

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Cherokee County

S.C. Supreme Court

Roger L. Couch, Circuit Court Judge

JONATHAN BYERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213076

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Jonathan Byers,) 2007-GS-11-0851-0856;0970-0973
7 Defendant.) October 8 - 10, 2007
8) Gaffney, South Carolina
9

10 B E F O R E:
11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

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Jury qualification

1 (Proceedings October 8, 2007)

2 THE COURT: Ladies and gentlemen, thank you for your
3 patience.

4 We are ready to begin with jury selection in the first
5 case that's going to require some of your participation.
6 And there are actually ten separate indictments alleging
7 ten separate and distinction criminal offenses. The
8 defendant, the person accused of the crimes, is alleged to
9 be the same or is stated as the same.

10 And these cases are the State vs. Jonathan Leon Byers.
11 As I've stated, he's been accused of ten separate and
12 distinct offenses that arise out of one particular event or
13 a course of events which the state alleges occurred back in
14 December of 2006.

15 I'm going to read the allegations that are contained
16 in the indictment just so that you'll know what those
17 allegations are. You'll understand what the case is about,
18 because I'm going to be asking you as a group, and
19 individually if that should become necessary, if there's
20 any reason why anybody can't be fair and impartial if
21 selected as a juror in the case.

22 So the first indictment alleges that Jonathan Leon
23 Byers committed the offense of burglary in the first
24 degree. They allege that he committed that offense on or
25 about December the 6th of 2006.

Jury qualification

1 By way of this indictment they allege that he did
2 wilfully and intentionally enter a dwelling that belonged
3 to Delores M. Perrin located on Union Street here in the
4 city of Gaffney, and he did that without her consent and
5 with the intent to commit a crime therein; and then they
6 allege an additional aggravating factor.

7 A second indictment also charges Jonathan Leon Byers
8 with burglary in the first degree. And they allege on
9 December the 11th of 2006 that he did wilfully and
10 intentionally enter a dwelling that belonged to Brandy D.
11 Giles located on Short Alley here in the city of Gaffney,
12 and that he entered that dwelling without her consent and
13 with the intent to commit a crime therein; and they allege
14 an additional aggravating factor.

15 The next indictment charges burglary in the first
16 degree. They allege that on or about December the 13th of
17 2006 Mr. Byers did wilfully and intentionally enter a
18 dwelling that belonged to Tammy Payne located on Victoria
19 Lane here in the city of Gaffney; that he entered that
20 dwelling without her consent and with the intent to commit
21 a crime therein; and they allege an additional aggravating
22 factor.

23 Another indictment charges Mr. Byers with the crime of
24 criminal sexual conduct in the first degree. And they
25 allege on December the 6th of 2006 that the defendant did

Jury qualification

1 engage in a sexual battery with a victim, that victim being
2 Delores M. Perrin, under one of the following
3 circumstances, and that it was committed without her
4 consent. And they allege that he used aggravated force to
5 accomplish that sexual battery and/or the victim submitted
6 to a sexual battery under circumstances where she was also
7 the victim of a forcible kidnapping, robbery or burglary or
8 similar act.

9 An additional indictment charges Mr. Byers with
10 criminal sexual conduct in the first degree. They allege
11 that occurred on December the 11th of 2006, and by way of
12 this indictment it is alleged that he committed a sexual
13 battery against Brandy D. Giles, and with one of the
14 following circumstances being present; and that the act was
15 without her consent.

16 They allege that he used aggravated force to
17 accomplish the sexual battery on Ms. Giles, and/or that
18 Ms. Giles submitted to a sexual battery under circumstances
19 where she was also the victim of a forcible confinement or
20 kidnapping, robbery or burglary or other similar act.

21 An additional indictment charges the defendant with
22 criminal sexual conduct in the first degree occurring on
23 December the 13th of 2006. And by way of this indictment
24 they allege that Mr. Byers did commit or engage in a sexual
25 battery with a victim by the name of Tammy Payne under one

Jury qualification

1 of the following circumstances, and that it was done
2 without her consent.

3 They allege that he did use aggravated force to
4 accomplish the sexual battery, and/or that the victim
5 submitted to the sexual battery under circumstances where
6 she was also the victim of a forcible confinement or a
7 kidnapping or robbery or a burglary or other similar act.

8 A separate indictment charges Jonathan Byers with the
9 crime of armed robbery. They allege on December the
10 13th of 2006 that Mr. Byers did, while armed with a pistol
11 or some other deadly weapon, or while alleging that he was
12 armed while using a representation of a deadly weapon or
13 some object that any person present would reasonably
14 believe to be a deadly weapon, and that he did take, steal
15 and carry away from the person or presence of Tammy Payne
16 by the use of force, violence and/or intimidation a certain
17 sum of money, excuse me, goods or monies described as a
18 cell phone, and that he took those personal items with the
19 intention of permanently depriving the owner of use and
20 possession of her property.

21 A separate indictment charges Mr. Byers with the crime
22 of possession of a firearm or a knife during the commission
23 of or attempt to commit a violent crime. And they allege
24 on December the 13th of 2006 that Mr. Byers did possess or
25 visibly display a firearm or a knife during the commission

Jury qualification

1 or attempted commission of a violent crime. They allege
2 that violent crime to be criminal sexual conduct in the
3 first degree and/or burglary in the first degree.

4 And an additional indictment charges Mr. Byers with
5 possession of a firearm or knife during the commission of a
6 violent crime. Again, they allege similar allegations as
7 those I have just described, but they allege that that
8 incident occurred on December the 11th of 2006.

9 And the final indictment also charges possession of a
10 firearm or a knife during the commission of or attempt to
11 commit a violent crime alleging similar allegations as
12 previously just discussed; and they allege that event
13 occurred on or about December the 6th of 2006.

14 Now, as to all of those allegations and as to the
15 charges set forth in the indictments the defendant,
16 Mr. Byers, has entered a plea of not guilty; and therefore
17 that plea of not guilty places upon the state the burden of
18 proving the allegations that they have set forth in each of
19 these indictments, the burden of proving each of the
20 essential elements that make up the crimes that are alleged
21 in each of these indictments; and therefore the burden is
22 upon the state to establish the defendant's guilt as to
23 each of the separate indictments beyond a reasonable doubt
24 before a verdict of guilty could be returned as to a
25 particular indictment.

Jury qualification

1 And therefore we're going to be selecting probably 14
2 of you. There will be 12 primary jurors and two additional
3 jurors to serve as alternate jurors in the event one of the
4 original 12 cannot continue to serve for some reason during
5 the trial. But we will select 14 of you.

6 By way of your participation you're simply going to be
7 called upon to listen to any testimony that might be
8 introduced during the trial of the case, to consider any
9 other evidence that might be introduced during the trial of
10 the case. By way of your consideration of that evidence at
11 the trial's conclusion you're going to be called upon to
12 determine what you believe to be the true facts as they
13 relate to each of these separate indictments.

14 You'll consider that evidence, you'll decide the
15 facts. And after deciding the facts you'll then apply the
16 law that I will have provided you, and you will determine
17 whether or not the defendant has been proven guilty of any
18 of the indictments and the crimes as stated therein.

19 Now, before we can begin with jury selection I've got
20 some questions that I'm going to be asking you as a group.
21 And the purpose of these questions is to determine whether
22 or not there is any reason why any one of you jurors should
23 not be selected to participate in the trial of this
24 particular case.

25 And so as these questions are asked you're going to be

Jury qualification

1 asked to respond to them if they should apply to you. And
2 when you stand I'll simply make some inquiry, and you'll
3 simply be asked to respond to those questions in order for
4 me to determine whether or not you should or should not be
5 seated for service in the trial of this case.

6 So during the course of this process if you have some
7 reason why any one of you believe that you could not be
8 fair and impartial to both sides, I'm going to ask you to
9 let me know that before we begin with the jury selection
10 process.

11 Now, first of all, as I told you, the defendant, that
12 is the person who is accused of having committed the crimes
13 that are alleged in these indictments, is Jonathan Byers.

14 Mr. Byers, if you will, please stand and face the jury
15 panel so that they may see who you are.

16 (Whereupon, the defendant and Mr. Thompson stood.)

17 THE COURT: Mr. Byers is represented by Don Thompson,
18 his lawyer, who will be assisting him in the trial of this
19 case.

20 Thank you. You may be seated.

21 In this case there are three persons who are alleged
22 to be victims of the various offenses that are set forth in
23 these indictments. And those persons are, and I'm going to
24 ask them to stand too as your name is called -- are Delores
25 N. Perrin, Brandy D. Giles and Tammy Payne.

Jury qualification

1 (Whereupon, the victims stood.)

2 THE COURT: Thank you. You may be seated.

3 Presenting the case on behalf of the state are your
4 solicitor, Trey Gowdy, and Cindy Crick, an assistant
5 circuit solicitor for the 7th Judicial Circuit.

6 Now, in addition to those three ladies that were
7 introduced to you and in addition to the defendant who has
8 been introduced to you, there are other persons who are
9 potentially going to be called as witnesses during the
10 trial of this case.

11 I'm going to recite a list of these potential
12 witnesses, because after I recite this list I need for any
13 juror to stand who has any connection or who knows any of
14 these persons who have been identified for your benefit.

15 So the reason I am introducing all of these people,
16 and that includes the lawyers, the reason all of these
17 people are being introduced is for us to determine whether
18 or not you as a juror have any connection with any of these
19 persons whatsoever. Have you ever met them, do you know
20 them, are you related to them, do you have a business or a
21 social or a personal connection?

22 So as I recite the list, please stand if you have any
23 connection or know any of these individuals. And then once
24 I've concluded that recitation, I'll discuss with any
25 standing their connection.

Jury qualification

1 We have Captain Skinner with the Gaffney Police
2 Department; Michael Segina with the Gaffney Police
3 Department; Billy Odom with the Gaffney Police Department;
4 Stephen Green with the Gaffney Police Department; Officer
5 J. R. Hughes with the Gaffney Police Department; T. J.
6 Kennedy with the Gaffney Police Department; Officer Wilkins
7 with the Gaffney Police Department; Crystal Clear with the
8 Gaffney Police Department; Ron Ramsey with the Gaffney
9 Police Department; David Clary with the Gaffney Police
10 Department.

11 Let me ask you when y'all stand, if you know somebody,
12 I need for you to remain standing because I don't know who
13 you are.

14 Well, I'm sorry. We need to bring the witnesses up
15 here. They can't be sitting back there with the jury.

16 But I do want you to stand. If a witness is present,
17 you can stand so the jury can see who you are. These are
18 three of those whose names have been called.

19 Thank you. Be seated.

20 Also have Chief O'Donald with the Gaffney Police
21 Department; Officer Brian Green with the police department.

22 These following persons are employed with the South
23 Carolina Law Enforcement Division, often referred to as
24 SLED.

25 They are and they include Kenneth Bogan; Jennifer

Jury qualification

1 Clayton; Karonda Williams; Sheree Brown; Nikki Perry; Amy
2 Stephens; Tammy Bannister; Theresa Hooks; Brandon Williams;
3 Shana Sorrells; Janice Bryson; and Marilyn Fitzpatrick.

4 We also have an individual by the name of Melissa
5 Solesby, a resident of Gaffney; Debbie Giles, a resident of
6 Gaffney; Germer Byars, a resident of Gaffney; Marc Finley
7 with the Spartanburg County Sheriff's Department; Renee
8 Sherbert with the Greenville County Law Enforcement
9 Division; Officer Guyton with the Cherokee County Sheriff's
10 Department; Mike Fowlkes with the county sheriff's
11 department; Wes Foster with the county sheriff's
12 department; Sheila Hanvy, a resident of Gaffney.

13 And the following five individuals are employed at
14 Upstate Carolina Medical Center. They include Shirley
15 Thompson, a registered nurse; Otis Speight, a physician;
16 Dan Karns, a physician; Joyce Linnon, a registered nurse;
17 and a Dr. Corbett, also a physician.

18 We also have J. F. Kellett who is a captain with the
19 Greenville County Department of Public Safety; Ira Jeffcoat
20 with the state law enforcement; Selina Kinard with the
21 state law enforcement division; Amy Stephens with the state
22 law enforcement division; Rhonda Fields with the state law
23 enforcement division; Robin Taylor with the state law
24 enforcement division; and Laura Mills with the state law
25 enforcement division.

Jury qualification

1 MR. THOMPSON: Your Honor, did you ask about on my
2 list number eight?

3 THE COURT: And B. J. Dover with the Gaffney Police
4 Department.

5 All right. I think those are all the potential
6 witnesses. I need to know if any juror is connected in any
7 fashion or you know any of these individuals, please stand.
8 And also if you know any of those who have been alleged to
9 be victims in the case, if you know them, stand; or if you
10 know the defendant, please stand; or if you know any of the
11 lawyers, please stand; as well as any members of their
12 respective families of all of those who've been introduced
13 to you, please stand.

14 All right. Now, I'm going to start on the front row.
15 I'll start on the first seat, and I'll work across the row.
16 I'll go to the second row, and I'll work back a row at the
17 time.

18 If you will, please, give me your name and your juror
19 number, and then tell me how the question relates to you.

20 JUROR NO. 3: My name is Angela Allison. I'm Juror
21 No. 3. Three of the witnesses are coworkers with my
22 husband, one of which is my brother. Two of the ladies
23 have worked with me previously, and I know their family
24 members.

25 THE COURT: You're talking about two of the persons

Jury qualification

1 who are alleged to be the victims in this case?

2 JUROR NO. 3: Yes, sir.

3 THE COURT: Okay. Is there anything about those
4 connections that would have any impact upon your decision
5 in the case?

6 JUROR NO. 3: No, sir.

7 THE COURT: In other words, you could put aside any
8 connection that you had with any of those persons who have
9 been identified and not allow it in any way to influence
10 your decision?

11 JUROR NO. 3: Maybe not.

12 THE COURT: Okay. We'll excuse you from service in
13 the case.

14 Okay. That's Juror No. 3.

15 Don't leave yet though. Don't leave.

16 Yes, ma'am.

17 JUROR NO. 99: My name is Vicki Wood, Juror No. 99.
18 I'm in the same neighborhood as Ms. Payne. I've met her
19 one time. And I'm familiar with Mike Fowlkes. We go to
20 church together.

21 THE COURT: All right. Would either of those
22 circumstances have any bearing upon your decision in this
23 case?

24 JUROR NO. 99: No, sir.

25 THE COURT: All right. Thank you, ma'am. You may be

Jury qualification

1 seated.

2 Yes, ma'am.

3 JUROR NO. 102: Linda McFalls, Juror 102. I know Wes
4 Foster, just merely on like a business level.

5 THE COURT: Would it have any bearing upon your
6 decision in this case?

7 JUROR NO. 102: No, sir.

8 THE COURT: All right. Anybody else you know?

9 JUROR NO. 102: Sir?

10 THE COURT: Is there anyone else that you know?

11 JUROR NO. 102: No, sir.

12 THE COURT: All right. Thank you. Be seated.

13 All right. Next row, yes, sir.

14 JUROR NO. 15: Carl Childers, Juror 15. Ms. Brandy
15 Giles is my niece.

16 THE COURT: Brandy Giles is your niece?

17 JUROR NO. 15: Yes, sir.

18 THE COURT: All right. Well, we'll excuse you from
19 service in this case. But don't leave yet.

20 Is there anybody else on that row?

21 Yes.

22 JUROR NO. 23: Tammy Gaffney, Juror No. 23. Several
23 of the officers, just acquaintance with from school. Other
24 than that, that's all.

25 THE COURT: Is there anything about that connection

Jury qualification

1 that would affect your judgment in this case?

2 JUROR NO. 23: No, sir.

3 THE COURT: All right. Thank you, ma'am. You may be
4 seated.

5 All right. Next row. Yes, ma'am.

6 JUROR NO. 71: Donna Robertson, Juror No. 71. I
7 worked at Upstate Carolina Medical Center before. I worked
8 with some of the witnesses.

9 THE COURT: And would it have any bearing upon your
10 decision in the case?

11 JUROR NO. 71: No, sir.

12 THE COURT: All right. Thank you. You may be seated.
13 Yes, sir.

14 JUROR NO. 66: Mickey Phillips, No. 66. Captain
15 Skinner is my next-door neighbor, and I'm acquainted with
16 several of the police officers.

17 THE COURT: And would any of those circumstances
18 affect your judgment in the case?

19 JUROR NO. 66: No, sir.

20 THE COURT: Thank you. You may be seated.

21 Yes, ma'am.

22 JUROR NO. 107: Marsha Jolly, Juror 107.

23 THE COURT: Excuse me. Did you say 107?

24 JUROR NO. 107: 107, yes, sir. I know Captain Skinner
25 and some of the police officers because of my tenure with

Jury qualification

1 Bank of America.

2 THE COURT: And would those circumstances have any
3 bearing upon your decision in this case?

4 JUROR NO. 107: No, sir.

5 THE COURT: Thank you. Be seated.

6 All right. Next row.

7 JUROR NO. 1: Millie Alamgir, Juror No. 1. I know him
8 by his family. That's all.

9 THE COURT: You know who?

10 JUROR NO. 1: The family member.

11 THE COURT: You know the defendant's family?

12 JUROR NO. 1: Uh-huh.

13 THE COURT: All right. And how do you know them? Are
14 you friends with them, you just happen to know who they
15 are, or what's the connection?

16 JUROR NO. 1: Well, I have been around them, you know,
17 a lot and stuff.

18 THE COURT: All right. Would that connection have any
19 impact upon your decision in the case?

20 JUROR NO. 1: No.

21 THE COURT: You could be fair to both sides?

22 JUROR NO. 1: Yes.

23 THE COURT: All right. Thank you. You may be seated.

24 Yes, ma'am.

25 JUROR NO. 83: I'm Juror No. 83.

Jury qualification

1 THE COURT: Did you say 83?

2 JUROR NO. 83: Yes. I'm connected with the defendant
3 and his mother, and my husband's first cousin.

4 THE COURT: His mother and your husband are first
5 cousins?

6 JUROR NO. 83: Right.

7 THE COURT: Is there anything about that connection
8 that would affect your judgment in this case?

9 JUROR NO. 83: Uh-huh.

10 THE COURT: All right. We'll excuse you. You said
11 yes?

12 JUROR NO. 83: Yes.

13 THE COURT: Could you say it out loud so the court
14 reporter can take it down?

15 JUROR NO. 83: I said yes.

16 THE COURT: I just need instead of shaking your head,
17 I need for you to say yes or no to the questions.

18 JUROR NO. 83: Yes.

19 THE COURT: Okay. Thank you. You're excused from
20 service in this case.

21 Yes, sir.

22 JUROR NO. 7: My name is Barry Burrell, Juror No. 7.
23 And I did some electrical work for Mr. Gowdy.

24 THE COURT: And would that have any bearing upon your
25 decision in this case?

Jury qualification

1 JUROR NO. 7: No, sir.

2 THE COURT: Okay. Thank you. Be seated.

3 Yes, sir.

4 JUROR NO. 49: Andrew Lanier, Juror No. 49. And one
5 of the potential witnesses is a coworker of mine.

6 THE COURT: And which one is that?

7 JUROR NO. 49: Germer Byars.

8 THE COURT: You said the last name was Byars?

9 JUROR NO. 49: Byars, yes, sir.

10 THE COURT: Okay. Would that have any bearing upon
11 your decision in this case?

12 JUROR NO. 49: No, sir.

13 THE COURT: All right. Thank you. You may be seated.

14 Is there any member of the jury panel who is now or
15 ever has been employed as a law enforcement officer, as
16 well as do you have a family member who is now or has ever
17 been employed as a law enforcement officer?

18 That includes deputy sheriffs, city police officers,
19 town or municipal law enforcement agencies, state law
20 enforcement division, any corrections department or local
21 detention facility, any military police officer, any type
22 of law enforcement officer. If you have been or are now
23 employed or you have a family member who has been or is now
24 employed as a law enforcement officer, I would ask that you
25 please stand.

Jury qualification

1 All right. I'll start with the gentleman on the
2 front. Your name and number, please, sir.

3 JUROR NO. 22: David Ellis, No. 22. My uncle is a
4 captain on the reserve, Robert Ellis.

5 THE COURT: His last name is Ellis?

6 JUROR NO. 22: Uh-huh.

7 THE COURT: Okay. Would that have any bearing upon
8 your decision in this case?

9 JUROR NO. 22: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, sir.

12 JUROR NO. 7: My sister was a city policeman for
13 Spartanburg.

14 THE COURT: And you're Juror No. 7?

15 JUROR NO. 7: Yes, sir.

16 THE COURT: Would that have any bearing upon your
17 decision?

18 JUROR NO. 7: No, sir.

19 THE COURT: Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 23: Tammy Gaffney, No. 23. My niece is a
22 police officer, and I have a couple of nephews that are on
23 the reserve.

24 THE COURT: Here?

25 JUROR NO. 23: My nephew lives here in Jonesville and

Jury qualification

1 my niece is in Chester.

2 THE COURT: Okay. Would that have any bearing upon
3 your decision?

4 JUROR NO. 22: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 107: Marsha Jolly, Juror 107. My
8 son-in-law is an investigator with the state attorney's
9 office in Florida.

10 THE COURT: And would that have any bearing upon your
11 decision?

12 JUROR NO. 107: No, sir.

13 THE COURT: Thank you. Be seated.

14 Is any member of the jury panel a member of or do you
15 contribute time or money to any type of organizations that
16 might be described as law enforcement or victims' rights'
17 types of support organizations?

18 And those might include Mothers Against Drunk Drivers
19 or Citizens Against Violent Crime or the fraternal order of
20 police, the honorary sheriffs association, the troopers
21 association or any other similar type of organization. I
22 need to know if you are a member of such or if you
23 contribute time or money to any such organization. If so,
24 please stand.

25 (No response.)

Jury qualification

1 THE COURT: Okay. Now, I've told you something about
2 the case by reading the allegations set forth in each of
3 these indictments. The indictments are not evidence.
4 They're not proof of anything, but they set forth the
5 allegations that the state has made against the defendant.

6 And so the reason I read those indictments was so that
7 you could understand basically what the case was about so
8 that I could ask you some questions about it before the
9 jury was selected.

10 So now having that understanding, I need to know if
11 there is any member of the jury panel where you or an
12 immediate family member -- and let's define an immediate
13 family member as a parent, a spouse, a child or a
14 sibling -- a parent, spouse, child or sibling. I need to
15 know if you or any member of your immediate family has ever
16 been the victim of a burglary, a robbery or a criminal
17 sexual assault.

18 And I also need to know as you think about that
19 question, part of it also needs to be whether or not you or
20 any member of your immediate family has ever been accused
21 of committing a crime such as burglary or robbery or
22 criminal sexual assault. So I need to know if you or a
23 family member has ever been the victim of such an offense
24 or ever been accused of having committed such an offense.

25 Now, those of you, if you need to respond, I'm going

Jury qualification

1 to ask that you please stand. And if you prefer to provide
2 me with the information down here, you may do so. You
3 don't have to do so from where you're seated. But I need
4 for you to give me that information if that applies to any
5 juror.

6 All right. I've got -- is everybody standing? Does
7 everybody understand the question? Is everybody standing
8 in response to it? Looks like I've got nine. I've got
9 nine jurors standing.

10 All right. I'm going start with this lady right here.
11 And, if you would, give me your name and your juror number.
12 And then you can answer the question where you are, or you
13 can come down here and answer the question. Okay.

14 JUROR NO. 99: Vicki Wood, No. 99. My husband's
15 business was burglarized.

16 THE COURT: And is there anything about that fact that
17 would affect your judgment in the case?

18 JUROR NO. 99: No, sir.

19 THE COURT: Thank you. Be seated.

20 Yes, sir.

21 JUROR NO. 27: Shannon Guthrie, No. 27. I'll come up
22 there.

23 (Bench conference held off the record with juror and
24 counsel.)

25 THE COURT: Is there -- just a minute. Let me address

Jury qualification

1 this one first.

2 Is there anything about that circumstance that you
3 just provided me that would affect your judgment in this
4 case? And that's Juror No. 27.

5 JUROR NO. 27: No, sir.

6 THE COURT: All right. Thank you. Be seated.
7 Yes, ma'am.

8 (Bench conference held off the record with Jurors Nos.
9 54 and 104 and counsel.)

10 THE COURT: All right. Now, I've talked with three
11 jurors here at the bench. Those are Jurors 27, 54 and 104.

12 They have all indicated a particular circumstance.
13 They have all indicated it would not affect their judgment
14 in the case, and I'll share that with the lawyers once I
15 get through with the other jurors.

16 Now, I've got five other jurors standing, and I assume
17 that y'all do not need to discuss it with me here at the
18 bench, you're going to discuss it from where you are.

19 So I'll just start with this gentleman. Your name,
20 please, sir.

21 JUROR NO. 94: Virgil Wicks, Juror No. 94. My
22 mother's home was burglarized, and mine also, within a
23 year. And mine was burglarized about a month ago.

24 THE COURT: And would any of those facts have any
25 bearing upon your decision in this case?

Jury qualification

1 JUROR NO. 94: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 57: Gloria Moss, No. 57. My home was
5 burglarized.

6 THE COURT: And would that have any bearing upon your
7 decision in this case?

8 JUROR NO. 57: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 66: Ricky Phillips, No. 66. My house was
12 burglarized.

13 THE COURT: Would that have any bearing upon your
14 decision in this case?

15 JUROR NO. 66: No, sir.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 107: Marsha Jolly, Juror 107. My home was
19 burglarized.

20 THE COURT: Would that have any bearing upon your
21 decision in this case?

22 JUROR NO. 107: No, sir.

23 THE COURT: Thank you. Be seated.

24 JUROR NO. 7: Barry Burrell, No. 7. My home was
25 burglarized.

Jury qualification

1 THE COURT: And would that have any bearing upon your
2 decision in this case?

3 JUROR NO. 7: No, sir.

4 THE COURT: Thank you. You may be seated.

5 Now, in this case, as in many things that occur down
6 here at the courthouse, there may have been something that
7 appeared relating to the case on television or on the radio
8 or in a newspaper article.

9 I need to find out if any member of this jury panel
10 has been exposed at any time to any type of media coverage
11 that might have related to the case. In other words, have
12 you seen anything on the television about it; have you
13 heard anything on the radio about it; have you read
14 anything in the newspaper about it?

15 And I also need to know if you just discussed it with
16 anybody personally or you've heard people talking about it.
17 So I need to know if anyone has been exposed to any type of
18 information, media and otherwise, that might relate to this
19 particular case. If so, please stand.

20 All right. Everyone standing who has been exposed to
21 some type of information relating to the case?

22 All right. It appears I have eight jurors standing.
23 So, again, I'll ask your name and your number. And then
24 tell me from what source you have been exposed to
25 information.

Jury qualification

1 I'm not asking you and do not want you to tell me what
2 you've heard unless I ask you -- what you've heard, seen or
3 read. I just need to know whether or not you have been so
4 exposed. And apparently you have if you're standing. And
5 I need to know what source that information came from.

6 All right. I'll begin with you, ma'am.

7 JUROR NO. 99: Vicki wood, No. 99. From the Fox News.
8 I heard their reports that they had given out Ms. Payne's
9 incident, and the other two ladies.

10 THE COURT: All right.

11 JUROR NO. 99: And from our local newspapers, the
12 Spartanburg Herald, the Chronical and the Ledger. Read
13 about that.

14 THE COURT: All right. And how long ago were you
15 exposed to any information?

16 JUROR NO. 99: It was just the time the incidents
17 occurred, the dates, maybe the next day following that.

18 THE COURT: You think it was like --

19 JUROR NO. 99: In December.

20 THE COURT: In December of last year?

21 JUROR NO. 99: Yes, sir.

22 THE COURT: Okay. And is there anything specifically
23 that you remember about what you did see on television or
24 did read in the newspaper?

25 JUROR NO. 99: This --

Jury qualification

1 THE COURT: Just yes or no.

2 JUROR NO. 99: Yes, sir.

3 THE COURT: All right. Is there anything that you
4 remember that you believe would affect your ability to be
5 fair and impartial in this case?

6 JUROR NO. 99: I don't think so.

7 THE COURT: Do you believe that you would have the
8 ability to put that information aside and not to allow it
9 to influence your judgment in the case?

10 JUROR NO. 99: Yes, sir.

11 THE COURT: And what I mean by that -- and this is for
12 the benefit of you as well as the other jurors standing --
13 what I need to know is you may hear something about the
14 case, you may read something about the case. And it might
15 be something that you're also going to hear in the
16 courtroom. In other words, the same information is going
17 to be provided in court.

18 But it also might be that there was something on the
19 news or in an article or that you heard from somebody
20 that's not presented in court. And it might be something
21 that's not even accurate. It might be that it was not in
22 court because it wasn't accurate to begin with. You just
23 don't know.

24 So what I need to find out from each of you is whether
25 or not there is anything about any information that you've

Jury qualification

1 been exposed to that you could not put aside and not allow
2 it to influence your decision in the case.

3 So, ma'am, I'll ask you if you believe that you could
4 put aside anything that you've heard or seen about the case
5 and not allow it to influence your decision.

6 JUROR NO. 99: I could.

7 THE COURT: Okay. Thank you. That's Juror 99.

8 Yes, ma'am.

9 JUROR NO. 102: Linda McFalls, 102. T. V. and
10 newspapers.

11 THE COURT: And how long ago?

12 JUROR NO. 102: Well, during the time of the incident.

13 THE COURT: Back in December?

14 JUROR NO. 102: Right.

15 THE COURT: Nothing recent.

16 JUROR NO. 102: Well, this morning on the T. V. it was
17 just that this was going to be the case.

18 THE COURT: Okay. And is there anything about
19 anything that you've heard, seen or read about the case
20 that would affect your ability to be fair and impartial in
21 this case?

22 JUROR NO. 102: No, sir.

23 THE COURT: Thank you. You may be seated.

24 Yes, sir, Juror No. --

25 JUROR NO. 27: Shannon Guthrie, No. 27. Seen it on

Jury qualification

1 the news and in the newspaper.

2 THE COURT: And how long ago?

3 JUROR NO. 27: Back in December.

4 THE COURT: Sir?

5 JUROR NO. 27: December.

6 THE COURT: Okay. And is there anything about what
7 you've seen, heard or read that would affect your judgment
8 in this case?

9 JUROR NO. 27: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 23: Tammy Gaffney, No. 23. Also the T. V.
13 and the newspapers.

14 THE COURT: How long ago?

15 JUROR NO. 23: Back when it happened in December.

16 THE COURT: Nothing recent?

17 JUROR NO. 23: No.

18 THE COURT: Is there anything about what you've heard,
19 seen or read that would affect your ability to be fair in
20 this case?

21 JUROR NO. 27: No.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 82: Tammy Stevenson, Juror No. 82. The T.
25 V. and the newspaper back in December.

Jury qualification

1 THE COURT: And would any of that have any impact upon
2 your decision in the case?

3 JUROR NO. 82: No, sir.

4 THE COURT: Thank you. Be seated.
5 Yes, sir.

6 JUROR NO. 49: Andrew Lanier, No. 49. From the
7 television and newspapers back in December of '06.

8 THE COURT: Would any of that have any bearing upon
9 your decision in the case?

10 JUROR NO. 49: No, sir.

11 THE COURT: Thank you. Be seated.
12 Yes, ma'am.

13 JUROR NO. 45: Katherine Ker, No. 45. I read it in
14 the newspaper in December of '06.

15 THE COURT: Nothing recent?

16 JUROR NO. 45: No, sir.

17 THE COURT: Would any of that have any bearing upon
18 your decision in the case?

19 JUROR NO. 45: No, sir.

20 THE COURT: Thank you. Be seated.
21 Yes, ma'am.

22 JUROR NO. 30: Stephanie Harris, No. 30. I read a
23 newspaper article, and a little bit of hearsay.

24 THE COURT: All right. And is there anything about
25 what you read or heard that would have any impact upon your

Jury qualification

1 decision in the case?

2 JUROR NO. 30: No, sir.

3 THE COURT: Thank you. Be seated.

4 Is there any member of the jury panel who has already
5 formed an opinion as to what you believe the ultimate
6 decisions in this case ought to be based upon anything that
7 you've been exposed to this morning or based upon anything
8 that you've been exposed to related to the case that you
9 were exposed to prior to coming to court today?

10 I need to know if any juror based upon any
11 consideration or any reason has already formed an opinion
12 as to what you think the ultimate decisions in the case
13 ought to be. If so, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel that
16 knows of any reason whatsoever? In other words, there is
17 something that hasn't already been discussed, I've not
18 asked you about it and you've not told me about it, but you
19 have some reason why you think in your minds you could not
20 be fair and impartial to both sides in the case.

21 If you have such a reason, I would ask that you please
22 stand. I'm not going to ask you what it is. I just need
23 to know if you have one, any reason why you think you could
24 not be fair and impartial if seated as a juror in the case.
25 If so, please stand.

Jury qualification

1 (No response.)

2 THE COURT: All right. Any other questions requested
3 by the state?

4 MS. CRICK: Nothing from the state, Your Honor.

5 THE COURT: By the defendant?

6 MR. THOMPSON: Your Honor, in our defense request for
7 voir dire number two on the second page, the first two
8 questions, actually goes into what knowledge they have and
9 whether or not they have had any personal fear or concern
10 at the time concerning that knowledge.

11 I know they're testifying as to media coverage, those
12 last statements, said they have had media coverage. But we
13 don't know what the extent of that is.

14 THE COURT: You want to find out what they heard, saw
15 or read?

16 MR. THOMPSON: Yes, sir. And what their memory is and
17 whether or not they had any personal concern for their own
18 safety at that time.

19 THE COURT: Okay. Well, I'm not going to ask them
20 what they have heard, saw or read. They've already told
21 me. The ones that did said they were exposed to it, and
22 they told me it would not affect their judgment in the
23 case. But I'm not going to go any further about that.

24 I will ask. Does any member of the jury panel have
25 any concerns whatsoever about your serving as a juror in

Jury qualification

1 this case? In other words, is there any reason why if you
2 were called upon to serve you don't think you would be able
3 to properly serve as a juror and to render the verdict that
4 you believe to be an appropriate verdict in the case
5 because of some extraneous information or some concern that
6 you might have about the consequences of your decision?
7 Any juror have any concerns about serving as a juror in the
8 case?

9 (No response.)

10 MR. THOMPSON: Your Honor, my concern wasn't whether
11 they had concern serving as a juror in the case.

12 My concern was at the time they heard information --
13 and most of them said they heard it back in December of
14 2006 -- whether or not that caused them any personal fear
15 or concern or to take any actions they would not normally
16 take based on that information.

17 THE COURT: Okay. I am going to decline that request.

18 All right. Any other questions?

19 MS. CRICK: No, sir.

20 THE COURT: Let me see y'all just a minute.

21 (Bench conference held off the record.)

22 THE COURT: All right. Any other matters we need to
23 address before the selection process begins?

24 MS. CRICK: None from the state, Your Honor.

25 MR. THOMPSON: No, sir.

Jury qualification

1 THE COURT: All right. Ladies and gentlemen, each of
2 your names are typed on a slip of paper, and they're in a
3 little capsule. They're in this juror, the drum containing
4 all of your names.

5 The clerk draws your name out one at a time randomly.
6 As your name is called you're going to be asked to come
7 down here. If you'll just come straight down the aisle and
8 stand right directly in front of where Ms. McBee is seated,
9 turn and face the back of the room where you are now.

10 Each side has an opportunity to have you seated for
11 service in the case or to have you excused from service in
12 the case. If either side asks that you be excused from
13 service in the case, you'll simply go back and have a seat
14 where you are now. If both agree to have you seated for
15 service in the case, you will be having a seat over here in
16 the jury box to your right and to my left.

17 So if you'll please simply come forward as your name
18 is called you'll be instructed if you're to be seated for
19 service in the case or excused from service in this case.

20 THE CLERK: Juror 19, Danny Courtney.

21 What says the state?

22 MS. CRICK: Please present Mr. Courtney.

23 MR. THOMPSON: Seat the juror, please.

24 THE CLERK: Please take a seat in the jury box.

25 Juror 36, Mitchel Humprhies.

Jury qualification

1 What says the state?
2 MS. CRICK: Please present Mr. Humphries.
3 THE CLERK: What says the defense?
4 MR. THOMPSON: Seat the juror, please.
5 THE CLERK: Please take a seat in the jury box.
6 Juror 18, Essie Coleman.
7 What says the state?
8 MS. CRICK: Please present Ms. Coleman.
9 THE CLERK: What says the defense?
10 MR. THOMPSON: Seat Ms. Coleman, please.
11 THE CLERK: Please take a seat in the jury box.
12 Juror 43, Daniel Jones.
13 What says the state?
14 MS. CRICK: Please present Mr. Jones.
15 THE CLERK: What says the defense?
16 MR. THOMPSON: Seat Mr. Jones, please.
17 THE CLERK: Please take a seat in the jury box.
18 Juror 70, Danny Reynolds.
19 What says the state?
20 MS. CRICK: Please present Mr. Reynolds.
21 THE CLERK: What says the defense?
22 MR. THOMPSON: Seat Mr. Reynolds, please.
23 THE CLERK: Please take a seat in the jury box.
24 Juror 6, Steven Blanton.
25 What says the state?

Jury qualification

1 MS. CRICK: Please present Mr. Blanton.
2 THE CLERK: What says the defense?
3 MR. THOMPSON: Seat Mr. Blanton, please.
4 THE CLERK: Please take a seat in the jury box.
5 Juror 96, Clayton Williamson.
6 What says the state?
7 MS. CRICK: Please present Mr. Williamson.
8 THE CLERK: What says the defense?
9 MR. THOMPSON: Seat Mr. Williamson, please.
10 THE CLERK: Please take a seat in the jury box.
11 Juror 23, Tammy Gaffney.
12 What says the state?
13 MS. CRICK: Please seat Ms. Gaffney?
14 THE CLERK: What says the defense?
15 MR. THOMPSON: Challenge for cause.
16 THE COURT: Denied.
17 MR. THOMPSON: Excuse from the trial of this case,
18 please.
19 THE CLERK: You have been excused.
20 Juror 92, Eugene White.
21 What says the state?
22 MS. CRICK: Please present this juror.
23 THE CLERK: What says the defense?
24 MR. THOMPSON: Seat Mr. White, please.
25 THE CLERK: Please take a seat in the jury box.

Jury qualification

1 Juror 22, Richard Ellis.
2 What says the state?
3 MS. CRICK: Please present Mr. Ellis.
4 THE CLERK: What says the defense?
5 MR. THOMPSON: Seat the juror, please.
6 THE CLERK: Please take a seat in the jury box.
7 Juror 94, Virgil Wicks.
8 What says the state?
9 MS. CRICK: Please present Mr. Wicks.
10 THE CLERK: What says the defense?
11 MR. THOMPSON: Excuse Mr. Wicks from the trial of this
12 case, please.
13 THE CLERK: You have been excused.
14 Juror 49, Andrew Lanier.
15 What says the state?
16 MS. CRICK: Please present Mr. Lanier.
17 THE CLERK: What says the defense?
18 MR. THOMPSON: Again, challenge for cause.
19 THE COURT: Denied.
20 MR. THOMPSON: Excuse the juror from the trial of this
21 case, please.
22 THE CLERK: You have been excused.
23 Juror 60, Angela Oglesby.
24 What says the state?
25 MS. CRICK: Please present Ms. Oglesby.

Jury qualification

1 THE CLERK: What says the defense?

2 MR. THOMPSON: Seat Ms. Oglesby, please.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 16, Timmy Childers.

5 What says the state?

6 MS. CRICK: Please excuse Mr. Childers from service in

7 this case.

8 THE CLERK: You have been excused.

9 Juror 27, Shannon Guthrie.

10 What says the state?

11 MS. CRICK: Please present Mr. Guthrie.

12 THE CLERK: What says the defense?

13 MR. THOMPSON: Challenge for cause.

14 THE COURT: Denied.

15 MR. THOMPSON: Excuse from the trial of this case,

16 please.

17 THE CLERK: You have been excused.

18 Juror 1, Millie Alamgir.

19 What says the state?

20 MS. CRICK: Please excuse Ms. Alamgir.

21 THE CLERK: You have been excused.

22 Juror 104, Karen Earls.

23 What says the state?

24 MS. CRICK: Please excuse Ms. Earls from service in

25 this case.

Jury qualification

1 THE CLERK: You have been excused.

2 Juror 66, Ned Phillips.

3 What says the state?

4 MS. CRICK: Please present Mr. Phillips.

5 THE CLERK: What says the defense?

6 MR. THOMPSON: Please excuse Mr. Phillips from the

7 trial of this case.

8 THE CLERK: You have been excused.

9 Juror 82, Tammy Stevenson.

10 What says the state?

11 MS. CRICK: Please present Ms. Stevenson.

12 THE CLERK: What says the defense?

13 MR. THOMPSON: Again, would challenge for cause.

14 THE COURT: Denied.

15 MR. THOMPSON: Excuse the juror from the trial of this
16 case, please.

17 THE CLERK: You have been excused.

18 Juror 61, Casandra Owens.

19 What says the state?

20 MS. CRICK: Please present Ms. Owens.

21 THE CLERK: What says the defense?

22 MR. THOMPSON: Excuse the juror from the trial of this
23 case, please.

24 THE COURT: You have been excused.

25 Juror 103, Steven McCraw.

Jury qualification

1 What says the state?

2 MS. CRICK: Please present Mr. McCraw.

3 THE CLERK: What says the defense?

4 MR. THOMPSON: Excuse Mr. McCraw from the trial of

5 this case, please.

6 THE CLERK: You have been excused.

7 Juror 30, Stephanie Harris.

8 What says the state?

9 MS. CRICK: Please present Mr. Harris.

10 THE CLERK: What says the defense?

11 MR. THOMPSON: Challenge for cause.

12 THE COURT: Denied.

13 MR. THOMPSON: Excuse Ms. Harris from the trial of

14 this case, please.

15 THE CLERK: You have been excused.

16 Juror 40, Tina Johnson.

17 What says the state?

18 MS. CRICK: Please present Ms. Johnson.

19 THE CLERK: What says the defense?

20 MR. THOMPSON: Seat Ms. Johnson, please.

21 THE CLERK: Please take a seat in the jury box.

22 Juror 105, Janice Littlejohn.

23 What says the state?

24 MS. CRICK: Please present Ms. Littlejohn.

25 THE CLERK: What says the defense?

Jury qualification

1 MR. THOMPSON: Seat Ms. Littlejohn, please.

2 THE CLERK: Please take a seat in the jury box.

3 THE COURT: This will be for the alternates.

4 THE CLERK: Juror 44, Tommy Jones. What says the
5 state?

6 MS. CRICK: Please present Mr. Jones.

7 THE CLERK: What says the defense?

8 MR. THOMPSON: Seat Mr. Jones, please.

9 THE CLERK: Please take a seat in the jury box.

10 THE COURT: This will be for the second alternate.

11 THE CLERK: Juror 45, Katherine Ker.

12 What says the state?

13 MS. CRICK: Please present Ms. Ker.

14 THE CLERK: What says the defense?

15 MR. THOMPSON: Challenge for cause.

16 THE COURT: Denied.

17 MR. THOMPSON: Excuse the juror from the trial of this
18 case, please.

19 THE CLERK: You have been excused.

20 Juror 7, Barry Burrell.

21 What says the state?

22 MS. CRICK: Please present Mr. Burrell.

23 THE CLERK: What says the defense?

24 MR. THOMPSON: Excuse Mr. Burrell from the trial of
25 this case, please.

Jury qualification

1 THE CLERK: You have been excused.

2 Juror 57, Gloria Moss. What says the state?

3 MS. CRICK: Please present Ms. Moss.

4 THE CLERK: What says the defense?

5 MR. THOMPSON: Seat the juror, please.

6 THE CLERK: Please take a seat in the jury box.

7 (Whereupon, a jury was impanelled.)

8 THE COURT: All right. Let me ask those who have been
9 selected to please go with a bailiff to a jury room. I'll
10 bring you back in just a few minutes.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Any matters that need to be addressed
14 regarding jury selection by the state?

15 MS. CRICK: None from the state, Your Honor.

16 THE COURT: By the defendant?

17 MR. THOMPSON: None other than I have already put on
18 the record, Your Honor.

19 (Whereupon, the remaining members of the jury venire
20 were excused.)

21 THE COURT: All right. Have the record reflect that
22 the question that was asked of the panel as to whether any
23 of the jurors or any members of their immediate family had
24 ever been the victim of or been accused of having committed
25 the offenses such as burglary, robbery or assault, nine

1 jurors stood in response to that question.

2 Three of those jurors came to the bench to provide me
3 with their circumstances relating to that question. Three
4 of those jurors, those being Jurors 27, 54 and 104,
5 indicated to the Court a relative who had been accused of
6 or convicted of an offense that would fit into the
7 categories of these.

8 That information was shared with the lawyers prior to
9 the jury selection process taking place.

10 All right. Any other matters we need to address
11 before the jury is sworn?

12 MS. CRICK: Your Honor, none from the state, Your
13 Honor.

14 MR. THOMPSON: Your Honor, I don't know if you want to
15 address it at this time or not.

16 There was an order ordering Mr. Byers to be evaluated
17 as to whether or not he was competent to stand trial. We

18 received that report. They indicate that he is competent.
19 I don't know if that's something you want to deal with at
20 this time or not.

21 THE COURT: Yeah. Let's do deal with that at this
22 time.

23 MR. THOMPSON: All right. In addition to that I will
24 hand up a copy of -- I believe this first one is the
25 competency, my copy that they sent me.

1 In addition to that, Your Honor, I asked for him to
2 also be evaluated as to criminal responsibility and his
3 capacity to conform. And they've indicated he is
4 responsible and does have the capacity to conform his
5 conduct.

6 (Pause.)

7 THE COURT: All right. It appears that the defendant
8 was ordered for an evaluation at the Department of Mental
9 Health as to the capacity or competency to stand trial
10 pursuant to Section 44-23-410.

11 It appears that that evaluation was performed. And
12 based upon the record and report submitted it appears
13 Dr. Michael Feralto, an attending psychiatrist with the
14 Department of Mental Health, determined based upon his
15 report that the defendant is competent to stand trial, that
16 he does have a factual and a rational understanding of the
17 proceedings against him and he also has the capacity to
18 assist in his own defense; and therefore he is competent.

19 Mr. Thompson, do you have any reason to believe that
20 the defendant is not presently competent to stand trial?

21 MR. THOMPSON: No, sir.

22 THE COURT: Okay. All right. Any other matters we
23 need to address before the jury is sworn?

24 MS. CRICK: No, sir, not from the state, Your Honor.

25 MR. THOMPSON: None.

1 THE COURT: All right. Bring the jury in and ask
2 Ms. Littlejohn, Ms. Littlejohn, to take the foreperson's
3 seat.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, we are
7 ready to begin with the trial of the case for which you
8 were selected.

9 And, Ms. Littlejohn, I'm going to ask you to serve as
10 the foreperson of the jury. Now, as the foreperson you
11 will have three specific duties that none of the other
12 jurors will have.

13 Number one, you'll be asked to serve as the
14 spokesperson for the jury. And so if during the trial
15 something arises that needs to be brought to my attention,
16 if you'll let the bailiff know, he'll let me know, and I'll
17 address any question or problem that you or a fellow juror
18 may have.

19 Secondly, you're going to be asked to preside over the
20 jury deliberations when the times comes. That of course
21 won't be until the end of the trial after all of the
22 evidence has been received and I have instructed you on the
23 law that's applicable in the case.

24 But when the time comes for jury deliberations you'll
25 be called upon to preside over that process in the jury

1 room simply to ensure that those deliberations are carried
2 out in some orderly fashion.

3 And, thirdly, you'll be asked to actually write the
4 verdict or the decisions of the jury. And you'll do that
5 on a verdict form that I'll provide you at the trial's
6 conclusion on which you will indicate the jury's unanimous
7 decisions as to each of the separate indictments.

8 Now, the foreperson has those specific duties that I
9 have just indicated, but that doesn't mean that she's any
10 more important than any of you other jurors, because the
11 decision of a jury is the unanimous consensus opinion of
12 all 12 jurors. And so all of you are going to have an
13 equal say and equal voice and an equal vote in what the
14 ultimate decisions will be in this case.

15 Someone simply has to be delegated those
16 responsibilities that I have just indicated, and I have
17 ~~delegated those to Ms. Littlejohn in appointing her as the~~
18 foreperson. But all of you jurors are equally important so
19 far as the ultimate decisions are concerned, because, as
20 I've stated, any decision or any verdict has to be
21 unanimous. All 12 must be in agreement.

22 Now, Mr. Jones and Ms. Moss, each of you have been
23 selected as alternate jurors. And the function of an
24 alternate juror is to take the place of one of the original
25 12 if for some reason during this trial one or more of

Jury sworn

1 these original 12 jurors cannot continue to serve for some
2 reason. And if one or more are called away because of an
3 emergency or something like that and they are not going to
4 be able to continue to serve, then in that event one or
5 both of you would be called upon to take that or those
6 jurors' places. And in that event you would become the
7 12th juror.

8 So it is important that you pay just as careful
9 attention as we ask of all of the jurors in the case,
10 because it does occur from time to time for one reason or
11 another one of the original 12 may be called away. In that
12 event one or both of you would be called upon to
13 participate.

14 So we do appreciate your participation as alternate
15 jurors just as we appreciate the participation of all of
16 you jurors who have been selected for the purpose of
17 deciding the verdicts in this particular case.

18 You may swear the panel.

19 (Whereupon, the jury was duly sworn.)

20 THE COURT: Ladies and gentlemen, as you know, you've
21 been selected to decide the verdicts in the case of the
22 State vs. Jonathan Leon Byers.

23 As I previously told you, Mr. Byers is accused of
24 having committed ten separate and distinct criminal
25 offenses. They are alleged to have arisen out of one

1 particular event, or at least course of events. There may
2 be more than one offense for a particular date. But
3 through the course of events Mr. Byers has been charged
4 with ten separate and distinct offenses.

5 He's been charged with three counts of burglary in the
6 first degree which relates to three separate dates, those
7 being December the 6th, December the 11th and December the
8 13th of 2006.

9 There are three separate persons alleged to be the
10 victims of those burglaries in the first degree. They are
11 Delores Perrin, Brandy Giles and Tammy Payne.

12 Mr. Byers is also accused of having committed three
13 separate criminal sexual conduct in the first degree
14 offenses, those offenses again alleged to have occurred on
15 December the 6th, December the 11th and December the 13th.
16 Again, those persons alleged to be the victims of that
17 criminal sexual conduct are Deloris Perrin, Brandy Giles
18 and Tammy Payne.

19 And then the three final indictments allege -- I'll
20 take that back. There are actually four additional
21 indictments. And they allege one count of armed robbery
22 and three counts of possession of a firearm during the
23 commission of a violent crime.

24 The indictment alleging armed robbery alleges that
25 offense occurred on December the 13th, the victim being

1 Tammy Payne. And then we have three indictments charging
2 possession of a firearm during the commission of a violent
3 crime. And those offenses are alleged to have occurred on
4 December the 6th, December the 11th and December the 13th
5 of 2006. And they allege that the defendant did possess or
6 visibly display a firearm during the commission of a
7 violent crime, that violent crime being criminal sexual
8 conduct in the first degree and/or burglary in the first
9 degree.

10 Now, as to each of those indictments, as to all of the
11 allegations and the charges contained therein, the
12 defendant has entered a plea of not guilty. And, as I told
13 you, that plea of not guilty has placed upon the state the
14 burden of proving the allegations that they set forth in
15 each of these indictments, the burden of proving each of
16 the essential elements that make up the crimes that are
17 alleged against this defendant; and therefore the burden is
18 upon the state to establish the defendant's guilt to the
19 satisfaction of you 12 jurors beyond a reasonable doubt
20 before any verdict of guilty could be returned as to any of
21 the indictments.

22 The burden is never upon a person who is accused of a
23 crime to prove that they are not guilty or to prove that
24 they are innocent. The burden is always upon the state
25 because they have brought the charge against another to

1 establish that person's guilt beyond a reasonable doubt.

2 Every person accused of a crime is presumed to be
3 innocent from that the time that they are placed under
4 arrest and throughout the course of the criminal process
5 and even throughout the course of the actual trial in the
6 case.

7 That presumption of innocence will be with Mr. Byers
8 even at the time that you go back into your jury room to
9 begin with your deliberations in this case. And that
10 presumption of innocence will be with him in that jury
11 room, and it will remain with him forever unless you 12
12 jurors determine that his guilt has been proven beyond a
13 reasonable doubt as it relates to a particular charge.

14 So if after you've carefully considered all the
15 evidence in the case and after considering that evidence
16 you've decided the facts as it relates to a particular
17 indictment and you apply the law as it relates to that
18 indictment, if you determine that the defendant's guilt has
19 been proven beyond a reasonable doubt, then he would no
20 longer be entitled to that presumption of innocence as it
21 relates to that particular charge. But it's only if,
22 unless and until you are satisfied of his guilt beyond a
23 reasonable doubt that that presumption of innocence would
24 no longer be applicable.

25 Now, as I told you, these indictments, you'll have

1 them in the jury room when the time comes for
2 deliberations, because these indictments are going to be
3 serving as the verdict forms. And so there are 11 separate
4 charges. And you'll be arriving at a verdict on each one.
5 And the forelady will be asked to indicate the jury's
6 decision as to that separate indictment on the back of that
7 particular indictment.

8 But other than serving as the verdict forms in this
9 case, these indictments serve no purpose so far as you
10 jurors are concerned. They're not evidence of anything;
11 they're not proof of anything. They simply set forth the
12 charge that the state has brought against the defendant, a
13 charge that the state has the burden of proving beyond a
14 reasonable doubt.

15 Now, the way the trial will proceed is in just a few
16 minutes the lawyers are going to address you in what are
17 called opening statements. There are two occasions in the
18 trial of a case where lawyers are permitted to address the
19 jury. And that is at the beginning of the trial before any
20 evidence has been introduced and then again at the
21 conclusion of the trial after all of the evidence has been
22 received.

23 Keep in mind however that the statements of the
24 lawyers are not evidence in the case. And that's because
25 the lawyers aren't witnesses to anything. There's nothing

1 that they're going to be telling you that they know about
2 this case of their own personal knowledge or experience.

3 They're not going to take the witness stand and
4 testify under oath and be subject to direct and
5 cross-examination as each of the witnesses will be. And
6 that's why what they tell you in their statements is not
7 evidence. And you can't consider it as evidence. But you
8 should listen what they have to say because those
9 statements do serve a purpose.

10 The opening statements will serve to provide you with
11 a basic understanding as to what this case is about from
12 the perspective of each side so that you'll have some
13 context in which to place the evidence that we will be
14 receiving shortly thereafter.

