragile. They don't stay around forever. But they're just
25 lots of variables that go into place. And just to

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1 summarize, basically, the type, the amount of perspiration
2 that you might have coming out of your hands, the condition
3 of the surface, and how you handle something. All those
4 factors come into play when it determines if you can leave
5 a print or not.

6 Q. Are there certain surfaces that are better for prints?

7 A. Ideally, nice cleans smooth surface in most cases
8 tends to lend the best results. Not always, but that's
9 typically, that would be the ultimate surface versus
10 something that's corrugated or textured or not smooth. So,
11 basically, a smooth surface would be considered the best
12 surface.

13 Q. All right. And what is the process for pulling a
14 print?

15 A. Well, it just depends on what type of evidence you're
16 examining. If it -- if the item, if the surface is what we
17 call non-coarse which means, you know, for example: like
18 this counter on this witness stand is considered non-porous
19 versus porous would be like paper, you know, things that
20 actually absorb the moisture. If it's non-porous we use
21 several different processes one of which would be super
22 glue. We fume super glue and then it creates a vapor that
23 would adhere to any moisture that might be on the surface.
24 We can use black powders. We can use different, we have
25 different dye stains that we use. We have light sources

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1 that we use. If it's a porous surface such as paper we
2 could use different chemicals that would develop prints and
3 normally when you're processing paper, for example, it's
4 reacting with acids in your perspiration. So there's
5 different processes that we use depending on, it just
6 depends on the type of object that we're processing.

7 Q. Now, once you received a print that's been developed,
8 I guess for lack of a better word, how do you examine that?

9 A. Well, quite often, as in this case, I mean, there were
10 some, you know, I received some items that I was asked to
11 process and then also received some items that had already
12 been processed by Dillon Police Department. And I was
13 asked to look at these areas of prints to determine if,
14 first of all, are they of value? You know, does it have
15 sufficient clarity? Does it have the ridges or the points
16 or just the overall clarity, does it have the sufficient
17 clarity that I need to compare with someone. And once I
18 determined that it's of no value, what that means is, is
19 that the print that I'm looking at is no value. I can't
20 compare it to anyone, you know, ever because the print it's
21 just not there. If the print is of value and I have a
22 sufficient amount of clarity then I can go further and I
23 can actually compared it to an individual to see if I can
24 determine which person might've left the certain print.

25 Q. So what goes into you comparing? What are you looking

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1 for?

2 A. Well, when I'm comparing I'm looking for the detail
3 within the print. You know, there's three basic patterns
4 that we consider. We all have those, you know, we might
5 have similar patterns but we don't have, we don't have the
6 same detail within the prints. I'm looking at an
7 individual's random identifying characteristics within the
8 print and I'm trying to determine if those characteristics
9 appear in the latent print that I've developed and if it
10 also appears in the same position in the known print of an
11 individual. So I'm trying to see if they are matching up
12 so to speak.

13 Q. All right. And in this case did you prepare a report?

14 A. I did.

15 Q. At this time

16 MR. KOZAK: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q. I'm showing the witness State's Exhibit 88, what am I
19 showing you?

20 A. This is the laboratory report that I issued on January
21 30, 2017. It has a list of all the items that I processed
22 and that I compared and looked at and it has results of my
23 examination and it has my electronic signature at the
24 bottom.

25 Q. Has this been altered or edited in any way?

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1 A. No, sir.

2 MR. KOZAK: At this time I'd like to move State's
3 Exhibit 88 into evidence and published to the jury?

4 MR. SWILLEY: Just one moment. No objection.

5 THE COURT: All right. State's Number 88 is
6 received into evidence.

7 (Whereupon, the Sled Report- Thomas Darnell has been marked
8 and entered into evidence as State's Exhibit No. 88)

9 Q. Do you have a copy up there?

10 A. I do.

11 Q. All right. What are we looking at on this first page?
12 What's some of the information that's on, at the top of
13 this page?

14 A. At the top of the page it has the name of the officer
15 which was Dillon Police Department that being Jason Turner.
16 It also has the sled laboratory number, the L16 number.
17 That's the lab number that was assigned to the case once it
18 came into the sled laboratory. And, obviously, the date at
19 the top is the date that I issued the report. It has the
20 Dillon Police Department case number and it has an incident
21 date and then it has three names listed there as well.

22 Q. All right. So on this first page what are the items
23 we're looking at?

24 A. The first item that I perceive was what we listed as
25 item 2 which is I've got it listed as an open condom

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1 package.

2 Q. And what did you try to do with this item?

3 A. I attempted to process it for latent prints and I
4 actually developed one area of a print on the package and I
5 developed it in a way that I needed to have it photograph
6 to be able to better evaluate and determine if it was of
7 value so had that print photographed.

8 Q. And what's item 2.1?

9 A. 2.1 is the latent impression that I developed on the
10 item 2, condom package. And the result, when I compared
11 it, was that I determined it was of no value for
12 comparison.

13 Q. So when you say no value for comparison, what you
14 mean?

15 A. No value just means that I can't, there's just not
16 enough clarity there for me to be able to compare it to
17 anyone. It's just there's no way to determine who left the
18 print. I can just say -- I can only say that there was a
19 print there at some point left on the condom package but I
20 couldn't say whose it was.

21 Q. So sometimes even when you get a print it's not a good
22 enough print to compare it anything?

23 A. That's -- that's -- that's correct. In fact, the no
24 value for comparison is a result that we typically come up
25 with quite a bit. You know, probably in my, all my years

1 of experience I probably rendered, honestly, more reports
2 to say no value than those where I've actually identified
3 someone. You know, in my years I would identify a lot of
4 folks but more often than not we tend, we tend to come up
5 with a no value result. And, again, as I explained
6 earlier, that's because not everyone leaves, leaves a good
7 print for all the reasons that I've already testified
8 about.

9 Q. So what is, I believe, item 3 through 8, what are
10 those?

11 A. Item 3 through 8 and, again, these item numbers are
12 numbers that were assigned to the item when it came into
13 the laboratory at sled. But items 3 through 8 are what
14 I've got listed as latent lifts indicated as, and it says
15 it came from, "taken from the exit door of the scene". All
16 of them were lifted in the same fashion. These would've
17 been latent lifts that Dillon Police Department submitted.
18 In other words, these were areas that they had already
19 process themselves and they lifted those areas and had
20 those affixed to a card. And then those came to me and I
21 was asked to evaluate those to determine if they were of
22 value or not.

23 Q. So what was the result of that examination?

24 A. All of the latent lifts that I received were of no
25 value for comparison. Again, I couldn't tell whose they

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1 were. They were prints there, but just wasn't enough
2 detail, wasn't enough clarity for me to be able to identify
3 anyone.

4 Q. So what's item 10?

5 A. Item 10 is a, I have listed as one (1) black handle
6 kitchen knife.

7 Q. Now, is that just a handle or is that you were asked
8 to process the handle of a knife?

9 A. I was actually -- I was asked to process the item 10
10 for latent's and for DNA. That's what I was asked to do
11 with that item.

12 Q. What -- what -- I guess, what I'm asking is was item
13 10 just to handle or was it a full knife?

14 A. Item 10, I have listed as of one (1) black handle
15 kitchen knife so it would be the blade with a handle. It
16 was intact.

17 Q. Okay. And what were you able to find with that test?

18 A. When processing item 10 using different chemicals I
19 developed areas of prints that were of no value for
20 comparison. And actually prior to, prior to processing it
21 for latent prints I swabbed portions of that knife handle
22 for any DNA that might be present. You know, quite often
23 we get, we get evidence in, all the time actually, to where
24 we're asked to process something for latent's, latent
25 prints or fingerprints and for DNA. So we have to sort of

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1 decide which areas we want to swap for DNA and which areas
2 we want to process for latent's. In other words, if I
3 swabbed the entire handle for DNA there would be no reason
4 to process it for latent prints because I had already
5 swabbed all the entire area. And this example, I swabbed
6 portions of the handle for DNA and then I processed the
7 remaining area for latent's. and the results for latent's
8 was that, again, the print was of no value. And then the
9 swabs were actually forwarded to the DNA department for
10 further analysis.

11 Q. And is that item 10.1?

12 A. Yes, sir. Item 10.1 is the swab from the knife
13 handle.

14 Q. All right. And so when you're asked to do both, swab
15 for DNA and fingerprints, would you go into a little bit
16 more why that is a problem?

17 A. Yeah, it's just that, you know, if I swabbed the
18 entire handle there would be nothing left for prints.
19 Because prints are extremely, extremely fragile. I'm
20 trying to decide which areas of the knife or the knife
21 handle to swab. So I'm swabbing like the narrow edges of
22 the knife, those, those, those sorts of things. I'm trying
23 to swabbed areas that might not be as conducive to leaving
24 a fingerprint. So I'm trying, I'm trying to do both. At
25 which, sometimes it's hard to do but in this case I was

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1 asked, it was requested that I do that so that's what I
2 did.

3 Q. So you're not swabbing the entire piece of -- you're
4 not swabbing the entire piece of the handle, you're only
5 swabbing pieces of it, correct?

6 A. Right. Just trying to get like the narrow edges or,
7 you know, and sometimes I even try to, try to picture if
8 I'm holding that knife which area would be the most likely
9 area where I would leave fingerprint. And so then I'm
10 trying to swab the areas away from that area, I'm trying to
11 swab that for DNA. So it's -- it's -- I'm trying to do,
12 I'm trying to do both.

13 Q. So when you're doing both. It's kind of a double-
14 edged sword taking a print will destroy DNA but swabbing
15 for DNA would destroy the print?

16 A. Absolutely. Absolutely. And that's -- and it's a
17 problem. But -- but, now, we get a lot of cases where we
18 are asked to do that. And so we have to sort of decide how
19 we want to best do that. Sometimes we'll actually decide
20 to just swab the entire thing. It just depends on what the
21 surfaces is like and what we're trying - what we're trying
22 to accomplish. In other words, if I've got a textured area
23 and I'm being asked to swab it for DNA and latent's, I'm
24 gonna recommend that we swab the entire thing because it's
25 textured. You know, and textured surfaces don't typically

1 lend very good results when it comes to leaving
2 fingerprints.

3 Q. So -- also would an item being left out in the
4 weather, would that remedy, I mean, with that cause prints
5 to possibly be washed away or destroyed?

6 A. It certainly could. It just depends on, depends on
7 the weather, you know, on a given day, you know, like I
8 said latent's are extremely fragile. In other words, just
9 a simple stroke of a fingerprint brush could cause them to
10 go away if you're not careful. The majority, about 98 to
11 99% of the print is nothing but perspiration. So you know,
12 if something is left out in the heat it would tend to
13 evaporate. You know, -- you know, heat certainly has a
14 detrimental effect on latent prints. In other words, if
15 I'm -- if I'm getting prints on the outside of a car, for
16 example, in July or June in South Carolina has hot as it
17 gets the chances of that print being destroyed by the
18 weather, by the heat its a pretty good chance that could
19 happen. Rain, obviously, if it rained on something that
20 would certainly have, have a negative effect on prints
21 being lift.

22 Q. Now, in the movies you always see someone who doesn't
23 want a print to be found wiping down a surface, is that
24 successful in wiping off prints?

25 A. Yeah. Prints can be wiped off rather, rather easily.

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1 In fact, whenever we are processing evidence, when we get
2 evidence in the laboratory, we wear lab coats and we have
3 to wear latex gloves and we actually have to handle the
4 item in such a way that we won't damage the prints.

5 Because, you know, if we're not careful we can damage them
6 ourselves in the laboratory trying to handle them. So we
7 have to handle them carefully because they're just that
8 fragile. So, yes, I mean, you can -- you can take a -- you
9 can wipe a latent print or a fingerprint away fairly,
10 fairly easily, I would say, depending on the surface.

11 Q. So you said you swabbed for DNA, what happens to the
12 DNA swab?

13 A. The DNA swabs once I, once I swab the area and I'm
14 using a sterile cotton swab, okay. We are in a clean room
15 doing it. It's in a sterile environment. And once I
16 collect the swabs I allow them to air dry and then I
17 package them into an envelope and I seal them up with
18 evidence tape. I date it and I initial it. And I write on
19 the envelope where it came from, the lab number, the item
20 number, the initials. And then once that's package I take
21 it downstairs to our evidence control department and
22 ultimately it winds up going to the DNA department for
23 examination.

24 Q. And in that case you sealed it correctly and did all
25 of that?

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1 A. Yes, sir. In other words, if I -- if I have more than
2 one, more than one swab, each - from each item it's
3 packaged separately. In other words, if I swab two items I
4 don't put those all-in-one envelope, I separate them out
5 and give him a number. And then they ultimately wind up
6 with the DNA department.

7 Q. Now, I guess, to backtrack a little bit, these
8 numbers, these item numbers that are given those stay with
9 the items all the way through all the testing?

10 A. Yes, sir. That number remains the same all the way
11 through. In other words, anytime evidence comes into the
12 sled laboratory it gets a case number. It gets a -- each
13 item gets a item number and that number stays, stays with
14 that item all the way through. Regardless, of how many
15 departments it might go to that number stays the same with
16 each item.

17 Q. So like item 10.1 is because you did something to item
18 10, right?

19 A. That's correct. 10.1 that number was actually created
20 by me. That's a sub items which item 10 would be the item
21 that I processed and then the .1 designates the, designates
22 the swabs that I collected off the knife handle.

23 Q. Right. So 10.1 is not the knife itself, it would be
24 what you created from the knife?

25 A. That's correct. Yes, sir.

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1 Q. Okay. What is item 11 and 11.1?

2 A. Item 11 is a, is one (1) kitchen knife blade. In
3 other words, it was a blade without the handle. Just a
4 blade itself. Item 11.1 is some DNA swabs that I collected
5 from the edges of the knife blade. Again, I was asked to
6 process it for latent's and for DNA, okay. So I had to, in
7 this case, what I did was before I processed for latent's,
8 I swabbed the very edge of the blade. If you picture a
9 knife blade I was swabbing the very edge of it for DNA and
10 I'm going to process the flat portion of the blade for
11 fingerprints.

12 Q. All right. And once you swabbed the blade for DNA,
13 the same process as you did for item 10.1?

14 A. Yes, sir.

15 Q. Okay. So that's sent to another unit that does the
16 processing of the actual evidence?

17 A. That's correct.

18 Q. So what happened when you looked for fingerprints on
19 item 11?

20 A. When I -- when I processed the blade I got what we
21 called no fingerprint evidence, "no fingerprint evidence
22 observed." There was nothing on the blade. And keep in
23 mind all I've got is the blade, there's no handle with it.
24 So -- but I was asked to swab or to swab for DNA and in the
25 process for latent, so I did both. No fingerprint evidence

T. Darnell- Cross Examination by Mr. Swilley

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1 on the knife blade and then I have had the swabs that went
2 to DNA.

3 Q. So this item was a little different than the other
4 items, correct?

5 A. Yes, sir.

6 Q. Because you didn't even have, pulled a print at all
7 from it?

8 A. Right. I didn't see any evidence of fingerprints on
9 the blade whatsoever.

10 Q. So the other items had a print but just couldn't be
11 compared. This one did not have a printed at all?

12 A. That's correct.

13 Q. All right.

14 MR. KOZAK: I beg the court's indulgence.

15 THE COURT: Yes, sir.

16 MR. KOZAK: No further questions, Your Honor.

17 THE COURT: Mr. Swilley?

18 **Cross-Examination by Mr. Swilley:**

19 Q. All right. Mr. Darnell, you just testified on direct
20 about latent prints that you examine, right?

21 A. Yes, sir.

22 Q. And you could also get prints from based on material
23 that's not perspiration too, right?

24 A. Yes, sir.

25 Q. And those would be, I guess, patent prints?

T. Darnell- Cross Examination by Mr. Swilley

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1 A. Well, a patent print would be a print that would be
2 visible to the naked eye. In other words, if I had grease
3 or blood or paint or something like that on my hand and I
4 touched an item, that impression could be left behind and
5 that would be referred to as a patent print.

6 Q. And you didn't -- you didn't receive any of those in
7 this investigation, did you?

8 A. No, sir.

9 Q. Okay. And all the items that are listed in that
10 report that was put into evidence, those are all the items
11 that you received for analysis, that correct?

12 A. Yes, sir.

13 Q. All right. And when you received material like this
14 from an agency all over the state, you're gonna try to do
15 an analysis on everything, right?

16 A. Yes, sir. I'm gonna try -- I'm gonna try to honor
17 their request of the submitting agency. They want me to,
18 you know, process it for different things so, yes, I'm
19 gonna try to process to the extent that I can.

20 Q. And there's not a limit on the amount of things that
21 they can send you, right? There's not a numerical limit,
22 is there?

23 A. No, sir.

24 Q. All right. They could send you, if they have a
25 hundred things, they can send you hundred things for you to

1 analyze?

2 A. Yes, sir, they could.

3 Q. Okay. And I think you testified on direct about, you
4 know, I guess, latent prints or prints in general can be,
5 can be wiped off, I guess, by human or manually?

6 A. Sure. Yes, sir.

7 Q. All right. And based on the information you have
8 that's not relevant in this case, is there -- is it, excuse
9 me? You weren't provided with any information that any
10 prints had been wiped off or anything, had you?

11 A. No, sir. No, sir. I just received these items for
12 processing. We also received a copy of the incident report
13 that goes over basic facts of the case. And outside of
14 that, that's about all we received. And sometimes we'll
15 get phone calls that kind of thing. I don't recall getting
16 any phone calls in this case. So I had the evidence before
17 me and I had an incident report that would've been created
18 by Dillon Police Department.

19 Q. Okay. I just wanted to clarify that. And everything
20 within this report that's everything you received?

21 A. Yes, sir, that's it.

22 Q. And, you know, if there's items that are recovered
23 later on they can, they can submit those too at a different
24 time, right?

25 A. Yes, sir.

T. Darnell- Cross Examination by Mr. Swilley

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1 Q. Within the same case?

2 A. Yes, sir.

3 Q. Okay. And sled doesn't impose any kind of time limit
4 on things that can be received pertained to each case,
5 right?

6 A. No, sir. No, we don't.

7 MR. SWILLEY: Give me one moment please, Mr. Darnell.

8 Q. And Mr. Darnell, just to clarify, I think you
9 testified on direct about, you know, more often than not
10 you don't find latent prints when that material is
11 presented to you? You are trying to find prints, though,
12 right?

13 A. Absolutely.

14 Q. Okay. All right.

15 MR. SWILLEY: Thank you very much.

16 THE COURT: Anything else, Ms. Kozak?

17 MR. KOZAK: No redirect, Your Honor.

18 THE COURT: All right. You can step down, sir, Mr.
19 Darnell. Thank you.

20 MR. DARNELL Yes, sir.

21 MR. KOZAK: Can he be release from his subpoena?

22 MR. SWILLEY: No objection.

23 THE COURT: All right. You may be excused, Mr.
24 Darnell. Thank you.

25 MR. DARNELL: Yes, sir.

V. Herrera- Direct Examination by Mr. Kozak

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1 MR. KOZAK: The State calls Verona Herrera.

2 THE CLERK: Place your left on the Bible and raise
3 right hand. Do you solemnly swear or affirm that the
4 evidence and testimony you're about to give the court and
5 the jury on this case is the truth, the whole truth, and
6 nothing but the truth so help you God?

7 MS. HERRERA: I do.

8 THE CLERK: Be seated and state your full name for
9 the court spelling your last for us.

10 MS. HERRERA: My name Verona Herrera, H-e-r-r-e-r-a.

11 VERONA HERRERA, first being
12 duly sworn, testified as follows:

13 **Direct Examination by Mr. Kozak:**

14 Q. Good morning, Ms. Herrera. Where are you currently
15 employed?

16 A. The South Carolina Law Enforcement Division or sled.

17 Q. And what's your position there?

18 A. I'm a forensic technician and forensics serologist in
19 the DNA section.

20 Q. And what's your educational background?

21 A. I have two associates degrees. One from Greenville
22 Tech and one from Tri-County Tech in Sciences and Criminal
23 Justice. And I have a Bachelors Degree in Criminal Justice
24 Forensics from Liberty University.

25 Q. And how long have you been employed at sled?

V. Herrera- Direct Examination by Mr. Kozak

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1 A. A little over a eleven years.

2 Q. And what units have you been a part of there?

3 A. I've always been in the evidence processing section of
4 the DNA department. We combined or made a new department
5 by adding some duties to the evidence processing to make a
6 serology department. So I still do the same thing I've
7 done all of the eleven years I just added some extra duties
8 a couple of years ago.

9 Q. And what types of training have you had in that field?

10 A. We are training in-house at sled under court qualified
11 analyst to process the items and to do the body fluid
12 identification testing.

13 Q. And is there continuing education involved in that?

14 A. We do occasionally go for continuing education but it
15 is not required for my position.

16 Q. Are there any certifications involved in that?

17 A. There are not, no.

18 Q. Okay.

19 MR. KOZAK: At this time, I'd like to ---

20 Q. Oh, have you ever testified in court before?

21 A. I have. Approximately seventy-five times.

22 Q. All right. And in what field have you been qualified
23 as?

24 A. A forensic evidence processing technician and in
25 forensic serology.

1 MR. KOZAK: Your Honor, at this time I'd like to
2 offer Ms. Herrera as an expert in forensic processing and
3 in serology.

4 MR. SWILLEY: I have no objection to that.

5 THE COURT: All right. I find her qualified as an
6 expert in the field of forensic serology and in forensic
7 evidence processing.

8 Q. I guess, what is serology?

9 A. Serology is the identification of body fluids. And in
10 our laboratory that is usually blood, semen, and saliva.

11 Q. All right. And what goes in to processing for, I
12 guess, fluids?

13 A. It depends on the item that you're talking about. If
14 it's clothing or car parts that kind of thing we would do
15 what's called a "present testing" for blood or semen. We
16 visualize the stain test it with the quick color change
17 test and that would go forward for identification if need
18 be. We also process sexual assault kits or swabs that come
19 into the laboratory. So the sexual assault kit we
20 inventory to determine what's in the kit. Test the
21 relevant swabs for semen or blood or saliva as needed.

22 Q. Now, when the evidence comes into the lab, is it
23 sealed?

24 A. It is. It is sealed in our evidence intake area.
25 Those lady store it and then provide it to me or any other

V. Herrera- Direct Examination by Mr. Kozak

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1 analyst that needs the evidence and then we would break the
2 seal.

3 Q. Okay. What would you do if a seal was broken when it
4 came in?

5 A. We would not analyze the evidence without talking with
6 the agency and my supervisor first and noting it in a case
7 file.

8 Q. So if the seal was broken it would be noted on the
9 report?

10 A. It would be noted in my case file ---

11 Q. In this case ---

12 A. --- not on the report.

13 Q. In this case was there any seal broken?

14 A. They were not.

15 Q. Okay. Did you prepare a report in this case?

16 A. I did. Yes, sir.

17 MR. KOZAK: I'm showing opposing counsel what's
18 been marked as State's Exhibit 89.

19 MR. SWILLEY: No objection, Your Honor.

20 MR. KOZAK: May I approach the witness?

21 THE COURT: Yes, sir.

22 Q. I'm showing the witness what's been marked as State's
23 Exhibit 89, please tell me what that is?

24 A. It's a copy of the report that I issued in this case?

25 MR. KOZAK: At this time I'd like to move State's

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1 Exhibit 89 into evidence and published to the jury?

2 THE COURT: All right. State's Number 89 is
3 received into evidence without objection. You may publish
4 it.

5 (Whereupon, the Sled Report- Verona Herrera has been marked
6 and entered into evidence as State's Exhibit No. 89)

7 Q. All right. So, I guess, how did you initially become
8 involved in this case?

9 A. I was just assigned the case in random order and then
10 took the evidence into my custody to process it.

11 Q. Okay. So once you start processing the evidence, what
12 you do?

13 A. It depends on the type of evidence. In this case, for
14 example, the condom I would swab the interior and the
15 exterior of the condom. Do the quick color change test for
16 the possible presence of semen or acid phosphatase,
17 actually. And then take that forward for further testing
18 for the p30 and spermatozoa.

19 Q. Okay. So when you're testing for the fluid on the
20 condom, what are you looking for?

21 A. So the test that we run it's like we swab it and drop
22 some chemicals on it. If the test -- if the swab has
23 changed color we know that needs to be taken forward for
24 further testing. There's a possibility that, that swab has
25 semen or seminal fluid on it and that's the acid

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1 phosphatase. Which to take it forward, we test for what's
2 called p30 or you may know it better as psa, phosphate
3 specific antigen. That is available in high qualities in
4 seminal fluid. And then we would also look for the sperm
5 cells themselves, the spermatozoa to identify the semen.

6 Q. So on these test you're actually looking for three
7 different things?

8 A. Potentially. At least two, but definitely three if
9 it's a piece of clothing or not swabs that came directly
10 from the body.

11 Q. So item 1 is the condom itself?

12 A. That is correct.

13 Q. Item 1.1 is the swab you did?

14 A. It's the swab from the interior of the condom as it
15 was submitted to us, yes.

16 Q. And what do you find on the swab from the interior of
17 condom in this case?

18 A. That was positive for all three acid phosphatase, p30
19 and spermatozoa so semen was identified on that.

20 Q. And what happens once you identify semen?

21 A. I cut a small section of it, put it in a tube to
22 forward to the DNA profile developing section of the DNA
23 part of the department.

24 Q. And is that tube sealed?

25 A. Yes. It sealed within a small heat sealed pouch

1 within a larger heat sealed pouch.

2 Q. All right. So did you also swab anything else on the
3 condom?

4 A. Yes. The exterior of condom as it was submitted to
5 the agency.

6 Q. And what did you find on that?

7 A. In that case, the acid phosphatases were positive but
8 the p30 was negative, spermatozoa was identified and then
9 it was forwarded to the DNA section.

10 Q. So, I guess, what could it mean when you only find one
11 aspect of the semen and not the others?

12 A. There are several different reasons. Semen is not --
13 semen is not a homogenize fluid so it could be that the
14 enzyme p30 or protein, excuse me, p30 was just not in the
15 sample that I tested. It could be that for some reason
16 degraded because it interacted with some chemical in the
17 condom. So we can't say semen is identified without both
18 the p30 and spermatozoa but in this case I only had this
19 spermatozoa.

20 Q. What you mean by homogenize?

21 A. So any portion you would take of a sample, it's kind
22 of like milk, it's homogenized so that all the fat stays in
23 the liquid and it doesn't separate out. Semen can separate
24 into like more of one chemical on a certain area in the
25 liquid than another's.

V. Herrera- Direct Examination by Mr. Kozak

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1 Q. Okay. And what you do after you identify the semen on
2 the outside of the condom?

3 A. The same thing. A small portion of that swab is cut
4 and placed in a tube for further testing.

5 Q. Okay. And what's item -- so what was the 1.3?

6 A. 1.3 was hair from the condom.

7 Q. And you don't do actually any testing on that?

8 A. I do visualize it to determine whether it is suitable
9 to go forward for further testing but I don't run any test
10 on it, no.

11 Q. So what happens to that hair?

12 A. It goes into a tube just like the cutting from the
13 swabs and goes forward to the DNA section.

14 Q. Okay. So what is item 9?

15 A. Item 9 is a shirt found in the dumpster at Dover
16 Village.

17 Q. And so what you do once you receive the shirt?

18 A. In this case the request on the shirt was for blood
19 and for ownership. So we would or I would lay the shirt
20 out, look for areas that appear to possibly be a
21 bloodstain. I test those for discolorations with a quick
22 color change test again that turns pink. And if those --
23 if it changes pink I would cut that and send it forward to
24 the DNA section. For ownership, we scrape and swab the
25 neck area of the shirt and send that forward for further

1 testing.

2 Q. Is this the shirt that you did the testing on?

3 A. That is the shirt. Yes.

4 Q. So what -- would you describe what we're seeing here?

5 A. Sure. Up here there is a hole right above the head,
6 that is where I cut item 9.1 which tested positive for the
7 presumptive test for blood and that was sent forward for
8 DNA section. There's also a cutting here on this right arm
9 that's labeled 9.2, that was also positive for the
10 presumptive test for blood and was sent forward to the DNA
11 section. And then I swabbed and scraped the neck area of
12 the shirt, the interior neck area of the shirt to try to
13 determine who wore that shirt. That's considered ownership
14 DNA and that was forwarded to the DNA section.

15 Q. Now, is there any way for DNA to get on this shirt
16 from not someone wearing it?

17 A. Yes. You can hug someone. You could wash your
18 clothes in the same wash machine with someone else. In
19 this case it came out of the dumpster so any items in the
20 trash bag or the dumpster itself, whichever impacted the
21 shirt, could potentially transfer DNA to it.

22 Q. How easy is it to transfer DNA?

23 A. It just depends. There's different levels of DNA and
24 different body fluids. It depends on whether you're
25 sweating a lot. Some people shed more DNA than others. It

V. Herrera- Direct Examination by Mr. Kozak

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1 just depends on the situation.

2 Q. Okay. Have you been or received a lot of shirts that
3 were involved in knife altercations?

4 A. Some, yes, sir.

5 Q. And if someone is a victim of a knife attack is the
6 shirt usually not cut up at all?

7 MR. SWILLEY: Objection, Your Honor. I think that's
8 gonna call for her for speculate. She's a serologist.

9 THE COURT: Rephrase your question.

10 MR. KOZAK: Okay.

11 Q. In your experience when you receive a shirt from a
12 knife attack have there been knife wounds or slits in the
13 shirt?

14 MR. SWILLEY: Objection, judge. That calls for a
15 general question. I think it's out of the scope of
16 relevance.

17 THE COURT: Based on her experience, I mean, she's
18 testified and she's been qualified as an expert, she can
19 answer the question.

20 A. If the person was injured with a knife, yes, I do
21 typically find some type of rip or tear defect in the
22 fabric.

23 Q. And so with item 9, what happened -- what did you find
24 with the presumptive testing?

25 A. The two areas that I cut, 9.1 and 9.2, were both

1 positive for the presumptive test for blood and then those
2 cuttings were sent forward for further testing in the DNA
3 section. And the swab from scraping the neck area of the
4 shirt was forwarded for further testing in the DNA section.

5 Q. So once again 9.1 was the cutting from where?

6 A. That was the chest area of the shirt.

7 Q. And 9.2 was the cutting from where?

8 A. The cuff area of the right arm of the shirt.

9 Q. And those were both positive for blood?

10 A. Presumptive test for blood, yes.

11 Q. Okay. And then what happened to those items?

12 A. They go forward for further testing.

13 Q. All right. Now, what is 9.3?

14 A. 9.3 is where we were trying to determine the ownership
15 of the shirt, who wore the shirt. So we scraped the
16 interior of the neck area because it tends to impact the
17 skin the most. And then we scrape it and then swab that
18 area and the scraper and the paper that it was scraped on
19 to and send that forward for further testing in the DNA
20 section.