15 The closing statements occur after all of the evidence
16 has been received. And, again, those statements are not
17 evidence. But it does permit the lawyers an opportunity to
18 discuss with you the evidence that you have seen and heard
19 during the trial of the case. And through that discussion
20 each will be trying to persuade you or to convince you that
21 that evidence does or does not support a particular
22 decision.

23 Now, it's in between those opening and the closing
24 statements of the lawyers that we actually receive the
25 evidence upon which you will base your decision.

1 As you know the state has the burden of proof. So the
2 state will go forward first in its presentation of
3 evidence.

4 After the state has concluded with its presentation of
5 evidence the defendant has the same opportunity to testify
6 and to present other evidence in the trial of the case.
7 But understand that a defendant in a criminal trial is
8 never under an obligation to testify or to present
9 evidence, because the burden is not upon the defendant to
10 prove that he is not guilty or to prove that he is
11 innocent, because in many cases that might not even be
12 possible,

13 And so a jury may not consider the fact that a
14 defendant does not testify or produce evidence, because he
15 has no burden to prove anything in the case. In some cases
16 he might not be able to. And so that's not a factor that
17 ~~may be considered in any fashion whatsoever by the jury in~~
18 your deliberations or in your determination as to whether
19 or not his guilt has been proven beyond a reasonable doubt.
20 A defendant however is afforded an opportunity to present
21 evidence should he or she wish to do so.

22 After all of that evidence has been received and after
23 you've heard the final summations of the lawyers, I will
24 then instruct you fully on the law as it relates to these
25 crimes and to the criminal law generally.

1 Then you'll be asked to go back into the jury room and
2 to begin with your deliberations in this case. And through
3 that process you 12 jurors will carefully examine all of
4 the evidence. You will determine what is the most credible
5 evidence and believable evidence.

6 It's your prerogative to assess the credibility and
7 the believability of witness testimony, and so it's
8 important that you give every witness the same degree of
9 attention as those witnesses testify so that you'll be in a
10 position to properly evaluate that witness' testimony and
11 each witness' testimony when you go back to deliberate.
12 But you'll decide what the facts are based upon your
13 consideration of all of the evidence.

14 Once you decide the facts, you'll then apply the law
15 as I'll have provided it to you. And you will determine
16 whether or not the defendant's guilt has been proven beyond
17 a reasonable doubt. If it has, your verdict is guilty. If
18 it has not, then your verdict is not guilty.

19 Now, all that we ask for you to do is to pay careful
20 attention throughout the course of the trial. Give every
21 witness the same degree of attention. Give all of the
22 evidence fair consideration. Listen to the lawyers when
23 they give you their statements and listen to the Court when
24 the Court provides you with the law that you are to apply
25 in the case.

1 It's also important that you keep an open mind
2 throughout the trial. That just means you are not to begin
3 making up your minds or formulating your opinions as to
4 what you think the ultimate decisions in the case ought to
5 be until after all of the evidence has been received and I
6 have instructed you on the law and I've asked you to go
7 back into the jury room to begin with your deliberations in
8 the case. That is the process that is designed for you 12
9 jurors to arrive at fair and just decisions in this case.

10 Now, as you know, there are separate indictments
11 charging separate offenses. All of the evidence is going
12 to be received during this trial, but you are to consider
13 each of the indictments separately. In other words, you'll
14 be rendering separate and distinct verdicts as it relates
15 to each of the separate indictments.

16 In this case your verdicts may be the same, they may
17 be different. That will depend upon your determination of
18 fact as it relates to that particular charge and then your
19 application of the law that I will have provided you.

20 So I do want to thank you in advance for your
21 participation, as well as your careful attention. Please
22 give the lawyers your attention now as they give you their
23 opening statements.

24 Solicitor.

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

Opening statements

1 December the 6th of 2006 Delores Perrin, the young
2 lady in the middle with the blue and white dress on, is
3 asleep in her own bed in the sanctuary of her own home.

4 She feels something touching her shoulder. She wakes
5 up and there's a man standing beside her bed with a gun.
6 The man tells her to take her clothes off. She asks why,
7 says why are you doing this. He tells her to shut up, this
8 is making me nervous, take your clothes off.

9 He's got a gun in his hand. She complies. He rapes
10 her. While he's raping her she asks why, why me, and he
11 tells her again to shut up. She knows he had a gun. She
12 remembers he had a mask covering part of his face. And
13 after he rapes her, he leaves.

14 December the 11th of 2006, Brandy Giles, who is the
15 young lady sitting closest to you in the blue and green
16 dress, has left a friend's house at 6:00 o'clock in the
17 morning.

18 She's going to her house. She is carrying a soft
19 drink bottle in her hand. She comes through the front door
20 and walks through the den into the kitchen. And she's
21 holding the drink bottle in her hand. And in her kitchen
22 is a man with a gun.

23 And something is partially covering his face just like
24 it was at Delores Perrin's house. And in the kitchen
25 Brandy Giles comes face to face with a man with a gun. And

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1 she drops the drink bottle. And he makes her go into the
2 bedroom. And at gunpoint he rapes her vaginally, he rapes
3 her anally and he forces her at gunpoint to perform oral
4 sex.

5 And she asks why. And she pleads with him, and she
6 asked him not to. But when he gets through raping her he
7 leaves. And she waits just a moment to make sure he's
8 gone. And she throws on a housecoat and goes to find her
9 mom.

10 On December the 13th Tammy Payne who is sitting
11 furthest away from you in the dark-colored pants and the
12 stripe top is at home in her bed in the sanctuary of her
13 own home with her children in the room beside her. And she
14 feels someone lifting the covers off of her as she is
15 asleep in the bed. And she wakes up to see a man with a
16 gun in her bedroom, his face partially covered.

17 She tries to reach for a cell phone and he takes it.
18 He's got a gun in his hand. And he begins to rape her.
19 Her children are in the room next door. And she says why,
20 why me. And the rapist says I'm just going -- I apologize
21 for using this word, but I'm going to use the word that the
22 rapist used -- I'm just going to fuck you and leave. And
23 despite her pleas to leave, despite her pleas not to do it,
24 he rapes her.

25 Three different women on three different nights in one

Opening statements

1 sitting. Despite the differences, three women who did not
2 know each other, three different nights, three different
3 homes, despite the differences, ladies and gentlemen, you
4 will see during the course of this trial that there are
5 similarities. There are similarities despite the fact that
6 three women who are unrelated to one another were picked.

7 All three homes was a woman with no man at home.
8 There was no man living at the house. In all three cases
9 the rapist had a gun, and in all three cases these three
10 women can describe to you the clothing that he had on, the
11 covering that he had on his face.

12 In all three cases the rape took place during what we
13 sometimes refer as the quiet hours between midnight and
14 6:00 or 7:00 in the morning. No man in any of the homes.

15 All three women immediately report it, immediately
16 either to a mom or to a best friend or to the police. All
17 three women go to Upstate Carolina to have a sex assault
18 kit performed, which is an invasive investigative
19 procedure. All three.

20 None of the three have ever seen the man that raped
21 them before or can tell the police his name. Physical
22 characteristics, that he's armed, clothing, something can
23 see in his face, but they don't know the man. All three
24 cooperate with law enforcement. All three submit to an
25 invasive medical procedure. And all three, ladies and

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1 gentlemen, are going to come before you this afternoon and
2 have to relive for you what is no, undoubtedly a woman's
3 worst nightmare.

4 You know, when Tammy Payne who was the last of the
5 three to be raped, she asked him why, and he says I am just
6 going to fuck you and leave. That's not quite right.

7 It's not quite that simple, Mr. Defendant, because he
8 left something behind. It's called D. N. A. In all three
9 of these women who submitted to this invasive medical
10 investigative procedure, part of that procedure is to see
11 whether there is semen that was left in any of the orifices
12 of the body -- the mouth, the anus or the vagina. In all
13 three the presence of semen was detected. And all three
14 match one another and all three match the defendant.

15 You will hear, ladies and gentlemen, none of these
16 three women have ever met Jonathan Byers, know Jonathan
17 Byers. They don't know one another. They did not know the
18 name of the person who assaulted them. Yet his D. N. A. is
19 in all three of them when they have the rape assault kit
20 done.

21 Ladies and gentlemen, Judge Cole is the judge of the
22 law. He will give you the law as he just did. He will
23 give it to you at the end of this trial. He is the judge
24 of the law in this case, but you are judges too. You don't
25 have on a black robe. This may be the only time you'll

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1 ever come inside of the Cherokee County Courthouse or ever
2 sit in this jury box. But you are judges too. You are the
3 judges of the facts in this case.

4 With respect to criminal sexual conduct, Judge Cole
5 will tell you I believe at the end of this case it's what
6 we use. In our common vernacular. It's rape. It is
7 forcibly forcing a woman to have sex, in this case at gun
8 point.

9 This defendant is charged with three counts of that,
10 one for each one of the victims that sits over here. In
11 all three cases a gun was used. So there are three cases
12 of possession of a firearm. In all three cases what the
13 law calls a burglary, some people use the expression home
14 invasion. It's actually legally a burglary, which is
15 coming into someone's house without permission with the
16 intent to commit a crime. In this case he was armed. And
17 armed robbery is the taking of Tammy Payne's cell phone at
18 gunpoint so she could not call the police.

19 Those are the charges before you. That's what you
20 will decide as judges of the facts. And I'll tell you the
21 only thing I have ever told a jury in 15 years of being a
22 prosecutor. Be fair to the defendant; be fair to the
23 state.

24 It's often said that this is a defendant's day in
25 court. It's also these three women's day in court for what

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1 happened to them on December the 6th, the 11th, the 13th of
2 December.

3 When you retire to the jury box when this is all over
4 and you consider all of the testimony and you examine all
5 of the exhibits, I want you to return a verdict that speaks
6 the truth, that tells the truth of what happened.

7 And despite the fact that this defendant told Tammy
8 Payne I'm just going to "F" you and leave, I believe you
9 will conclude that he left enough in all three of these
10 sexual assaults for you to find him guilty beyond a
11 reasonable doubt.

12 THE COURT: Mr. Thompson.

13 MR. THOMPSON: Good morning, ladies and gentlemen, or
14 good afternoon by now.

15 I'm not going to be as long as my colleague, Mr.
16 Gowdy, was. One thing he did say toward the end of it I
17 want to make sure y'all understand. He said it's also
18 these three ladies' day in court. It is their day in
19 court.

20 But they're not on trial. Mr. Byers is the only man
21 in this courtroom that's on trial. Whether or not his
22 guilt or innocence is determined deals with him, not with
23 these three ladies.

24 I want you to listen carefully, very, very carefully,
25 to the evidence in this case. The state has the burden of

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1 proof. And unless something has changed since last week
2 that I am not aware of, you're not going to hear a single
3 one of these ladies say that that's the man that did that
4 to them. No. You're not going to hear a single one of
5 them say that.

6 First of all, December the 6th, December the 11th,
7 December the 13th, I wasn't there. I don't know what
8 happened. Judge Cole wasn't, the attorneys weren't there.
9 I wasn't there. I don't know what happened. I don't know
10 whether this happened or not. Okay. At this point in time
11 we can only assume it did.

12 I don't know what the circumstances were; I don't know
13 what the details were. The ladies are going to tell you
14 from the witness stand their side of the story. But I want
15 you to realize not one of them is going to point at
16 Mr. Byers and say that's the man that did it to me.

17 You're going to find no fingerprint evidence that he
18 was there. In fact, the fingerprint evidence the state
19 found belonged to somebody else.

20 The only evidence the state is going to put up to tie
21 Mr. Byers to this incident is D. N. A. evidence, okay, D.
22 N. A. evidence. I want you to listen very, very careful to
23 the D. N. A. testimony.

24 There's going to be some markers in the D. N. A. that
25 matches Mr. Byers. I think when you listen to the

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1 testimony you're going to find there's some D. N. A.
2 markers in the D. N. A. that two of these ladies match each
3 other with those markers.

4 Listen carefully to the D. N. A. evidence. That's
5 what the state has. And you've got to determine if that
6 evidence is sufficient to convict this man for burglary and
7 rape or criminal sexual conduct. And with that I'm going
8 to sit down. Thank you.

9 THE COURT: All right. Ladies and gentlemen, because
10 of the hour, we're going to recess for lunch.

11 Let me caution you before I let you go to lunch that
12 during the trial of this case you are not permitted to talk
13 about the case with anybody. That means no family members,
14 no friends, no, not even your fellow jurors. You're not
15 permitted to talk about this case until you are involved in
16 jury deliberations. And that, as you know, won't be until
17 after all of the evidence has been received and after I've

18 given you the law and asked you to begin those
19 deliberations. So now that we're going to break for lunch
20 keep in mind you cannot discuss the case with any person
21 whatsoever in any fashion whatsoever.

22 Also, you must avoid the possibility that you will be
23 exposed to information about the case or that might be
24 relating to the case by other people talking about the
25 case. So when you leave the courthouse, what I want you to

1 do is leave the courthouse property directly and go
2 wherever you're going for lunch. Or in the evening when
3 you go home, go directly home.

4 Don't stand out in the parking lot or on the sidewalk
5 or the steps or smoke a cigarette out there, because there
6 might be somebody out there talking about a case. It might
7 not even be this one. But you think it is, and you might
8 hear something that might influence your judgment in this
9 case. And that's got to be avoided.

10 Your verdicts and your decisions have to be based
11 solely upon what you see and hear during the trial of this
12 case in the courtroom and the law that I will provide you.
13 You're not permitted to allow yourselves to be influenced
14 by any outside consideration.

15 And therefore in addition to not having any
16 discussions about the case, you also cannot permit
17 yourselves to be exposed to any type of media coverage that
18 relates to the case. So don't watch anything that might be
19 on the television about the case; don't listen to anything
20 that might come across the radio about the case; do not
21 read anything that might be in the newspaper that relates
22 to the case.

23 Again, what somebody else says it is might very well
24 be wrong as to what actually occurred. And that's why you
25 can't allow yourselves to be influenced by this

1 information. And that's why you can't allow yourselves to
2 be exposed to any type of media coverage in addition to no
3 discussion or other exposure to conversations.

4 So with that caution in mind, do have a good lunch.
5 I'm going to ask that you please report back to your jury
6 room at 2:30 this afternoon. At 2:30 this afternoon report
7 back to the jury room.

8 As you leave you'll be leaving through the back of the
9 courtroom. You'll go down the back stairs which will take
10 you outside the entrance, the side entrance of the
11 courthouse, which is directly across the street from the
12 church.

13 When you come back that's the entrance that you will
14 go to in order to come back to your jury room. So if
15 you're not sure about how to get there, talk to the
16 bailiff. But you will leave through the back of the
17 ~~courtroom to the side entrance of the courthouse.~~ When you
18 come back, come to that same entrance. Someone will be
19 there to let you into the courthouse. And you'll come
20 straight back up the steps and straight to your jury room.

21 Okay. Have a good lunch. We'll see you at 2:30.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Are there any matters that need to be
25 addressed before we recess?

1 MS. CRICK: None from the state, Your Honor.

2 MR. THOMPSON: No, sir.

3 THE COURT: Court is in recess until 2:30.

4 (Whereupon, a recess was taken.)

5 (Photographs marked State's Exhibits Nos. 1 through 32
6 for Identification; shoe print impression marked State's
7 Exhibit No. 33 for Identification; shoe print standard
8 marked State's Exhibit No. 34 for Identification; bag with
9 t-shirt marked State's Exhibit No. 35 for Identification;
10 nylon jacket marked State's Exhibit No. 36 for
11 Identification; bed sheet cutting marked State's Exhibit No.
12 37 for Identification; sexual assault kit for Delores Perrin
13 marked State's Exhibit No. 38 for Identification; sexual
14 assault kit for Brandy Giles marked State's Exhibit No. 39
15 for Identification; sexual assault kit for Tammy Payne
16 marked State's Exhibit No. 40 for Identification;
17 defendant's buccal swab marked State's Exhibit No. 41 for
18 Identification.)

19 THE COURT: Any matters to address before the jury is
20 brought in?

21 MS. CRICK: No, sir.

22 MR. THOMPSON: None.

23 THE COURT: Okay. Bring them in.

24 (The following takes place in the presence of the
25 jury.)

Delores Neal Perrin
Direct examination by Ms. Crick

1 THE COURT: Good afternoon, ladies and gentlemen.

2 As you know, when we recessed for lunch we had not yet
3 begun with the reception of evidence, so we will begin with
4 that presentation this afternoon.

5 Of course, as I told you, the state has the burden of
6 proof. They'll go forward first with their presentation of
7 evidence.

8 Ms. Crick.

9 MS. CRICK: Thank you, Your Honor. The state calls
10 Delores Perrin.

11 DELORES NEAL PERRIN, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. CRICK

14 Q Can you tell the jury what your full name is?

15 A Delores Neal Perrin.

16 Q And how old are you, Delores?

17 A Forty-nine.

18 Q Are you single or are you married?

19 A Single.

20 Q Do you have any children?

21 A No.

22 Q Where do you live right now?

23 A

24 Q Is that in Gaffney?

25 A Yes, it is.

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 Q Which is in Cherokee County?
- 2 A That's right.
- 3 Q And how long have you lived there?
- 4 A Off and on all my life.
- 5 Q So did you grow up in that house?
- 6 A Yes, I did.
- 7 Q Do you work right now?
- 8 A No.
- 9 Q Did you work back in December of 2006?
- 10 A Yes. I worked before.
- 11 Q Where did you work back then?
- 12 A Well, I worked at Badcock. And then I left Badcock
- 13 and went to Atlanta to work, Macey's, remodeling.
- 14 Q In retail pretty much is what you did?
- 15 A Right.
- 16 Q But you are not working at this time.
- 17 A No, I am not.
- 18 MS. CRICK: Your Honor, may I approach the witness?
- 19 THE COURT: Yes.
- 20 Q I'm going to show you, Delores, what's been marked as
- 21 State's Exhibit No. 1. Just take a quick look at that for
- 22 me and tell me if you recognize what's in that picture.
- 23 A That's my house, the front of the house.
- 24 Q And this is the house you lived in December of 2006?
- 25 A That's correct.

Delores Neal Perrin
Direct examination by Ms. Crick

1 Q The house you still live in?

2 A Yes. That's right.

3 MS. CRICK: Your Honor, at this time I'd like to offer
4 State's 1 into evidence.

5 MR. THOMPSON: No objection.

6 THE COURT: It's admitted.

7 (Photograph marked State's Exhibit No. 1.)

8 MS. CRICK: May I publish it to the jury, Your Honor?

9 THE COURT: You may.

10 Q So that is -- what part of your house is that?

11 A That's the front door, front of the house.

12 Q And I'm also going to show you State's Exhibit 4 and
13 5, State's 6 and State's 7. And tell me if you recognize
14 what's in those photographs.

15 A This is the back of my house. It's the deck with the
16 sliding glass doors.

17 Q So are those just pictures of your home but from
18 different angles?

19 A That's correct.

20 Q And that's where you lived on December the 6th.

21 A That's correct.

22 Q Of 2006.

23 MS. CRICK: Your Honor, at this time I'd like to offer
24 State's 4, 5, 6 and 7 into evidence.

25 MR. THOMPSON: No objection.

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 THE COURT: They are admitted.
2 (Photographs marked State's Exhibits Nos. 4, 5, 6 and
3 7.)
4 MS. CRICK: May I publish these to the jury?
5 THE COURT: You may.
6 Q So you said that one of those was the back of your
7 house. Is that what we're seeing back there?
8 A Yes, it is.
9 Q Do you have a deck back there?
10 A Yes, I do.
11 Q When you go into your home -- I'm looking at -- is
12 that the door here?
13 A Yes, it is.
14 Q And also one back here?
15 A Correct.
16 Q When you enter your home do you enter from this one on
17 the side or this one on the back?
18 A I entered the one on the side.
19 Q This one right there?
20 A That's correct.
21 Q What kind of door is this on the back?
22 A That's the sliding glass door.
23 Q I'm going to show you. Actually, I'm going to put two
24 pictures up here. What is that a picture of?
25 A That's the bottom of the sliding glass doors.

Delores Neal Perrin
Direct examination by Ms. Crick

1 Q The sliding glass door that leads out to your deck?

2 A To the back deck.

3 Q Finally, I'm going to show you State's 2 and 3. Just
4 take a look at those for me and tell me if you recognize
5 what those are.

6 A That's my bedroom.

7 Q Both of them?

8 A That's my bed.

9 Q And that's your bed as it was on December the 6th of
10 2006.

11 A That's correct.

12 MS. CRICK: Your Honor, at this time I would like to
13 offer State's 2 and 3 into evidence.

14 MR. THOMPSON: No objection.

15 THE COURT: They are admitted.

16 (Photographs marked State's Exhibits Nos. 2 and 3.)

17 Q Let's go back to December the 6th of 2006. I'm
18 actually going to want you to talk to the jury a little bit
19 about what happened leading up to that time. Okay. So
20 that day before, tell me what you were doing that day.

21 A The day before I had gone out with a friend to eat at
22 a restaurant in Spartanburg.

23 Q What time did you get home?

24 A I got home, I would say, around 10:00 o'clock.

25 Q 10:00 p.m.

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 A 10:00 o'clock p.m.
- 2 Q And when you came home at 10:00 o'clock p.m., which
- 3 door did you go in?
- 4 A I went in that door that I showed you, the one I
- 5 always went in.
- 6 Q The side door?
- 7 A The side door.
- 8 Q Now, was it locked when you got home?
- 9 A Yes, it was.
- 10 Q Did you check that sliding glass door when you got
- 11 home?
- 12 A Yes, I did.
- 13 Q Tell me about that sliding glass door. Had you ever
- 14 had any problems with that in the past?
- 15 A I didn't really realize I had that much of a problem
- 16 with it. A friend of mine had put it in. And every time I
- 17 locked I'd pull on it. But after this happened I checked
- 18 it. And when I pull on it two or three times it would
- 19 break loose like the latch would come up, so.
- 20 Q So you could -- if you pulled hard enough somebody
- 21 could open that door.
- 22 A Yeah. I didn't really realize that. I mean, I wasn't
- 23 expecting anybody to come in the house.
- 24 Q That evening when you got home at 10:00 o'clock, what
- 25 did you do?

Delores Neal Perrin
Direct examination by Ms. Crick

1 A I was very full. And I usually cut on the T. V. and
2 watch the T. V. But I was just so full I went to sleep
3 without cutting my T. V. on.

4 Q So once you got home you pretty much went straight to
5 bed.

6 A Straight to bed.

7 Q And when you went to bed were you dressed in your
8 nightclothes or --

9 A Yes. It was cold that night, and I didn't have on my
10 nightclothes. My heating. I had a problem with my heating
11 at that time. And I had on a sweat shirt and I had on --
12 fully clothed because it was really cold.

13 Q So you went to sleep about what time, do you think?

14 A Probably about 10:30 by the time I laid down.

15 Q What's the next thing you remember after you went to
16 sleep?

17 A I remember being awoken by something that was hitting
18 me on my arm. And I looked up. And when I looked up I saw
19 a man with a mask on over his nose with a gun pointed in my
20 face.

21 I immediately thought I was dreaming. I just thought
22 it was a nightmare. I just, I was, you know, this is just
23 a bad nightmare. And I looked around and to see if it was
24 a nightmare or if it was really real.

25 And I looked and saw my cat, my little kitten. And I

Delores Neal Perrin
Direct examination by Ms. Crick

1 said, well, this is my cat. And I looked around and I saw
2 through the blinds that it was coming, becoming light of
3 day. And so I knew it was never a dream. I just thought I
4 was getting burglarized at that point. I mean, everything
5 was going through my head.

6 Q So but at that point did you know who was in your
7 home?

8 A No.

9 Q You didn't recognize him.

10 A No.

11 Q What could you tell about him from what you saw at
12 that point? What did he look like?

13 A Like I said, his mask and short hair. And I could see
14 his eyes. And I could see the gun, also see the gun.

15 Q What kind of gun did he have? Not specifically, but
16 what did it look like to you?

17 A A silver short gun, I mean.

18 Q Was it the kind of gun you hold in your hand like a
19 handgun?

20 A Handgun.

21 Q Was he a young guy or an older guy?

22 A I would say young.

23 Q Do you remember what he had on?

24 A Blue jeans, a shirt with a tag on it.

25 Q Okay.

Delores Neal Perrin
Direct examination by Ms. Crick

1 A Had a tag on the side of it. And I don't know what it
2 said. It said something on the front of it, but I'm not
3 sure what.

4 Q Did he say anything to you when you first came in?

5 A He had the gun pointed to me. And I started just
6 babbling saying how did you get in, where did you come
7 from, how did you get in. And he said shut up, just shut
8 up. You know, so I shut up.

9 Q What did you think was going on at that point?

10 A Well, I thought he was going to shoot me and then rob
11 me. That's what I thought at that point.

12 So I told him anything that he wanted in my house, I'd
13 be glad to give it to him. I mean, I'd be glad to help him
14 get it out, you know, just please don't kill me, just don't
15 kill me.

16 Q And were you nice to him?

17 A Yes.

18 Q What made you be nice to him?

19 A Well, it hadn't been that long that I saw on T. V.
20 where a girl had been kidnapped before. And she was really
21 nice to whoever it was that kidnapped her, so she was being
22 his friend and he let her live.

23 Q Is that what you were hoping would happen?

24 A That's what I was hoping would happen, yes.

25 Q Did he tell you what to do? What did he say?

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 A Take off your clothes. And at that point I was just,
2 that was the last thing I was thinking of. I mean, I was
3 thinking of burglary or, you know, wanting. I said I don't
4 have any money, you know, so.
- 5 Q So when he told you to take off your clothes, what did
6 you think was going on?
- 7 A Well, I thought then that he was going to rape me.
- 8 Q Did you do what he told you to do?
- 9 A Yes, I did.
- 10 Q And why did you do what he told you to do?
- 11 A You've got a gun pointed in your face you're going to
12 do to save your life, pretty much going to do what they
13 tell you to do.
- 14 Q What did he do next?
- 15 A He took off his clothes. And I told him to please put
16 down the gun for a minute, you making me nervous, you
17 making me nervous, you know.
- 18 Q What was it about him taking off his clothes and that
19 gun that made you nervous?
- 20 A Well, I mean, I was fixing to get raped.
- 21 Q Did he have the gun in his hand?
- 22 A He had the gun in his hand pointed toward me.
- 23 Q And did he have it in his hand while he was trying to
24 take off his clothes?
- 25 A He put it down for a second.

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 Q Where did he put it when he put it down?
- 2 A He put it over on his side on my dresser.
- 3 Q Did you think about getting out of there at that
- 4 point?
- 5 A I mean, I know that, you know, I might could have done
- 6 something, but it wasn't worth, you know, losing your life
- 7 for, you know. Yeah, I mean.
- 8 Q So in your mind the safest thing for you to do is do
- 9 what he said.
- 10 A That's correct.
- 11 Q You said he took off his clothes. Did he take off all
- 12 of his clothes?
- 13 A Just his pants.
- 14 Q Where were you at when he took off his pants?
- 15 A Laying down on the bed.
- 16 Q And your clothes were off at that point. What did he
- 17 do after he took off his pants?
- 18 A He came toward me and raped me.
- 19 Q And I apologize because we have to be a little bit
- 20 specific for the jury. Were you on your back side or your
- 21 front side?
- 22 A Front side first.
- 23 Q So you were lying on your back.
- 24 A On the back.
- 25 Q And he approached you. What exactly did he do at that

Delores Neal Perrin
Direct examination by Ms. Crick

1 point?

2 A He put his bodily parts into my bodily parts.

3 Q And when you say your bodily parts, are you talking
4 about your vaginal area?

5 A Vaginal area.

6 Q And how long about did that go on?

7 A I don't know. I was praying a lot, and it didn't seem
8 like it was too long.

9 Q Were you aware if he had put on a condom at that
10 point?

11 A No. I didn't see that. No. I never. He didn't.

12 Q What were you looking at?

13 A I was mainly looking at the eyes and looking at the
14 gun, looking at the eyes and looking at the gun.

15 Q After he penetrated you from front, what did he tell
16 you to do?

17 A Told me to roll over.

18 Q And do what?

19 A Just roll over, and then he proceeded to.

20 Q How were you on the bed? Were you on the bed
21 actually?

22 A I was on the bed.

23 Q And what position were you in at that point?

24 A On my hands and knees.

25 Q And he penetrated you again?

Delores Neal Perrin
Direct examination by Ms. Crick

1 A Yes.

2 Q Were you able to tell whether or not he ejaculated at
3 that point?

4 A I kind of felt like he did, but I'm not for sure
5 but --.

6 Q After that happened what did you do?

7 A After that happened he put on his clothes and he
8 pointed the gun at me again and said don't move, don't go
9 anywhere.

10 And I waited for a few seconds. And then I put my
11 clothing that I had beside the bed on. And everything was
12 going through my head. I was just like what to do, what to
13 do. You know, I was thinking, well, I've got my cell phone
14 here but if he sees me calling he's going to, if he peeps
15 around the corner or if he's in another room robbing me,
16 he's going to turn around and shoot me. And I just thought
17 to get my keys and get my cell phone and run out that door
18 just as fast as I could to get in my car.

19 Q Is that what you did?

20 A That's exactly what I did.

21 Q You didn't stop to make a phone call.

22 A No, no. I was afraid he could have been around the
23 bush or anywhere with the gun. I wasn't going to take any
24 chances. I was just praying he wouldn't get to me before I
25 got in my car and took off.

Delores Neal Perrin
Direct examination by Ms. Crick

1 Q And whenever you got in your car, where did you go?

2 A I went straight to my friend. She works at Harold
3 Tindall's. She works in the morning. And she is a cook
4 there. And I told her what happened.

5 Q And after you told her what happened, what were you
6 thinking at that point?

7 A Well, I was thinking everything going through my head,
8 if I tell then he'll come back and kill me if they don't
9 get him. And I was just thinking I don't know whether to
10 tell or not. And this rape is a really embarrassing thing.
11 You just don't want to, you know. So she persuaded me, we
12 are calling the law right now.

13 Q And is that what you did?

14 A That's exactly what we did.

15 Q After you called the law did they come out and talk to
16 you?

17 A Yes, they did.

18 Q And what did y'all do after they came out?

19 A After they came and talked to me, and we left there
20 and went back to my house and I asked them could I please
21 at least go to the bathroom and brush my teeth because I
22 just ran right out of the house. They said you can't go to
23 the bathroom because you'll mess up any evidence or
24 anything, and they said brush your teeth if you want to.

25 Q And you did do that. After that where did you go?

Delores Neal Perrin
Direct examination by Ms. Crick

- 1 A After that they took me to the hospital.
- 2 Q Which hospital did you go to?
- 3 A Upstate Medical in Gaffney.
- 4 Q And when you got there what did you do?
- 5 A They proceeded to tell me that they were going to give
- 6 me a rape kit to test.
- 7 Q An examination?
- 8 A Examination.
- 9 Q What did that involve?
- 10 A That involved a lot of things.
- 11 Q That you can remember.
- 12 A Pulling of your hair, different places all over your
- 13 body, and I think a pap smear, I think more or less like.
- 14 Q And you agreed to go through all of that.
- 15 A Yes.
- 16 Q Where did you go? Well, let me back up a second.
- 17 During all of this, I know they do a full examination of
- 18 you. And I'm going to try to put this delicately. Was it
- 19 also that time of the month --
- 20 A Yes, it was.
- 21 Q -- when all of this happened? After you left the
- 22 hospital where did you go? Did you stay at home that
- 23 night?
- 24 A I kept telling them I wanted to go back home and
- 25 secure my house. Because I didn't really understand how he

Delores Neal Perrin
Direct examination by Ms. Crick

1 got in. And I wanted to make sure they got somebody there
2 to check all the doors and if there is anything that, you
3 know, they could help me out with, you know, to secure it
4 even more, you know.

5 Q And did you spend the night at your house that night?

6 A No, I did not.

7 Q Where did you stay?

8 A I stayed with a friend.

9 Q And why did you stay with a friend?

10 A Because I was scared. I didn't know if he was coming
11 back.

12 Q Since this has happened do you do anything differently
13 now?

14 A Well, I can't sleep at night, and I have nightmares
15 all the time that somebody is touching me with a gun. I
16 really haven't been able to hold down a job and just I'm
17 afraid all the time --

18 MR. THOMPSON: Your Honor, I'm going to object at this
19 time what's gone on since then.

20 THE COURT: Sustained.

21 MR. THOMPSON: What's going on since this incident --

22 THE COURT: Sustained.

23 MR. THOMPSON: I mean, I understand that, but it's not
24 pertinent to the incident itself.

25 THE COURT: Sustained.

Delores Neal Perrin
Cross-examination by Mr. Thompson

1 MS. CRICK: One moment, Your Honor.

2 (Pause.)

3 Q Before December 6th, the day that this happened, had
4 you ever seen this defendant before in your life?

5 A No.

6 Q Had you ever met these other ladies before?

7 A No.

8 Q In your life?

9 A In my life.

10 MS. CRICK: Your Honor, that's all from the state at
11 this time.

12 CROSS-EXAMINATION

13 BY MR. THOMPSON

14 Q Ms. Perrin, I'm not going to put you back through the
15 details of the incident. Okay. I've just got a very few
16 questions I want to ask you. You say that the person that
17 came into your house came in through a sliding door, you
18 believe.

19 A Well, when I went back to check my house I had noticed
20 a lot of the doors weren't exactly -- like my front door,
21 it had been pulled apart like the glass, type of glass
22 door. And then I have a big door. And it was pulled
23 apart. And since then I have noticed that the, that door
24 on my sliding, on my front-porch side, that when you shut
25 it, it, it opens back when I lock it. But the main thing

Delores Neal Perrin
Cross-examination by Mr. Thompson

1 is that sliding glass door, I noticed when the hinges, when
2 you locked it, that appears to be locked. And when you
3 pull on it one time, and then it's locked. But you jerk on
4 it really hard, it opened.

5 Q Okay. Had there been anybody in the house from the
6 time the incident occurred until you went back to check on
7 the doors?

8 A The police.

9 Q The police. So the door could be opened because the
10 police had opened it, is that correct? And you say in
11 order to open that sliding glass door you've got to jerk on
12 it two or three times.

13 A Yeah.

14 Q Okay. Did the person that assaulted you -- you
15 described him as wearing blue jeans and having on a shirt
16 with a tag still on it. What color was that shirt, do you
17 know?

18 A It appeared to be a brown color.

19 Q Okay. And did he have on shoes and socks?

20 A Had on tennis shoes.

21 Q Tennis shoes. Was he wearing any gloves? No gloves.

22 THE COURT: Please answer out loud.

23 A Oh, I was mainly looking at the gun and everything. I
24 don't recall. If he had gloves they would have been dark,
25 and I don't, I didn't see.

Delores Neal Perrin
Cross-examination by Mr. Thompson

- 1 Q Okay. Now, when you -- do you remember an Officer
2 Green talking with him on the scene?
- 3 A Which one is Officer Green?
- 4 Q S. S. Green.
- 5 A On the scene like in the house?
- 6 Q Well, yeah. Do you remember talking with him?
- 7 A Well, I talked. There was two or three, and if I saw
8 him, you know.
- 9 Q Well, let me ask the question this way then. Did you
10 ever tell any of the officers that the person that
11 assaulted you was a black male approximately 35 to 40 years
12 old?
- 13 A I couldn't judge exactly how old he was really.
- 14 Q But do you deny that you told Officer Green that he
15 was 35 to 40 years old?
- 16 A I was upset. I mean, I, I figured that. All I could
17 see was, you know, his eyes. Eyes looked older.
- 18 Q And do you know Sergeant Billy Odom?
- 19 A Yes.
- 20 Q And did you give Sergeant Odom a description of your
21 assailant's skin tone? And what do you remember telling
22 Sergeant Odom?
- 23 A I remember saying that he was a black male.
- 24 Q Did you tell him that his skin tone was medium to dark
25 in color?

Delores Neal Perrin
Cross-examination by Mr. Thompson

1 A Well, the way the lighting was, you know, well, when
2 you got a mask on all the way up to here and it's black and
3 all you can see is the eyes, you know, I couldn't really, I
4 couldn't be exact.

5 Q To this day you can't say who it is that did this to
6 you, is that correct? You can't point at Mr. Byers and say
7 that's the man that did it to me. You don't recognize him,
8 is that correct?

9 A The eyes look the same. I mean, that's all I saw, was
10 the eyes.

11 Q All you saw was the eyes.

12 A And the medium-built or, you know.

13 Q And have you ever seen Mr. Byers before other than
14 these proceedings that's going on during this case?

15 A No, sir.

16 Q You've never seen him before?

17 A Other than that night, I mean, you know, if that's
18 him, yeah, no.

19 Q Okay. Do you know whether or not the police checked
20 the doors at your house for fingerprints?

21 A I believe they did.

22 Q Did they check the sliding glass door?

23 A I believe they did. I wasn't there when they did
24 everything. But I don't know. I didn't ask them.

25 Q Okay. When you got home was there black powder all

Brandy Giles
Direct examination by Mr. Gowdy

1 over your door?

2 A Uh-huhs.

3 Q Was there also on the side door?

4 A I didn't -- I was so upset then I really wasn't
5 checking for fingerprints. I mean, I'm sure they did, I
6 mean.

7 Q Thank you.

8 MR. THOMPSON: I don't have any further questions.

9 MS. CRICK: Nothing further from the state.

10 THE COURT: You may step down.

11 MR. GOWDY: May it please the Court, Your Honor. The
12 state would call Ms. Brandy Giles.

13 BRANDY GILES, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. GOWDY

16 Q Good afternoon, ma'am.

17 A Good afternoon.

18 Q I'm going to get you to speak up with a good strong
19 voice where the last lady and the last gentleman in the
20 jury box can hear you. Okay? Tell us your name and where
21 you live.

22 A Brandy Jones. And where I live now or where I lived
23 then?

24 Q Where you live now.

25 A I live with my mother on the Union Highway.

Brandy Giles
Direct examination by Mr. Gowdy

- 1 Q Okay. Who do you live with now?
- 2 A My mother.
- 3 Q And who else?
- 4 A My son and my stepfather.
- 5 Q In December of 2006 did you live in Cherokee County?
- 6 A Yes, sir.
- 7 Q Where did you live in Cherokee County in 2006,
- 8 December?
- 9 A
- 10 Q And was that in the city of Gaffney?
- 11 A Yes, sir.
- 12 Q Did anyone live with you at that address in December
- 13 of 2006?
- 14 A No, sir.
- 15 Q Were you working at the time?
- 16 A No, sir.
- 17 Q Were you battling a substance abuse problem at the
- 18 time?
- 19 A Yes, sir.
- 20 Q And as a result of that substance abuse problem did
- 21 you -- were you convicted of forgery and grand larceny?
- 22 A Yes, sir.
- 23 Q Are you a recovering addict today?
- 24 A Yes, sir.
- 25 Q All right. December of 2006, you're living alone,

Brandy Giles
Direct examination by Mr. Gowdy

1 , is that correct?

2 A Yes, sir.

3 Q All right. I want to go specifically to December the
4 10th, which is the day before you were assaulted. In the
5 afternoon hours where were you?

6 A I was with my boyfriend at the time.

7 Q Okay.

8 A At his house.

9 Q At his house. All right. And did you spend the
10 remainder of that afternoon and the evening at your
11 boyfriend's house?

12 A Yes, sir.

13 Q What time did you come back to your residence?

14 A Approximately 6:00 o'clock.

15 Q Okay. And how were you dressed?

16 A Blue jeans and a t-shirt and --

17 THE COURT REPORTER: Excuse me. Repeat that.

18 A Blue jeans and a t-shirt.

19 Q Brandy, I need to get you to speak up because if the
20 court reporter is having trouble with you, then the ladies
21 and gentlemen are going to have trouble with you. Okay?

22 A Yes, sir.

23 Q I am going to stand back over here.

24 THE COURT: You can slide your chair a little bit and
25 the microphone will pick you up. If you are going to --

Brandy Giles
Direct examination by Mr. Gowdy

1 don't lean back. Pull that microphone to you.

2 Q All right. Tell the jury how you were dressed at
3 6:00 o'clock in the morning when you were leaving your
4 boyfriend's house coming to your house.

5 A I had on blue jeans and a t-shirt.

6 Q All right. Were you carrying anything inside your
7 house?

8 A I was carrying a Mountain Dew bottle.

9 Q When you say a Mountain Dew bottle, a 20-ounce bottle
10 like I would buy in the store or a two-liter bottle?

11 A Two-liter.

12 Q All right. And which door to your house did you go
13 in?

14 A My front door.

15 Q Okay. What's the first room that you go into when you
16 walk in the front door of your house?

17 A My living room.

18 Q And where did you go when you left the living room?

19 A I was walking toward the kitchen to put the drink in
20 the refrigerator.

21 Q And tell the jury what you saw.

22 A A man with a gun pointed at me.

23 Q And tell the jury how the man was dressed.

24 A To my recollection he had on dark jeans, a white
25 t-shirt, a black coat and a toboggan.

Brandy Giles
Direct examination by Mr. Gowdy

- 1 Q Did he have anything covering his face?
- 2 A It was a half mask that covered his nose and mouth.
- 3 Q Were you able to tell the race of the person that was
- 4 in your kitchen?
- 5 A Yes, sir.
- 6 Q And what was that?
- 7 A A black male.
- 8 Q What was your reaction when you saw -- you said he had
- 9 a gun.
- 10 A Yes, sir.
- 11 Q Were you able to see what -- was it a long gun or a
- 12 short gun?
- 13 A A little short handgun.
- 14 Q Were you able to see any of the characteristics of
- 15 that gun?
- 16 A It was black and silver.
- 17 Q All right. And what did you do when you saw a man in
- 18 your kitchen holding a gun?
- 19 A I dropped the Mountain Dew bottle.
- 20 Q Did he say anything to you? What did he say?
- 21 A Told me to get in my bedroom and take my clothes off.
- 22 Q What did you say to him?
- 23 A Please don't do this, my mom is on her way with my
- 24 little boy.
- 25 Q All right. What happened next?

Brandy Giles
Direct examination by Mr. Gowdy

- 1 A He made me take off all my clothes and get on the bed.
2 As he stood in front of me he took down his pants and made
3 me suck his thing.
- 4 Q Where was the gun at this point?
- 5 A It was pointed to my head. I was crying.
- 6 Q You said he forced you to perform oral sex.
- 7 A Yes, sir.
- 8 Q Do you know whether or not he had on a condom?
- 9 A No, sir. He didn't.
- 10 Q All right. After he made you perform oral sex, what
11 happened?
- 12 A He made me lay back on my back as he put it in my
13 vagina for a few minutes. And after that he told me to
14 roll over to my knees and raped me anally.
- 15 Q Did you say anything to him while the sexual assault
16 was going on?
- 17 A I was telling him to please stop, don't do this,
18 asking him why.
- 19 Q Did he ever answer when you asked him why?
- 20 A Just told me to shut up.
- 21 Q Brandy, did you think your life was in danger if you
22 did not do what this person told you to do?
- 23 A Yes, sir.
- 24 Q How long did the sexual assault last?
- 25 A To my knowledge maybe 20 or 30 minutes. I wasn't

Brandy Giles
Direct examination by Mr. Gowdy

- 1 looking at a clock.
- 2 Q What were you looking at?
- 3 A The gun.
- 4 Q Did he ever give you any indication why he picked your
- 5 house?
- 6 A No.
- 7 Q When you asked why did he ever answer your question?
- 8 A No. He just kept saying shut up.
- 9 Q Did you know whether or not he ever ejaculated?
- 10 A Yes, sir.
- 11 Q Do you know? And did he or did he not?
- 12 A He did.
- 13 Q After this sexual assault was over, what happened?
- 14 A He told me to get on my bed and don't move. He pulled
- 15 his pants up and left.
- 16 Q What did you do after he left?
- 17 A I waited maybe two or three minutes. I didn't hear
- 18 anything in the house. I got up and put on my coat and my
- 19 robe and ran out the door to go to my mama's at work.
- 20 Q You went looking for your mom. Where does your mama
- 21 work?
- 22 A Carolina Cotton.
- 23 Q All right. Did you eventually go to Upstate Carolina
- 24 Medical Center that day?
- 25 A Yes, sir. Within 30 minutes of the incident.

Brandy Giles
Direct examination by Mr. Gowdy

1 Q Within 30 minutes you were at the hospital.

2 A Yes, sir.

3 Q Was there a sex assault kit, for lack of a better
4 word, or examination done on you?

5 A Yes, sir.

6 Q Tell the jury what that consists of.

7 A They pulled hairs from certain parts of my body, did
8 something like a pap smear, swab thing, did a swab of my
9 mouth. I think that's all.

10 Q Brandy, I want to show you what's been marked as
11 State's Exhibits 14, 13, 12, 11, 10, 9 and 8 and ask you
12 whether or not you can recognize what is depicted in those
13 photographs.

14 A This is a --

15 Q Don't tell me what it is. Just tell me if you can
16 recognize it.

17 A Yes, sir.

18 MR. GOWDY: Your Honor, we would move State's 8
19 through 14 inclusive into evidence at this point.

20 MR. THOMPSON: No objection.

21 THE COURT: They are admitted.

22 (Photographs marked State's Exhibits Nos. 8 through
23 14.)

24 MR. GOWDY: Permission to publish to the jury, Your
25 Honor?

Brandy Giles
Direct examination by Mr. Gowdy

- 1 THE COURT: You may.
- 2 Q State's Exhibit No. 8. Brandy, tell the jury what
- 3 they are looking at.
- 4 A That's the front of my house.
- 5 Q Is that the door that you walked in --
- 6 A Yes, sir.
- 7 Q -- on the morning of December the 11th?
- 8 A Yes, sir.
- 9 Q Was the door opened or closed?
- 10 A Closed.
- 11 Q Was it locked or unlocked?
- 12 A Locked.
- 13 Q Let me show you State's Exhibit 12. Do you recognize
- 14 that?
- 15 A That's my kitchen.
- 16 Q Brandy, I may need to show you the picture if you
- 17 can't see it from here. But can you tell the jury what is
- 18 in the floor of your kitchen?
- 19 A I can't see that far.
- 20 Q All right.
- 21 A Right there?
- 22 Q Right there.
- 23 A That's a Mountain Dew bottle.
- 24 Q Say that again.
- 25 A That's the Mountain Dew bottle.

Brandy Giles
Direct examination by Mr. Gowdy

1 Q In the floor right beside the refrigerator is the
2 Mountain Dew bottle --

3 A Yes, sir.

4 Q -- that you walked into the kitchen with, into your
5 house with that morning?

6 A Yes, sir.

7 Q Let me show you State's Exhibit 11. Do you recognize
8 that?

9 A That's my refrigerator.

10 Q Do you know what those are?

11 A Knives.

12 Q Knives. Brandy, do you keep knives in the
13 refrigerator?

14 A No, sir.

15 Q Have you ever kept knives in the refrigerator?

16 A No, sir.

17 Q Prior to December the 6th or 7th when your house was
18 searched and that picture was taken, have you ever had
19 knives in your refrigerator?

20 A Never.

21 Q Let me show you State's Exhibit 9. Do you recognize
22 that?

23 A That's the side of my house.

24 Q That's the side of your house. What is that little
25 yellow thing in the picture?

Brandy Giles
Direct examination by Mr. Gowdy

- 1 A That's my son's chair.
- 2 Q Your son's chair. A little plastic chair?
- 3 A Yes, sir.
- 4 Q Let me show you State's Exhibit 13. Tell the jury
- 5 what they're looking at.
- 6 A That's my son's chair.
- 7 Q That is the chair underneath that window?
- 8 A Yes, sir.
- 9 Q Let me show you State's Exhibit 14. What is that?
- 10 A That's my side window.
- 11 Q Is that the window right above where that chair is?
- 12 A Yes, sir.
- 13 Q Is that window normally opened or closed?
- 14 A Closed.
- 15 Q How do you know it's normally closed?
- 16 A Because it's painted shut.
- 17 Q Painted shut. Let me show you State's Exhibit No. 10.
- 18 What is the jury looking at?
- 19 A My bedroom.
- 20 Q I want you to step down here for just a second,
- 21 Brandy.
- 22 (Whereupon, the witness left the stand.)
- 23 Q Have you ever used one of these before? Push the
- 24 button and point. Show the jury where your rapist was
- 25 during the sexual assault.

Brandy Giles
Cross-examination by Mr. Thompson

1 A I --

2 THE COURT: You have got to speak up a lot louder so
3 everybody can hear, please.

4 A Right there in front of my bed.

5 Q Is that where the entire sexual assault took place?

6 A Yes, sir.

7 Q Have your seat back.

8 (Whereupon, the witness returned to the stand.)

9 Q Brandy, prior to December the 11th of 2006 had you
10 ever seen the defendant before?

11 A No, sir.

12 Q Had he ever received permission to come into your
13 house?

14 A Never.

15 Q Did you know his name?

16 A No, sir.

17 Q Thank you. Please answer any questions Mr. Thompson
18 may have for you.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON

21 Q Hi, Brandy.

22 A Hey.

23 Q You and I know each other, don't we?

24 A Yes, sir.

25 Q Okay. I want to ask you some questions if I may. And

Brandy Giles
Cross-examination by Mr. Thompson

1 I'm not going to go back over the details. Well, I take
2 that back. I am going to ask one question.

3 Do you know whether or not the person that assaulted
4 you was circumcised or uncircumcised?

5 A No, sir.

6 Q You don't know. You say he had a black and silver
7 semiautomatic handgun.

8 A Yes, sir.

9 Q And did you give a description of a black male
10 approximately age 25 to 30?

11 A Yes, sir.

12 Q 5'7", 150 pounds?

13 A Yes, sir.

14 Q And you say he had on a toboggan?

15 A Yes, sir.

16 Q Can you describe what you mean by that?

17 A What I mean, it was a black toboggan.

18 Q Well, some of us have different opinions of what a
19 toboggan is. Would you describe what you're talking about?

20 A It was a black toboggan and, you know, folded up on
21 his head.

22 Q Folded up half on top of his head?

23 A Yes, sir.

24 Q So you could see his whole face?

25 A I could see a little bit of his nose and up.

Brandy Giles
Cross-examination by Mr. Thompson

1 Q And it covered his head.

2 A No. The only thing I could not see was his mouth.

3 Q It covered his whole head, his ears and all of that.

4 And he just had an opening for his ear?

5 A Yes, sir.

6 Q Okay. Do you remember giving -- or let me ask you if
7 you recognize.

8 MR. THOMPSON: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 Q Let me ask you if you recognize this.

11 THE COURT: Just look through it and see if you
12 recognize it.

13 THE WITNESS: Oh.

14 A Yes, sir.

15 Q Is that a questionnaire that you filled out concerning
16 the assault?

17 A Yes, sir.

18 Q Is it in your handwriting?

19 A Yes, sir.

20 Q Now, in that questionnaire one of the questions was
21 did the person take anything while he was there. What's
22 your answer in the questionnaire?

23 A Which questionnaire?

24 Q Let me show you. What was your answer to that? Well,
25 the question is did he take any items that he touched or

Brandy Giles
Cross-examination by Mr. Thompson

1 ejaculated on. And you checked?

2 A No.

3 Q And you put no. And then it says, "If yes, what?"
4 And what did you put there?

5 A Took \$10 from me.

6 Q Does that say \$10 or \$60?

7 A Ten.

8 Q Ten?

9 A Yes, sir.

10 Q Is that the only person you've ever said that to,
11 whoever took this questionnaire from you?

12 A Yes, sir.

13 Q Okay. You didn't tell the state that when you were
14 preparing for trial?

15 A No, sir.

16 Q Okay. You didn't testify to that today until I
17 questioned you about it, is that right?

18 A Right.

19 Q Prior to all of this incident -- I know we've been in
20 court a couple of times on some pretrial stuff and you've
21 seen Mr. Byers at that time -- had you ever seen Mr. Byers
22 before all of this?

23 A Never.

24 Q Do you know him?

25 A No, sir.

Debbie Giles
Direct examination by Mr. Gowdy

1 Q Would you know where he lives?

2 A No, sir.

3 Q Has he ever been in your house?

4 A No, sir.

5 Q Thank you.

6 MR. GOWDY: Nothing on redirect, Your Honor.

7 THE COURT: You may step down.

8 MR. GOWDY: Your Honor, the state calls Ms. Debbie
9 Giles.

10 DEBBIE GILES, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. GOWDY

13 Q Good afternoon, ma'am.

14 A Hello.

15 Q If I could get you to speak up where the last
16 gentleman and the last lady can hear you, okay, tell them
17 your name.

18 A Debbie Giles.

19 Q And what relation are you to Ms. Brandy Giles?

20 A It's my daughter.

21 Q I want to go back with you to December the 11th of
22 2006. Okay. Between the hours of, say, 6:30 a.m. and
23 7:30 a.m. where were you?

24 A In my home, getting ready for work at home.

25 Q Okay. And did you receive a telephone call from your

Debbie Giles
Direct examination by Mr. Gowdy

1 daughter?

2 A I did.

3 Q Can you describe for the jury her demeanor when she
4 called you?

5 A She was screaming to the top of her lungs, mama, I
6 just got raped by some man in my house and I thought I was
7 going to die and why was he in there. I'm sorry.

8 Q Ms. Giles, did you ask your daughter whether or not
9 she knew her assailant?

10 A I did.

11 MR. THOMPSON: Objection. That will be hearsay, Your
12 Honor, and not admissible under the rules.

13 THE COURT: Well, let me see y'all just a minute.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 THE COURT: You can answer the question.

17 A I did just in the course of my conversation.

18 THE COURT: Do you understand what the question is?

19 THE WITNESS: Did she know him?

20 THE COURT: Did you ask her if she knew who her
21 assailant was.

22 A I did.

23 Q All right. And just give me a one-word answer if you
24 can, Ms. Giles. Did she indicate whether or not she knew
25 her assailant?

Debbie Giles
Cross-examination by Mr. Thompson

1 A No.

2 Q She said she did not, right?

3 A Right.

4 Q Okay. Did you -- were you having trouble
5 understanding her because of her emotions?

6 A I was.

7 Q Did you ultimately go to Upstate Hospital and meet
8 her?

9 A I did.

10 Q And did you remain with her during her rape
11 examination and the entire time she was at the hospital?

12 A Yes.

13 Q All right. Please answer any questions the defense
14 attorney may have for you.

15 CROSS-EXAMINATION

16 BY MR. THOMPSON

17 Q At around 7:00 in the morning on December the 11th you
18 were not at t, is that correct?

19 A No.

20 Q You have no personal knowledge of what took place.

21 A No.

22 Q Thank you.

23 MS. CRICK: Your Honor, the state calls Tammy Payne.
24
25

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 TAMMY PAYNE DAWKINS, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. CRICK
4 Q Ms. Payne, can you tell the jury your full name?
5 A Tammy Payne Dawkins.
6 Q Are you single or married?
7 A Married now. I was single then.
8 Q You were single when this attack took place?
9 A Yes.
10 Q How old are you?
11 A Twenty-four.
12 Q Do you have any children?
13 A Yes.
14 Q What are their ages?
15 A Six, five, four and one.
16 Q Where do you live now?
17 A At 100 Victoria Lane, Gaffney.
18 Q And where did you live in December of 2006?
19 A The same place.
20 Q At 100 Victoria Lane?
21 A Yes, ma'am.
22 Q Did you live by yourself at that time or did somebody
23 live with you?
24 A My children.
25 Q So back in December at Victoria Lane it was just you

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 and your children.
- 2 A Yes.
- 3 Q Were you working then?
- 4 A Yes.
- 5 Q Tell us what you were doing back then.
- 6 A I worked at Limestone College as an I. T. technician.
- 7 Q What does that mean?
- 8 A I work on computers.
- 9 Q Did you have to get a degree to do that?
- 10 A Yes.
- 11 Q Do you work now?
- 12 A No.
- 13 Q I'm going to take you back to December the 13th,
- 14 actually a little bit before that. What did you do that
- 15 day?
- 16 A I went to work.
- 17 Q At Limestone?
- 18 A At Limestone.
- 19 Q What time did you get off work?
- 20 A At 5:30.
- 21 Q What did you do after you got off work that day?
- 22 A I'm not really sure. Some days I would go help my
- 23 aunt at her restaurant. So I'm not sure if I went there or
- 24 if I went straight and got my kids from daycare.
- 25 Q So after you would get off work, at some point you

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 would have gone to get your children from daycare.

2 A Yes, or my parents if I would have worked at the
3 restaurant.

4 Q And you would have come back to your home at 100
5 Victoria Lane?

6 A Yes.

7 Q Tammy, I'm going to show you some pictures. But
8 before I do that, tell me in your home, where did you
9 sleep?

10 A In my bedroom.

11 Q And how many doors were on your bedroom?

12 A One. And there's two doorways, but one door.

13 Q So there are two doorways. Where do those lead?

14 A One door leads into the kitchen. That doorway has a
15 door. And then one door leads into a small hallway. And
16 my children's room is across the hall. Neither one of
17 those have a door.

18 Q So you sleep in one bedroom. And on one side there's
19 no door. And directly across from that is your children's
20 room?

21 A Yes, ma'am.

22 Q And there's no door on that.

23 A Yes, ma'am.

24 Q I'm going to show you some pictures now.

25 THE COURT: Your Honor, if I may approach the witness.

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 Q I'm going to show you State's 15, 16, 17, 18, 19, 20,
2 21, 22, 23 and 24. Just take a look at those for me. And
3 tell me if you recognize what is in those pictures.

4 A Yes.

5 Q And those are pictures of what?

6 A My home.

7 Q Inside your home?

8 A In and out.

9 Q And outside your home. And that's how your home
10 looked book in December of 2006?

11 A Uh-huh.

12 MS. CRICK: Your Honor, at this time I would like to
13 offer those into evidence.

14 MR. THOMPSON: No objection.

15 THE COURT: They are admitted.

16 (Photographs marked State's Exhibits Nos. 15, 16, 17,
17 18, 19, 20, 21, 22, 23 and 24.)

18 MS. CRICK: They're State's 16, excuse me, 15 through
19 24. May I publish these, Your Honor?

20 THE COURT: You may.

21 Q Tammy, I'm going to put something up here, and you
22 just tell me what that is.

23 A The front of our house.

24 Q And what is that?

25 A The inside of my front door.

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 Q Is that the door you would have come into if you were
2 coming home?

3 A Yes.

4 Q Did you always keep that door locked?

5 A No.

6 Q At the time you did not.

7 A No.

8 Q Do you recognize that?

9 A That's my back door.

10 Q How about that?

11 A That's the door that goes from the kitchen to my
12 bedroom.

13 Q So that is your bedroom. But that is the doorway that
14 does have a door on it.

15 A Yes.

16 Q Okay. And what about this? I know it is kind of --

17 A That is my room. That's my bed. On the right you can
18 see the door that goes from the kitchen to my room. And
19 then where they're standing taking the picture is my
20 doorway that doesn't have a door.

21 Q So that this little door here that we are seeing there
22 is an opening over here?

23 A Yes.

24 Q And then whoever is standing there taking a picture is
25 standing in that other doorway which is no door.

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 A Right.
- 2 Q And then is this -- what is that?
- 3 A That's my bed.
- 4 Q Closeup of your bed?
- 5 A Yes.
- 6 Q And how about, let me see if I can get them all on
- 7 there. What about these?
- 8 A That's my children's room.
- 9 Q That would have been directly across from your
- 10 bedroom.
- 11 A Yes, ma'am.
- 12 Q Who sleeps right here?
- 13 A My baby, my one-year-old.
- 14 Q And then how about right here?
- 15 A That is my three-year-old's bed, but my children
- 16 usually all pile up in it together. They don't like to
- 17 sleep upstairs.
- 18 Q So they have a room upstairs?
- 19 A Yes.
- 20 Q But they prefer to sleep all together downstairs.
- 21 A Yes.
- 22 Q And you're okay with them doing that.
- 23 A Yeah.
- 24 Q All right. So on the day that you were attacked,
- 25 where was everybody sleeping?

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 A In the room across from me.
- 2 Q The kids' room.
- 3 A Yes.
- 4 Q And you were in your bedroom.
- 5 A Yes.
- 6 Q And you remember going to sleep that night.
- 7 A Yes.
- 8 Q What's the next thing you remember?
- 9 A Someone pulling the covers off of me.
- 10 Q Is that what woke you up?
- 11 A Yes.
- 12 Q Do you remember about what time that was?
- 13 A It had to be around 2:00 something, 2:30.
- 14 Q In the morning?
- 15 A Yeah, it was in the morning.
- 16 Q In the early hours of the morning.
- 17 A Yeah. It was still dark out.
- 18 Q When you woke up, when you looked up, what did you
- 19 see?
- 20 A I saw a man standing over me with a mask and gun.
- 21 Q Could you tell by looking at him, could you tell
- 22 anything about what he looked like?
- 23 A I could tell he was a black male.
- 24 Q Could you tell if he was young or old?
- 25 A Young.

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 Q Was he a tall guy or a short guy?

2 A He wasn't very tall. I think they said around 5'8".

3 Q Do you remember what he had on?

4 A Yes. He had on an orange or yellow shirt with writing
5 across it, and then he had on a gray zip-up hoody sweater
6 jacket thing over it and had the hood on.

7 Q Did you recognize him as someone you knew at that
8 point?

9 A No.

10 Q When you saw him in your bedroom, what did you do?

11 A I scrambled around to grab my cell phone.

12 Q Where was your cell phone?

13 A It was laying right beside my head to the left of,
14 right of me. I mean to the left of me.

15 Q Were you able to make a phone call on your phone?

16 A No. He grabbed my phone. It was charged. He
17 uncharged it and stuck the phone in his pocket.

18 Q At that point did he indicate to you what was going
19 on?

20 A Yes. I asked him what, what was he doing, why are you
21 here. And he said that he was just going to fuck me and
22 leave.

23 Q Those are his exact words.

24 A Yes.

25 Q And what was going through your mind at that point?

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 A I thought he was going to kill me and my children were
2 going to find me dead.
- 3 Q And they were across the hall?
- 4 A Yes.
- 5 Q Did you scream at that point?
- 6 A No.
- 7 Q Did you do what he told you to do at that point?
- 8 A Yes.
- 9 Q Why did you do that?
- 10 A Because I just wanted him to leave.
- 11 Q You said he had a gun.
- 12 A Yes.
- 13 Q What -- can you describe the gun as best you remember?
- 14 A It was a handgun. It was silver. It had a slide on
15 it.
- 16 Q How do you know it had a slide on it?
- 17 A Because he cocked it.
- 18 Q And after he cocked that slide, what did he say?
- 19 A He told me to get on my hands and knees and back up to
20 him.
- 21 Q And where were you at that point?
- 22 A On my bed.
- 23 Q Did you do what he told you to do?
- 24 A Yes.
- 25 Q And what did he do?

Tammy Payne Dawkins
Direct examination by Ms. Crick

- 1 A He put his penis in my vagina.
- 2 Q Did he do anything else at that point?
- 3 A No.
- 4 Q Do you know about how long that went on?
- 5 A Just a few minutes.
- 6 Q Did you know if he ejaculated?
- 7 A I did not.
- 8 Q You have no clue.
- 9 A Uh-uh.
- 10 Q Did you know if he was wearing a condom at that point?
- 11 A I do not.
- 12 Q Didn't see it.
- 13 A Uh-uh.
- 14 Q After that was over, what did he do?
- 15 A He left my room and went out the door.
- 16 Q What did you do?
- 17 A I got up and went and checked the doors to make sure
- 18 they were locked and secured.
- 19 Q Do you know which door he left out of?
- 20 A Yes. The front door.
- 21 Q How do you know that?
- 22 A Because when he left I heard him unlock the sliding
- 23 chain that's on my front door. And then I heard it shut.
- 24 Q And is that --
- 25 A And when I went back to the front door it was locked.

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 Q And that's a door that you at that time may or may not
2 have kept locked.

3 A Right.

4 Q After you checked your doors, what was the next thing
5 you did?

6 A I just sat down on the couch for a minute trying to
7 figure out what to do because I couldn't -- he took my
8 phone. And I couldn't leave to go, you know, to the
9 neighbors or anything because my kids were there. I
10 finally dug up an old cell phone that didn't have service
11 any more. But it would dial 9-1-1. And I dialed 9-1-1.

12 Q I'm going to -- this already has been entered as
13 State's 24, but I'm going to ask you to take a look at this
14 and tell me what that is.

15 A The pink phone is the phone that I found in my drawer
16 that I used.

17 Q An old phone?

18 A The old phone, yeah.

19 Q Did it have service?

20 A It did not have service.

21 Q But it would let you call 9-1-1.

22 A Yes. That's the only number it would let me call.

23 Q Did the police come out?

24 A Yes.

25 Q Who else came out?

Tammy Payne Dawkins
Direct examination by Ms. Crick

1 A When the police come out I begged them to let me call
2 my daddy, and they got my daddy up there.

3 Q And you told them what happened?

4 A Yes.

5 Q What happened? What did you do with the kids?

6 A Me and my father loaded them up in his car and took
7 them to my mom's. And my dad took me straight up to
8 Upstate.

9 Q Once you got to Upstate, what did you have to do?

10 A I had to do the rape kit.

11 Q What was involved with that?

12 A They pulled hair from different sections of my head;
13 they pulled hair from my private areas; they did a pap
14 smear; they swabbed my mouth. I had to take some medicine.

15 Q And you did all of that.

16 A Uh-huh.

17 Q Have you had to seek counseling since this happened?

18 A Yes.

19 Q Have you been diagnosed with anything?

20 A Posttraumatic stress disorder.

21 Q As a result of this incident?

22 A Yes.

23 Q Before this happened on December the 13th, 2006, had
24 you ever seen the defendant before in your life?

25 A No.

Tammy Payne Dawkins
Cross-examination by Mr. Thompson

1 Q Had you ever talked to these two ladies before in your
2 life?

3 A No, no.

4 MS. CRICK: Your Honor, I have no further questions at
5 this time.

6 MR. THOMPSON: May it please the Court, Your Honor.

7 THE COURT: Mr. Thompson.

8 CROSS-EXAMINATION

9 BY MR. THOMPSON

10 Q Ms. Payne, do you know a Germer Byars?

11 A Yes. Germer.

12 Q Germer. Is that the way you pronounce it?

13 A Yes.

14 Q Is he a guest in your house?

15 A Yes.

16 Q Now, in the description that you gave you say young,
17 not very tall.

18 A Right.

19 Q And you say he had on a gray zip-up hoody sweater and
20 he had the hood on.

21 A Uh-huh.

22 Q Did the hood cover any part of his face?

23 A No. He had a ski mask on.

24 Q So he had a ski mask on also.

25 A Yes. And the only thing I could see is where his eyes

Tammy Payne Dawkins
Redirect examination by Ms. Crick

1 are.

2 Q I'm sorry. His eyes?

3 A And his mouth.

4 Q Okay. Have you ever seen Mr. Byers before?

5 A No.

6 Q Do you know him?

7 A No.

8 Q Has he ever been in your house?

9 A No.

10 Q Have you ever been to his house?

11 A No.

12 Q Thank you.

13 MS. CRICK: Just a quick follow-up, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. CRICK

16 Q He asked you about Germer Byars.

17 A Yes.

18 Q How do know him?

19 A He is my best friend's fiancé.

20 Q Would there be times that they would maybe hang out at
21 your home?

22 A Yes.

23 Q So it wouldn't have been unusual that he would have
24 been in your home.

25 A Right. He was in there a couple of days before that.

Tammy Payne Dawkins
Redirect examination by Ms. Crick

1 We were watching movies.

2 Q You and him.

3 A Yes, ma'am, and my best friend, Amy.

4 MS. CRICK: Nothing further, Your Honor.

5 THE COURT: You may step down.

6 MS. CRICK: Your Honor, may we approach?

7 THE COURT: Yeah. We're going to take a short break
8 first.

9 All right. Ladies and gentlemen, let me ask you to go
10 to your jury room. But, now, remember any time we take a
11 break you can't discuss the case. You can only do that
12 during deliberations. So during the break do not discuss
13 the case in any fashion. We'll bring you back shortly.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court's in recess for 15 minutes.

17 Do y'all still need to see me?

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Are we ready for the jury?

20 MR. GOWDY: Yes, sir.

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Okay. Bring them in.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: All right. The jury is present. You may

Mike Segina
Direct examination by Mr. Gowdy

1 proceed.

2 MR. GOWDY: May it please the Court, Your Honor. The
3 state would call Mr. Mike Segina with the Gaffney Police
4 Department.

5 MIKE SEGINA, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. GOWDY

8 Q Good afternoon, Officer.

9 A Good morning.

10 Q In a good strong, clear voice, could you introduce
11 yourself to the jury? Tell them where you work and how
12 long you've been there.

13 A I'm Detective Sergeant Mike Segina. I work for the
14 Gaffney Police Department as a detective. I've been there
15 for 15 years.

16 Q Detective in what capacity are you currently employed
17 at the Gaffney Police Department?

18 A I'm currently employed as a detective, a crime scene
19 detective, and training officer.

20 Q Do you go to crime scenes, just as generally, not with
21 specific reference to this case? Do you go to crime scenes
22 and process the crime scene in the jurisdiction of the city
23 of Gaffney?

24 A I do.

25 Q All right. And tell the jury generally what that

Mike Segina
Direct examination by Mr. Gowdy

1 involves.

2 A Using a camera, document the crime scene; collect
3 evidence; and also take care of that evidence once it's
4 brought back to the police department.

5 Q Can you give the jury a sense of what training or
6 courses or other specialized education you have had in
7 crime scene analysis?

8 A I have been to several schools. I first graduated
9 from basic law enforcement at the criminal justice academy.
10 I've been to different homicide investigations, schools,
11 child-abuse-investigation schools, crime-scene processing,
12 evidence collection, D. N. A. evidence collection,
13 forensic-pathology seminar, several others.

14 Q Is there a certain pattern or procedure that law
15 enforcement officers have to follow with respect to both
16 the recovery and the storing of evidence?

17 A Yes, there is.

18 Q What generally are some of the things that you strive
19 for in evidence collection and preservation?

20 A Make sure that the evidence is packaged correctly, not
21 contaminated, and then stored in a secured environment.

22 Q And are -- do you have access to the evidence room at
23 the Gaffney City Police Department?

24 A I do. I am the evidence custodian for the Gaffney
25 City Police Department.

Mike Segina
Direct examination by Mr. Gowdy

1 Q And is that access limited to just you and the chief
2 himself?

3 A Yes.

4 Q All right. What is SLED?

5 A It's the South Carolina Law Enforcement Division.

6 Q And what would be a reason why evidence would be
7 transported from a jurisdiction like Gaffney city police to
8 SLED?

9 A For processing or further analysis.

10 Q Is there some analysis that can be done locally?

11 A Yes, there's some that we can do in-house or our
12 department. But some of it requires the use of the state
13 law enforcement division.

14 Q Give the jury an example of something that can be done
15 locally.

16 A Dusting for fingerprints, fuming for fingerprints.

17 Q And what would be an example of something that would
18 have to be sent off to the state law enforcement division
19 for processing or analysis?

20 A Chemical analysis like drug identification, D. N. A.
21 identification.

22 Q Okay. Detective, let me -- did you respond to all
23 three of the sexual assault crime scenes?

24 A I did.

25 Q And did you document those crime scenes with

Mike Segina
Direct examination by Mr. Gowdy

1 photographs?

2 A I did.

3 Q Let me show you what's been introduced as State's
4 Exhibit 6, 5, 11 and 4 and ask you whether or not you took
5 those photographs while you were processing the respective
6 crime scenes.

7 A Yes, I took these photographs.

8 Q Let me show you State's Exhibit 6. Do you see a
9 sliding glass door?

10 A Yes, sir, I do.

11 Q Let me show you State's Exhibit 5 and ask you whether
12 or not that's a closeup of the same.

13 A Yes, it is.

14 Q Let me show you State's Exhibit 4 and ask you if that
15 is a different angle of the same door.

16 A Correct. From the inside, photographing from the
17 inside out.

18 Q All right. Detective, you mentioned fuming for
19 fingerprints, lifting fingerprints. If I were to walk
20 around for ten or 15 minutes with this in my hand, am I
21 guaranteed to leave fingerprints on it?

22 A No.

23 Q What are some of the factors that can influence
24 whether or not fingerprints are left on an item?

25 A The oil in the skin, the surface of the item being

Mike Segina
Direct examination by Mr. Gowdy

1 touched.

2 Q Would it be fair to say that gloves theoretically
3 could impact whether or not prints are left?

4 A Yes, gloves.

5 Q How about if someone were to open a door like that
6 door with their jacket instead of with their hand?

7 A It would be the absence of fingerprints on that item.

8 Q What if somebody rubbed an item down after they
9 touched it? Would that, in fact, greatly impact your
10 ability to lift a print?

11 A Yes, it would.

12 Q Did you -- we will just stick with the pictures that
13 are in front of us. The sliding glass door, did you
14 attempt to lift prints off that sliding glass door?

15 A I did.

16 Q And were you able to do so?

17 A No, I was not.

18 Q And when you say, no, you were not, were you able to
19 lift the owner of that house's prints?

20 A No. There was no fingerprints lifted from that door.

21 Q Let me move to another photograph, State's Exhibit 11,
22 Brandy Giles' refrigerator. Did you document the knives
23 that you found in the refrigerator?

24 A I did.

25 Q Did you attempt to lift prints off those knives?

Mike Segina
Direct examination by Mr. Gowdy

1 A I did.

2 Q Were you able to left any prints off those knives?

3 A No. There was no identifiable prints to look at.

4 Q Not even Mr. Giles' prints.

5 A No.

6 Q Is it fair to say that an item could be handled or
7 touched and not leave prints that are identifiable for law
8 enforcement to lift?

9 A That's correct.

10 Q Do you recall, Detective, did you find those knives or
11 were you called by Ms. Giles who told you to come, that she
12 had found them and you responded to the scene?

13 A We were notified by the owner, Ms. Giles, that when
14 she had come home and opened the refrigerator she noticed
15 those in there. And she didn't put them in there. So we
16 went back and photographed them and collected them and then
17 processed them at the police department.

18 Q And do you recall what day you executed your search
19 warrant on Ms. Giles' residence? The incident took place
20 on the 11th. Would you have responded on the 11th?

21 A I apologize. I will get the right folder. I
22 responded to, on the 14th at 1:00 o'clock.

23 Q On the 14th you processed the crime scene.

24 A Oh, processed the crime scene.

25 Q Yes.

Mike Segina
Direct examination by Mr. Gowdy

1 A Yes, sir. That was on the 11th.

2 Q Okay. And then you were called back when she
3 discovered the knives.

4 A Yes, sir, on the 14th.

5 Q Okay. Let me ask you to look at State's Exhibits 33
6 and 34 and State's Exhibits 26 and 25, and ask you whether
7 or not you recognize what is in that folder and in those
8 two photographs.

9 A Yes, sir, I do.

10 MR. GOWDY: Your Honor, we would move State's 25, 26,
11 33 and 34 into evidence.

12 MR. THOMPSON: I haven't seen those.

13 (Pause.)

14 MR. THOMPSON: Your Honor, I have no problem with them
15 being admitted as evidence that he's collected, but I think
16 there is going to be further testimony concerning -- the
17 pictures I have no problem with whatsoever but --

18 THE COURT: The pictures are numbered what?

19 MR. GOWDY: Twenty-five and 26, Your Honor.

20 MR. THOMPSON: If there's going to be any testimony
21 concerning any testing of this, I think there needs to be
22 some qualifications and the foundation laid on behalf of
23 the witness.

24 THE COURT: Let me see those again. These are items
25 that the witness has collected?

Mike Segina
Direct examination by Mr. Gowdy

1 MR. GOWDY: Yes, sir.

2 THE COURT: Okay. They're admitted, all four are
3 admitted. It's 25, 26, 33 and 34, are admitted.

4 MR. GOWDY: Thank you, Your Honor.

5 (Photographs marked State's Exhibits Nos. 25, 26, 33
6 and 34.)

7 Q Detective Segina, have you had any experience or
8 training or attended any classes on the lifting of
9 footprints and the comparison of footprints?

10 A Yes, I have.

11 Q Tell the jury what experience and education and
12 training you have had in those areas.

13 A As part of crime scene processing we have been
14 instructed on how to take fingerprints or footwear
15 impressions to lift using castings, lifting paper.

16 Q Have you also compared a known sample with an unknown
17 sample with respect to footprints before?

18 A I have.

19 Q Let me show you State's Exhibits 25 and 26. Where did
20 you collect that chair?

21 A This chair was collected at

22 Q This is State's 9 that I am showing you. What is that
23 yellow thing underneath the window?

24 A It's a yellow Little Tykes plastic chair.

25 Q All right. And 13 would be what?

Mike Segina

Direct examination by Mr. Gowdy

1 A A closeup of that same chair.

2 Q And 25 would be what?

3 A That's a photo, a closeup photo, of the top of that
4 chair after it was using a different light source,
5 alternate light source.

6 Q And 26 would be what?

7 A That would be the same chair after using magnetic
8 powder, fingerprint powder.

9 Q All right. Detective, show the jury or tell the jury
10 what process you went through in trying to determine
11 whether or not there was a footprint on that chair.

12 A Took a light, different lights, regular flashlight and
13 hold it at an angle and shoot it across the surface of
14 that. There was some dirt on the chair and where a foot
15 had stepped on it. I removed some of that dirt, so it left
16 an outline of that shoe. So by taking the light and
17 holding it at different angles we were able to shadow, and
18 it would show, show up that footprint.

19 Q And were you able to capture the impression or the
20 imprint left on the shoe on one of the items you're holding
21 in the file here? I'm sorry. In State's 33.

22 A A small portion of that print, yes.

23 Q Okay. On December the 16th did you have an occasion
24 to interview Jonathan Byers on a matter unrelated to this
25 case?

Mike Segina
Direct examination by Mr. Gowdy

1 A I did.

2 Q And during the course of that interview did you ask
3 for consent to take a buccal swab sample from him?

4 A I did.

5 Q Tell the jury what that is.

6 A It is a cotton tip or cotton swab that's placed into
7 the mouth to take a sample, a D. N. A. sample.

8 Q And have you been trained in how to do that?

9 A Yes, I have.

10 Q Tell the jury how you do that.

11 A You ask the consenter to open their mouth. And after
12 they open their mouth you insert the sterile cotton swab
13 and swirl them around in the cheek area and remove them.

14 Q What do you do with the Q-tips after you do that?

15 A You let him air dry and then you secure them in an
16 evidence bag.

17 Q And what is the purpose of taking a buccal sample from
18 someone?

19 A It's to obtain a D. N. A. sample from that presenter.

20 Q And did you follow that process and procedure with
21 Mr. Byers?

22 A I did.

23 Q And did you package the Q-tips that you used to take a
24 buccal sample from him?

25 A I did.

Mike Segina
Direct examination by Mr. Gowdy

1 Q Was he wearing tennis shoes when you conducted that
2 interview of him?

3 A He was.

4 Q Did you take those tennis shoes?

5 A Yes, we did.

6 Q Did you take an imprint from the bottom of those
7 tennis shoes?

8 A Yes, I did.

9 Q Did you compare the imprint from the bottom of the
10 tennis shoes you found on his feet to what you found in the
11 Little Tykes chair?

12 A Yes, I did.

13 Q With what result?

14 MR. THOMPSON: Objection. Again, he hasn't been
15 qualified as an expert to give opinion testimony, Your
16 Honor.

17 THE COURT: Well, lay a foundation.

18 Q What training, education have you had with respect to
19 the lifting and the analysis of shoe prints?

20 A I had a course in shoe impression and tire impression
21 that was conducted at, in the Charleston Sheriff's
22 Department.

23 Q And how long did that training last?

24 A It was a 3-day course.

25 Q And during the course of that training did you learn

Mike Segina
Cross-examination by Mr. Thompson

1 the proper techniques and procedures for the lifting of
2 shoe prints?

3 A I did.

4 Q Did you also learn the proper techniques and
5 procedures for the comparison of shoe prints that you had
6 lifted with known samples?

7 A I did.

8 MR. GOWDY: Your Honor, at this point we would move
9 him in as an expert in the limited field of shoe print
10 impression lifting and comparison.

11 CROSS-EXAMINATION

12 BY MR. THOMPSON

13 Q You say you took a 3-day course in Charleston --

14 A Yes, sir.

15 Q -- in shoe prints and tire identification.

16 A Among other things. It was an evidence collection
17 course.

18 Q How much time was spent on the shoe prints?

19 A It was part of the one, maybe one of the days. I
20 wouldn't say the whole day. I can't recall the exact
21 amount of time in hours or minutes.

22 Q And part of that was on lifting shoe prints?

23 A Yes. Lifting prints, fingerprints, shoe prints.

24 Q And did that include showing how to dust it and put
25 down the paper and all of that to lift it?

Mike Segina
Cross-examination by Mr. Thompson

1 A Yes, sir.

2 Q Okay. How much of that day was spent on comparing
3 shoe prints?

4 A Probably the equal amount of time.

5 Q We're talking two hours?

6 A I cannot recall the exact minutes.

7 Q And that's the only thing you had in shoe prints.

8 A Yes.

9 MR. THOMPSON: We would object to any qualification as
10 an expert witness, Your Honor.

11 THE COURT: All right. Let me address one issue.

12 I'll ask the jury to please go to your jury room.

13 Don't talk about the case or anything related to it. I'll
14 bring you back in just a moment.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Solicitor, I think you're going to have to
18 lay a little more detail in that foundation.

19 I don't know who. He said it was at the sheriff's
20 department in Charleston. I don't know who put on the
21 seminar, who was doing the teaching, whether they were
22 qualified to do what they were doing or what.

23 I mean, at the same time, I'm not sure what portion,
24 or if all, or if it is all, that you're objecting to.

25 MR. THOMPSON: I'm not objecting to his collection of

1 the shoe prints.

2 THE COURT: All right. You don't object to the manner
3 in which he collected the prints?

4 MR. THOMPSON: No, sir, I don't object. The only
5 thing I'm objecting to is his opinion testimony that what
6 he collected matches -- the shoe sample he collected from
7 Mr. Byers matches the shoe sample he collected from the
8 chair. That's the only thing I'm objecting to.

9 THE COURT: Collected from what?

10 MR. THOMPSON: The lifting of the print from the
11 chair.

12 THE COURT: Right.

13 MR. THOMPSON: He's about to testify, as I take it,
14 that that matches the sample he took from Mr. Byers.

15 THE COURT: Okay.

16 MR. THOMPSON: That's -- the opinion testimony on that
17 is the only thing I'm objecting to.

18 THE COURT: All right. Well, do we have -- have we
19 got the pictures of both of those?

20 MR. GOWDY: Your Honor, we have a shoe impression that
21 was taken from the shoe that he had on the night that they
22 interviewed. This is what was lifted from the Little Tykes
23 chair.

24 THE COURT: Can you tell what that is?

25 MR. GOWDY: I cannot.

1 THE COURT: I couldn't either. I looked at it
2 earlier, and it looks like it's just a black sheet to me,
3 but.

4 MR. GOWDY: I think what -- well, let me.

5 THE COURT: Well, let me be sure I understand what
6 you're wanting him to testify to.

7 Are you going to offer him to provide testimony that
8 the imprint from the chair and the shoe that was in the
9 possession of the defendant are the same or just that they
10 appear to be similar and --

11 MR. GOWDY: That they appear to be similar. He can't
12 say that the shoe that stepped in that Little Tykes chair
13 is the same shoe that belonged on Jonathan Byars' foot. He
14 cannot say that.

15 THE COURT: All right.

16 MR. GOWDY: In fact, what he will say is that the
17 imprint left in the Little Tykes chair was very faint and
18 was a partial imprint. But the portion of the imprint that
19 he lifted off the Little Tykes matches that pattern. And I
20 guess our -- I'm not arguing that it doesn't require an
21 expert foundation, but the comparison of that pattern to
22 what he lifted from the chair is not like D. N. A.
23 comparison. It's one pattern. It's one geometrical
24 pattern compared to another.

25 THE COURT: Well, that's why. That's the reason I

Mike Segina (In-camera)
Redirect examination by Mr. Gowdy

1 asked the question. Does it require an expert to compare
2 them?

3 MR. GOWDY: I don't think it does. It's not like D.
4 N. A. It's one geometrical comparison to another.

5 THE COURT: I understand. Well, now, my other
6 question is that's what we're going -- the jury is supposed
7 to be looking at?

8 MR. GOWDY: Well, I'm going to ask this witness.

9 REDIRECT EXAMINATION

10 BY MR. GOWDY

11 Q Is that what remains of your lifting of the print from
12 the Little Tykes chair?

13 A This, yes.

14 MR. THOMPSON: And I have no objection to that.

15 Q Is it under the plastic? I mean, how would one if one
16 wanted to compare it now, how would they do so?

17 A By placing this over the top of the faint outline on
18 the jail lift. This is -- the print is not actually on the
19 clear piece. It is stuck to the, the gummy film that is
20 what you see in black.

21 Q All right. So this transparency covers that up.

22 A It is a protective cover.

23 Q And if I lifted that up or when you lifted that up and
24 laid this print over it --

25 A No. You would damage. The print is stuck to the

Mike Segina (In-camera)
Redirect examination by Mr. Gowdy

1 black portion.

2 Q All right. Well, then how did you do your comparison?

3 A By laying the transparency over the top of the jail
4 lift.

5 Q And what percentage of that shoe-sole bottom showed up
6 on the Little Tykes chair?

7 A Maybe a three-quarters of an inch.

8 Q All right. How are you able to reach the conclusion
9 that it was a similar type shoe than the one -- as the one
10 Jonathan Byers had on?

11 A Based on this outside pattern it is a -- it is a
12 similar pattern which shows small squares in both the
13 imprint that we made from the shoe and the imprint that
14 come off the chair.

15 Q So you're not saying the shoe that Jonathan Byers had
16 on is the shoe that stepped into that Little Tykes chair.

17 A No. I cannot say that.

18 Q You're saying there are similarities from the print
19 that was left.

20 A From the print that we took from Mr. Byers' shoes to
21 the print that we took off the chair, there is a similarity
22 in that outside pattern over three-quarters of an inch.

23 Q All right. And how much training, how much training
24 -- who put on the training in Charleston?

25 A It was a -- I can't recall the actual company who put

Mike Segina (In-camera)
Redirect examination by Mr. Gowdy

1 on the training, or the instructor's name.

2 Q Was there a lot of time spent on comparing one shoe
3 bottom to another?

4 A Not a substantial amount, no. This was a, this was a
5 crime scene processing evidence collection class, footwear,
6 tire wear. That was all part of this 3-day course.

7 MR. GOWDY: Your Honor --

8 THE COURT: Let me see those two exhibits. Let me see
9 y'all up here a minute.

10 (Bench conference held off the record.)

11 THE COURT: All right. Now, as I understand it, the
12 defense does not object to the witness' qualification to
13 take an impression of footwear from an object that it
14 apparently has come into contact with.

15 MR. THOMPSON: No, sir. There is no objection to that
16 qualification.

17 THE COURT: The defendant -- and that's the part of
18 the crime scene, the collection of evidence.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: The defendant objects to this witness
21 being able to compare the defendant's shoe to an item that
22 he collected that he has testified to is a footwear
23 impression taken from the chair shown in one of the
24 exhibits.

25 MR. THOMPSON: I object to him being able to give an

1 opinion as to the comparison between the two.

2 THE COURT: All right. Now, I understand that what
3 the state's purpose in offering this testimony is, to
4 simply state that the witness made a footwear impression of
5 the defendant's tennis shoe.

6 MR. GOWDY: Yes, sir.

7 THE COURT: Which is shown on one of those exhibits.
8 And that he also took -- what number is that?

9 MR. GOWDY: Thirty-four.

10 THE COURT: That he took, that he made an impression
11 of the defendant's footwear, which is shown in Exhibit
12 No. 34; and that he also took an impression of what
13 appeared to be a footwear impression left on that chair
14 which is shown in --

15 MR. GOWDY: Thirty-three.

16 THE COURT: State's Exhibit -- yeah. But where is the
17 chair? What exhibit was that?

18 MR. GOWDY: It's 13; it's 25. Thirteen is the --

19 MR. THOMPSON: And there's one on the --

20 MR. GOWDY: And 26.

21 THE COURT: Okay. And so the state's purpose in
22 offering this testimony, additional testimony, is that you
23 want the witness to testify that the impression he took
24 from the chair has similarities to the impression of the
25 footwear that belonged to the defendant.

1 MR. GOWDY: Yes, sir. And further in saying, he's
2 going to say that the similarities are very slight, that it
3 is a very small portion, but the portion that is taken, the
4 portion he can see, the brackets, in particular, those do
5 match up with the kind of shoe the defendant had on. He
6 didn't have a clue whether or not those were the
7 defendant's shoes or not.

8 THE COURT: Well, I understand, but I also understand
9 that he's not even going to be testifying that the shoes
10 are the same type of shoe. They just appear to have some
11 similarities.

12 MR. GOWDY: Yes, sir.

13 THE COURT: And the jury will have to decide whether
14 they're the same or different.

15 MR. GOWDY: Yes, sir.

16 THE COURT: Does that resolve?

17 MR. THOMPSON: ~~I still think he's giving an opinion.~~

18 And even though he hasn't been qualified as an expert, he's
19 been asked the questions about his training and this and
20 that and the other. And I realize they haven't been --

21 THE COURT: Well, ordinarily -- I understand what
22 you're saying. Ordinarily, you know, it would be something
23 that was obvious. You know, you wouldn't need anybody to
24 compare anything. The jury can compare them if they're
25 both in evidence.

1 The problem here is this is the witness that took that
2 impression from the chair. And, quite frankly, you would
3 have to -- I mean, I don't know how. I'm having a great
4 difficulty even seeing it. I don't know whether a jury is
5 going to be able to see it or not. That item is in
6 evidence, and they can make their own comparison.

7 This witness is in a unique position because he
8 actually saw the impression in the chair. And he made the
9 impression that's now introduced as an exhibit. So I don't
10 think, I mean, I don't think it requires an expert to
11 testify that there were similarities.

12 MR. THOMPSON: Well, the situation we've got is as you
13 just said, Judge. You can't even tell what it is. But
14 they're going to get back there, if they can't tell what it
15 is, they're going to simply just rely on his testimony that
16 it was the shoe print that matched Mr. Byers.

17 THE COURT: Well, that's true of every witness'
18 testimony if it's something within their experience or
19 knowledge, or expertise for that matter.

20 This witness is not going to be qualified as an expert
21 in footwear comparisons. He's simply testifying as a crime
22 scene evidence collection specialist. And he's going to
23 testify that he made that impression and that that
24 impression has similar characteristics to that of the
25 footwear that he also made an impression of that belonged

1 to the defendant.

2 I'm not saying you have to have an expert to make
3 those comparisons. I'm saying he's a crime scene evidence
4 collection specialist. He's the one that collected that
5 evidence.

6 MR. THOMPSON: I understand that.

7 THE COURT: He simply wouldn't be saying that when I
8 saw it there were similarities to that of the footwear
9 impression of the defendant.

10 You can examine him about it. But, I mean, what I'm
11 saying is -- whose house was that, where the chair --

12 MR. GOWDY: Brandy Giles.

13 THE COURT: Ms. Giles could testify if she had that
14 knowledge that she saw a footwear impression in a chair and
15 it looks like the one of the defendant's tennis shoes. She
16 could do that. It wouldn't require an expert. It's just,
17 ~~it's what you observe. And this witness has observed it~~

18 because he made that impression.

19 I'm going to allow him to testify without objection to
20 the fact that he made the impressions, and they have been
21 introduced into evidence. I will permit him, over
22 objection if you still have an objection, to testify that
23 his viewing of the impression in the chair and the tennis
24 shoe that belonged to the defendant have similar
25 characteristics on the soles. And he'll have to testify

1 what they are if he is examined about it.

2 And then it's up to the jury to decide if that's
3 credible testimony or not or if you can even look at the
4 two and tell they are similarities, so.

5 MR. THOMPSON: Let me ask this question, Judge,
6 knowing how picky the appellate courts are over preserving
7 appeal issues.

8 Do you want me -- when they come back, in front of the
9 jury do you want me to object again or will this one -- I
10 know sometimes if that's the exact thing he's going to
11 testify to they'll let our objection at this point in time
12 carry forward.

13 THE COURT: Well, you'll -- well, I understand you're
14 not objecting to his collection of those two impressions.
15 When he -- if he's going to testify that there are
16 similarities between the two, you'll have to object if you
17 do.

18 MR. THOMPSON: Okay.

19 THE COURT: Okay.

20 MR. THOMPSON: Thank you.

21 THE COURT: Because, as I say, he's not testifying as
22 an expert in footwear impressions. He's testifying as a
23 crime scene evidence collection specialist who has taken
24 two items of evidence and is just saying that, you know, a
25 jury can look at it and see there's some similarities. And

Mike Segina
Redirect examination by Mr. Gowdy

1 of course the jury can look at it and tell for themselves.

2 All right. Bring the jury back.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: All right. Solicitor.

6 MR. GOWDY: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. GOWDY

9 Q Detective Segina, I am showing you and the jury
10 State's 26 on the overhead while I ask you about State's
11 33. Did you attempt to lift whatever partial shoe print
12 was in that chair and put it on State's Exhibit 33?

13 A I did.

14 Q And in the interest of full disclosure to the jury
15 with a shoe being normal size such as this, what portion of
16 the print were you able to lift out of that Little Tykes
17 chair?

18 A Approximately about three-quarters-of-an-inch portion
19 of it.

20 Q All right. And that three-quarters-of-an-inch
21 portion, did you then attempt to compare to State's
22 Exhibit 34, which is the bottom of a black skint-up tennis
23 shoe?

24 MR. THOMPSON: I renew my objection, Your Honor.

25 THE COURT: I sustain the objection.

Mike Segina
Redirect examination by Mr. Gowdy

1 Let me see y'all.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 MR. GOWDY: Thank you, Your Honor.

5 Q Detective Segina, did you note any areas of similarity
6 between the shoe print?

7 MR. THOMPSON: Again, I would renew my objection, Your
8 Honor.

9 THE COURT: All right. Overrule the objection.

10 Q Between the shoe print impression taken and what the
11 jury is seeing, that exhibit, and State's 34 and State's
12 33?

13 A A small similarity, yes.

14 Q Okay. Let me show you State's Exhibit 41 and ask you
15 whether or not you recognize that.

16 A Yes, I do.

17 Q What is that?

18 A That is the two swabs taken from the mouth of Jonathan
19 Leon Byers.

20 Q And what date were those swabs taken?

21 A 12/16/06 at 6:10 a.m. at the Gaffney Police
22 Department.

23 Q And did you take them yourself?

24 A Yes, I did.

25 Q And did you put the swabs in a sealed container and

Mike Segina
Redirect examination by Mr. Gowdy

1 process them?

2 A I did.

3 Q And where did you ultimately take those swabs?

4 A To the state law enforcement division, also known as
5 SLED.

6 MR. GOWDY: Your Honor, one moment of the Court's
7 time.

8 (Pause.)

9 MR. GOWDY: Your Honor, we would move State's 41 in
10 for the purposes of showing what Detective Segina took from
11 the defendant and what he did with it after he took it.

12 MR. THOMPSON: Your Honor, it is my understanding
13 they're not going beyond the scope that he's just told the
14 Court for introduction right now. So we have no objection
15 to that. I mean, if we're going into the analysis at this
16 time, I would, but --

17 THE COURT: Well, I understand. He's not going to be
18 testifying. I understand he won't be testifying about any
19 test that might have been conducted on the item. He's just
20 testifying as to its collection.

21 MR. GOWDY: That's correct.

22 MR. THOMPSON: I have no objection to that.

23 THE COURT: All right. It's admitted.

24 (Defendant's buccal swab marked State's Exhibit No.
25 41.)

Mike Segina

Redirect examination by Mr. Gowdy

1 Q And, Detective, who did you give State's 41 to?

2 A Agent Jennifer Clayton with SLED.

3 Q And while we're talking about SLED, let me show you

4 State's Exhibits 38, 39 and 40, specifically State's 38.

5 From whom did you receive that and to whom did you give it?

6 A I received it from Detective Sergeant Billy Odom and

7 took it to SLED.

8 Q And was it sealed when you received it?

9 A Yes, it was.

10 Q Did you tamper with it or alter it in any way?

11 A No, I did not.

12 Q Was it sealed when you delivered it to SLED?

13 A Yes, it was.

14 Q And State's 39, from whom did you receive it and to

15 whom did you give it?

16 A I received it from Captain Skinner with the Gaffney

17 Police Department and took it to SLED.

18 Q Was it sealed when you received it?

19 A Yes, it was.

20 Q And what does that purport to be? What is State's 39?

21 A It is a sexual assault evidence collection kit labeled

22 Giles, Brandy.

23 Q And what is State's 38?

24 A A sexual assault evidence collection kit labeled

25 Perrin, Delores.

Mike Segina
Redirect examination by Mr. Gowdy

1 Q All right. State's 40, which is the sexual assault
2 kit labeled Tammy Payne, from whom did you receive that and
3 to whom did you give it?

4 A I received it from Detective Billy Odom and took it to
5 SLED.

6 Q Was it sealed when you received it?

7 A Yes, it was.

8 Q Was it sealed when you took it to SLED?

9 A Yes, it was.

10 Q Did you alter it in any way?

11 A No, I did not.

12 Q Did you participate in a search of

13 A Yes, I did.

14 Q Who lived there?

15 A Mr. Byers.

16 Q Let me show you State's 27, 28, 30 and 31 and ask you
17 whether or not you recognize what's in those pictures.

18 A Yes, I do.

19 MR. GOWDY: Your Honor, we would move State's 30, 31,
20 27 and 28 into evidence.

21 MR. THOMPSON: No objection.

22 THE COURT: They are admitted.

23 (Photographs marked State's Exhibits Nos. 27, 28, 30
24 and 31.)

25 Q Showing you State's 30, Detective Segina, what is

Mike Segina
Redirect examination by Mr. Gowdy

1 that?

2 A That is the front portion of 201 Second, First Street,
3 First Street, excuse me.

4 Q Who lived there?

5 A Mr. Byers.

6 Q And how did you receive word that that was his
7 address? Did he tell you? Is that the address he listed?

8 A It was the address on his booking form.

9 Q Okay. Did you search inside the house, under the
10 house and around the house?

11 A Yes, we did.

12 Q Let me show you State's Exhibit 31. Tell the jury
13 what that is right there.

14 A It's a gray sweatshirt with a green and yellow stripe.

15 Q What's behind it? Do you want to see it up close?

16 A Yes, sir, if you don't mind. A pair of, appears to be
17 a pair of, blue jeans.

18 Q And you found these two items of clothing during your
19 search of Mr. Byers' residence?

20 A Yes, we did.

21 Q And where did you find them?

22 A In the living room.

23 Q Do you recall if anyone else lived there with him?

24 A I believe the grandparent, grandmother maybe.

25 Q Let me show you State's 27. What is that?

Mike Segina
Redirect examination by Mr. Gowdy

1 A A dark blue nylon jacket.

2 Q Show you State's 28. What is that?

3 A A brown long-sleeve shirt with a tag on the back.

4 Q Did you find a firearm while you were searching 201?

5 A No, we did not.

6 Q Did you find any ammunition?

7 A Yes. We found a .22 caliber short Remington bullet
8 under the rear porch.

9 Q What caliber?

10 A .22 caliber.

11 Q And where did you find it?

12 A Located under the rear porch.

13 Q Detective, let me show you State's Exhibits 3 and 37
14 and ask you if you recognize those two items.

15 A Yes, I do.

16 MR. GOWDY: Your Honor, we would move State's 3 and 37
17 into evidence at this point.

18 MR. THOMPSON: No objection.

19 THE COURT: They're admitted.

20 (Photograph marked State's Exhibit No. 3; bedsheet
21 cutting marked State's Exhibit No. 37.)

22 MR. GOWDY: Your Honor, permission to publish State's
23 3.

24 THE COURT: You may.

25 Q Detective Segina, tell the jury what they're looking

Mike Segina
Redirect examination by Mr. Gowdy

- 1 at.
- 2 A A picture of Ms. Perrin's bed with a portion of the
3 bedsheet removed.
- 4 Q You're saying Ms. Perrin. Are you referring to
5 Ms. Delores Perrin?
- 6 A Yes.
- 7 Q What is the white spot? What is that? What's the
8 jury looking at?
- 9 (Whereupon, the witness left the stand.)
- 10 Q Keep your voice up.
- 11 A That would be the mattress after the sheet was -- the
12 portion of the sheet was removed.
- 13 Q And State's 37 would be what?
- 14 A Would be the cut sample of the sheet.
- 15 Q So you cut a portion of the sheet from Delores
16 Perrin's bed and did what with it?
- 17 A I placed it into the evidence bag.
- 18 Q Did you seal it?
- 19 A Yes, I did.
- 20 Q Where did you take it?
- 21 A To SLED.
- 22 Q And for what purpose did you take it to SLED?
- 23 A For additional processing.
- 24 MR. GOWDY: One moment, Your Honor.
- 25 (Pause.)

Mike Segina
Recross-examination by Mr. Thompson

1 Q Detective, please answer any questions Mr. Thompson
2 may have for you.

3 RECROSS-EXAMINATION

4 BY MR. THOMPSON

5 Q Basically, other than you dusted for fingerprints and
6 found no other prints, is that correct --

7 A That's correct.

8 Q -- and how many different places at Ms. Perrin's house
9 did you dust? You said you dusted that back sliding glass
10 door.

11 A That's correct. I just fingerprinted the sliding rear
12 door.

13 Q Did you dust the side door?

14 A No, I did not.

15 Q You did not.

16 Okay. At Ms. Giles' house did you dust? You said you
17 dusted that yellow chair. Did you dust anything else? I

18 believe you said you dusted the knives in the refrigerator
19 several days later.

20 A I fingerprinted the window on the left side of the
21 house, the open window.

22 Q Okay. Did you find anything on the window?

23 A No, I did not.

24 Q Did you dust any of the doors?

25 A No, I did not.

Mike Segina
Recross-examination by Mr. Thompson

1 Q Were you aware that the back door might have been a
2 point of entry?

3 A Possibly a point of entry?

4 Q Yes.

5 A Yes. It could have been.

6 Q Okay. And did you dust it?

7 A No, I did not.

8 Q At Ms. Payne's house did you dust anything?

9 A I fingerprinted the front door inside and out.

10 Q Okay. Did you think to dust anywhere inside the
11 bedrooms of any of the three houses?

12 A No, I did not.

13 Q Okay. So no door facings or anything like that that
14 might have been touched as they walked through or anything.

15 A No, I didn't.

16 Q What about in the kitchen at Brandy Giles' house? Was
17 anything dusted, the stove or the knives? I believe you

18 dusted several days later the knives in the refrigerator.

19 Did you dust the refrigerator itself?

20 A No, I did not.

21 Q Okay. Now, you say that when you searched the house
22 that Mr. Byers lives in with his grandmother you didn't
23 find a gun but you found a .22 bullet under the rear porch.

24 A Yes, sir.

25 Q Okay. How long had it been there, do you know?

Mike Segina

Recross-examination by Mr. Thompson

1 A I could not tell.

2 Q Okay. And did you find -- I think it was Ms. Payne
3 that said her cell phone was taken. Did you find her cell
4 phone at Ms. Byars' house?

5 A No, we did not.

6 Q Thank you.

7 MR. THOMPSON: I have nothing further.

8 MR. GOWDY: Nothing on redirect, Your Honor.

9 THE COURT: You may step down.
10 Let me see y'all a minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, we have
14 some other witnesses here, but they're going to take some
15 length of time. It's not going to be relatively short. So
16 this is a good chance for us to recess for the afternoon.

17 ~~As you prepare to leave let me again remind you of the~~
18 caution I have previously given you. And that is during
19 the overnight recess do not discuss the case with any
20 person whatsoever in any fashion whatsoever.

21 Do not permit yourselves to be exposed to any type of
22 media coverage that might relate to this case, whether it
23 be television or radio or newspapers. Do not permit anyone
24 to try to discuss the case with you.

25 And also during the trial you can't conduct your own

1 research or do your own investigation into any issue that
2 might arise in order to try to help you understand
3 something better. You can't conduct your own research.

4 You have to accept the case as it's presented during
5 the trial. That's the evidence upon which you must base
6 your decision.

7 So during the overnight recess no discussions, no
8 media exposure, no investigation, no research.

9 Do have a good evening, and please report directly to
10 your jury room at 9:30 in the morning, 9:30 in the morning.
11 Have a good evening.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Any matters we need to address
15 before we recess?

16 MS. CRICK: No, sir.

17 MR. THOMPSON: None from the defense.

18 THE COURT: All right. Court is in recess until
19 9:30 in the morning.

20 END OF PROCEEDINGS OCTOBER 8, 2007
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1 (Proceedings October 9, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters to address before the jury is
5 brought in?

6 MS. CRICK: No, sir.

7 MR. THOMPSON: None from the defense.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when he recessed yesterday the state was
13 in the midst of their presentation of evidence. So we're
14 going to continue with that presentation this morning.

15 Before we do that let me ask and be certain that every
16 juror has followed the instruction given yesterday evening
17 before you left, and that is has any juror had any
18 discussions about the case, has any juror been exposed
19 intentionally or accidentally to any type of media coverage
20 that relates to the case. Has any juror conducted any
21 investigation or done any research that relates to the
22 case?

23 If in any way you have not followed that instruction,
24 let me ask any juror to raise your hand.

25 (No response.)

Shirley Thompson
Direct examination by Ms. Crick

1 THE COURT: All right. All have responded in the
2 negative.

3 All right. Ms. Crick.

4 MS. CRICK: Thank you, Your Honor. The state calls
5 Shirley Thompson.

6 SHIRLEY THOMPSON, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. CRICK

9 Q Can you please tell the jury your full name?

10 A Shirley Thompson.

11 Q Where do you live, Ms. Thompson?

12 A I live in Blacksburg.

13 Q Do you work?

14 A Yes.

15 Q Where do you work?

16 A Upstate Carolina Medical.

17 Q What do you do at Upstate?

18 A I'm a nurse in the emergency room.

19 Q How long have you been a nurse?

20 A Since 1977.

21 Q And how long have you been at Upstate?

22 A Thirty-two years.

23 Q Have you done one specific job since you've been there
24 32 years, or different jobs?

25 A Different jobs.

Shirley Thompson
Direct examination by Ms. Crick

- 1 Q What have you done the most?
2 A The emergency room.
3 Q Did you have to have any special education or training
4 to be a nurse?
5 A Yes.
6 Q What did you have to do?
7 A I went to college and nursing school, and then we do
8 continuing ed all throughout the year.
9 Q So every year do you have to do additional training to
10 keep up with new things in medicine?
11 A Right.
12 Q During your time as an E. R. nurse have you had to do
13 sexual assault examinations?
14 A Yes..
15 Q Is it fair to say that you've done quite a few in
16 those 25 or so years?
17 A A few, yeah.
18 Q Did you do a sexual assault examination and kit on
19 Delores Perrin?
20 A Yes.
21 Q And did you also do one on Brandy Giles?
22 A Yes.
23 Q Is there a general way that you do those kits? How do
24 you know what to do?
25 A Well, you have -- the paperwork is in this format.

Shirley Thompson
Direct examination by Ms. Crick

1 It's a format that you go by. Usually the patient is
2 triaged first, and they're brought back into the room.
3 Interviews are done. Documentation is taken on the
4 interview, what the patient stated happened. And then
5 consents are obtained. And then you start the protocol.

6 Q And when you say contents are obtained, before you
7 start doing any of your rape examination do you tell the
8 patient what's going to happen?

9 A Yes.

10 Q Do you walk through it step by step so that they know?

11 A We usually tell them that, you know, it is a procedure
12 that takes, takes a good while. It's a long, drawn out
13 procedure. It's very detailed. It's their personal --
14 there are things that the patient has to go through that
15 are not always pleasant. But it is to obtain the
16 information that is needed.

17 Q And you explain all of that, and then you get them
18 to -- do they have to sign a consent form?

19 A Yes, they have to sign a consent form.

20 Q And you said you followed the protocol. Is there a
21 paper inside the kit?

22 A Yes.

23 Q And it tells you exactly what to do.

24 A Right.

25 Q What is the first thing, or what do you normally do?

Shirley Thompson
Direct examination by Ms. Crick

1 Just kind of explain to the jury what steps you go through
2 with each patient.

3 A Well, once you have taken down their narrative, you
4 know, what they have said has happened, you start the
5 procedure by usually having them to undress on a piece of
6 paper. That is to catch any debris that may fall.

7 Q So you put a sheet of paper on the floor?

8 A Right.

9 Q And they stand over it naked.

10 A Right.

11 Q And the point of that is what?

12 A Well, once you have them undress, you fold that paper.
13 Clothing is put into an evidence bag and then that paper
14 itself is put into an evidence bag and sealed.

15 Q And after they do that, once you collect the paper, do
16 you further examine them?

17 A Yes.

18 Q What do you do? Do you look over --

19 A Do a physical exam and see if there are any abrasions,
20 bruising, anything that may have occurred during the
21 incident.