21 Q. So there -- you did not do presumptive test for blood
22 on that section?

23 A. No. We're not trying to identify blood in that
24 section.

25 Q. Okay. So what kind of DNA would show up on a scraping

V. Herrera- Direct Examination by Mr. Kozak

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1 of the neck? Are there different types of DNA, I guess?

2 A. There are different ---

3 Q. Or I guess -- sorry, go ahead.

4 A. I'm sorry. There are different types of DNA like
5 mitochondrial and nuclear which our laboratory does not
6 test for mitochondrial they only do nuclear. So nuclear
7 DNA is found in every cell of the body except for red blood
8 cells. So when we're looking at ownership we're trying to
9 typically look for skin cells that give up there DNA.

10 Q. So, I guess, is there, I guess, a better question for
11 DNA but is there -- your testing for both blood and skin
12 cells?

13 A. In that case, there is no differentiation there was no
14 testing for blood. So any kind of DNA that was on the neck
15 area would be found.

16 Q. Okay.

17 A. It could be blood. It could be skin cells. Any DNA.

18 Q. So what is item 12, it looks like it's got a lot of
19 parks?

20 A. Item 12 is the sexual assault evidence collection kit
21 from Candace Simpson.

22 Q. All right. So what you do once you receive a sexual
23 assault kit?

24 A. Sexual assault kits come in a box. Those are broken
25 down into the toxicology section and the DNA section in our

1 evidence control department. Then I take the DNA section
2 of it and inventory it to see what items were collected at
3 the hospital. And then test those items.

4 Q. So what items come in?

5 A. In this case, there is a vaginal swabs, oral swabs,
6 rectal swabs, suspected body fluids swabs from the thighs,
7 fingernail scrapings, the victims buccal swab.

8 Q. Okay. So when you examine the vaginal swab, what did
9 you find?

10 A. The components of semen p30 and spermatozoa were
11 positive. Semen was identified and that was forwarded to
12 the DNA section.

13 Q. What did you find in the oral swabs?

14 A. Examinations for semen p30 was positive but no
15 spermatozoa was identified and the item was forwarded to
16 the DNA section.

17 Q. And what did you find the rectal swabs?

18 A. Components of semen p30 was positive. No spermatozoa
19 was identified and the item was forwarded to the DNA
20 section.

21 Q. And what about the thighs?

22 A. The thighs, again, examination for component of semen
23 p30 was positive. No spermatozoa identified and the item
24 was forwarded to the DNA section.

25 Q. So as we were discussing earlier, I guess, the three

V. Herrera- Direct Examination by Mr. Kozak

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1 different parts of semen are to -- what's the difference
2 between what you found in the vaginal swabs and the other
3 three?

4 A. Okay. So semen is made up of two components, ah, well
5 two sections. A cellular component which is the
6 spermatozoa and a liquid component which contains also the
7 spermatozoa. The p30 is a protein in the liquid portion
8 that we look for. And then the spermatozoa are the sperm
9 cells themselves. We can't call it in our laboratory semen
10 unless we find both of those because p30 can be found in
11 other locations in the body just at lower concentrations.
12 But spermatozoa are not usually found in other places
13 unless it's transferred or through sometimes the urine of
14 males.

15 Q. All right. So what was done with the fingernails?

16 A. The fingernails that was just the tip of the scraper
17 was cut and forwarded to the DNA section.

18 Q. And so what is the last two things you examined?

19 A. The buccal swab from Candace Simpson and the buccal
20 swab from Tyreek Hayes.

21 Q. Okay. And is that just forwarded to the DNA section?

22 A. Well, the buccal swab from Candace Simpson was the
23 one, item 14, was not analyzed because a buccal swab from
24 the victim was included in the kit and we use that buccal
25 swab. And then the buccal swab from Tyreek Hayes was just

1 forwarded on to the DNA section.

2 Q. Okay. I guess, as an overarching question, how
3 fragile is DNA?

4 A. If it's dried and kept in climate control conditions
5 it can last for numbers of years. If it's exposed to the
6 elements and heat, moisture, it can degrade.

7 Q. All right. And how easily can it be, I guess, wiped
8 off or taken off of an item?

9 A. It depends on the item. If it's a smooth surface it's
10 much easier for it to be removed because there's no porous
11 area for the DNA to cling to. But like a shirt or
12 something is very difficult to wipe it all off.

13 Q. All right.

14 MR. KOZAK: I beg the Court's indulgence.

15 Q. Did -- are you aware that the sled departments did
16 toxicology analysis on Candace Simpson that night or
17 Candace Simpson's blood?

18 A. Yes. That would've come in with the sexual assault
19 kit.

20 MR. KOZAK: I'm showing opposing counsel what's
21 been marked as State's Number 80.

22 Q. Approaching with State's Exhibit 80, what is this?

23 A. This appears to be a copy of the toxicology report
24 Lindsey Mitchell issued.

25 Q. And has it been altered or edited in any way?

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1 A. I can't speak to that.

2 Q. I mean, does it look like a ---

3 A. It looks like a typical ---

4 Q. --- typical report?

5 A. --- report.

6 Q. Okay.

7 MR. KOZAK: At this time I'd like to move State's
8 Exhibit 80 into evidence and published to the jury.

9 MR. SWILLEY: No objection to that.

10 THE COURT: Eighty, you said?

11 MR. KOZAK: Yes, sir.

12 THE COURT: All right. State's Exhibit 80 is
13 admitted into evidence.

14 (Whereupon, the Sled Report- Lindsey Mitchell has been
15 marked and entered into evidence as State's Exhibit No. 80)

16 Q. Will you just read to the jury what the result is on
17 that test?

18 A. Ethanol was the item analyze for and the result was
19 negative.

20 MR. KOZAK: I beg the Court's indulgence.

21 Q. In your experience, I mean, limit experience but, I
22 mean, with sled, what is ethanol looking for? What's the
23 common term for ethanol?

24 A. Alcohol.

25 Q. Okay.

1 MR. KOZAK: No further questions, Your Honor.

2 THE COURT: Okay. Mr. Swilley?

3 **Cross-Examination by Mr. Swilley:**

4 Q. All right. Ms. Herrera, you, I guess, you tested it
5 looks like, I guess, that would be twelve items to be sent
6 to DNA department, is that correct? Well, more
7 importantly, let me ask you, you tested all the items you
8 received to go to the DNA department, right?

9 A. All the ones in my report, yes, sir, they were. They
10 were tested.

11 Q. All right. And all the ones that are in the report
12 are all the ones you actually received?

13 A. That is correct, yes.

14 Q. Yes, ma'am. And it looks like you - I'd say item, it
15 would appear - I guess, 12 was the sexual assault
16 collection kit from Candace Simpson, is that correct?

17 A. That is correct.

18 Q. All right. And 12.1, just to reiterate, is the
19 vaginal swab, is that correct?

20 A. Yes, sir.

21 Q. And I think the results you found there was positive
22 for semen, is that correct?

23 A. Yes, sir.

24 Q. And as well as the rectal swab I think there was
25 positive for semen, is that correct?

V. Herrera- Cross-Examination by Mr. Swilley

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1 A. No, sir. The rectal swab was positive for the
2 component of semen p30 but no spermatozoa was identified.

3 Q. I'm sorry, excuse me. So it had -- there was no semen
4 that was actually identified on the rectal swab, is that
5 correct?

6 A. That's correct. Just a component of semen.

7 Q. And the component could get there feasible by, I
8 guess, coming from the vaginally area or the perennial
9 area, is that correct?

10 A. That is absolutely correct.

11 Q. Yes, ma'am. Thank you. And you also I think it looks
12 like you analyze the or -- yeah, analyze the fingernail
13 scrapings 12.5, right?

14 A. I just forward those on. I didn't do any testing to
15 them.

16 Q. So you didn't test for blood in there or anything like
17 that?

18 A. No, sir.

19 Q. So skin cells or anything else like that you just
20 forwarded them on?

21 A. We just forward them on. Yes, sir.

22 Q. Okay. Now, going back to the items 12.1 and 12.3 and
23 it looks like as well 12.2, you did -- well -- excuse me,
24 let me back up, as it pertains to 12.1 the vaginal swabs
25 and 12.3 the rectal swabs, you didn't find any blood in

1 those swabs, did you?

2 A. I did not test for blood.

3 Q. Okay. Now, if there had been bleeding in that area
4 you could've found -- you could've -- you could've found
5 blood had there been bleeding, is that correct?

6 A. We don't typically test swabs from the vaginal area or
7 the rectal area for blood unless there's an indication the
8 assailant was bleeding. We would -- we find the DNA of the
9 victim there any way so blood there is just going to tell
10 us that the victim's own DNA was there.

11 Q. Okay. And -- well, if there had been trauma to the
12 vaginal area there potentially could be blood too, right?

13 A. There is a potential, yes.

14 Q. Okay. And this scenario you didn't, and these two
15 swabs, you didn't find any -- just to clarify, you didn't
16 find any blood in either one of these two swabs ---

17 A. I did not test for blood, no.

18 Q. Okay. Thank you. And I think just to go back and
19 what was brought up during direct examination, no
20 information was provided to you that any kind of DNA had
21 been intentionally move back by any individual from any of
22 these items, is that correct?

23 A. I'm ---

24 Q. Sorry.

25 A. That's okay.

V. Herrera- Cross-Examination by Mr. Swilley

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1 Q. I was talking too fast. Based on the information you
2 were provided in this case I think you testified, you
3 testified on direct that DNA particles or material can be
4 potentially moved from tangible items, right?

5 A. That is possible, yes.

6 Q. All right. And you didn't get any information from
7 anybody from anywhere that, that had happen in this case,
8 had you?

9 A. I have no information for that.

10 Q. Thank you.

11 MR. SWILLEY: Give me one moment, Ms. Herrera?

12 MS. HERRERA: Sure.

13 Q. And the neck area -- I guess, 9.3 the scrapings from
14 the neck area of the shirt that just forwarded on to the
15 DNA section as well, you don't do any kind of presumptive
16 testing for anything there, is that correct?

17 A. I do not. No, sir. We don't have a test for skin
18 cells.

19 Q. Okay. So no presumptive testing was done on the neck
20 area, is that correct?

21 A. That's correct.

22 Q. Okay.

23 MR. SWILLEY: Thank you, Ms. Herrera. Nothing
24 further.

25 THE COURT: Anything else, Mr. Kozak?

S. Stewart- Direct Examination by Mr. Burchstead 412

1 MR. KOZAK: Nothing further, Your Honor

2 THE COURT: All right. You can step down, ma'am.

3 Thank you. May this witness be excused?

4 MR. SWILLEY: No objection.

5 MR. KOZAK: No objection, judge.

6 THE COURT: You may be excused, Ms. Herrera. Thank
7 you.

8 MS. HERRERA: Thank you.

9 MS. BURCHSTEAD: The State calls Samuel Stewart.

10 THE CLERK: Place your left on the Bible and raise
11 right for me. Do you solemnly swear or affirm that the
12 evidence and testimony you're about to give the court and
13 the jury on this case is the truth, the whole truth, and
14 nothing but the truth so help you God?

15 MR. STEWART: I do.

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the court and spell your last name for
18 us please.

19 MR. STEWART: Samuel Alan Stewart, S-t-e-w-a-r-t.

20 SAMUEL STEWART, first being
21 duly sworn, testified as follows:

22 **Direct Examination by Ms. Burchstead:**

23 Q. Good morning, Mr. Stewart.

24 A. Good morning.

25 Q. Mr. Stewart, where are you employed?

S. Stewart- Direct Examination by Mr. Burchstead 413

1 A. I work for the South Carolina Law Enforcement Division
2 commonly known as sled.

3 Q. And how long have you been at sled?

4 A. Seven years.

5 Q. What are your primary duties at sled?

6 A. At sled on the DNA analyst assigned to the -- I'm a
7 DNA analysis assigned to the DNA work department. As a DNA
8 analyst it's my job to test any evidence and known
9 standards in a criminal investigation for DNA. My purpose
10 is try to determine whether or not that DNA profile develop
11 from those known standards can be included or excluded from
12 the DNA found on the evidence.

13 Q. Okay. And just a ballpark, how many test have you
14 done for DNA at sled?

15 A. Hundreds, I would say.

16 Q. And have you previously testified in court?

17 A. Yes, I have.

18 Q. Have you previously been qualified as an expert in
19 court?

20 A. Yes, I have.

21 Q. And were you qualified in the area of DNA and DNA
22 testing previously?

23 A. That is correct.

24 Q. And presumably you had background and training for
25 this testing?

S. Stewart- Direct Examination by Mr. Burchstead 414

1 A. Yes. At sled -- first, I got my Bachelors in Science
2 and Biology from Francis Marion University and I also had
3 in-house sled training for over a year and a half. We had
4 to complete lots of test samples, practicing samples,
5 practical test, competent test to qualify as a competent
6 DNA analyst.

7 Q. Okay. And do you have any continuing education or
8 subject to peer review those sorts of things?

9 A. We do eight hours of continuing education every year.

10 MS. BURCHSTEAD: Okay. Your Honor, at this time
11 the State offers Mr. Stewart as an expert in the field of
12 DNA and DNA analysis and testing.

13 MR. SWILLEY: No objection.

14 THE COURT: All right. I find him to be qualified
15 as an expert in the area of DNA testing and analysis.

16 Q. So back up just a minute, we're using the term DNA,
17 can you explain to the jury what is DNA and in just basic
18 terms?

19 A. Yeah. DNA stands for deoxyribonucleic acid. It is
20 the genetic material that's found in every individual and
21 it's responsible for certain traits such as our eye and our
22 hair color. DNA contains a dense packets on its
23 chromosomes which is found in every cell of your body
24 excluding red blood cells. We inherit half of our
25 chromosomes from our mother and the other half from my

S. Stewart- Direct Examination by Mr. Burchstead 415

1 father. And on those chromosomes we target certain
2 locations known as STR's and that stands for short tandem
3 repeats.

4 Q. So ---

5 A. And we look at 21 of those STR's repeats to develop
6 what's known as a DNA profile which would be used to
7 identify one, excuse me, one individual from another
8 excluding identical twins.

9 Q. Okay. And I failed to tell you the mic system is not
10 working real good this morning ---

11 A. I can speak up ---

12 Q. --- so just speak up -- speak up as much as you can.

13 A. --- not a problem. I can do that. I apologize.

14 Q. So in short, is it accurate to say DNA helps to
15 identify individuals?

16 A. Yes, that is correct. We use DNA to identify
17 individuals that may contributed to a piece of evidence.

18 Q. Okay. And so at sled conduct DNA analysis on
19 particular items that are submitted to sled, is that right?

20 A. That is correct.

21 Q. So how do items usually come to you for DNA testing?

22 A. Usually, all evidence is submitted from a submitting
23 agency and they bring it to our evidence control. The
24 evidence control logs in that evidence that the submitting
25 agency brings and they housed in a secured evidence locker.

S. Stewart- Direct Examination by Mr. Burchstead

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1 It's also given a unique sled number and item number for
2 everything that's brought in. It's contained in the
3 evidence locker until an analyst is assigned to that case.
4 Once an analyst is assigned to that case to work, the
5 analyst then goes down to evidence control and they take
6 all that evidence into their custody to begin starting
7 testing. They keep it in their custody through the
8 duration of the process of testing of those items of
9 evidence. And then it's taken back to evidence control
10 once we're done completing our analysis on it.

11 Q. Okay. And if there was something out of the norm or
12 the protocol is not followed, would you make a notation or
13 how would you handle that?

14 A. Yes. So everything is concealed in a heat sealed
15 pouches, not tampered with. Only the analyst that's doing
16 the testing are allowed to enter and exit the pouch and we
17 have to initial and date when we do that. If there's any
18 kind of discrepancy with that, the heat sealed pouch,
19 anything that the evidence looks like it might have been
20 tampered with we wouldn't do any testing on it.

21 Q. All right. Were you asked to do an analysis in this
22 particular case?

23 A. Yes, I was.

24 Q. Okay. And just briefly can you explain the sled
25 numbering system when items come to you, how there

S. Stewart- Direct Examination by Mr. Burchstead 417

1 numbered, and what you would be testing?

2 A. Yes. So this case number in particular it was given a
3 unique sled number L16-15253 and the items -- but the item
4 are given an unique number too just depended upon how they
5 were submitted. We have various number of items for this
6 case.

7 Q. Okay. So did you actually generate a report in this
8 case?

9 A. Yes, I did.

10 Q. Okay.

11 MS. BURCHSTEAD: I beg the Court's indulgence.
12 Permission to approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 Q. Okay. I am showing you what has been marked as
15 State's Exhibit Number 90, would you take a look at that
16 and tell us if you recognize it?

17 A. Yes, this is my sled report that I issued dated
18 December 17, 2018.

19 Q. Does it look to be complete and accurate?

20 A. Yes, it does.

21 MS. BURCHSTEAD: Your Honor, at this time, the
22 State moved Exhibit 90 into evidence.

23 THE COURT: All right. State's number 90 is
24 admitted into evidence and received into evidence without
25 objection.

S. Stewart- Direct Examination by Mr. Burchstead 418

1 MS. BURCHSTEAD: All right. And permission to
2 publish?

3 THE COURT: Yes, ma'am.

4 (Whereupon, the Sled Report- Samuel Stewart has been marked
5 and entered into evidence as State's Exhibit No. 90)

6 Q. Let's walk the jury through your findings now. I'm
7 going to approach again to give you a copy of your report
8 if you want to read from that or step down that's up to
9 you.

10 A. Okay.

11 Q. If you'll speak real clear for us.

12 A. Okay.

13 Q. Nice and loud. Okay. Can you just describe to the
14 jury what they're seeing here on page 1 at the top of the
15 identifying information?

16 A. So this is our basic first page of it. It lets you
17 see the comparison standards. Those are the standards of
18 the individuals that are involved in the case. So I use
19 their standards to compare against any kind of DNA profiles
20 I may develop from the evidence.

21 Q. And when you say standards, buccal swab, could that be
22 like a cheek swab?

23 A. Yes. It's a sterile swab that's used to collect cheek
24 cells inside the mouth.

25 Q. Okay. So that's what you use to do your test?

S. Stewart- Direct Examination by Mr. Burchstead 419

1 A. Yeah. To do the comparisons with, that is correct.

2 Q. All right. Where it says items of evidence, item 1.1,
3 what is that and how did it get to you?

4 A. It's swab from interior condom. I believe that item
5 was collected by the forensics serologist ---

6 Q. Ms. Herrera?

7 A. --- Ms. Herrera -- Yes. She swab that condom for me
8 and then submitted it to me so I can do the DNA analysis on
9 that.

10 Q. Okay. And did you have any findings on that?

11 A. Yes, I did.

12 Q. And what were your findings?

13 A. And if I can back up ---

14 Q. Sure.

15 A. Whenever we have an item of evidence that has semen or
16 the possibility of having semen on it what I do is
17 different type of extraction known as the differential
18 extraction. What we want to do is we want to separate any
19 kind of other DNA that might be on that item from that
20 sperm DNA that's possibly there. So when I refer to my
21 report they'll be a section that says non-sperm fraction
22 and sperm fraction. The non-sperm fraction that's a
23 fraction we hope to have captured any other DNA that may
24 have been there present on that item. And the sperm
25 fracture is the actual fracture that we hope to capture

S. Stewart- Direct Examination by Mr. Burchstead 420

1 just that semen DNA that's there. Sometimes we do get
2 complete separation and sometimes we don't. But I just
3 wanted to make sure I reference that before I started
4 reading my report.

5 Q. And I appreciate that. Thank you.

6 A. No problem.

7 Q. Yes.

8 A. So swab from interior of condom, the non-sperm
9 fraction the DNA profile is a mixture of two individuals --
10 -

11 THE COURT: Speak up just a little bit.

12 A. I'm sorry. The DNA profile is a mixture of at least
13 two individuals. A mixture is when we have more than one
14 person contributing their DNA to an item. That's pretty
15 common too as well. The DNA profile of the major
16 contributor matches the DNA profile of Tyreek Hayes. The
17 probability of randomly selecting an unrelated individual
18 having a DNA profile matching the major contributor to this
19 mixture is 1 and 140 nonillion. Candace Simpson is
20 included as a possible minor contributor. The probability
21 of randomly selecting an unrelated individual who could
22 have contributed to this mixture is approximately 1 in 22.
23 And Ann Covington is excluded as a possible minor. And the
24 minor contributor is just someone who contributed much more
25 DNA to that item than the other person there.

S. Stewart- Direct Examination by Mr. Burchstead 421

1 Q. Okay. So from the interior of the condom we have a
2 major contributor of Tyreek Hayes and a minor contributor
3 of Candace Simpson, is that correct?

4 A. That's correct. On the sperm -- on the non-sperm
5 fraction.

6 Q. All right. And when you say, going back to page 1,
7 the likelihood or probability of randomly selecting an
8 unrelated individual is 1 and 140 nonillion, can you just
9 explain that a little bit more?

10 A. Yeah. What that means if I took a random person's DNA
11 profile and I compared it to that major contributor from
12 that non-sperm fraction the chances of that random person
13 DNA profile matching the major contributor would be 100, 1
14 and 140 nonillion. So this a pretty significant number in
15 the chances of a random person's DNA matching that would be
16 highly unlikely.

17 Q. Thank you. All right. Now, let's move to item 1.2,
18 swabs from the exterior of the condom, would those have
19 come to you again from Ms. Herrera?

20 A. That is correct.

21 Q. Okay. And did you perform an analysis and get some
22 results on that?

23 A. I did.

24 Q. Okay. And what are your results?

25 A. From the non-sperm fraction the DNA profile is a

1 mixture of two individuals, Candace Simpson and Tyreek
2 Hayes are included as possible contributors to that
3 mixture. The probability of randomly selecting an
4 unrelated individual who could have contributed to this
5 mixture is approximately 1 and 35 million. And Ann
6 Covington is excluded as a possible minor contributor.

7 Q. And, again, you had received a swab from Ann as well
8 so were you just testing all items for all three of the
9 individuals?

10 A. That is correct.

11 Q. Okay.

12 A. To see if they can contribute to it.

13 Q. Because that was what you were asked to do?

14 A. That is correct.

15 Q. Okay. All right. Go ahead with 1.2 there, so Ann is
16 not excluded or Ann Covington is excluded and I believe
17 we're on the sperm fraction, if you'll go through that?

18 A. Yeah, the sperm fraction the DNA profile is a mixture
19 of the two individuals. The DNA profile of the major
20 contributor matches the DNA profile of Tyreek Hayes. The
21 probability of randomly selecting an unrelated individual
22 having a DNA profile matching the major contributor to this
23 mixture is approximately 1 in 140 nonillion. And due to
24 the inability to calculate a statistic, no further
25 interpretation will be offered regarding the minor

S. Stewart- Direct Examination by Mr. Burchstead 423

1 contributor to this mixture. And that just means that I
2 just didn't have enough genetic information to put a stat
3 to that minor contributor. And if we are unable to put a
4 statistic to any kind of contributor we won't do any kind
5 of interpretations on that.

6 Q. All right. Thank you. Let's me on to the next item,
7 1.3.1, and can you just refreshes on why we have all these
8 little numbers after it, the .3 and the .1?

9 A. Yeah. We sub items. So everything that these items
10 came from originated from the condom so we just want to
11 make sure that each item, we want to reference where it
12 came from and also give it is unique own number as well.

13 Q. Because it moves to the different areas within sled?

14 A. That's correct.

15 Q. Okay. Do you have some results related to the hair
16 from the condom?

17 A. The DNA profile is a mixture of two individuals. Due
18 to the inability to calculate a statistic, no further
19 interpretations will be offered.

20 Q. Okay. Now, item 9.1 is the cutting from the chest
21 area of the shirt, did you test that?

22 A. Yes, I did.

23 Q. And what are your results?

24 A. The DNA profile is a mixture of two individuals. The
25 DNA profile of the major contributor matches the DNA

1 profile of Ann Covington. The probability of randomly
2 selecting an unrelated individual having, excuse me,
3 matching the major contributor to this mixture is 1 and 1.,
4 excuse me, 1 and 7.9 nonillion.

5 Q. Okay. So for clarity purposes, item 9 was the shirt
6 that have been submitted for testing and 9.1 was from the
7 cutting from the chest area, right?

8 A. That is correct.

9 Q. So that's what you tested and found the DNA profile of
10 Ann Covington, is that right?

11 A. As the major contributor, that is correct.

12 Q. Okay. All right. Let's talk about item 9.2, go
13 through that for us?

14 A. Oh, yes. The DNA profile is a mixture of at least two
15 individuals. The DNA profile of the major contributor
16 matches the DNA profile of Candace Simpson. The
17 probability of randomly selecting an unrelated individual
18 having a DNA profile matching the major contributor to this
19 mixture is approximately 1 in 12 nonillion. And due to the
20 inability to calculate a statistic, no further
21 interpretation will be offered regarding the minor
22 contributors to this mixture.

23 Q. All right. So we're still talking about item 9 for
24 sled numbering purposes, that same shirt and then 9.2 is
25 the cutting from the arm ---

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1 A. From the ---

2 Q. --- that you would've gotten from Ms. Herrera, is that
3 right?

4 A. That's correct. The cuff area of the right arm.
5 That's correct.

6 Q. So the major contributor is Candace on that?

7 A. That is correct.

8 Q. So we have Candace's DNA on the arm of the shirt, is
9 that correct?

10 A. That is correct.

11 Q. Okay. Now, what do you mean and you may have touched
12 on this briefly but let's clarify just a little bit more.
13 Your last notation on 9.2, "due to the inability to
14 calculate a statistic, no further interpretation will be
15 offered as to a minor contributor", can you explain that a
16 little bit more for us?

17 A. Not a problem. Because there's not enough genetic
18 information there for me to be able to use as a statistic.
19 We won't put a -- we won't do any kind of comparison in
20 with it. Whenever we compare anything to anybody or we say
21 we match or that person is a major contributor we would
22 want to put a weight stat to give it more significance to
23 let you know exactly how much of that person is
24 contributing to that item as a major contributor. But if
25 I'm unable to do that then we won't do any kind of

1 comparisons with that. And that's just -- and that does
2 happen occasionally.

3 Q. All right. Let's move down to the next page, talk
4 about item 9.3, we're still referencing that same shirt, is
5 that correct?

6 A. That's correct.

7 Q. Okay. And if you'll tell us the results for item 9.3?

8 A. Ah, yes. The DNA profile is a mixture of at least
9 three individuals. The partial DNA profile of the major
10 component to this mixture is consistent with being from two
11 individuals. Candace Simpson and Tyreek Hayes are included
12 as possible contributors to the major component. The
13 probability of randomly selecting an unrelated individual
14 who could have contributor to the major component to this
15 mixture is 1 and 1.0 million. Ann Covington is excluded as
16 a contributor to the major component. And due to the
17 inability to calculate a statistic, no further
18 interpretations will be offered regarding the minor
19 component to this mixture. If I may explain about the
20 major component, whenever we have received two people
21 contributing significantly more DNA to a person, excuse me,
22 a mixture of three people are more than we can kind of pull
23 out who is known as that major component. That's just a
24 way for us to be able to target those major, those major
25 persons who are contributing to a three-person mixture or

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1 more. So that's what a major component is.

2 Q. Okay. Thank you. And just for clarity, I'm not sure
3 if we put it out there, 9.3 is a swab from the neck area of
4 the same shirt, right?

5 A. That is correct.

6 Q. Okay. Now, let's pause for a minute and talk a little
7 bit about the transfer of DNA, how easy is it to
8 transferred DNA?

9 A. It varies. It just depends on that person any kind of
10 external circumstances that might be going on. Everybody
11 sheds skin cells differently. Some people are heavy
12 shedders. Some people are light shedders. It just really
13 just depends upon the circumstance, what kind of external
14 factors that may come in contact with the item and, in this
15 case, the shirt. It just kind of varies.

16 Q. Okay. So is it possible to transfer DNA from like
17 sweat, rubbing up on somebody, a hug, that kind of thing?

18 A. Yes, it is. It's possible.

19 Q. All right. Let's move to item 10.1 and if you can
20 explain what item 10 was for us?

21 A. That was swabs of handle of knife.

22 Q. Okay.

23 A. A knife that has a DPD number 28 ---

24 Q. So DPD number 28 that would've been the Dillon Police
25 Department, right?

1 A. I believe so.

2 Q. Okay. And then sled gave it item 10?

3 A. Ten.

4 Q. Okay.

5 A. But the swab we gave 10.1.

6 Q. Okay. And if you'll tell us your findings on that?

7 A. The partial DNA profile is insufficient for
8 interpretation.

9 Q. Okay. What does that mean?

10 A. It just means once again not enough genetic
11 information to do any kind of comparisons with. It's very
12 low DNA.

13 Q. So there's nothing there for you to be able to test,

14 A. There was nothing in ---

15 Q. --- compare it?

16 A. There was nothing -- it wasn't enough to do any kind
17 of comparisons with.

18 Q. Okay.

19 A. And no Y-STR profile was developed. If I may explain
20 what Y testing is, that's a different type of testing of
21 DNA that only targets male DNA. It's testing the Y
22 chromosome that every male has. That Y profile that could
23 be developed it follows the paternal line. So any father
24 or brother or son, grandfather, uncle, brother it would all
25 have that same Y profile since that Y chromosome is passed

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1 down from father to son. And we did do Y testing on this
2 one but as I stated no Y profile was developed.

3 Q. Okay. And is that related to the fact that there
4 wasn't enough to be able to test?

5 A. That's correct.

6 Q. Okay. And for clarity purposes this particular knife
7 we're talking about this came from the handle of the knife
8 ---

9 A. That is correct.

10 Q. --- as compared to a blade, is that right?

11 A. That is correct.

12 Q. So this would be a knife with a handle on it. Okay.
13 So item 11.1, can you tell us about that, your findings
14 there?

15 A. Ah, yes. The DNA profile is a mixture of two
16 individuals. The partial DNA profile of the major
17 contributor matches the DNA profile of Ann Covington. The
18 probability of randomly selecting an unrelated individual
19 having a DNA profile matching the major contributed to this
20 mixture is 1 in 100 sextillion. Due to the inability to
21 calculate -- due to the inability to calculate a statistic,
22 no further interpretation be offered regarding the minor
23 contributors to this mixture. And though partial Y-STR
24 profile is insufficient for interpretation.