22 Q Any injuries that would have occurred?

23 A Right.

24 Q Now, in your experience do you always see injuries in
25 a sexual assault case?

Shirley Thompson
Direct examination by Ms. Crick

1 A Not always.

2 Q What else do you do after you look over them for any
3 injuries?

4 A Then you start, you know, obtaining your evidence,
5 which, again, it's in the format. We have several things
6 that we go through. You do the pubic hair combings; you
7 pull the hair from the pubic area; you do head hair from
8 different areas of the head.

9 Q So do you -- and I'm going to stop for a second here.
10 You have to actually take a comb and comb through the pubic
11 hair area.

12 A Yes.

13 Q And the purpose of that is?

14 A To pick up any evidence, whether it be from the
15 patient or from anywhere. It may be even debris that
16 you're picking up.

17 Q And you said that you pluck hairs from the pubic area.

18 A Yes.

19 Q And what do you do with those?

20 A They are put into a sealed envelope.

21 Q For comparison later?

22 A Right.

23 Q And then you also pull hairs from the head?

24 A Yes.

25 Q For the same reason.

Shirley Thompson
Direct examination by Ms. Crick

- 1 A Right.
- 2 Q Do you use what's known as a Wood's lamp?
- 3 A Yes, ma'am.
- 4 Q What is that? Can you let the jury know?
- 5 A It's an ultraviolet light. You usually turn the
- 6 lights off in the exam room and scan the pubic area with a
- 7 Wood's light, and it will usually show up any kind.
- 8 Anything that's there will usually illuminate.
- 9 Q Like bodily fluids?
- 10 A Like body fluids. I don't know what all it will
- 11 illuminate, but I know that box will.
- 12 Q And if you use that Wood's lamp and saw an area on the
- 13 body that was illuminated, what do you normally do?
- 14 A Take a swab from that area.
- 15 Q You would swab that area.
- 16 A Right.
- 17 ~~Q Do you do the internal swabs, the vaginal swabs?~~
- 18 A No.
- 19 Q Who does that?
- 20 A The physician does that.
- 21 Q You would just do the exterior stuff.
- 22 A Right.
- 23 Q And once you do that swab, what would you do with it?
- 24 A The swab is then put into an envelope and sealed; and
- 25 date, time and my initials are put onto it.

Shirley Thompson
Direct examination by Ms. Crick

- 1 Q After you look at the body and collect pubic hairs and
2 do all of that, what's the next thing the patient would
3 have to do?
- 4 A Go through the exam with a physician.
- 5 Q And are they on a table?
- 6 A Yes.
- 7 Q In an exam room?
- 8 A Right.
- 9 Q Feet inserts.
- 10 A Right.
- 11 Q And what does the doctor do specifically?
- 12 A He does his physical exam, and then he collects
13 vaginal specimens or rectal specimens if need be.
- 14 Q So, and he uses a swab.
- 15 A Yes.
- 16 Q To swab the orifices of the body essentially.
- 17 A Right.
- 18 Q Would he do the swab of the mouth or is that something
19 you would do?
- 20 A The nurse does that.
- 21 Q Any internal things that involve the genitals he will
22 do.
- 23 A Right.
- 24 Q Once the doctors does the swab does he seal it, or do
25 you seal it?

Shirley Thompson
Direct examination by Ms. Crick

- 1 A I seal it because it has to dry.
- 2 Q So once you get the swab from the doctor, what do you
3 normally do with it?
- 4 A I put it. I have the envelope there. I usually just
5 slip it to the edge of the envelope, leave the edge out
6 just enough for it to air dry. Once it has dried, put it
7 into the envelope completely and seal it.
- 8 Q And once you have everything in the envelopes, where
9 do you put the envelopes?
- 10 A The envelopes are then placed into a box, which is a
11 kit.
- 12 Q And let me show you. I'm going to show you all of
13 them, two of them in the beginning. Is this the box?
- 14 A Yes.
- 15 Q And that's State's 39 and 38. You put all the
16 envelopes into these boxes.
- 17 A Right.
- 18 Q Once you do that, what do you do with the boxes?
- 19 A The box stays with me.
- 20 Q Do you seal it up?
- 21 A No, it's not sealed at that time. It is not sealed
22 until the officer arrives to collect it.
- 23 Q And at that point who seals it?
- 24 A I seal it.
- 25 Q In the presence of the officer?

Shirley Thompson
Direct examination by Ms. Crick

- 1 A Right.
- 2 Q And when you say you seal it, is that the tape?
- 3 A Evidence tape.
- 4 Q You put that on the box.
- 5 A Right.
- 6 Q And you said it stays with you the whole time.
- 7 A Yes, ma'am.
- 8 Q What if you go to the restroom?
- 9 A It goes with me.
- 10 Q Until you give it to law enforcement.
- 11 A Right.
- 12 Q Okay. We're going to go to the two individuals I
- 13 asked you about earlier.
- 14 Let's talk about Delores Perrin first. Do you recall
- 15 what her reason was for being there at the E. R.?
- 16 A She stated that she was sexually assaulted.
- 17 Q Did she tell you when that sexual assault had
- 18 occurred, about?
- 19 A Yeah. I think that's in my notes.
- 20 Q Okay.
- 21 A I don't remember the time.
- 22 Q Let me pass that up to you.
- 23 MS. CRICK: Your Honor, may I approach the witness?
- 24 THE COURT: Yes.
- 25 Q I'm just going -- I'm not going to attempt to enter

Shirley Thompson
Direct examination by Ms. Crick

1 these into evidence but just to refresh your memory. You
2 don't have to be specific, but generally did she tell you
3 when it had occurred?

4 A Yes.

5 Q When had it occurred?

6 A She came in that morning. We started at 8:17, and I
7 don't have the specific time on here. It's probably on the
8 others.

9 Q Had it happened recently?

10 A That morning.

11 Q Okay. So it was that morning that she gave it to you.

12 A Right.

13 Q Did she tell you where it had occurred?

14 A At her home.

15 Q And she said that it was a sexual assault.

16 A Yes, ma'am.

17 Q Once she came in to see you, you did the full exam
18 that you just described to the jury with her.

19 A Yes, ma'am.

20 Q And you used that Wood's lamp.

21 A Yes, ma'am.

22 Q Did you have occasion to do an external swab on
23 Ms. Perrin?

24 A I believe we did.

25 Q And let me show you. I'm going to get this marked

Shirley Thompson
Direct examination by Ms. Crick

1 first.

2 (Body fluid envelope marked State's Exhibit No. 42 for
3 Identification.)

4 Q I'm going show you what's been marked as State's 42.
5 If you could, just take a look at that and tell me if you
6 recognize what that is.

7 A This is a miscellaneous body fluid. It was obtained
8 from the external labia.

9 Q So, and I don't know if we all know what that is. But
10 where is that area?

11 A That is the outside of the pubic area.

12 Q The vaginal area?

13 A Right.

14 Q And you did a swab of that area.

15 A Right.

16 Q Once you did that swab, you put it in the envelope.

17 A Yes.

18 Q And sealed it up.

19 A Right.

20 Q And put in that kit.

21 A Yes.

22 Q And gave it to an officer.

23 A Yes.

24 Q I'm going to show you one more swab that I'm going to
25 get marked.

Shirley Thompson
Direct examination by Ms. Crick

1 (Body fluid envelope marked State's Exhibit No. 43 for
2 Identification.)

3 Q And this is going to be State's 43. And tell me if
4 you recognize what that is.

5 A This is a vaginal swab.

6 Q And that's from Delores Perrin?

7 A It is.

8 Q And who is the doctor that took that swab?

9 A Dr. Speight.

10 Q And you were there working with Dr. Speight during the
11 exam.

12 A Yes, ma'am.

13 Q And did Dr. Speight give that swab to you?

14 A Yes.

15 Q And what did you do with it?

16 A That swab is then put into this envelope and sealed.

17 Q And then you put that envelope into a box?

18 A Right.

19 Q I'm going to show you State's 38 which is already in
20 evidence. And tell me if you recognize that box.

21 A Yes.

22 Q What is it?

23 A This is the collection kit for sexual assault on
24 Delores Perrin obtained by me at Upstate Carolina.

25 Q And who did you give that to?

Shirley Thompson
Direct examination by Ms. Crick

1 A This was to Billy Odom, Jr.

2 Q Of the Gaffney Police Department?

3 A Yes.

4 Q I'll take that back from you. Along with those swabs
5 you put the white sheet and everything else that you
6 collected in that box, and that all went to the officer.

7 A Right.

8 Q And that was Billy Odom.

9 All right. I'm going to go now to Brandy Giles. Did
10 you do an examination of her on December the 11th?

11 A Yes.

12 Q And what was her reason for being there?

13 A She stated she had been sexually assaulted.

14 Q And I'm going to show you your notes from that one to
15 see. Did she tell you when it had happened?

16 A That morning.

17 Q And did she tell you where it had happened?

18 A Yes, ma'am, at her home.

19 Q Did you do the same process and procedure that you
20 described to the jury earlier --

21 A Yes.

22 Q -- on Brandy? I'm going to show you and actually have
23 two things marked.

24 (Body fluid envelope marked State's Exhibit No. 44 for
25 Identification; body fluid envelope marked State's Exhibit

Shirley Thompson
Direct examination by Ms. Crick

- 1 No. 45 for Identification.)
- 2 Q I am going to show you State's 44 and 45, and just
- 3 tell me if you recognize those two things.
- 4 A Yes, 44 is a vaginal swab obtained on Brandy Giles.
- 5 Q And who actually did that swab?
- 6 A That would be the physician.
- 7 Q Dr. Karns?
- 8 A Yes.
- 9 Q And then what is the other item you have in your hand?
- 10 A This is miscellaneous body fluid collected on Brandy
- 11 Giles by me, and it was fluid from the inner thigh.
- 12 Q So is that something you would have seen and also --
- 13 something that you would have seen with that Wood's light?
- 14 A With the Wood's lamp.
- 15 Q And you collected that.
- 16 A Yes, ma'am.
- 17 Q And after you collected all of that, I'm going to show
- 18 you State's 39. Tell us what that is.
- 19 A This is the sexual assault evidence collection kit on
- 20 Brandy Giles.
- 21 Q And is your name on the back of that?
- 22 A Yes, ma'am.
- 23 Q And you put everything in that box and sealed it up --
- 24 A Yes, ma'am.
- 25 Q -- in the presence of an officer.

Shirley Thompson
Cross-examination by Mr. Thompson

1 A Right.

2 Q And who did you give it to?

3 A Chris Skinner with the city police department.

4 MS. CRICK: One moment, please, Your Honor.

5 (Pause.)

6 MS. CRICK: Your Honor, I have no further questions at
7 this time.

8 CROSS-EXAMINATION

9 BY MR. THOMPSON

10 Q Ms. Thompson, on Brandy Giles you testified that you
11 took, I believe, vaginal swabs and miscellaneous swabs from
12 the body.

13 A Yes, sir.

14 Q Was there also oral swabs taken?

15 A Yes, sir.

16 Q Was there also rectal swabs taken?

17 A Yes, sir.

18 Q Okay. And as to these two events, your total
19 involvement was at the hospital --

20 A Yes, sir.

21 Q -- processing the person that came in, is that
22 correct?

23 A Yes, sir.

24 Q You have no personal knowledge what took place on
25 December the 6th of last year or December the 13th of last

Dr. Paul Daniel Karns
Direct examination by Ms. Crick

1 year, is that correct, or the 11th?

2 A No, sir.

3 Q Thank you.

4 THE COURT: Thank you. You may step down.

5 MS. CRICK: Your Honor, the state calls Dr. Karns.

6 DR. PAUL DANIEL KARNS, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. CRICK

9 Q Could you tell the jury full name, Dr. Karns?

10 A It's Paul Daniel Karns.

11 Q And where do you work?

12 A I work in the emergency room at Upstate Carolina.

13 Q And what do you do there? I think it's obvious from
14 your name, but what specifically?

15 A One of the E. R. physicians.

16 Q How long have you been in the E. R.?

17 A About 18 years.

18 Q And what do you do in the E. R.?

19 A I see patients and treat patients.

20 Q Anyone who comes there for treatment, they would see
21 you.

22 A Yes, ma'am.

23 Q Did you examine Brandy Giles on December the 11th of
24 2006?

25 A I did.

Dr. Paul Daniel Karns
Direct examination by Ms. Crick

1 Q Before we get into that I'm going to ask you a couple
2 of questions about your background as a doctor. Could you
3 just give the jury and us the benefit of your educational
4 background?

5 A Four years of undergraduate at Wofford College, went
6 to medical school in Columbia for four years, did three
7 years of residency at Spartanburg Regional, two years in
8 private practice and the last 18 years work in the
9 emergency room.

10 Q Do you have to do any continuing education?

11 A Yes, ma'am, to keep up your -- we have to do so many
12 hours per year.

13 Q So each year you continue with your training.

14 A Yes, ma'am.

15 MS. CRICK: Your Honor, at this time I'd like to
16 qualify him as an expert in emergency medicine.

17 MR. THOMPSON: No objection.

18 THE COURT: He is so qualified.

19 Q In your practice at the E. R. do you examine sexual
20 assault victims?

21 A Yes, ma'am.

22 Q And was that the case when you examined Brandy Giles
23 on December the 11th?

24 A Yes, ma'am.

25 Q That was the reason she came in?

Dr. Paul Daniel Karns
Direct examination by Ms. Crick

1 A Uh-huh.

2 Q And you're familiar with the sexual assault kit, I
3 guess, the box and the swabs and all of that.

4 A Yes, ma'am.

5 Q What part of that are you involved with?

6 A The physician, we usually just do the physical-exam
7 portion. I usually don't get involved too much with the
8 history or the present illness or the subject information.

9 Q So by the time she gets to you the nurse has already
10 talked to her about what happened and gotten any history.
11 Do you have the benefit of that knowledge?

12 A Correct.

13 Q But you don't actually collect that information.

14 A Correct.

15 Q So when she gets to you, what specifically would you
16 do?

17 A I usually do a physical exam, look at her skin for any
18 signs of trauma, and then move to the pelvic exam.

19 Q And when you do the pelvic exam are you looking for
20 injury there?

21 A Of course, yes.

22 Q In this particular case on Brandy did you find or note
23 any injury to that vaginal area?

24 A I didn't see any signs of trauma.

25 Q And if don't see a sign of trauma, is that unusual in

Dr. Paul Daniel Karns
Direct examination by Ms. Crick

- 1 a sexual assault case?
- 2 A It's not.
- 3 Q What is normal to see in a sexual assault case?
- 4 A I would say usually it's a fairly normal exam.
- 5 Q In most cases it's normal.
- 6 A Yes.
- 7 Q Would, whether there are injuries or not, would that
- 8 be influenced by how a victim fought or struggled?
- 9 A Correct.
- 10 Q Do you order followup treatment? Or actually let me
- 11 back up. Do you prescribe medications for sexual assault
- 12 victims?
- 13 A Yes, ma'am.
- 14 Q What kind of medications do you prescribe?
- 15 A We do a culture for gonorrhea and chlamydia. And
- 16 since those results are not ready for at least 48 hours, we
- 17 usually treat the gonorrhea and chlamydia. And we usually
- 18 give emergency prevention. And that's about all.
- 19 Q So someone who comes in after a sexual assault goes
- 20 ahead and would take medications to deal with S. T. D.'s
- 21 should they be present?
- 22 A Right.
- 23 Q And also to prevent pregnancy should that be an issue.
- 24 A Right.
- 25 Q And you did both of those things in this case.

Dr. Paul Daniel Karns
Cross-examination by Mr. Thompson

1 A Right.

2 Q I'm going to show you what's been marked as State's 44
3 if you could take a look at that. What is that?

4 A That's a vaginal swab from Brandy Giles.

5 Q And would that be the swab that you actually did in
6 her vaginal area?

7 A Yes, ma'am.

8 Q And after you were done with that swab what would you
9 have done with it?

10 A These things are usually laid out on Mayo stand, and I
11 usually just put the Q-tip swab in the particular envelope.

12 Q And then who gets them after that?

13 A The nurse does.

14 Q And then she does whatever she does.

15 A Right. Air dries them.

16 MS. CRICK: Your Honor, I have no further questions at
17 this time.

18 CROSS-EXAMINATION

19 BY MR. THOMPSON

20 Q Doctor, may I see? I just want to ask a question
21 about that. How do you know that's the one you did on
22 Brandy Giles?

23 A The only reason I know is because it's in the kit and
24 it's sealed up, and that's the procedure that we're
25 following at the time, I mean.

Dr. Paul Daniel Karns
Cross-examination by Mr. Thompson

- 1 Q Well.
- 2 A It's never left unguarded, so.
- 3 Q This kit?
- 4 A Yeah. The Q-tips look the same, if that's your
5 question.
- 6 Q Is this the kit?
- 7 A Yes.
- 8 Q Is this the kit?
- 9 A Uh-huh.
- 10 Q How do you know which kit that came out of?
- 11 A Because it's initialed and written on at the time.
- 12 Q Who initialed it?
- 13 A The nurse initials the envelope.
- 14 Q Okay. So you're simply going by you believe that
15 because the nurses initialed it. You don't have any of
16 your initials on there or anything like that, do you?
- 17 A No.
- 18 Q Okay. Were you present on December the 11th at Short
19 Alley and have any personal knowledge of what went on in
20 this case?
- 21 A Except other than my physical exam, no.
- 22 Q Okay. Thank you.
- 23 MS. CRICK: Just quickly, Your Honor.
- 24
- 25

Dr. Paul Daniel Karns
Cross-examination by Mr. Thompson

1 REDIRECT EXAMINATION

2 BY MS. CRICK

3 Q That was the only vaginal swab you did, correct?

4 A Correct.

5 Q And you handed it directly to Shirley Thompson.

6 A Right. We also do another thing called a wet mount
7 and intake cultures too.

8 Q And all of that was given to the nurse and put in the
9 kit.

10 A Right. Right at that time.

11 Q You didn't do the other two.

12 A No.

13 Q You just did this one.

14 A Correct.

15 Q And you recognize that as Brandy Giles.

16 A Correct.

17 MS. CRICK: That's all, Your Honor.

18 THE COURT: You may step down.

19 MS. CRICK: Your Honor, the state calls Joyce Linnon.

20 JOYCE RENA LINNON, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. CRICK

23 Q Ms. Linnon, can you tell the jury your full name?

24 A Joyce Rena Linnon.

25 Q And where do you live?

Joyce Rena Linnon
Direct examination by Ms. Crick

- 1 A I live in Spartanburg.
- 2 Q Do you work?
- 3 A Not at this moment.
- 4 Q Where did you work prior to now?
- 5 A Upstate Carolina in the emergency room.
- 6 Q So you are what, a nurse?
- 7 A I'm a registered nurse, yes, ma'am.
- 8 Q How long have you been a nurse?
- 9 A I have been a nurse since 1974.
- 10 Q And during part of your time as a nurse have you
- 11 worked in the emergency room?
- 12 A In the emergency room, yes, ma'am.
- 13 Q Did you perform a sexual assault exam on Tammy Payne?
- 14 A Yes, ma'am.
- 15 Q And do you know what date that was? Or I can show
- 16 you.
- 17 A Yeah. All I know is what she told me or what you
- 18 know.
- 19 Q Hang on one second. Those are your notes.
- 20 A 12/13/06.
- 21 Q December the 13th of 2006?
- 22 A Yes, ma'am.
- 23 Q And you were in the courtroom when Nurse Thompson
- 24 testified --
- 25 A Yes, ma'am.

Joyce Rena Linnon
Direct examination by Ms. Crick

- 1 Q -- about the sexual assault procedure and kit and
2 collection.
- 3 A Yes.
- 4 Q Is that what you did on Tammy Payne?
- 5 A Yes, ma'am.
- 6 Q Did you talk to her first about what had happened?
- 7 A Yes, ma'am.
- 8 Q Did she tell you when it had happened?
- 9 A I think within the past hour.
- 10 Q And did she tell you where it had happened?
- 11 A At home.
- 12 Q You did a physical exam on her?
- 13 A Yes, ma'am.
- 14 Q You also collected pubic hair?
- 15 A Well, she had shaved, but I went ahead and combed it
16 just in case.
- 17 Q So you did do all of that.
- 18 A Uh-huh.
- 19 Q Pulled her head hair.
- 20 A Yes, ma'am.
- 21 Q And what did she do after that or what did she do
22 after you were done with her?
- 23 A After I was done, well, of course the doctor came in
24 and did his exam and did his vaginal smears.
- 25 Q And do you know which doctor that was?

Joyce Rena Linnon
Direct examination by Ms. Crick

1 A That's Dr. Corbett.

2 Q And after he did his vaginal swabs would you have
3 collected those from him?

4 A Yes, ma'am.

5 Q Let me show you something I'm going to have marked as
6 State's 46.

7 (Body fluid envelope marked State's Exhibit No. 46 for
8 Identification.)

9 Q If you will, take a look at that and tell us what that
10 is.

11 A That's a vaginal swab that Dr. Corbett collected at
12 0555.

13 Q And after he collected it, what did he do with it?

14 A He gave it to me and I air dried it and then I put it
15 in a container.

16 Q Is that the envelope?

17 A Yes, ma'am.

18 Q And let me show you State's 40 if you would take a
19 look at the front and back of that box. What is that?

20 A This is the rape kit or the sexual assault kit, and it
21 has Tammy Payne's name on it, Dr. Corbett, my name and
22 medical, Upstate Carolina Medical Center. And then it has
23 where I gave it to Billy Odom of the Gaffney Police
24 Department on 12/13/06. And on the back it has Billy
25 Odom's signature and Sergeant Michael Segina's signature.

Joyce Rena Linnon
Cross-examination by Mr. Thompson

1 Q So before you gave that to law enforcement would that
2 box have stayed in your possession the entire time?

3 A Oh, yes, ma'am, yes, ma'am,

4 Q And you would have put that swab in that box and
5 sealed it up.

6 A Yes, ma'am.

7 Q With your name on it and Dr. Corbett's name on it.

8 A Yes, ma'am.

9 MS. CRICK: Your Honor, I have no further questions at
10 this time.

11 CROSS-EXAMINATION

12 BY MR. THOMPSON

13 Q Ms. Linnon, did you seal the box yourself?

14 A Yes, sir.

15 Q Okay. Do you still have the other exhibit up there?

16 That's okay. I will get it. Are you the person that
17 marked this envelope?

18 A Yes, I am.

19 Q Is all of that handwriting yours?

20 A Yes, sir.

21 Q Are those initials?

22 A No, no. Those initials are not mine and this SLED
23 number is not mine.

24 Q Okay.

25 A It's the blue ink that's mine.

Joyce Rena Linnon
Cross-examination by Mr. Thompson.

1 Q The blue ink is yours.

2 A Yes, sir.

3 Q Okay. You're the one that marked off on it.

4 A Yes, sir.

5 Q And you personally sealed the box before you gave it
6 to Detective Odom.

7 A Yes, sir.

8 Q Okay. Were you present on December the 13th at the
9 location this incident is alleged to have occurred at?

10 A No, sir.

11 Q Do you have any personal knowledge of it whatsoever?

12 A No, sir.

13 Q Thank you.

14 THE COURT: You may step down. Thank you.

15 MS. CRICK: Your Honor, may we approach?

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 THE COURT: Ladies and gentlemen, we are going to need
19 to take a short break. We've got some matters to deal with
20 as far as getting witnesses here. They're on the way, in
21 route, but they're not here yet. So it should take only a
22 few moments.

23 So I'll ask you to please go to your jury room. Do
24 not discuss the case. I'll bring you back in just a few
25 minutes.

Dr. Bernard Augustus Corbett, III
Direct examination by Ms. Crick

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: We'll be at ease while we wait for the
4 witness.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. Are we ready for the jury?

7 MR. THOMPSON: Yes, sir.

8 MS. CRICK: Yes, sir.

9 THE COURT: Who is the next witness?

10 MS. CRICK: Dr. Corbett.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. The jury is present. You may
14 proceed.

15 MS. CRICK: Thank you, Your Honor. The state calls
16 Dr. Corbett.

17 DR. BERNARD AUGUSTUS CORBETT,
18 III, having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. CRICK

20 Q Dr. Corbett, could you please tell the jury your full
21 name?

22 A Bernard Augustus Corbett, III.

23 Q And where do you live?

24 A I live in Moore, South Carolina.

25 Q Where do you work?

Dr. Bernard Augustus Corbett, III
Direct examination by Ms. Crick

- 1 A Upstate Carolina Medical Center.
- 2 Q What do you do at Upstate?
- 3 A I'm an emergency physician.
- 4 Q How long have you been a physician?
- 5 A Licensed in the state of South Carolina since 1980.
- 6 Q And how long have you been -- are you in the E. R. at
- 7 Upstate?
- 8 A Yes, sir.
- 9 Q How long have you been in the E. R.?
- 10 A A year and a half.
- 11 Q Did you examine Tammy Payne on December the 13th of
- 12 2006?
- 13 A Yes, I did.
- 14 Q We're going to talk about that in just a second. But
- 15 before we do that could you explain to the jury just what
- 16 your educational background is?
- 17 A It's important, I guess, I graduated from medical
- 18 school in California; I went to residency at Spartanburg
- 19 Regional Medical Center; practiced in Charlotte for a short
- 20 time. And then the rest of the time I've been in
- 21 Spartanburg in family practice, emergency room.
- 22 Q Do you have to have additional training each year?
- 23 A Yes.
- 24 Q What kind of training?
- 25 A We have to maintain a certain number of hours of

Dr. Bernard Augustus Corbett, III
Direct examination by Ms. Crick

1 education, and I have done that for all of the years that I
2 have been in practice.

3 MS. CRICK: Your Honor, at this time I would like to
4 qualify him as an expert in emergency medicine.

5 MR. THOMPSON: No objection.

6 THE COURT: He is so qualified.

7 Q Part of your practice is examining sexual assault
8 victims who come into the E. R.

9 A That's correct.

10 Q And is that why Tammy Payne was there?

11 A That's correct.

12 Q You're familiar with the sexual assault kit and
13 examination.

14 A Yes.

15 Q And what part did you play in all of that?

16 A Involvement of the emergency room physician involving
17 Ms. Payne, as I say, collection of smears and biological
18 specimens to be evaluated by the state department, SLED.

19 Q And the nurse does a large part of the examination, is
20 that correct?

21 A She does the initial part of the examination. But
22 anything that requires entry of a body cavity, then we have
23 to do that.

24 Q That's what you do. And that's what you did in this
25 case.

Dr. Bernard Augustus Corbett, III
Direct examination by Ms. Crick

1 A Yes, ma'am.

2 Q Let me before I get to your vaginal swab -- did you
3 examine her for any external injuries?

4 A Yes.

5 Q Did you note any injuries in her case?

6 A No, I did not.

7 Q Is that unusual in a sexual assault case?

8 A No, it's not.

9 Q What factors might come into play that would determine
10 whether there would be injuries or not?

11 A Well, if the female is, has had children, then there's
12 every possibility there will be no trauma. If she has had
13 no children, it's more likely there will be trauma.

14 Q Right.

15 A And that's pretty much it.

16 Q So it depends on the circumstances of the case.

17 A Yes.

18 Q Would you say it is unusual to have no injury or usual
19 to have no injury?

20 A A vast majority of the cases that we see have no
21 injury.

22 Q Now, I'm going to show you, and I think it's actually
23 already up here in front of you, two things. The first one
24 is State's 46 if you'll take a look at that. And tell us
25 what that is.

Dr. Bernard Augustus Corbett, III
Direct examination by Ms. Crick

- 1 A That is the vaginal swab specimen container on
2 Ms. Payne collected by me on December 13th of '06 at 5:55.
3 Q After you collected that, was that from your internal
4 swab of the vaginal area?
5 A Yes.
6 Q After you collected that what would you have done with
7 it?
8 A Handed it directly to the nurse.
9 Q And then from there the nurse seals it up and gets it
10 to the right law enforcement.
11 A That's correct.
12 Q All right. I'm also going to show you State's 40.
13 Can you tell us what that is?
14 A That is the container kit that is used to send the,
15 all the specimens we collect to the state.
16 Q Is your name on that kit on the front of the box?
17 A Yes, it is.
18 Q And that's the kit for Tammy Payne.
19 A That's correct.
20 Q Do you ever order a follow-up treatment for patients
21 or prescribe medications for sexual assault patients?
22 A Most of the time that's discussed with the patient and
23 their desire. If there has been a possible exposure, then
24 they're given the option to take medications for
25 appropriate prophylaxis.

Dr. Bernard Augustus Corbett, III
Cross-examination by Mr. Thompson

1 Q And that would be to prevent what?

2 A Well, there are some things we can prevent and there
3 are some things we can't do anything about. To prevent
4 sexually transmitted diseases such as gonorrhea, syphilis.
5 We cannot do anything about H. I. V.

6 Q How about for pregnancy?

7 A That option is given. We do have that option
8 available to us now. So they have the option of taking
9 some, usually a high dose of those pills.

10 MS. CRICK: Your Honor, I think I have no further
11 questions at this time.

12 CROSS-EXAMINATION

13 BY MR. THOMPSON

14 Q Doctor, your total involvement on December the 13th of
15 last year in the case was the physical exam, is that
16 correct?

17 A Yes, sir.

18 Q You have no personal knowledge whatsoever of what
19 transpired prior to that.

20 A No personal knowledge, no, sir.

21 Q No personal knowledge. Thank you.

22 THE COURT: You may step down. Thank you.

23 THE WITNESS: Thank you.

24 MS. CRICK: Your Honor, the state calls Dr. Speight.

25

Dr. Otis Donnell Speight
Direct examination by Ms. Crick

- 1 DR. OTIS DONNELL SPEIGHT,
2 having been duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. CRICK
4 Q Dr. Speight, could you please give the jury your full
5 name?
6 A Otis Donnell Speight.
7 Q And where do you live?
8 A I live in Tega Cay or Fort Mill, South Carolina.
9 Q Where do you work?
10 A I work full time at Piedmont Medical in Rock Hill,
11 South Carolina, and I work part time at Upstate Medical in
12 Gaffney, South Carolina.
13 Q And is that in the emergency room?
14 A In the emergency room, yes, ma'am.
15 Q How long have you been a physician?
16 A I finished medical school in 1985. I completed my
17 ~~residency in emergency medicine and internal medicine in~~
18 1989. And I have been practicing full time since that
19 time.
20 Q And where did you go to school?
21 A I did an undergraduate degree in chemistry at the
22 University of North Carolina at Chapel Hill and completed
23 that in 1978. I completed a master of science and
24 infectious disease in 1981 at the University of North
25 Carolina in Chapel Hill.

Dr. Otis Donnell Speight
Direct examination by Ms. Crick

1 I completed my medical school at the University of
2 North Carolina in 1985, after which completed a residency
3 in emergency medicine and internal medicine at Northwestern
4 in Chicago.

5 After completion of my residency I completed a
6 national health service obligation. I worked for them for
7 three years as payment. I completed that in Lawton,
8 Oklahoma, at Comanche County Memorial Hospital.

9 I completed a master's in business administration at
10 Wompa (sic) University. And I've been practicing emergency
11 medicine at Rock Hill since 1992.

12 Q And do you have to continue to get training every
13 year?

14 A Yes. Our hospital privileges require that we get -- I
15 think it's almost 45 hours of continuing medical education
16 every two years.

17 Q And you have done that.

18 A Absolutely.

19 MS. CRICK: Your Honor, at this time I would like to
20 qualify him as an expert in emergency medicine.

21 MR. THOMPSON: No objection.

22 THE COURT: He is so qualified.

23 MS. CRICK: Thank you, Your Honor.

24 Q Part of your practice in the E. R. is you see sexual
25 assault victims.

Dr. Otis Donnell Speight
Direct examination by Ms. Crick

1 A Yes, ma'am.

2 Q Did you exam Delores Perrin on December the 6th of
3 2006?

4 A Yes, I did.

5 Q And her purpose for being in the E. R. was?

6 A Alleged sexual assault.

7 Q And the jury has heard a little bit about the sexual
8 assault exam. Your part in it is what?

9 A To do an evaluation, first of all, for patient
10 mortality to make sure everything is medically stable. And
11 I also secure information that may be used later on in
12 terms of the sexual assault examination as established by
13 the state.

14 Q So part of that is the collection of evidence.

15 A Absolutely.

16 Q In this case you did a physical examination of Delores
17 Perrin.

18 A Yes, I did.

19 Q What did you note about her physical condition?

20 A I have to look at the records to refer to specifics,
21 and I don't want to speak out of turn. I apologize. I
22 worked all last night, so I want to make that clear.

23 Q That's okay. I want to give you -- I've got two pages
24 of these notes. And I will see if I can. I am going to
25 see if I can locate any others. But is that enough to tell

Dr. Otis Donnell Speight
Direct examination by Ms. Crick

1 you?

2 A Yes, yes, it is.

3 Q What did you note as far as her physical condition?

4 A She had some scratches to the right of her breast and
5 mid back which reportedly were from kitten scratches.

6 Q So that was not from the assailant.

7 A No.

8 Q She volunteered the information to you --

9 A Absolutely.

10 Q -- that that was from her kitten. And I'm going to
11 give you -- I think I've got a page here that you do not
12 have.

13 As far as your examination of her vaginal area or the
14 internal examination, did you make any notations there?

15 A I have documentation that the swabs were already
16 taken, samples were taken. We generally document any
17 abnormalities that we see. And I don't see any
18 documentation of any abnormality documented at the time of
19 the examination.

20 Q You noted dark blood in the vaginal vault at some
21 point. Now, would that have been a result of injury or
22 something else?

23 A It could have very well have been. Blood in the
24 vaginal vault does not necessarily indicate trauma.

25 Q So would it indicate someone who has her monthly

Dr. Otis Donnell Speight
Direct examination by Ms. Crick

1 period?

2 A Absolutely.

3 Q So there than that, no injury was observed.

4 A No, it was not.

5 Q Would that be abnormal in a sexual assault case not to
6 see injury?

7 A No. A majority of the cases there aren't signs of
8 trauma. It's dependent upon the individual's degree of
9 fear or cooperation during the alleged assault.

10 Q So in the majority of the cases you don't see it.

11 A Exactly.

12 Q And if a victim were cooperative and not fighting you
13 may not see it.

14 A Absolutely. You may not see it if there is no signs
15 of trauma, again.

16 Q After you did your physical examination you collected
17 a vaginal swab.

18 A Yes.

19 Q I'm going to show you what's been marked as State's
20 43. And tell me if you recognize that.

21 A Yes, I do.

22 Q What is that?

23 A It's a container which contains a swab that were taken
24 from Ms. Delores on 12/6/06 by myself.

25 Q And after you did that swab, who would you have given

Dr. Otis Donnell Speight
Cross-examination by Mr. Thompson

1 that to?

2 A Directly to the nurse. She would have placed it in a
3 container, a sealed container, and then sent it to SLED for
4 evaluation.

5 Q Would you in a sexual assault case order any follow-up
6 treatment or prescribe medication?

7 A Yes. Generally we offer prophylaxes for the commonly
8 sexually transmitted diseases, which are primarily
9 chlamydia, gonorrhea and syphilis. We do offer them
10 prophylaxes for the pregnancy if they need it because of
11 the AID's exposure. And we also discuss with them the
12 possibility of ordering an H. I. V., although there's no
13 current treatment. We usually establish a base line as
14 whether they've had a prior exposure or whether this will
15 be a new exposure.

16 Q And you would have gone through all of this in this
17 case.

18 A Absolutely, standard alleged sexual assault exam.

19 MS. CRICK: Your Honor, I have no further questions at
20 this time.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON

23 Q Dr. Speight, on December the 6th your total
24 involvement in this case was an examination of Ms. Perrin,
25 is that correct?

Mike Fowlkes
Direct examination by Mr. Gowdy

1 A Exactly.

2 Q You have no personal knowledge of what transpired
3 prior to that knowledge.

4 A No personal knowledge.

5 Q Thank you. Nothing further.

6 THE COURT: Thank you. You may step down.

7 MR. GOWDY: Your Honor, the state would call Detective
8 Mike Fowlkes.

9 MIKE FOWLKES, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. GOWDY

12 Q Good morning, Detective Fowlkes.

13 A Good morning. How are you?

14 Q Can you introduce yourself to the jury? And tell them
15 your background in law enforcement and where you're
16 currently employed and how long you've been there.

17 A I'm Captain Mike Fowlkes. I'm a criminal
18 investigations supervisor. I've been there 17 years with
19 the Cherokee County Sheriff's Department.

20 Q You are currently a captain, did I hear you say?

21 A Yes, sir.

22 Q All right. I want to go back with you to December the
23 16th of 2006 and ask you whether or not you had an occasion
24 to interview the defendant, Jonathan Byers, about a matter
25 unrelated to this prosecution.

Mike Fowlkes
Direct examination by Mr. Gowdy

- 1 A Yes, sir. I did.
- 2 Q During the course of that interview did this defendant
- 3 tell you whether or not on December the 16th of 2006 he was
- 4 in possession of a handgun?
- 5 A Yes, he did.
- 6 Q Did he describe that handgun to you?
- 7 A Yes, sir, he did.
- 8 Q Can you tell the ladies and gentlemen of the jury the
- 9 description that this defendant gave you on December the
- 10 16th of 2006 of the handgun in his possession?
- 11 A He described to me that he had acquired and possessed
- 12 a .22 caliber gray or silver in color with a black handle,
- 13 a small handgun, yes, sir.
- 14 Q All right. And that is on December the 16th.
- 15 A Yes, it was.
- 16 Q Of '06.
- 17 A Yes, sir.
- 18 Q Said gray and black.
- 19 A Gray-silver in color with a black handle.
- 20 Q .22 caliber, did you say?
- 21 A .22. He actually stated it had .22 on the side of it.
- 22 Q And that would be a short gun or a pistol, correct?
- 23 A Yes, sir.
- 24 Q All right. That's on December the 16th of 2006. Did
- 25 he tell you when he came into possession of that

Mike Fowlkes
Direct examination by Mr. Gowdy

- 1 gray-silver black .22 caliber pistol?
- 2 A Said he had acquired it approximately two to three
3 weeks earlier.
- 4 Q Two to three weeks earlier he had acquired it. Okay.
5 So he had it on December the 16th.
- 6 A Yes, sir.
- 7 Q He acquired it two or three weeks earlier.
- 8 A Yes, sir.
- 9 Q And you're talking to him on the 16th, correct?
- 10 A Yes, sir.
- 11 Q All right. And did he tell you where that gun was on
12 December the 16th of 2006?
- 13 A He did. He told me the gun was at his residence.
- 14 Q At his residence. Did you go to his residence on
15 December the 16th of 2006 and search for a gray-silver
16 black .22 caliber handgun?
- 17 A Yes. We did several hours after the interview.
- 18 Q Several hours after the interview. Did you search
19 hard for it?
- 20 A Yes.
- 21 Q Did you look under the house?
- 22 A We did, yes, sir.
- 23 Q In the house?
- 24 A Did, yes, sir.
- 25 Q Did you find it?

Nikki Perry
Direct examination by Mr. Gowdy

1 A No, sir.

2 Q Please answer any questions Mr. Thompson may have for
3 you.

4 MR. THOMPSON: I have no questions.

5 THE COURT: You may step down.

6 MR. GOWDY: Your Honor, can Mr. Thompson and I
7 approach for one moment?

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 MR. GOWDY: Your Honor, the state would call Ms. Nikki
11 Perry.

12 NIKKI PERRY, having been duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. GOWDY

15 Q Good morning, ma'am.

16 A Good morning.

17 Q Can you introduce yourself to the ladies and gentlemen
18 of the jury? Tell them where you work and how long you've
19 been there.

20 A My name is Nikki Perry. I work for the South Carolina
21 Law Enforcement Division, and I have worked there a little
22 over a year now.

23 Q Ms. Perry, what department do you work in at SLED?

24 A I work in the evidence control department.

25 Q Can you tell the ladies and gentlemen of the jury what

Nikki Perry
Direct examination by Mr. Gowdy

1 someone who works in the evidence control department at
2 SLED does?

3 A Yes, sir. Law enforcement agencies across South
4 Carolina bring in evidence, and they have a SLED request
5 form filled out. And what we do is we log in the
6 information. We also package the evidence. We seal it.
7 We have them initial and date it. We enter it into the
8 computer. It then provides a lab number, a label that we
9 place in the evidence used for tracking within the
10 laboratory.

11 Q Law enforcement agencies from all across South
12 Carolina bring evidence to you.

13 A Yes, sir.

14 Q All right. Is that evidence that's brought to you, do
15 you require that it be packaged or secured in any way
16 before you will accept it?

17 A Yes. It usually is packaged and labeled when it is
18 brought in our department.

19 Q All right. Let me show you State's Exhibit 38 and ask
20 you whether or not you received this and whether or not
21 your notes indicate that you received Delores Perrin's
22 sexual assault kit.

23 A Well, in my department I recognize the packaging and
24 the labeling that I place on the evidence.

25 Q All right. Let me show you --

Nikki Perry
Direct examination by Mr. Gowdy

1 MR. GOWDY: One moment, Your Honor.

2 (Pause.)

3 (Body fluid envelope marked State's Exhibit No. 47 for
4 Identification; body fluid envelope marked State's Exhibit
5 No. 48 for Identification.)

6 Q Let me show you State's 47, Ms. Perrin, and ask you
7 whether or not there is anything on that package that you
8 would recognize as indicating that you handled that.

9 A Yes, sir. I recognize the lab number, L06-16873, item
10 number one.

11 Q And what would you have done with that?

12 A The evidence comes in in a sexual assault evidence
13 collection kit like you have here, as well as a SLED
14 request form.

15 I log in the information. I -- the sexual assault
16 evidence collection kit comes in sealed when the officer
17 brings it in. I will then open the box. I take all of the
18 items inside of the box and place them in a heat-sealed
19 pouch. I will heat seal it. I have the officer initial
20 and date on the seal.

21 I then log in the information. It provides me a lab
22 number and an item number. And I place it on the heat-seal
23 pouch.

24 And at that time after I log it in and it provides a
25 number and I place it on the pouch, I then place it in our

Nikki Perry
Direct examination by Mr. Gowdy

1 D. N. A. evidence in-take storage.

2 Q So it comes in in a sealed container.

3 A It does.

4 Q You open it. And you put it in another heat-sealed
5 container. And you pass it on to whatever the proper
6 department, whether it be fingerprint analysis, D. N. A.,
7 hair. You make sure it gets to the right person in a
8 secure package.

9 A Yes, sir. I do.

10 Q All right.

11 MR. GOWDY: One moment, Your Honor.

12 (Pause.)

13 MR. GOWDY: Your Honor, we would move State's 47 into
14 evidence.

15 MR. THOMPSON: No objection.

16 THE COURT: It's admitted.

17 ~~(Body fluid envelope marked State's Exhibit No. 47.)~~

18 Q Do your notes --

19 THE COURT: Just one point of clarification. Do I
20 understand that State's Exhibit 47 came from State's
21 Exhibit 38 which is that box?

22 THE WITNESS: Yes, sir.

23 Q Who would you have taken -- who would you have given
24 State's 47 to? Do your notes indicate?

25 A According to my chain of custody, after I place it in

Nikki Perry
Cross-examination by Mr. Thompson

1 D. N. A. evidence in-take storage, which is a refrigerator
2 located in our locked evidence room, I then take it back
3 into my custody. And I gave it to Theresa Hooks.

4 Q Okay. Ms. Perrin, please answer any questions
5 Mr. Thompson may have for you.

6 CROSS-EXAMINATION

7 BY MR. THOMPSON

8 Q Ms. Perrin, is this the only time that you touched 38
9 and 47, State's 38 and 47, this piece of evidence?

10 A The 37 is the sexual assault kit?

11 Q Yes.

12 A Box?

13 Q Thirty-eight, I believe it was, the box.

14 A Yes, sir, when it --

15 Q 38 is the box.

16 A When the officer brings in -- that's the only time I
17 touch that box. I open the box and take the items out and
18 place it in a heat-sealed pouch. The box is then returned
19 to the officer.

20 Q Okay. And do you have notes up there?

21 A I have my chain of custody.

22 Q You have your chain of custody. Okay. That's good.
23 What all did you take out of that box? I know you have
24 identified No. 47, State's 47.

25 A According to my chain of custody this particular C. S.

Nikki Perry
Cross-examination by Mr. Thompson

1 C. kit contained blood from Delores Perrin. That is routed
2 to toxicology. A blood standard from Delores Perrin,
3 vaginal swabs.

4 Q I guess let me just ask the question a different way.
5 Maybe that will get where we are trying to go.

6 A Okay.

7 Q You have your document which documents your chain of
8 custody, right?

9 A Yes, sir.

10 Q Okay. Now, on the very first page, item one on your
11 chain indicates that's a heat-sealed pouch containing the
12 C. S. C. kit.

13 A Yes, sir.

14 Q Described as Delores Perrin, is that correct?

15 A Yes, sir.

16 Q Okay. And you've testified that you took that from
17 Sergeant Segina and put it in D. N. A. evidence and took it
18 out -- looks like about two hours later -- and gave it to
19 Theresa Hooks, is that correct?

20 A Yes, sir, that is correct.

21 Q All right. Now, on the second page you have an item
22 1.2 which is a sealed zip-lock bag containing a blood
23 standard. I'm sorry. I'm on the wrong page here. I am.
24 I'm sorry. I was on the wrong page. On page six, did you
25 take any other evidence related to this case?

Nikki Perry
Cross-examination by Mr. Thompson

- 1 A Which item are you referring to?
- 2 Q Item two.
- 3 A Item two.
- 4 Q Uh-huh.
- 5 A Yes, sir, I did.
- 6 Q Okay. And what evidence was that?
- 7 A According to my chain of custody, was panties.
- 8 Q And what did you do with that?
- 9 A I placed the panties in a heat-sealed pouch just as I
- 10 did the C. S. C. kit. It was in a separate heat-sealed
- 11 pouch.
- 12 It generated a lab number, and item. Placed item
- 13 number two on the panties. And I also have the officer
- 14 initial and date it on the seal.
- 15 Q Okay. Did you also on the following page, page seven,
- 16 take in item three?
- 17 A According to my chain of custody, yes, sir, I did.
- 18 Q And did you do the same with that as far as putting it
- 19 into evidence in in-take storage?
- 20 A Yes, sir. I placed it in processing, and that's
- 21 in-take storage.
- 22 Q Okay. Now, on that one you didn't take that out of
- 23 processing, did you?
- 24 A No, sir, I did not.
- 25 Q Okay. And on the prior one, item two, you didn't take

Rhonda Williams
Direct examination by Ms. Crick

1 that out of processing either, did you?

2 A No, sir, I did not.

3 Q Thank you.

4 THE COURT: You may step down.

5 MS. CRICK: Your Honor, the state calls Rhonda
6 Williams.

7 RHONDA WILLIAMS, having been
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. CRICK

10 Q Hi, Ms. Williams. Could you give the jury your full
11 name?

12 A Rhonda Michelle Williams.

13 Q Where do you work?

14 A South Carolina Law Enforcement Division.

15 Q What do you do down at SLED?

16 A I work as a forensic technician.

17 Q And what does that mean?

18 A It's just a title that we are given at our level.

19 Q And at your level what kind of duties do you normally
20 perform?

21 A I work in the evidence control department. In that
22 department, that is where we collect evidence from across
23 the state. We package the evidence. We have the officers
24 initial and date the evidence.

25 We log in the evidence into our computer database

Rhonda Williams
Direct examination by Ms. Crick

1 where a label is generated, and it's used for tracking the
2 evidence inside the lab.

3 Q So you, any time somebody deals with that piece of
4 evidence, it's logged into a computer.

5 A Yes.

6 Q Did you receive a sexual assault kit on Brandy Giles
7 on, from Mike Segina? And I'll show you that kit. It's
8 marked as State's 39. Is this how it would come to you?

9 A Yes.

10 Q And did you also receive a sexual assault kit on Tammy
11 Payne, which is State's 40? And I'll do them one at a
12 time.

13 A Yes, sir.

14 Q So you -- so the officer brought those two boxes to
15 you.

16 A Yes.

17 Q At SLED.

18 A Yes.

19 Q And that officer was Mike Segina?

20 A Yes.

21 Q When they got to you, were both of those sealed up?

22 A In our department, if the evidence comes into our
23 department unsealed, that information is properly
24 documented.

25 Q And in this case does it show?

Rhonda Williams
Direct examination by Ms. Crick

1 A No. There was no documentation that the evidence came
2 in unsealed.

3 Q So it would have been sealed.

4 A So it would have been sealed.

5 Q Now, once you get it, once you get a sexual assault
6 kit like that, what do you do with it?

7 A Once we get the sexual assault kit we remove all items
8 from out of the box and we place it into a SLED heat-sealed
9 pouch where it is sealed. And the officer initials and
10 dates, signs the heat-sealed package.

11 Q Okay. I'm going to have a couple of things marked
12 right here.

13 (Body fluid envelope marked State's Exhibit No. 49 for
14 Identification; body fluid envelope marked State's Exhibit
15 No. 50 for Identification.)

16 Q Okay. I'm going to show you now what's been marked as
17 State's 49 first. And actually I may have -- let me take
18 that back. Let me give you. It will be easier to go maybe
19 by date. I'm going to give you State's 50. And tell me if
20 you recognize what that is.

21 A That is the sexual assault kit for Brandy Giles.

22 Q And when you were talking about before a heat-sealed
23 pouch, is that what you were talking about?

24 A Yes.

25 Q And that's what the officer had to initial and sign.

Rhonda Williams
Direct examination by Ms. Crick

- 1 A Yes.
- 2 Q And you recognize that on there.
- 3 A Yes.
- 4 Q Everything from that box you put into that pouch.
- 5 A Yes.
- 6 Q What do you do with that pouch when you're done with
7 it?
- 8 A Once we package the evidence it's initialed and dated.
9 I place the evidence into the D. N. A. evidence in-take
10 storage.
- 11 Q And when it's sitting in storage, what is it waiting
12 for?
- 13 A It's waiting to be picked up by either the next
14 technician for that department, D. N. A. department, or the
15 analyst themselves.
- 16 Q And the next person that picks that up, that's entered
17 into the computer?
- 18 A Yes.
- 19 Q Do you know who that was in this case with Brandy
20 Giles?
- 21 A That's where I gave the evidence to Sheree Brown.
- 22 Q And then from there on Sheree Brown would have done
23 what with it?
- 24 A According to my chain of custody, Sheree placed the
25 evidence into the D. N. A. refrigerator, fourth floor.

Rhonda Williams
Direct examination by Ms. Crick

- 1 Q Okay. And she would not have opened it at that point.
- 2 A Not that I am aware of.
- 3 Q Would not have unsealed your heat-sealed pouch.
- 4 A Right.
- 5 Q The swabs that would have come in that kit, vaginal
- 6 swabs, oral swabs, anything for D. N. A., would have been
- 7 in that heat-sealed pouch.
- 8 A Yes.
- 9 Q Until someone from D. N. A. picked it up?
- 10 A Yes.
- 11 Q Let me also show you what's marked as State's 49. And
- 12 tell me if you recognize that.
- 13 A This is the sexual assault kit for Tammy Payne.
- 14 Q That's the heat-sealed pouch. You would have put
- 15 everything from her box into that pouch.
- 16 A Yes.
- 17 Q And you got that from Mike Segina?
- 18 A Yes.
- 19 Q After you sealed everything up in that one you did
- 20 what with it?
- 21 A After everything was sealed and initialed and dated,
- 22 it was then placed into the D. N. A. evidence in-take
- 23 storage.
- 24 Q And while it's in storage is it still sealed up?
- 25 A Yes.

Rhonda Williams
Cross-examination by Mr. Thompson

1 Q And the next person that picked that up, do you know
2 who that was?

3 A Nikki Perry gave the evidence to Sharon Graham.

4 Q And at that point it would have still been sealed up.

5 A Yes.

6 Q I will take that back.

7 MS. CRICK: I'm going to show the defense.

8 MR. THOMPSON: No objection.

9 MS. CRICK: Your Honor, the defense doesn't object.
10 We would like to enter these into evidence at this time.

11 MR. THOMPSON: No objection.

12 THE COURT: They are admitted.

13 (Body fluid envelope marked State's Exhibit No. 49;
14 body fluid envelope marked State's Exhibit No. 50.)

15 MS. CRICK: I don't have any further questions of her
16 at this time.

17 CROSS-EXAMINATION

18 BY MR. THOMPSON

19 Q Just one. It deals with the last question you were
20 asked, Ms. Williams. You say that your log shows that
21 Nikki Perry gave this to a Sheree Brown, is that right?

22 A Yes.

23 Q And then you said it would have still been sealed.
24 Were you present when Nikki Perry gave it to Sheree Brown?

25 A No, I was not.

Theresa Hooks
Direct examination by Ms. Crick

1 Q So you don't have any personal knowledge whether it
2 was still sealed at that time or not.

3 A Well, our policies and procedures --

4 Q That's the policy and procedure. But do you have any
5 personal knowledge?

6 A No.

7 Q Okay. Thank you.

8 MS. CRICK: No further questions, Your Honor.

9 THE COURT: Step down.

10 MS. CRICK: Your Honor, the state calls Theresa Hooks.

11 THE COURT: Let me see y'all just a minute.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THERESA HOOKS, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. CRICK

17 Q Ms. Hooks, can you tell the jury your full name?

18 A It is Theresa Hooks.

19 Q And where do you work?

20 A South Carolina Law Enforcement Division, also known as
21 SLED.

22 Q What do you do at SLED?

23 A At the time of this case I was a forensic technician
24 in the D. N. A. department.

25 Q And part of your job as a forensic technician involves

Theresa Hooks
Direct examination by Ms. Crick

1 storing and preserving evidence?

2 A Yes, ma'am.

3 Q I'm going to show you a couple of things. Bear with
4 me one second. I'm going to show you State's 43 and I'm
5 going to show you State's 48. Can you tell me what that is
6 if you recognize it?

7 A I recognize State's Exhibit 48. This is a pouch that
8 comes out of the heat-sealed pouch that comes up to D. N.

9 A. This is vaginal swabs. I do not recognize this because
10 it's not something that I opened, but I do recognize this
11 being a pouch that does come in a C. S. C. kit.

12 Q And I'm also going to show you State's 47. And tell
13 me if you recognize that.

14 A Yes, I do.

15 Q What is that?

16 A This is the heat-sealed pouch what comes up to the D.
17 N. A. department. It has other individual packages in it.
18 I can recognize it because of our lab number, and my
19 initials and date is also on the side when I heat-sealed
20 it, and the top of the heat seal.

21 Q Do you know who had that before you did?

22 A Do you mind if I refer to my chain of custody?

23 Q No.

24 A Prior to me receiving it, Nikki Perry is the one who
25 gave it to me.

Theresa Hooks
Direct examination by Ms. Crick

1 Q So when you got it was it still -- was it still heat
2 sealed or had Nikki opened it?

3 A No, ma'am. When I actually received this evidence
4 log-in it had not been opened. We cannot take evidence if
5 it has been opened. It has to have a heat seal across the
6 top. And the investigator who brought it in has to initial
7 and date it. If it was tampered with or it was opened by
8 somebody else, I wouldn't have taken into my custody.

9 Q So once you got that you did open it.

10 A Yes, ma'am.

11 Q What did you do with the contents of that once you
12 opened it?

13 A State's Exhibit No. 48 is what I opened. Inside of
14 this there is typically a D. N. A. blood standard that we
15 look for. There is also another pouch that's green that's
16 the toxicology sample. We looked for that as well.
17 Whenever I opened this I looked for our sample, the D. N.
18 A. samples, that I can take out and analyze it. And the
19 top sample goes up to the tox department.

20 Q So you didn't have anything to do with the tox part of
21 it. But the D. N. A. part of it, you said you would
22 stabilize the D. N. A.

23 A Yes.

24 Q What does that mean?

25 A When the blood actually comes in, it's in a vial.

Theresa Hooks
Direct examination by Ms. Crick

1 typically in purple or lavender top tube, it's in a liquid
2 form. As technicians, we take that liquid form of blood
3 and pour it onto a, excuse me, it's a sterilized piece of
4 paper that allows it to dry. Once it's dried we package it
5 and put it back into the evidence kit and seal it back into
6 the heat-sealed pouch and then we store it.

7 Q So the whole purpose of you opening up that heat
8 sealed pack was to stabilize that blood D. N. A.

9 A Yes, ma'am.

10 Q And you put it back in there and did that.

11 A Yes, ma'am.

12 Q And sealed it back up.

13 A Yes.

14 Q Once you sealed it back up, where did you put it?

15 A According to my chain of custody, I put in it our D.
16 N. A. S. box or bin. That's actually a bin that we use to
17 store evidence for approximately six months. These bins

18 stay in our D. N. A. department which is a secured
19 location. And after six months the technicians will take
20 it back out and determine what to do with it if the case
21 isn't assigned during that time.

22 Q And this case was assigned to Ken Bogan.

23 A Yes, ma'am.

24 Q So after you resealed that evidence and put it in the
25 bin, do you know who got the evidence after you?

Theresa Hooks
Direct examination by Ms. Crick

- 1 A It appears to be Sheree Brown.
- 2 Q She got your sealed pack.
- 3 A Yes, ma'am.
- 4 Q Okay. I'm going to ask you another item. This is
- 5 State's 37. And I'll take those other ones back. Just
- 6 tell me if you recognize that one.
- 7 A I recognize the lab number on it.
- 8 Q Okay.
- 9 A Which is the same lab number that was on the other
- 10 pouch.
- 11 Q So that would be for the Delores Perrin, the same case
- 12 as the other case.
- 13 A Yes, ma'am.
- 14 Q And what is it?
- 15 A It's one heat-sealed pouch containing cuttings
- 16 described as an evidence bag containing cuttings from a
- 17 bedsheet.
- 18 Q Cuttings from a bedsheet.
- 19 A Yes, ma'am.
- 20 Q Who did you get that from?
- 21 A I also retrieved this from Nikki Perry.
- 22 Q With the other things that were with that kit?
- 23 A Yes, ma'am.
- 24 Q And once you get it from Nikki Perry, what did you do
- 25 with it?

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 A I put that into the D. N. A. F. bin as well, along
2 with the C. S. C. kit.

3 Q Indicating it was going to be tested for D. N. A.

4 A At that point in time we put it in the D. N. A. F. bin
5 because there are certain criteria that we have to assign
6 in the case. And it was put in the "F" bin because there
7 was something that we didn't have that we would have to
8 assign.

9 Q Okay. Did you open it at any time?

10 A Looking at it, it does not have my initials on it.
11 So, no, ma'am, I would not have opened this.

12 Q It remained sealed until you transferred to the "F"
13 bin with the other stuff you had.

14 A Yes, ma'am.

15 MS. CRICK: Your Honor, I have no other questions at
16 this time.

17 MR. THOMPSON: No questions.

18 THE COURT: You may step down.

19 MS. CRICK: The state calls Jennifer Clayton.

20 JENNIFER LYNN CLAYTON, having
21 been duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. CRICK

23 Q Ms. Clayton, can you tell the jury your full name,
24 please?

25 A Jennifer Lynn Clayton, C-L-A-Y-T-O-N.

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 Q Where do you work?

2 A Currently employed with the South Carolina Law
3 Enforcement Division, also known as SLED.

4 Q And how long have you been with SLED?

5 A I've been with SLED approximately five years.

6 Q What do you do there at SLED?

7 A I am currently a forensic D. N. A. analyst within the
8 D. N. A. department.

9 Q And what does that mean? What do you do?

10 A As a D. N. A. analyst I have evidence from cases
11 assigned to me. And then I will develop a D. N. A. profile
12 from those so that it can be compared to -- I develop a D.
13 N. A. profile from evidence, or I can develop it from
14 standards. And then those can be compared.

15 Q Do you have to have any special training or education
16 to do that?

17 A Yes.

18 Q Could you explain that to the jury?

19 A Yes. I earned a bachelor's of science from U. N. C.
20 at Chapel Hill, a bachelor's of biology, and I also took
21 courses at N. C. State and U. N. C. My course work
22 included microbiology, genetics, biochemistry and
23 statistics.

24 I completed an internship at the North Carolina State
25 Bureau of Inves -- I mean, yes, the North Carolina State

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 Bureau of Investigations.

2 After being hired on at SLED I originally hired on as
3 a forensic technician. I worked as a technician for two
4 years. And after becoming a D. N. A. analyst, I completed
5 a one-year training program under another qualified analyst
6 before I was allowed to do case work on my own.

7 Q Have you ever been qualified as an expert in D. N. A.
8 in court before?

9 A Yes, I have.

10 Q Do you know about how many times?

11 A I believe it's six times.

12 Q In South Carolina?

13 A Yes, ma'am.

14 MS. CRICK: Your Honor, at this time I would like to
15 qualify her as an expert in D. N. A. in this case.

16 MR. THOMPSON: No objection.

17 THE COURT: She is so qualified.

18 Q I'm going to show you what's been marked as State's
19 41. If you will, take a look at that and tell me if you
20 recognize it.

21 A I don't recognize the exterior pouch, but I do
22 recognize the heat-sealed pouch that's sealed inside of
23 that. It has my initials and the date at which I seal it.

24 Q Could you tell us what that is inside there?

25 A Let's see. It will take me. Do you want me to open

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 the chain?

2 Q We may be able to open that for you.

3 MS. CRICK: Your Honor, if I can grab that I can open
4 it so she can look at it a little bit better.

5 (Pause.)

6 Q I am going to pass the pouch up to you too, but I will
7 take the inside out. And now maybe you can see it a little
8 bit better. What is that?

9 A This is a buccal standard from Jonathan Leon Byers.

10 Q What's a buccal standard?

11 A We have two types of standards that we typically use
12 to get D. N. A. from. If we know, it's a known source.
13 Sometimes we do blood and sometimes we do buccal. And
14 sometimes -- a buccal standard is simply a swab taken from
15 the inside of the cheek. And it contains skin cells. And
16 then we can break those skin cells down to separate the D.
17 N. A. out and develop a D. N. A. profile for that
18 individual.

19 Q And that is the swab from the mouth of Jonathan Byers?

20 A That's correct.

21 Q Who did you receive that from?

22 A I received that from Michael Segina.

23 Q With the Gaffney Police Department?

24 A That's correct.

25 Q Do you know what date you received that?

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 A Yes, I do, if you can allow me to refer to my notes.

2 Q Yeah.

3 A I took that in my custody on December the 16th of 2006
4 directly from Sergeant Michael Segina.

5 Q And when you received it, what did you do with it?

6 A I performed the D. N. A. analysis on it which simply
7 means, as I said earlier, you break the cells open and
8 separate the D. N. A. from the rest of the cell so that you
9 can focus on particular areas in the D. N. A. to develop a
10 D. N. A. profile, which in simplest terms is a set of
11 numbers that is unique with the exception of identical
12 twins, is unique to each individual.

13 Q And in this case what you received was simply his
14 standard, Jonathan Byers, or a sample -- excuse me.

15 A Relevant to the cases today, yes.

16 Q And your job as it pertained to that particular swab
17 was simply to develop his D. N. A. profile?

18 A That's correct.

19 Q And that's what you did.

20 A That's correct.

21 Q And when you got his swab, it was sealed?

22 A That's correct.

23 Q And no one touched it but you.

24 A That's correct.

25 Q And you tested it.

Jennifer Lynn Clayton
Direct examination by Ms. Crick

1 A That's correct.

2 Q At that point after you developed his profile did you
3 share that profile with another analyst?

4 A Yes.

5 Q Who was that analyst?

6 A Ken Bogan.

7 Q Did you yourself do any comparisons to the three cases
8 that we are here about today that are C. S. C. rape cases?

9 A No, ma'am. Ken Bogan did that comparison.

10 MS. CRICK: Beg the Court's indulgence.

11 (Pause.)

12 Q Did you generate a report after you developed a
13 profile?

14 A Yes, I did.

15 Q And in that report is there a chart, so to speak?

16 A Yes, ma'am.

17 Q That shows his profile?

18 A Yes, there is.

19 Q And that is what you shared with Ken Bogan.

20 A That's correct.

21 MS. CRICK: One moment, Your Honor.

22 (Pause.)

23 MS. CRICK: Your Honor, I have no further questions at
24 this time.

25

Jennifer Lynn Clayton
Cross-examination by Mr. Thompson

1 CROSS-EXAMINATION

2 BY MR. THOMPSON

3 Q You say you -- to establish this profile you break the
4 cell open and take the D. N. A. out.

5 A That's correct.

6 Q I believe that was your words, correct?

7 A Yes. In simple terms.

8 Q Now, the D. N. A. is a spiral or helical pairs, is
9 that correct?

10 A Yes. It's a basically, a long-chain molecule.

11 Q Okay. And it's in pairs.

12 A It's in pairs.

13 Q Base pairs?

14 A Yes. Well, yes. It's in base pairs. And D. N. A.
15 chromosomes are in pairs also.

16 Q And about how many base pairs is in each cell of D. N.
17 A.?

18 A In each cell? Human D. N. A. contains approximately
19 3 billion base pairs. So that would be each cell would
20 contain approximately 3 billion base pairs.

21 Q And out of those 3 billion base pairs, how many did
22 you use to develop your profile?

23 A The way that we count it isn't actually -- I couldn't
24 tell you exactly how many base pairs it is. We check
25 locations, and these locations are varying numbers of base

Jennifer Lynn Clayton
Cross-examination by Mr. Thompson

1 pairs long. And I couldn't tell you right off the top of
2 my head how many base pairs is contained in each location.
3 But each location varies from individual to individual in
4 length, which means the number of base pairs at that
5 location would also vary between individuals.

6 Q Okay. Well, would it be approximately maybe 200 to
7 300 base pairs on each one?

8 A I believe that's correct. I couldn't say for sure
9 without checking for each particular location.

10 Q Okay. Well, let's even go up higher. Let's go 500.

11 A Okay.

12 Q Could it be that many?

13 A Probably not. I don't believe any of them are that
14 long, but I'm not positive about that.

15 Q Okay. And you checked how many locations?

16 A I checked 15 locations.

17 Q Fifteen locations. So if we go to 500 times 15, we're
18 talking 7,500 base pairs that you would have checked, is
19 that correct?

20 A I don't think I can do that math in the top of my head
21 without paper or pencil, but I'll take your word for that.

22 Q Okay. And that is out of 3 billion base pairs.

23 A That's correct.

24 Q And you were able to establish profiles using
25 somewhere less than 7,500 out of 3 billion.

Jennifer Lynn Clayton
Redirect examination by Ms. Crick
Recross-examination by Mr. Thompson

1 A That's correct.

2 Q Thank you.

3 REDIRECT EXAMINATION

4 BY MS. CRICK

5 Q Just a quick follow-up. The 15 that you do check, why
6 do you check those 15?

7 A The locations that we use are widely established.
8 They're used in forensics all over the United States. And
9 they're even used, a number of them are used,
10 internationally. And it's a kit that we get to test all of
11 the locations at once. And then we get, once the seven --
12 it's basically the seven numbers, is the simplest way to
13 put it when we're done. And we have found that,
14 statistically speaking, those locations are more than
15 enough to develop a match between a standard in evidence or
16 between two pieces of standard -- two pieces of evidence.

17 Q And that's a commonly accepted practice.

18 A That's correct.

19 MS. CRICK: Nothing further, Your Honor.

20 RECROSS-EXAMINATION

21 BY MR. THOMPSON

22 Q You're just talking a mathematical match. The only
23 way you can do an identical match is if you tested all
24 3 billion base pairs, is that correct?

25 A That's correct. You have to sequence it to do an

Kenneth L. Bogan
Direct examination by Ms. Crick

1 identical match.

2 Q Thank you.

3 THE COURT: You may step down.

4 MS. CRICK: Your Honor, the state calls Ken Bogan.

5 KENNETH L. BOGAN, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. CRICK

8 Q Could you please tell the jury your full name?

9 A My name is Kenneth L. Bogan. My last name is spelled
10 B-O-G-A-N.

11 Q Where do you work?

12 A I'm employed with the South Carolina Law Enforcement
13 Division.

14 Q How long have you been there with SLED?

15 A Almost 24 years.

16 Q What do you do?

17 A I'm a forensic D. N. A. analyst.

18 Q And in simple terms, what does that mean?

19 A Okay. As a forensic D. N. A. analyst I receive items
20 of evidence from law enforcement agencies throughout the
21 state of South Carolina. I receive these items of evidence
22 for the purpose of identifying biological stains,
23 developing D. N. A. profile from those stains and comparing
24 them to known standards.

25 Q Did you have to have special training or education to

Kenneth L. Bogan
Direct examination by Ms. Crick

1 do that?

2 A Yes, I did.

3 Q Can you summarize that for the jury?

4 A Yes. I received a bachelor of science degree from the
5 University of Central Florida. My degree is in medical
6 technology. Medical technology is a field of science which
7 deals with diagnostic tests.

8 I basically worked in a hospital laboratory for
9 approximately six years until in 1984 I was hired at SLED.
10 When I went to work at SLED I was trained as a forensic
11 serologist. A forensic serologist is an individual who
12 works with items of evidence to identify body fluids. I
13 identified body fluids such as blood, semen or saliva.

14 In approximately 1990 I began my training in D. N. A.
15 analysis by attending the Federal Bureau of Investigation's
16 training course in D. N. A. typing.

17 I subsequently received advanced training from the F.
18 B. I. in advanced D. N. A. analysis. I also went through
19 approximately one year to one-and-a-half year's training
20 program under court-qualified D. N. A. analysts at the
21 South Carolina Law Enforcement Division before beginning
22 taking my own cases. I started working my own cases in
23 approximately 1992.

24 Q And you've been at SLED ever since.

25 A Yes.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 Q Have you ever been qualified as an expert in D. N. A.
2 in a courtroom?

3 A Yes, I have.

4 Q Do you know about how many times?

5 A It's approximately 60.

6 Q Sixty?

7 A Yes. In D. N. A. analysis approximately 60 times, and
8 forensic serology well over a hundred.

9 MS. CRICK: Your Honor, at this time I would like to
10 have Ken Bogan qualified as an expert in D. N. A.

11 MR. THOMPSON: No objection.

12 THE COURT: He is so qualified.

13 Q Before we get into the D. N. A. I want to let the jury
14 know a little bit about the SLED lab and your procedures
15 there at the lab. Are you accredited?

16 A Yes, the laboratory is accredited. We go through an
17 accreditation from an organization called the American
18 Society of Crime Laboratory Directors. That's an
19 inspection that occurs every five years.

20 We are inspected by -- usually directors of
21 laboratories are people that have expertise in, in their
22 specific areas. This is an inspection that covers all
23 aspects of laboratory, not just D. N. A. but other
24 compartments such as firearms, latent prints, questioned
25 documents and so forth. That's an accreditation that we

Kenneth L. Bogan
Direct examination by Ms. Crick

1 have passed successfully on two different occasions. We
2 are due again I think in 2009.

3 We also undergo an inspection each year by another
4 forensic laboratory that comes in and looks at all of our
5 protocols, procedures, the background and education of all
6 of our analysts and checks the facility as far as evidence
7 security and so forth. That inspection is done by an
8 organization basically under the guidelines of the D. N. A.
9 advisory board. But we undergo that inspection every year.

10 Q And you have recently undergone accreditation, is that
11 correct?

12 A Yeah, well.

13 Q For inspection?

14 A Again, I think our last inspection from Ashcraft (sic)
15 was in 2004 and our last D. N. A. inspection was
16 approximately a year ago.

17 Q Let me ask you a little bit about, because I know you
18 guys deal with a lot of evidence there in the lab. What
19 procedures, what protections do you have within the lab to
20 make sure that when you get a sample it's not contaminated?

21 A Initially, every item of evidence that comes into the
22 laboratory is sealed. It's sealed by the submitting
23 officer.

24 Whenever it changes hands, goes from one person to
25 another until it gets to its final place that it needs to

Kenneth L. Bogan
Direct examination by Ms. Crick

1 be examined, the integrity of the seals is always checked
2 by the individual that is handling, so that when evidence
3 comes to me it's in a sealed condition. That way I know
4 that it has not been altered or tampered with.

5 In some instances we have technicians that will get
6 involved in a particular sample and will stabilize the
7 sample. I know you heard some testimony earlier where a
8 sample was stabilized by drying it on a piece of sterile
9 paper. It was then resealed and then submitted. It
10 basically ends up in my hands in a sealed condition.

11 Q And you check for that every time you receive a
12 sample.

13 A Yes.

14 Q Do you have special hoods in the lab or doors in the
15 lab that protects one sample from getting mixed up with
16 another sample?

17 A Yes. All of the examinations that I do, I perform
18 them under a hood. It's basically an enclosed area, has a
19 glass front on it in an area where I can put my hands
20 underneath to work on the samples. Each and every time,
21 you know, I work on a case I make sure that the area that
22 I'm working on is clean. I wear sterile gloves.

23 As far as different areas of security of the evidence,
24 we have secured freezers, secured refrigerators where the
25 evidence is stored when it's not being examined.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 Q And do you work on one sample at a time?

2 A Yes.

3 Q Under that hood.

4 A Yes.

5 Q Once an analyst there at SLED does come up with a
6 finding, are those reviewed?

7 A Yes. For example, if I do an analysis on a case and
8 generate D. N. A. profiles for comparison, I will generate
9 a report. The report eventually goes to the law
10 enforcement agency that submits the evidence. And a copy
11 also generally goes to the solicitor's office.

12 Before my report can go out all of my work has to be
13 reviewed by another forensic D. N. A. analyst. It goes
14 through what we call a peer review or a tech review where
15 all the work that I've done is reviewed by other analysts.
16 It also goes through an admin review which is checked again
17 a second time.

18 Q So any statistics you come up with, numbers you come
19 up with, all of that is checked and double checked.

20 A Yes.

21 Q All right. Let's talk a about D. N. A. We're going
22 to feel a little bit like we're back in school, but in a
23 general sense can you tell us what is D. N. A.?

24 A Basically D. N. A. is an abbreviation. It stands for
25 deoxyribonucleic aid. It's a lot easier to say D. N. A.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 But D. N. A. is found in all the cells in the body that
2 have a nucleus. And a lots of cells that have a nucleus,
3 they're such things as blood cells, skin cells. We can get
4 D. N. A. from bones, from bone marrow, from teeth, from
5 hair roots and so forth.

6 No two people have the same D. N. A. except identical
7 twins, and forensically we can use D. N. A. from evidence
8 samples to develop D. N. A. profiles from them and compare
9 them to a D. N. A. profile that's developed from a known
10 standard and determine whether those two samples indeed
11 match and could have come from the same person or if they
12 don't match which means that they do not come from the same
13 person.

14 Q Now, what -- I know we're here for a criminal case and
15 you might use D. N. A. in that situation. But what other
16 purposes could you use D. N. A. for?

17 A Well, the technique that we use at the SLED laboratory
18 is also used in other instances for identification of, for
19 instance, war dead. It was used in the World Trade Center
20 to identify individuals who perished in that event.

21 It can be used for paternity testing to determine the
22 true parents of an individual, identification of remains
23 that are found abandoned, for example.

24 Q And could it be used in some cases for people who have
25 been wrongfully convicted to set them free?

Kenneth L. Bogan
Direct examination by Ms. Crick

1 A Absolutely.

2 Q When you get something, a sample, a drop of blood,
3 semen, whatever it may be, what is the first thing you do
4 with that sample? I guess that's an unknown sample.
5 What's the first thing you do?

6 A I suppose the first thing I do is I inventory it. I
7 probably will mark it for identification so that I can
8 recognize it later.

9 But to begin my analysis basically what I do is to
10 take a portion of it. Sometimes I have to consume all of
11 it. Sometimes, most of the time, I try to leave a portion
12 in case there's future testing. But I take a portion of it
13 and perform what's called the D. N. A. extraction. That's
14 basically I take a cutting, for example, if it's a swab or
15 if it's a piece of cloth, I just take a small portion of it
16 and soak it in some buffers and some detergents, and that
17 basically soaks the D. N. A. out.

18 There are some chemicals that are added to slice those
19 cells, the body cells, whether it be skin cells, blood
20 cells or sperm cells to slice those cells and break them up
21 and release the D. N. A.

22 Q And based on that D. N. A. do you develop a profile?

23 A Yes, eventually.

24 Q What is a profile? What does that tell you?

25 A Well, as Ms. Clayton had described, a profile is

Kenneth L. Bogan
Direct examination by Ms. Crick

1 simply the total combination of the genetic markers that
2 are examined from that D. N. A. that's extracted.

3 We test at 15 different locations for that for what we
4 call polymorphic. That means exist in many forms.
5 Everybody has them, but most people will differ in the
6 types of genetic markers that they have. So that's the 15
7 different locations.

8 Also we test at another location which will identify
9 the sex of the individual, whether they're male or female.

10 Q Who determines the 15 locations? Is that based on
11 anything else?

12 A Over the, during the development of D. N. A. analysis
13 various techniques were used. Years ago we used a
14 technique that was different locations. But with the
15 advent of the technique that we're using today, which is
16 called P. C. R. S. T. R. D. N. A. analysis -- I'll tell you
17 what those abbreviations mean. P. C. R. stands for
18 polymerase chain reaction; S. T. R. stands for short tandem
19 repeats.

20 The technique that we use today, it was a technique
21 that as it developed more and more locations that differ
22 between individuals were found on the D. N. A. molecule.
23 And it was determined that these locations could be
24 examined rapidly, more rapidly, than the older technique
25 and that we could also develop D. N. A. profiles not only

Kenneth L. Bogan
Direct examination by Ms. Crick

1 more rapidly, but we could consume less material. It took
2 less material to develop a D. N. A. profile.

3 So those four loci locations are in that D. N. A.
4 molecule, but what were chosen when they were basically
5 standardized through, from other laboratories. And people
6 want to be able to compare evidence from one laboratory
7 that was developed with evidence that was examined at
8 another laboratory. We have to compare those profiles.

9 So they were basically four loci, what we call core
10 loci. Those were the ones that most labs were using. And
11 as some of them were added on all of the laboratories
12 generally would add on to those same four loci. Some
13 laboratories don't examine to quite the extent that we do,
14 and they may examine less loci than we do at SLED.

15 Q So you in some cases examine more locations than other
16 labs do.

17 A Yes.

18 Q When you get a profile -- so I've got a, you know a,
19 semen stain, let's say. You develop a profile. Does that
20 tell you, okay, here's who did it?

21 A No.

22 Q What does it tell you?

23 A It's a profile that can be compared. It can be
24 compared to other individuals. It's either going to match
25 that individual or not match that individual.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 Q What do you need to determine whose semen that is?

2 A I would need a standard from individuals that are
3 possibly involved with the case. A standard is a sample of
4 D. N. A. or a sample that contains D. N. A. that is known
5 to come from that individual. And that would be something
6 that I would use to develop a profile and compare that
7 profile with the profile I develop from the evidence.

8 Q So, for example, you may get a swab from the mouth --

9 A Yes.

10 Q -- that you know belongs to a certain individual.

11 A That's correct.

12 Q You will compare that to the unknown profile you've
13 got --

14 A That's correct.

15 Q -- and determine if that's a match.

16 A Yes.

17 Q After you determine it's a match do you come up with
18 some sort of number or statistic?

19 A Yes.

20 Q How do you do that?

21 A Basically, when I have a profile from evidence and a
22 profile from a standard and they match, the question that I
23 have to ask myself and that lawyers will ask me is what's
24 the probability that somebody else has that same profile.

25 So based on statistical calculations, if you recall, I

Kenneth L. Bogan
Direct examination by Ms. Crick

1 said that everybody has these genetic markers but they
2 exist in the population in different percentages.

3 So if you know anything about, for example, your own
4 blood type, there are four different blood types. There is
5 blood Type A, Blood Type B, Blood type O and Blood Type
6 A-B. They're not distributed throughout the population in
7 equal percentages. It's not like one-fourth of the people
8 have the same type blood. Type O is the most common type
9 blood and exists in approximately 50 percent of the
10 population. So about half us have the same type of blood.

11 It's the same with genetic markers that I look at in
12 D. N. A. analysis. They exist in the population, although
13 there are way more of them than just the four blood types.
14 And they exist in the population in different percentages.

15 So those percentages have been measured and documented
16 in the database. So I use those figures or the frequency
17 estimates from that database and then calculate a frequency
18 estimate for the probability of finding the D. N. A.
19 profile of somebody else chosen at random and the
20 population having that same D. N. A. profile.

21 Q And that's the statistic you come up with.

22 A Yes.

23 Q Okay. I'm going to go specifically to the cases we're
24 here about today.

25 You received several samples from three separate cases,

Kenneth L. Bogan
Direct examination by Ms. Crick

1 is that correct --

2 A Yes, I did.

3 Q -- in this case? And you analyzed each one of those
4 samples, is that correct?

5 A I received, I examined samples from each case. There
6 were some samples that I did not perform any analysis on.

7 Q And in some cases why would you maybe analyze some
8 samples and not others within the same case?

9 A Generally speaking, if I find what I call a sample
10 that's meaningful or probative and I develop a profile from
11 it and I can compare it, it's not necessary to examine 15
12 other items and possibly get the same profile or possibly
13 get no results.

14 So it's a choice that's made for different reasons.
15 Number one, I look for the most meaningful sample, what I
16 call probative; I look for ways to be economical and not
17 spend the state's money on a lot of samples; and I also
18 look for ways to expedite the case. The more samples I run
19 the longer it takes me to do them, to generate reports and
20 so forth.

21 Q Okay. I'm going to show you some of those samples
22 marked State's 42, 43 and 37. These all relate to the case
23 involving Delores Perrin. Could you tell me if you
24 recognize any or all of those items? And if you need for
25 me to open that one, I can do that.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 A Okay. Yes, yes. State's Exhibit 43 has my initials
2 and my item number down there in the corner. It's,
3 contains vaginal swabs from a sexual assault evidence
4 collection kit. The victim's name is listed as Delores
5 Perrin.

6 State's Exhibit 42 also has my initials and item
7 number. It contained swabbings from, that were collected
8 during the sexual assault examination from Delores Perrin.
9 It was labeled as miscellaneous body fluid. It's also
10 indicated as being collected from the external labia which
11 is the external portion of the vaginal area.

12 State's Exhibit 37 is a heat-sealed pouch, also has my
13 initials here and my item number. It contains a paper bag.
14 Inside that paper bag --

15 Q And I apologize.

16 A -- is a cutting from a bedsheet.

17 Q That's right.

18 A That was collected and submitted to the laboratory for
19 D. N. A. analysis.

20 Q So you know based on your initials that you analyzed
21 each of those things.

22 A Yes.

23 Q When you received -- let's talk about the swabs first.
24 When you received the two swabs were those in a heat-sealed
25 envelope?

Kenneth L. Bogan
Direct examination by Ms. Crick

- 1 A Yes.
- 2 Q Who did you receive those from or where did you get
3 those items?
- 4 A They were placed in the -- they were in a heat-sealed
5 pouch similar to this, sealed and placed in what is known
6 as the D. N. A. refrigerator. It's a secured refrigerator
7 within the D. N. A. laboratory.
- 8 Each D. N. A. analyst has a box with their initials on
9 it. It was basically placed in the box with my name on it.
10 It was placed there by Sheree Brown.
- 11 Q And before Sheree Brown put it there had anyone opened
12 it since it came into the lab?
- 13 A This particular one, I think that Theresa Hooks has
14 described that she opened the heat-sealed pouch and put
15 the -- stabilized the blood sample by taking the liquid
16 blood and drying it down and putting on a sterile one.
- 17 Q So when you received it, it had not been tampered with
18 since Theresa Hooks sealed it. It was still sealed when
19 you got it.
- 20 A That's correct.
- 21 Q And Sheree Brown would have simply transported it.
- 22 A That's correct.
- 23 Q What date did you test those things?
- 24 A I began my analysis on December the 13th of 2006.
- 25 Q And you developed profiles from each of those items or

Kenneth L. Bogan
Direct examination by Ms. Crick

- 1 any of those items, I should ask. I think there were two.
- 2 A Of the items we just spoke about?
- 3 Q Yes, sir. On Delores Perrin.
- 4 A Yes. Right. I examined the vaginal swabs for the
- 5 presence of semen. I did identify semen.
- 6 Q You did identify semen on the vaginal swab?
- 7 A Yes, yes, I did. And I further did D. N. A. analysis
- 8 on it and developed a D. N. A. profile from semen from that
- 9 sample.
- 10 Q How about on the bedsheet? Did you identify anything
- 11 on that?
- 12 A Yes. I also identified semen on the bedsheet and
- 13 performed D. N. A. analysis on that semen stain as well.
- 14 Q Did you at that point have anything to compare that
- 15 semen to?
- 16 A First of all, semen is the male, comes from the male
- 17 individual.
- 18 I had a D. N. A. standard from the female in this
- 19 case, Delores Perrin. I was able to, of course, compare it
- 20 to that. But I did not have a standard from any male
- 21 individuals at the time for comparison.
- 22 Q So you got two profiles, one from the bedsheet and one
- 23 from the vaginal swab?
- 24 A That's correct.
- 25 Q And let's talk about the bedsheet first. Did you get

Kenneth L. Bogan
Direct examination by Ms. Crick

1 a male or a female?

2 A Well, the semen stain was a mixture. It was a mixture
3 of two individuals. But during the extraction process I
4 can basically attempt to, and in this case I was
5 successful, in doing what's called a differential
6 extraction. That's separating the contribution from a
7 female individual from the male individual.

8 And so I was able to develop basically a profile that
9 was consistent with a mixture of two individuals and what
10 basically I call a female fraction. From the semen stain
11 itself or from the semen I was able to develop a profile
12 from only one individual.

13 Q So you had a pure profile that you could look at from
14 a male individual from a bedsheet.

15 A Yes.

16 Q And from the vaginal swab what did you get?

17 A I did the same analysis on the vaginal swabs. As you
18 would expect, vaginal swabs would be a mixture, part of the
19 D. N. A. coming from the female from which it was taken.
20 There was semen identified on it. I was able to develop a
21 D. N. A. profile from the semen and basically got the D. N.
22 A. profile from one individual.

23 Q So when you say you have a known sample, you're
24 talking about a vaginal swab. And you've got a mixture of
25 D. N. A. How do you know which numbers go with whom? How

Kenneth L. Bogan
Direct examination by Ms. Crick

1 are you able to figure out which part of it is the male and
2 which part is the female?

3 A The reason that I have a standard from the female, and
4 knowing that the sample such as a vaginal swab is what we
5 in my field call intimate sample, it's known to have D. N.
6 A. from that individual. So I would expect to find her D.
7 N. A. present. That's why I develop her profile, so that I
8 can know what her contribution is.

9 Again, what I do when I examine the semen stain is I
10 perform a differential extraction. And that way I can
11 separate the male portion from the female portion.
12 Sometimes I don't get all of the male fraction out of
13 what's the female fraction. But in this particular case I
14 got a pure D. N. A. profile. The only contribution in the
15 male fraction came from semen.

16 Q At some point did you get a known profile to compare
17 that semen to?

18 A Yes.

19 Q How did you come about getting that profile?

20 A I was requested by the Gaffney Police Department to
21 compare the profile that I developed from semen on both the
22 vaginal swab and the bedsheet. And the D. N. A.
23 profiles -- I just want you to know the D. N. A. profiles
24 from both the vaginal swabs and the bedsheet came from the
25 same individual. The D. N. A. profiles were identical.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 I was requested to compare it to a D. N. A. profile
2 performed by Jennifer Clayton.

3 Q And did you actually obtain that profile from her?

4 A Yes, I did.

5 Q And that was a profile belonging to?

6 A Jonathan Byers.

7 Q So you got a profile that she had developed from
8 Jonathan Byers from his buccal swab --

9 A Yes.

10 Q -- and compared it to the profile that you had in this
11 case.

12 A Yes.

13 Q And what were your findings as far as that goes?

14 A That the D. N. A. profile from Jonathan Byers matched
15 the D. N. A. profile that I developed from semen on both
16 the vaginal swabs and the cutting from the bedsheet.

17 Q Did you develop a report to document your findings?

18 A Yes, I did.

19 MS. CRICK: And if I could have this marked at this
20 time.

21 (Report dated April 12, 2007, marked State's Exhibit
22 No. 51 for Identification.)

23 Q I'm going to show you what's been marked as State's
24 51. Can you tell us what that is?

25 A State's Exhibit 51 is a copy of the report that I

Kenneth L. Bogan
Direct examination by Ms. Crick

1 prepared. It's basically three pages. It contains the
2 results of my serological analysis, as well as the D. N. A.
3 analysis that I performed.

4 Q And the findings, your result was what?

5 A The D. N. A. profile developed from semen on this
6 item, which is State's Exhibit 43 which is the vaginal
7 swabs, and the semen on item, cutting from bedsheet, which
8 is State's Exhibit 37, matched the D. N. A. profile of
9 Jonathan Byers.

10 I calculated a probability that somebody else would
11 have a D. N. A. profile the same as the profile I developed
12 from the semen. The probability of finding another
13 individual unrelated having the D. N. A. profile matching
14 that semen is approximately one in 640 trillion.

15 Q The possibility that that matches someone else is one
16 in 640 trillion?

17 A That's correct.

18 Q I'm going to take these back.

19 You also did an analysis on a case involving Brandy
20 Giles, is that correct?

21 A Yes, I did.

22 Q You received that on what date?

23 A That would be December the 13th of 2006.

24 Q And when you got it was it sealed?

25 A Yes.

Kenneth L. Bogan
Direct examination by Ms. Crick

1 Q Who did you receive that from?

2 A Again, that was placed in my evidence box in the D. N.
3 A. refrigerator in the laboratory by Sheree Brown.

4 Q And it was still sealed when you got it.

5 A Yes.

6 Q And within those heat-sealed pouches I'm going to show
7 you actually Exhibits 44 and 45. Tell me if you found
8 those in that heat-sealed pouch.

9 A Yes. State's Exhibit 44, I recognize it. It has my
10 initials and my item number on it. It's labeled as a
11 vaginal swab from Brandy Giles. Is that correct?

12 Q Uh-huh.

13 A State's Exhibit 45 is a -- has my initials and my item
14 number here on it. It's labeled as miscellaneous body
15 fluid. It was, along with this, inside the heat-sealed
16 pouch, a sexual assault evidence collection kit.

17 This is labeled as fluid collected from the inner
18 thighs that was collected during the sexual assault
19 examination.

20 Q And did you analyze both of those items?

21 A Yes, I did.

22 Q Can you tell me if you found anything with regard to
23 those two items?

24 A I identified semen on both of those items.

25 Q The vaginal swab. And is that the swab from the inner

Kenneth L. Bogan
Direct examination by Ms. Crick

1 thigh?

2 A Yes.

3 Q I'm going to show you one more report.

4 (Report dated March 5, 2007, marked State's Exhibit No.
5 52 for Identification.)

6 Q This is State's 52, and ask you if you recognize that.

7 A Yes. It's a copy of a 4-page report that I prepared
8 regarding the examination I did regarding the Brandy Giles
9 case.

10 Q And what were your findings in that case?

11 A I examined, again, like I said, the vaginal swabs.
12 Identified semen on the vaginal swabs. I also identified
13 semen on the miscellaneous body fluid, which was fluid from
14 the inner thighs.

15 I developed D. N. A. profiles from them. The D. N. A.
16 profile that I developed from the swab that came from the
17 inner thighs and from the semen on the vaginal swabs
18 matched the D. N. A. profile of Jonathan Byers.

19 I, again, calculated the statistic, and it came out,
20 of course, to be the same number, approximately one in
21 640 trillion, that another individual would have that same
22 profile.

23 Q And that matched Jonathan Byers.

24 A Yes.

25 Q You also did an analysis on a case involving Tammy

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1 Payne.

2 A Yes.

3 Q When did that come to you, those samples in that case?

4 A December the 13th of 2006.

5 Q I'm going to show you what's marked as State's 46.

6 Tell me if you recognize that.

7 A Yes. State's Exhibit 46 are vaginal swabs that were
8 collected during the sexual assault examination that
9 contains Tammy Payne.

10 Q And when you received that it would have been a
11 heat-sealed pouch.

12 A Yes.

13 Q And you got that from whom?

14 A It, again, was placed in my box in the D. N. A.
15 refrigerator by Sheree Brown.

16 Q And it was sealed when you got it?

17 A Yes.

18 Q And you analyzed that sample?

19 A Yes, I did.

20 Q Last report.

21 (Report dated December 13, 2006, marked State's Exhibit
22 No. 53 for Identification.)

23 Q I'm going to show you what's been marked as State's
24 Exhibit 53. Tell me if you recognize that one.

25 A Yes. State's Exhibit 53 is a copy of a 4-page report

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Direct examination by Ms. Crick

1 that is a supplemental report which I issued regarding my
2 analysis and results involving a victim, Tammy Payne, and a
3 subject, Jonathan Byers.

4 Q Did you identify semen in that case?

5 A Yes, I did.

6 Q On what?

7 A On the vaginal swabs that were within the sexual
8 assault evidence collection kit.

9 Q And what were your findings with regard to that case?

10 A I developed a D. N. A. profile on the semen on those
11 vaginal swabs. The D. N. A. profile matched the D. N. A.
12 profile of Jonathan Byers.

13 Again, I calculated the probability of someone else
14 having that same profile. The likelihood or probability is
15 one in 640 trillion.

16 MS. CRICK: Your Honor, at this time I would like to
17 enter State's -- and I will try to do them in order -- 42,
18 43, 44, 45, 46 and 37 into evidence.

19 MR. THOMPSON: No objection.

20 THE COURT: They are admitted.

21 (Bed sheet cutting marked State's Exhibit No. 37; body
22 fluid envelope marked State's Exhibit No. 42; body fluid
23 envelope marked State's Exhibit No. 43; body fluid envelope
24 marked State's Exhibit No. 44; body fluid envelope marked
25 State's Exhibit No. 45; body fluid envelope marked State's

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Direct examination by Ms. Crick

1 Exhibit No. 46.)

2 Q So the profile in each of those three cases was the
3 same.

4 A Yes.

5 Q And all of those matched Jonathan Byers.

6 A That's correct.

7 MS. CRICK: Your Honor, I have no further questions at
8 this time.

9 THE COURT: All right. Let's take a short break
10 before we go any further.

11 I'll ask the jury to go to your jury room. Don't
12 discuss the case. We'll bring you back in just a few
13 minutes.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: All right. The witness may step down. Do
17 not discuss your testimony during the break.

18 We will be in recess for ten minutes.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Are we ready for the jury?
21 Bring them in.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: All right. Ladies and gentlemen, as you
25 know, the direct examination of the witness has been

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 completed. So we are now going to proceed with the
2 cross-examination by Mr. Thompson.

3 MR. THOMPSON: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. THOMPSON

7 Q Mr. Bogan, I want to first -- these reports that
8 you've testified to, I think they're marked State's
9 Exhibits 51, 52 and 53.

10 On the first one you testified that the odds of it
11 being an unrelated individual was one in 640 trillion. In
12 the last two you simply testified to the odds of it being
13 another individual. Was that a misspeak or --

14 A That was an omission if I did say that. It should
15 have been the same, the same exact.

16 Q So we're talking unrelated individual.

17 A Yes.

18 Q Okay. Would a related individual -- would somebody
19 related to me have D. N. A. more similar to my D. N. A.
20 than somebody -- that if we were to test your D. N. A.?

21 A Yes. Someone related to you would have D. N. A., more
22 than likely have D. N. A., more related to you than to
23 someone totally chosen at random.

24 Q Okay. Unrelated to me.

25 A Yes.

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 Q Do you know whether or not Mr. Byers has any brothers?

2 A No, I do not.

3 Q Do you know that he has -- so you don't know if he has
4 any. So you don't know that he has two brothers.

5 A I do not.

6 Q Did you test any relatives' D. N. A. of Mr. Byers?

7 A No, I did not.

8 Q Okay. You say identical twins have identical D. N. A.
9 patterns.

10 A They will, yes.

11 Q All right. And that would -- in order to prove that
12 you'd have to actually, in order to conclusively prove that
13 without using mathematics you'd have to, test one other
14 person's D. N. A., is that correct?

15 A Well, what you asked is would identical twins have the
16 same D. N. A. profile. Forensic D. N. A. profile, I can
17 develop. And they would have identical profiles. But you
18 could also sequence their D. N. A. There probably would be
19 some differences in the different mutations, but basically
20 they would have identical D. N. A.

21 Q Okay. In this particular case you used 15 genes, is
22 that right, or 15 sites?

23 A There is 15 different locations that were examined,
24 plus one called amelogenin which basically just determines
25 the -- whether the gender of the individual, whether it's

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 male or female.

2 Q It basically determines gender and whether or not they
3 have enamel on their teeth or something like that, right?

4 A Have what?

5 Q Enamel on their teeth.

6 A No.

7 Q Is that part of that one?

8 A No.

9 Q Okay. In a -- you testified that in the past y'all
10 tested, I think, four, four location, four sites?

11 A It's been since the early 90's. I think we actually
12 began testing five, and then we added two more and went to
13 seven.

14 Q And you testified that some labs at this time test
15 different numbers of sites than what you do.

16 A Yes.

17 Q Okay. So there's not truly one standard in the
18 industry.

19 A There's basically what I described as -- is probably
20 99 percent of all of the forensic laboratories use the
21 exact same loci that we do. Some will add some; some will
22 subtract some. But basically the ones that we are using,
23 most of the laboratories use the exact same one. I
24 referred to them as, known as the core loci. Most forensic
25 labs use the same core loci we do. We probably do more

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 than some. We may do less than some.

2 Q Well, the chemicals that you add to the samples that
3 you have to develop what you get, do you mix those
4 chemicals yourself, do you buy them, or is it a commercial
5 kit that you buy?

6 A It's a commercial kit.

7 Q Okay. And that commercial kit basically points at
8 those certain loci, is that right?

9 A That's correct.

10 Q And most labs, probably all labs, buy that commercial
11 kit or a commercial kit to do their work with, is that
12 right?

13 A Yes.

14 Q So that's why those loci are essentially looked at,
15 because that's what that commercial kit looks at.

16 A Well, the manufacturers will develop their kits to
17 target those same four loci because that's what's used in
18 forensics.

19 Q Now, there's two types of forensic genetics, is there
20 not, molecular genetics, which the biological part, and
21 then the, called population genetics, which is the
22 mathematical part?

23 A I would agree with that, yes.

24 Q Okay. And when you actually test those 15-or loci,
25 loci, that is part of your molecular or biological

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 genetics.
- 2 A Yes.
- 3 Q Then when you take the results of that and apply
- 4 mathematics to it, that's the population genetics, is that
- 5 correct?
- 6 A Yes.
- 7 Q Okay. And I believe you say that your report is for
- 8 an unrelated individual, that population genetics is for an
- 9 unrelated individual.
- 10 A Yes.
- 11 Q Okay. Do you have your -- I just pulled these
- 12 three -- the tables that you generated?
- 13 A I have them, yes.
- 14 Q Okay. Would you look at the one dealing with -- let's
- 15 see, the first person was Ms. Perrin. Do you have it?
- 16 A Yes.
- 17 Q Okay. At loci D18, which is one of the 15 that you
- 18 checked, Ms. Perrin and Mr. Byers have exactly identical D.
- 19 N. A., is that correct?
- 20 A Yes.
- 21 Q Okay.
- 22 A They have the same type.
- 23 Q All right. You get the same numbers for that.
- 24 A Yes.
- 25 Q So using that one by itself wouldn't tell you

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 anything, would it?

2 A I couldn't say that it wouldn't tell me anything. I
3 could tell you that it either -- it matches both of those
4 individuals.

5 Q Okay. It matches both individuals.

6 A Right.

7 Q If I handed you a sample, you couldn't tell me, just
8 using that one loci you couldn't tell me, whether it came
9 from Mr. Byers or Ms. Perrin or a combination of the two,
10 could you?

11 A No. I could not.

12 Q All right. And at D8 Mr. Byers and Ms. Perrin share
13 one of the alleles. They have one in common, don't they?

14 A Yes, they do.

15 Q And at D21 they have one in common, do they not?

16 A Yes, they do.

17 Q And at D7 they have one in common, do they not?

18 A Yes, they do.

19 Q Or possibly three in common. Ms. Perrin -- hers are
20 both the same number, is that correct?

21 A She is what we call homozygous. In other words, she
22 has two copies of the nine --

23 Q Of the same?

24 A Nine alleles, right.

25 Q Okay. And so they have that in common at that loci.

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 At D3 do they not have two in common?
- 2 A They have one in common.
- 3 Q I'm sorry. One in common. Yes. At -- and it changes
4 from D and a number to TH01. Do they not each have one in
5 common?
- 6 A Yes, they do.
- 7 Q And at D13 do they not each have one in common?
- 8 A Yes, they do.
- 9 Q And at D2 do they not each have one in common?
- 10 A Yes, they do.
- 11 Q And at D19 do they not each have one in common?
- 12 A Yes.
- 13 Q And, again, it changes from D to VWA. And I assume
14 those are acronyms for something.
- 15 A Yes, they are.
- 16 Q Okay. But at that site do they not each have one in
17 common?
- 18 A Yes.
- 19 Q And at TPOX do they not each have one in common?
- 20 A Yes.
- 21 Q And at -- we've already discussed I believe at D18
22 they have two in common, is that correct?
- 23 A Yes.
- 24 Q They have the same one. What about at FGA? Do they
25 each have one in common?

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 A Yes.
- 2 Q So now out of the 15 sites -- one, two, three, four,
3 five, six, seven, eight, nine, ten, 11, 12 -- they have 12
4 sites where they have at least one allele in common, is
5 that correct?
- 6 A I didn't count them, but I trust your counting, yes.
7 I will agree with you.
- 8 Q All right. Now, let's look at one. Do you have one?
9 Well, let me ask this question before I go to that one. Do
10 you know whether or not Ms. Perrin and Mr. Byers are
11 related?
- 12 A I do not.
- 13 Q They are not even of the same race, are they? I mean,
14 this is Ms. Perrin and that's Mr. Byers.
- 15 A I would say they are of different races.
- 16 Q Does D. N. A. tell you what the race of somebody is?
- 17 A No.
- 18 Q Okay. Let's take a look at Ms. Giles if you have that
19 one. Okay. Do you have it?
- 20 A Yes.
- 21 Q Now, at site D7 Mr. Byers and Ms. Giles, both genes
22 are the same again, or have the same number, is that
23 correct?
- 24 A That's correct.
- 25 Q So by itself that site couldn't tell you whether a

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 sample came from Mr. Byers or Ms. Giles or a combination of
2 the two, is that correct?
- 3 A That's correct.
- 4 Q All right. Now, let's look at D8. Do they have an
5 allele in common?
- 6 A I'm sorry. Which one?
- 7 Q D8.
- 8 A D8, yes. They share a 14 allele.
- 9 Q And we just discussed D7 where they have both alleles
10 in common. At CSF do they have an allele in common?
- 11 A Yes.
- 12 Q At D3 do they have an allele in common?
- 13 A Yes.
- 14 Q At D19 do they have an allele in common?
- 15 A Yes.
- 16 Q At VWA, site VWA, do they have an allele in common?
- 17 A Yes.
- 18 Q At site TPOX do they have an allele in common?
- 19 A Yes.
- 20 Q At site D18 do they have an allele in common?
- 21 A Yes.
- 22 Q And at site D5 do they have an allele in common?
- 23 A Yes.
- 24 Q So, again, now we have, we have eight sites out of the
25 15, do we not, where Ms. Giles and Mr. Byers have alleles

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 in common?
- 2 A Again, I didn't count them, but eight sounds right.
- 3 Q Okay. And Ms. Giles isn't sitting here any more.
- 4 She's way back in the back back there. Do you know whether
- 5 Ms. Giles and Mr. Byers are related?
- 6 A I do not know.
- 7 Q Are they of the same race?
- 8 A They do not appear to be.
- 9 Q And, again, D. N. A. doesn't discuss race at all, does
- 10 it?
- 11 A It does not.
- 12 Q Okay. Let's look at the chart for Ms. Payne, please.
- 13 Do you have it?
- 14 A Yes, I do.
- 15 Q Okay. Now, Mr. Byers and Ms. Payne at site D13, they
- 16 are a match on both, are they not?
- 17 A Yes.
- 18 Q Okay. At site D8 does Ms. Payne and Mr. Byers have an
- 19 allele in common?
- 20 A Yes.
- 21 Q At site D21 do they have an allele in common?
- 22 A Yes.
- 23 Q At site CSF do they have an allele in common?
- 24 A Yes.
- 25 Q At site D3 do they have an allele in common?

Kenneth L. Bogan
Cross-examination by Mr. Thompson

- 1 A Yes.
- 2 Q And we just discussed D13, which is the one where both
3 alleles are in common. At site D19 do they have an allele
4 in common?
- 5 A Yes.
- 6 Q At site VWA do they have an allele in common?
- 7 A Yes.
- 8 Q At site TPOX do they have an allele in common?
- 9 A Yes.
- 10 Q At site D18 does Ms. Payne and Mr. Byers have an allele
11 in common?
- 12 A Yes.
- 13 Q At site D5 does Mr. Byers and Ms. Payne have an allele
14 in common?
- 15 A Yes.
- 16 Q At site FGA do they have an allele in common?
- 17 A Yes.
- 18 Q So out of the 15 allele -- out of the 15 sites, as I
19 count them, again, we have ten sites where Ms. Payne and
20 Mr. Byers have one of the two alleles in common, is that
21 correct?
- 22 A Yes.
- 23 Q In fact, in one of the sites they have both alleles in
24 common.
- 25 A That would be D13, yes, or, yes, D13.

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 Q Okay. And I believe you already said D. N. A. doesn't
2 indicate the race of the donor, and I'm not sure if
3 Ms. Payne is here or not. She is sitting back there. And
4 Mr. Byers. Do you know whether they're related or not?

5 A I do not.

6 Q Okay. They are obviously of different races, is that
7 correct?

8 A Appears to be, yes.

9 Q And you said they don't indicate the race of the
10 donor. D. N. A. doesn't tell you anything about the age of
11 the donor or where the donor lives or anything like that,
12 does it?

13 A No. Sure doesn't.

14 Q Okay. It doesn't tell you any of the details of the
15 case, only whether or not you got a sample and who the
16 contributors to that sample were. And that's based on
17 science to a certain degree. And then we go into
18 mathematics, which I guess, statistics and probability, is
19 that it?

20 A I'm not sure what you're asking me.

21 Q Okay. Well, if you checked all 3 billion genes or
22 base pairs, you wouldn't even worry about math except for
23 adding them up, is that correct?

24 A I would agree with that. If you sequence the D. N. A.
25 and the sequences came out the same, you wouldn't have to

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 worry about it, right.

2 Q Right. But since we're not checking all 3 billion of
3 them -- we're only checking I believe -- you were present
4 when Ms. Clayton testified, were you not?

5 A Yes.

6 Q Would you agree that the strand that's tested is no
7 more than 500 base pair?

8 A Yes.

9 Q Would it be closer to 200 to 300 maybe?

10 A Yeah. Each location, each allele or each location,
11 that we have been discussing, the size of the allele that we
12 are looking at -- allele is the form, different form, of
13 gene. That's the difference between individuals, or
14 potential difference.

15 At each location each one of those is probably between
16 the neighborhood of 150 to maybe 300 base pairs long. So
17 each one of those that we've discussed when you're talking
18 about the numbers, each one of those is approximately 150
19 to, say, 350 base pair parts.

20 Q So I guess -- you said you wasn't sure of my question.
21 Here is what my question is. And let's just go to 500,
22 which is a number that we can round off, or at least I can
23 in my mind better. If I've got 15 sites checking 500 base
24 pair, that's 7,500 base pair that I'm checking out of
25 3 billion base pair, is that correct?

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 A Yes.

2 Q Okay. So what we're doing at that point in time, as
3 you said, if we check each one, then we can have certainty
4 in a comparison. What we're going to do is checking at
5 most 7,500, and probably a little less than that. And what
6 we're doing after that is we're using probability and
7 statistics to determine whether or not there is a match
8 there, is that correct?

9 A No, not exactly. I can determine that there's a match
10 between profiles. And profiles, basically, if you were to
11 look at the alleles, the same alleles from the evidence
12 stain are the same alleles that's in the known standard.

13 So the alleles that I detected in the semen stain are
14 the exact same alleles that I detected in the known
15 standard from Jonathan Byers. So that determines that it
16 is a match.

17 The question is what's the probability or the
18 likelihood that somebody else also has that same profile,
19 those same numbers. So that's the question that the
20 population genetics stand for.

21 Q And that's -- so not being a scientist, I'm sorry. I
22 misspoke. It's not a match but it's the probability of it
23 being in this particular case Mr. Byers, that's mathematics
24 used to calculate that, probability and statistics.

25 A Well, sort of. You know, what I'm saying is the

Kenneth L. Bogan
Cross-examination by Mr. Thompson

1 probability of selecting and finding somebody else at
2 random, unrelated individual at random, having that same
3 profile is one in 640 trillion.

4 Q Okay. What is your margin of error?

5 A Probably factor of ten fold.

6 Q Margin of error a factor of ten fold.

7 A Yes. Basically, the numbers that we calculate are
8 calculated in a conservative manner. The loci are not used
9 in calculation, and then there's a margin of error.
10 Probably, basically, when I say one in 640 trillion, you
11 can either add a zero or subtract a zero, but somewhere in
12 that range. So it's an approximation.