25 Q. Okay. So let's -- let's clarify a couple of things

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1 there. So for item 11 you were testing a blade, is that
2 correct?

3 A. That is correct.

4 Q. So not a knife with a handle but a blade?

5 A. That is correct.

6 Q. Okay. And the major contributor was Ann Covington?

7 A. That is correct.

8 Q. Okay. Now, tell us on this one why you didn't have or
9 why there is an insufficient interpretation for Y?

10 A. Once again just not enough genetic information to do
11 any kind of comparisons with very low DNA.

12 Q. Okay. So you found a mix of two individuals and the
13 major contributor is Ann, is that what we're saying?

14 A. Ann Covington, that is correct.

15 Q. Okay. Let's move to item 12.1, page 5 of your report.
16 So again vaginal swabs came to you from another department,
17 is that right?

18 A. Yes. Ms. Herrera swabbed those -- well, she cut them,
19 yes, that's correct.

20 Q. Okay. And what findings you have for the vaginal
21 swabs?

22 A. For the non-sperm fraction the DNA profile is
23 attributable to Candace Simpson. Which means I did find
24 her DNA in that non-sperm fraction. And the sperm
25 fraction, the DNA profile is a mixture of two individuals.

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1 A DNA profile foreign to Candace Simpson was developed and
2 it matches the DNA profile of Tyreek Hayes. The
3 probability of randomly selecting an unrelated individual
4 having a DNA profile matching this foreign DNA is
5 approximately 1 and 28 octillion. And also DNA types
6 attributable to Candace Simpson were also present in that
7 sperm fraction.

8 Q. Okay. So item 12.1, the vaginal swabs from Ms.
9 Simpson we have a mixture of two individuals and, in short
10 terms, it would be Tyreek Hayes and Candace Simpson, right?

11 A. That is correct in the sperm fraction.

12 Q. Okay. And item 12.2, the oral swabs, can you tell us
13 what you found there?

14 A. Yes. In the non-sperm fraction the DNA profile is
15 attributable to Candace Simpson. And the sperm fraction
16 the DNA profile is a mixture of two individuals. The
17 partial DNA profile of the major contributor is
18 attributable to Candace Simpson. But Tyreek Hayes is
19 included as a possible minor contributor to that mixture.
20 The probability of randomly selecting an unrelated
21 individual who could have contributed to this mixture is
22 approximately 1 in 840 billion. And Ann Covington is
23 excluded as a possible minor contributor to this mixture.

24 Q. Okay. So item 12.2 that's still part of the sled or
25 sled number 12, right ---

1 A. Yes. From ---

2 Q. --- which would be the the sex assault kit?

3 A. That's correct.

4 Q. Okay. So this is the oral swabs from the sex assault
5 kit, is that right?

6 A. That is correct.

7 Q. Okay. So, in short terms, again, we have major
8 contributor is Candace and another contributor is Tyreek
9 Hayes, is that correct?

10 A. That is correct.

11 Q. Let's move to 12.3 , so rectal swabs, again, this
12 would be from the same sex assault kit, right?

13 A. That is correct.

14 Q. Okay. And what are your findings of the rectal swabs?

15 A. The non-sperm fraction the DNA profile is attributable
16 to Candace Simpson.

17 Q. If you could you just speak up a little bit. Sorry.

18 A. I'm sorry. I apologize. The non-sperm fraction the
19 DNA profile is attributed to Candace Simpson. The sperm
20 fraction the DNA profile is a mixture of two individuals.
21 The DNA profile foreign to Candace Simpson was developed
22 and it matches the DNA profile to Tyreek Hayes. The
23 probability of randomly selecting an unrelated individual
24 having a DNA profile matching this foreign DNA is
25 approximately 1 in 20 septillion. And DNA types

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1 attributable to Candace Simpson are also present in this
2 mixture.

3 Q. Okay. So from the rectal swabs in the sex assault kit
4 we have Candace Simpson and Tyreek Hayes?

5 A. That is correct.

6 Q. And could you tell us about 12.4 the thighs, the swabs
7 from Candace's thighs?

8 A. The non-sperm fraction the DNA profile is a mixture of
9 two individuals. The partial DNA profile of the major
10 contributed is attributable to Candace Simpson. And due to
11 the inability to calculate a statistic, no further
12 interpretation would be offered regarding the minor
13 contributor to that mixture. For the sperm fracture the
14 DNA profile matches the DNA of Tyreek Hayes. And the
15 probability of randomly selecting an unrelated individual
16 having a DNA profile matching this item is approximately 1
17 in 140 nonillion.

18 Q. Okay. So from the thigh swabs major contributor,
19 Candace, and also DNA of Tyreek Hayes?

20 A. In the sperm fracture, that is correct.

21 Q. In the sperm fracture, thank you. Okay. And item
22 12.5.1, still working with the a sex assault kit, did you
23 find the results of the fingernail scrapings, left hand?

24 A. Yeah. Develop from the left hand finger scrapings the
25 DNA profile is a mixture of two individuals, at least two

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1 individuals. The DNA profile of the major contributor is
2 attributable to Candace Simpson. The partial DNA profile
3 of the minor contributor is insufficient for
4 interpretation.

5 Q. All right. So you found two individuals but can only
6 determine the major contributor, is that right?

7 A. That is correct.

8 Q. Okay. And the next item, the right hand fingernail
9 scrapings, what is your finding there?

10 A. The DNA profile is attributable to Candace Simpson.

11 Q. Okay.

12 MS. BURCHSTEAD: I beg the Court's indulgence.

13 Q. All right. Just to clear up a couple points here, I
14 believe throughout your report and at least in a couple of
15 places maybe with the shirt and the fingernail scrapings,
16 could you explain just a little bit more when the partial
17 DNA profile of a minor contributor is insufficient for
18 interpretation, what does that mean?

19 A. It just means that we just did not have enough genetic
20 information to do any kind of statistics with. Once again,
21 if we can't put a stat to it we don't make any kind of
22 comparisons to it. We always want to put a weight on our
23 stat to any kind of comparisons that we are making whenever
24 we're doing any kind of testing just to show the
25 significance of that comparison. And if we are unable to

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1 do that because of the makeup of their DNA profile such as
2 two minor or two partial then we won't to any kind of
3 comparisons with that.

4 THE COURT: Don't let your voice trail off.

5 A. I'm sorry. I apologize. I really do apologize. I'm
6 sorry.

7 Q. It's hard. We understand. Okay. So does it mean the
8 person is unknown or you just don't have enough to test?

9 A. We just don't have enough to test is what that means.

10 Q. Okay.

11 MS. BURCHSTEAD: Nothing further on direct, Your
12 Honor.

13 THE COURT: Okay. Mr. Swilley?

14 **Cross-Examination by Mr. Swilley:**

15 Q. All right, Mr. Stewart ---

16 A. Good morning.

17 Q. Good morning. Going back to report, it would appear
18 that, you know, going back -- and you have a copy of your
19 report, don't you?

20 A. I do.

21 Q. Okay. Now, you were given comparisons for or you were
22 given comparisons standards which are those buccal swabs
23 from Candace Simpson, Tyreek Hayes and Ann Covington,
24 correct?

25 A. That is correct.

1 Q. You weren't given any more buccal swabs from anyone
2 else, right?

3 A. I was not.

4 Q. All right. Now, -- and then you base, you know, you
5 base your analysis on these items that you tested or that
6 you analyzed which be 1 through 12, right, all 12 items --
7 those -- the only comparisons standards with Candace
8 Simpson, Tyreek Hayes and Ann Covington, is that correct?

9 A. That is correct.

10 Q. Okay. And there was no way for you to have a
11 comparison standard for someone else who you didn't
12 receive, right?

13 A. No.

14 Q. Okay. Thank you. Now, going back to -- and just so
15 we're clear, the swab or the swab from the interior of the
16 condom there was, in fact, it would've appeared to have
17 been actual semen from inside, you know, the actual, you
18 know, to have all three components for semen inside of that
19 condom, right?

20 A. Yes. That's what Ms. Herrera testified to.

21 Q. I'm sorry, now?

22 A. Ms. Herrera she tested all three the p30, acid
23 phosphatase and spermatozoa tested positive.

24 Q. Those are all three components of semen, right?

25 A. That is correct.

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1 Q. Okay. Now, and that was from the inside of the
2 condom. And the exterior of the condom which is 1.2 is
3 that swab, that's a profile from at least two different,
4 that was two different individuals and your analysis
5 included that Candace and Tyreek were included as possible
6 contributors to this mixture, right?

7 A. For the non-sperm fraction?

8 Q. Yes, for the non-sperm fraction, that's correct?

9 A. That is correct.

10 Q. Right. And for the actual sperm faction there is no
11 semen, there's no actual semen that was identified but
12 there was a spermatozoa that was identified for the
13 exterior, is that correct?

14 A. I have to look at her -- and you mean for item 1.1,
15 correct? I believe she identified everything from 1.1. acid
16 phosphatase, p30 and spermatozoa were all identified on
17 item 1.1.

18 Q. Right. And then I'm going to hand you what's been
19 marked as State's Exhibit 89 that's Ms. Herrera's report.

20 A. Mmm, hmm.

21 Q. There you go just so you're working off the actual
22 exhibits.

23 A. That's correct.

24 Q. Now, 1.2 there was no semen found but there was
25 spermatozoa found, is that correct?

1 A. That is correct.

2 Q. Okay. And that would mean that the spermatozoa came
3 in contact with the exterior of the condom, right?

4 A. I believe so.

5 Q. Okay. And we move on to item 3 which is, excuse me,
6 or 1.31 or 1.3.1, excuse me.

7 A. Mmm, hmm.

8 Q. That is a hair from the condom and that was a mixture
9 of at least two different individuals, right?

10 A. That is correct.

11 Q. And you didn't have any inability to calculate a
12 statistic because you didn't have enough to test, is that
13 right?

14 A. Right. Yeah, I didn't have enough confidence in that
15 profile to put weight to it, a statistic, so I didn't do
16 any comparisons.

17 Q. Okay. But you -- but for something like this you
18 could've done a comparison, right, you just didn't feel
19 confident ---

20 A. Well, if we can't put a weight to it then I won't put
21 a comparison or I want put any type of comparisons with it.

22 Q. You won't put a comparison to it, right?

23 A. Well, also sled, I mean, anyone in our lab we're not
24 gonna put any kind comparison with that. I mean, that's
25 generally accepted in a forensic community. If we can't

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1 put a stat to it then we won't do any kind of comparisons
2 with it.

3 Q. Okay. And going back to 9.1, chest area of the shirt,
4 that was a mixture of at least two individuals and said the
5 "major contributor was Ann Covington", right?

6 A. That is correct.

7 Q. That was her DNA?

8 A. That is correct.

9 Q. Okay. And the actual source of that DNA is not noted
10 on your report, is that correct?

11 A. It is not.

12 Q. Okay. And that's because you don't know because you
13 just get the standard from Ms. Herrera, right?

14 A. Yeah, I get the swab from her. All the cuttings from
15 her, that is correct.

16 Q. Right. Okay. Same with the cuff area of the shirt,
17 the actual DNA profile major contributor is Candace
18 Simpson, is that correct?

19 A. That is correct.

20 Q. All right. And that's a mixture of at least two
21 different individuals from the cuff of that shirt, right?

22 A. That is correct.

23 Q. Right. And due to the inability to calculate a
24 statistic you can identify the other individual, could you?

25 A. I cannot.

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1 Q. All right. That individual, you have no idea who that
2 person could be?

3 A. I do not.

4 Q. Right. Moving on. And then the same with 9.3, it
5 says, "there's DNA profile mixture of at least three
6 different individuals", right?

7 A. That is correct.

8 Q. Okay. And the major component of this mixture is
9 consistent with being, would being from two individuals or
10 the partial profile, excuse me, of the major component at
11 least two individuals, right?

12 A. That is correct.

13 Q. And that's Candace and Tyreek, right?

14 A. That is correct.

15 Q. Right. And Ann Covington is excluded from being a
16 contributor to the major component, right?

17 A. That is correct.

18 Q. Right. So -- so there is, at least, consistent from
19 being with two individuals, the profile is a mixture of
20 three, right?

21 A. That is correct.

22 Q. All right. Now, and you had Ann Covington's, and
23 again I'm reverting back, you had Ann's sample to compare
24 it to, right?

25 A. That is correct.

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1 Q. You had Tyreek's?

2 A. That is correct.

3 Q. And you had Candace's, right?

4 A. That is correct.

5 Q. And those are the only three and Ann was actually
6 excluded as a contributor from that neck area of the shirt,
7 right?

8 A. As a major component.

9 Q. As a major component. So there's three major
10 components, right, you had three people to compare it to
11 and two of them, two of your samples were major component,
12 right?

13 A. They're in the mixture, that is correct.

14 Q. Tyreek and Candace?

15 THE COURT: Speak up please.

16 A. That's -- that's correct, yes.

17 Q. All right. Now, that third one you don't have a
18 comparison so you don't know who that third major
19 contributor is, do you?

20 A. I do not but also I would not be able to do -- even if
21 I were to have another standard I wouldn't be able to do
22 the comparisons to that, to that minor component because it
23 was just so partial and I can do a stat to it so

24 Q. Now, as to the -- now, as to the -- okay. Now, as to
25 the mixture -- but there is three different individuals on

1 that, on that, on that scraping from the neck area?

2 A. That is correct.

3 Q. And you only identified two -- you could only
4 identified to with the samples you were given, right?

5 A. Yes. And I excluded Ann Covington from the major
6 component. That's correct.

7 Q. Okay. And you can't -- and you can't -- you are
8 unable to figure out who the minor contributor was, right?

9 A. I wouldn't be able to even if I had another standard I
10 wouldn't be able to.

11 Q. Okay. And then we go back, you know, you had a swab
12 on the knife handle, you couldn't, you couldn't use that
13 profile at all from the knife handle for interpretation,
14 right?

15 A. Item 10.1?

16 Q. That's correct.

17 A. That is correct.

18 Q. Okay. And then you got swabs from the blade edges on
19 item 11, isn't that correct?

20 A. That 11.1, that's correct.

21 Q. All right. And you were able to find out that's DNA
22 profile of two different, two different individuals, right?

23 A. Yes, that's correct.

24 Q. And you are able to identify one and that's Ann
25 Covington, right?

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1 A. That is correct.

2 Q. And you can't identify the other?

3 A. I cannot.

4 Q. Okay. And you were able to compare that standard with
5 all three of the standard or you were able to compare that,
6 that profile with the three standards you were given,
7 right?

8 A. That is correct.

9 Q. And you only had three so that's all you could compare
10 it to, right?

11 A. With the three standards, that is correct.

12 Q. Okay. Going back -- going up to 9.2, that's the cut -
13 - okay. Now, if you were given more swab samples you
14 could, you could compare those standards to all of these
15 items, right? You could have had you been given more?

16 A. The ones -- I don't believe not for the ones that's
17 insufficient or the ones -- even if I had another standard
18 for those partial ones I could not do any kind of
19 comparisons with those.

20 Q. Okay. Now, going back to 12, it looks like 12.2, the
21 oral swab, I'm going to revert you back to Ms. Herrera's
22 report, 12.2, there was no -- there was no spermatozoa
23 identified in 12.2, isn't that right?

24 A. That is correct.

25 Q. Okay. Only p30 was found in there, right?

1 A. That is correct.

2 Q. And p30 is short for what?

3 A. It's short for protein, protein 30. That's
4 potentially what I think it stands for.

5 Q. Protein -- protein 30?

6 A. I -- I -- I believe so ---

7 Q. You don't ---

8 A. --- don't quote me on that.

9 Q. You don't know?

10 A. I don't.

11 Q. Okay. You just know that's one of the three
12 components of semen, right?

13 A. That's correct.

14 Q. And it comes from males, right?

15 A. Yes, it does.

16 Q. Okay. Now, going back to your report on 12.2, the
17 actual sperm fraction is comparable to -- well, you have it
18 labeled as a sperm fraction it's actually a profile of the
19 mixture of two individuals and you were able to include the
20 major contributor to what you labeled as a sperm fraction
21 as Candace and the minor contributor of this mixture is
22 Tyreek Hayes, right?

23 A. That is correct.

24 Q. And you don't know the source of this, of this
25 particular fraction, do you?

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1 A. Like I said, it's supposed to try to encompass on any
2 kind of semen potential DNA that's there, but I do not know
3 the exact source of it.

4 Q. All right. There was no semen that was found --
5 according to Ms. Herrera there's no semen that was found in
6 the swab, right?

7 A. That is -- no spermatozoa, that's correct.

8 Q. Right. And you have to have all three to have actual
9 semen, right?

10 A. Well, the sperm is actually in the spermatozoa.
11 That's the actual DNA that we would get from that so....

12 Q. Okay.

13 A. But she said no spermatozoa so I cannot tell you
14 hundred percent where the DNA actually came from.

15 Q. You can't tell -- yeah, you can't tell what part or
16 where the actual DNA came from it's just DNA there?

17 A. That's correct.

18 Q. It could've come from saliva, right?

19 A. Yes, that's correct.

20 Q. Okay. Just give me one moment Mr. Herrera. It's not
21 Mr. Herrera, give me one moment please, Mr. Stewart?

22 A. That's okay.

23 Q. And Mr. Stewart, as far as the DNA, the DNA analysis
24 you can't tell, DNA doesn't tell you when, right?

25 A. It does not.

1 Q. Right. It doesn't tell you where, right?

2 A. It does not.

3 Q. And it also doesn't tell you how either, right?

4 A. It does not.

5 Q. Just that it is?

6 A. That it's there. That's correct.

7 Q. Okay. And then you went back -- well, you were able
8 to try to do an analysis for Y-STR, and just to clarify
9 that, Y-STR analysis of DNA that's for Y chromosome, right?

10 A. That is correct.

11 Q. And just so everybody - and just so to make sure
12 we're aware, I mean, females have two X, chromosomes,
13 right?

14 A. That is correct.

15 Q. And a male has a X and Y chromosome, right?

16 A. That is correct.

17 Q. And that Y chromosome is what, I guess, inherently
18 makes a male a male?

19 A. That is correct.

20 Q. Right. And when you do that Y chromosome analysis you
21 looking for that male, specific type of male DNA, right?

22 A. Yeah. If the Y profile - if the Y-STR profile we
23 develop off locations off that Y chromosome.

24 Q. Okay. And you weren't able to get any kind of results
25 on the Y-STR analysis that you did, right?

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1 A. Off of 10.1, I'm sorry, let me go back. For 10.1,
2 there was no Y-STR profile developed. And for 11.1 there
3 was a partial Y-STR that was to insufficient for
4 interpretation.

5 Q. So that's swab from that 11.1, that's the swab from
6 the blade of edge of item 11, there was, there was a
7 partial DNA profile of a man that you were able to, at
8 least, identify, right?

9 A. I did type -- there's one profile, I mean, one type at
10 that Y-STR but, like I said, it was to insufficient.

11 Q. All right. And that's item 11, right? That's just
12 the blade edge, right? That's just the knife with no
13 handle, is that correct?

14 A. That is correct.

15 Q. Okay. And there's a -- so just to make sure, there's
16 a partial Y-STR profile on that, on that knife that you
17 cannot identify?

18 A. Yeah, that's correct.

19 Q. Okay. Now -- and just to be clear, an STR stands for
20 short tandem repeat, right?

21 A. That is correct.

22 Q. Right. And you're -- I think Ms. Herrera testified
23 earlier there's two types of DNA analysis, there's nuclear
24 that sled does, right?

25 A. That's correct.

S. Stewart- Cross-Examination by Mr. Swilley

448

1 Q. And this mitochondrial that sled doesn't do?

2 A. That is correct.

3 Q. All right. Now, and this short tandem repeat test is
4 a test for the nuclear DNA, right?

5 A. That is correct.

6 Q. Right. And the Y-STR it's just a same short tandem
7 repeat specifically for the Y rather than ---

8 A. The entire ---

9 Q. --- everything else, right?

10 A. That is correct.

11 Q. Okay. And when you did that, that narrowing, that Y-
12 STR test which is the narrowing down short tandem repeat
13 test for the nuclear, for the nuclear DNA, you can't
14 interpret it, right?

15 A. The Y, profile?

16 Q. Right.

17 A. No, I cannot.

18 Q. Now, if you had a, a Y that was sufficient for
19 interpretation you could've compared it to any standard,
20 right?

21 A. Any male standard, that is correct.

22 Q. Any male, yeah, any male standards, right?

23 A. That is correct.

24 Q. All right.

25 MR. SWILLEY: All right. Thank you, Mr. Stewart.

S. Stewart- Redirect Examination by Ms. Burchstead 449

1 MR. STEWART: No problem.

2 THE COURT: Ms. Burchstead?

3 MS. BURCHSTEAD: Thank you, Your Honor.

4 **Redirect Examination by Ms. Burchstead:**

5 Q. Just briefly let's see if we can go over a few things.
6 All right. So there's a lot of talk about majors and
7 minors. So specifically looking at 9.3, again we're
8 talking about the neck area of the shirt. I believe you
9 had said on cross even if you had been given another sample
10 there wasn't enough test for that third potential
11 contributor, is that right?

12 A. That is correct.

13 Q. Okay. So the fact that you don't have enough test
14 does that mean Ann is excluded as a minor?

15 A. I couldn't, like I said, I couldn't do any type of
16 comparisons with that minor.

17 Q. Okay. So it could be Ann?

18 A. It's possible. But, like I said, I just can't do
19 anything with it.

20 Q. Or it could be someone that just rubbed up on it may
21 be if DNA had transferred?

22 A. It's possible.

23 Q. It could've happened, a shirt getting tossed around in
24 a garbage can, if there's some DNA in the garbage can?

25 A. Yeah, that can be possible too.

S. Stewart- Recross-Examination by Mr. Swilley

450

1 Q. Okay. So just not enough for you to know?

2 A. That's correct.

3 Q. Okay. All right, similarly with item 11.1 that's the
4 knife with the blade, so not the handle from the knife but
5 just the blade knife, is your result excluding Candace as a
6 contributor?

7 A. No, it is not.

8 Q. So Candace could be on that, her DNA could be on
9 there, potentially?

10 A. Like I said ---

11 THE COURT: Speak up.

12 A. I couldn't do anything with it ---

13 Q. We just don't know?

14 A. I just don't know. No, I don't.

15 MS. BURCHSTEAD: Nothing further.

16 MR. STEWART: Thank you.

17 THE COURT: Mr. Swilley?

18 **Re-cross Examination by Mr. Swilley:**

19 Q. Just to -- all right. Just to clarify, Mr. Stewart, I
20 think Ms. Burchstead just ask you different ways DNA could
21 be, could've been transferred to item 9.3, there is no
22 limitation on -- you have no way of to limit the ways in
23 which DNA, to know in which the ways DNA could have been
24 transferred in 9.3, right?

25 A. I do not.

S. Stewart- Recross-Examination by Mr. Swilley

451

1 Q. And as far as the blade that doesn't, your analysis
2 didn't exclude anybody. As she said, it doesn't exclude
3 Candace Simpson, right?

4 A. That's correct.

5 Q. It doesn't exclude anybody else in this world?

6 A. That's correct.

7 MR. SWILLEY: Thank you.

8 THE COURT: All right. Mr. Stewart, you can step
9 down. Thank you, sir.

10 MS. BURCHSTEAD: May he be excuse, Your Honor?

11 THE COURT: Any objection?

12 MR. SWILLEY: No objection.

13 THE COURT: Mr. Stuart, you may be excused.

14 MR. STEWART: Sorry about that.

15 MS. BURCHSTEAD: And may we approach, Your Honor?

16 THE COURT: Yes.

17 (Whereupon, a bench conference was held off the record)

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a break at this point in time before we hear
20 from the next witness. Again, I caution you about
21 discussing the case when you go back into the jury room.
22 We'll wait until the conclusion of the trial. You may be
23 excused. Everybody remain seated while the jury goes out.

24 (Whereupon, the jury exits the courtroom at 11:25 a.m.)

25 THE COURT: All right. We'll take a break. A

1 short break.

2 (Whereupon, the court takes a short break)

3 (Whereupon, the court goes back on the record at 11:44
4 a.m.)

5 THE COURT: Are we ready for the jury, counsel?

6 MS. BURCHSTEAD: Yes, Your Honor.

7 MR. SWILLEY: Yes, sir.

8 (Whereupon, the jury enters the courtroom at at 11:44 a.m.)

9 THE COURT: All right. The State may call its next
10 witness?

11 MS. BURCHSTEAD: Thank you, Your Honor. The State
12 calls Tonya Moore.

13 THE CLERK: Place your left on the Bible and raise
14 right hand. Do you solemnly swear or affirm that the
15 evidence and testimony you're about to give the court and
16 the jury on this case is the truth, the whole truth, and
17 nothing but the truth so help you God?

18 MS. MOORE: I do.

19 THE COURT: Have a seat in the witness box. State
20 your full name for the court and spelling your last.

21 MS. MOORE: Tonya M-o-o-r-e.

22 THE COURT: Ms. Moore, the sound system is not
23 working so I'm going to ask you to keep your voice up and
24 speak loudly and clearly at all times, all right?

25 MS. MOORE: All right.

T. Moore- Direct Examination by Ms. Burchstead

453

1 THE COURT: Okay. Thank you.

2 TONYA MOORE, first being
3 duly sworn, testified as follows:

4 **Direct Examination by Ms. Burchstead:**

5 Q. Good morning, Ms. Moore.

6 A. Good morning.

7 Q. Ms. Moore, where do you live?

8 A. I live across the street from Candace in Maplewood
9 Apartments.

10 THE COURT: Speak up, now, a little bit.

11 A. I live across the street from Maple, I mean, from
12 Candace in Maplewood.

13 Q. Okay. So you live in Dillon County in Maplewood
14 Apartments?

15 A. Yes.

16 Q. And you mentioned Candace, so you know Candace
17 Simpson?

18 A. Yes.

19 Q. How do you know her?

20 A. We're real close friend more like relatives.

21 Q. Okay. And do you know Ann Covington?

22 A. Yes.

23 Q. And how do you know Ann?

24 A. Friends. Real close friends more like relatives.

25 Q. All right. So how long have you known Candace and

1 Ann?

2 A. For years.

3 Q. Okay. Do you work anywhere?

4 A. Yes, ma'am.

5 Q. Where do you work?

6 A. Board of Disability and Special Needs.

7 Q. And what do you do there?

8 A. I'm a caregiver.

9 Q. And how long have you been at DDSN?

10 A. For four years.

11 Q. You say you live at Maplewood, how long have you lived
12 at Maplewood?

13 A. Seven years.

14 Q. So let's go back to 2016 the night of September 30th,
15 do you remember if that was a Friday night? Weekend night
16 ---

17 A. A Saturday. It was a weekend. I think it was a
18 Saturday.

19 Q. All right. Okay. So did you have any plans for that
20 night?

21 A. Yes, ma'am. I attended the Strikers Club there was a
22 party out there.

23 Q. Okay. So you went to Strikers?

24 A. Yes.

25 Q. Okay. And did you see Candace at Strikers?

T. Moore- Direct Examination by Ms. Burchstead

455

1 A. Yes, ma'am.

2 Q. All right. Do you know an individual name Tyreek
3 Hayes?

4 A. At the point I didn't but -- then, I didn't.

5 Q. Okay. All right. So did you stay at Strikers all
6 night or ---

7 A. I did.

8 Q. Okay. Did you go anywhere after Strikers?

9 A. Yes, to, um, after hours spot called T. Lee's.

10 Q. All right. And when you say after hour spot, what do
11 you mean?

12 A. Meaning like after the regular clubs get over, like
13 two or something like that, it's just like after hours
14 after two.

15 Q. Okay. So after Strikers closed, did you go T. Lee's?

16 A. Yes, ma'am.

17 Q. All right. Were you driving?

18 A. Yes, ma'am.

19 Q. Okay. Did you take anybody with you to T. Lee's?

20 A. Me and Candace.

21 Q. So you and Candace went to T. Lee's?

22 A. Yes.

23 Q. And about how long did you stay at T. Lee's, do you
24 remember?

25 A. Not long.

T. Moore- Direct Examination by Ms. Burchstead

456

1 Q. Okay. And when you left T. Lee's were you still
2 driving?

3 A. Yes, ma'am.

4 Q. And did you take anybody with you?

5 A. Yes.

6 Q. Who did you take with you?

7 A. Candace and Reedy.

8 Q. And when you say Reedy, do you know him by any other
9 name or

10 A. That's all the name I know him.

11 Q. All right. So how did you end up with Reedy in your
12 car?

13 A. He asked Candace for me to give him a ride home.

14 Q. All right.

15 A. That he stayed in the next complex over ---

16 Q. Okay.

17 A. --- from where we lived at.

18 Q. All right. So you didn't know him?

19 A. No, I didn't.

20 Q. But through Candace you agreed to give him a ride ---

21 A. Right.

22 Q. --- is that right?

23 A. Right.

24 Q. So you said the next apartment complex over, what's
25 that?

T. Moore- Direct Examination by Ms. Burchstead

457

1 A. Dover Village.

2 Q. So you thought he was going to go to Dover Village, is
3 that right?

4 A. Correct.

5 Q. Okay. So do you have any idea what time it was when
6 the three of y'all got into the car to leave T. Lee's?

7 A. It was around probably two, 3-ish, somewhere in there.

8

9 Q. Okay. So Strikers had closed at what time?

10 A. No, excuse me, Strikers closed probably around two,
11 around two or 2:30.

12 Q. Okay.

13 A. We sat out there for a little while so maybe around 3-
14 ish, 4-ish, somewhere in there.

15 Q. All right.

16 A. I'm not for sure what exact time.

17 Q. So you've been to Strikers, hung out a little bit in
18 the parking lot ---

19 A. Yes.

20 Q. --- or somewhere outside?

21 A. Yes.

22 Q. Then you go to T. Lee's?

23 A. Yes.

24 Q. Stay there for little while?

25 A. Yes.

T. Moore- Direct Examination by Ms. Burchstead

458

1 Q. Okay. And the three of y'all get in the car to head
2 to Maplewood?

3 A. Yes.

4 Q. Okay. So you live in Maplewood, right?

5 A. Yes.

6 Q. All right. And Candace lives at Maplewood?

7 A. Yes.

8 Q. And it was your understanding -- was it your
9 understanding that Reedy, the guy with Candace, was gonna
10 go straight to Dover Village?

11 A. Yes.

12 Q. Okay. And you just knew him as Reedy, at that point,
13 right?

14 A. Yes.

15 Q. Okay. So were Candace and Reedy, where were they
16 positioned in your car?

17 A. Well, Candace was in the front seat. He was in the
18 back seat behind me.

19 Q. All right. Were y'all talking on the drive home?

20 A. No.

21 Q. Okay. Was Candace and Reedy talking at all?

22 A. No.

23 Q. Okay. And where were you planning -- were you
24 planning to drop them off or just go to your place, how
25 were you gonna get everybody where they needed to go?

T. Moore- Direct Examination by Ms. Burchstead

459

1 A. Well, from where I live at it's like right there, it's
2 a few steps, and then you go over to the next building so I
3 pulled in front of my building.

4 Q. Okay.

5 A. Cuz it's walking distance so he, I guess, I was
6 thinking he was gonna walk on over there.

7 Q. And so was it walking distance for Candace to get her
8 apartment?

9 A. Yes.

10 Q. And then Dover Village is just a little bit passed
11 that, is that right?

12 A. Yes.

13 Q. Okay. So you made it back to your place, right?

14 A. Yes.

15 Q. Okay. What happened when you got back to your place?

16 A. I pulled in my unit. I heard him ask her can he come
17 over. She stated you can come over for a minute but you're
18 not getting any. Then they both left, got out the car and
19 walked to her unit and I went in my unit.

20 Q. Okay. And do you know anything -- you didn't see
21 anything in her unit, you never went into her apartment
22 that night, right?

23 A. No, ma'am.

24 Q. Okay.

25 MS. BURCHSTEAD: I beg the Court's indulgence.

T. Moore- Cross-Examination by Mr. Swilley

460

1 Nothing further on direct. Thank you.

2 THE COURT: All right. Mr. Swilley?

3 **Cross-Examination by Mr. Swilley:**

4 Q. Ms. Moore, it's your testimony today that it was just
5 you and Candace that went out?

6 A. Sir?

7 Q. It's your testimony today that it was just you and
8 Candace that went out to the clubs?

9 A. Yes, sir.

10 Q. Okay. Now, do you recall speaking with investigator
11 Turner about this on October 1, 2016, don't you?

12 A. Yes, sir.

13 Q. All right. And you were talking to him in the police
14 car, right?

15 A. Yes, sir.

16 Q. All right. And you told him that some of your friend
17 girls went back to the club, T. Lee's, after Strikers,
18 right?

19 A. No, sir. Actually what I said was that me and Candace
20 went back to the club. I don't recall ---

21 Q. Okay.

22 A. --- saying other ones went back to there.

23 Q. All right. Ms. Moore, if you wouldn't mind could you
24 just read line 16 through 19?

25 A. "Last night we went to the little party at Strikers.

T. Moore- Cross-Examination by Mr. Swilley

461

1 After we done went -- after we done we went to Strikers.

2 All of me and my friend girls went back to the club to T.

3 Lee's."

4 Q. Thank you. And Ms. Moore, you weren't the only one in
5 the car when you came back to Maplewood either, were you?

6 Or you and Candace and Tyreek weren't the only ones in the
7 car when you got back to Maplewood either, were you?

8 A. Yeah, we were.

9 Q. Okay. Candace is one of your best friends, right?

10 A. Correct.

11 Q. You've known her for a long time, right?

12 A. Yes.

13 Q. You live in the same apartment complex with her, don't
14 you?

15 A. Yes.

16 Q. All right. It's your testimony today that you don't
17 know Tyreek Hayes?

18 A. Yes, sir.

19 Q. All right. And it's your testimony that you didn't
20 know who he was at the time, right?

21 A. Yes.

22 Q. Is that your testimony?

23 A. Yes.

24 Q. You've lived in Dillon your whole life, haven't you?

25 A. I have.

T. Moore- Cross-Examination by Mr. Swilley

462

1 Q. Okay. And you've never lived anywhere else, have you?

2 A. No, sir.

3 Q. All right. Went to Dillon high school, didn't you?

4 A. I did.

5 Q. Okay. All of your family lives in Dillon too, right?

6 A. Yes.

7 Q. I think you testified y'all left Strikers between
8 three and four in the a.m.? Not Strikers, excuse me, you
9 left T. Lee's to go home about between three and four in
10 the a.m.?

11 A. Yes, sir.

12 Q. Okay. And you're certain about ---

13 A. Somewhere along in long in that. I'm not for certain
14 what exact hour but somewhere in that time.

15 Q. I'm sorry, what was the last thing you said?

16 A. I said somewhere along in that time. I'm not sure
17 what exact time.

18 Q. Okay.

19 MR. SWILLEY: Thank you, Ms. Moore.

20 THE COURT: Anything else?

21 MS. BURCHSTEAD: No, Your Honor. May the witness
22 be excused?

23 THE COURT: All right. You can step down, ma'am.
24 No objection?

25 MR. SWILLEY: No objection.

I. Russell- Direct Examination by Mr. Swilley

470

1 nothing but the truth so help you God?

2 MS. RUSSELL: I do.

3 THE CLERK: Have a seat in the witness box. State
4 your full name for the court and spelling your last.

5 THE COURT: And that microphone doesn't work.

6 MS. RUSSELL: Oh, I'm sorry.

7 THE COURT: Just please speak loudly and clearly
8 since it does not work.

9 MS. RUSSELL: Okay. My name is Infinity Russell.
10 That is I-n-f-i-n-i-t-y, Russell, R-u-s-s-e-l-l.

11 Infinity Russell, first being
12 duly sworn, testified as follows:

13 **Direct Examination by Mr. Swilley:**

14 Q. Ms. Russell, where do you reside?

15 A. I am -- I reside in Dillon, South Carolina.

16 Q. Okay. How long have you been residing in Dillon for?

17 A. For about five years.

18 Q. Five years. And do you know who Tyreek Hayes is?

19 A. I do.

20 Q. All right. How do you know Tyreek?

21 A. I know Tyreek Hayes from Purdue. We used to work
22 together.

23 Q. Okay. And that's the extent of how you know him?

24 A. Right.

25 Q. Okay. And do you know who Candace Simpson is?

1 A. I do.

2 Q. Okay. And -- actually, what part of Dillon do you
3 live in, Infinity?

4 A. I stay in front of Walmart to be exact in Interstate
5 Apartments.

6 Q. Okay. And do you -- around the time of 2000 -- do you
7 recall going out to any nightclubs around the time of it
8 would've been around November or December of 2016?

9 A. Yes.

10 Q. Okay. Which nightclub did you frequent at that time?

11 A. I attend two nights clubs, actually, one is Alar (sic)
12 which is now closed now. And the other one is Johnny's
13 lounge.

14 Q. Okay. And did you have a chance to be at the same
15 nightclub during this time as Candace Simpson?

16 A. Yes.

17 Q. Okay. And don't tell me -- don't tell me what anybody
18 said but did you witness Ms. Simpson at these nightclub?

19 A. Yes, I have.

20 Q. Okay. And specifically do you remember about how long
21 after -- well, how long after November 1st, excuse me,
22 October 1st -- or let me ask you this, about how long after
23 November 1, 2016 was this, how many weeks?

24 A. It hadn't been probably a month.

25 Q. A month?

I. Russell- Direct Examination by Mr. Swilley

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1 A. Yeah, no longer than a month when I seen her.

2 Q. Can you describe her demeanor at these nightclubs?

3 A. Yes, very, very social. Talkative. You know,
4 intoxicated.

5 Q. Okay.

6 A. Very intoxicated.

7 Q. Okay. Was she interacting with people?

8 A. She was.

9 Q. Okay. Would you describe her conduct as ---

10 MS. BURCHSTEAD: Objection. Relevance. Pretty far
11 from the date of the incident of how she's acting at
12 nightclubs is not relevant.

13 MR. SWILLEY: Judge, I think ---

14 THE COURT: Does she know specifically about the
15 night in question?

16 MR. SWILLEY: Your Honor, I don't think she has the
17 information -- I don't believe she's gonna testify to
18 anything about the incident in question just subsequent
19 observation.

20 THE COURT: And we're talking about a month after
21 the incident, is that what she testified to?

22 MS. RUSSELL: Yes, sir.

23 MR. SWILLEY: I believe so.

24 THE COURT: I don't see the relevance in that quite
25 frankly, after the fact. Had it been something prior to

A. Hamilton- Direct Examination by Mr. Swilley

473

1 maybe we can tie in a connection but this is after the
2 fact. I'm gonna sustain the objection for the State.

3 MR. SWILLEY: Nothing further, Your Honor.

4 THE COURT: Okay. Anything from the State?

5 MS. BURCHSTEAD: No questions, Your Honor.

6 THE COURT: All right. You can step down. Thank
7 you, ma'am.

8 MR. SWILLEY: Your Honor, I'd ask that Ms. Russell be
9 excused.

10 THE COURT: Any objection?

11 MS. BURCHSTEAD: No objection.

12 THE COURT: All right. You may excused, ma'am.
13 Your Honor, the defense would call Andre Hamilton.

14 THE CLERK: Place your left on the Bible and raise
15 right hand. Do you solemnly swear or affirm that the
16 evidence and testimony you're about to give the court and
17 the jury on this case is the truth ---

18 MR. HAMILTON: Yes, ma'am.

19 THE CLERK: --- the whole truth, and nothing but
20 the truth so help you God?

21 MR. HAMILTON: Yes, ma'am.

22 THE COURT: Be seated in the witness box. State
23 your full name for the court and spelling your last.

24 MR. HAMILTON: Andre Hamilton, H-a-m-i-l-t-o-n. My
25 last name Hamilton.

A. Hamilton- Direct Examination by Mr. Swilley

474

1 ANDRE HAMILTON, first being
2 duly sworn, testified as follows:

3 **Direct Examination by Mr. Swilley:**

4 Q. All right. Andre, scoot up a little bit.

5 THE COURT: Mr. Hamilton, I want you to know the
6 sound system is not working so you're going to have to
7 project your voice loudly and clearly for the court.

8 A. Yes, sir.

9 Q. All right. Where do you reside?

10 A. Huh?

11 Q. Where do you live?

12 A. I live in Newtown.

13 Q. In Newtown?

14 A. Yes, sir.

15 Q. Okay. Speak up for me a little more. Is Newtown in
16 Dillon?

17 A. Yes, sir, Dillon - Dillon, South Carolina.

18 Q. Okay. How old are you?

19 A. Twenty-two.

20 Q. All right. Are you -- do you know Tyreek Hayes?

21 A. Yes, sir, that's my cousin.

22 Q. He's your cousin?

23 A. Yes, sir.

24 Q. Okay. And Andre, were you living in Dillon on
25 September 30, 2016?

A. Hamilton- Direct Examination by Mr. Swilley

475

1 A. I've been staying in Dillon all my life.

2 Q. Okay. And do you recall that evening or that evening
3 being with Tyreek Hayes?

4 A. Yes, sir. I was getting ready to go out to the club,
5 actually, myself.

6 Q. You were getting ready to go out to the nightclub that
7 evening?

8 A. Yes, sir.

9 Q. What particular nightclub was that?

10 A. Strikers.

11 Q. Strikers?

12 A. Yes, sir.

13 Q. Okay. And when you were getting ready, where were
14 you?

15 A. I was home and ironing my clothes. Me and my cousin
16 were at my house, I was get'in ready ironing my clothes, we
17 was talk'in or whatever. He left before I did.

18 Q. Your cousin being Tyreek?

19 A. Yes, sir.

20 Q. Okay. And he left before you did?

21 A. Yes, sir.

22 Q. All right. Andre, without telling what anybody said
23 based on your observations where was, where was Mr. Hayes
24 headed when he left your home?

25 A. He went -- he went to Strikers.

A. Hamilton- Direct Examination by Mr. Swilley

476

1 Q. Okay. And for what -- for what reason did he go to
2 Strikers at that time?

3 A. He had told me he had ---

4 Q. Don't tell me what anybody said. Tell me for what
5 reason you know of that he was or why he was going to
6 Strikers at that time?

7 A. He was gonna meet somebody there.

8 Q. Say that one more time?

9 A. Meet somebody there.

10 Q. Okay. You know whether or not this individual was a
11 male or a female?

12 A. A female.

13 Q. Female, okay. And did you go to Strikers later that
14 night?

15 A. Yes, sir.

16 Q. Did you see Tyreek Hayes there?

17 A. Yes, sir.

18 Q. Okay. And what time did you leave Strikers at night?

19 A. I left about one sum'in, I left before the club
20 closed.

21 Q. You left before the club closed?

22 A. Yes, sir.

23 Q. So you left early?

24 A. Yes, sir.

25 Q. And did you see Tyreek Hayes at the club that evening?

A. Hamilton- Direct Examination by Mr. Swilley

477

1 A. Yeah, he was with a female dancing in the middle of
2 the club, having a good time, talk'in, having a
3 conversation. I wouldn't really paying attention like
4 that, but I know they were having a good time or whatever.

5 Q. Do you know Candace Simpson?

6 A. I know - I don't know her, but I know of her. I seen
7 her before.

8 Q. Do you know who she is?

9 A. I know her if a see her.

10 Q. Was that female Candace Simpson he was with?

11 A. I ain't really -- I seen -- I seen a little bit of
12 her. I seen -- from the side of her face, yeah. I wasn't
13 really look'in at her face but I was look'in at her, you
14 know. Yes.

15 Q. Base -- Andre, based upon your observation was that
16 Candace Simpson who he was talking to?

17 A. Yes. But I don't know her -- I ain't know her name --
18 seem like I don't know her name, do you feel me?

19 Q. Okay.

20 A. But I know if I see her, you know.

21 Q. Okay. And was that her that you saw him talking and
22 commingling with?

23 A. Yes.

24 Q. Okay. And after that you left Strikers by yourself?

25 A. Yes.

A. Hamilton- Direct Examination by Mr. Swilley 478

1 Q. Okay. And did you see Tyreek talk with anybody else,
2 any other females that evening?

3 A. At my house earlier on -- earlier at my house I was
4 getting ready, he had a female at my house already there
5 with him. After she left he went to the club. He said
6 another female was waiting on him at the club.

7 Q. Okay. My question to you was, did you see Tyreek at
8 the club with any other, talking with any other woman at
9 that point?

10 A. At the club?

11 Q. Yeah.

12 A. No, only one female.

13 Q. Just one?

14 A. Yes.

15 Q. Okay. All right.

16 MR. SWILLEY: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 Q. Andre, based upon what you saw did it appear that the,
19 did it appear that Candace and Tyreek were interested in
20 each other at that time?

21 A. Yes.

22 MR. KOZAK: Objection, Your Honor, speculation.

23 MR. SWILLEY: I said did it appeared that way based
24 on his observation. I think he can testify as to what he
25 observed based on appearance.

A. Hamilton- Cross Examination by Mr. Kozak

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1 THE COURT: State the question again.

2 Q. Based on your observation, did they appeared to be
3 interested in each other?

4 A. It's like they knew each other, like, they been
5 talk'in, conversate'in, friends.

6 Q. Okay. That's what -- is that what you saw?

7 THE COURT: He can testify as to what he saw and
8 observed.

9 Q. Okay. Is that what you saw? You've got say yes or
10 no.

11 A. Oh, yes, sir.

12 Q. Thank you, Andre.

13 MR. SWILLEY: Nothing further.

14 THE COURT: Mr. Kozak?

15 **Cross-Examination by Mr. Kozak:**

16 Q. Mr. Hamilton, you said you were out with Tyreek Hayes
17 that night, correct?

18 A. I was at my house, me and him was at my house.

19 Q. But you went to Strikers with him, correct?

20 A. Yes, sir.

21 Q. You said you were get'in ready to go out, correct?

22 A. I was get'in ready to go out.

23 Q. So he was already ready to go out?

24 A. He was ready.

25 Q. This was what he was wearing that night, right?

A. Hamilton- Cross Examination by Mr. Kozak

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1 A. Yeah, that's my house.

2 Q. It's your house -- is that your house?

3 A. Yes.

4 Q. So this is the shirt that he was wearing that night?

5 A. I can't remember really what he had own but it's my
6 house, yeah.

7 Q. September 30th, right, can you read the date from that
8 photo?

9 A. September 30, 2016.

10 THE COURT: Speak up so I can here you. Speak up.

11 A. Oh, September 30, 2016.

12 Q. And that's the night there we're talking about,
13 correct?

14 A. Right.

15 Q. So this picture was taken at your house wearing that
16 shirt before you guys went out, correct?

17 A. Right.

18 Q. You said you didn't go to T.Lee's, right?

19 A. No, sir.

20 Q. So you didn't see anything else happen that night
21 after Strikers, did you?

22 A. Uh,uh.

23 THE COURT: Is that a yes or no?

24 A. No, sir.

25 MR. KOZAK: No further questions, Your Honor.

A. Hamilton- Cross Examination by Mr. Kozak

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1 A. I apologize.

2 MR. SWILLEY: I have nothing further, Your Honor.

3 THE COURT: All right. You can step down.

4 MR. SWILLEY: I'd ask that he be excused from his
5 subpoena.

6 THE COURT: Any objection?

7 MS. BURCHSTEAD: No objection.

8 THE COURT: All right. You may be excuse, sir.

9 MR. SWILLEY: I'd call Lacarius Manning.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right hand. Do you solemnly swear or affirm that
12 the evidence and testimony you're about to give the court
13 and the jury on this case is the truth, the whole truth,
14 and nothing but the truth so help you God?

15 THE CLERK: Place your left hand on the Bible and raise
16 right hand right here.

17 MR. MANNING: Left hand?

18 THE CLERK: Place your left hand on the Bible,
19 raise your right hand. Do you solemnly swear or affirm
20 that the evidence and testimony you're about to give the
21 court and the jury on this case ---

22 MR. MANNING: Yes, ma'am.

23 THE CLERK: --- is the truth, the whole truth, and
24 nothing but the truth so help you God?

25 MR. MANNING: Yes, ma'am.

L. Manning- Direct Examination by Mr. Swilley 482

1 THE CLERK: Have a seat in the witness box. State
2 your full name for the court and spelling your last.

3 MR. MANNING: Lacarius Manning ---

4 THE COURT: Sir, that microphone does not work so
5 you're going to just have to speak loudly and clearly and
6 make sure everybody can hear you.

7 MR. MANNING: Lacarius Manning. L-a-c-a-r-i-u-s M-a-
8 n-n-i-n-g.

9 THE COURT: Okay. Speak a little bit lower than
10 that, if you can?

11 MR. MANNING: Okay.

12 LACARIUS MANNING, first being
13 duly sworn, testified as follows:

14 **Direct Examination by Mr. Swilley:**

15 Q. Lacarius, tell me how old you are?

16 A. Twenty-five.

17 Q. Twenty-five.

18 THE COURT: Speak up, now.

19 A. Twenty-five.

20 Q. Try to speak about as loud as I am.

21 A. Okay.

22 Q. All right. You're twenty-five?

23 A. Yes, sir.

24 Q. And you're from where?

25 A. Dillon, South Carolina.

1 Q. Okay. And you reside in where now?

2 A. In Dillon, South Carolina.

3 Q. In Dillon. All right. And you -- do you know Tyreek
4 Hayes?

5 A. Yes, sir.

6 THE COURT: Speak up.

7 Q. You've got to speak up.

8 A. Yes, sir.

9 Q. All right. Speak up so these folks can hear you. How
10 long have you been knowing Tyreek for?

11 A. Since I was in kindergarten.

12 Q. Since you are in kindergarten?

13 A. Yes, sir.

14 Q. And do you know Candace Simpson, do you know who she
15 is?

16 A. I know of her I don't know her.

17 Q. Do you, I mean, do you know who she is?

18 A. Yes, sir.

19 Q. Okay. And Lacarius, do you recall being out at
20 Strikers nightclub on September 30, 2016, that evening?

21 A. Yes, sir.

22 Q. All right. Now, don't tell me what anybody said but
23 tell me when you got to Strikers what did you, did you
24 observe Tyreek Hayes?

25 A. Yes, sir.

L. Manning- Direct Examination by Mr. Swilley

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1 Q. All right. And tell me based on your observations who
2 was Tyreek speaking with?

3 A. Candace Simpson.

4 Q. All right. And based on your observation about how
5 long was he with Candace talking?

6 A. He was back and forth.

7 Q. Right.

8 A. She was from the bar to this, to the bar to this, like
9 back and forth.

10 Q. Was he spending a lot of time interacting with her?

11 A. So-so, you know what I'm say'in, like, you know how
12 you be in the club just go to her, come back, go to her,
13 come back but he was with her, though.

14 Q. Did it appear that they were together?

15 A. Yes, sir.

16 Q. Okay. And Lacarius, did you -- did you leave the club
17 that evening and go -- did you leave Strikers that evening
18 and go anywhere else?

19 A. I left before him. I had went to Escalade, well we
20 call it T. Lee's.

21 Q. All right. T. Lee's Club?

22 A. Yes, sir.

23 Q. Is that like after Strikers had closed?

24 A. That was after Strikers closed but I left before
25 Strikers closed.

1 Q. Okay.

2 A. But I ended up seeing him coming to it, um, T. Lee's.

3 Q. Okay. And when he got to T. Lee's who was he
4 interacting with at T. Lee's?

5 A. He was with her. He told me he was going home with
6 her.

7 Q. Don't -- don't tell me what anybody told you.

8 A. He was with Candace Simpson.

9 Q. Okay.

10 A. But he told me he was going home with her.

11 THE COURT: Don't tell us what he said.

12 A. Oh, okay.

13 Q. And were they -- was he interacting with her at T.
14 Lee's as well?

15 A. Yes, sir.

16 Q. Okay. And based, without telling me what anybody
17 said, based on your observations -- well, did you leave
18 when T. Lee's closed?

19 A. You say what, now?

20 Q. Did you leave T. Lee's when T. Lee's closed?

21 A. I left a little bit before they closed.

22 Q. Okay. Were people starting to file out at T. Lee's?

23 A. Like leave?

24 Q. Yeah.

25 A. A little bit.

L. Manning- Direct Examination by Mr. Swilley

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1 Q. Okay. And did you ---

2 A. But it's an all nightclub, though.

3 Q. Gotcha. And did you happen to see Tyreek Hayes leave
4 that evening?

5 A. Yes, sir.

6 Q. With whom did he leave?

7 A. He left with Candace Simpson.

8 Q. Okay. Do you recall whose car they were in?

9 A. No, sir.

10 Q. Okay. Was it with another -- was there another lady?

11 A. It was other girls with him but I don't know them.

12 Q. You don't know the girls that were ---

13 A. No, I don't know ---

14 Q. --- riding with him?

15 A. --- the girls. I know, I think the girls name
16 Rochelle or something like that and Tonya.

17 Q. Okay. And that's who he left with?

18 A. Yes, sir.

19 Q. Okay. And when you got back, you got back home that
20 evening?

21 A. I stayed -- I stayed out there at Maplewood in the
22 third row.

23 Q. Okay. But you didn't see anything that happened that
24 evening -- or when you got home, did you go straight home?

25 A. I went straight home.

L. Manning- Cross-Examination by Mr. Kozak

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1 Q. Okay. And that's what you recall about that evening
2 of September 30th, October 1st morning?

3 A. Yes, sir, that morning.

4 Q. Okay. Give me one moment please.

5 A. All right.

6 MR. SWILLEY: Thank, Lacaruis. Please answer any
7 questions that these folks have.

8 THE COURT: Mr. Kozak?

9 **Cross-Examination by Mr. Kozak:**

10 Q. Hello, Lacarious. You said you've known Tyreek Hayes
11 since kindergarten, right?

12 A. Yes, sir.

13 THE COURT: Speak up please.

14 Q. You guys went to kindergarten is that what you said?

15 A. Yes, sir.

16 Q. That's a long time, right?

17 A. Yes, sir.

18 Q. You care a lot about Tyreek Hayes, don't you?

19 A. Yes, sir.

20 Q. You said, also, you don't really know Candace, right?

21 A. No, sir, I don't.

22 Q. Okay. You weren't present inside Candace's apartment
23 that night, were you?

24 A. No, sir.

25 MR. KOZAK: No further questions, Your Honor.

L. Manning- Cross-Examination by Mr. Kozak

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1 MR. SWILLEY: Nothing else.

2 THE COURT: All right. You can step down. Any
3 objection to this gentleman been excused?

4 MR. SWILLEY: There's not, not from me.

5 MR. KOZAK: Not from the State, Your Honor.

6 THE COURT: All right. You can be excused, sir.

7 MR. SWILLEY: Your Honor, at this time we'd call
8 Tyreek Hayes.

9 THE COURT: All right. Counsel approach the bench
10 please.

11 (Whereupon, a bench conference was held off the record)

12 THE COURT: You to go ahead and swear him in.

13 THE CLERK: Okay. Place your left on the Bible and
14 raise your right hand. Do you solemnly swear or affirm
15 that the evidence and testimony you're about to give the
16 court and the jury on this case is the truth, the whole
17 truth, and nothing but the truth so help you God?

18 MR. HAYES: Yes, ma'am.

19 THE CLERK: Be seated in the witness box and state
20 your full name for the court and spell your last for us.

21 THE COURT: All right. Ladies and gentlemen, this
22 is one of those times we have a legal matter to take up
23 which we must take him outside your presence so I'm gonna
24 ask you retire to the jury room for a short while while we
25 take care of this matter. We'll call you back into the

T. Hayes- Direct Examination by Mr. Swilley

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1 testimony that looking at the statement in the Gregory
2 case, you know, when it says, "he offers facts which are
3 inconsistent with his own guilt and raise an inference as
4 to his presumption of innocence" I think that would fit
5 this category. So I think I'm gonna let offer his
6 testimony.

7 MR. SWILLEY: Yes, sir.

8 THE COURT: Okay. If you'll bring the jury back.
9 (Whereupon, the jury enters the courtroom at 1:58 p.m.)

10 THE COURT: All right. Mr. Hayes, state your full
11 name for the record and spell your last name please.

12 MR. HAYES: Tyreek Dashawn Hayes, T-y-r-e-e-k, H--
13 a-y-e-s. My last name is Hayes.

14 THE COURT: And as you've heard me tell everybody
15 else microphone is not working ---

16 MR. HAYES: Yes, I'm aware ---

17 THE COURT: --- so speak loudly and clearly.

18 MR. HAYES: Yes, sir.

19 **Conti- Direct Examination by Mr. Swilley:**

20 Q. All right. Tyreek, tell me how old you are?

21 A. Twenty-five.

22 Q. Where are you from?

23 A. Dillon.

24 Q. And you have been in Dillon your whole life?

25 A. Yes, sir.

T. Hayes- Direct Examination by Mr. Swilley

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1 Q. Okay. Where did you go to high school?

2 A. Dillon High School.

3 Q. And again speak up for me a little bit. Tyreek, I'm
4 going to ask you, do you recall about what time you started
5 communicating with Candance Simpson?

6 A. Um, 2016, um, between August and September - August
7 and September.

8 Q. Okay. And at that time tell me what forms were you
9 communicating with her?

10 A. Um, basically, um, just a building level ---

11 Q. Well ---

12 COURT REPORTER: I didn't get that.

13 Q. Say that again?

14 A. A building level.

15 Q. Okay. The question to you, were you communicating
16 with her verbally in person at times?

17 A. At times.

18 Q. And were you communicating with her electronically?

19 A. Yes.

20 Q. Through what means?

21 A. Um, Facebook.

22 Q. Okay. And have you had a chance to look at the
23 Facebook conversation between you and her?

24 A. Yes.

25 Q. And how long -- when did that -- do you recall what

T. Hayes- Direct Examination by Mr. Swilley

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1 time that conversation started on Facebook?

2 A. Um, September.

3 Q. Was it -- was it a matter of -- well, let me ask you,
4 was it early or late September?

5 A. Early.

6 Q. Okay. How often during that time would you
7 communicate with her over Facebook?

8 A. Basically, every day.

9 Q. Okay.

10 THE COURT: Can we get more of a timeframe, a year

11 ---

12 MR. SWILLEY: Okay.

13 THE COURT: --- September of what year?

14 Q. September of what year did you start ---

15 A. 2016.

16 Q. 2016, okay. And do you -- and you said you
17 communicated with her, would this be a conversation going
18 on back and forth?

19 A. Yes.

20 Q. All right. Based on this conversation, did -- did you
21 -- did you discuss any, I guess, friends or relatives you
22 knew in common?

23 A. Yes.

24 Q. Okay. Let me ask you, did you know -- do you know any
25 -- did you know any of her family members growing up?

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1 A. Yes.

2 Q. All right. Tell me who?

3 A. Her nephew, Akeem Nelson.

4 Q. Okay. How did you know him?

5 A. Um, we went to, um, middle school and high school
6 together.

7 Q. Okay. And any other siblings that she had?

8 A. Her brother.

9 Q. Who's that?

10 A. Damien.

11 Q. All right. And how did you know him?

12 A. We played ball together.

13 Q. Played football?

14 A. Yeah.

15 Q. At Dillon High School?

16 A. Yeah.

17 Q. Okay. And how much older than you is she?

18 A. A big age difference. I want to say, I guess,
19 probably about eight or nine ---

20 Q. Years?

21 A. --- years difference.

22 Q. Okay. And did -- well, during these conversations,
23 did you express any kind of like feelings you had towards
24 her?

25 A. Yeah.

1 Q. Okay. What -- I mean, did you want -- can you
2 describe -- can you describe that?

3 A. Yes. Um, well, I did let it be known that I really
4 did liked her and I really did was -- I really did liked
5 her and I really want to spend time with her.

6 Q. Okay. Romantically?

7 A. Um, somewhat.

8 Q. I mean, some -- somewhat?

9 A. Yes, sir.

10 Q. You said somewhat, okay. All right. And did it get
11 to a time where time, I'm going to fast-forward a little
12 bit, you reviewed the conversation you had with her on
13 September 30th?

14 A. Right.

15 Q. Right. Without telling what -- without telling me
16 what anybody said, did it -- were you made aware of where
17 she was going to be that evening?

18 A. Right. Right.

19 Q. And that was where?

20 A. Strikers.

21 Q. Okay. And Strikers is Strikers Nightclub?

22 A. Right.

23 Q. Okay. and tell me leading up to, before you went in
24 Strikers, tell me where you were?

25 A. Before I went?

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1 Q. Yeah.

2 A. I was at auntie's house.

3 Q. Is that -- is that your aunt who is Andre's mom?

4 A. Yes.

5 Q. Okay. And you were over there with him?

6 A. Yes.

7 Q. And about, do you remember about what time you left
8 Andre's house?

9 A. I think about ten going on eleven?

10 Q. At night?

11 A. Yes.

12 Q. Okay. When you got a Strikers tell me what -- who
13 were you interacting with at Strikers?

14 A. When I first got a Strikers I was interacting with my
15 so-called "home boys", um, boys I was raised up from the
16 same area.