13 Q All right. Thank you.

14 MS. CRICK: Just briefly, Your Honor.

15 Actually if I could at this time since he was
16 referring to the alleles on the charts, these have already
17 been marked as State's 52 -- 51, 52 and 53, if I could go
18 ahead and enter those into evidence.

19 MR. THOMPSON: I would object. That's simply a report
20 that he's already testified to.

21 THE COURT: They are admitted over objection.

22 MS. CRICK: Thank you, Your Honor.

23 (Report dated April 12, 2007, marked State's Exhibit
24 No. 51; report dated March 5, 2007, marked State's Exhibit
25 No. 52; report dated December 13, 2006, marked State's

Kenneth L. Bogan
Redirect examination by Ms. Crick

1 Exhibit No. 53.)

2 REDIRECT EXAMINATION

3 BY MS. CRICK

4 Q You were questioned about alleles that the victims and
5 Mr. Byers may have had in common. I'm going to put up on
6 this overhead real quick the report that relates to Delores
7 Perrin. My eyes are bad.

8 Okay. We see on there on the top line what? What are
9 those numbers that go across the top?

10 A If you're looking down at the side where it says
11 items, those numbers out across the top are basically the
12 names of the locations on a D. N. A. molecule. The "D"
13 stands for D. N. A.; the eight stands for which chromosome
14 it is. There are 23 chromosomes or 23 pairs of
15 chromosomes. The eight stands for which chromosome number
16 it is. The S1179 stands for the site on that particular
17 chromosome.

18 So if you were to read across, D2 would be cross on
19 number two. Then D7. CSF is a location that was near a
20 gene for cystic fibrosis. So it was basically named that.
21 Sometimes people will name locations on D. N. A. that they
22 have discovered that are forensically important or
23 important for human identification. And they name them
24 after themselves, so they'll use their initials. So
25 sometimes initials are used, but generally you'll see

Kenneth L. Bogan
Redirect examination by Ms. Crick

1 numbers across the top.

2 Q So essentially all of these things across the top,
3 those are the locations that he was referring to?

4 A Locations that heard -- yeah, and you've heard me
5 refer to them as loci or locations.

6 Q And then going down this way, are these each of the
7 samples you had?

8 A Yes.

9 Q Okay. So here's Delores. And you had what, a known
10 sample? So you know what her profile is.

11 A That's correct.

12 Q And then on Mr. Byers, he also gave a sample. So you
13 know what his profile is.

14 A That's correct.

15 Q And then you do what when you come down here? I see
16 two vaginal swabs. One says "F" and one says "M". What is
17 that?

18 A If you recall when I said if I have a semen stain I
19 perform a differential extraction, and I basically attempt
20 to separate the male portion from the female portion. The
21 female portion I labeled as 1.4 F. The male portion I
22 labeled as 1.4 M. They both came from the exact same
23 vaginal swabs. But I separated a portion to do separate
24 analyses on the differential extractions of each of them.

25 Q So while you can't necessarily determine race or any

Kenneth L. Bogan
Redirect examination by Ms. Crick

1 of that stuff, you can tell the gender.

2 A Definitely, yes.

3 Q Okay. And so what's that you've done here with the
4 swabs. You've got a female part and a male part. And also
5 on the bedsheet you have a female part and a male part, is
6 that correct?

7 A That's correct.

8 Q All right. Let's look at that. He was mentioning
9 numbers in common, and I just wanted the jury to see what
10 he's talking about. We have the -- let's go down to the
11 male portion of the vaginal swab. What's that number?

12 A Those numbers -- well, the numbers are 13 and 14.
13 There's two different alleles present.

14 If you remember when I -- an allele is a different form
15 of a gene basically. And, in other words, we all have a
16 gene at that particular locus, D8, but we don't always have
17 the same ones. It's possible that we could share one or
18 some or even both of them. But those numbers represent the
19 alleles at that gene.

20 Q And is it really a combination of all of those alleles
21 in the 15 locations that gives you a complete profile?

22 A Yes. It's a combination of all of the alleles all the
23 way across, not just at one location.

24 Q But you look at each location, and you're looking for
25 what, a match?

Kenneth L. Bogan
Redirect examination by Ms. Crick

- 1 A Yes. I compared the results, for example in 1.4 M. I
2 compared the numbers there, 13 and 14, with the known
3 profile of Jonathan Byers.
- 4 Q Which is?
- 5 A Thirteen and 14.
- 6 Q And then let's go to the next one. You've got the
7 male portion here is?
- 8 A In D21 it's 27, 28.
- 9 Q And Jonathan Byers is?
- 10 A Twenty-seven, 28.
- 11 Q And the next one in the male profile?
- 12 A It's a 9, 10.
- 13 Q Mr. Byers is?
- 14 A A 9, 10.
- 15 Q Vaginal swab?
- 16 A The allele is an 11.
- 17 Q And he is?
- 18 A An 11.
- 19 Q The male portion of the swab?
- 20 A It is 15, 17.
- 21 Q Mr. Byers?
- 22 A Fifteen, 17.
- 23 Q Male portion?
- 24 A Seven and eight, seven and eight, 12 at D13 and 12 at
25 D13. D16 is 13 from the evidence and 13 from Mr. Byers.

Kenneth L. Bogan
Redirect examination by Ms. Crick

- 1 Q And from the vaginal swab?
- 2 A D21, or excuse me, D2 at the vaginal swabs, 19, 21.
- 3 Q Mr. Byers.
- 4 A Is a 19, 21.
- 5 Q The swab?
- 6 A Thirteen, 14.
- 7 Q Mr. Byers.
- 8 A Thirteen, 14.
- 9 Q The swab?
- 10 A Sixteen, 18.
- 11 Q And Mr. Byers?
- 12 A Sixteen, 18.
- 13 Q Now, and here's a good place to touch on, I guess,
- 14 what the defense attorney is asking you.
- 15 Now, Delores also has an 18 up here, right?
- 16 A Yes.
- 17 Q But it ain't a 16, 18.
- 18 A No. Her profile is a 14.
- 19 Q So it's possible to have a number in common, but it's
- 20 not a match at that location.
- 21 A That's correct.
- 22 Q You have to have both of them in common, correct?
- 23 A Yes.
- 24 Q And so all across this page all of the numbers that we
- 25 see at each location that were on that vaginal swab match

Kenneth L. Bogan
Redirect examination by Ms. Crick

- 1 Mr. Byers?
- 2 A That's correct.
- 3 Q And for the other two cases as well.
- 4 A Again, you see the name of Brandy Giles up there at
- 5 the very top.
- 6 Q Same thing. And then we have the separation, correct,
- 7 the female and the male?
- 8 A Correct.
- 9 Q And then also on that inner thigh swab.
- 10 A Right.
- 11 Q And when we look here at the inner portion of the
- 12 inner thigh we see a --
- 13 A Thirteen, 14.
- 14 Q When you look at the male portion of the vaginal swab
- 15 we see?
- 16 A We see a combination, 13, 14, 15. That's a situation
- 17 where I wasn't able to completely do a separation from the
- 18 female and male fraction. So it's still a --
- 19 Q And that -- oh, I'm sorry.
- 20 A I was just going to say that the mixture is consistent
- 21 with being a mixture of D. N. A. from Brandy Giles and
- 22 Jonathan Byers.
- 23 Q And you know that because you can see Brandy is a 14,
- 24 15. You can see that you've got a 14, 15. And you know
- 25 that that swab came from her vagina, correct?

Kenneth L. Bogan
Redirect examination by Ms. Crick

- 1 A Yes.
- 2 Q So you know that her D. N. A. has to be present,
3 correct?
- 4 A Yes.
- 5 Q And the rest of those from the inner thigh on the male
6 portion all the way across here, and the jury can look at
7 these in the back, match Jonathan Byers.
- 8 A Yes. On the swabs from the under thigh I developed
9 profile from semen, the profile perfectly matches the D. N.
10 A. profile of Jonathan Byers.
- 11 Q No mixture there to separate out.
- 12 A No.
- 13 Q And finally Ms. Payne, same situation. But this time
14 you said there was a bit of a mixture.
- 15 A If you push that up just a little bit, I'm blocked out
16 by those.
- 17 Q I'm sorry. There you go.
- 18 A Yes. In the vaginal swabs from the male fraction --
- 19 Q Right.
- 20 A -- I wasn't able to get all of her D. N. A. out. So
21 there's a -- in some locations there's a mixture. In other
22 locations there's not a mixture.
- 23 Q Okay. So in this first one on the vaginal swab we've
24 got what?
- 25 A Thirteen, 14.

Kenneth L. Bogan
Redirect examination by Ms. Crick

1 Q And his number is?

2 A Thirteen, 14.

3 Q We've also got -- we've got three numbers here. What
4 does this mean?

5 A The three numbers means that -- it means that it's a
6 mixture.

7 Q Okay.

8 A I have a 27, 28 and a 32.2. Those are all different
9 alleles. It's consistent with being a mixture --

10 Q Right.

11 A -- of Tammy Payne and Jonathan Byers. I can also tell
12 from my results by interpreting, by comparing them, which
13 is sort of a picture of what I look at, that the major
14 contributor to that mixture, D. N. A. profile, is a 27, 28.
15 And that's why those letters are bold.

16 The reason that the 32.2 is in parenthesis means that
17 there was just a very tiny contribution from the individual
18 that had that particular allele. And if you notice
19 underneath the whole chart it has parenthesis down there.
20 And it says alleles between 75 and 149 are RFUs. RFU is
21 just a way for me measuring how much D. N. A. was present.

22 Q So when we see them we know that you tried to separate
23 the female and the male in that vaginal swab, correct?

24 A Yes.

25 Q And so when we see stuff like this in parenthesis that

Kenneth L. Bogan
Redirect examination by Ms. Crick

- 1 matches Tammy, that means a little bit was left?
- 2 A Yes.
- 3 Q But you can tell that the major contributor is a what
- 4 here?
- 5 A Well, we're looking at D21?
- 6 Q Yes, sir.
- 7 A That's 27, 28.
- 8 Q And Jonathan Byers is?
- 9 A Twenty-eight, 28.
- 10 Q And the major contributor on the next one?
- 11 A A nine, ten.
- 12 Q And Mr. Byers is?
- 13 A A nine, ten.
- 14 Q And then we've got one here, which is?
- 15 A An 11.
- 16 Q And Mr. Byers?
- 17 A Mr. Byers is an 11.
- 18 Q And the next one?
- 19 A Fifteen, 17.
- 20 Q Mr. Byers?
- 21 A Is a 15, 17.
- 22 Q And it goes on like that.
- 23 A Yes.
- 24 MS. CRICK: Your Honor, I have no further questions at
- 25 this time.

1 MR. THOMPSON: No recross.

2 THE COURT: You may step down.

3 Ladies and gentlemen, we're going to break for lunch.

4 Remember the caution I've previously given you. No
5 discussions of the case, no exposure to any type of media
6 coverage that might relate to it. No investigation on your
7 own.

8 Do have a good lunch, and please report back to the
9 jury room at 2:30 this afternoon, 2:30 this afternoon.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Court is in recess until 2:30.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Any matters to address before
15 is jury is brought in?

16 MS. CRICK: No, sir, not from the state. And that
17 concludes our case.

18 MR. THOMPSON: No, sir. I assume they are going to
19 rest. I don't know if you are going to send the jury back
20 out.

21 THE COURT: No. Ms. Crick says they're going to rest.
22 And we can address any issues now.

23 MR. THOMPSON: I have explained to Mr. Byers his right
24 to testify. I have given him my opinion. I think at this
25 point in time the case is still a case that we have a slim

1 argument in.

2 I know what he wants to testify to. I think that if
3 he does that we're going to have no argument whatsoever and
4 it's going to be a guaranteed conviction.

5 I've explained that to him. His family has talked
6 with him here briefly. I don't know what his final
7 decision has been though. We just finished as you walked
8 out.

9 THE COURT: All right. Mr. Byers, you're the
10 defendant. You're the one that's charged with these
11 criminal offenses.

12 When they come to trial you've got an absolute right
13 to remain silent or to testify if you want to. It's your
14 decision. Only you can make it.

15 Do you understand that you do have an absolute right
16 to remain silent, which simply means nobody can make you
17 take the witness stand? Nobody can make you testify;
18 nobody can make you answer any questions.

19 At the same time, if you want to testify or you want
20 to present any evidence, now is the only opportunity that
21 you're going to have to do so.

22 Now, do you understand that if you choose not to
23 testify that I'm going to tell the jury they can't hold
24 that against you, they can't consider that in any way?

25 If you choose to testify you will have to answer not

1 only your lawyer's questions but you'll have to answer the
2 prosecutor's questions even if the responses to those
3 questions might tend to prove you guilty of any one or more
4 of these crimes that they claim you committed.

5 Now, have you and Mr. Thompson had an opportunity to
6 discuss the advantages and the disadvantages of your
7 testifying as well as not testifying?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand what those
10 advantages and disadvantages are?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And have you had time to reflect upon your
13 decision about whether or not you will testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And have you made a decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And what is your decision?

18 THE DEFENDANT: I'm going to testify.

19 THE COURT: You want to testify.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anybody forced you into that decision?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anybody pressured you into that
24 decision?

25 THE DEFENDANT: No, sir.

Motion

1 THE COURT: Is that a decision that you made of your
2 own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're satisfied with it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right. You can have a seat.

7 Any other witnesses that are going to be called,
8 Mr. Thompson?

9 MR. THOMPSON: No.

10 THE COURT: Okay. Do you want to address any motions?

11 MR. THOMPSON: Yes, sir. We probably need to if he's
12 going to testify.

13 I understand under the -- I think I filed a motion. I
14 believe you've got a copy of it already to -- that's
15 required under the rape shield statute.

16 THE COURT: I have it.

17 MR. THOMPSON: And I've provided a copy of this to the
18 state.

19 It's my understanding that Mr. Byers intends to
20 testify that he knows all three of these victims and that
21 he has had past sexual conduct with all three of these
22 victims. And he's offering that as evidence of the source
23 of the semen.

24 THE COURT: Well, there's plenty of evidence as to
25 that being the source of the semen. He wants to offer some

Motion

1 more?

2 MR. THOMPSON: Well, as I said earlier, Your Honor, my
3 advice to him is not to testify.

4 THE COURT: You know, what I'm saying, is he going to
5 testify it's consensual sex?

6 MR. THOMPSON: That's what he's going to testify.

7 THE COURT: All right. The state doesn't have any
8 basis for an objection to it, do you?

9 MS. CRICK: No, sir. It falls outside the rape shield
10 in that case.

11 THE COURT: All right. Anything else?

12 MR. THOMPSON: No, sir.

13 THE COURT: All right. Bring the jury in.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 As you know, when we recessed the state was still in
18 the midst of presenting their evidence. So we'll continue
19 with that this afternoon.

20 Ms. Crick.

21 MS. CRICK: Your Honor, at this time the state rests.

22 THE COURT: All right. Ladies and gentlemen, that is
23 all of the testimony or evidence to be offered by the
24 state, at least in their case in chief. So we'll now
25 proceed with any to be offered by the defense.

Jonathan Leon Byers
Direct examination by Mr. Thompson

1 Mr. Thompson.

2 MR. THOMPSON: Your Honor, the defense would call
3 Jonathan Byers.

4 JONATHAN LEON BYERS, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. THOMPSON

7 Q Mr. Byers, will you give us your full name please,
8 sir?

9 A Jonathan Leon Byers.

10 Q And how old are you?

11 A Nineteen.

12 Q And where do you live?

13 A

14 Q Who lives there with you?

15 THE COURT: You don't have to lean into it. You might
16 need to bring the chair up a little bit. Just pull the
17 chair up. I mean, pull it up to the front. There you go.

18 THE WITNESS: Thank you.

19 Q Who lives there with you?

20 A My grandma and my little brother.

21 Q How many brothers do you have?

22 A Two.

23 Q Okay.

24 A Two.

25 Q And one of them lives with you?

Jonathan Leon Byers
Direct examination by Mr. Thompson

- 1 A Yes, sir.
- 2 Q Okay. Mr. Byers, I want to -- you're on trial at this
3 point in time charged with committing a burglary last
4 December on these three ladies' houses and committing rape,
5 criminal sexual conduct. Do you understand that?
- 6 A Yes, sir.
- 7 Q Along with an armed robbery.
- 8 A Yes, sir.
- 9 Q Do you recall December of last year?
- 10 A Yes, sir.
- 11 Q Okay. Do you know Brandy Giles?
- 12 A Yes, sir.
- 13 Q How do you know her?
- 14 A She lives right up the street from me and I met her at
15 the store, at the corner store right there above Limestone
16 Courts.
- 17 Q Did you have any kind of relationship with Brandy
18 Giles?
- 19 A We used to mess around, sir.
- 20 Q I don't know what "used to mess around" means. Tell
21 the Court and tell the jury.
- 22 A I used to go up to her house and mess with her, like
23 have sexual intercourse.
- 24 Q You and Brandy Giles had sexual intercourse?
- 25 A Yes, sir.

Jonathan Leon Byers
Direct examination by Mr. Thompson

- 1 Q Did you and Brandy Giles have sexual intercourse in
2 December of last year?
- 3 A Yes, sir.
- 4 Q Okay. Do you recall whether or not it was on the
5 11th of December?
- 6 A No, sir.
- 7 Q Was it in December before Christmas?
- 8 A Yes, sir.
- 9 Q Okay. Do you know Tammy Payne?
- 10 A Yes, sir.
- 11 Q How do you know Tammy Payne?
- 12 A From over there at her house.
- 13 Q What do you mean by "over there at her house"?
- 14 A When I was walking over there by Limestone College, I
15 met her over there.
- 16 Q Okay. Have you had a prior relationship with
17 Ms. Payne?
- 18 A Yes, sir.
- 19 Q And was that relationship sexual?
- 20 A Yes, sir.
- 21 Q Did you have sex with Ms. Payne in December of last
22 year?
- 23 A Yes, sir.
- 24 Q Would it have been on the 13th of December?
- 25 A I do not know that, sir.

Jonathan Leon Byers
Direct examination by Mr. Thompson

- 1 Q Pardon?
- 2 A I said I do not know that.
- 3 Q Was it before Christmas?
- 4 A Yes, sir.
- 5 Q How long had you had a relationship with Ms. Payne?
- 6 A I really don't know. It was last year whenever we had
- 7 started, like after the summer.
- 8 Q Do you know Ms. Perrin?
- 9 A Yes, sir.
- 10 Q How long have you known Ms. Perrin?
- 11 A Like right before summer when I started cutting her
- 12 yard.
- 13 Q You cut her yard?
- 14 A Yes, sir.
- 15 Q Okay. Did she pay you for cutting her yard?
- 16 A Yes, sir.
- 17 Q Did you have a relationship with Ms. Perrin?
- 18 A Yes, sir.
- 19 Q And when did that relationship begin?
- 20 A Like a little after I started cutting her grass.
- 21 Q Was it a sexual relationship?
- 22 A Yes, sir.
- 23 Q Was it an ongoing relationship?
- 24 A Like what do you mean by that?
- 25 Q Was it a one-time occurrence right after you started

Jonathan Leon Byers
Direct examination by Mr. Thompson

- 1 cutting her grass, or did it go on?
2 A It went on.
3 Q Did you have sex with Ms. Perrin in December of last
4 year?
5 A Yes, sir.
6 Q Would it have been on December the 6th?
7 A I do not know the date.
8 Q Okay. Was it between Thanksgiving and Christmas?
9 A Yes, sir.
10 Q Now, all of these women have testified. You've sat in
11 court and listened to their testimony, have you not?
12 A Yes, sir.
13 Q Did you forcibly have sex with any of these women?
14 A No, sir.
15 Q Did you break in their house?
16 A No, sir.
17 Q Did you hold a gun on them?
18 A No, sir.
19 Q Okay. Do you have any reason to know why they would
20 say that you've done that?
21 A No, sir. That's what got me. I want to know why.
22 Q But you in December of last year, sometime before
23 Christmas, you had sex with all three of these women.
24 A Yes, sir.
25 Q Thank you. Answer any questions the state may have,

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 please.

2 CROSS-EXAMINATION

3 BY MR. GOWDY

4 Q Mr. Byers, do you remember being interviewed on
5 December the 16th at the Gaffney police station?

6 A Yes, sir.

7 Q You were in the room with Detective Mike Fowlkes,
8 Detective Mike Segina and Detective Billy Odom?

9 A I do not know. I know I ain't never seen him before.

10 Q Well, you remember being in the Gaffney police station
11 on December the 16th, right?

12 A Yes, sir.

13 Q And they, they weren't talking to you about these
14 three sexual assault cases. They were talking to you about
15 something else, right?

16 A Yes, sir.

17 Q And you signed a form and gave them permission to talk
18 to you. Do you remember that?

19 A Yes, sir. I was forced to sign a form.

20 Q You were forced to sign.

21 A Yes, sir.

22 Q Were you forced to give them your buccal swab?

23 A No, sir.

24 Q All right. So you did that voluntarily.

25 A Yes, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 Q But you were forced to talk to them.

2 A I was forced to sign the paper.

3 Q Okay. On that piece of paper that you claim you were
4 forced, you told them on December the 16th, this date right
5 here, December the 16th, you told them that you had a gray
6 or silver and black pistol at your house, correct?

7 A No, sir. They asked me if I had a pistol, where would
8 I keep one at. I said at my house.

9 Q Well, now, Mr. Byers --

10 THE COURT: While she is marking that let me see you
11 just a minute.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 (Preinterrogation waiver form and voluntary statement
15 marked State's Exhibit No. 54 for Identification.)

16 THE COURT: All right. Ladies and gentlemen, I've got
17 one matter I'll need to address before we go further. I'll
18 ask you to go to your jury room. I will deal with that
19 matter and bring you right back. Don't discuss the case.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: All right. The jury has been excused.

23 Solicitor, do you want to ask him some questions about
24 the voluntariness of any statement?

25 BY MR. GOWDY

Jonathan Leon Byers (In-camera)
Cross-examination by Mr. Gowdy

1 forced to sign State's Exhibit 54. Do you see that
2 signature?

3 A Yes, sir.

4 Q That's your signature?

5 A Yes, sir.

6 Q And you're saying you were forced to sign that?

7 A Yes, sir.

8 Q Were you forced to sign there too?

9 A Yes, sir.

10 Q Who forced you to sign that, Mr. Byers?

11 A He's not in here. I don't know his name, but I know
12 his face.

13 Q All right. Well, how about the statement itself? Did
14 they force you to say certain things?

15 A They was asking me questions, if I did this or if I
16 did that, what would I do. And I told them what I would
17 do.

18 Q All right. So you agree with me that at least what
19 you told them was voluntary.

20 A They was asking me questions about things.

21 Q Well, did they make up the answer?

22 A Yes.

23 Q So you didn't tell them any of this. When it says,
24 "About two or three weeks ago I was at Cozy One Stop on
25 Cherokee Avenue and a white girl pulled up in a Jeep," they

Jonathan Leon Byers (In-camera)
Redirect examination by Mr. Thompson

1 Cherokee Avenue and a white girl pulled up in a Jeep," they
2 made that up.

3 A Yes.

4 Q You didn't tell them anything.

5 A No, no, sir.

6 Q Okay.

7 THE COURT: All right. I understand we're going to
8 have an additional hearing.

9 Mr. Thompson, do you want to go ahead and ask him any
10 questions?

11 REDIRECT EXAMINATION

12 BY MR. THOMPSON

13 Q Do you know who the officer was?

14 THE COURT: Relating to the voluntariness of the
15 statement.

16 MR. THOMPSON: Right.

17 Q Do you know who the officer was that was present when
18 you gave the statement? You say you recognize his face.

19 A Yes, sir.

20 Q Has he been in the courtroom during this trial?

21 A No, sir.

22 Q Okay. You don't know his name.

23 A No, sir.

24 Q Was there more than one there?

25 A Yes, sir. It was a SLED, a SLED one. They was about

Jonathan Leon Byers (In-camera)
Recross-examination by Mr. Gowdy

1 five or six of them in there, sir.

2 Q So there's five or six in there.

3 A It was only two at first, and then about four or five
4 of them came in and forced me to sign it, sir!

5 Q Okay. What did they do to force you to sign it?

6 A Stood around me. And I had just got ganged by some
7 boys. So I signed it.

8 Q Okay. So they basically intimidated you to get you to
9 sign it?

10 A Yes, sir.

11 Q Thank you.

12 THE COURT: Anything else?

13 RECROSS-EXAMINATION

14 BY MR. GOWDY

15 Q Mr. Byers, are you challenging the voluntariness of
16 your consent to the buccal swab also, or just the
17 statement?

18 A No, sir. I ain't challenging that.

19 Q Well, the two took place at the same time, right?
20 They interviewed you about the Shasta incident, and they
21 took buccal swabs from you, right?

22 A Yes, sir.

23 Q So you're not saying they forced you to give the
24 buccal swab. You're just saying they forced you to sign
25 the statement about the incident with Shasta.

Jonathan Leon Byers (In-camera)
Recross-examination by Mr. Gowdy

1 A Yes, sir. They just asked me to get some of my saliva
2 out of my mouth, and I told them yes.

3 Q All right. But the rest of it they made up.

4 A Yes, sir.

5 Q The whole incident with Shasta they made up.

6 A Yes.

7 Q All right. So you had nothing to do with Shasta and
8 nothing to do with the, with your D. N. A. being found in a
9 condom at her house and nothing to do with the injuries
10 that she suffered. All of that was made up.

11 A Yes.

12 THE COURT: Okay. You can step down for a moment.

13 THE WITNESS: Yes, sir.

14 MR. GOWDY: We have sent for Detective Fowlkes, Your
15 Honor.

16 The other detective had an emergency appendectomy --
17 Billy Odom. So we have sent for Detective Fowlkes, and I
18 hope he'll be here momentarily.

19 THE COURT: All right. We will be at ease while we
20 wait for Mr. Fowlkes.

21 (Whereupon, a recess was taken.)

22 (Photograph marked State's Exhibit No. 55 for
23 Identification.)

24 THE COURT: All right. Solicitor, have you got
25 Mr. Fowlkes here?

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

1 MR. GOWDY: Yes, sir. The state would call Detective
2 Mike Fowlkes, recall him to the stand.

3 MIKE FOWLKES, having been
4 first duly sworn, testified as follows:

5 THE COURT: Mr. Folks, you have previously been placed
6 under oath. And you're still under oath now.

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION BY MR. GOWDY

9 Q Detective Fowlkes, in December of 2006 were you
10 working a separate investigation that involved Mr. Jonathan
11 Byers?

12 A Yes, sir, I was.

13 Q Did you have occasion on December the 16th of 2006 to
14 talk to Mr. Byers about that separate unrelated
15 investigation?

16 A Yes, sir, I did.

17 Q Who was present when you talked to him?

18 A Myself and Billy Odom and Agent Darrell Betsell with
19 the South Carolina Law Enforcement Division.

20 Q I want to show you what's been marked as State's
21 Exhibit 54 and ask you whether or not you recognize that
22 3-page document.

23 A Yes, I do.

24 Q What is the first page?

25 A It's a preinterrogation waiver form that's commonly

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

1 used by the Cherokee County Sheriff's Office and the
2 Gaffney Police Department.

3 Q What is the name at the top of it? Who is being
4 interviewed?

5 A Jonathan Leon Byers.

6 Q And who's conducting the interview?

7 A I'm conducting the interview. We were questioning him
8 in reference to my case at that point.

9 Q Did he appear to understand the questions that you
10 asked him?

11 A He did, yes, sir.

12 Q Did he appear to be under the influence of drugs or
13 alcohol?

14 A No, he did not.

15 Q Did you coerce or threaten him in any way to get him
16 to sit down and talk to you?

17 A No, sir.

18 Q Did you hear either SLED Agent Betsell or Detective
19 Billy Odom threaten him in any way to get him to sit down
20 and talk to you?

21 A Not in any way.

22 Q Did you go over his right not to talk to you?

23 A Yes, sir, I did.

24 Q And what form did you use?

25 A The preinterrogation waiver. It actually has a

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

1 subsection for statement of rights.

2 Q And is that a standard form that's used in all
3 interrogations?

4 A Yes, sir, it is.

5 Q And did you advise him of each one of his rights?

6 A Yes, sir, I did.

7 Q Did you have him evidence in any way that he
8 understood the rights?

9 A He understood the rights and clearly stated he
10 understood the rights.

11 Q Did he also sign that he understood the rights?

12 A Yes, sir, he did.

13 Q On page one I see under your signature a Jonathan
14 Byers.

15 A Yes, sir.

16 Q Who signed that?

17 A Jonathan Byers.

18 Q And beside each one of those rights is a checkmark.
19 Who put that checkmark there?

20 A I did.

21 Q And why did you put the checkmark there?

22 A That's to indicate I individually read each one of
23 those rights.

24 Q All right. So you advised him he had the right to
25 remain silent.

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q The right to talk to an attorney.
- 3 A Yes, sir.
- 4 Q Could stop talking to you any time he wanted to.
- 5 A Yes, sir.
- 6 Q Couldn't hire a lawyer, one would be appointed for
- 7 him.
- 8 A That's correct.
- 9 Q And he said, he indicated he understood his rights and
- 10 that he agreed to waive them.
- 11 A Yes, sir.
- 12 Q How many of his signatures are on the first page?
- 13 A Three.
- 14 Q All right. I want to show you what is marked as
- 15 State's Exhibit 55 and ask you whether or not you recognize
- 16 that.
- 17 A Yes, sir.
- 18 Q What is that?
- 19 A That is Jonathan Leon Byers the morning of
- 20 December 16th, same clothing, exactly how he looked that
- 21 morning.
- 22 Q All right. Did y'all physically assault him in any
- 23 way to get him to cooperate with you?
- 24 A No, sir.
- 25 Q Did you threaten him?

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

- 1 A No, sir.
- 2 Q Did you deny him food or water or medicine?
- 3 A No, sir. I did not.
- 4 Q After he waived his rights and evidenced it by signing
5 three different places on the form, did you proceed to
6 question him about these unrelated incidents?
- 7 A I did, yes, sir.
- 8 Q Did you write out his statement, or did he?
- 9 A I wrote the statement.
- 10 Q Why did you write it?
- 11 A Commonly we will ask or write the statement for
12 legibility and spelling so that it can be read by any
13 layperson.
- 14 Q Do you use the words that he provides to you or do you
15 translate it and make it up and write down what you want?
- 16 A It's in his own words.
- 17 Q Do you give him an opportunity to read over it before
18 he signs it?
- 19 A Yes, sir, I do.
- 20 Q And how would someone looking at pages two and three
21 of that document know that he's read over it?
- 22 A It's indicated by the initialing at the beginning and
23 the end of the statement. And he also further states that
24 he has read the statement and received a copy at the bottom
25 of the preinterrogation waiver form.

Mike Fowlkes (In-camera)
Direct examination by Mr. Gowdy

1 Q Detective, is his signature at the bottom of both
2 pages one and two of his statement and pages two and three
3 of this document?

4 A Yes, sir.

5 Q And are his initials at the beginning and the end of
6 each one of those two pages?

7 A Yes, sir, they are.

8 Q And the words that are contained on this 2-page
9 statement came from whom?

10 A Jonathan Leon Byers.

11 Q Nothing promised him in exchange for it.

12 A Nothing.

13 Q No physical threats.

14 A No, sir.

15 MR. GOWDY: Your Honor, we would move State's 54 in as
16 a court's exhibit at this point with the right to refer to
17 it, portions of it, later on.

18 MR. THOMPSON: No objection as a court's exhibit.

19 THE COURT: Okay.

20 (Preinterrogation waiver form and voluntary statement
21 previously marked State's Exhibit No. 54 for Identification
22 changed to Court's Exhibit No. 1.)

23 Q Please answer any questions Mr. Thompson may have for
24 you, Detective.

25

Mike Fowlkes (In-camera)
Cross-examination by Mr. Thompson

1 CROSS-EXAMINATION

2 BY MR. THOMPSON

3 Q Detective Fowlkes, you say there was you and Detective
4 Odom and one Carol Betsell from SLED.

5 A That's correct, yes, sir.

6 Q Were there any more people in that room?

7 A No, sir, not at the time he was in the interview room,
8 no, sir.

9 Q Where was the interview room at?

10 A It was in the, I don't know, what they actually call
11 the room. The Gaffney Police Department.

12 Q In the police department?

13 A Yes. It's set up like a conference room, yes, sir.

14 Q Now, you work for the sheriff's department, right?

15 A I do.

16 Q Why were you involved in this?

17 A Because I was investigating an assault case that
18 involved a shooting with Mr. Byers.

19 Q And that's the one you got the waiver of rights on.

20 A Yes, sir.

21 Q Assault, shooting.

22 A Yes, sir.

23 Q You say that he waived his right to an attorney.

24 A Yes, sir.

25 Q Did he do that immediately when you asked him that?

1 A Yes, sir.

2 Q He didn't ask, no, I want an attorney and y'all keep
3 talking and eventually he say, okay, I'll give up and talk
4 to you?

5 A Never.

6 MR. THOMPSON: Excuse me a moment, Your Honor.

7 (Pause.)

8 MR. THOMPSON: Nothing further.

9 MR. GOWDY: Nothing on redirect, Your Honor.

10 THE COURT: Anything further on behalf of the state?

11 MR. GOWDY: No, sir. That would be the state's
12 showing, Your Honor.

13 THE COURT: Mr. Thompson, did you need to provide any
14 additional testimony with regard to the voluntariness of
15 the statement?

16 MR. THOMPSON: No, sir. Mr. Byers has testified.

17 THE COURT: All right. Based upon the testimony
18 presented I do find that the -- by a preponderance of the
19 evidence that the statement which has been testified to as
20 having been given by Jonathan Byers on December the 16th of
21 2006 to Detective Mike Fowlkes was freely and voluntarily
22 made, that the defendant was advised of his constitutional
23 rights, that he understood those rights, he agreed to waive
24 those rights, he was not promised, coerced or threatened in
25 any fashion which resulted in his providing a statement to

1 law enforcement; and therefore the -- at least some
2 relevant portions of that statement will be admitted in the
3 trial of the case.

4 Now, Solicitor, as I understand it, the only portion
5 that you are wanting to question the defendant about is the
6 portion that relates to whether or not he had in his
7 possession a handgun.

8 MR. GOWDY: Yes, sir. And I'll even agree to -- I
9 mean, I'm not going to show the exhibit to the jury. Or if
10 I do I'm certainly going to redact it beforehand. I'm not
11 even going to put where he says he got the gun from her.
12 If you will see on the second page towards the bottom when
13 he starts discussing his possession of the gun, I think he
14 says he got it from her. I'm leaving that part of it.

15 I just simply want the jury to know on the 16th of
16 December he said he had a handgun that was gray and black.
17 Now, I would like to be able to show him the signature and
18 show him his initials. And it will not be admitted into
19 evidence.

20 THE COURT: You're talking about the signature on the
21 statement or the signature on the waiver form?

22 MR. GOWDY: The signature on the statement and the
23 waiver form.

24 THE COURT: Well, if that's going to be introduced.

25 MR. GOWDY: I wasn't going to introduce it. I was

1 just going to ask him if he concedes that that is his name
2 at the bottom of it.

3 THE COURT: In other words, you're just going to ask
4 the defendant about it.

5 MR. GOWDY: Yes, sir.

6 THE COURT: Okay. Well, that's acceptable.

7 MR. THOMPSON: Your Honor, I know that you've ruled on
8 the admissibility. We'd just note our exception to that.

9 THE COURT: Note, note the exception to it.

10 All right. Anything further?

11 MR. THOMPSON: No, sir.

12 MR. GOWDY: No, sir, Your Honor.

13 MR. THOMPSON: There is one thing that might be a
14 housekeeping matter at this point in time.

15 His family when we came out just then asked me if
16 after he finished testifying if I would ask for a break
17 until tomorrow to give them a chance to get some witnesses
18 in here. So I will ask the Court after his testimony since
19 it's already 3:20 if we could have a break to get some
20 witnesses.

21 THE COURT: Okay. All right. We will talk about
22 that.

23 MR. THOMPSON: All right.

24 THE COURT: All right. Mr. Byers, come back and take
25 your place on the stand.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: All right. Ladies and gentlemen, we are
4 going to continue with the cross-examination of the
5 witness.

6 CONTINUED CROSS-EXAMINATION BY MR. GOWDY

7 Q Mr. Byers, do you remember on December the 16th of
8 2006 being interviewed by detectives Mike Fowlkes and Billy
9 Odom and a SLED agent named Carol Betsell?

10 A I remember Billy Odom, sir. Billy Odom.

11 Q So you deny that this man right there was present.

12 A I didn't see him, sir.

13 Q Well, Mr. Byers, let me show you an exhibit. Can you
14 see that?

15 A Yes, sir.

16 Q Jonathan Leon Byers.

17 A Byers.

18 Q Who is that?

19 A That's me.

20 Q All right. Gaffney South Carolina.

21 Who would that be? Who lives there?

22 A I do.

23 Q Okay. Social security number, is that your social
24 security number?

25 A Yes, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 Q Okay. And that's 12/16/06, correct?
- 2 A Yes, sir.
- 3 Q All right. And that's Mike Fowlkes. Do you see that?
- 4 A I see that, sir.
- 5 Q And that's the gentleman right there.
- 6 A He wasn't talking to me. It had to be Billy Odom.
- 7 Q Whose signature is that?
- 8 A That's mine, sir.
- 9 Q And it's under, "You have the right to remain silent."
- 10 Do you know what that means?
- 11 A Yes, sir.
- 12 Q "Anything you say can and will be used against you in
- 13 a court of law." Do you know what that means?
- 14 A Yes, sir.
- 15 Q "You have the right to talk to an attorney." Do you
- 16 know what that means?
- 17 A Yes, sir.
- 18 Q You can stop talking any time you want to, right?
- 19 A Yes, sir.
- 20 Q And you signed that you waived your rights. Do you
- 21 see your signature?
- 22 A What does that mean?
- 23 Q Do you see your signature?
- 24 A Yes, sir.
- 25 Q Do you see your signature right there?

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q Do you see your signature right there?
- 3 A Yes, sir.
- 4 Q Three different spots on one page you see your
5 signature, correct?
- 6 A Yes, sir.
- 7 Q Let's turn to the second page. Do you see your
8 signature there?
- 9 A Yes, sir.
- 10 Q Do you see your initials there?
- 11 A Yes, sir.
- 12 Q Do you see your initials there?
- 13 A Yes, sir.
- 14 Q All right. Let's turn to the next page. Do you see
15 your signature there?
- 16 A Yes, sir.
- 17 Q Do you see your initials there and there?
- 18 A Yes, sir.
- 19 Q And whose name is at the top?
- 20 A Jonathan Leon Byers.
- 21 Q Jonathan Leon Byers. In fact, the statement says it's
22 written for me by Captain Mike Fowlkes. That's him,
23 Mr. Byers. You signed it.
- 24 A But he wasn't the one talking to me, sir. I do not
25 remember his face. I remember faces very well, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 Q Well, let's see if you remember this. Do you remember
2 telling -- regardless of who it was, do you remember
3 telling law enforcement on December the 16th, 2006, "I've
4 got a gray and black .22 caliber pistol at my house"?
5 A No, sir. What I remember is when they asked me if you
6 had a pistol what would you do. I said I would keep it at
7 my house to protect my family.
8 Q All right. I'm going to get you to read for me.
9 Okay?
10 A Yes, sir.
11 Q What's that? Start right there. "I've got" --
12 A "I've got the .22." Let me see it, sir. It says on
13 here not in my handwriting, "I got the .22 caliber pistol
14 at my house that I took from her."
15 Q Keep going.
16 A "The gun is gray with a black handle. It's got .22 on
17 the side of it but it don't have the cup for it."
18 Q All right. Now, what's the last statement?
19 A "This statement was written for me by Captain Mike
20 Fowlkes. This statement is true and correct. So help me
21 God."
22 Q "So help me God." And who signed the bottom of that,
23 Mr. Byers?
24 A I did, sir.
25 Q So on December the 16th of 2006 you signed a document

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 that said you had a pistol at your house. Not where you
2 might keep it, not an imaginary pistol. But you had a
3 pistol at your house.

4 A I didn't read the statement, sir. They just told me
5 to sign it and initial it, sir. As a matter of fact, they
6 told me to write some circles and everything, sir. I
7 remember everything now. And they forced me to do it, sir.
8 There was about six or eight of them in there I remember,
9 sir.

10 Q Mr. Byers, I'm going to show you State's 55. Do you
11 recognize this guy?

12 A Yes, sir.

13 Q Who is that?

14 A That's me.

15 Q And that was a picture taken on December the 6th of
16 2006, right?

17 A Yes, sir.

18 MR. GOWDY: Your Honor, I would move State's 55 into
19 evidence. Permission to publish it to the jury.

20 MR. THOMPSON: I would like to look at the picture
21 first, Judge.

22 (Pause.)

23 MR. THOMPSON: No objection.

24 THE COURT: It's admitted.

25 (Photograph marked State's Exhibit No. 55.)

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 MR. GOWDY: Permission to publish it to madam
2 forelady.

3 Q Mr. Byers, I couldn't help but note how short your
4 hair was in that picture on December the 16th. You've let
5 it grow a little bit since these charges came up, haven't
6 you?

7 A I had my hair cut about three times, sir.

8 Q But it's shorter in December, right?

9 A Obviously, yes, sir.

10 Q Right. And there are no marks on you. There are no
11 belt marks. Nobody beat you into signing that statement,
12 did they?

13 A No, sir.

14 Q It's your statement.

15 A They forced me. They didn't beat me. They forced me.

16 Q So you deny. You deny having a pistol at your house
17 on December the 16th of 2006.

18 A They didn't say nothing like that, sir. They asked me
19 if I, if I would had a pistol where would I keep it, and I
20 say in my house to protect my family.

21 Q Mr. Byers, I want you to listen to my question, okay,
22 not the one you want me to ask, not the one you thought I
23 was going to ask. But you answer the one I ask. Okay.
24 Did you have a gun at your house on December the 16th of
25 2006?

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 A No, sir.
- 2 Q Then why did you tell the police you did?
- 3 A Because I didn't, sir. I just told them, I just
- 4 explained to you, sir.
- 5 Q Because if you had one on December the 16th, then that
- 6 would mean that you had one on December the 13th, right?
- 7 A Yes. But I ain't never had nern, sir.
- 8 Q Because in that very same statement that you signed
- 9 you told law enforcement that you got that gun two or three
- 10 weeks ago. Do you want to see that part of it?
- 11 A Yes, sir.
- 12 Q Right beside, right under your name. Whose name is
- 13 that?
- 14 A My name, sir.
- 15 Q And whose initials are that?
- 16 A Mine.
- 17 Q And it says about two or three weeks ago, right?
- 18 A That's what it says, sir.
- 19 Q That's when you got the gun.
- 20 A Sir, I just told you that.
- 21 Q You got the gun from a girl named Shasta. Do you not
- 22 remember that, Mr. Byers?
- 23 A No, sir.
- 24 Q You do not remember stealing a gun from Shasta and
- 25 telling the police about it?

Motion

1 MR. THOMPSON: Your Honor, that's a leading question,
2 Your Honor. Your Honor, objection. Could we side-bar?

3 THE COURT: Yes, sir.

4 MR. THOMPSON: I'm going to have a motion in a minute.

5 THE COURT: Okay.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen, let me
9 ask you to step back to your jury room just a minute, and
10 we will bring you break in just a few minutes.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Mr. Thompson.

14 MR. THOMPSON: Your Honor, at this time I would move
15 for a mistrial in this case.

16 Solicitor Gowdy got upset with my client and went
17 beyond the bounds of what at the side bar was agreed to he
18 was going to go into.

19 He went into stealing the gun from Shasta. First of
20 all, that goes into another crime that Mr. Byers is not on
21 trial for here today. And it goes beyond the limits of
22 what he said earlier at the side bar that he was simply
23 going to use this statement to show that he had a gun on
24 December the 16th, which is what we all agreed that that
25 would be the extent of what he went into.

Motion

1 So now he's not only gone beyond those limits but he's
2 raised the issue of another crime in front of this jury.
3 That's a bell that just can't be un-rung. And I would move
4 for a mistrial in this matter at this time.

5 THE COURT: All right. Solicitor.

6 MR. GOWDY: Your Honor, this defendant has denied
7 anything in this statement. He says it was coerced; he
8 says he didn't say it; he says it was written out. He's
9 denied having a gun at his house despite the fact that he
10 signed a statement that says he did.

11 I think that I am entitled to go into the context in
12 which this statement was given and the context in which he
13 came in possession of the gun.

14 In a perfect world I would not have had to go into
15 that. He would have said, yes, that's my signature and,
16 yes, I said that. But that's not what he said. He said
17 the police manufactured it, the police wrote that down for
18 me, I never said that, it was a hypothetical question.

19 If you read this full statement, which, by the way, I
20 believe is res gestae of this current crime, the gun came
21 from this incident, a D. N. A. sample came from this
22 incident. If you read this statement he admits to taking a
23 gun from a prostitute, the same gun that he admits having
24 at his house.

25 He now denies having that gun. How am I supposed to

Motion

1 cross-examine him on this denial without at least
2 confronting him with the fact that earlier he said
3 something different?

4 THE COURT: Well, I don't know, but I think he's
5 denied everything in the statement. So you knew he denied
6 it.

7 But now we had a discussion about what was going to be
8 admitted into evidence with regard to that statement. And
9 if I'm not mistaken, you told me you had no intention of
10 going into any of that other information that was contained
11 in the statement other than the fact that he just had in
12 his possession that pistol. If you thought that that was
13 relevant, how he obtained possession of it, why didn't we
14 have that same discussion or why didn't you tell me that
15 you thought it was admissible so we could have addressed it
16 at least prior to its admission rather than trying to
17 decide after its admission?

18 MR. GOWDY: Your Honor, I apologize to the Court. I
19 did not anticipate this defendant denying that he ever said
20 that to law enforcement.

21 THE COURT: You didn't anticipate that he would deny
22 making that statement? Let me see that statement.

23 MR. GOWDY: My prior conversations with Mr. Thompson
24 where I tried to limit greatly what I would go into was
25 with the assumption on my behalf that he would admit that

Motion

1 portion of the statement.

2 THE COURT: Well, I mean he'd already -- you knew he'd
3 already testified that it was coerced and they made him say
4 it.

5 Let me see y'all just a minute.

6 (Bench conference held off the record.)

7 THE COURT: We are going to take five minutes.

8 You can step down from the stand and have a seat.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. Have Mr. Byers come back
11 around, please.

12 All right. I've had a chance to review the statement.
13 It appears from the statement that the defendant did not
14 say that he had stolen a weapon.

15 That is going to be cleared up through the solicitor's
16 questions. So there will be no indication or implication
17 that the weapon was stolen.

18 I do think it's appropriate for the solicitor to
19 cross-examine the witness as to the fact that he had the
20 weapon and also told the police officers where he got the
21 weapon.

22 But, now, I understand there's nothing else in the
23 statement that the state intends to go into other than the
24 fact that the source of the weapon and the fact that he
25 stated -- the fact that he stated the source of the weapon

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 and the fact that he possessed the weapon.

2 MR. GOWDY: Yes, sir, as quickly as possible and then
3 move on to another area.

4 THE COURT: All right. Motion for a mistrial is
5 denied.

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Solicitor.

11 MR. GOWDY: May it please the Court.

12 BY MR. GOWDY

13 Q Mr. Byers, I used a word improvidently. I used the
14 word stolen. There is nothing to indicate that in this
15 statement.

16 So I am going to acknowledge that I used that word
17 improvidently. And rather than me trying to characterize
18 this statement and your words, I'm just going to ask you to
19 read what is above your signature. Okay?

20 A Yes, sir.

21 Q Start right there and end right there. I just want
22 you to read that and that.

23 A Which? Show me again, sir.

24 Q Start, "I got," and end with, "Come."

25 A "I got the gun from her."

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 Q "I got the gun from her. And then I got this
2 .22 caliber pistol at my house. The gun is grayish with
3 black handle. It's got .22 on the side of it and doesn't
4 have a clip."

5 A That's my first time ever reading this today. I ain't
6 never read it before. I just initialed it because I was
7 forced to initial it and sign it, sir.

8 Q Mr. Byers --

9 A Yes, sir.

10 Q -- do you want the jury to believe that the police
11 officers made that story up?

12 A Yes, sir.

13 Q How in the world would they come up with a fact
14 pattern like that?

15 MR. THOMPSON: Objection. He is pitting witnesses,
16 Your Honor.

17 THE COURT: Overruled.

18 A I don't know, sir.

19 Q So on December the 16th of 2006 you'll agree with me
20 there's a statement with your signature at the bottom of it
21 where you admit that you have a gray and black gun. Can we
22 at least admit to that?

23 A No, sir. I just admit that I was forced to sign it,
24 sir.

25 Q Okay. Well, you will agree that you were not forced

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 to give a buccal swab to law enforcement.
- 2 A No, sir.
- 3 Q You did that.
- 4 A Yes, sir.
- 5 Q And the police had your saliva.
- 6 A Yes.
- 7 Q They did not have your semen, correct?
- 8 A Say that again, sir.
- 9 Q They did not have your semen.
- 10 A They did not have my semen?
- 11 Q Right.
- 12 A What do you mean by that?
- 13 Q What part of that do you not understand? You gave
- 14 them your saliva.
- 15 A Oh, yes, sir.
- 16 Q Not your hair and not your blood and not your semen.
- 17 A No, sir.
- 18 Q Right. So if SLED found your semen, it didn't come
- 19 from law enforcement.
- 20 A No, sir.
- 21 Q Okay. State's Exhibit 31, blue jeans and a gray shirt
- 22 found at your house, whose are those?
- 23 A Those are mine, sir.
- 24 Q Okay. Dark blue nylon jacket, whose is that?
- 25 A It is mine, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 Q Brown shirt with a tag showing on the outside, whose
2 is that?

3 A Mine.

4 Q Where is the gun, Mr. Byers?

5 A Like I said before, sir, I do not know nothing about
6 guns. I'm a school boy. I go to school, sir, Spartanburg
7 Tech.

8 Q Where is the gun, Mr. Byers? Where is Tammy Payne's
9 cell phone?

10 A I do not know what you're talking about, sir.

11 Q If I understand you correctly, you want the jury to
12 believe that you had an ongoing sexual relationship with
13 Delores Perrin and Brandy Giles and Tammy Payne.

14 A Yes, sir.

15 Q How in the world is it that none of the three of them
16 remember that?

17 A I don't know, sir. That's what I want to know, sir.

18 Q Well, what explanation can you offer to us? How in
19 the world could they forget about something like that?

20 A Sir, I'm stuck on it like you.

21 Q Well, they're not trying to frame you. You will agree
22 with me there, right?

23 A That's what I think so, sir.

24 Q Well, Mr. Byers, if they were going to frame you they
25 would have given your name to the police.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 A Yes, sir.

2 Q They never mentioned your name to the police, did
3 they, Mr. Byers?

4 A No, sir.

5 Q So they're not trying to frame you.

6 A No, sir, oh, yes, sir, they're trying to frame me. I
7 don't know what they're doing like that, but that's one of
8 my thoughts that I think they're trying to do though, sir.

9 Q Are you telling the jury that you had sex with all
10 three of these victims the same night they were raped?

11 A I don't know about that, sir. I don't know nothing
12 about the rape night. That's what I was telling you.
13 That's what I have been telling you.

14 Q If Delores Perrin was in Spartanburg with a friend,
15 when would you have had an opportunity to have sex with
16 her?

17 A I don't know what you're talking about, sir. I don't
18 know nothing you're talking about.

19 Q You said you had sex with her. And your semen was
20 found inside of her when she went to the hospital and had a
21 medical test run. So my question to you is she's in
22 Spartanburg. Her testimony, she's in Spartanburg having
23 dinner with a friend. When would she have had a chance to
24 have sex with you?

25 A Obviously, when she came home, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 Q Do you think she would remember that?
- 2 A Yes.
- 3 Q Were you here when she testified she had never seen
- 4 you before?
- 5 A Yes, sir.
- 6 Q Were you here when she testified you had never been
- 7 inside of her house before?
- 8 A Yes, sir.
- 9 Q Can you tell the ladies and gentlemen of the jury why
- 10 she would make that up?
- 11 A That's still got me stuck, sir. That's what I want to
- 12 know today. I have been locked up.
- 13 Q It's got all of us stuck, Mr. Byers. Tell us, tell
- 14 us. What's her motive?
- 15 A I don't know. But I know that I've been locked up for
- 16 ten months for nothing, sir.
- 17 Q Well, Mr. Byers, let's don't say nothing. Your D. N.
- 18 A. was found inside of three different rape victims,
- 19 correct?
- 20 A Yes, sir.
- 21 Q Okay. All three of them say that they have never seen
- 22 you before, correct?
- 23 A Yes, sir. But I ain't never raped nobody, sir.
- 24 That's what I'm trying to tell you.
- 25 Q They all said that you had clothing on that matches

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 the clothing found at your house, correct?

2 A Yes, sir.

3 Q They all said you had a gun that matches the exact
4 description that on December the 16th you said you had at
5 your house, correct?

6 A They're working together, sir, obviously.

7 Q Do you own some black Felix (sic) tennis shoes?

8 A I own two pair, sir.

9 Q All right. And that's what the police could have
10 gotten to match up with the print taken out of that chair,
11 right?

12 A Yes, sir.

13 Q I want to ask you this. You said you've got some
14 questions. I've got some too. When did you put the knives
15 in the refrigerator?

16 A I don't know what you're talking about, sir.

17 Q You didn't do that?

18 A No, sir.

19 Q Are you saying that a separate person raped all three
20 of them or that they weren't raped and they're blaming you
21 for it?

22 A I ain't saying none of that, sir.

23 Q You've got to be saying one, Mr. Byers, so which one
24 are you saying? Are you saying that they made up the fact
25 that they were raped, period?

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 A Yes.
- 2 Q So you don't believe they were raped.
- 3 A No, sir, because I was sitting at home protecting my
4 family too.
- 5 Q All right. Well, that's not my question, Mr. Byers.
6 Are you saying they made up the fact that they were raped?
- 7 A Yes.
- 8 Q All right. So did they also make up the fact that
9 they lost their jobs after they were raped?
- 10 A I don't know what you're talking about, sir.
- 11 Q Are they making up the fact that they have
12 posttraumatic stress disorder as a result of being raped?
- 13 A I believe I got that, too, sir, from being in jail.
- 14 Q You're the victim, right, Mr. Byers?
- 15 A Yes, sir. I woke up with the guns and stuff in my
16 face.
- 17 Q You're the victim of a grand conspiracy, three women
18 that do not know each other. Y'all never went on a triple
19 date, did you?
- 20 A No, sir.
- 21 Q So you don't have any evidence that these three women
22 knew each other.
- 23 A No, sir. But I know that two of them knew each other.
- 24 Q Mr. Byers, you had a chance to tell us that on direct
25 examination, didn't you?