17 Q. Okay. And -- some friend of yours?

18 A. Say again.

19 Q. They were friends of yours?

20 A. Yes.

21 Q. Okay. And who else did you interact with?

22 A. Ms. Simpson.

23 Q. Candace Simpson?

24 A. Yes.

25 Q. Okay. How long were you interacting with her at

1 Strikers?

2 A. It was different period of times but about three
3 minutes and then it just - different time frames.

4 Q. Okay. Was that throughout the evenings at Strikers?

5 A. Yes.

6 Q. Okay. And after Strikers shut down, where did you go?

7 A. I went right down the road to T. Lee's called
8 Escalade, a little night, a little night bar.

9 Q. Okay. And do you recall how long you were at T. Lee's
10 for?

11 A. Um, I want to say probably about twenty, twenty-five
12 minutes.

13 Q. At T. Lee's?

14 A. Yes.

15 Q. Okay. And then after T. Lee's tell me what -- tell me
16 what happened?

17 A. Um, while I was at T. Lee's -- that's basically
18 another spot where in my neighborhood where, basically, I
19 know everybody, my home boys was there, you got people
20 gambling, good music going on, drinking, a lot association
21 going on. And at that point in time that's where I was
22 tuneup at the bar, you know, Ms. Simpson come in by herself
23 and she came straight to me.

24 Q. Okay. After you left T. Lee's tell me where you went?

25 A. After I left T. Lee's I went with Candace to Candace's

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1 house.

2 Q. All right. Now, -- and who was driving the car?

3 A. Tanya Moore.

4 Q. All right. Were there any other people in the car
5 with you?

6 A. No.

7 Q. Okay. And how long did it take to get from T. Lee's
8 to -- how long did it take to get from T. Lee's to
9 Candace's house?

10 A. Probably, about, no more than ten minutes.

11 Q. Okay.

12 A. It's across town but no longer than ten minutes.

13 Q. Okay. And do you recall about what time of night or
14 early morning this was?

15 A. Um, around about five - five, six in the morning.

16 Q. Okay. And you -- and then when you got to Maplewood
17 tell me what happened then?

18 A. Um, well, when we pulled into Maplewood, ah, that's
19 where everybody got out the car and me and Ms. Simpson, we
20 went directly to her house and the other girl went to her
21 apartment.

22 Q. Okay. And when you went -- tell me what happened once
23 you got into Candace's apartment?

24 A. Ah, when I got into the apartment everything was good.
25 We continue to communicate while she whined down, you know,

1 conversation, the conversations steady was going, um, turn
2 the TV on, the TV going, just communication - still
3 communication.

4 Q. Okay. And did that -- and at that point, did -- what
5 happened after y'all are hanging out for little while in
6 the house?

7 A. Well, after certain period of time we was hanging out
8 in the living room that's when she decided to go get in the
9 shower and get the smoke smell and all that other type
10 stuff off of her.

11 Q. And then what transpired after that?

12 A. She got out of the shower, she, um, put her lotion on
13 everything. That's when she came, she came back to me, she
14 sat on my lap - my lap, excuse me, she sat on my lap, you
15 know, that's when I had woke up because I had dozed off for
16 a minute or two. So when she came back and sat on my lap
17 that's where I put my hand around her waist and that's when
18 we continued talking more.

19 Q. Okay. And after that event happened, what happened
20 after that?

21 A. After that, that's when, um, it got some point in time
22 where, um, I had kissed her and when I kissed her, you
23 know, she give me some feedback and one thing led to
24 another.

25 Q. Now, specifically when you say feedback, could you be

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1 a little more specific? Can you describe that a little bit
2 more?

3 A. Yes, sir. Um, well, when I kissed her, you know, she
4 kissed me back like in a rough, rough way and she put her
5 arm around me.

6 Q. Okay. And after that happened tell me what - what
7 transpired after that?

8 A. After that, that's where, like I said one thing led to
9 another. That's when I picked her up and that's when we
10 went to, um, to her bedroom.

11 Q. Okay. And when she got to the bedroom tell me what
12 happened then?

13 A. Um, we got to the bedroom that's when, um, you know, -
14 - well, what she had on she had a little dress on so, um,
15 that really wasn't, it wasn't no issue pulling none of her
16 clothes off or anything. So she helped undress me so
17 that's when the kissing continued and that's when he got to
18 a point she was like, do you got a condom? And I was like
19 no. So what she did was she got up, she went in her closet
20 and she got a condom and she gave it to me and I put it on
21 and I used the condom.

22 Q. Okay. You put that on yourself?

23 A. Yes.

24 Q. Okay. And after that did -- did you have intercourse?

25 A. Yes.

1 Q. Okay. And after that occurred tell me what happened
2 -- well, between the time you got there and by the time
3 y'all were intimate, how much time lapsed during that time?

4 A. Probably about a good thirty, no longer than thirty
5 minutes. I'm gonna say thirty minutes.

6 Q. Okay. And then after you and her were, after y'all
7 engage in relations tell me what you recall after that?

8 A. After we engaged and everything that's when, um, you
9 know, we had consensual intercourse like normal.

10 Q. Okay. After the intercourse tell me what you recall
11 happening then?

12 A. Oh.

13 Q. Did you fall asleep at some point?

14 A. Yeah, I did.

15 Q. Okay.

16 A. So I had -- I had fell asleep on the couch. I fell
17 asleep on the couch. But that's when we had went to the
18 bedroom ---

19 Q. No, I'm talking about after - not before you, before
20 y'all ---

21 A. Oh, you're talking about in the bedroom?

22 Q. Right. Just tell me what happened after y'all had
23 slept with each other?

24 A. That's when some, some guy came in the room.

25 Q. Now, Tyreek you said -- did y'all -- at the time was

T. Hayes- Direct Examination by Mr. Swilley

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1 there anything making noise, was there a TV on?

2 A. There was a little speaker, little speaker box.

3 Q. Okay. And that was to -- was that the TV or ---

4 A. No, that was the, um, music plugged up to a phone.

5 Q. Okay. That was like -- so was music playing?

6 A. Yes.

7 Q. Okay. And -- all right. And was the music playing
8 continuously while you were there?

9 A. Yes.

10 Q. Okay. And tell me what -- tell me -- all right now,
11 after y'all had been with each other, tell me what happened
12 then?

13 A. What you mean in the bedroom?

14 Q. Tell me what transpired like what happened after, you
15 know, ---

16 A. Oh, um, well, when in the bedroom at some point in
17 time after we was having consensual intercourse that's
18 when, um, some guy came in the room on us.

19 Q. Okay. And tell me what happened when that happened?
20 Tell me what happened then?

21 A. Well, when I noticed there was a guy at the door
22 that's when, you know, I jumped back and that's when, um,
23 he got loud. At first he was talking to her it was like,
24 um, what you got going on, this, that and the third. And
25 that's when, um, he was like, he was like, oh, this what

1 you got going on. He became -- he got loud. He became
2 violent and that's when he started making threats towards
3 me and that's when he left the room for second.

4 Q. Okay.

5 A. And when he left the room that's when, um, Ms. Simpson
6 followed behind him. And I'm pretty sure it was her
7 boyfriend because, um, she specifically said, "babe" and
8 from my knowledge babe, that your guy.

9 Q. Okay. And let me ask you, Tyreek, when you were in
10 the house did you see -- was there -- did you see any
11 property that would've belong to an adult male?

12 A. Yeah, I seen some Air Jordan's in the living room in,
13 um, the corner.

14 Q. Now, those Air Jordan's, that an adult would wear or a
15 child would wear?

16 A. Adult.

17 Q. Okay. And did you see anything else in that apartment
18 that may have belonged to -- well, was there any other
19 items in that apartment that would belong to an adult male?

20 A. Um, yes, in the bedroom.

21 Q. And that was what?

22 A. That was, um, pants and maybe a shirt - shirt or two
23 here and there.

24 Q. All right. Now, going back to when this person came
25 in and confronted you and her and made threats and then

T. Hayes- Direct Examination by Mr. Swilley

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1 left the room, tell me what you recall happening after
2 that?

3 A. Say it one more again.

4 Q. Okay. Sorry. Fast forwarding, you recall this
5 individual coming into the room?

6 A. Yes.

7 Q. And tell me what happened after him and Candace left
8 the room?

9 A. Um, when him and Ms. Simpson when they left, when they
10 left the room, um, he, from my knowledge from listening,
11 they was in the kitchen. They was arguing. She was
12 basically telling him calm down, calm down. But he would
13 never calm down. And that's one thing led to another.
14 That's when they were arguing and then it they was fight'in
15 and then I heard like a loud noise, I guess he slammed her
16 on the floor.

17 Q. Okay. What do you recall happening after that?

18 A. Um, after that, that's when I specifically, I was
19 putting on my clothes fast and in a hurry. And that's
20 when, um, when I left out the room - when I got myself
21 together, I left out the room. And when I left out the
22 room that's when I was about to head for the exit of the
23 front door and that's when I hear this girl gasping and she
24 was telling me, "Reedy help me", "Reedy help me" so that's
25 when, you know, I had to help her. It wouldn't be right if

T. Hayes- Direct Examination by Mr. Swilley

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1 I didn't. So when I turned around I helped this woman and
2 that's when I kicked this guy, her boyfriend, off her and
3 that's what I was going to charge at him while he was
4 turned around but that's when he grabbed the knife so fast
5 that's when I jumped behind her.

6 Q. Okay. And what was he doing?

7 A. At that point in time, you know, he was, he was making
8 threats. He was coming forward. He was swinging the knife
9 out of control. That's when he was cut'in her in the
10 kitchen.

11 Q. Okay.

12 A. And then he was cut'in me as well on my arm and that's
13 when I just continue to stand behind her.

14 Q. Okay. Tell me what you recall happening after that?

15 A. Um, after that it got to the point where, you know, I
16 wanted exit for the front door but the apartment so small -
17 the apartment so small I felt like at the time, I felt like
18 if I run for this front door, you know, she out the way and
19 it's just me and he's gone stab me in my neck or anything
20 like that. So at that point in time when, um, when we was
21 moving to the door that's when we hear a knock at the door.
22 Do I know it is? I don't know who it is. And that's when
23 the girl, she finally came in, and it's her sista. And so
24 when he -- so when she came into the apartment that's when,
25 you know, the kids came in, you know, that's when she said,

T. Hayes- Direct Examination by Mr. Swilley

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1 what's sista going on with my sista? What's going on here?
2 And at that point in time everything was at a standstill,
3 you know, her sista was like she was at a standstill
4 because she couldn't believe what she was really seeing.
5 And that's when, um, and that's when, um, the boyfriend he
6 started making his way towards her, talking. He was like,
7 "shit, you know what's going on." "Don't act like you
8 don't know." "You know what's going on." "You know what
9 your sista got going on." And that's when, um, and that's
10 when the girl, the girl push him because he was trying to
11 leave.

12 Q. The girl being, who?

13 A. Ann.

14 Q. Okay. Go ahead.

15 A. She push him. She pushed him back because he was
16 trying to leave, but the sista wanted answer. And when the
17 sista wasn't get'in no answers, you know, she wouldn't let
18 nobody leave the apartment. And so me, for my knowledge,
19 I'm still stand behind this woman because I don't know what
20 this guys capable of I don't know what, you know, don't
21 know what this man is gonna do. So at that point in time -
22 so at that point in time that's when, um, them two, the
23 boyfriend and Ann, they get into it, you know, she fall
24 that's when she scream ---

25 Q. Now, when you said they get into it, it's a physical

1 confrontation?

2 A. Yes. It's, um, they fight'in - fight'in, that's what
3 it was. And for my knowledge she was, um, he was cut'in
4 her and stuff that's when she get up and she leave out the
5 front door with the two minor kids.

6 Q. And when did -- where did you run out?

7 A. I ran out the back door. The back patio door.

8 Q. Okay. And after that where did you run to?

9 A. Um, my girlfriend house. I had a girlfriend that stay
10 over there in Dover.

11 Q. Okay. And, Tyreek, just so were all clear, you had a
12 girlfriend at the time?

13 A. Right.

14 Q. And who was that?

15 A. Shalanda Livingston.

16 Q. Okay. And did -- and you didn't -- did you tell that
17 to Ms. Simpson that you had a girlfriend?

18 A. Nah, I didn't tell her at first.

19 Q. Okay. Well, and then you ran to Shalanda's house, is
20 that correct?

21 A. That's correct.

22 Q. And did you tell Shalanda what happened?

23 A. No, I didn't tell my girlfriend what happened.

24 Q. Okay. And I think at some point you -- let me make
25 sure, at some point you -- and tell me, okay, so about what

T. Hayes- Direct Examination by Mr. Swilley

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1 time did you get to Shalanda's house?

2 A. With me guess and taking a good guess ---

3 Q. Don't -- don't guess. Based on your -- based on your
4 recollection about what time did you get to Shalanda's
5 house?

6 A. I want to say seven -- seven or eight.

7 Q. Seven, eight, okay. And Tyreek did you ever -- did you
8 ever tell Shalanda what happened?

9 A. Nah, I never told my girlfriend what happened.

10 Q. Okay. Did you ever tell Shalanda to ever get rid of
11 anything of yours?

12 A. Um, no, I didn't.

13 Q. Okay. And to your knowledge, you know, between that
14 time and when you went the next day to talk to Investigator
15 Turner, did you ever -- well -- did you ever -- did you ever
16 have conversation with Shalanda about this particular
17 incident?

18 A. No.

19 Q. Okay. And then when you got to -- and did you -- and
20 the next day, did you go up to the police department when
21 they wanted to speak with you?

22 A. Yes.

23 Q. Okay. And who gave you a ride up there?

24 A. Um, one of my people I know from around the way, um,
25 what was his name -- what was his name -- well, his nickname

1 was Butthead that's what they call him.

2 Q. Chris?

3 A. Right.

4 Q. And did at that point -- and that was how long after --
5 how long after this incident did you find out that you
6 needed to go to the police station?

7 A. Probably, I want to say a few minutes - a few minutes
8 after I got to my girlfriend's house that's when I heard
9 about what was being said, um, well what I was being
10 accused of.

11 Q. Okay. Now, when you went up to the -- when you went
12 up to the police station did they asked to see any kind of,
13 um, any kind of marks on you person?

14 A. Yes. The first thing the investigator told me, um,
15 was pull your shirt up and I was like, why do I pull my
16 shirt up? And he said, because she said that she bit you
17 and she said that she scratched your back up.

18 Q. Did you have any bite marks or any scratch marks?

19 A. No bite marks. No scratch marks.

20 Q. Okay. And was there a slight wound - was there a
21 slight ---

22 A. There was, um, ---

23 Q. --- injury that you had from the knife, a knife that
24 hit you?

25 A. Yes.

T. Hayes- Direct Examination by Mr. Swilley

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1 Q. Okay. Where was that?

2 A. On my -- on my hand up to my arm.

3 Q. Okay. And did hurt you bad?

4 A. No, it didn't hurt me.

5 Q. Okay. And did you voluntarily show them, show them
6 your body when asked?

7 A. I volunteer everything.

8 Q. Okay. And, Tyreek, when they asked for a cheek swab
9 sample, did you give that to them?

10 A. I gave it to them.

11 Q. Okay. How many times did you give them the cheek
12 sample?

13 A. Um, to my knowledge, two times.

14 Q. Okay. And why did you do that?

15 A. I ain't did nothing wrong. Give it to them.

16 Q. And -- give me one second -- I can't remember if I've
17 ask you this already but you never -- did you ever direct
18 Shalanda do anything for you that day to throw anything
19 away?

20 A. No.

21 Q. Okay. Tyreek, did you rape Candace Simpson?

22 A. No, sir.

23 Q. Did you stab Candace Simpson?

24 A. No, sir.

25 Q. Did you choke Candace Simpson?

T. Hayes- Cross Examination by Ms. Burchstead

515

1 A. No, sir.

2 Q. Did you stab Ann Covington?

3 A. No, sir.

4 THE COURT: Tyreek, please answer any questions the
5 government has.

6 **Cross-Examination by Ms. Burchstead:**

7 Q. So you had no injuries?

8 A. Ma'am?

9 Q. You didn't have any bite marks? You didn't have any
10 stab marks, did you?

11 A. Yes.

12 Q. You were stabbed?

13 A. Yes. Well, stabbed, cut.

14 Q. Right. You have any stabbed wounds, you didn't go to
15 the hospital?

16 A. No.

17 Q. You didn't get treated by EMS?

18 A. No.

19 Q. So let's back up for a minute, you said y'all were
20 communicating for a while before you had sex, right?

21 A. Right.

22 Q. Consensual sex?

23 A. Right.

24 Q. About thirty minutes before the sex?

25 A. Right.

T. Hayes- Cross Examination by Ms. Burchstead

516

1 Q. Okay. And then sex?

2 A. Right.

3 Q. And then some guy shows up?

4 A. Right.

5 Q. You have no idea who this guy is?

6 A. At the - at that time, no. But later on I found out
7 who he was.

8 Q. Mmm, hmm. All right. So some dude runs in and y'all
9 were in the bedroom when he comes in?

10 A. Right.

11 Q. And he's upset?

12 A. Right.

13 Q. And you just stand there?

14 A. No -- there was only one door.

15 Q. Right. So you put your clothes on?

16 A. Right.

17 Q. And they are getting into a fight and you needed to
18 help her?

19 A. Did I help her?

20 Q. I think you said on direct that "you needed to help
21 her".

22 A. Say it -- I couldn't understand what you were saying,
23 miss.

24 Q. Did you say on direct exam "you needed to help Candace
25 with this dude"?

1 A. Oh, right.

2 Q. Huh, huh, so where were y'all when you were helping
3 her?

4 A. I was, um, we was in the kitchen.

5 Q. You're in the kitchen, so how did you get to the
6 kitchen?

7 A. Um, after I put my clothes on I was about to head for
8 the exit door that's when I turn around and helped her.

9 Q. Okay. And you helped her. So the guy had a knife?

10 A. Well, he grabbed one.

11 Q. Mmm, hmm. And you stopped him from attacking her,
12 right?

13 A. No.

14 Q. No?

15 A. No.

16 Q. So you just let him attack her?

17 A. It was -- he attacked both of us.

18 Q. Because you got all cut up, right?

19 A. No, I didn't.

20 Q. No, you didn't.

21 A. Because she was in front of me.

22 Q. Your hands aren't cut from grabbing any knife or
23 anything?

24 A. Right.

25 Q. Mmm, hmm. So let me see, Ann shows up and the dude

T. Hayes- Cross Examination by Ms. Burchstead

518

1 attacks Ann, is that right? They get into a fight and he
2 attacks Ann?

3 A. That's correct.

4 Q. Okay. And you just stand there and watch that happen
5 too?

6 A. The apartment was so small I couldn't make no move.

7 Q. Okay. So you are a man and ran away?

8 MR. SWILLEY: Objection, Your Honor. Judge, that ---

9 THE COURT: All right. Rephrase the question.

10 Q. Did you run away or did you actually fight this guy?

11 A. I ran. I ran.

12 THE COURT: Speak up.

13 A. I ran. I ran.

14 Q. Okay. So in your help of these ladies you didn't call
15 911, right?

16 A. No phone.

17 Q. And after this happened you don't go to law
18 enforcement and give a description? You don't immediately
19 after this happened you're not trying to help find this
20 guy? You don't go back and check?

21 A. Right.

22 Q. And you got to Shalanda's around seven or eight?

23 A. That time period, yes.

24 MS. BURCHSTEAD: I begged the Court's indulgence.

25 Q. Just one clarity, what door did you go out?

T. Hayes- Redirect Examination by Mr. Swilley

519

1 A. Um, the back patio door.

2 Q. Okay. And what - what door did anybody else go out?

3 A. Be specific.

4 Q. What door did Ann go out?

5 A. The front.

6 Q. You saw Ann go out the front?

7 A. Yes.

8 Q. And Candace and the dude was still there when you
9 left?

10 A. When I left, nah, the dude, he left first.

11 Q. The dude left first?

12 A. Right.

13 Q. What door did he go out?

14 A. He went out the back patio.

15 Q. So you just left Candace there?

16 A. I helped her and then I left.

17 Q. Okay. And you got to Shalanda's around seven or
18 eight?

19 A. Correct.

20 MS. BURCHSTEAD: Nothing further.

21 MR. SWILLEY: Just a follow-up.

22 THE COURT: Yes, sir.

23 **Redirect Examination by Mr. Swilley:**

24 Q. Tyreek, were you scared?

25 A. I was.

1 Q. Okay.

2 MR. SWILLEY: That's all I have.

3 THE COURT: Anything else, Ms. Burchstead?

4 MS. BURCHSTEAD: No, Your Honor.

5 THE COURT: All right. You can step down.

6 MR. HAYES: Thank you, sir.

7 THE COURT: Anything else, Mr. Swilley?

8 MR. SWILLEY: The defense would rest at this time.

9 THE COURT: Okay. Any rebuttal from the State?

10 MS. BURCHSTEAD: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, I'm
12 going to ask you return to the jury room for a short while,
13 while we take up a couple more legal matters and see where
14 we stand as far as conclusion of this case. Again, do not
15 discuss the matter until you've heard all of the evidence
16 and all the arguments and the charge on the law. Thank
17 you.

18 (Whereupon, the jury exits the courtroom at at 2:29 p.m.)

19 THE COURT: Mr. Swilley, any other motions?

20 MR. SWILLEY: Your Honor, I'd renew my motion for a
21 directed verdict of not guilty.

22 THE COURT: All right. And I will, again,
23 respectfully deny your motion for directed verdict on the
24 same basis as I did with the conclusion of the State's
25 case. Okay. Counsel, how much time do you need to get

1 THE COURT: Okay.

2 MR. SWILLEY: Your Honor, may I have one minute to
3 use the restroom before we get started.

4 THE COURT: Yeah. Nerves.

5 (Whereupon, the court takes a break)

6 THE COURT: All right. Any other matters, counsel,
7 before we bring the jury?

8 MS. BURCHSTEAD: Not from the State.

9 MR. SWILLEY: There are not, Your Honor.

10 THE COURT: All right. Gary, bring them in.

11 (Whereupon, the jury enters the courtroom at 9:48 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.

13 (Whereupon, the jury greets the judge)

14 THE COURT: I Hope you had a good evening last
15 night. The State may proceed.

16 MS. BURCHSTEAD: Thank you, Your Honor. May it
17 please, the court?

18 **Closing agrument- Ms. Burchstead:**

19 Reedy All Boss, Tyreek Hayes is going to show who's
20 the boss. He wanted what he wanted and he was going to
21 take it. He got turned down and he turned violent. On
22 October 1, 2016, in the early morning hours he raped and
23 strangled Candace Simpson in her apartment for around three
24 hours. She was going in and out of consciousness, repeat
25 sex acts, holding on for her life, afraid for her life

1 until her sister shows up and then he attacks both of them
2 with the knife slicing at both of their necks. This case
3 is pretty simple. It was a rape followed by a brutal
4 attack of both women.

5 Tyreek Hayes is charged with criminal sexual conduct
6 in the first degree, two counts of attempted murder,
7 kidnapping, and possession of a weapon during the
8 commission of a violent crime and he is guilty of all of
9 those.

10 Now, the judge is going to charge you on the law.
11 Give you some instructions before you go back to
12 deliberate. And he'll give you a very thoroughal
13 explanation of what the laws are and what the State has to
14 prove and what Mr. Hayes is charged with. I want to give
15 you just a little bit of context right now, I have just a
16 basic understanding of what those charges are while you
17 listen to me present our position and Mr. Swilley.

18 Criminal sexual conduct in the first-degree common
19 name is rape. Criminal sexual conduct, first-degree
20 requires a sexual battery with aggravated force. Sexual
21 battery can include intercourse oral sex, it's any
22 penetration however slight.

23 Aggravated force, in this case we would suggest. is
24 being held against her will, the forcible confinement which
25 leads to that kidnapping charge. Mr. Kozak told you in

1 opening statement it's not what people necessarily think
2 about when you charge kidnapping. You don't have to be
3 bound up or, you know, duct tape or ropes or something, you
4 don't have to be stashed in a car and taken somewhere.
5 Kidnapping under South Carolina law is the unlawful seizure
6 or confinement of another. Not being able to leave.

7 Attempted murder, a little bit trickery here with all
8 the definitions and, again, the judge is going to instruct
9 you on that. But drilling it down in it's bear sense as
10 y'all listen to us, you have to have an attempt and that
11 just means you try to do it and you weren't successful,
12 right. And you have to do this attempt with the intent to
13 kill, malice. Malice is that buzzword there. That malice
14 can be found through circumstantial evidence. You can look
15 at the surroundings if you believe there is malice there.
16 Malice is expressed or implied. It can be informed in an
17 instant. It is a disregard for human life. You can look
18 at whether there is a deadly weapon. But really do we have
19 an intent to inflict an injury with that disregard for
20 human life. And again that's just drilling it down to kind
21 of the simplest terms. The judge is going to give you a
22 more thoroughal instruction on that. But, in this case
23 we're suggesting to you, it is attempted murder and the
24 judge is also gonna charge you on what are called lesser
25 included offenses. You have assault battery of a high and

1 aggravated nature and assault battery in the first degree.
2 The judge will instruct you on those. The main difference
3 is that there different levels and you don't necessarily
4 have that malice, that desire to kill, but maybe just
5 injure. We don't believe that's what this case is. And
6 we'll go through some of the evidence here in just a
7 minute. But remember were slicing at necks, stabbing,
8 knives, violet attack, following a rape. So the State
9 believes the attempted murder is the appropriate charge.
10 But you will have all those charges instructed to you and
11 y'all can decide what you think.

12 So you heard a lot of testimony. Saw some other
13 evidence. Let's look back at what's been presented to you
14 from the State's perspective.

15 September 30, 2016, a Friday night, Candace is gonna
16 go out have a girls night, just a night out. They gonna go
17 to Strikers. She leaves out with a couple girls. And
18 prior to that night she'd been talking to Reedy All Boss on
19 Facebook and, yeah, probably liked him a little bit.
20 They're chatting. Laying that foundation, right. They go
21 to Strikers, have a night, leave around 230. The club
22 closes, I believe we heard a couple of folks say, club
23 closed at 2:30, hang out in the parking lot, chat a little
24 bit, end up that T. Lee's. So Candace sees Reedy Boss, now
25 we know that to be, Tyreek Hayes at T. Lee's. They chat.

1 I'm not sure exactly how long they're there but not too
2 long, I'm gonna suggest probably about an hour so. And
3 remember she was with her cousin Tonya. So Tonya gives
4 Reedy Boss, and she knew him as Reedy, Tyreek Hayes and
5 Candace a ride back to Maplewood. Remember Candace lives
6 near Tonya and Tonya is going to drop them off in front of
7 her place and they're thinking that Tyreek's gonna head
8 over to Dover Village. Remember that's right next door.
9 You got Maplewood and right next to that you've got Dover
10 Village, and we'll take a look at some of the maps here in
11 the minute. So they're thinking he's going to go over to
12 Dover Village. He asked if he could come in and Tonya
13 tells you it's her impression that Candace said, you know,
14 "you're not gonna get any" but she does let him in. And
15 you may be wondering why she let him in. I suggest you
16 she's wondering the same thing. It's probably the biggest
17 mistake of her life. She let him in. Maybe they were
18 thinking something was gonna happen maybe not, but it
19 obviously turned violent. She showers. Comes out. She
20 asked him to leave because she's got to do hair in the
21 morning, it's early. It's probably, what, 4:30 maybe five
22 or somewhere between four and five at this point, if we
23 gone to Strikers and hung out a little bit. Went to T.
24 Lee's. Stay maybe for an hour. You get home. Talk little
25 bit and have a shower. So somewhere between four and five,

1 right. So she showers. She needs him to go. He's not
2 gonna leave. He's gonna take what he wants. He's gonna
3 show her who's boss. He gets violent. He gets her in the
4 bedroom. Now, remember this apartment is small. There's
5 one door to the bedroom. And you've got your front door
6 and your side door, kind of, off from the kitchen and we'll
7 look at the pictures here in a minute. But it's tight.
8 It's a small little apartment. She gets to the bedroom she
9 screams. He strangling her. She's calling for help but he
10 is strangling her. And you've seen those pictures, we're
11 gonna look at them. He strangled her. She quit, she's a
12 mother. I suggest to you she is thinking at this point if
13 I just give him what he wants it'll stop. She's trying to
14 minimize damage at that point. She wants to live for her
15 kids. She wants to live. And maybe she cannot get an STD
16 or something of that nature. She doesn't know what he has
17 so she begs him to wear a condom. Just do it. Just get it
18 over with. So they're struggling. They end up on the
19 floor. If she runs out the door how far is she gonna get.
20 He's obviously been dominating her. She can't get out the
21 door. She's begging for condom, just do it. But it
22 doesn't end! It doesn't end! It goes on for hours. She's
23 in and out of consciousness. He wants oral sex. There may
24 or may not have been some anal penetration, remember that
25 rape kit. There's sperm or sperm fractions, DNA in her

1 mouth, anus, thighs. I didn't hear anything about a condom
2 breaking. He follows her to the bathroom. I suggest to
3 you while she's in and out of consciousness he may have
4 even thought he killed her at one point because he
5 strangled so much she passed out. I suggest to you, he
6 himself, is now in damage control is trying to think what
7 am I gonna do. Maybe he goes to the kitchen and stashes a
8 knife. She's in and out of consciousness. At that point
9 is her word against his, right. Remember she told you from
10 that witness stand she was afraid because he said you're
11 gonna tell. She thought he was gonna kill her because he
12 thought she was gonna tell. But then it really goes off
13 the rails even more violent when Ann shows up with those
14 kids. Ann think she's walking in on some and then her
15 sister screaming whether she says "rape" or "he's gonna
16 kill me" she could've said both. But Ann figures out
17 something bad wrong here and then we have this chaotic
18 violent attack. They don't know where the knife came from.
19 It could've already been in the bedroom. Maybe he got it
20 from the kitchen. At some point, I suggest he got from the
21 kitchen. Remember those pictures from the kitchen, and
22 again, we're gonna look at some of this stuff. The knives
23 in the drain. So there's an attack on Ann. Ann told you
24 there were scuffling in the bedroom. The kids are just,
25 you know, hanging out in the living room, hallway area.

1 Attacks Ann. I suggest to you that knife broke. Remember
2 we've got the blade that was found in the bedroom with
3 Ann's DNA on it. Don't know wether there's a handle but we
4 found a blade a few days later with Ann's DNA on it.
5 Candace realizes he stabbing Ann, jumps to save her sister,
6 and then she starts getting it. Ann, thank goodness, gets
7 out of there with those kids. She runs to the neighbor to
8 Elaine. Presumably Elaine calls 911. We know 911 was
9 called when she went to Elaine's. So while she's over
10 there trying to get 911 to help she sees Tyreek looking out
11 the door. I thinks he still in damage control. He's
12 trying to figure out who knows what and locks that front
13 door. This whole time it's just a violent attack that's
14 very fast and very violent. Both women have slashes on
15 their neck, Candace's is deeper. You heard the doctor talk
16 to you, there lucky the knife wasn't any bigger than a
17 little steak knife. Multiple, multiple wounds. They're
18 both fighting for their lives. Ann is already out with the
19 kids. Candace is still struggling. She takes that moment
20 when he's peeking, to get out. And you see all the blood
21 in the kitchen. She runs out. Her bloody footprint, she's
22 naked and bleeding just trying to live. She gets to
23 Elaine's. Elaine's apartment has blood all over it from
24 where she's dripping blood. And they think Reedy Boss it
25 still in there, Tyreek Hayes is still in there when law

1 enforcement arrives. Remember Lorie Tyler, Officer Tyler,
2 she gets there and the first thing she's being told is
3 Reedy Boss and he still in there. Remember that 911 call,
4 the CAD sheet, yeah, we don't have the call. Somebody
5 didn't get the call but you have the information from the
6 call. Immediately Reedy Boss, stabbed all over, Reedy Boss
7 and that call comes in at 9:29. When law enforcement
8 arrives, Reedy Boss, we think he still in there. But he
9 had left. He ran. He actually did go to that girlfriends
10 apartment over in Dover Village. So when he's running,
11 State's 1 blown up, remember we put these pins in so we've
12 got Candace an Elaine's apartment and we've got the
13 baseball field over here, the baseball complex with the
14 field behind it. He comes over this way, runs out. I
15 suggest he stopped somewhere in here wipes that second
16 knife, and chunks it in the field. And we'll look at those
17 knives here in a minute. Same type of knife, steak knife,
18 Diamond Cut. The one on the field they couldn't get any
19 prints or DNA on it, nothing, because it had been wiped.
20 It was a bent blade. When you're stabbing with a steak
21 knife, this isn't some butcher knife, this is a little
22 steak knife and you're stabbing people. I suggest to you
23 that blade is gonna bend that's why that knife is bent.
24 That was the second knife that was used. That one was
25 probably the one used in the kitchen with Candace. And he

1 runs on over here to Shalanda's and the shirt, the same
2 day, ends up up in this dumpster. And what's on that
3 shirt? Ann and Candace's DNA, their blood.

4 Both Candace and Ann came to this courtroom and sat
5 right there for y'all to look at them and listen to what
6 they had to say and they told you, Tyreek Hayes, Reedy
7 Boss, did this to both of them. They've been consistent
8 since 2016 that he's the one that did it. Why would they
9 make it up? Why would you not want the person who actually
10 tried to kill you be held responsible? From the time
11 they're bleeding and Candace is naked and running to
12 Elaine's the first thing that's told to 911, to the
13 neighbor, is Reedy Boss. They don't have time to talk
14 about how they're gonna pin it on somebody else if it's not
15 really him. They're surviving and shout'in out truth.
16 Reedy Boss tried to kill them after he raped Candace.

17 And then they pick him up out of a photo lineup. Now,
18 some nuances in what happened in that apartment bedroom,
19 not bedroom,, okay. Maybe there's not a hundred percent
20 match, but you know what I think there's a hundred percent
21 match that's a bigger problem. That would be a
22 collaborated story where they're trying to come into
23 falsehood. The fact that there are some slight differences
24 to me just indicates they was complete chaos and they had a
25 different perception at different times. But what's

1 consistent is that Reedy Boss was slicing at them with a
2 knife and that they had to get out of there or die.
3 They're not talking about who to pick out of photo lineup.
4 The police figure out from getting on the scene, Reedy
5 Boss, Facebook, they get this lineup prepared. You got
6 your pictures. They both individually picked him out and
7 still maintain that he did this.

8 All right. So we talked about the particular laws or
9 the crimes that he's charged with and the laws that we have
10 to show. So let's go in a little bit of detail here on the
11 elements. Criminal sexual conduct in the first-degree,
12 we've got penetration. We've also got DNA, potential oral,
13 potential anal. Candace told you multiple sex acts. He
14 strangled her. He held her against her will. Remember the
15 doctor and the nurse, the doctor said consistent with
16 strangulation and the nurse said strangulation. You can
17 look at it yourself. I don't think it takes an expert to
18 look at these pictures and figure out strangulation. He's
19 not forcing himself on her why is he strangling her. And
20 he's holding her against her will. She quit calling for
21 help. She was in and out of consciousness. She was trying
22 to survive for her kids then she's in and out of
23 consciousness. He kidnapped her in a sense she couldn't
24 get away. He held her against her will.

25 The knife attacks on both of them, again, you can look

1 at the surrounding circumstances. We suggest to you the
2 knife is a deadly weapon during this crime and the way it's
3 used. The stab wounds particularly the slices at the neck.
4 Just a violent nature, the graphic nature. That's the
5 attempted murder. The doctor had to put Candace back
6 together. He told you that. A bigger knife, less of a
7 struggle, they'd be dead. And again two knives, one is
8 found with Ann's blood. The other is wiped clean but bent
9 near the location. There's no question Tyreek Hayes did
10 this. There's no question how violent it is. We talked
11 about how Candace and Ann coming here and telling you who
12 did this to them. You judge the credibility of the
13 witnesses. You decide who's telling the truth and who's
14 not telling the truth. Who has something to gain from not
15 being truthful? You look at the witnesses. You look at
16 their demeanor. You decide who's been truthful and who's
17 not. What matches who story? What story makes more sense?
18 There's no reason for Ann and Candace to make this up and
19 they have been consistent since Candace has been running
20 naked and bloody.

21 The defendant testified. He told you his version. I
22 suggest to you it didn't make any sense. It didn't make
23 any sense. I couldn't -- I couldn't even follow it,. I
24 don't if you could but I couldn't. He's just standing
25 there while Ann's getting attacked. He's gonna help and

1 yet he runs away. And that's fine if you want to run, but
2 he doesn't run for help. He doesn't run and call 911. He
3 doesn't run and get his -- if he's the victim of some
4 random dude, some dude did this, he doesn't get any
5 treatment. He has some old little flesh wound. Blood all
6 over that apartment is Candace and Ann's. The ones that go
7 to the hospital is Candace and Ann. No one is calling 911
8 but Candace and Ann. Elaine actually called. Instead, he
9 goes on that run right to his girlfriends and the shirt
10 gets thrown into the dumpster. And that shirt has the DNA,
11 remember we had the testimony from Mr. Stewart from sled
12 and we had the prints guy, it's just prints are not as
13 common as you think. And I tell you it doesn't matter in
14 this case. We don't even have Ann or Candace's prints in
15 that house. Prints, they just don't tell us anything in
16 this case. But there's nothing else that indicates anybody
17 else did this. And the DNA on the shirt, remember, DNA can
18 transfer pretty easily. There was that minor third
19 contributor. Yeah, I know who it could be, but the major
20 blood on that is Candace and Ann's. I mean, it could've
21 been girlfriends DNA. He could've been anything. There's
22 no reason to think it was someone else that committed the
23 crime.

24 And let's talk just a little bit more about the
25 defense testimony. Did he ever explain to y'all

1 strangulation? No, because he can't. It wasn't a perfect
2 investigation. It's pretty rare you get everything
3 airtight. But you got what you need to convict. We don't
4 have the 911 call we've got the transcript, Reedy Boss.
5 Candace is stabbed all over and Reedy Boss did it.

6 In opening statement Mr. Swilley was talking to y'all
7 about the power that you have and that you don't need to
8 listen to the government because the government says so.
9 The government is the State of South Carolina. And I'm
10 proud to be here representing the State, the citizens of
11 the state. You do have the power. You have an important
12 job. You have the power to do the right thing. The right
13 thing is to seek justice and if the evidence is there to
14 convict. It is clear in this case what happened. The
15 evidence is there. Let's take a quick look back at some of
16 these photos. I'm not to go through all of them. You'll
17 have them back in the jury room. Sorry, their small. But
18 they follow Candace's story. And you've got the apartment,
19 ■ the keys. Who locked that door? Tyreek Hayes. When
20 he was peeking out see what was going on. He locked that
21 door and everybody ran the side. You've got blood
22 everywhere. Blood on the door. Of course, we know we got
23 the condom in the bedroom. You've got braids. Her hair on
24 the floor. The bedroom, again, I'm not gonna put a lot of
25 emphasis on all these pictures. You'll have them back

1 there. I just want to show you a few. But remember a
2 small apartment. They end up in the kitchen. You've got
3 that blood on the floor. Blood on the wall. All right.
4 There's no question this is violent. Drips of blood. Hair
5 -- hair in the kitchen. Why are you gonna say somebody
6 else did this? Blood. Just blood. Blood everywhere.
7 Knocked up table. All right. Remember all the blood, I
8 don't need to show you all the blood. You know it. You've
9 seen it. Here's Candace and Ann rather - I'm sorry I
10 didn't give the court reporter numbers, we're going through
11 the State's photos - number 49, Ann in the hospital. She's
12 gone make this up. See that slice on her neck. State's
13 50, Ann neck, an attempt to slice her neck. Fifty-one in
14 the hospital. Remember Candace's defensive wounds those
15 bloody hands, State's 52. Candace in surgery, State's 58.
16 State's 60 remember those defensive wounds. You know who
17 didn't get offensive wounds? Tyreek Hayes. He wasn't
18 grabbing any knives. He was using knives. State's 67,
19 look at her face, Candace. Remember the nurse told you she
20 was worried about Candace's being able to use your hands
21 again, she's a hairdresser. State's 72 and 73 she was
22 strangled. Strangled, clearly.

23 The State has the burden of proof. We have to show
24 you these crimes are committed beyond a reasonable doubt.
25 The jury reach verdicts all the time. It's not an

1 unreachable goal here. It just means proof that leaves you
2 firmly convinced. And in this case there is no doubt,
3 there is no doubt about it. Due justice fine Tyreek Hayes
4 guilty of all five counts.

5 Thank you.

6 **Closing Arguments- Mr. Swilley:**

7 So every time I got to get up here and do one of these
8 arguments I always try to think about how I can put, you
9 know, use a story or some kind of analogy to put in
10 perspective of what I'm trying to show the jury because, I
11 mean, a lot of this stuff is foreign to you because you
12 guys are lay people. Maybe this is the first time you've
13 ever come to court. So I was straining - and it gets
14 harder every time - I was straining really hard to try and
15 think of some kind of example I could, I could show and
16 prove my point of what I'm trying to show. So I started
17 thinking back when I was a kid and I started thinking well
18 I bet everybody that went to school from whenever until now
19 probably learned about Christopher Columbus. And that
20 Christopher Columbus, you know, he was credited with
21 discovering America. Well, you know, you've got people
22 that criticized that and says we didn't really discover
23 America because the Native Americans were already here and,
24 you know, that's not really fair. Here's what he did do
25 and this is what I remember learning in school and here's

1 what did happen. You remember Christopher Columbus wanted
2 to get a bunch of money so that he could go and, you know,
3 explore because he had this crazy theory that the earth
4 wasn't flat. And he went out and investigated it and he
5 got the Queen of Portugal to go give him some money because
6 she wanted him to go find or maybe it was King Ferdinand, I
7 forget, but to go find, you know, spices, and gold, and
8 stuff. But he had this wild idea that the earth was round
9 and he got laughed out for that. And you know what
10 happened he went out investigated it and he was right. He
11 was right. He went out and he found out that what he had
12 been investigating the whole time that there's no edge of
13 the earth to fall off of, he was right. And had there been
14 an investigation in to certain leads in this case it
15 would've turned out differently had that happen. But it
16 didn't. What we have here and I've talked about, you know,
17 because I said so the first time and that's what this all
18 boils down to. It didn't take long to convince the
19 authorities, for Candace and then, Ann to convince the
20 authorities of their story. That their story was the
21 story. And at that point that was it. That was the
22 gospel. And everything they gathered after that was called
23 confirmation bias. A confirm the bias they already have.
24 I had my easel over there that just collapsed but there are
25 several differences that you have in the story between

1 Candace and you've got Ann. Now, although the situation
2 was chaotic this was not, this was not -- this is not a --
3 this is not -- this is not a chain of events that's hard to
4 get confused. Okay. Thing about the most dramatic events
5 of somebody's life and they're not really going to change
6 or deviate the way that these changes, that these stories
7 have deviated, right. They don't match up. If you notice
8 Candace and Ann were in here or I guess, Candace testified
9 first. Ann wasn't in here during Candace's testimony. The
10 reason why is because you don't want them to have to be
11 able to piggyback off of each other. And when they weren't
12 in here their stories were vastly different. Vastly
13 different. So the big difference based on what we heard
14 is, who left the house first, Candace or Ann? Now, if I
15 recall correctly, you have Candace who she claims that she
16 was -- she comes in between four and five, right? All
17 right. Now, you've got this young man who she says whose
18 last name and first name that she claims she never knew,
19 she invites this man into her home, okay. Based on what
20 we've seen and what we know from our everyday common sense
21 that's not something that happens, okay. You don't bring
22 somebody, man or woman or anybody, anybody that you're
23 going to do anything with into your home between four and
24 five in the morning on a Friday night if you don't know
25 them. And what we know for sure based on this toxicology

1 she was sober. She had just as much wherewithal then as
2 she's got now. Actions speak louder than words and you
3 know what else speaks louder than words inaction, and I'm
4 gonna talk about that here in the second. So you have
5 Candace between four and five said she brings somebody in
6 whose name she doesn't know, but she knows Tyreek Hayes.
7 All right. Dillon ain't but so big. And he played ball
8 with her brother. She knows him from around. She's been
9 talking with him for weeks, right. She knows Tyreek Hayes.
10 She knows who is. That's just that. And then at some
11 point she says after twenty minutes that somehow he begins
12 to attempt to kiss her - and excuse my handwriting - and
13 that goes into, she says no and then that segues into he
14 doesn't take no for an answer and he drags her by I believe
15 she testified her waist to the bedroom and forces himself
16 on her. And based on what we've heard that this happened
17 and that she at some point based on her testimony and this
18 is new, okay, this is Candace now, not Candace at the time
19 she was talking to the police about what happened, she begs
20 him to wear a condom, okay. With which according to her he
21 complies and she's been raped, okay. What do we know, and
22 I don't mean to get graphic with you, but prophylactic or
23 protection comes in a wrapper, okay, comes in a square. We
24 all know that. You have to open it up like you would open
25 up a candy bar or anything in a wrapper with two hands, all

1 right. And to apply said prophylactic said condom you have
2 to use two hands, okay. That can take anywhere between,
3 you know, one to five to ten seconds, right. When you do
4 that there's ten seconds with which she could've run out
5 the door which by the way according to them was just in the
6 middle of the night in Maplewood unlocked. So according to
7 her, she recklessly brings somebody she doesn't know into
8 the house and leaves the door unlocked and then all of a
9 sudden she's being, according to her, she's being violently
10 raped, strangled, and raped and nobody hears anything. And
11 even though she testified that he threatened, she says he
12 threatened if she screams he would choke her out but that
13 whole scene right there that's in disarray, okay. Based on
14 what she said there would've had to have been a struggle.
15 There would've had to have been a lot of noise going on and
16 with those thin walls in Maplewood for Elaine Manning to
17 hear, all right. And, in case you didn't notice, we didn't
18 hear from Elaine Manning. The woman who actually called
19 911, we didn't hear from her.

20 So at some point Candace says that he holds her there,
21 she's in and out of consciousness without any kind head
22 trauma or anything else. I mean, she says that she passed
23 out because of strangulation but she doesn't have any brain
24 damage or anything of that nature and all of a sudden she
25 falls asleep or passes out and she wakes up and Tyreek

1 Hayes is sitting there staring at her and she awakens. Let
2 me think about that for a second, so she goes in and out of
3 consciousness. She passes out. And then she wakes up and
4 he sitting there and he just happens to be staring at her.
5 And then, of course, he wants oral sex which, again, it's
6 facts that were added here today never before recorded
7 during the course of this investigation, three years later
8 never mentioned anything about that to anybody with law
9 enforcement, not recorded at all, at all. All right.
10 That's a big deal. If you're forced to perform oral sex on
11 somebody that's something you're not going to leave out,
12 right. And not only did they talk to her at the hospital,
13 but law enforcement talked to her briefly at the scene,
14 right. And then later on several times, I mean, she
15 testified that she's met, she had met with law enforcement
16 again I think even Investigator Turner testified he went
17 out and talked with him again after he had spoken with
18 Tyreek, which I'm going to get to in a second, but that's a
19 big deal. This is not -- this is not -- what they're
20 saying the facts are it's not a difficult thing to keep
21 straight and remember. That's brand-new. If something so
22 traumatic happened to you that story is not gonna change.
23 So all of a sudden according to Candace, Ann comes in --
24 Ann comes in and then she screams, she claims she screamed,
25 "help me, he raped me". And at that point according to

1 Candace he and Ann started fighting and she says it looks
2 like, you know, she she comes in - Ann comes in there
3 during the bedroom, Ann sees them, they start a fight,
4 right. Okay. Well, all of a sudden it looks like he's
5 hitting her but he's got a knife, where did the knife come
6 from? The knife just didn't appear out of thin air. And
7 here's what I'm asking you to consider. Who -- you don't
8 keep a knife in the bedroom, okay. She didn't testify that
9 she saw him walk up to the kitchen and get a knife and then
10 walk back, which by the way if that had really happened,
11 that's plenty of time to escape. Knives don't appear in
12 bedrooms and we're going to get to that later.

13 So at some point she testified he apparently has a
14 knife, you know, the knife comes around from wherever in
15 the bedroom or from the hall or wherever, wherever it
16 supposedly they came into contact with each other with the
17 knife, Candace jumps on his back supposedly after she been,
18 according to her, repeatedly choked, right, and raped, she
19 jumps on his back. And then at some point Tyree begins to
20 stab her. And then according to Candace, according to
21 Candace now, here we go again, Ann runs with the kids and
22 locks herself in the bedroom, all right, with the children.
23 And supposedly after that Candace ran off or got out of the
24 door, she says she kicked open the screen door. She said
25 she went through the screen door and somehow I believe, if

1 it was Tyreek I don't know if she said he was trying to get
2 in here but these - these - these facts don't add up. If
3 you break them down and you take a look at it there's no
4 way. And law enforcement didn't do that because they took
5 what they told them, their side of the story is the gospel,
6 never questioned it. And because they never questioned it
7 they never followed up on it. And then Candace testifies
8 that she went out the back door and walked all the way
9 around and then comes back towards Elaine Manning's
10 apartment. Now, we've got this aerial view, right, of
11 Maplewood. And at some point Candace would've, according
12 to her, she comes out here and walks all the way around to
13 the front, right, to supposedly Elaine's apartment, ■■■
14 That's a good -- that's a good walk. Look at that it's in
15 an L shape, right. You walk all the way around, - well,
16 why wouldn't you run off and bang on some of the other
17 apartments that are closer like on the other side. She
18 goes straight to Elaine's. It's almost like it was seem
19 that she was following somebody out the door. Because that
20 -- because Elaine's apartment was not the closest, it's not
21 the closest place to run to. Think about that. She
22 supposedly walked all the way around to Elaine's apartment
23 but if you're running away from somebody, if you're running
24 away from somebody you gonna run to the nearest place to
25 safety and that's not the nearest place of safety. Why

1 didn't she run to her friend Tonya's house which is closer
2 to somebody that she knew better? That may or may not be
3 -- well, and it may or may not be -- I think Tonya testify
4 that she lives in the same building but that's out here,
5 it's a long way to walk around past many other people when
6 you're running and more safe avenues of escape when you're
7 looking for help. She said she went out the back and
8 walked all the way around. That's not where you go when
9 you're running from somebody. Luckily, Ann - I lost my
10 blue marker but it's okay, ah, here it is - Ann says that
11 she walked in and she makes the mistake - the mistake that
12 she thought they were having, thought they were having
13 consensual sex, okay. If that were true, how would you
14 mistake what Candace describes and then what Ann says that
15 she saw first of all? Well, first of all I thought having
16 consensual sex and I was going to leave and then Candace
17 runs out and screams "he's trying to kill me" not she
18 didn't run out screaming "he raped me" like Candace said on
19 the stand. Now, if that had really happened and you had
20 seen your own sister run out of a door or run to a door in
21 the bedroom and scream "he killed me" -- ah, "he raped me,
22 he raped me" you would remember that. That would be
23 somewhat -- I'd say somebody would remember that. That
24 would be ingrained in your mind and apparently that didn't
25 happen because it's not. These are deviations from each

1 other that would not be there unless the story was false,
2 unless it was was cooked up. I mean, the facts are facts,
3 y'all. This is the testimony. Look at the evidence. Look
4 at the testimony and look at the evidence. And then he ask
5 Ann, did you ever lock yourself in the bedroom? No. I
6 didn't locked myself in the bedroom. All right. According
7 to Ann, Ann says that she's the one that left first and
8 took the kids over to Elaine Manning's house. According to
9 Candace, Candace escaped while at some point Tyreek Hayes
10 was going after Ann or that Reedy All Boss was going after
11 Ann. Well, who left first? Those stories they don't, they
12 don't line up. They don't line up. And at some point -
13 at some point at no point did anyone ever take a look at
14 all the differences and say oh, hold on now, wait a second,
15 all this stuff doesn't add up. And Ann if I'm not
16 mistaken, and again if you want to hear the testimony when
17 you go in the jury room you can just request that it be
18 replayed for you, the evidence, it's in evidence,
19 supposedly Ann runs out with the children and Candace is
20 still in there and then Candace is still in the house and
21 then when she goes to Elaine's, Ann says that she sees
22 Tyreek Hayes peek out the door of the apartment of the
23 front door. That's the first time that's ever been said.
24 Now, we don't have when statements were taken, remember the
25 statement of Ann was trying to be recorded on the body

1 camera, the body camera is dead. Lorie Tyler's body camera
2 the battery was dead. So they don't go back and get
3 another statement from her to see if the story sticks
4 because, why? Because they said so, I mean, case closed.
5 They got the guy. What they say is what were gonna do.
6 What we're gonna go with. But here luckily, luckily and
7 Lorie Tyler did a very good job of, at the beginning,
8 interviewing Ann. And remember she does incident reports.
9 They're correct. They're accurate. They're precise and
10 they're detailed, right. Nowhere in any of this report
11 that she took, that she made, that she pays attention to,
12 that she reviews does it ever mention, did she ever mention
13 Ann saying that he peeked out of the door after I had gone
14 to Elaine Manning's house? What we know based on the
15 evidence that Ann had told Lorie Tyler was that she mistook
16 what she says she saw as consensual, that Candace runs out,
17 that Candace begins to scream. She testified that -- Ann
18 informed Lorie Tyler that, at that time in the bedroom,
19 that Tyreek began poking her or that the suspect began
20 poking her with a knife that, again, magically appeared in
21 the bedroom because people keep bedrooms or keep knives in
22 the bedroom, no. So here's where the story starts to
23 unravel and no one paid attention to that. So I want to
24 kinda jump into that investigation and you have - there
25 was no - look at these and these aren't even all of them -

1 there's no part of that apartment complex or that house and
2 it's not a mansion it's apartment complex that they didn't
3 photograph, okay. There's no part of that apartment
4 complex that they didn't photograph. And supposedly five
5 days later, on October 5th as you heard, Candace on her own
6 free will and accord brings to the police a knife blade, a
7 knife blade, okay. Supposedly she said her son had found
8 behind the nightstand. Okay. So now you've got, you got
9 plenty of time to think well, you know, I got to have a
10 reason to keep this, that there would be a knife in the
11 bedroom so she brings up a knife blade that was found in
12 the bedroom without a handle, without the part which would
13 be traced back to somebody who's holding the knife, right.
14 And you heard the State say, well, I would assert to you
15 that that knife handle broke. Nobody talked about anything
16 about a knife handle breaking at all. If that knife -- if
17 that blade had been in that house at the time of the, of
18 her being stabbed, they would've found it. Make no doubt
19 about it, okay. And this investigation was misguided but
20 it was not un-thoroughal. That thing would've been found.
21 There's no way. It would've been found. And it's not a
22 coincidence that, that blade was brought to the police
23 without the handle. Now, you can take a look at this
24 knife, this knife blade is like the one that was found in
25 the field it's just like the one - and again I'm going to

1 talk about that knife blade that was found in the field in
2 the minute- it's a good thing I didn't go to med school -
3 it's just like the one the blade that was turned, that
4 thing was riveted on. That thing -- that's not -- look at
5 that, that thing is stuck on there. There is no way that,
6 that thing would've come off during the stabbing. Somebody
7 took that thing off of that other blade. And they took it
8 off because they didn't want the police to know that, they
9 didn't want the police to have that handle. Because you
10 know where that things going, it's going to sled. And it's
11 gonna be searched for DNA -- it's gonna be checked for DNA
12 which it was and miraculously that knife blade had Ann's
13 DNA on it, okay. So she brings back the knife blade with
14 no handle to the police that tested positive that had Ann's
15 DNA on there, okay. Not a coincidence. It wasn't in the
16 house at the time that the police investigated it. And
17 somehow miraculously it ends up and Candace's possession,
18 okay.

19 Now, Ms. Burchstead brought up, you know, what reason
20 did they have to lie? And you know what, we don't know
21 because was no investigation of that. I don't know if it's
22 fear of somebody. I don't know if it's love with somebody.
23 And I don't know if is a combination of both, all right.
24 But that right there wouldn't have happened had somebody
25 else not been involved. And nobody gave it a second

1 thought. Nobody gave it a second thought. Nobody.

2 What else you have, I'm gonna segue into -- let's talk
3 about the State's missing pieces for just a second, all
4 right. Now, this 911 call that was missing, all right, you
5 heard testimony from Ms. Anika Sellers that, that call is
6 on the system for a year and then it gets erased, okay.
7 Now, I don't know why you didn't take it upon yourself to
8 preserve, I say calls, there were calls, there were 911
9 calls, plural, multiple, that were erased from that system
10 because no one preserved them. And the reason why the
11 police didn't preserve them it's not because they didn't do
12 that intentionally, and actions speak louder than words and
13 they didn't think they needed it. Like we've got our guy.
14 What do we need the 911 call for, we got him - the calls
15 rather. But you look at this CAD first call: stabbed
16 everywhere; losing blood; Elaine calls this in; male party
17 left. Male party left. It doesn't say anything about
18 Reedy Boss. Stabbed everywhere; losing blood; Elaine
19 called this in; male party left; unknown direction travel;
20 it was very hard to understand female party because she was
21 yelling on the phone. All right. The first one was placed
22 at 9:29. The next one was placed at 9:32. Next, 9:37
23 advised that law enforcement is on the scene; 9:38, male
24 party called in to advised that there was an emergency
25 Maplewood Apartments. He advised [REDACTED], okay. Called the

1 male party back, 911 call male party back and got no
2 answer. Then went back to the voice recording to see if
3 could get the name of the male party it sound like some guy
4 name "Radio" on Facebook, okay. And this is when everybody
5 is in there yelling, right. Later on, the male party call
6 back advised his name was James. He was asked did he know
7 the victim's name because it was hard to understand the
8 original caller, if he knew the guy that did the stabbing.
9 This guy stated that he didn't know, he just pulled up and
10 was advised to call 911. And no one on the scene was
11 interviewed other than -- well, I no one on the scene was
12 interviewed, no one on the scene was really formally
13 interviewed except for Candace and Ann. No one on the
14 scene was really even spoken with except for Candace, Ann
15 and Elaine and there never was an interview with Elaine,
16 formal interview, at all period. And you know why? They
17 didn't think they needed to and actions speak louder than
18 words. Hey, we don't need it. We believe them. They've
19 got the guy. We don't need to talk to her. We don't need
20 to interview her. We don't need to memorialize any
21 statement. Going back, so even though the police got that
22 911 call nothing was followed up on that. Nothing
23 whatsoever was followed up on that. Another missing piece
24 that we saw, let's go to that -- let's go to that forensic
25 sexual exam - somewhere in here - what you have in that

1 forensic sexual exam is you have the questionnaire. You
2 have the questionnaire of -- what you had in this forensic
3 sexual exam is we had nurse Bass come and testify, right.
4 And nurse Bass, you know, she filled out all of the stuff,
5 made sure all of this stuff was accurate, okay. And
6 according to Candace on the stand, remember, she said he
7 went with me to the bathroom and I couldn't use the
8 bathroom, right. She told the sexual assault nurse that
9 she both urinated and defecated and also that she both ate,
10 no, excuse me, vomited. She vomited. Which there is no
11 vomit found anywhere at that house. And then it goes on to
12 say that - and I don't mean to get too graphic with you -
13 but description of contacts mentions penis and it mentions
14 finger, yes. It doesn't mention unsure, it mentions yes.
15 It doesn't mention anything about anybody assert any
16 fingers inside of her, all right. And these people that
17 fill these out and go over these are professionals, all
18 right. They're not going to get this kind of stuff wrong.
19 And then unsure, kissing unsure, biting unsure, oral sex
20 unsure, and then the patient states she's unsure because
21 she passed out multiple times after strangulation. Well,
22 she testified that she had to perform oral sex with which
23 she was, according to her, was conscious so you would know
24 whether or not that was going on. Nobody scrutinize this.
25 Nobody looked at it. Nobody gave it a second thought.

1 Nobody. And you know what else about the sexual assault
2 protocol, we heard from nurse Bass that didn't conduct the
3 genital, she said I didn't do the genital inspection, Dr.
4 Mijalli who investigated all the stabbed wounds and
5 everything else about the choking but we didn't hear from
6 any doctor who nurse Bass testified did the genital
7 examination and that was because there was no trauma to the
8 genital area. There was a woods light highlight areas
9 where there was fluid which is consistent with the sexual
10 encounter. There's no lacerations, no cuts, no bruising,
11 no redness, no swelling, no nothing but to indicate
12 consensual sex. It doesn't indicate there was any force
13 sexual contact whatsoever. That's why you didn't hear from
14 the doctor that did the genital inspection.