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 A What do you mean by that, sir?
- 2 Q Is that the window that you climbed through?
- 3 A No, sir.
- 4 Q Mr. Byers, if you had sex with Brandy Giles, how come
- 5 she doesn't remember it?
- 6 A They're trying to get me locked up for nothing, sir.
- 7 Q Why? See, that's what I don't understand, Mr. Byers.
- 8 A That's what I'm asking you, sir.
- 9 Q Because if they wanted you locked up, they would have
- 10 given the police your name, right?
- 11 A Yes, sir.
- 12 Q But they didn't.
- 13 A I know that, sir.
- 14 Q They all submitted to invasive medical procedures,
- 15 correct?
- 16 A Yes, sir.
- 17 Q They had to have Q-tip swabs inserted into their
- 18 vagina to find your semen, correct?
- 19 A Yes, sir.
- 20 Q And have it sent down to SLED where they don't know
- 21 you at SLED. Do they?
- 22 A Sir?
- 23 Q Are you saying SLED is part of this conspiracy?
- 24 A What you mean by that, sir?
- 25 Q The scientist that testified from SLED, are they part

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 of this?

2 A I ain't denying. They might have found my semen,
3 because I was having relationships with them, sir.

4 Q Where did you meet Tammy Payne?

5 A Walking over there by her house, sir.

6 Q Do you know her children's names?

7 A No, sir.

8 Q Do you know how many she has got?

9 A I know that she had three at the time, sir.

10 Q Well, you knew that because that's what she testified
11 to yesterday, right? You don't know any of their names?

12 A No, sir.

13 Q Have you got any notes or cards that she would have
14 written you during the course of your relationship with
15 her?

16 A No, sir.

17 Q Have you got anything at all that you can show this
18 jury other than your word that you had a relationship with
19 Tammy Payne? Anything? A note, a card, a cell phone bill,
20 anything?

21 A No, sir.

22 Q You just want to us take your word for it.

23 A Yes, sir.

24 Q Okay. Brandy Giles.

25 A I want them to tell the truth, sir.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 Q Well, the jury is going to decide who is telling the
2 truth, Mr. Byers.

3 A Yes, sir.

4 Q Do you understand that?

5 A Yes, sir.

6 Q Okay. They all three testified they never seen you
7 before.

8 A Yes, sir.

9 Q Three different women who do not know one another in
10 the course of one week.

11 A I know that two of them know each other, sir.

12 Q Well, they said they didn't, Mr. Byers. Do you think
13 those two got together and decided to frame you?

14 A I don't know. If they're saying that they don't know
15 each other they, obviously they, ain't telling the truth,
16 sir.

17 Q Where did you meet Delores Perrin?

18 A Cutting her yard, sir.

19 Q She said you never cut her yard, Mr. Byers. She cuts
20 her own grass.

21 MR. THOMPSON: Objection. There's been no testimony
22 to that, Judge.

23 THE COURT: Well, I don't know what the testimony is.
24 I can't remember it all, but it might be a witness-pitting
25 sort of thing. So I'll sustain the objection.

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

- 1 Q Was she home when you cut the grass?
- 2 A Sometimes, yes, and sometimes, no, sir.
- 3 Q Well, she would have seen you, right?
- 4 A Yes, sir.
- 5 Q And when she was asked on the witness stand whether or
- 6 not she had ever seen you before in her life, she said no,
- 7 correct?
- 8 A Yes, sir.
- 9 Q Have you got any notes or cards or pictures or
- 10 anything to show this jury for them to see that you had a
- 11 prior relationship with Delores Perrin?
- 12 A No, sir. I have a baby and mama, too, sir. I do not
- 13 carry stuff like that around with me.
- 14 Q So the answer would be no?
- 15 A Yes, sir.
- 16 Q How did you get in Delores Perrin's house?
- 17 A She would leave the door open for me, or she would
- 18 open it up for me when I get there, sir.
- 19 Q Do you think she would have remembered that?
- 20 A Yes, sir.
- 21 Q All right. Now, why would she make up the fact -- why
- 22 would she come to court and say she had never met you
- 23 before? What possible motive would she have for doing
- 24 that?
- 25 A This is --

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 MR. THOMPSON: Judge, I'm going to object to this.
2 This question has been asked and answered. It's pitting
3 the witnesses against each other and it's badgering the
4 witness.

5 THE COURT: Sustained.

6 Q Before today have you told anyone the story that you
7 just told this jury?

8 A No, sir. The only thing I told my lawyer was about
9 how they forced me to sign that statement, sir, and how
10 when I asked my lawyer could I -- when I asked the police
11 could I wait until I see my lawyer, and they told me no.
12 They kept telling me no, kept me there for like hours.

13 Q How long did you spend in Brandy Giles' house before
14 she got home?

15 A I do not know what you're talking about, sir.

16 Q Well, she went to the hospital on December the 11th,
17 right?

18 A That's what it say, sir.

19 Q With your semen running down her leg, correct?

20 A I guess so, sir.

21 Q Well, then even by your version she would have had to
22 have sex with you sometime within the past 24 hours, right?

23 A Yes.

24 Q Where?

25 A That's what I don't know, sir. I don't know the dates

Jonathan Leon Byers
Cross-examination by Mr. Gowdy

1 or nothing. That's why I'm wondering why they doing this
2 to me. Excuse me, sir?

3 Q Did you hear her say she was at her boyfriend's house
4 the day before?

5 A No, sir.

6 Q You didn't hear her say that?

7 A No, sir.

8 MR. GOWDY: One second, Your Honor.

9 (Pause.)

10 MR. GOWDY: Your Honor, can Mr. Thompson and I
11 approach for one moment?

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 MR. GOWDY: I have no further questions, Your Honor.

15 MR. THOMPSON: No redirect.

16 THE COURT: You may step down.

17 MR. THOMPSON: Your Honor, again, may we approach?

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 MR. THOMPSON: Your Honor, as we have discussed
21 earlier during breaks, I have a couple of witnesses that
22 we're trying to get here.

23 Unfortunately, it's 4:00 o'clock and a little bit
24 after. They're not here. Can we have a continuance until
25 in the morning to try to get those witnesses?

1 THE COURT: Okay. All right. Ladies and gentlemen,
2 we're going to recess for the afternoon, and we will resume
3 in the morning to conclude.

4 Keep in mind no discussions; no media exposure,
5 television, radio or newspaper; no independent research or
6 investigation into any issue. Also, do not permit anyone
7 to try to discuss the case with you.

8 With that caution in mind, do have a good evening.
9 Please report back to your jury room at 9:30 in the
10 morning, 9:30 in the morning.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Before we leave let me be sure
14 of an evidentiary matter.

15 Do I understand correctly that Exhibits 1 through 53
16 have all been admitted with the exception of 48?

17 MS. CRICK: Yes, sir. I believe that's correct.

18 The only thing -- let me look at the number here, Your
19 Honor. The clothes have not been entered. And that would
20 be No. 35 and No. 36. Those have not been entered. And
21 then 48 has not been entered. And I think that's it.
22 That's all I am aware of.

23 THE COURT: Give me those numbers again, have not been
24 admitted.

25 MS. CRICK: It was No. 36 and No. 35. And 48 I think

1 is the one you had mentioned.

2 THE COURT: Okay. All right. Anything further before
3 we recess?

4 MS. CRICK: Not from the state, Your Honor.

5 MR. THOMPSON: No, sir.

6 THE COURT: All right. Court's in recess until 9:30
7 in the morning.

8 END OF PROCEEDINGS OCTOBER 9, 2007

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1 (Proceedings October 10, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters to address before
5 is jury is brought in?

6 MS. CRICK: Not from the state, Your Honor.

7 MR. THOMPSON: Your Honor, we had taken a recess in an
8 attempt to try to locate some witnesses, but we've been
9 unsuccessful in doing so.

10 Mr. Byers has actually told me he does not wish for me
11 to call any more witnesses. So at this point in time the
12 defense would rest.

13 I don't know if you want to bring the jury out and me
14 rest and you send them back for me to make a
15 directed-verdict motion or if you want me to go ahead and
16 make that motion now and let you --

17 THE COURT: Well, the state may have some reply. I'm
18 not sure.

19 MS. CRICK: We do. We have one.

20 THE COURT: Okay.

21 MR. THOMPSON: But I do think I still have to make the
22 motion that I'm required to after we rest before they put
23 up their reply in order to protect the record.

24 THE COURT: Okay. Mr. Byers, Mr. Thompson has told me
25 that yesterday he asked us to break early so that he could

Motion

1 locate some witnesses perhaps. He tells me now that he has
2 no witnesses and that you've told him that you don't want
3 him to call anybody else, that you intend to rest. Is that
4 true?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In other words, you don't have any other
7 witnesses you want Mr. Thompson to call in the trial?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. All right. You can have a seat.
10 All right. Mr. Thompson.

11 MR. THOMPSON: Your Honor, at this time I would -- and
12 I realize it's slightly ahead of time. But I know he's
13 going to rest as soon as the jury comes out.

14 We would move for a directed verdict, basically renew
15 our prior motions, and especially our mistrial motion.

16 THE COURT: All right. That motion is denied.
17 Who is the reply witness?

18 MR. GOWDY: Detective Mike Fowlkes, Your Honor.

19 THE COURT: Bring the jury in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Good morning, ladies and gentlemen.

23 As you know, when we recessed yesterday the defense
24 was in the midst of its presentation, so we'll continue
25 with that this morning.

Mike Fowlkes
Direct examination by Mr. Gowdy

1 Mr. Thompson.

2 MR. THOMPSON: Your Honor, at this time the defense
3 would rest.

4 THE COURT: All right. Does the state have reply?

5 MR. GOWDY: Yes, sir, Your Honor.

6 THE COURT: All right.

7 MR. GOWDY: Your Honor, the state would call Detective
8 Mike Fowlkes.

9 THE COURT: Mr. Fowlkes, you have previously been
10 placed under oath, and you're still under oath today.

11 THE WITNESS: Yes, sir.

12 (Preinterrogation waiver form marked State's Exhibit
13 No. 57 for Identification.)

14 MIKE FOWLKES, having
15 previously duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. GOWDY

17 Q Good morning, Detective Fowlkes.

18 A Good morning, sir.

19 Q You have already told the jury your background in law
20 enforcement. Would you tell us again how long you've been
21 in law enforcement?

22 A I've been in law enforcement 17 years.

23 Q And what's your current position at the Cherokee
24 County Sheriff's Department?

25 A Captain over criminal investigations and supervisor of

Mike Fowlkes
Direct examination by Mr. Gowdy

1 seven other investigators with the sheriff's department.

2 Q As part of your duties as the captain of
3 investigations have you conducted interviews with people
4 throughout your career?

5 A I have several of them.

6 Q How many interviews would you estimate that you have
7 conducted in your career?

8 A Probably somewhere between six or seven hundred
9 interviews.

10 Q Six or seven hundred?

11 A Several hundred.

12 Q As a part of conducting interviews do you occasionally
13 use a form, a waiver of rights form?

14 A Yes, sir. We do.

15 Q Let me show you what's been marked as State's
16 Exhibit 57. Does that form inform the witness what his or
17 her rights may be under the law?

18 A Yes, it does. It's a preinterrogation waiver, and it
19 has a subsection for statement of rights.

20 Q And do you go over each one of those rights
21 individually?

22 A Yes, sir, I do.

23 Q And on December the 16th of 2006 did you have an
24 occasion to interview Mr. Jonathan Byers?

25 A Yes, sir, I did.

Mike Fowlkes
Direct examination by Mr. Gowdy

- 1 Q And did you go over his rights with him?
- 2 A I did.
- 3 Q Did he appear to understand the words that you were
- 4 using?
- 5 A Yes, sir, he did.
- 6 Q Did you understand the words that he was using?
- 7 A Yes.
- 8 Q Did he appear to be under the influence of drugs or
- 9 alcohol?
- 10 A No, he did not.
- 11 Q Did you threaten or coerce him in any way to get him
- 12 to waive his rights?
- 13 A No, I did not.
- 14 Q Did anyone present threaten or coerce him in any way
- 15 to get him to waive his rights?
- 16 A No, sir.
- 17 Q The exhibit that you are holding in your hands, did
- 18 Jonathan Byers sign that waiver of rights at any place?
- 19 A Yes, sir, he did.
- 20 Q How many different times does his signature appear on
- 21 that one sheet of paper?
- 22 A Three times.
- 23 MR. GOWDY: Your Honor, we would move State's 57 into
- 24 evidence and ask permission to publish it to the jury.
- 25 MR. THOMPSON: No objection.

Mike Fowlkes
Direct examination by Mr. Gowdy

1 THE COURT: It's admitted.

2 MR. GOWDY: Thank you, Your Honor.

3 (Preinterrogation waiver form marked State's Exhibit
4 No. 57.)

5 Q All right. Detective Fowlkes, that is the form that
6 you used on December the 16th?

7 A Yes, sir, it is.

8 Q And that would be your name right there.

9 A Yes.

10 Q The checkmarks, did you check those or did Mr. Byers
11 check those?

12 A I check them as I read each individual right.

13 Q And is that your separate protocol and the one that
14 you follow in your other investigations?

15 A Yes, sir, it is.

16 Q Whose signature is that?

17 A Jonathan Byers.

18 Q Did you force him to sign it?

19 A No, sir.

20 Q Did anyone force him to sign it?

21 A No, sir.

22 Q Did you coerce him?

23 A No, sir.

24 Q Whose signature is that right there?

25 A Jonathan Byers.

Mike Fowlkes

Direct examination by Mr. Gowdy

- 1 Q Did you force him to sign that?
- 2 A No, sir.
- 3 Q Did you coerce him?
- 4 A No, I didn't.
- 5 Q Did anybody else force him or coerce him?
- 6 A No, sir.
- 7 Q Lastly, the third signature, whose is that?
- 8 A Jonathan Byers.
- 9 Q After Mr. Byers waived his rights you proceeded to ask
- 10 him some questions, correct?
- 11 A I did, yes, sir.
- 12 Q And on December the 16th did he tell you that he came
- 13 into possession of a gun at some point previous?
- 14 A He did, yes, sir.
- 15 Q Did he say that he had come into possession of the gun
- 16 two or three weeks earlier?
- 17 A Two or three weeks prior to December the 16th, yes,
- 18 sir.
- 19 Q Did he further describe the gun as a .22 caliber
- 20 pistol?
- 21 A He did.
- 22 Q Did he tell you that he had the gun at his house?
- 23 A He did.
- 24 Q Did he tell you gun was grayish with a black handle?
- 25 A He did, yes, sir.

Mike Fowlkes
Direct examination by Mr. Gowdy

1 Q And, lastly, did he tell you that this statement was
2 written for him by you?

3 A Yes, sir, he did.

4 Q Who requested that you write it?

5 A He did. It's in his own words.

6 Q Did he sign the bottom of the page where he said two
7 or three weeks ago and the page where he described the gun?

8 A He did.

9 Q Do you also have him initial at the beginning of each
10 of those pages?

11 A Yes, sir.

12 Q So there would be, if I am correct, a total of five
13 separate Jonathan Byers' signatures on these three pages.

14 A That's correct.

15 Q And did he sign them voluntarily?

16 A Yes, sir, he did.

17 Q And did he provide the information that you just told
18 the jury about?

19 A He provided the information.

20 Q You didn't make it up or force him.

21 A No, sir.

22 Q Detective Fowlkes, please answer any questions that
23 Mr. Thompson may have for you.
24
25

Mike Fowlkes
Cross-examination by Mr. Thompson

1 CROSS-EXAMINATION

2 BY MR. THOMPSON

3 Q Good morning, Detective.

4 A Good morning.

5 Q This says that it's around, looks like, 6:15 in the
6 morning, is that correct?

7 A That's correct.

8 Q At what point in time did y'all take Mr. Byers into
9 that interview room?

10 A 6:15 that morning.

11 Q So you walked him in and signed that as you walked
12 through the door?

13 A That would have been the initial preinterrogation
14 waiver.

15 Q Okay. So that means you filled that out the minute
16 you walked in that room and sat down.

17 A The initial contact we had with him, yes, sir.

18 Q Okay. How many people were in that room?

19 A There was myself, Detective Billy Odom and Agent
20 Darrell Betsell with the state law enforcement division.

21 Q There couldn't have been more than that?

22 A It was not more than that.

23 Q Was there ever anybody else come in the room during
24 the course of the interview with Mr. Byers?

25 A When he volunteered his D. N. A. sample, yes, sir.

Mike Fowlkes
Cross-examination by Mr. Thompson

1 Sergeant Mike Segina.

2 Q Okay. So that makes four, right?

3 A At that time it did, yeah.

4 Q Was there ever any intimidation used to get Mr. Byers
5 to sign this?

6 A None.

7 Q Is it normal to have three people in an interview room
8 when you're interviewing somebody?

9 A It could be at times, yes, sir. You're dealing with
10 the task force. You had the state law enforcement
11 division, the Gaffney city police and the sheriff's
12 department. There was a representative of each agency
13 there, yes, sir.

14 Q Do you know whether or not Mr. Byers could read and
15 write?

16 A Yes, sir. He indicated that he could.

17 Q But you wrote the statement for him, is that correct?

18 A I did.

19 Q Thank you.

20 MR. GOWDY: No, sir.

21 THE COURT: You may step down.

22 Any other reply?

23 MR. GOWDY: Not from the state, no, sir, Your Honor.

24 THE COURT: Ladies and gentlemen, that is all the
25 testimony or evidence to be offered in the trial of the

Motion

1 case.

2 What remains to be done are the lawyers' final
3 summations, after which I'll instruct you on the law. And
4 then you'll begin with your deliberations in the case.

5 I've got a couple of matters that I'll need to address
6 with the lawyers before we can do that, and it should take
7 only a moment or two.

8 So I'll ask you to please go to your jury room. And
9 I'll bring you back in just a few minutes. Do not discuss
10 the case.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Mr. Thompson, do you want to
14 renew your motions?

15 MR. THOMPSON: Yes, sir. I need to renew my motion
16 for a directed verdict, Your Honor.

17 THE COURT: All right. That motion is denied.

18 Are there any instruction requests by the state?

19 MS. CRICK: No, sir.

20 THE COURT: The defendant?

21 MR. THOMPSON: No, sir, not for any instruction
22 requests.

23 There is one issue though. Mr. Byers -- and I'll
24 bring this up with the Court -- Mr. Byers has indicated to
25 me that he wants to do his own closing argument.

1 I told him he has no absolute right to do that, that
2 will be up to the discretion of the Court. So I don't know
3 if the Court wants to inquire into that or not.

4 THE COURT: That's not going to be permitted since
5 you're his lawyer.

6 MR. THOMPSON: All right. Do you understand that,
7 Mr. Byers?

8 THE DEFENDANT: In order for me to do my closing
9 remark I ain't going -- I got to kick him out?

10 THE COURT: No, sir. You can't do the closing
11 remarks. That's what your lawyer -- that's what your
12 lawyer is for.

13 THE DEFENDANT: Know what I'm saying, like I tell him
14 to step out from the bench where I am at?

15 THE COURT: Well, it's too late for that. You asked
16 to have a lawyer assist you in this case, and that's what
17 Mr. Thompson has been doing. It's too late now for you to
18 terminate his representation.

19 THE DEFENDANT: So this -- I can't, I can't terminate
20 him?

21 THE COURT: No, sir.

22 THE DEFENDANT: This is my case and I can't terminate
23 him.

24 THE COURT: Well, let me understand. When you were
25 charged and when this case came to court did you ask to

1 have a lawyer represent you in this case?

2 THE DEFENDANT: No, sir.

3 THE COURT: In other words, somebody made you have a
4 lawyer?

5 THE DEFENDANT: No, sir. They asked me did I want a
6 public defender, and I said yes.

7 THE COURT: Oh, that's what I'm asking. You did ask
8 to have a lawyer represent yourself -- to represent you in
9 this case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you ever tell anybody at any time up
12 until just this minute that you wanted to represent
13 yourself?

14 THE DEFENDANT: No, sir. I just wanted to do the
15 closing argument, sir.

16 THE COURT: You've always wanted to have a lawyer help
17 you in the case?

18 THE DEFENDANT: I wanted him to say what I wanted him
19 to say. But he, he really ain't saying what I told him to,
20 sir.

21 THE COURT: Well, I don't know what he's going to say.
22 I haven't heard it yet. Are you predicting what he's going
23 to say?

24 MR. THOMPSON: I think what he's trying to tell the
25 Court is starting yesterday we have not been on the same

1 page at all as to how I should represent him. He wants me
2 to ask certain questions that, quite frankly, I don't ask
3 because of reasons, they may open doors to other things,
4 things like that.

5 He wants to take the stand and testify again. I told
6 him that's not a possibility because he's had his time on
7 the stand. And he's just not in agreement with the way
8 that I'm handling the case at this point in time is the
9 problem.

10 THE COURT: Okay. Well, I can't -- I'm not going to
11 be able to resolve that issue for you.

12 But, Mr. Byers, as I understand it from what you've
13 told me, you requested to have a lawyer assist you in your
14 case. You had a lawyer assisting you in this case.

15 I have seen nothing in this courtroom through the
16 performance of Mr. Thompson that would indicate to me that
17 he has not properly represented you from the beginning up
18 until the present. And so I see no reason that I would
19 permit you to have him terminated at this stage of this
20 trial. And so that will not be permitted.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Anything further?

23 MS. CRICK: No, sir.

24 THE COURT: All right. Are y'all ready to argue?

25 MS. CRICK: Yes, sir.

Closing arguments

1 THE COURT: Okay. Bring the jury in.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: All right. Ladies and gentlemen, as I
5 told you, all the evidence is in.

6 What remains to be done are the lawyers' final
7 summations. And then I'll instruct you on the law that's
8 applicable in the case. And then you will be asked to go
9 back and begin with your deliberations.

10 So please give the lawyers your attention now as they
11 give you their final summations.

12 Mr. Thompson.

13 MR. THOMPSON: Thank you, Your Honor.

14 Ladies and gentlemen, I am a pacer. I'm not
15 accustomed to having jurors sit down here and I'm afraid
16 I'll sit in their lap. So I'm going to pull this podium
17 here and I am going to try to stay behind it.

18 This may be the shortest -- I've been practicing law
19 for 28 years. This may be the shortest closing argument
20 I've ever given in a case. But I want you to listen to it
21 carefully.

22 The judge is going to explain the law to you of
23 burglary and criminal sexual conduct, armed robbery and
24 possession of a weapon. I'm not going to go into any of
25 that. You need to listen to him on that law because the

Closing arguments

1 state has the burden of proof of proving beyond a
2 reasonable doubt each and every element in order to get a
3 conviction.

4 What I'm going to talk to you about this, this case
5 from the start seems to be a case of who done it. And when
6 the state finished its evidence, closed its evidence, it
7 still seemed to be a case of who done it. Ms. Perrin,
8 Ms. Giles and Ms. Payne, none of them could point to
9 Mr. Byers and say he's the man that raped me.

10 The officer, Officer Segina, David Segina, took
11 fingerprints at each house. There were no fingerprints to
12 tie Mr. Byers to this.

13 Now, granted, everything wasn't fingerprinted. We
14 didn't fingerprint anything, the door facing of the
15 bedrooms or one of the doors on, I believe, Ms. Perrin's
16 house or the refrigerator door at Ms. Giles' house. But be
17 that as it may, fingerprints were taken. There was no, no
18 physical evidence from fingerprints to tie Mr. Byers to
19 this incident.

20 There was a shoe print that you'll have back there
21 with you, State's Exhibit 34, that is a print from the
22 tennis shoe of Mr. Byers when they talked to him later in
23 December. They say that they took this because of this
24 shoe print. And I want you to look at this, State's
25 Exhibit 33. This shoe print that was taken off a yellow

Closing arguments

1 chair.

2 Look at it. Tell me, or back there in the jury room,
3 see if you can find a thing on here that indicates that
4 those two shoes match each other, that shoe print and that
5 shoe print taken off match each other.

6 The only thing that the state has in this case was D.
7 N. A. evidence. They have nothing else. D. N. A.
8 evidence, while the officer, while the agent, Bogan, Ken
9 Bogan, testified that one in 640 trillion, and that seems
10 to be a magic number for him.

11 He compares Mr. Byers' D. N. A. with Ms. Perrin's D.
12 N. A. and he comes out to one in 640, let's see, thousand,
13 million, billion, trillion if my math is right. One in 640
14 trillion. He compares Mr. Byers' D. N. A. with Ms. Giles'
15 D. N. A.

16 Now, everybody's got some similarities, but there's
17 differences. And there's enough difference that you can
18 tell the difference between people, is what he testifies
19 to. But he also comes out in comparison to their one in
20 640 trillion. He compares the D. N. A. of Mr. Byers and
21 Ms. Payne. And, again, they're different. But it comes
22 out to be one in 640 trillion. It's funny that they've all
23 got different D. N. A. but the numbers all turn out exactly
24 the same.

25 Now, I asked him. I said is there a margin of error.

Closing arguments

1 Yeah, there is a ten-fold margin of error. Ten-fold margin
2 of error means it can be anywhere from -- I missed a zero
3 in there. It can be anywhere from six zillion,
4 400 trillion down to 64 trillion. That's a big difference.
5 That's a 2,000 percent difference in numbers.

6 So we not only have a 100 percent margin of error,
7 which is one out of two. We have a 2,000 percent margin of
8 error on D. N. A. He testified to it himself.

9 I'm telling you all of this because, you know, we
10 pointed out some similarities between the alleles at the
11 different sites. We talked about, you know, there's
12 3 billion base pair. But they only checked at most 7,500
13 of those 3 billion. And there is similarities in there.
14 But then they use some kind of math they put in there and
15 they come up with this, these numbers.

16 And why do we only check 15? We only check 15, and
17 Agent Bogan testified to this. We checked 15 because it's
18 economical for the state. We don't want to spend a lot of
19 their money. And it helps expedite the case.

20 The only way we can guarantee scientifically it's the
21 same person is we check every one of them. But we check 15
22 because it's economical and we don't want to spend a lot of
23 the state's money and it helps expedite the case.

24 We also check 15 because we buy a commercial kit to do
25 this, and that commercial kit only checks 15. If that

Closing arguments

1 commercial kit only checked ten, then that's what we would
2 check. If that commercial kit only checked 20, that's what
3 we'd do. We buy something to do it with and it only checks
4 15. Prior to 15 we only did five. And after that we only
5 did seven. Some labs do different numbers.

6 There's really no standard in the industry on D. N. A.
7 as to what we do except for most people buy this commercial
8 kit to do it with. And that sort of sets the standard
9 because this is what we buy.

10 I am telling you all of this because at that point in
11 time the state sits down, and they have presented their
12 case. And I'm of the opinion, and I submit to you, you may
13 think differently, that at that point in time the only
14 evidence they had was D. N. A. that had a lot of reasonable
15 doubt to it, a lot of reasonable doubt.

16 No need for Mr. Byers to take the stand and talk to
17 you because the state has got the burden of proof, not him.
18 But he takes the stand. He insists on taking the stand
19 because he wants to tell you his side of the story because
20 he's not guilty and he's had consensual sex, a
21 relationship, with these three women.

22 And while you have heard them say initially, and I'm
23 talking about the three women, while you heard them say
24 they didn't know Mr. Byers and never seen him before, after
25 he accused them of having consensual sex with them, you

Closing arguments

1 haven't heard a one of them retake that stand as they put
2 Detective Fowlkes up on the stand to talk about the
3 statement. You haven't heard a one of them retake that
4 stand and just deny consensual sex with Mr. Byers.

5 The issue in this case, ladies and gentlemen, is
6 credibility, is credibility. If you believe that the state
7 has proven beyond a reasonable doubt that there was no
8 consensual sex in this case, you took an oath as jurors.

9 You have got nobody here that you want to reward; you
10 have got nobody here you want to punish. Your job is to
11 try to find the truth if you can. And if you believe, the
12 collective 12 of you, unanimously that the state has proven
13 beyond a reasonable doubt that there was no consensual sex
14 and that Ms. Byers was not voluntarily let into those
15 homes, you have an obligation under your oath to convict
16 him, find him guilty.

17 On the other hand, if there's any doubt, any
18 reasonable doubt, as to whether or not the state has proven
19 him guilty, or if the state, and by that I mean they're not
20 having to prove him innocent. We don't have a duty. The
21 state has a duty to prove him guilty. If they have failed
22 for any reason in that proof, under your oath you have an
23 obligation to return verdicts of not guilty.

24 Now, I have just, I have just, I'm basically through.
25 That's all I've got to say to you. Why after the state

Closing arguments

1 presented its case did Mr. Byers take the stand and
2 testify? And he's testified. He said what he said.

3 And why has the state not come back with reply
4 testimony? They put Detective Fowlkes back up here. Why
5 didn't they call the girls? That's reasonable doubt,
6 ladies and gentlemen. And I would ask you to return a
7 verdict of not guilty. Thank you.

8 THE COURT: Ms. Crick.

9 MS. CRICK: May it please the Court, Your Honor.

10 It is no doubt a woman's grace here to be inside of
11 her own home in the darkness of her own bedroom in her own
12 bed without the slightest idea that when she opens up her
13 eyes she's going to see a stranger or that when she turns
14 around in her kitchen she's going to see a stranger
15 standing there with a gun.

16 And if that woman is also a single woman, she is the
17 only one there in that house except for maybe her kitten or
18 maybe her three young children. But there's nobody there
19 who is going to be able to come help her in that moment.
20 She has to rely on her wits, her own internal strength and
21 her own good sense to save her own life.

22 And that's exactly what all three of them women did.
23 They did exactly what the defendant told them to do so that
24 they could get out of there with their lives. And because
25 of what he did you're here today and he's on trial for

Closing arguments

1 several different crimes.

2 And before you can decide whether he has violated the
3 law you obviously have to know what the law is. And Judge
4 Cole is going to do a very thorough job of explaining that
5 to you in a minute. But I want to give you a general idea
6 before we can talk about the evidence.

7 He's charged with criminal sexual conduct in the first
8 degree for each one of these women. That is essentially
9 that he committed sexual battery. All that means is oral
10 sex, vaginal sex, anal sex, some sort of sexual battery,
11 and he did it using aggravated force or he did it when they
12 were also the victim of some kind of forcible confinement,
13 in other words he held them there against their will, some
14 sort of kidnapping, a burglary where he maybe broke into
15 their home, some sort of robbery. Any of those things
16 would make him guilty of criminal sexual conduct in the
17 first degree.

18 He's also charged with burglary in the first degree,
19 which means essentially that somebody enters a home without
20 that owner's consent and he has it in his mind that he's
21 going to commit a criminal intent. And he either does it
22 in the nighttime, or when he does it he uses a deadly
23 weapon, or he displays a deadly weapon. That's burglary
24 first.

25 He's also charged with armed robbery. You've got a

Closing arguments

1 gun and you take some property from somebody else, and in
2 this case we're talking about Tammy's cell phone.

3 And he's also charged with possessing a firearm during
4 the commission of a violent crime, three counts of that.

5 And criminal sexual conduct in the first degree and
6 burglary in the first degree. Those are both violent
7 crimes. That's the law.

8 What is the issue in this case? It's either one of
9 two things, either number one he didn't do it, he wasn't
10 there, it's not him, it's somebody else, or, two, it was
11 me, I was there, but it was consensual sex.

12 Now, he already got on the stand and told you, yeah, I
13 had sex with each and every one of them but it wasn't rape,
14 they are framing me. So all of this goggly-goo about
15 numbers and D. N. A. and all of that stuff, the D. N. A.
16 was right in this case.

17 What we're talking about here is what he says, which
18 is that he had an ongoing consensual sexual relationship
19 with each and every one of these women and that for some
20 reason they are now all coming in here today to falsely
21 accuse him of rape. So when you think about the evidence,
22 when you look at the evidence, keep that in your mind. And
23 look at it and ask yourself does that make sense.

24 He said that he met each of them here on the street,
25 at the convenience store or mowing their lawn and that from

Closing arguments

1 about summertime on into December they were having some
2 sort of romantic relationship, said he didn't have any
3 cards or letters or anything like that but they were having
4 some romantic relationship when all of a sudden out of the
5 blue they all come forward and say let's frame Jonathan
6 Byers, let's accuse him of rape and raping us at gunpoint.
7 And, coincidentally, that this is why we brought Mike
8 Fowlkes back up on the stand to show you that sheet he
9 filled out, that consent form where he gave that statement,
10 and coincidentally in that statement he says, yeah, I did
11 take a .22 silver and black pistol and I've kept that at my
12 house and I have had that since about two or three weeks
13 ago.

14 Now, that was on December the 16th, which means he had
15 that gun on December the 6th, he had that gun on
16 December the 11th and he had that gun on December the 13th,
17 coincidentally. And the first time he ever told anybody
18 that this was all consensual sex as you heard from him was
19 on this stand in the courtroom yesterday. That's what he
20 says. That's what he wants you to believe.

21 But what does the evidence say? And it goes beyond
22 just D. N. A. You heard from every one of those victims,
23 and it's not easy to get on that stand and tell you what
24 happened in excruciating detail, but they did it.

25 Delores was the first one. She told you she came home

Closing arguments

1 from a dinner date with somebody else on December the 6th
2 and she went to bed. She went to sleep. And the next
3 thing she remembers is being tapped on the shoulder and
4 waking up and seeing a man standing there with a gun. She
5 didn't know if she was dreaming. She thought this was a
6 nightmare. And she was able to give a description of that
7 gun. Guess what? It was a silver handgun.

8 Let me take a second right here to pause and ask you
9 all, and I don't know. How many consensual sexual
10 encounters involve a pistol?

11 She also was able to give a description of him and his
12 clothing. She said he had on a dark brown shirt with a tag
13 on it. She said he had on a black silky ski mask so that
14 she really could not see all of his facial features. And
15 the only thing she could tell you was he was, in fact, a
16 black male.

17 She could see his eyes. And, by the way, those are
18 eyes she remembered and described to you and said as she
19 sat on the stand, yeah, they do look a lot like Jonathan
20 Byers' eyes. He was young. He wasn't very tall. He had
21 short hair. He had medium to dark skin tone and a medium
22 build.

23 Now, what is missing in that description? If you're
24 looking to frame your lover, I suppose, what's missing from
25 that description? She never said his name. This is a man

Closing arguments

1 we're supposed to believe that she wants to get back at for
2 some reason that he can't even think of. Well, for
3 whatever reason that is, and she gets all of these details
4 in order. And the one thing she doesn't tell the police
5 is, hey, it was Jonathan Byers, that's who raped me, why
6 don't y'all go question him, go talk to him, that's who did
7 it if you want to frame him. Wouldn't you call his name?
8 Nope.

9 What she did was beg for her life. And he told her to
10 shut up because she was making him nervous. And she in her
11 mind flashed back to something she had seen on T. V. where
12 a woman was nice to her abductor and that guy let her live.

13 So that's exactly what she did. She thought about
14 fighting him for a second, but he was a man and he had a
15 gun. And even though it was that time of the month for
16 her, she did what she was told to do.

17 And she didn't have any injuries because she didn't
18 fight him. She couldn't fight him. He had a gun. And the
19 whole time he was raping her she told you that she lay
20 there and she looked at two things, the gun and his eyes,
21 the gun and his eyes. Eyes that she saw in the courtroom
22 when she testified.

23 She could tell by his reaction that, or afterwards
24 that, he had ejaculated. But she wasn't sure if he used a
25 condom. So after he left she ran out of there. She did go

Closing arguments

1 to the emergency room and she did go through that horrible
2 process of the rape kit examination. And you heard the
3 nurses describe it and you heard them describe what she did
4 was go into that E. R. after they told what was coming.
5 She knew what they were going to do and she knew how long
6 it was going to take. She stripped off all her clothing
7 and stood there naked in front of a perfect stranger over a
8 white piece of paper so that they could collect any debris
9 that might be on her body.

10 And then she got on the table and let them shine a big
11 old lamp on her and look all over her body for body fluids
12 and swab those if they found them. And then she allowed
13 herself to be put in stirrups and have a doctor come in and
14 swab every possible orifice of her body.

15 She let the nurse comb her pubic area. She let the
16 nurse pluck one by one hairs from her pubic area and from
17 the hairs on her head. She took medications that were
18 prescribed to prevent pregnancy and to prevent S. T. D.s, a
19 woman who we're supposed to believe had consensual sex with
20 a man and didn't give a darn about a condom. And did that.
21 That is not something someone does after consensual sex.

22 And she didn't go home after the E. R. She didn't go
23 get in her bed and have a nice sleep, oh, I can't wait
24 until I get Jonathan Byers. She went to a friend's house.
25 And that's not what you do after consensual sex. That's

Closing arguments

1 what you do when you're scared that your rapist might come
2 back to your house and get you. That's why you do that.

3 Brandy Giles was next. And she told you that on
4 December the 11th, about five days after Delores, she went
5 home after being with her boyfriend, actually having spent
6 the night there.

7 She walked into her kitchen, and she had a 2-liter
8 bottle of Mountain Dew. And when she turned around before
9 she could get in that refrigerator she saw a man standing
10 there.

11 And how do we know he surprised her? We can see the
12 2-liter setting right there in the floor. And he had a
13 gun, and she described that gun. It was a black and silver
14 handgun and it was pointing at her.

15 And she also described him. And she told you what he
16 had on. He had on a toboggan, some sort of mask. She
17 could only tell that he was a young, black male. He wore a
18 white t-shirt, he wore blue jeans and he wore a dark coat.

19 She never said it was Jonathan Byers. A woman who
20 we're supposed to believe is trying to frame Jonathan
21 Byers, again, never said his name. And he forced her to go
22 into the bedroom and take off her clothes and made her lie
23 on the bed and sexually assaulted her. And he made her
24 have oral sex, anal sex, vaginal sex. And when she asked
25 him why, begged him not to kill her, he just told her to

Closing arguments

1 shut up and not yell. Does it make sense that during
2 consensual sex someone would be begging for their life?

3 She was taken after that by a friend to Upstate. She
4 went through the same process as Delores. And her mom saw
5 her, and you heard from her mom. She got on the stand and
6 testified and told you her reaction, told you her
7 daughter's reaction and how she acted that night and how
8 terrified she was that night.

9 And I guess we're supposed to believe that Ms. Giles
10 is in on this conspiracy and that all of that that you saw
11 on the stand was some big acting performance. What you saw
12 on the stand was a mother who is upset because her daughter
13 had been violated and held at gunpoint.

14 You also heard that she was dressed just in her robe
15 and a coat. I don't know about all the ladies in here. I
16 don't generally leave my house in my robe and a coat unless
17 maybe I'm running quickly to the mailbox or I'm scared or
18 something is going on in my house, it's on fire, something.
19 But that's how she was dressed when she got to the
20 emergency room and went through all of that testing.

21 And there's something else interesting in Brandy's
22 case, a shoe impression under a window that has always been
23 shut because it has been painted shut. But somehow that
24 window was open now and the shoe impression found on that
25 chair was similar to the shoe impression of Jonathan Byers.

Closing arguments

1 Why if you're having consensual sex with someone do you
2 need to go into the home through the window?

3 And finally she noticed knives in her refrigerator.
4 And it's hard to see, but I'll point those out right here.
5 All of her steak knives setting in her fridge. I don't
6 know many people who keep their knives in the refrigerator.
7 But she told you she sure didn't.

8 This is not consistent with consensual sex. This is
9 consistent with someone who wanted to make darn sure that
10 he was the only one in that house and darn sure that his
11 victim could not fight back.

12 And finally Tammy Payne. She was the last one in a
13 couple of days, two days after Brandy. And she had put her
14 6-month old in the crib and her babies in the bed, a room
15 with no door on it. And she went to bed across the hall in
16 her room, and there was no door right there. The only
17 thing separating them was the air in that hallway.

18 Even though those kids wanted to sleep together, and
19 they had a room upstairs. They could have slept upstairs.
20 But those kids liked to sleep together. So she said that's
21 fine, we'll all sleep downstairs together.

22 She went to sleep and woke up to someone pulling off
23 her covers. And she saw a man standing next to her bed.
24 He was wearing a black ski mask just with his eyes and
25 mouth showing.

Closing arguments

1 So you couldn't see much other than he was a black
2 male who was young. She did describe his clothing. He was
3 wearing a black hooded sweat jacket, blue jeans and another
4 shirt underneath that. And that's all she told the police.

5 And you heard me say it two times before. She did not
6 give his name, a guy that she wants to frame, and she never
7 says go check Jonathan Byers.

8 She thought very quickly and tried to grab her cell
9 phone. He took it. The only way she was able to call the
10 police, because her babies were there and she couldn't
11 leave them, was with an old one she found in a drawer. And
12 there is a picture of that.

13 When she asked him why he was doing it he raised up
14 what? A silver handgun and pulled back the slide. And
15 what did he say to her? And I apologize. But he said it,
16 not me. I'm just going to fuck you and leave. Now, I
17 don't know about everyone else, but to me that does not
18 sound like a loving consensual sexual encounter.

19 That's what was on his mind. And what was on Tammy's
20 mind? She was worried about her kids and getting him out
21 of that house as quick as she could. She was thinking he's
22 going to kill me and my kids are going to come in here and
23 they're going to find me dead.

24 We're supposed to believe that she had consensual sex
25 with a guy in a room with no door while her babies were

Closing arguments

1 right across the hall in a room with no door. It makes
2 perfect sense that a mother in that situation would do
3 exactly what she is told. A mother doesn't want to scream
4 and a mother doesn't want to fight back because a mother
5 does not want her kids to wake up and walk across that
6 hallway and see their mother being raped by a man with a
7 gun.

8 So she didn't have any injuries because she did
9 exactly what he told her to do. And when he told her to
10 turn over and get on your knees and back up to me, it
11 should not shock any of us that that's exactly what she
12 did.

13 He penetrated her vaginally. And she wasn't sure if
14 he ejaculated. She wasn't sure if he used a condom. But
15 she went ahead and went to the hospital and did the same
16 thing the other two did. And the reason she did it was
17 hopefully to get some D. N. A. so we could figure out who
18 in the world was doing this. That's the only reason they
19 did it, to tell who this guy was.

20 At that point that's all they knew, was what I
21 described to you. That's all anybody knew, that there were
22 three attacks by a young black male, medium build, not very
23 tall, medium to dark complexion. He wore a ski mask.

24 He came into homes where single women lived through
25 windows or through doors. He held them at gunpoint with a

Closing arguments

1 silver handgun, made them take off their clothing,
2 penetrated them from the front and sometimes also from the
3 back. None of them thinks he wore a condom.

4 And they did not know him. If they did he, they would
5 have given his name. They did not know him. He was a
6 stranger, not a boyfriend, not a friend, a stranger to them
7 and a stranger to everyone else.

8 And at that point the only thing anybody could do was
9 wait, and that's exactly what people did. And they were
10 hoping that there would be some semen or some D. N. A. or
11 something so that they could tell who this young black
12 male, not very tall, medium build, medium to dark
13 complexion guy in ski mask with a silver handgun was.

14 And guess what? That's exactly what they found. In
15 each and every one of these cases there was D. N. A. For
16 the first time what they knew initially was, hey, it's the
17 same guy for all three women, it's the same D. N. A.
18 profile.

19 That's why the numbers are the same. It's the same
20 profile for every single woman. And when we got that swab
21 from his mouth with his D. N. A. on it and sent that swab
22 down to SLED, got an answer.

23 Jonathan Byers is the young black male, not very tall,
24 medium build, medium to dark complexion who wore a ski mask
25 and carried that silver handgun. Jonathan Byers is the man

Closing arguments

1 who raped Delores Perrin and Brandy Giles and Tammy Payne.

2 That D. N. A. that was collected when they went to
3 that hospital in each and every case matched him
4 640 trillion to one. He was there on December 6th; he was
5 there on December 11th; and he was there on December 13th.

6 Now, he had a little trouble remembering dates, but
7 they remember. And the fact that that D. N. A. was there
8 when they went to those E. R.s and had those tests done
9 tells us that he was there.

10 If you believe what he says, folks, you have to
11 believe that three women who didn't know each other got
12 together and came up with this big plan to frame Jonathan
13 Byers, don't know why, and that Brandy's mom was part of
14 it, SLED was part of it, Dr. Speight, Dr. Corbett,
15 Dr. Karns and the nurses were part of it.

16 You have to believe they decided just to trap him with
17 the D. N. A. and just to keep their fingers crossed as they
18 waited and hoped that the police put two and two together
19 and they found some D. N. A. down at SLED.

20 You have to believe that in an effort to make all of
21 this believable that they gave academy award winning
22 performances, that they were crying and hysterical to their
23 mothers and their friends, that they called 9-1-1 and the
24 police and that was all just an act, that Brandy flew out
25 of there in her robe and her coat so people would believe

Closing arguments

1 her, they went and got sexual assault exams in the hopes
2 that there would be some D. N. A. so people would figure it
3 out, and they planted footprints, and that they planted
4 knives and they planted cell phones and everything else,
5 put footprints under windows, spilled drinks in the floor.

6 Ask yourself this. What motive do they have?
7 Seriously. Have their lives improved because of this?
8 Have they gained anything by saying any of this?
9 Absolutely not.

10 And the truth of the matter is these women did not
11 know each other from Adam's house cat before this happened.
12 They were living different lives, different worlds. And
13 the only reason their worlds came together is because of
14 what he did.

15 And now it's a world where, you heard them testify,
16 they have nightmares. That's normal. It's a world where
17 they can't sleep at night and in some cases have not been
18 able to hold a job because they can't sleep at night. It's
19 a world where they have posttraumatic stress disorder and
20 go to counselors so they can deal with the trauma of what
21 has happened.

22 They don't feel safe in their homes, homes that they
23 need to live in all of their lives and homes where they
24 raise their children, homes they still walk through every
25 day and rooms they walk through every day and relive in

Jury charge

1 vivid detail exactly what happened because it happened
2 right there in their house.

3 None of those things, y'all, are side effects of
4 consensual sex. It was not consensual sex. It is exactly
5 what Delores Perrin thought it was, which is a nightmare,
6 an absolute nightmare. And there's nothing on this planet
7 that anybody is going to be able to do to change that.
8 Nothing at all.

9 Nobody can give them back their sense of safety or the
10 feeling you have when you go in your house and you're in
11 four walls. They can't give them back their dignity
12 because their bodies have been violated in a way that none
13 of us hopefully will ever have to understand. I can't give
14 them back their mental health because those are memories
15 that will always be either in the forefront or the backs of
16 their minds. And we certainly can't give them the answers
17 to the question that they all wanted to know. Why, why me?

18 The truth of the matter is they may never have the
19 luxury of lying down in their beds at night and sleeping
20 peacefully until their alarm goes off the next morning.
21 But they can have justice and we can give them that. Thank
22 you.

23 THE COURT: Madam forelady and ladies and gentlemen of
24 the jury, you of course have heard and seen all of the
25 evidence in the case. You have now heard the final

Jury charge

1 summations of the lawyers. And so now I'm going to provide
2 you the legal instruction that you are apply to the facts
3 as you determine those facts to be based upon your common
4 sense examination of evidence in the case.

5 It is your exclusive duty to determine what the facts
6 are. You do that through your own common sense examination
7 of all of the testimony and the other evidence received
8 during the trial of this case.

9 You 12 jurors alone will decide what weight, value and
10 effect to give to any particular testimony or other
11 evidence in the case. Your sole objective is to simply
12 reach the truth in the matter, and by doing that you will
13 have fulfilled your obligation as jurors, and that is to
14 simply give both the state and the defendant a fair and
15 impartial trial.

16 Now, in this case, as you know, the state has charged
17 the defendant, Jonathan Leon Byers, with several and
18 distinct criminal offenses. And, as I told you earlier,
19 you will be called upon to render separate and distinct
20 verdicts as it relates to those separate charges.

21 As I also told you, your verdicts may be the same,
22 they may be different. That will depend upon your
23 determination of fact based upon your consideration of the
24 evidence and then your application of the law as I will
25 have provided it to you in order to reach your decisions in

Jury charge

1 the case.

2 But you do have ten separate indictments. There are
3 ten separate indictments. They relate to what the state
4 claims are three separate and distinct events.

5 Three indictments relate to an event that the state
6 alleges occurred on or about December the 6th of 2006. And
7 that indictment relates to a person who is alleged to be a
8 victim in each of those separate indictments, that person
9 being Delores N. Perrin.

10 By way of those three indictments the state alleges
11 that on or about December the 6th of 2006 the defendant,
12 Jonathan Leon Byers, did here in Cherokee County wilfully
13 and intentionally enter a dwelling that belonged to Delores
14 M. Perrin located on Union Street here in the city of
15 Gaffney and that he entered that dwelling without her
16 consent and with the intent to commit a crime therein.

17 They further allege that in addition to those facts
18 that he also either entered the dwelling in the nighttime,
19 and/or he was armed with a deadly weapon, and/or he caused
20 physical injury to a person who was not a participant in
21 the crime, and/or he used or threatened the use of a
22 dangerous instrument, and/or he displayed what appeared to
23 be a pistol or other deadly weapon or firearm.

24 They also allege by way of a separate indictment that
25 on December the 6th of 2006 he did commit the crime of

Jury charge

1 criminal sexual conduct in the first degree, alleged by way
2 of that indictment he did on that date engage in a sexual
3 battery with Delores N. Perrin and under one or both of the
4 following circumstances, for that matter, but it only
5 requires one to be proven: That he used aggravated force
6 to accomplish the sexual battery on Delores Perrin
7 submitted to a sexual battery under circumstances where she
8 was also the victim of a forcible confinement or burglary
9 or any other similar offense or act.

10 They also allege on December the 6th that Jonathan
11 Byers did here in Cherokee County possess or did visibly
12 display a firearm during the commission of a violent crime,
13 and they allege that violent crime to be either criminal
14 sexual conduct and/or burglary in the first degree.

15 They also allege three separate and distinct offenses
16 that they allege occurred on or about December the 11th of
17 2006. Those three indictments allege similar offenses.
18 They allege burglary in the first degree; they allege
19 criminal sexual conduct in the first degree; and they
20 allege possession of a firearm during the commission of a
21 violent crime.

22 Those allegations are similar or perhaps identical to
23 those contained in the other indictments that I just read.
24 They however allege a different person to be the victim of
25 those offenses.

Jury charge

1 They allege in those, these three indictments, that
2 Brandy D. Giles was the victim of the burglary in the first
3 degree, of criminal sexual conduct in the first degree and
4 that Mr. Byers possessed a firearm during the commission of
5 those criminal offenses.

6 And the remaining event, the state alleges by way of
7 these indictments, occurred on or about December the
8 13th of 2006. And there are four separate indictments that
9 relate to that particular event.

10 The state alleges on December the 13th of 2006
11 Mr. Byers did commit the crime of burglary in the first
12 degree, of criminal sexual conduct in the first degree, of
13 possession of a firearm during the commission of a violent
14 crime; and they also allege an additional criminal offense
15 known as armed robbery. Each of those offenses relate to
16 an event wherein the victim is alleged to have been Tammy
17 Payne.

18 Now, as to each of those indictments and as to the
19 charges and allegations contained therein the defendant has
20 entered a plea of not guilty. And that plea of not guilty,
21 as I told you, has placed upon the state the burden of
22 proving the allegations that are set forth in each of those
23 indictments, the burden of proving each of the essential
24 elements that make up the crimes that are alleged against
25 the defendant; and therefore the burden is upon the state

Jury charge

1 to establish the defendant's guilt as to each of those
2 separate charges by evidence which convinces you of his
3 guilt beyond a reasonable doubt.

4 The burden is never upon a defendant or a person who
5 is accused of a crime to prove that they are not guilty or
6 to prove that they are innocent because in some cases that
7 might not even be possible. The burden is always upon the
8 state because they bring the accusation against another to
9 establish that person's guilt beyond a reasonable doubt.

10 You are instructed that it is a vital, important and
11 cardinal rule of law that every defendant in a criminal
12 trial, and it doesn't matter how serious the offenses might
13 be for which that person stands charged, that person is
14 always to be presumed innocent of those charges.

15 And that presumption of innocence remains with every
16 defendant, as it does with this defendant, from the time
17 that he is placed under arrest and throughout the course of
18 the criminal process and even throughout the course of the
19 trial in the case.

20 As I told you, that presumption of innocence will be
21 with Mr. Byers even as you go back into your jury room to
22 begin with your deliberations in this case. And that
23 presumption of innocence will be with him in that jury
24 room, and it will remain with him forever unless you 12
25 jurors determine that he's no longer entitled to that

Jury charge

1 presumption of innocence.

2 That is after you've carefully considered all the
3 evidence in the case, from that evidence you've decided the
4 facts, and after deciding those facts you have applied the
5 law that I will have provided you, if you 12 jurors
6 unanimously determine that his guilt has been proven as to
7 some particular offense or offenses beyond a reasonable
8 doubt, then he would no longer be entitled to that
9 presumption of innocence. But it's only if, unless and
10 until you 12 jurors are satisfied of his guilt beyond a
11 reasonable doubt that the presumption of innocence would no
12 longer be applicable.

13 Now, while the state does have the burden of proving
14 the defendant's guilt beyond a reasonable doubt, that
15 doesn't mean that the state has to prove his guilt beyond
16 all doubt or beyond any possible doubt. But it does
17 require the state to prove his guilt to your satisfaction
18 beyond a reasonable doubt.

19 The term reasonable doubt is to be given its plain and
20 ordinary meaning. A reasonable doubt is the kind of doubt
21 that would cause a reasonable person to hesitate to act
22 upon the information provided.

23 A defendant in a criminal is entitled to any
24 reasonable doubt that arises from the evidence or lack of
25 evidence in a case. And if upon any factual issue

Jury charge

1 essential to a finding of a verdict of guilty you have some
2 reasonable doubt as to how that issue should be resolved,
3 it would be your duty to resolve that reasonable doubt in
4 favor of the defendant.

5 And therefore if upon your consideration of the whole
6 case you have a reasonable doubt as to the defendant's
7 guilt, it would be your duty to resolve that reasonable
8 doubt in his favor and to return a verdict of not guilty.

9 And, on the other hand, after you have carefully
10 considered all the evidence in the case and decided the
11 facts and applied the law, if you have no reasonable doubt
12 as to his guilt, then of course it would be your
13 corresponding duty to convict the defendant or to find him
14 guilty of any crime that has been proven to your
15 satisfaction beyond a reasonable doubt.

16 Now, the same law that provides that you are the
17 judges of the facts also provides that I am the judge of
18 the law. That simply means that nobody is going to tell
19 you how to arrive at your determination of fact in this
20 case. You do that, as I have stated, through the exercise
21 of good judgment and common sense conscientiously applied
22 to the testimony and the evidence in the case.