15 Now, investigator Turner testified, and I want to make
16 this clear, everything that Jason Turner said on that stand
17 is the truth as far as what he did and what he didn't do.
18 He was honest. Made no doubt about what he did do, made no
19 doubt about what he didn't do. He was -- everything was
20 accurate. And he mentioned about after he talked to Tyreek
21 Hayes, you know, he told him in the interview I'm gonna
22 follow up on this and I don't, you know, we don't have --
23 everybody is treated equal. We don't have anybody, um,
24 we're gonna go back and confront them with this. And I
25 asked him, you didn't go back and confront them about this.

1 And he said, yeah, I did. And he did. But it was so -- it
2 was so -- he as them -- he went back and said, confronted
3 them with the story and they said, no that's not true and
4 then that was it. He created a vast array of supplemental
5 incident reports. And he says the paperwork usually starts
6 after the arrest of you're an investigator. He didn't even
7 make a mention in this incident report of going back and
8 talking to them because it wasn't even an afterthought to
9 him. He didn't -- he didn't put any thought into whether
10 or not what Tyreek told him needed to be followed up on.
11 He'd already made up his mind from the get-go. And his
12 investigation after that everything that happened was
13 confirmation bias. It's confirmed bias and didn't think
14 twice about.

15 We don't have any other standards of DNA to compare to
16 any of the stuff because they didn't go get them. They
17 didn't follow up and they didn't think they needed to
18 follow up on it to get any other standards or see if there
19 were any other standards to collect. Because they said so.
20 It's a dangerous thing. You know every body part that
21 somebody has the tongue can do the most damage. I guess
22 figuratively speaking as far as damage to somebody's life
23 and I'm not trying to take away for one second or tried to
24 distract you from the fact that these two women were
25 assaulted with a knife and wounded, okay. That happened.

1 But he didn't do it. And we would probably know who did if
2 certain things were done that weren't done that needed to
3 be done.

4 Like I say, y'all, this is not a complicated series of
5 events to get straight. Also I want to call your
6 attention, while we're on the subject of knives over here,
7 this knife that miraculously appeared just the blade with
8 no handle, there was a knife, the only knife found during
9 the course of this investigation while the police
10 investigated, they found one knife on scene when they
11 responded and that knife was at Elaine Manning's house.
12 Remember the Paula Dean knife we talked about laying next
13 or in the very close vicinity I believe was testified to,
14 to blood. The blood that was indicated was from one of
15 these two women. And Ms. Manny didn't want that thing
16 taken into custody. But investigator Turner, he took it
17 into custody at that time just to be safe, but where did it
18 not end up? Sled. Never got sent down there. Why? They
19 didn't think it need to. You find a knife near blood where
20 a victim of a stabbing took place and you never sent it
21 down to sled. And actions speak louder than words. Never
22 made it. Were no follow-up interviews or questions of any
23 of the other neighbors around and they didn't interview
24 Tonya Moore who is a friend of Candace, who said they
25 dropped them off and conveniently said, "you're not get'in

1 anything". You remember Tonya Moore who said she was out
2 with her friend girl and then accordingly, then she changed
3 her story and says that it was just her, Candace and Reedy,
4 right. She can't even keep that story straight. You know,
5 she conveniently said told us, "you can come in but you're
6 not get'in anything" okay.

7 What happened was that the government - I mean, the
8 government collectively if you want to call it the State
9 call it the State but it's the government to which you pay
10 taxes - took their word as the gospel and then that was it
11 that led the investigation. Their word is not the gospel.
12 Tyreek didn't get, he didn't get treated as an equal. This
13 is America everybody suppose to be equal, he didn't get
14 treated as an equal. Because they took their words, they
15 took these women words as the gospel. Now, I want to talk
16 to you about Tyreek and Ms. Burchstead talked a little bit
17 about when he got up there and how history doesn't make
18 sense. I want to tell you this, does Tyreek make himself
19 out to look like a hero? No. I asked, the only question I
20 ask on redirect was, "were you scared?" "Yes." I mean, he
21 said I got between him and the girl. I mean, that's not
22 something you want to be proud of, right. And here's
23 another thing when he got up and got - and I want to
24 explain this to you about Tyreek - first of all, everybody
25 in America has got the Fifth Amendment Right. He didn't

1 have to go down to talk to Jason Turner. He could've asked
2 for a lawyer. And you know what that would've been used
3 against him. You would've never heard about it. He didn't
4 have to talk to them and give a recorded statement, he did.
5 He didn't have to get up on this stand and testify and
6 withstand cross-examination from somebody who is a
7 professional cross examiner. These ladies did but he
8 didn't and he did. He didn't have to give his cheek swab.
9 They would've gotten anyway with a warrant or an order but
10 he didn't have to give it but he didn't, he gave it twice.
11 He didn't have to do that. And if he had not testified
12 here the same thing would've applied, you would've been
13 instructed, you don't take that into consideration. But
14 here's what didn't happen on cross-examination, never not
15 once and Tyreek gave a recorded statement, never not once
16 was he, was he contradicted by what he said previously for
17 what he said today because they would have done it, they do
18 it for a living. They would've found it. Never not once
19 was he contradicted from the prior statement. Never not
20 once.

21 Like I said, Tyreek wasn't treated as an equal in this
22 investigation which you should have. But fortunately you
23 all sworn under oath to be fair and impartial without bias
24 and that's your duty. You got to do that. And these
25 things can't be ignored any longer. And one of the things

1 I think me and the State agree on is that you guys have as
2 much power as you're probably ever gonna have and you've
3 got the power to set it right. As I said, you know, you
4 don't work for the government this is why trials exist.
5 This is why they have to have -- this is why they have to
6 have evidence and had to have it looked at by somebody who
7 doesn't work and who's not employed and who has no
8 allegiance of the government in situations like this.

9 Now, I've been in charge with Tyreek's case for a long
10 time. When I sit down I can't -- I'm done. I have no more
11 power. I have -- I can't do anything else at this point
12 all of that transfers to y'all. I'm asking y'all to use
13 that power the way it's supposed to be used. The State
14 hasn't proven him guilty of any of these crimes beyond a
15 reasonable doubt. The State says there is no doubt. Who
16 are you going to believe them or your lying eyes? It's the
17 way they make it look. You can see it, is there and it's
18 there for a reason and the reason is that he didn't do
19 this. He didn't -- there was no rape and he didn't stab
20 anybody. I'm asking y'all to find him not guilty because
21 that's your duty.

22 Thank you.

23 THE COURT: Ms. Burchstead?

24 MS. BURCHSTEAD: Thank you, Your Honor.

25 **Closing Arguments- Ms. Burchstead:**

1 You know why I didn't ask him about what he had said
2 before because what he told you on the witness stand didn't
3 make any sense. I didn't need to. He didn't really
4 explain anything to you just some other dude did it. Some
5 other dude did it while he stood there and watched part of
6 it, bounced around, it just didn't make any sense. I
7 didn't think I needed to beat him up anymore. His story
8 from that witness stand what he chose to tell y'all
9 yesterday didn't make any sense. He got between him and
10 the girl but he's not injured at all. He's got no like the
11 one old little wound, right. He didn't have any defensive
12 wounds. He didn't actually get between the girl. He
13 didn't provide any help. No injuries. No calls to EMS,
14 911. And remember the timeline he puts himself at
15 Shalanda's between seven and eight and 911 is called at
16 9:29, does that make any sense? No. Because he still
17 raping and strangling Candace. And you don't attack her
18 with the knife if you didn't rape her and strangle her.
19 Maybe he wasn't gonna do it until the sister showed up.

20 And the knife that was found by Candace's son that she
21 brought to law enforcement she didn't know what might have
22 been found in the field. She didn't know they were both
23 black Diamond and they matched. She just knew, hey, look
24 we found this I better get this to law enforcement with
25 Ann's blood on it. What do they do, go cut Ann later, make

1 it up. They're not making this up. Naked and running, are
2 we gonna be critical of where she ran? Are you kidding?
3 She's trying not to die. She's following her sister who
4 probably left a blood trail herself.

5 And the 911 call at 9:29: stabbing everywhere. And,
6 yeah, Mr. Swilley went back through and may notation it
7 doesn't actually say Reedy Boss until later, and you'll
8 have it in the jury room to look at, it said "went back and
9 listened" when you go back and actually listen to the
10 recordings then transcribed in there what it was, it was
11 Reedy Boss. That's still even within a few minutes. Law
12 enforcement goes there, it's Reedy Boss. Reedy Boss! Reedy
13 Boss! Reedy Boss! Naked and bleeding, it's Reedy Boss!
14 You're not thinking about pinning it on someone else. And
15 if you want to pin it on someone else, do you really have
16 to blame Tyreek? If you're trying to protect someone maybe
17 you just don't say who did it. I don't know. Somebody
18 attacked me. You're not gonna pin it on somebody else.
19 The truth is that Tyreek did this. He went after both of
20 them with the knife. And, yeah, if she's in and out of
21 consciousness he absolutely could have gotten the knife
22 from the kitchen and held it in the bedroom. He's probably
23 trying to figure out what he's gonna do then Ann shows up
24 and now he's got to do it. And it was chaotic. Sure, a
25 little bit of differences in their stories. Locked in the

1 bedroom. Not locked in the bedroom. If they wanted to
2 fabricate they had three years to get together and say, hey
3 let's get all the details just right so we can really get
4 this guy. No, they came in and told you the truth. You're
5 scuffling, you might not remember in the door or not in the
6 door. And Candace did not say that Tyreek went running
7 after Ann. No. Looked out the door, Ann says she sees him
8 looking out the door. He looks out the door and he locks
9 it. And Candace goes out the only available exit that side
10 door in the kitchen. You've got the pictures. You see
11 that side door, remember that screen door busted through.
12 She's running for her life. That was the chance she had.

13 And the sex assault kit, this is an adult woman, not
14 necessarily going to find tearing, okay. Especially, if
15 she's passed out when he's doing it. We know he attacked
16 her with a knife. We know she was strangled. Are we
17 really critical of whether she remembers going to the
18 bathroom and not? I believe her testimony was "couldn't
19 go". My interpretation of that was she couldn't go at
20 first. Pardon for this but sometimes when you get in
21 there, you know, you can't quite do it right away. Who
22 cares? Is that what this case is about? No! She was
23 sober when she talked to law enforcement. Should also had
24 just been attacked. She answered the questions asked.
25 Maybe they didn't ask her if there was oral sex and she was

1 in and out of consciousness. That rape protocol
2 questionnaire, she doesn't remember! She doesn't remember
3 because she was in and out of consciousness. She is
4 consistent that she was strangled, held against her will,
5 raped, and then she and her sister were sliced at the neck
6 and stabbed and ran for help and immediately, immediately,
7 Reedy Boss. Three years later from that witness stand,
8 crying, "that man did it" because he did. There is no
9 doubt, none. And we ask that you find him guilty.

10 Thank you.

11 THE COURT: All right. Ladies and gentlemen, let's
12 take a rule short break before I charge you on the law.
13 We'll be back in about ten minutes. And again do not
14 discuss the case. We'll get you back in very shortly.
15 (Whereupon, the jury exits the courtroom at 11:02 a.m.)

16 THE COURT: All right. Let's take a short ten
17 minute break, go to the restroom, get back.

18 (Whereupon, the court takes a short break)

19 (Whereupon, the court is back on the record at 11:18 a.m.)

20 THE COURT: All right. Is everybody in that needs
21 to be in?

22 MR. SWILLEY: I believe so.

23 MS. BURCHSTEAD: Yes, sir.

24 THE COURT: All right.

25 (Whereupon, the court is waiting for the audience to get in

1 and be seated)

2 THE COURT: All right. There will be no going in
3 and out while I am charging the jury on the law. Everybody
4 was good during the arguments. There was no up and down.
5 But I don't need in and out during the charge to the jury.
6 All right. Bring the jury in.

7 (Whereupon, the jury enters the courtroom at 11:20 a.m.)

8 THE COURT: _____ All right. Ladies and gentlemen,
9 before I charge you on the law which you're to apply to the
10 facts as you find them in this case, I want to first thank
11 you for your patience this week. But most of all I want to
12 thank you for the attention that you have paid. You been a
13 very attentive jury throughout the course of this trial so
14 you've done a great service for the State and the defendant
15 and the court, itself. I want you do know that very much
16 appreciated by the court. I'm gonna ask that you please
17 bear with me as I go through this charge. It's rather
18 lengthy but I'm required by law to provide this information
19 to you. A lot of it I'll have to read to you so I asked
20 that you bear with me with regards to that. There's no way
21 I can memorize all of this and speak to you directly, but
22 do be patient. Pay attention. Try not to let your
23 thoughts wander because this is the law that you will apply
24 to the facts in this case.

25 **Judge's Charge:**

1 Now, the indictments in this case charged the
2 defendant with criminal sexual conduct in the first degree,
3 kidnapping, attempted murder as to Candace Simpson,
4 attempted murder as to Ann Covington, and possession of a
5 weapon during the commission of a violent crime. I remind
6 you that the fact that the defendant was arrested, charged
7 and indicted in this case, is not evidence in this case and
8 cannot be considered by you as evidence of guilt in this
9 case, nor does it create any presumption or inferences of
10 guilt. This document that I hold are simply the formal,
11 written instrument which contains the charges made against
12 the defendant. They are the formal documents by which this
13 case is brought into this court.

14 Now, the indictments in this case allege several
15 different offenses against as I have just said. Indictment
16 one is 2016-875 for attempted murder. And that attempted
17 murder is with regards to Candace Simpson. The second
18 indictment is 2016-GS-17-876 which is for criminal sexual
19 conduct first degree. Indictment number three is 2016-877
20 which is for kidnapping. Indictment number four is 2016-
21 878 which is possession, which is for possession of a
22 weapon during the commission of a violent crime. And then
23 the other indictment, the last one, is 2016-879 which is
24 attempted murder as to Ann Covington.

25 Each one indictments charges a separate and distinct

1 offense. You must decide each indictment separately on the
2 evidence and the law applicable to it uninfluenced by your
3 decision as to any other indictment. The offenses of
4 assault and battery of a high and aggravated nature, and
5 assault and battery in the first degree, the elements of
6 which I will explain to you later are what we call lesser
7 included offenses of attempted murder and they may be
8 considered by you in your deliberations. The defendant may
9 be convicted or acquitted on any or all of the offenses
10 charged. You will be asked to write a separate verdict of
11 guilty or not guilty for each indictment.

12 Now, the defendant has pled not guilty to this
13 indictment, and that plea puts the burden on the State of
14 South Carolina to prove the defendant guilty. A person
15 charged with committing a criminal offense in South
16 Carolina is never required to prove himself innocent.

17 I charge you that it is an important rule of the law
18 that the defendant in a criminal trial, no matter what the
19 seriousness of the charge may be, will always be presumed
20 to be innocent of the crime for which the indictment was
21 issued unless guilt has been proven by evidence satisfying
22 you of that guilt beyond a reasonable doubt. This
23 presumption of innocence does not end when you begin your
24 deliberations, but it accompanies the defendant throughout
25 the trial until you reach a verdict of guilt based on

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the defendant
5 which remains with the defendant until it has been stripped
6 from the defendant by evidence satisfying you of the
7 defendants guilt beyond a reasonable doubt.

8 The presumption of innocence is not mere legal theory.
9 It is not just a legal phrase. It is a substantial right to
10 which every defendant is entitled unless you, the jury, are
11 satisfied from the evidence of the defendant's guilt beyond
12 a reasonable doubt.

13 What is reasonable doubt in the law? A reasonable
14 doubt is the kind of doubt that would cause a reasonable
15 person to hesitate to act. The State has the burden of
16 proving the defendant guilty beyond a reasonable doubt.
17 Some of you may have served as jurors in civil cases, where
18 you were told that it is only necessary to prove that a
19 fact is more likely true than not true, such as by the
20 greater weight or preponderance of the evidence. In
21 criminal cases, the States proof must be more powerful than
22 that. It must be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the defendants guilt. There are
25 very few things in this world that we know with absolute

1 certainty, and in criminal cases the law does not require
2 proof that overcomes every possible doubt. If, based on
3 your consideration of the evidence, you are firmly
4 convinced that the defendant is guilty of the crimes
5 charged, you must find the defendant guilty. If on the
6 other hand, you think there is a real possibility that
7 defendant is not guilty, you must give the defendant the
8 benefit of the doubt and find him not guilty.

9 I remind you that, during this trial, you and I have
10 certain duties to perform. As the trial judge, it is my
11 responsibility to preside over the trial and I've also have
12 the duty to rule on the admissibility of the evidence
13 offered during this trial. You are to consider only the
14 competent evidence before you. If there was any testimony
15 ordered stricken from the record in this case during this
16 trial, you must disregard that testimony. You are to
17 consider only the testimony which has been presented from
18 this witness stand, any exhibits which have been made a
19 part of the record in this case, and any stipulations of
20 counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I am the
23 sole judge of the law of this case, and he did sure duty as
24 jurors to accept and apply this law as I now state it to
25 you. If you already have any idea as to what the law is or

1 what the law ought to be and it does not agree with what I
2 now tell you the law is, you must abandon these ideas
3 because you are sworn to accept the law and apply the law
4 exactly as I state it to you.

5 In every case tried in this court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in a
7 case. A trial judge cannot intimate, state, comment on, or
8 make any statement to a trial jury about the facts of a
9 case. Since you, the jury, are the sole judge of the facts
10 in this case, you are not to infer from what I have said
11 during this progress of this trial in ruling upon the
12 admissibility of evidence, or otherwise, or anything that I
13 say now during the course of this instructions to you, that
14 I have any opinion about the facts in this case. The law
15 does not allow me to have an opinion about the facts in
16 this case. This is a matter solely for you, the jury, to
17 determine. As jurors, it is your duty to determine the
18 effect, value, weight, and truth of the evidence presented
19 during this trial.

20 There are two types of evidence which are generally
21 presented during a trial, direct evidence and
22 circumstantial evidence.

23 Direct evidence directly proves the existence of a
24 fact and does not require deduction.

25 Circumstantial evidence is proof of a chain of facts

1 and circumstances indicating the existence of a fact.

2 Crimes may be proven by circumstantial evidence. The
3 law makes no distinction between the weight or the value to
4 be given to either direct or circumstantial evidence,
5 however, to the extent the State relies on circumstantial
6 evidence, all of the circumstances must be consistent with
7 each other, and when taken together, point conclusively to
8 the guilt of the accused beyond a reasonable doubt. If
9 these circumstances merely portray the defendant's behavior
10 as suspicion, the proof has failed.

11 The State has the burden of proving the defendant
12 guilty beyond a reasonable doubt. This burden rest with
13 the State regardless of whether the State relies on direct
14 evidence, circumstantial evidence, or some combination of
15 the two.

16 Now, those definitions, excuse me, sometimes are
17 somewhat confusing when we talk about direct and
18 circumstantial evidence. Obviously direct evidence is
19 something that you've seen, you have direct knowledge of it
20 and you know what it is. I give you an example; if we were
21 to go outside and look up at the sky and we see a jet plane
22 going across, we see it, we're looking at it. We know
23 that, that's a jet plane and that's direct evidence. If we
24 go out or another group goes out a little bit later and
25 they look up at the sky and all they see is that white

1 vapor trail that's left by jet a plane, they don't to the
2 jet. But they know from experience that jet planes leave
3 that white vapor trail so they would know that a jet plane
4 had just crossed the sky, even though they didn't see it,
5 they know it because the circumstantial evidence of the
6 vapor trail being left behind. I tried to give that as a
7 somewhat of a simple explanation, something I can
8 understand myself, quite frankly.

9 Now, Necessarily, you must determine the credibility
10 of witnesses who have testified in this case. Credibility
11 simply means believability. It becomes your duty as jurors
12 to analyze and to evaluate the evidence and determine which
13 evidence convinces you of its truth.

14 In determining the believability of witnesses who have
15 testified in this case, you may believe one witness over
16 several witnesses or several witnesses over one witness.
17 You may believe a part of the testimony of a witness and
18 reject the remaining part of the testimony of that same
19 witness. You may believe the testimony of a witness in its
20 entirety or reject the testimony of a witness in its
21 entirety. You may consider whether any witness has
22 exhibited to you any interest, bias, prejudice, or other
23 motive in this case. You may also consider the appearance
24 and manner of a witness while on the witness stand.

25 Now, our rules of evidence ordinarily do not permit

1 witnesses to testify to opinions or conclusions. An
2 exception to this rule exists for witnesses we call "expert
3 witnesses." And we had several expert witnesses testify.
4 You heard me qualify them as experts throughout the trial.
5 A witness who, by education and experience, has become
6 expert in some art, science, profession, or calling may
7 state an opinion as to relevant and material matter, in
8 which the witness claims to be an expert and may also state
9 the reasons for the opinion.

10 You should consider any expert opinion received in
11 evidence in this case and, like any other evidence, give it
12 the weight you think it deserves. If you decide that the
13 opinion of an expert witness is not based on sufficient
14 education and experience, or if you conclude that the
15 reasons given in support of the opinion are not sound, or
16 that the opinion is outweighed by other evidence, you may
17 disregard the opinion entirely.

18 An expert witness' testimony is to be given no greater
19 weight than that of other witnesses simply because the
20 witness is an expert. Further, you are not required to
21 accept an experts opinion, even though it is not
22 contradicted.

23 Now, There has been evidence presented that witnesses
24 have made prior statements which are not consistent with
25 the witnesses' present testimony. You may use this

1 evidence to decide whether to believe the witness. You may
2 also use evidence of the earlier contradictory statements
3 to determine the truth of those statements. It is up to
4 you to decide whether to believe the earlier statements or
5 the testimony given at trial.

6 If a witness has shown to have knowingly testified
7 untruthfully concerning any material matter, you may
8 consider this in determining whether to trust the witness'
9 testimony as to other matters. You may reject all
10 testimony of that witness or give all or part of the
11 testimony the weight you think it deserves.

12 Now, with regards to the particular charges that these
13 indictment contain, first of all we'll look at first,
14 criminal sexual conduct in the first-degree. Our law
15 states, and the defendant is charged with criminal sexual
16 conduct in the first-degree, the first element which the
17 State must prove beyond a reasonable doubt is that the
18 defendant engaged in a sexual battery with the victim. A
19 sexual battery is sexual intercourse, cunnilingus,
20 fellatio, anal intercourse, or any intrusion, however
21 slight, of any part of a person's body or of any object
22 into the genital or anal openings of another persons body.
23 Except when the intrusion is accomplished for medically
24 recognized treatment or diagnostic purposes.

25 If you find that the State has not shown beyond a

1 reasonable doubt that a sexual battery occurred, you would
2 must stop deliberating and your verdict would have to be
3 not guilty.

4 If you find that a sexual battery did occur, you must
5 then decide whether the State has proven beyond a
6 reasonable doubt, excuse me, if you find that a sexual
7 battery did occur you must then decide the State has proven
8 beyond a reasonable doubt that the defendant used
9 aggravated force to accomplish the sexual battery.

10 Aggravated force means the use of physical force or
11 physical violence of a high and aggravated nature to
12 overcome the victim. This includes the threat of use of a
13 deadly weapon or strangulation or anything of that nature
14 that is violent.

15 The victim then, it must be shown, the victim
16 submitted to sexual battery while the victim was also the
17 victim of forcible confinement, kidnapping, robbery,
18 extortion, burglary, housebreaking, or any other similar
19 act or offenses.

20 The defendant caused the victim, without the victim's
21 consent, to become mentally incapacitated or physically
22 helpless. This is another element.

23 Mentally incapacitated means that the victim was
24 rendered temporarily unable to evaluate or control his or
25 her conduct. This condition may be caused by some illness,

1 defect, the influence of a substance, or some other cause.

2 Physically helpless means that the victim was
3 unconscious, asleep, or for any other reason physically
4 unable to communicate consent to the sexual battery.

5 An attempt -- an attempt is an effort to accomplish a
6 crime which does not succeed. An attempt includes a
7 specific intent to do a particular criminal act along with
8 an act falling short of the act intended. The State must
9 show more than mere preparation and intent. There must be
10 some overt act committed in the effort to commit the crime.

11 Intent means intending the result which actually
12 occurs; not accidentally or involuntary. Intent may be
13 shown by acts and conduct of the defendant and other
14 circumstances from which you may naturally and reasonably
15 infer intent.

16 As to the charge of attempt murder, in order to prove
17 this crime, the State must prove the defendant attempted to
18 kill another person with malice aforethought, either
19 express or implied.

20 Malice is hatred, ill-will, or hostility towards
21 another person. It is the intentional doing of a wrongful
22 act without just cause or excuse and with an intent to
23 inflict an injury or under circumstances that the law will
24 infer an evil intent.

25 Malice aforethought does not require that malice

1 exists for any particular time before the act is committed,
2 but malice must be exist in the mind of the defendant just
3 before and at the time of the act is committed. Therefore,
4 there must be a combination of the previous evil intent and
5 the act.

6 Malice aforethought may be expressed or inferred.
7 These terms, "express" and "inferred" do not mean different
8 kinds of malice but merely the manner in which malice may
9 be shown to exist. That is either by direct evidence or by
10 inference from the facts and circumstances which are
11 approved. Express malice is shown when a person speaks
12 words with express hatred or ill will for another or when
13 the person prepared beforehand to do the act which was
14 later accomplished; for example, lying in wait for a person
15 or any other acts of preparation going to show that the
16 deed was within the defendant's mind would be express
17 malice.

18 Malice, however, may be inferred from conduct showing
19 a total disregard for human life. Inferred malice may also
20 arise when the deed is done with a deadly weapon. A deadly
21 weapon is any article, instrument, or substance which is
22 likely to cause death or great bodily harm. Whether an
23 instrument has been used as a deadly weapon depends on the
24 facts and circumstances of each case.

25 The following are examples of instruments which may be

1 deadly weapon: a pistol, a shotgun, a rifle, a dagger, a
2 knife, a razor. Fist is a deadly weapon: a hand or fist is
3 not normally considered a deadly weapon. However, under
4 some circumstances, depending on the manner and means of
5 its use, the wounds inflicted, and other relevant facts, a
6 hand or fist may be considered a deadly weapon. It is for
7 you to decide in this case, beyond a reasonable doubt,
8 whether or not a hand or fist is a deadly weapon.

9 Ordinary objects may become deadly weapon when the
10 facts show that they had been used to inflict seriously
11 bodily harm or death.

12 If facts are approved beyond a reasonable doubt
13 sufficient to raise an inference of malice to your
14 satisfaction, this inference would be simply an evidentiary
15 fact to be considered by you, the jury, along with the
16 other evidence in this case, and you may give it the weight
17 you decide it should receive.

18 A specific intent to kill is not an element of
19 attempted murder, but there must be a general intent to
20 commit serious bodily injury. Intent means intending the
21 result which actually occurs; not accidentally or
22 involuntary. Intent may be shown by acts and conduct of
23 the defendant and other circumstances from which you may
24 naturally and reasonably infer intent. Evidence of the
25 character of the act, the character of the instrument use,

1 the manner in which it was used, the purpose to be
2 accomplished, and the resulting wounds or injuries may be
3 considered in determining the intent with which the act was
4 committed. Intent may also be inferred when it is
5 demonstrated that the defendant voluntarily and willfully
6 commits an act, the natural tendency of which is to destroy
7 another's life.

8 Kidnapping: The defendant is charged with kidnapping.
9 The State must prove beyond a reasonable doubt that the
10 defendant knowingly and unlawfully seized, confined,
11 inveigled, decoyed, kidnapped, abducted, or carried away
12 another person without authority of law.

13 To do a thing unlawfully is to do it willfully against
14 the law.

15 Knowingly means with knowledge, consciously, not
16 accidentally.

17 Seize means to take hold of suddenly or forcibly.

18 Confined means to limit, restrict, or enclosed within
19 bounds, imprisoned, or shut or keep in.

20 Inveigle means to lure, entice, or lead astray by
21 false representations, promises, or other deceitful means.

22 Decoyed means to lure by, or as if by, decoyed. A
23 decoy is something to entice a person into a trap.

24 Kidnap is to remove a person against his will by
25 unlawful force or by fraud.

1 Abduct means to carry off secretly or by force for an
2 illegal purpose.

3 Carry away means to remove.

4 The State does not have to prove that the defendant
5 did all of these things. Instead, if you find beyond a
6 reasonable doubt that the defendant did any of these
7 things, you may find the defendant guilty of kidnapping.

8 Something done without authority of the law is
9 something which the law does not sanction, permit, allow,
10 condone, or provide justification for.

11 The kidnapping does not have to be for any personal or
12 monetary gain for any illegal purpose, but may be for any
13 reason whatsoever.

14 The defendant is charged with possession of a weapon
15 during the commission of a violent crime. The State must
16 prove beyond a reasonable doubt that the defendant was in
17 possession of a knife or visibly displayed what appeared to
18 be a knife during the commission of a violent crime.

19 A knife is a cutting instrument consisting of a sharp
20 blade fastened to a handle.

21 In order to find the defendant guilty of possession of
22 a weapon during the commission of a violent crime, you must
23 first find the defendant guilty of either committing a
24 violent crime or attempting to commit a violent crime.
25 Criminal sexual conduct in the first degree, kidnapping,

1 attempted murder, assault and battery of a high and
2 aggravated nature, and assault battery in the first degree
3 are all violent crime.

4 A person commits the offense of assault battery of a
5 high and aggravated nature if the person unlawfully injures
6 another person, and great bodily injury to another person
7 results; or the act is accomplished by means likely to
8 produce death or great bodily injury.

9 Great bodily injury means bodily injury which causes a
10 substantial risk of death or which causes serious,
11 permanent disfigurement or protracted loss or impairment of
12 the function of a bodily member or organ.

13 Assault and Battery first-degree, a person commits the
14 offense of assault and battery in the first degree if the
15 person unlawfully; injures another person, and the act
16 either involves non-consensual touching of the private
17 parts of an adult, either under or above clothing, with
18 lewd and lascivious intent; or occurred during the
19 commission of a robbery, burglary, kidnapping, or theft;
20 private parts mean the genital area or buttocks of a male
21 or female or the breasts of a female.

22 A person may also commit the offense of assault and
23 battery in the first degree if the person unlawfully:
24 offers or attempts to injure another person with the
25 present ability to do so, and the act either: is

1 accomplished by means likely to produce death or great
2 oddy injury; or occurred during the commission of a
3 robbery, burglary, kidnapping, or theft.

4 Great bodily injury means bodily injury which causes a
5 substantial risk of death or which causes serious,
6 permanent disfigurement or protracted loss or impairment of
7 the function of a bodily member or organ.

8 The defendant in this case contends that another
9 person committed the charged crime and that he had nothing
10 to do with it. The law places no burden on the defendant
11 to prove that someone else committed the crime. Thus,
12 there is no burden upon him to prove the other person's
13 guilt. The burden is on the prosecution to prove beyond a
14 reasonable doubt that the defendant was present at the
15 scene and that he committed the crime. The State must
16 prove that allegation, along with all the other elements of
17 the offense, beyond a reasonable doubt.

18 Now, ladies and gentlemen, there are nine possible
19 verdicts which you may find in this case: guilty as to
20 criminal sexual conduct in the first degree, not guilty as
21 to the criminal sexual conduct in the first degree; guilty
22 as to kidnapping; not guilty as to kidnapping; guilty as to
23 attempted murder on Candace Simpson; not guilty as to
24 attempted murder on Candace Simpson; guilty as to attempted
25 murder on Ann Covington; not guilty as to attempted murder

1 on Ann Covington; guilty as to possession of a weapon
2 during the commission of a violent crime; not guilty as to
3 possession of a weapon during the commission of a violent
4 crime; guilty as to assault battery of a high and
5 aggravated nature on Candace Simpson; not guilty as to
6 assault and battery of a high and aggravated nature on
7 Candace Simpson; guilty as to assault and battery of a high
8 and aggravated nature on Ann Covington; not guilty of
9 assault and battery of a high and aggravated nature on Ann
10 Covington; guilty as to assault and battery in the first
11 degree on Candace Simpson; not guilty as to assault battery
12 in the first degree on Candace Simpson; guilty as to
13 assault and battery in the first-degree on Ann Covington;
14 or not guilty as to assault battery in the first-degree on
15 Ann Covington. There is no significance whatsoever in the
16 order in which I state these possible verdicts; it is
17 simply that one must be stated first.

18 Ladies and gentlemen, ma'dam foreperson, I have a jury
19 verdict form for you that you will use in the courtroom
20 upon the conclusion of your deliberations once you have
21 reached a verdict. It has instructions on part of this.
22 It starts out and it deals with the criminal sexual conduct
23 in the first-degree charge and then it goes down to the
24 kidnapping charge. Then we have attempted murder on
25 Candace Simpson which you'll find some instructions

1 underneath. It's states, if you find the defendant guilty
2 do not consider the next two lesser included offenses. But
3 if you find him guilty on the attempted murder you stop
4 right there with regards to that offense. However, if you
5 find that the defendant is not guilty of attempted murder
6 you would consider the next two lesser included offenses.
7 First would be the assault and battery of a high and
8 aggravated nature charge. And again if you find the
9 defendant guilty on that charge, you would stop. You would
10 not go any further considering any other assault charge.
11 However, if you were to find him not guilty of assault
12 battery of a high negative nature you would then go down
13 and consider the next assault charge which is assault
14 battery in the first-degree and you would find the person
15 guilty or not guilty of that charge. And then we go down
16 with attempted murder on Ann Covington, it follows the same
17 procedure. And you'll have the instructions here that
18 tells you, if you find him guilty here, just stop. If not,
19 you continue on to the assault and battery of a high and
20 aggravated nature, if you find him guilty, you stop. If
21 you don't find him guilty you continue down to assault
22 battery in the first-degree on Ann Covington. And then the
23 last charge is the possession of a weapon during the
24 commission of a violent crime and you'll consider that. So
25 that is all the indictment charges that are to be

1 considered separately and to be dealt with. The only thing
2 that is to be considered beyond that would be the attempted
3 murder charges which I've explained having the lesser
4 included offenses of assault battery first-degree and
5 assault battery of a high and aggravated nature. So
6 actually there are three things that you could consider
7 with regards to the attempted murder charge. Now, this can
8 be somewhat confusing. I hope it's not. I hope it will be
9 self-explanatory when you go back into the jury room. But,
10 of course, at any time you have any questions or anything
11 you can present that in writing on a piece of paper, hand
12 it to the bailiff or to the deputy whoever's outside the
13 jury room and that will be presented to me, then I can get
14 you back in here and possibly answer any questions that you
15 might have during the course of your deliberations.

16 Now, I remind you that your verdict must be verdict
17 must be a unanimous verdict. All 12 of you must agrees on
18 the verdict. Once that verdict has been reached, Madam
19 foreperson, you will check the appropriate boxes, guilty or
20 not guilty, as these offenses, you will then sign your name
21 on the bottom of the last page. And then you will knock on
22 the door and let somebody know that you have reached a
23 verdict and that will be presented to the court and we'll
24 bring you back into the jury room at that point in time to
25 announce the verdict, at that point in time.

1 Now, I'm going to ask you to retire to the jury room
2 at this time. Don't start discussing it. I've got to take
3 up some matters with the attorneys and make sure they have
4 no exceptions to anything that I've said. Make sure that
5 they don't request that I tell you anything else. We've
6 got to get all of the exhibits together and bring them into
7 you, into the jury room. You go ahead and retire now, get
8 comfortable. And just very shortly the deputy or bailiff
9 will bring to you all the exhibits and the verdict form and
10 they will say begin your deliberations and then you can
11 start at that point in time. Okay. Thank you very much.
12 Thank you very much for your tentativeness throughout this
13 trial. Oh, wait a minute, let me have the two alternates.
14 I'm sorry. Let me have the two - the two alternates stay
15 here.

16 (Whereupon, the jury exits the courtroom at 11:49 a.m.)

17 THE COURT: Ms. Bethea?

18 MS. BETHEA: Yes.

19 THE COURT: And Ms. Cooke?

20 MS. COOKE: Yes, sir.

21 THE COURT: All right. Since all of our twelve
22 jurors have remained throughout the trial and are here
23 today we have no need for you to serve any further. I
24 always hate it when alternates have to sit through an
25 entire trial particular like this one and then I'll get to

1 be involved in and participate in the final decision to be
2 made. Now, you are welcome to stay around, hang around and
3 see what happens, see what your fellow jurors do with
4 regards to this case. You don't have to. But you are
5 welcomed to. Further, you don't have to talk to anybody
6 about your opinion or what you think if you don't want to.
7 However, you can if you want to. If somebody were to
8 approach you as you were leaving or even the next day or
9 two and say, what would you have done? What was going on?
10 What were your thoughts? You can say I don't want to talk
11 to you. And if you say that, that should end it. Or you
12 can answer them and talk to them if you want to. If you
13 were to tell somebody that you didn't want to talk about it
14 and they continued to pursue you or harass you or try to
15 get the information out of you, all you need to do is to
16 let the clerk of court know, let the deputy sheriff's
17 office know and I'll take care of that individual if they
18 harass you anyway. But it's entirely left up to you,
19 voluntary on your part. Again, you are welcome to stay,
20 stick around, see what happens with regards to your fellow
21 jurors or you're welcome to leave. I do want to thank you
22 for your service. Thank you for responding to your summons
23 to come here. As we explained earlier our justice system
24 would not work without jurors and people who are willing to
25 serve as jurors. As I said earlier this is the most

1 important civic duty that you can perform for your county,
2 and your state, and your country. You have any questions
3 you want to ask me?

4 MS. BETHEA: Can we stay in the courtroom?

5 THE COURT: Ma'am -- you can stay, yeah, in the
6 courtroom. You can hang around, you know, or whatever and
7 if we end up getting lunch for the other jurors if they
8 want to stay let's get lunch for them, Madam, clerk, okay,
9 because they've worked hard this week even though they're
10 not getting to make the final decision.

11 Now, counsel, is there any exception to my charge?

12 MS. BURCHSTEAD: No, Your Honor.

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: Okay. All right. Then we'll gather
15 the exhibits together and get them to the jury along with
16 this verdict form so they can get started.

17 (Whereupon, the jury starts deliberations at 11:59 a.m.)

18 THE COURT: All right. Counsel, we have a couple
19 of question from the jury. The first one is, we would like
20 to see/read his statement? The second one is all the
21 transcript/interviews from call? I assume they mean the
22 911 call. Obviously, the statement is not admitted into
23 evidence. They can't see it. The transcript all they had
24 what the CAD ---

25 MS. BURCHSTEAD: CAD ---

1 THE COURT: --- report, that's been introduced and
2 I'll tell them that's all they can consider just what's
3 been introduced into evidence.

4 MR. SWILLEY: Judge, I would just request or explain
5 to the jury that the record is closed and they have to
6 decide the case off what they've heard ---

7 THE COURT: Yeah, I'm gonna do that. They can only
8 consider what's been introduced during the course of the
9 trial and I'll explain that to them.

10 MR. KOZAK: Your Honor, are they asking for the
11 statement he made on the stand or his statement that was
12 referenced ---

13 THE COURT: I assume they mean his statement ---

14 MS. BURCHSTEAD: To Law enforcement.

15 THE COURT: --- the written statement ---

16 MR. KOZAK: Okay.

17 THE COURT: --- it doesn't say, it just says his
18 statement. I can ask her when she comes to verify that so.
19 It don't -- it doesn't say his testimony.

20 MS. BURCHSTEAD: Right.

21 THE COURT: It says, statement.

22 MS. BURCHSTEAD: I would agree with, Your Honor.
23 And if we can just direct their attention to the CAD and
24 maybe give them the exhibit number for the CAD so they're
25 clear on what it is.

1 THE COURT: Do you know the number of that, Lisa?

2 COURT REPORTER: Yes, sir. It's number 82.

3 THE COURT: Eighty-two?

4 COURT REPORTER: Yes, sir.

5 THE COURT: It's not a full transcript but it's ---

6 MS. BURCHSTEAD: Right. That's what they had.

7 THE COURT: --- statement -- bring in the jury in,
8 all of them.

9 (Whereupon, the jury enters the courtroom at 12:18 p.m.)

10 THE COURT: All right. Madam Foreperson, I have
11 the questions that you have submitted to the court. The
12 first one is we would like to see/read his statement? Are
13 you speaking about the statement that he made to law
14 enforcement?

15 MS. FAULK: Yes.

16 THE COURT: Okay. All right. There's no way that
17 you can see that. The reason being it was not introduced
18 into evidence and it was not made an exhibit or part of the
19 record and since is not part of the record I can't let you,
20 I can't let you see it. And the second statement is all
21 the transcript/interviews from call? I assume you mean the
22 911 call? That -- there is no transcript that I know of
23 with regard to that. If there was one or is one it was not
24 introduced into evidence. Now, there is what they call the
25 CAD report which is exhibit number 82 which has I guess a

1 brief description of what the 911 calls were and that's the
2 only thing we have with regards and the only thing that you
3 can consider. The record is closed. The only evidence or
4 exhibits that you can consider are those that you have back
5 in the jury room with you. Anything else that was not
6 introduced in evidence is not part of the record in this
7 case and cannot be considered by you. Purely and simply
8 you make your decision based on the oral testimony of those
9 witnesses and the physical evidence which was introduced in
10 the form of certain exhibits. Now, does that give you an
11 explanation that you understand?

12 MS. FAULK: Yes.

13 THE COURT: Okay. Thank you. If you have any
14 other questions don't hesitate.

15 (Whereupon, the jury exits the courtroom at 12:20 p.m.)

16 THE COURT: For the record, counsel, this has been
17 marked as Court's Exhibit Number One.

18 (Whereupon, the Question by the Jury has been marked and
19 entered into evidence as Court's Exhibit No. 1)

20 THE COURT: Okay. We'll stand at ease.

21 MS. BURCHSTEAD: Thank you, judge.

22 (Whereupon, the court goes back on the record at 2:57 p.m.)

23 THE COURT: All right. Counsel, the question is,
24 what will happen if we can't agree on one of Tyreek Hayes'
25 charges? Signed by Debbie Faulk, the foreperson. What I

1 am inclined to do is to ask them how close to being
2 deadlock they are with regards to that one issue. Give
3 them a semi Allen charge which would be the one Allen
4 charge, tell them to go back -- I don't really want to tell
5 them that, you know, we can take the verdicts on the other
6 indictments because they may just throw in the towel and
7 not give the consideration to this last charge. So I want
8 to be careful in how I answered this. That's why I'm going
9 over it with you. First of all to get some feel -- I'm
10 certainly not going to ask for a count. I'm going to tell
11 them right off the bat, and in light of this latest case
12 that's come down about being coercive and everything, we've
13 got to be careful. But I want to ask them about maybe
14 something to the effect, how far apart are you without
15 giving me any numbers? Do you think further deliberations
16 would allow you to, you know, reach a verdict? Without,
17 again, trying to tell them what would happen with the other
18 charges if they reached a verdict. Any objections to how I
19 am planning to approach this?

20 MR. SWILLEY: Your Honor, so you just plan on giving
21 them an Allen charge? Is that -- you're just gonna give
22 them an Allen charge?

23 THE COURT: I'm basically, at this point time,
24 gonna give them, you know, an Allen charge with regards to
25 this one, apparently one charge that there hung up on. And

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1 that would be the one Allen charge, I'm not gonna give them
2 one Allen charge, of course, mean, they come back later
3 they'd have to agree to go back and deliberate, otherwise,
4 I'd have to declare a mistrial with regards that one issue
5 that one charge so. I can't give them two Allen charges.

6 MR. SWILLEY: Right.

7 THE COURT: I mean, there's not much way around not
8 giving one now at this point since I've got this question
9 so.

10 MR. SWILLEY: I thinking Allen charge would be
11 appropriate at this time it seems like.

12 MS. BURCHSTEAD: I don't disagree, you know, as it
13 relates to, you know, meaningful deliberations would be
14 fruitful to continue as to that charge, yeah, basically the
15 Allen charge.

16 THE COURT: I'm mean, it's -- I can't really sort
17 of touch on an Allen charge without doing an Allen charge.
18 I mean, ---

19 MS. BURCHSTEAD: Right.

20 THE COURT: --- if I even touch on it then that's
21 gonna trigger an Allen charge with Appellate Court, you
22 know, whether I do it in full or not and then, you know, I
23 can't do it but once.

24 MS. BURCHSTEAD: Right. Agree.

25 MR. SWILLEY: That's correct.

1 THE COURT: Sort of an unusual question so.

2 MS. BURCHSTEAD: I beg the Court's indulgence.

3 THE COURT: Sure. But you understand I don't want
4 to tell them, you know, what happens to the other charges
5 if they can agree on this ---

6 MS. BURCHSTEAD: Right.

7 THE COURT: And that's what they're actually asking
8 but, you know.

9 MS. BURCHSTEAD: That's what Mr. Kozak and I were
10 discussing. If they're not asking what happens to the
11 other charges then I don't think we need to discuss them
12 but we just don't want to get into a situation where they
13 think it has to be a package deal. So as long as it's an
14 Allen charge as to the one charge I think that's
15 appropriate as to the one count.

16 THE COURT: It's a little bit of an odd question.
17 I won't be directly answering their question by doing an
18 Allen charge but ---

19 MR. KOZAK: What ---

20 THE COURT: Yes, sir, Mr. Kozak?

21 MR. KOZAK: What -- what I think we're concerned
22 about is that they may not think they can give a verdict on
23 some of the charges if they can't reach a verdict on all of
24 the charges; and, so when you asked them or give them Allen
25 charge they come back holding all the charges because they

1 think they have to come to a verdict on all of them.

2 THE COURT: I agree.

3 MR. KOZAK: That's the only thing we're concerned
4 about.

5 THE COURT: Yeah.

6 MR. KOZAK: It's a tricky situation.

7 THE COURT: Sir?

8 MR. KOZAK: It's a tricky situation.

9 THE COURT: And I agree I don't want to, I don't
10 want them to go back if they reached the decision and
11 unreach it, so to speak. I mean, it is what it is.
12 Technically, I guess I could tell them, you know, if they
13 reached the decision, those decisions stand but I'm
14 encouraging them and go ahead and give them the Allen
15 charge and go back on this one other charge.

16 MR. KOZAK: I think a good -- I'm not trying to
17 give you instructions ---

18 THE COURT: No, I'm ---

19 MR. KOZAK: --- but something along the line of not
20 being able to reach a verdict on one charge does not
21 necessarily effect the verdict on the other four. I don't
22 know -- something along those lines where ---

23 MR. SWILLEY: Well, Judge, we don't know, I guess, we
24 don't really know what particular charge it is and I think
25 the verdict on one ---

1 THE COURT: We don't know what the charge is and we
2 don't know what they've done on the others, I mean ---

3 MS. BURCHSTEAD: Right.

4 MR. SWILLEY: Well, the verdict on one could effect
5 one on the other, I guess, feasibly as to the weapons
6 charge to the kidnapping or attempted murder that could be
7 construed or that could be misconstrued I think. I don't
8 know -- my position -- my position is just to be safe just
9 to give the jury just an Allen charge, I guess, that's what
10 I'm asking for.

11 MS. BURCHSTEAD: Your Honor, according to Pauling
12 versus State, you know, if they're deadlocked I think it's
13 appropriate to advise the jury that only the charges on
14 which they can't agree would have to be retried and just to
15 incorporate that in the Allen charge. As Mr. Kozak said we
16 just want the jury to understand it doesn't have to be a
17 package. It can be but it doesn't have to be. As long as
18 that's clear I think we're comfortable with that.

19 THE COURT: All right. Well, in my initial charge
20 I told them that you must decide each indictment separately
21 on the evidence, you know, and the law applicable to it is
22 to be uninfluenced by your decision as to any other
23 indictment. I might can reemphasize that some want and
24 state to them, you know, each indictment stands on its own.
25 And, you know, if you've reached decisions on some they're

1 not to be effected by what you do on any charge that you
2 can't reach a decision on, something to that effect.

3 MR. SWILLEY: Okay.

4 MS. BURCHSTEAD: That's sounds good to the State,
5 Your Honor, and go ahead with the Allen charge as to the
6 one their hung, yes, sir.

7 THE COURT: Okay. All right. Bring them in.

8 (Whereupon, the jury enters the courtroom at 3:06 p.m.)

9 THE COURT: Madam court reporter, mark this as the
10 next exhibit.

11 (Whereupon, the Question by the Jury has been marked and
12 entered into evidence as Court's Exhibit No. 2)

13 **Allen Charge:**

14 THE COURT: All right. Ms. Faulk, I have your
15 question. For the record the question reads: What will
16 happen if we can agree on one of Tyreek Hayes' charges?
17 First of all, let me caution you as I explain things to you
18 or if I ask you any question, do not at any point in time
19 tell me of any type of split or how the jury may be voting
20 on this particular charge, do you understand that? Don't
21 give me the split whatsoever as far as that's concern.

22 Now, with regards to your question I'm going to reread
23 some of what I've read to you earlier when I first began my
24 charge on the law when I talked about all the different
25 separate indictments that he's charged with. You remember

1 I said each indictment charges a separate and distinct
2 offense. You must decide each indictment separately on the
3 evidence and the law applicable to it on influenced by your
4 decision as to any other indictment. In other words, each
5 one of these charges stands on its own. Now, it appears
6 from your question that you have one particular charge that
7 you can't agree on, is that correct?

8 MS. FAULK: That's correct.

9 THE COURT: Okay. What I must do with regards to
10 that is that if you've reach any agreement on the others as
11 I said, you know, they stand on their own. This other
12 charge that you have if you have become deadlocked on it,
13 so to speak, I have a particular charge I need to give you
14 which will pertain to the one you can't agree on.

15 Now, as you all know the decision has to be unanimous
16 on each and all the charges. Apparently you have reached
17 an unanimous decision on some of them but there's one
18 you're still left undecided. Everybody knows that when a
19 matter is in dispute, things are in dispute it's hard for
20 two people to agree on something. The court is very much
21 aware when you've got twelve people trying to agree on
22 something it's even more difficult. But, and in most cases
23 absolute certainty cannot be reached or expected, however,
24 you have a duty to make every reasonable effort to reach a
25 unanimous verdict and in doing this you should consult with

1 one another, express your own views, and listen to the
2 opinions of your fellow jurors. Tell each other how you
3 feel and why you feel that way. And you may have already
4 been doing this in your other deliberations. But you have
5 to discuss your differences with open minds.

6 Although, the verdict of the jury must be unanimous.
7 Every one of you has the right to your own opinion. The
8 verdict you agree to must be your own verdict. The result
9 of your own convictions and you should not give up your
10 firmly held beliefs merely to be in agreement with your
11 fellow jurors.

12 A majority should consider the minorities position and
13 the minority should consider the majority's position. You
14 should carefully consider and respect the opinions of each
15 other and reevaluate your position for reasonableness,
16 correctness, and impartiality. You must lay aside all
17 outside matters and re-examine the questions before you
18 based on the law and the evidence in this case.

19 If you're not able to reach a decision with regards to
20 this one charge it would become necessary for me to declare
21 a mistrial. And in that case, it doesn't mean anybody wins
22 or loses on that particular charge. What it means is that
23 at some point in time in the future, we'll come back here
24 and we'll have to try that charge that was not decided
25 upon. And it would be some other jury sitting where you

1 sit right now. The same people would be here. The same
2 lawyers would be here. The same questions would basically
3 get asked again. The same testimony would be introduced.
4 We just go through the whole process we've done this week
5 again. You are selected in the manner at the same source
6 of any future jury would be selected and there's no reason
7 for me to think that any other juror is going to be any
8 better than the twelve of you, any more intelligent than
9 you, any more impartial than you or any more conscientious
10 than any of you are and they couldn't be any more competent
11 than you are. So with that said and they'll be no other
12 different evidence as I've told you. Nothing will be more
13 clearer to them than has been made clear to you in this
14 particular case. So what I want to do is ask you to go
15 back into the jury room and reconsider this one charge that
16 you are having problems with and see if you cannot reach,
17 within a reasonable time, a decision, a unanimous decision,
18 with regards to this one particular charge. As I indicated
19 earlier -- as I indicated earlier they all stand on their
20 own. So if you've reach decisions on the others you done
21 your job with regards to them. But I ask that you go back
22 now and try to reach a decision on this one last, this one
23 other charge that you're having difficulty with. Any
24 questions?

25 (Whereupon, the jury indicates no)

1 THE COURT: Okay. Thank you. You may return to
2 the jury room.

3 (Whereupon, the jury exits the courtroom at 3:12 p.m.)

4 THE COURT: All right. Any exceptions to what I
5 explained to the jury?

6 MS. BURCHSTEAD: Not from the State.

7 MR. SWILLEY: No, Your Honor.

8 THE COURT: Okay. All right. Thank you. We'll
9 see what they.

10 (Whereupon, the jury starts their deliberations again)

11 THE COURT: All right. Counselor, we have a
12 verdict. Anything we need to take up before we bring the
13 jury in?

14 MS. BURCHSTEAD: Not from the State.

15 MR. SWILLEY: No, Your Honor.

16 THE COURT: All right. Bring them in.

17 (Whereupon, the jury enters the courtroom at 3:33 p.m.)

18 **Verdict:**

19 THE COURT: Madam Foreman, I understand you've
20 reached a verdict?

21 MS. FAULK: Yes, sir.

22 THE COURT: Would you hand the form up to the
23 officer for me, please?

24 (Whereupon, the foreperson complies)

25 THE COURT: Thank you. All right. Madam clerk,

1 would you publish the verdict please?

2 THE CLERK: Yes, Your Honor. On Your Honor's
3 docket the State of South Carolina versus Tyreek Dashawn
4 Hayes, criminal sexual conduct in the first degree, not
5 guilty. Kidnapping, as to the kidnapping, guilty.
6 Attempted murder on Candace Simpson, guilty. On the
7 assault battery of the high and aggravated nature on
8 Candace Simpson, no verdict. On the assault and battery in
9 the first degree on Candace Simpson, no verdict. On the
10 attempted murder on Ann Covington, guilty. On the assault
11 and battery of a high and aggravated nature on Ann
12 Covington, no verdict. Assault and battery in the first
13 degree on Ann Covington, no verdict. Possession of a
14 weapon during the commission of a violent crime, guilty.
15 Signed by foreperson Debbie. If this is all of your
16 verdicts, would you please raise your right hand?
17 (Whereupon, all jurors raised their right hands)

18 THE COURT: Does the defendant wish to poll the
19 jury?

20 MR. SWILLEY: I do, Your Honor.

21 THE COURT: All right, sir.

22 THE CLERK: When I call your name you need to
23 stand where you're seated and then I'll ask you a question,
24 okay? I'll start with the foreperson, Debbie Faulk. Is
25 this your verdict? MS. FAULK: Yes.

1 THE CLERK: Is it still your verdict?

2 MS. FAULK: Yes.

3 THE CLERK: Thank you. Connie Wheeler, is this
4 your verdict?

5 MS. WHEELER: Yes.

6 THE CLERK: Still your verdict?

7 MS. WHEELER: Yes.

8 THE CLERK: Thank you. Michael Roberts, is this
9 your verdict?

10 MR. ROBERTS: Yes.

11 THE CLERK: Still your verdict?

12 MR. ROBERTS: Yes.

13 THE CLERK: Thank you. Terry Webster, is this your
14 verdict?

15 MR. WEBSTER: Yes.

16 THE CLERK: Still your verdict?

17 MS. WEBSTER: Yes.

18 THE CLERK: Thank you. Jarvis Dixon, is this your
19 verdict?

20 MR. DIXON: Yes.

21 THE CLERK: Still your verdict?

22 MR. DIXON: Yes.

23 THE CLERK: Thank you. Terry Self, is this your
24 verdict?

25 MR. SELF: Yes.

1 THE CLERK: Still your verdict?

2 MR. SELF: Yes.

3 THE CLERK: Patricia Derry, is this your verdict?

4 MS. DERRY: Yes.

5 THE CLERK: Still your verdict?

6 MS. DERRY: Yes.

7 THE CLERK: Thank you. Donta Norman, is this your
8 verdict?

9 MR. NORMAN: Yes.

10 THE CLERK: Still your verdict?

11 MR. NORMAN: Yes.

12 THE CLERK: Thank you. Daisy Cuiman, is this your
13 verdict?

14 MS. CUIMAN: Yes.

15 THE CLERK: Still your verdict?

16 MS. CUIMAN: Yes.

17 THE CLERK: Thank you. Carlton Hilburn, is this
18 your verdict?

19 MR. HILBURN: Yes.

20 THE CLERK: Still your verdict?

21 MS. HILBURN: Yes.

22 THE CLERK: Thank you. Johnny Dial, is this your
23 verdict?

24 MS. DIAL: Yes.

25 THE CLERK: Still your verdict?

1 MR. DIAL: Yes.

2 THE CLERK: Thank you. Keith Leonard, is it your
3 verdict?

4 MS. LEONARD: Yes.

5 THE CLERK: Still your verdict?

6 MR. LEONARD: Yes.

7 THE CLERK: Thank you. That's it, all twelve, Your
8 Honor.

9 THE COURT: Okay. Thank you, ma'am. All right,
10 ladies and gentlemen of the jury, that concludes your
11 service with regards to this trial. Concludes your
12 services, obviously, this week it being Friday afternoon
13 with regards your jury duty. First thing I want to do is
14 thank you for your service and what you've done here this
15 week. You have provided a valuable service to the County
16 of Dillon, State of South Carolina and that does not go
17 unnoticed by the court. I just don't sit here and say this
18 just to be hearing myself talk. I sincerely mean how much
19 I appreciate the fact that you responded to your summons
20 and we have a lot of people that take off and run and look
21 for excuses not to serve, but you all came forward and were
22 willing to serve and ready to go forward and we do
23 appreciate that. It's not easy serving on a jury. It's
24 inconvenient serving on a jury and we're mindful of that
25 and we understand that. But I do want you to know, as I

1 THE COURT: Okay. All right. Mr. Hayes, the jury
2 has spoken and they have found you guilty with regards to
3 four of the five indictments that were handed down against
4 you. The nature of these offenses is terribly troubling.
5 This was certainly a violent crime if ever there were a
6 violent crime. The photographs bear that out without me
7 having to go into great detail. You asked for mercy but no
8 mercy was shown to these two victims in any way whatsoever.
9 They're lucky to be here today. Thank goodness they are
10 still here today. Otherwise, you'd be looking at a murder
11 charge instead of an attempted murder charge. But the jury
12 was convinced unanimously and beyond a reasonable doubt
13 that you attempted to murder both of these young ladies and
14 I cannot ignore that fact in sentencing you. The jury,
15 obviously, gave you the benefit of the doubt with regards
16 to the criminal sexual conduct charge. But they were
17 certainly convinced of your guilt with regards to the
18 remaining charges.

19 Therefore, the sentence of the court with regards to
20 indictment number 2016-GS-17-0875, attempted murder, the
21 Court sentences you to the State Department of Corrections
22 for a term of 30 years. With regards to indictment 2016-
23 GS-17-0879, attempted murder, the sentence of the court is
24 you be committed to the State Department of Corrections for
25 a term of 30 years. Those sentences run consecutively.

1 With regards to the kidnapping charge, indictment 2016-GS-
2 17-0877, the sentence of the court is you be committed to
3 the State Department of Corrections for a term of 15 years.
4 That sentence also run consecutive to the other sentences.
5 And with regards to the sentence of possession of a weapon
6 during the commission of a violent crime, the sentence of
7 the court is - and that's on indictment 2016-GS-17-0878 -
8 the sentence of the court is you be committed to the State
9 Department of Corrections for a term of 5 years, again,
10 that run consecutive to the other charges. You will be
11 given credit for time served of 1018 days. Good luck to
12 you. That's the sentence of the court.

13 MS. BURCHSTEAD: Thank you, Your Honor.

14 THE COURT: That's a total of 80 years.

15 (Whereupon, conclusion of the case on July 26, 2019)
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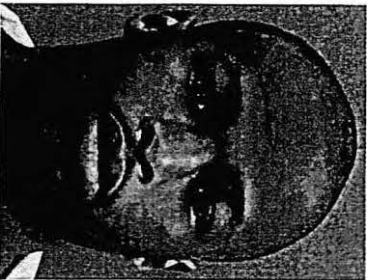
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(u) Ann Coulter
Shelene



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10/1/2014 6:50pm

Jason de
Coulter & Coulter

Shelene Coulter



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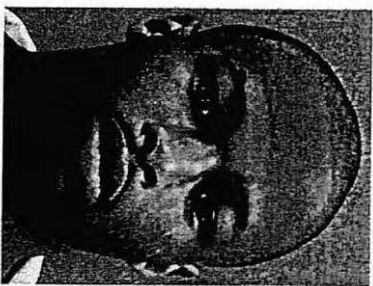
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10/1/2016

5:55pm

@ Hospital

from Juan

Latoya Simpson
Latoya Simpson

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dillon County
Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYREEK DASHAWN HAYES,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blicht, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov, this 14th day of December, 2020.

s/Susan B. Hackett
Susan B. Hackett
Appellate Defender