23 You must however under your oath as a juror accept the
24 law as I provide it to you as being the law that you are to
25 apply in this case. In other words, you're not to concern

Jury charge

1 yourself with what you thought the law was before you came
2 to serve as a juror this week or what you think the law
3 ought to be.

4 You must under your oath accept the law as I provide
5 it as being the law that is applicable in this case, and
6 then you simply take that law and you apply it to the facts
7 as you 12 jurors determine those facts to be based upon
8 your common sense examination of the evidence in the case.

9 As I told you, you are the sole judges of the facts in
10 this case. You are therefore necessarily the sole judges
11 of the credibility, that is the believability, of each
12 witness that has testified in this trial.

13 You must decide what weight, value and effect to give
14 to any particular witness' testimony or even a portion of
15 that testimony in order for you to arrive at your decisions
16 in this case.

17 In determining the credibility or the believability of
18 a particular witness there are a number of factors which
19 you should consider in making your assessment and making
20 your evaluation of a witness' credibility. I'm going list
21 those factors for you.

22 You may consider the demeanor of the witness. That is
23 how did the witness appear to you as the witness testified
24 from that witness stand. Was the witness straightforward
25 in responding to questions or was the witness hesitant or

Jury charge

1 evasive in responding to those questions that were asked of
2 that witness? Simply put, did the witness appear to you to
3 be telling the truth and to have knowledge of the facts to
4 which that witness has testified.

5 You may also consider whether or not the testimony of
6 a witness is consistent, or is it inconsistent with other
7 testimony provided here in court or other statements made
8 in court or outside of court? And you may consider whether
9 or not the testimony of a witness is consistent or
10 inconsistent with other witnesses' testimony or evidence
11 received during the trial of the case.

12 You may also consider how the witness came to know the
13 facts to which that witness has testified. That is what
14 was that particular witness' opportunity and ability to
15 perceive the existence of those facts to which that witness
16 has testified by having previously used his or her senses.
17 And then what is that witness' ability to be able to come
18 into court and to accurately recollect to you as to what
19 they have previously seen or heard, or felt for that
20 matter?

21 You may also consider any bias or prejudice or
22 interest that a witness might have in the outcome of the
23 case. In other words, do you find some reason that a
24 particular witness would come into court and would help or
25 hurt one side or the other. And you may consider any

Jury charge

1 interest that the witness might have in the outcome of the
2 case if you determine that a witness does have such an
3 interest and you find that that interest would bear upon
4 that particular witness' credibility.

5 Now, you as the finders of the facts and you as the
6 judges of the credibility of each witness that has
7 testified during this trial are permitted to believe as
8 much or as little of what a witness has testified to as you
9 deem is appropriate.

10 Therefore you may believe everything that a witness
11 testified to; you may choose to believe none of it. You
12 may believe one portion of a witness' testimony and reject
13 some other portion of that same witness' testimony. You
14 may believe one witness as opposed to several, or several
15 as opposed to one.

16 Whatever your good judgment and common sense tells you
17 is the most believable and credible testimony is the
18 testimony that you should accept. And you should reject
19 any testimony or other evidence that you find not to be
20 credible or believable.

21 Your sole objective, again, is to simply reach the
22 truth in the matter, and it should not matter from what
23 source that truth may come, whether it be from a witness
24 for the state or a witness for the defense or a combination
25 of testimony and evidence received from both sides in the

Jury charge

1 case.

2 Now, while there are various forms of evidence such as
3 testimony, photographs, documents, charts and other types
4 of physical exhibits, there are really only two types of
5 evidence. Either or both of those types of evidence may be
6 used singly or collectively in order to prove some fact in
7 issue in the case. But the two types of evidence are
8 direct evidence and circumstantial evidence.

9 Now, direct evidence is the testimony of a person who
10 testifies from actual knowledge of that fact. It is
11 testimony by a person who has perceived the existence of
12 some fact by means of his or her senses and then comes into
13 court and testifies to what they have previously perceived.

14 Circumstantial evidence, on the other hand, is proof
15 of some other fact or set of facts which taken either
16 singly or collectively may prove the existence of a fact in
17 question as a necessary consequence, that is through an
18 inference.

19 And an inference is simply a deduction of fact that
20 may logically and reasonably be drawn from the proof of
21 some other fact or set of facts. It is a fact not proven
22 by the direct testimony of a witness based upon personal
23 perception, but it is a conclusion which might reasonably
24 be drawn from the proof of other facts.

25 In other words, you may infer that a particular event

Jury charge

1 occurred or that a particular fact exists based upon the
2 proof of sufficient factual circumstances which would
3 reasonably warrant your arriving at such a conclusion.

4 Now, the law makes absolutely no distinction between
5 the weight or the value to be given to direct evidence as
6 opposed to circumstantial evidence, nor is a greater degree
7 of certainty required of circumstantial evidence as opposed
8 to direct evidence.

9 Whatever the type of evidence used to prove any fact
10 in issue, you should consider all of the evidence presented
11 in the trial of the case. And after carefully considering
12 all of that evidence in your minds if you are not convinced
13 of the guilt of the defendant beyond a reasonable doubt,
14 then you must resolve that doubt in his favor and return a
15 verdict of not guilty.

16 Now, during the trial of this case you've also heard
17 testimony that has been received from persons who were
18 qualified, offered by a party and were qualified, by the
19 Court as an expert in a particular field.

20 Now, ordinarily lay witnesses, those who are not
21 experts, are not permitted to testify in an opinion form.
22 They can testify about things they perceive, but they're
23 not permitted to testify in an opinion form based upon the
24 facts of the matter.

25 However where a person is an expert and is qualified

Jury charge

1 by the Court as an expert in a particular field, then that
2 witness may be able to come into court and testify in an
3 opinion form based upon the facts that relate to the case.

4 Now, please understand that just because a witness is
5 qualified by the Court as an expert should not be taken by
6 you as any indication by me as to how I feel about the
7 testimony or how you should accept that testimony.

8 You still must judge the credibility of an expert
9 witness just as you do any other witness. And you may
10 accept it or reject it just as you do the testimony of any
11 other lay witness.

12 Now, where a person has special education or training
13 or experience or knowledge with respect to a particular
14 field, then they may be qualified as an expert in that
15 particular field.

16 You have to determine what weight or value to give to
17 that testimony just as you do any other. And if you find
18 that that particular person who has been qualified as an
19 expert does not possess the requisite skill or knowledge or
20 ability or you find that they did not properly take into
21 consideration the facts that relate to this particular
22 case, then you can reject that expert's testimony. Again,
23 you must assess the credibility of an expert just as you do
24 any other witness in the case. And it is for you 12 jurors
25 to make that assessment, and it's not for the Court to do.

Jury charge

1 Now, although it is ordinarily a function of the Court
2 to determine the admissibility of evidence, it is always
3 the jury's decision as to what weight, if any, to give to
4 that evidence that has been received during the trial of
5 the case.

6 Now, there has been admitted into evidence during the
7 trial of this case a particular statement that the state
8 claims was made by the defendant pursuant to some
9 questioning by law enforcement at a particular time.

10 You are instructed that in regards to any statement
11 that is alleged to have been made by the defendant you as
12 the trier of the fact in this case must make your own
13 determination as to whether or not any statement was made
14 by the defendant and, if it was, whether or not that
15 statement was made freely and voluntarily by the defendant.

16 You are further instructed that before you may
17 consider any statement that is alleged to have been made by
18 the defendant, before you can in any way use that statement
19 against him in the event that it's incriminating in some
20 fashion, you must be satisfied beyond a reasonable doubt
21 that any statement given by the defendant was freely and
22 voluntarily made by the defendant after you consider the
23 totality of the circumstances that relate to the taking of
24 the statement or the giving of any statement by the
25 defendant to law enforcement officers.

Jury charge

1 Now, in making your determination as to the
2 voluntariness of any statement you must consider a number
3 of factors relating to the characteristics of the
4 defendant, as well as the circumstances that surrounded
5 that particular interrogation.

6 Some of the factors that you must consider are whether
7 or not the accused was advised of and understood his
8 constitutional right to remain silent, that anything he
9 said might be used against him in court, that he had the
10 right to have the presence of a lawyer and if he could not
11 afford a lawyer one would be appointed for him before any
12 questioning took place, and that if he wished to answer
13 questions he could stop at any time during the questioning
14 process.

15 You must also consider evidence that relates to the
16 age, intelligence, education, capacity and experience of
17 the defendant, as well as the nature of the interrogation
18 itself, including whether or not there were any threats or
19 promises or coercion or pressure applied to the defendant
20 in order to obtain a statement.

21 If after your consideration of the totality of the
22 circumstances relating to the giving or taking of any
23 statement, if you are not satisfied beyond a reasonable
24 doubt that any statement proven to have been given by the
25 defendant was freely and voluntarily made, then you must

Jury charge

1 not consider that statement in any fashion whatsoever as
2 evidence against the defendant.

3 Should you find beyond a reasonable doubt that any
4 statement proven to have been made by the defendant was
5 given freely and voluntarily, then you may consider that
6 statement as you deem appropriate, that is you may accept
7 it or reject it in its entirety or even in part, just as
8 you consider any other evidence in the case.

9 Now, as you are aware, there are ten separate charges,
10 but there are really only four different criminal offenses
11 that are alleged, or simply three separate events which
12 have been alleged.

13 The crimes that have been alleged are burglary in the
14 first degree, criminal sexual conduct in the first degree,
15 possession of a firearm during the commission of a violent
16 crime and armed robbery.

17 I'm going to instruct you now on the law as it relates
18 to each of those separate offenses. The crime that I will
19 address first will be the law as it relates to the crime of
20 burglary in the first degree, after which I'll do criminal
21 sexual conduct in the first degree, and then I'll do
22 possession of a firearm during the commission of a violent
23 crime, and then I'll also instruct you on armed robbery.

24 Each of these crimes are statutory offenses which
25 simply means that the legislature has codified a criminal

Jury charge

1 offense in the law. In other words, they set forth what
2 the crime is, they define what the law is and what has to
3 be proven in order for a person to be found guilty of
4 having committed that particular crime.

5 Section 16-11-311 is the statute that relates to
6 burglary in the first degree. And that statute provides as
7 follows: A person is guilty of burglary in the first
8 degree if that person enters a dwelling without consent and
9 with the intent to commit a crime therein.

10 And one or more of the additional factors must be
11 established -- when in effecting entry or while in the
12 dwelling or in immediate flight from the dwelling the
13 defendant is armed with a deadly weapon; or the defendant
14 caused physical injury to a person who was not a
15 participant in the crime, that is a participant as a person
16 committing a crime; or the defendant used or threatened the
17 use of a dangerous instrument; or the defendant displayed
18 what was or appeared to be a pistol, firearm or other
19 deadly weapon; or the entering or the remaining occurred in
20 the nighttime.

21 So based upon the foregoing statute before you could
22 return a verdict of guilty on any of the three indictments
23 charging burglary in the first degree it would be necessary
24 that the state has proven to your satisfaction beyond a
25 reasonable doubt the following four essential elements:

Jury charge

1 Number one -- and this is, relates to each of the separate
2 burglary indictments -- the state would have to prove that
3 the defendant entered a dwelling.

4 Entry is an indispensable element in the crime of
5 burglary. Entry is the act of going into the dwelling.
6 And it's not necessary that any actual force or breaking
7 take place in order to accomplish an entry. The act of
8 entering the dwelling itself constitutes the element of
9 entry.

10 It also must be the entry of a dwelling. And a
11 dwelling is defined in the law as a building or a structure
12 which is normally used for sleeping, living or lodging by
13 any person.

14 The second element is that there must be an entry of a
15 dwelling without consent. Entering without consent means
16 to enter a dwelling without the consent of the owner or
17 person in possession of the property.

18 The third element is there must be an entry of a
19 dwelling without consent and with the intent to commit a
20 crime therein. There must be an intent to commit a crime,
21 whether or not a crime is actually committed.

22 The mere entering of a dwelling without an intent to
23 commit a crime does not constitute burglary. It is only
24 when there is an entering of a dwelling without consent
25 accompanied by an intent to commit a crime therein that the

Jury charge

1 crime of burglary is completed. And a crime of any grade
2 or severity is sufficient to satisfy this particular
3 element of burglary.

4 It further is required that the intent to commit a
5 crime exist at the time of the entry into the dwelling.
6 It's not sufficient that any intent to commit a crime be
7 formed after entry into the dwelling.

8 On the other hand, where the intent to commit a crime
9 exists at the time of entering the dwelling, it is no a
10 defense to a charge of burglary that the intent was later
11 abandoned. And an intent simply means the state of a
12 person's mind which directs his actions toward a specific
13 object or goal. So the entry of a dwelling without consent
14 and with the intent to commit a crime therein constitutes
15 the crime of burglary.

16 And the fourth element that has to be proven in order
17 for it to be burglary in the first degree is that either
18 when the defendant affected entry or while in a dwelling or
19 in immediate flight therefrom the defendant was armed with
20 a deadly weapon or caused physical injury to a person who
21 was not committing the crime, committed the crime, or the
22 defendant used or threatened the use of a dangerous
23 instrument, or the defendant displayed what was or appeared
24 to be a pistol, revolver or other firearm, or the entering
25 or the remaining occurred in the nighttime.

Jury charge

1 Now, in this particular case the state is alleging the
2 additional element which is the fourth or, excuse me, the
3 state is alleging additional factors which is the fourth
4 element of the crime of burglary in the first degree.

5 They allege that the defendant entered in the
6 nighttime, that he was armed with a deadly weapon, that he
7 caused physical injury to a person who was not a
8 participant in the commission of a crime, that he used or
9 threatened the use of a dangerous instrument, or that he
10 displayed what was or appeared to be a pistol, revolver or
11 other firearm.

12 Now, while the state has alleged those different
13 factors that all come under the statute that would make any
14 burglary proven a burglary in the first degree, it is not
15 necessary that the state prove more than one of those
16 additional factors.

17 The state must however prove at least one. They may
18 prove all, but they don't have to. But they do have to
19 prove at least one of those additional factors before the
20 defendant could be found guilty of burglary in the first
21 degree.

22 Now, the state also alleges by way of three separate
23 indictments that the defendant committed the crime of
24 criminal sexual conduct in the first degree. Criminal
25 sexual conduct in the first degree is an offense which is

Jury charge

1 set forth in Section 16-3-652 of the Code of Laws.

2 That particular section of law provides that a person
3 is guilty of criminal sexual conduct in the first degree if
4 the actor engages in sexual battery with the victim and one
5 or more of the following additional circumstances are
6 proven: One, that the actor used aggravated force to
7 accomplish a sexual battery; or, secondly, the victim
8 submits to a sexual battery by the actor under
9 circumstances where the victim is also the victim of a
10 forcible confinement, a robbery, a burglary or any other
11 similar offense or act.

12 Now, a separate code section provides for definitions
13 for some of those terms that are set forth in that statute.
14 And under 16-3-651 the term actor is defined as the person
15 who is accused of having committed criminal sexual conduct.

16 The term victim is defined as the person who is
17 alleged to have been subjected to criminal sexual conduct.

18 A sexual battery is defined as sexual intercourse,
19 cunnilingus, fellatio, anal intercourse or any other
20 intrusion, however slight, of any part of a person's body
21 or of any object into the genital or anal openings of
22 another person's body except when accomplished for
23 medically recognized treatment.

24 The term fellatio refers to stimulation of the male
25 genitalia by oral contact.

Jury charge

1 The term aggravated force is defined in the statute as
2 the use of physical force of a high and aggravated nature
3 to overcome the victim and would include the threat or the
4 use of a deadly weapon in the commission of criminal sexual
5 conduct.

6 Therefore based upon the language of the statute there
7 are two essential elements which must be established beyond
8 a reasonable doubt before the defendant could be found
9 guilty of criminal sexual conduct in the first degree.

10 First, it must be proven to your satisfaction that the
11 defendant, Jonathan Leon Byers, did engage in a sexual
12 battery as that term has been defined, and that he engaged
13 in that sexual battery with, and you've got three separate
14 indictments. One alleges the victim to be Delores Perrin,
15 the other alleges the victim to be Brandy Giles, and the
16 other alleges the victim to be Tammy Payne.

17 Secondly, with respect to each of those separate
18 indictments it must be proven to your satisfaction beyond a
19 reasonable doubt that at the time of the commission of any
20 sexual battery the defendant used aggravated force to
21 accomplish the sexual battery or the victim was also the
22 victim of a forcible confinement or a robbery or a burglary
23 or any other similar offense or act.

24 Now, while the statute does require that the defendant
25 either use aggravated force to accomplish a sexual battery

Jury charge

1 or the victim was also the victim of a forcible confinement
2 or robbery or burglary or other similar act, the state
3 doesn't have to prove both of those additional
4 circumstances. But the state must prove at least one
5 before the defendant could be found guilty of criminal
6 sexual conduct in the first degree.

7 The defendant is also charged in three separate
8 indictments with the crime of possession of a firearm
9 during the commission of a violent crime. And that's a
10 statutory criminal offense, and it's set forth in
11 16-23-490.

12 That section provides that it shall be unlawful to
13 possess a firearm or to visibly display a firearm during
14 the commission of a violent crime. And a separate code
15 section provides what offenses under the law are classified
16 as violent crimes.

17 And 16-1-160 provides that crimes of burglary and
18 criminal sexual conduct are classified as violent crimes
19 under the law of this state. Therefore in order for the
20 defendant to be found guilty of a violation of this
21 particular section of law, and there are three separate
22 indictments that you are to consider with respect to that
23 criminal offense -- before the defendant could be found
24 guilty of a violation of that section it would be necessary
25 that the evidence in the case establishes to your

Jury charge

1 satisfaction beyond a reasonable doubt that the defendant
2 did commit the crime of burglary or criminal sexual conduct
3 and that during the commission of that crime he did possess
4 a firearm or did visibly display a firearm.

5 The final offense that I will instruct you on is the
6 crime of armed robbery. Armed robbery is the crime of
7 robbery committed with the use of a deadly weapon.

8 Section 16-11-330 defines what armed robbery is. And
9 it states that a person who commits the crime of robbery
10 while armed with a pistol or other deadly weapon or while
11 alleging either by action or words that he was armed while
12 using a representation of a deadly weapon or any object
13 which a person present during the commission of a robbery
14 reasonably believed to be a deadly weapon is guilty of the
15 crime of armed robbery.

16 Now, a robbery under the law is simply defined, it's
17 often referred to as a larceny or a stealing by force.
18 Robbery is defined as the taking, the stealing and the
19 carrying away of the property of another having any value
20 whatsoever from the person or from the presence of that
21 person without his or her consent and with an intent to
22 steal by the use of force or violence or by the threat of
23 the use of force or violence, that is by way of an
24 intimidation in order to accomplish the robbery.

25 Robbery is further defined as the forcing of a person

Jury charge

1 to surrender property by the use of force or violence or as
2 the stealing of property by putting a person in fear.
3 Taking property from a person by force or violence or
4 forcing a person to surrender possession of property by
5 putting that person in fear with an intent to steal is a
6 robbery under the law. And a robbery accompanied by the
7 use of a pistol or other deadly weapon is an armed robbery
8 under the statute.

9 Criminal intent is also a necessary element of any
10 offense that has to be proven to your satisfaction beyond a
11 reasonable doubt. And intent means the state of person's
12 mind which directs his actions towards a specific object or
13 goal.

14 Criminal intent is the state of a person's mind which
15 operates jointly with the commission of some act in the
16 commission of a criminal offense. Criminal intent is a
17 mental state of conscious wrongdoing in contrast to the
18 commission of some act which is the result of accident,
19 mistake or inadvertence.

20 Criminal intent may be proven by the acts,
21 declarations or conduct of the defendant, as well as any
22 other circumstances which have been established by the
23 evidence in the case from which you might naturally and
24 reasonably infer any such intent.

25 Now, Madam Forelady and ladies and gentlemen of the

Jury charge

1 jury, I am not in any way concerned with what your verdicts
2 are, but you are instructed that any decision as it relates
3 to any indictment must be unanimous. All 12 of you have to
4 be in agreement before any verdict can be returned as to
5 any of the separate indictments.

6 Now, Madam Forelady, you and your fellow jurors can
7 deliberate in the fashion that you determine to be
8 appropriate, and you can take these indictments in whatever
9 order you see fit. That's up to you. I'm not going to
10 tell you how to do it.

11 But you do have ten separate indictments. You will be
12 rendering ten separate and distinct decisions. As I told
13 you, those decisions might all be the same or they could be
14 different. That'll just depend upon your determination of
15 fact as relates to that particular charge and then your
16 application of the law as I have provided it.

17 With regard to each of the separate indictments, you
18 have two possible verdict forms. Those two possible
19 verdict forms are guilty and not guilty.

20 In other words, if the state has proven each of the
21 essential elements of a particular crime set forth in an
22 indictment and the state has proven that the defendant has
23 committed that crime beyond a reasonable doubt, then in
24 that case your verdict would be guilty.

25 If the state has proved -- failed to prove that this

Jury charge

1 defendant has committed a crime stated in an indictment or
2 one of the essential elements that constitutes that crime
3 has not been proven beyond a reasonable doubt, then as to
4 that particular charge your verdict would be not guilty.

5 So whichever it is, guilty or not guilty, I'll ask
6 that you, Madam Forelady, indicate that decision in the
7 space provided on the back of each of those separate
8 indictments.

9 You'll see on the back of the indictment in the lower
10 left-hand corner there's the word verdict. And it's
11 beneath that word that you'll indicate the jury's unanimous
12 decision. Also, you're asked to sign your name as the
13 foreperson of the jury. And there's also a space for you
14 to put the applicable date.

15 Now, the only exception with respect to the verdicts,
16 the three indictments that charge possession of a firearm
17 during the commission of a violent crime, needless to say
18 as I have instructed you, before a person can be found
19 guilty -- the crime is not just possession of a firearm.

20 The crime is possession of a firearm during the
21 commission of a violent crime. So it is necessary before
22 the defendant could be found guilty of possession of a
23 firearm during the commission of a violent crime the jury
24 must also find the defendant guilty of a violent crime.

25 In this case those crimes are alleged to be either

Jury charge

1 burglary or criminal sexual conduct. But the defendant
2 could only be found guilty of possession of a firearm
3 during the commission of a violent crime if the jury has
4 also found him guilty of burglary and/or criminal sexual
5 conduct.

6 So, Madam Forelady, once you and your fellow jurors
7 have deliberated the case and decided the facts and applied
8 the law, if you'll indicate the particular verdict that's
9 appropriate on the particular indictment, and of course as
10 you know you've got -- no.

11 You'll have all the indictments there. But you've got
12 three separate events. One is December the 6th. Three
13 crimes are alleged. One is December the 11th. Three
14 crimes are alleged. One is December the 13th. Four crimes
15 are alleged. And of course you'll consider those all
16 separate. Just indicate your decision on the back of the
17 indictment as to each of the separate charges.

18 Now, I don't know how long your deliberations will
19 take. That will of course depend upon how much time you
20 need to review all of the evidence and engage in your
21 deliberations and discussions and to decide the facts and
22 then apply the law.

23 During your deliberations understand that no
24 additional evidence can be submitted now that the case has
25 been given to you for your consideration. So even if there

Jury charge

1 is more evidence that could be presented, it can't be
2 presented.

3 So sometimes juries go back and they start as they get
4 into their deliberations, they start wondering about other
5 things. I can't answer any question that relates to the
6 facts or the evidence in the case. You've got to resolve
7 that amongst yourselves. No additional evidence can be
8 received even if it existed now that the case is going back
9 to you.

10 If you have some question about the evidence or about
11 a factual issue and you think that that question can be
12 answered by having testimony replayed in whole or in part
13 from some witness, we can always bring you back to have
14 that testimony replayed.

15 We do not have transcripts of the witnesses' testimony
16 available. So I can't send you back a transcript. But if
17 you get to a point where you need to have a witness'
18 testimony replayed, I can bring you back to permit you to
19 hear that testimony in hopes that it can answer any
20 questions.

21 If at any time you have a question about the law that
22 is applicable in the case, I can always answer those
23 questions. So if at point in your deliberations you're
24 confused about the law or you need an additional
25 explanation or clarification of the law, I can always bring

Jury charge

1 you back to provide you with that additional explanation or
2 any clarification. So if you have a question about the
3 law, you let me know, and I'll assist you in providing that
4 clarification or addition.

5 If at any time you have a question that needs to be
6 directed to me, Madam Forelady, you or a fellow juror has
7 one, write it on a piece of paper. Give it to the bailiff.
8 He'll provide it to me and I'll respond accordingly.

9 If we have any smokers on the jury, you are permitted
10 to smoke during deliberations, but you can't smoke in the
11 jury room. If you have to smoke you'll have to be taken
12 outside.

13 But the jury is instructed that if any juror is absent
14 from the jury room for any authorized purpose deliberations
15 have to stop. They may only resume when all 12 are present
16 so that all may participate, because, as I said, the
17 verdicts have to be unanimous. All have to be in
18 agreement.

19 As far as lunch goes, if you get to a point in your
20 deliberations where you think it appropriate that you need
21 to order lunch, if you will let us know, let the bailiff
22 know, the clerk will come in and take your lunch order.

23 It usually takes about an hour, maybe a little bit
24 more, to order lunch and have it prepared and brought to
25 the jury room. So keep that timetable or timeframe in mind

Jury charge

1 as you go back. Understand you don't have to order lunch.
2 But if you want to order lunch, understand it's going to
3 take an hour or a little bit more to have it. So we will
4 not be ordering any lunch unless you let the bailiff know
5 that you think it appropriate to do so. In that event
6 we'll make those arrangements for you.

7 I think that covers everything. So I'm going to ask
8 you right now with the exception of the two alternate
9 jurors, I'll ask the primary 12 if you'll please go back to
10 your jury room. But do not yet begin deliberations.

11 I've got some matters I'll need to address with the
12 lawyers. We need to account for all of the exhibits.

13 So you can talk about smoking or lunch or other
14 things, but do not discuss the case. And it should take
15 only a few moments.

16 When I send you word to begin deliberations, you may
17 begin those deliberations. In that event the bailiff will
18 bring to the jury room all of the exhibits.

19 And to you, Madam Forelady, he'll bring these
20 indictments, which, as I say, serve as the verdict forms.

21 Okay. Please retire but await my instruction as to
22 when to begin.

23 (Whereupon, the jury retired to deliberate at
24 11:37 a.m.)

25 (Whereupon, the alternate jurors were excused.)

Verdict

1 THE COURT: Are there any exceptions taken to the
2 instruction or requests for additions to the instruction by
3 the state?

4 MR. GOWDY: No objections; no exceptions.

5 THE COURT: By the defense?

6 MR. THOMPSON: None.

7 THE COURT: Let me ask y'all to verify the exhibits.
8 And I think I'm correct, 35, 36 and 48 were not admitted.

9 MS. CRICK: That's right.

10 THE COURT: Okay. Let me ask y'all to verify the
11 other exhibits before they go back.

12 (Pause.)

13 THE COURT: Are all the exhibits accounted for?

14 MR. GOWDY: Yes, sir.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: All right. If you will take the exhibits,
17 back, along with the verdict form, tell the jury to begin
18 deliberations and notify us when they've concluded.

19 We'll be at ease while the jury is deliberating.

20 (Whereupon, the exhibits were submitted to the jury at
21 11:47 a.m.)

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. I'm told the jury has reached
24 a decision. Are we ready to receive the verdict?

25 MS. CRICK: Yes, sir.

Verdict

1 MR. THOMPSON: Yes, sir.

2 The only thing I might ask is my client's family went
3 to lunch, and they're not back. We told them 2:15.

4 THE COURT: Well, do you know where they are?

5 UNIDENTIFIED PERSON: They're on their way back.

6 MR. THOMPSON: No, sir, I don't. They are on the way
7 back.

8 THE COURT: On the way back from where?

9 UNIDENTIFIED PERSON: From K. F. C.

10 THE COURT: From where?

11 UNIDENTIFIED PERSON: K. F. C.

12 MR. THOMPSON: K. F. C.

13 THE COURT: Where is that?

14 MR. THOMPSON: Floyd Baker.

15 THE COURT: Well, we can wait a few minutes. We'll
16 wait five minutes.

17 MR. THOMPSON: All right. Thank you.

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Bring the jury in, please,
20 sir.

21 (Whereupon, the jury returned to the courtroom at
22 2:13 p.m.)

23 THE COURT: Madam Forelady, have you and your fellow
24 jurors reached a unanimous decision as to each of the
25 separate indictments?

Verdict

1 THE FOREPERSON: We have.

2 THE COURT: Have you indicated that unanimous decision
3 on the back of each indictment as requested?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Have you signed your name as the
6 foreperson?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: And placed today's date on it?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: If you will, please hand those verdict
11 forms up by way of the bailiff.

12 You may publish the verdicts.

13 THE CLERK: 2007-GS-11-852, the State vs. Jonathan
14 Leon Byers, indictment for burglary first degree, the
15 verdict is guilty. Signed by foreperson, Janice
16 Littlejohn.

17 Indictment 2007-GS-11-855, the State vs. Jonathan Leon
18 Byers, indictment for criminal sexual conduct first degree,
19 the verdict is guilty. Signed by foreperson, Janice
20 Littlejohn.

21 Indictment 2007-GS-11-972, the State vs. Jonathan
22 Byers, indictment for possession of firearm or knife during
23 commission of or attempt to commit a violent crime, the
24 verdict is guilty. Signed by foreperson, Janice
25 Littlejohn.

Verdict

1 2007-GS-11-851, the State vs. Jonathan Leon Byers,
2 indictment for burglary first degree, the verdict is
3 guilty. Signed by foreperson, Janice Littlejohn.

4 Indictment 2007-GS-11-854, the State vs. Jonathan Leon
5 Byers, indictment for criminal sexual conduct first degree,
6 the verdict is guilty. Signed by foreperson, Janice
7 Littlejohn.

8 2007-GS-11-973, the State vs. Jonathan Byers,
9 indictment for possession of firearm or knife during
10 commission of or attempt to commit a violent crime, the
11 verdict is guilty. Signed by foreperson, Janice
12 Littlejohn.

13 2007-GS-11-853, the State vs. Jonathan Leon Byers,
14 indictment for burglary first degree, the verdict is
15 guilty. Signed by foreperson, Janice Littlejohn.

16 2007-GS-11-856, the State vs. Jonathan Leon Byers,
17 indictment for criminal sexual conduct first degree, the
18 verdict is guilty. Signed by foreperson, Janice
19 Littlejohn.

20 2007-GS-11-971, the State vs. Jonathan Byers,
21 indictment for possession of firearm or knife during
22 commission of or attempt to commit a violent crime, the
23 verdict is guilty. Signed by foreperson, Janice
24 Littlejohn.

25 2007-GS-11-970 the, State vs. Jonathan Byers,

Verdict

1 indictment for armed robbery, the verdict is guilty.

2 Signed by foreperson, Janice Littlejohn.

3 Ladies and gentlemen of the jury, if that is the
4 verdict of you all, please indicate by raising your right
5 hand.

6 (Whereupon, all responded in the affirmative.)

7 THE CLERK: Thank you.

8 THE COURT: Does the defendant wish to have the jury
9 polled?

10 MR. THOMPSON: Please, Your Honor.

11 THE COURT: All right. Poll the jury, please, ma'am.

12 THE CLERK: As I call your name, if you'll raise your
13 right hand.

14 Juror 19, Danny Courtney, is this your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Juror 36, Mitchel Humphries, is this your
17 verdict?

18 THE JUROR: Yes, it is.

19 THE CLERK: Juror 18, Essie Coleman, is this your
20 verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: Juror 43, Daniel Jones, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror 70, Danny Reynolds, is this your

Verdict

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror 6, Stephen Blanton, is this your
4 verdict?

5 THE JUROR: Yes, ma'am.

6 THE COURT: Juror 96, Clayton Williamson, is this your
7 verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror 92, Eugene White, is this your
10 verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Juror 22, Richard Ellis, is this your
13 verdict?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: Juror 60, Angela Oglesby, is this your
16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror 40, Tina Johnson, is this your
19 verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Juror 105, Janice Littlejohn, is this your
22 verdict?

23 THE JUROR: Yes.

24 THE COURT: All right. Any other matters to be
25 addressed with the jury present?

Motion and sentence

1 MS. CRICK: None from the state.

2 MR. THOMPSON: None from the defense.

3 (Whereupon, the trial jury was excused.)

4 THE COURT: All right. Any matters to be addressed
5 prior to the imposition of sentences?

6 MS. CRICK: Not from the state, Your Honor.

7 MR. THOMPSON: Your Honor, at this time we would make
8 a motion for a new trial based on the record and our prior
9 motions.

10 THE COURT: All right. That motion is denied.

11 MR. THOMPSON: We're ready.

12 THE COURT: Okay.

13 MS. CRICK: We will pass up sentencing sheets, Your
14 Honor, to let him sign.

15 (Pause.)

16 MR. THOMPSON: Your Honor, before you begin sentencing
17 there is one matter I would like to bring up with the
18 Court.

19 THE COURT: Okay.

20 MR. THOMPSON: On the three indictments for possession
21 of a firearm in the course of a violent crime, those
22 indictments were not indicted as a count, a separate count,
23 on the original indictment. There were separate
24 indictments, and they were not indicted at the same time.

25 The C. S. C.s and burglary were indicted at the

Sentence

1 June 7th grand jury and the possession of firearm or knife
2 was indicted on the August 2nd grand jury.

3 The statute provides that the punishment for the
4 firearm charge cannot be imposed unless the person was
5 convicted -- unless the person convicted was at the same
6 time indicted and convicted of a violent crime. That's
7 Code Section 16-1-60. There are some other.

8 THE COURT: What's the section?

9 MR. THOMPSON: I'm sorry. 16-23-490 is the section.
10 The violent crime is 16-1-60. It's Subsection (e) of that
11 statute.

12 And there is a case, State vs. Smith, from 2005 from
13 our Court of Appeals that says that, quoting it, "South
14 Carolina Code Annotated, Section 16-23-490, provides
15 contemporaneous indictment and conviction of violent crime
16 prerequisite to punishment under the section."

17 THE COURT: Have you got a copy of that case?

18 MR. THOMPSON: I've got a copy. I'm sorry. I've got
19 one copy and it's marked up.

20 THE COURT: Well, this just, this case just, stands
21 for the proposition that if you don't have a qualifying
22 offense you can't be convicted of possession of a firearm
23 during the commission of that offense.

24 MR. THOMPSON: That's right. Then they go ahead --

25 THE COURT: In this case a voluntary manslaughter

Sentence

1 conviction was reversed, and therefore they also reversed
2 the possession of firearm during the commission of a
3 violent crime. But there is nothing in the case that
4 requires that the defendant be indicted at the same term.
5 It does require that he be convicted of the violent offense
6 before any additional punishment can be imposed.

7 MR. THOMPSON: Yes, sir. But they do have the
8 language in the case. And it may be just superfluous
9 language, but it says, "Providing contemporaneous
10 indictment and conviction of a violent crime."

11 THE COURT: Well, yeah. You're right. That's what
12 the language says.

13 MR. THOMPSON: And the statute does require that he
14 be -- it says, the language of the statute is, "The person
15 was at the same time indicted and convicted."

16 THE COURT: Well, you're talking about 16-23-490.
17 16-23-490 just says that the additional punishment may not
18 be imposed --

19 MR. THOMPSON: That's correct.

20 THE COURT: -- unless the indictment alleged as a
21 separate count that the person was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime and conviction was
24 had upon that count in the indictment.

25 That doesn't require in my view that you put each

Sentence

1 count in the same indictment. It just must be, there must
2 be an indictment, and you cannot be convicted of the
3 latter, being possession of a firearm, unless you've been
4 convicted of a qualifying offense, in this case burglary
5 and/or criminal sexual conduct.

6 MR. THOMPSON: And I'm not trying to argue that the
7 count has to be in the same indictment. I tried to figure
8 out an argument along those lines, but I wasn't successful
9 in doing so.

10 My argument is that this requires not only that he be
11 convicted at the same time but that he also be indicted at
12 the same time.

13 Now, that could be two separate indictments, which in
14 this case we have two separate indictments. But the
15 indictment for the burglaries and C. S. C.s are, went
16 before the June 7th grand jury.

17 THE COURT: Right.

18 MR. THOMPSON: The indictment for the firearm or use
19 of weapon in a violent crime went before the August the
20 2nd grand jury. So that's two different grand juries. He
21 was not indicted at the same time on those indictments.

22 THE COURT: Well, you say the statute has that
23 language in it?

24 MR. THOMPSON: I think it's the last sentence of the
25 statute, Judge. "The penalties prescribed in this section

Sentence

1 may not be imposed unless the person convicted was at the
2 same time indicted and convicted of a violent crime as
3 defined in Section 16-160."

4 That's the reason I pulled that case. While I agree
5 with you it's not the case exactly on point from the Court
6 of Appeals, it does have that language. And it says
7 providing contemporaneous indictment and conviction.

8 THE COURT: Well, okay. I guess you can interpret it
9 that way if you wish to.

10 The language does say the penalties prescribed in this
11 section may not be imposed unless the person convicted was
12 at the same time indicted and convicted of a violent crime,
13 which means when the person is convicted he has to also be
14 indicted and convicted of a violent crime, indicted for and
15 convicted of.

16 I don't think it means that you have to do it at the
17 same grand jury term. I see what you're saying now, but I
18 don't believe that's intended that you be indicted in the
19 same grand jury term before you can be convicted. It just
20 means that you must at the time that you are convicted of a
21 violent crime, you must also stand indicted for and be
22 convicted of that violent crime before you can be convicted
23 of the additional offense of possession of a firearm during
24 the commission of a violent crime, so.

25 Does the state want to be heard?

Sentence

1 MS. CRICK: No, sir.

2 THE COURT: Okay.

3 MR. THOMPSON: I've put my argument on the record.

4 THE COURT: All right. Anything else?

5 MR. THOMPSON: No, sir, not as to that.

6 THE COURT: Okay.

7 MR. THOMPSON: I'll give you some background on
8 Mr. Byers whenever you're ready.

9 THE COURT: Does the state have anything additional
10 you want to present?

11 MS. CRICK: The only thing additional, Your Honor, he
12 doesn't have a record. You obviously have heard all the
13 testimony and the evidence in the case.

14 The victims are not going to want to speak to you
15 individually but wanted me to reiterate to you that they
16 did not know him and wanted me to let you know that the
17 rapes themselves were very traumatic and bad enough but
18 having him come in here and say that it was consensual was
19 just as bad. And they wanted me to convey that to you.

20 THE COURT: All right. Mr. Thompson.

21 MR. THOMPSON: Judge, Mr. Byers is a young man. He's
22 19 years old. There's not a lot of his life I can tell you
23 about. He hasn't been alive that long.

24 He is single. He lives with his grandmother, Mary
25 Byers. She's in the orange shirt out here in the audience.

Sentence

1 He has two brothers, an older brother that doesn't live in
2 the home and a younger brother that does.

3 He has two children. One of them would be about a
4 year and a half old now and the other one would be less
5 than a year old, maybe about nine months, eight or nine
6 months.

7 He has a tenth grade education and was working on his
8 G. E. D. at the time this occurred. He has worked in the
9 past at Bojangles. And basically that's the history of
10 Mr. Byers' life.

11 At this point in time I would ask Your Honor to be as
12 lenient in sentencing as Your Honor could be.

13 THE COURT: All right. Mr. Byers, do you have
14 anything you want to tell me?

15 (No response.)

16 THE COURT: Is that a no?

17 (No response.)

18 THE COURT: All right. On Indictment 2007-851, that's
19 the indictment for burglary in the first degree, wherein
20 you have been found guilty by a jury of that offense, the
21 Sentence of the Court is you, Jonathan Leon Byers, be
22 confined to the South Carolina Department of Corrections
23 for the period of your natural life.

24 Indictment 2007-854, indictment for criminal sexual
25 conduct in the first degree, wherein you have been found

Sentence

1 guilty, the Sentence of the Court is you be confined to the
2 South Carolina Department of Corrections for a period of 30
3 years.

4 Indictment 2007-971, an indictment for possession of a
5 firearm during the commission of a violent crime, wherein
6 you have been found guilty by a jury of that offense,
7 Sentence of the Court is you, Jonathan Leon Byers, be
8 confined to the South Carolina Department of Corrections
9 for a period of five years. That sentence is consecutive
10 to that sentence imposed on 2007-851.

11 Indictment 2007-852, indictment for burglary in the
12 first degree, wherein you have been found guilty by a jury,
13 the Sentence of the Court is you, Jonathan Leon Byers, be
14 confined to the South Carolina Department of Corrections
15 for the period of your natural life. That sentence is
16 consecutive to that sentence imposed on 2007-851.

17 Indictment 2007-855, criminal sexual conduct in the
18 first degree, wherein you have been found guilty by a jury,
19 Sentence of the Court is you, Jonathan Leon Byers, be
20 confined to the South Carolina Department of Corrections
21 for a period of 30 years.

22 Indictment 2007-972, possession of a firearm during
23 the commission of a violent crime, Sentence of the Court is
24 you, Jonathan Leon Byers, be confined to the South Carolina
25 Department of Corrections for a period of five years. That

Sentence

1 sentence is consecutive to that sentence imposed on
2 2007-852.

3 Indictment 2007-853, burglary in the first degree,
4 wherein you have been found guilty by a jury of that
5 offense, the Sentence of the Court is you, Jonathan Leon
6 Byers, be confined to the South Carolina Department of
7 Corrections for the period of your natural life. That
8 sentence is consecutive to that sentence imposed on
9 Indictment 2007-852.

10 Indictment 2007-856, criminal sexual conduct in the
11 first degree, Sentence of the Court is you, Jonathan Leon
12 Byers, be confined to the South Carolina Department of
13 Corrections for a period of 30 years.

14 Indictment 2007-970, an indictment for armed robbery,
15 wherein you have been found guilty by a jury, Sentence of
16 the Court is you, Jonathan Leon Byers, be confined to the
17 South Carolina Department of Corrections for a period of 30
18 years.

19 Indictment 2007-973, an indictment for possession of a
20 firearm during the commission of a violent crime, wherein
21 you have been found guilty by a jury of that offense, the
22 Sentence of the Court is you, Jonathan Leon Byers, be
23 confined to the South Carolina Department of Corrections
24 for a period of five years. That sentence is consecutive
25 to that sentence imposed on 2007-853.

Sentence

1 Mr. Byers, you have a right to appeal the verdicts of
2 the jury and the Sentences of this Court. You must file
3 any notice of your intention to appeal those decisions
4 within ten days of today's date.

5 MR. THOMPSON: I'll take care of that for him.

6 One issue, Your Honor, before we -- let's go back to
7 the possession of a firearm charges.

8 Under Subsection (a) of Section 16-23-490, if you give
9 a life sentence without parole you're not allowed to apply
10 the 5-years sentence. It's the last sentence of Subsection
11 (a).

12 THE COURT: Okay. Well, then it won't be, it won't be
13 applicable.

14 MR. THOMPSON: So are you withdrawing your sentence?

15 THE COURT: It will have to be vacated.

16 MR. THOMPSON: Vacated.

17 THE COURT: It doesn't apply.

18 MR. THOMPSON: Okay.

19 MS. CRICK: Thank you, Your Honor.

20 THE COURT: All right.

21 END OF REQUESTED TRANSCRIPT OF RECORD
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Certificate

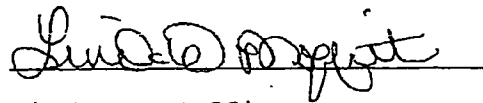
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 8th, 9th and 10th days of October 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 11, 2008



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN BYERS,

APPELLANT

AMENDED FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Was Byers right to represent himself, and his right to counsel of his choosing, denied when the trial court judge informed that him—categorically—that he could not fire his lawyer and represent himself before closing arguments?

Did the trial court judge abuse his discretion when he did not grant Byers's motion for a mistrial after the solicitor interjected improper—and completely inaccurate-- Lyle evidence into the trial?

STATEMENT OF THE CASE

Jonathan Byers was indicted for the following offenses: Burglary 1st degree—3 counts (07-GS-11-0853, -0851, -0852), Criminal Sexual Conduct First Degree—3 counts (07-GS-11-0855, -0854, -0856), Armed Robbery (07-GS-11-0970), and Possession of Firearm during Commission of a Violent Crime – 3 counts (07-GS-11-0971, -0973, -0972) during the June 2007 term of the Cherokee County Grand Jury. Between October 8th -10th, 2007, he was tried before the Honorable J. Derham Cole, and a jury. He was represented by Donald A. Thompson, Esquire. He was sentenced to Life on each Burglary 1st degree, with those convictions ordered consecutive; 30 years on each Criminal Sexual Conduct First Degree; 30 years on the Armed Robbery, and additional 5 year terms for the firearms charges. Those firearm sentences were vacated at the time of the sentencing since he also received a Life sentence for the other charges.

This appeal timely follows.

ARGUMENT

Byers's right to represent himself, and his right to counsel of his own choosing, was denied when the trial court judge informed him—categorically—that he could not fire his lawyer before closing arguments.

Byers testified at trial. (Tr. page 288, line 7 to page 333, line 15). At the close of the defense case, he informed his attorney that he wished to conduct his own closing argument. (Tr. page 346, lines 23-25). The following exchange then occurred:

THE COURT: That's not going to be permitted since you're his lawyer.

MR. THOMPSON: All right. Do you understand that, Mr. Byers?

THE DEFENDANT: In order for me to do my closing remark I ain't going—I got to kick him out . . .

THE COURT: Well, it's too late for that. You asked to have a lawyer assist you in this case, and that's what Mr. Thompson has been doing. It's too late now for you to terminate his representation.

THE DEFENDANT: So this—I can't, I can't terminate him?

THE COURT: No, sir.

THE DEFENDANT: This is my case and I can't terminate him.

(Tr. page 347, line 4-23).

Byers informed the judge that his attorney was not effective in getting his point across. (Tr. page 348, lines 18-19). Byers's attorney admitted that they were not "on the same page" as to how the case was being presented. (Tr. page 348, line 24 to page 349, line 9), and his direct examination of his client was less than comprehensive. (Tr. page 288, line 7 to page 292, line 25). As Byers's attorney informed the court before his client took the stand: "I know what he wants to testify to. I think that if he does that we're going to have no argument whatsoever and it's going to be a guaranteed conviction. I've explained that to him." (Tr. page 284, lines 2-5) In the end, the judge refused Byers's request to relieve his attorney and represent himself. This was error, and Byers should have his convictions reversed.

The Sixth Amendment guarantees the right of self representation. *See* U.S.C.A. Const. Amend. 6.

The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master, and the right to make a defense is stripped of the personal character upon which the Amendment insists.

Faretta v. California, 422 U.S. 806, 819, 95 S.Ct. 2525, 2533, 45 L.Ed.2d 562 (1975).

In this case, Byers unequivocally asserted his right to self-representation, but the judge simply did not entertain his invocation at all. In a similar case, a defendant asked to question a witness and to act as "co-counsel" during the course of a trial but the judge refused:

The Court: Three . . . I don't know what's on your mind, sir, with regard to matters that happen during trial. If there are areas that you think your lawyer should inquire into, you tell your lawyer. You have a good lawyer. Frankly, you've had three good lawyers. Mr. Wiley is your lawyer. He's representing you in able fashion. If there are things that you think he needs to follow up on, all you need to do is tell him quietly in the corner there as you're sitting with him. Is that agreed?

Defendant: Well, your Honor, I mean, I agree on the situation that Mr. Wiley probably is a good lawyer, but the way he has been setting himself, I could do a better job. That's why I want to co-counsel. I could do a better job than him.

The Court: Well, you're not going to be co-counsel in this case. You have counsel. . . . Nor will I permit you to represent yourself if you fire Mr. Wiley during this trial, if that's on your mind.

State v. Gatone, 698 A.2d 230, 240 (1997).

Finding a denial of the right to self-representation, the Court also noted that "the comments of the trial justice categorically silenced further inquiry by defendant and

rendered futile any future attempt by him to request self-representation. . . In wresting from defendant his constitutional right to represent himself, the trial justice committed reversible error.” *Id.* at 241. The same thing happened in this case. Byers asserted his constitutional right to self-representation as best he knew how, but the trial judge would not entertain his requests. Instead of engaging in a meaningful colloquy with Byers to determine whether he was aware of the dangers of self-representation, as required by *Faretta* and *Dearybury v. State*, 367 S.C. 34, 625 S.E.2d 212 (2006), the trial judge instead imposed appointed counsel on Byers, violating his constitutional rights. *See also United States v. Stubbs*, 281 F.3d 109 (2002), *n.* 5: “A defendant need not “recite some talismanic formula hoping to open the eyes and ears of the court to his request” to invoke his/her Sixth Amendment rights under *Faretta* (quoting *Dorman v. Wainwright*, 798 F.2d 1358, 1366 (11th Cir. 1986). Any further attempt to assert his rights would have been futile given the trial judge’s categorical refusal to meaningfully address the issue with Byers.

In this case, the trial court judge abused his discretion. As the South Carolina Supreme Court has held:

A defendant’s right to waive the assistance of counsel is not unlimited. The request to proceed *pro se* must be clearly asserted by the defendant prior to trial. . . . If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge Therefore, it is incumbent upon the trial court to determine whether the request is made for purposes of delay or to gain tactical advantage, and whether the lateness of the request may hinder the administration of justice.

State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170-71 (1999) (internal citations omitted).

The trial court judge did not offer any reason(s) for not allowing Byers's request. Byers did not request a continuance; he had not been disruptive, nor was there reason to believe he would be disruptive. There was no reason to believe that allowing Byers the opportunity to represent himself would have been for purposes of "gaining a tactical advantage" or that his request may have "hindered the administration of justice." There were no suggestions that Byers lacked the mental competency to represent himself. See Indiana v. Edwards, 128 S.Ct. 2379, 554 U.S. ____ (2008). While trial court judges are allowed great discretion in running their courtrooms, the exercise of that discretion should not be arbitrarily imposed. The trial court judge's sole "reason" for not permitting Byers to exercise his constitutional rights is embodied in his statement to Byers's attorney: "That's not going to be permitted since you're his lawyer." (Tr. page 347, line 4-5). The judge's decision in this regard was arbitrarily imposed because it was without any justification. See Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987) (When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred) and State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981) (It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly).

Implicated in Byers's assertion of his Sixth Amendment rights is his corollary right to have counsel of his choosing. Through his attorney and his discussions with the Court, it is clear that Byers intended to act as his own attorney out of his own sense of strategic

decision-making. He unambiguously informed the Court that his attorney was not bringing up the points that he believed needed to be imparted to the jury. As further evidence of this, is the fact that he decided to take the stand. He wanted his story told *in his own person*. “The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. . . . The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails” Faretta at 819. Holding that the denial of one’s counsel of choice is a structural error, the United States Supreme Court found, in United States v. Gonzalez-Lopez, 548 U.S. 140, 150 126 S.Ct. 2557, 2565, 165 L.Ed.2d 409 (2006) that “[a] choice-of-counsel violation occurs *whenever* the defendant’s choice is wrongfully denied.” (emphasis in original). Byers requested that he be allowed to be his own counsel. The trial court judge’s decision, without any reasoning or justification, denied him his constitutional right to do so. *See also* McKaskle v. Wiggins, 465 U.S. 168, 177 n. 8, 104 S.Ct. 944, 950 n. 8, 79 L.Ed.2d 122, 133 n. 8 (1984) (denial of the right to self-representation is never “harmless error.”). Byers wanted himself as his own representative at his own trial, but was denied that right.

Whether Byers was capable of effectively representing himself at closing argument is a non-issue. As Gonzalez-Lopez makes clear: “[The Sixth Amendment] commands, not that a trial be fair, but that a particular guarantee of fairness be provided- to wit, that the accused be defended by the counsel he believes to be the best.” Id. at 2562. And, although a defendant “may conduct his own defense ultimately to his own detriment, his choice must be honored out of ‘that respect for the individual which is the lifeblood of the law.’” Faretta at 834. *See also* Gatone at 241.

The trial court judge's categorical denial of Byers's invocation of his right to represent himself violated his rights as secured by the Sixth Amendment of the Federal Constitution. His right to represent himself, and his right to have counsel of his choosing were violated when the judge, without any justification, refused to allow Byers to conduct his own closing argument. Byers did not ask for a continuance, nor was his behavior disruptive to the court. The judge's exercise of his discretion was arbitrary. As this error was structural, Byers respectfully asks this Court to reverse his convictions.

II. The trial court judge abused his discretion by not granting Byers's motion for a mistrial after the solicitor interjected improper—and inaccurate-- Lyle evidence into the trial.

When Byers took the stand, the solicitor cross-examined him. The following exchange occurred:

Q: You got the gun from a girl named Shasta. Do you not remember that, Mr. Byers?

A: No, sir.

Q: You do not remember stealing a gun from Shasta and telling the police about it?

(Tr. page 315, lines 21-25).

Byers's attorney immediately objected and then requested a mistrial. (Tr. page 316, line 1-15).

Apparently this remark went well beyond what the parties had agreed would be admissible. Also, the remark was inaccurate.

THE COURT: . . . But now we had a discussion about what was going to be admitted into evidence with regard to that statement. And if I'm not mistaken, you told me you had no intention of going into that other information that was contained in the statement other than the fact that he just had in his possession that pistol. If you thought that that was relevant, how he obtained possession of it, why didn't we have that same discussion or why didn't you tell me that you thought it was admissible so we could have addressed it at least prior to its admission rather than trying to decide after its admission.

(Tr. page 318, line 7-17).

And then,

THE COURT: . . . All right. I've had a chance to review the statement. It appears from the statement that the *defendant did not say that he had stolen a weapon.*

(Tr. page 319, line 12-14) (emphasis added).

The judge abused his discretion by not granting a mistrial when the solicitor interjected wholly inaccurate and inflammatory evidence into the trial. Byers's convictions should be reversed.

Only relevant evidence should be admitted during a trial. See Rule 402, SCRE. Moreover, inflammatory remarks that are calculated to appeal to the passions and

prejudices of the jury should be affirmatively condemned. *See State v. Bennett*, 369 S.C. 219, 632 S.E.2d 281 (2006). *See also South Carolina State Highway Department v. Nasim*, 255 S.C. 406, 411, 179 S.E.2d 211, 213 (1971) and *Dial v. Niggel Associates, Inc.*, 333 S.C. 253, 509 S.E.2d 269 (1998). A prosecutor "must be able to show that the questions posed to the defendant's character witness were asked in good faith and based on reliable information that can be supported by admissible evidence. *State v. Clark*, 258 Ga. 464, 369 S.E.2d 900 (1988). The questions posed to Byers during the solicitor's cross-examination were inflammatory and calculated to malign Byers's character. As a false statement, the solicitor lacked any good faith belief in posing that question to Byers.

Solicitors, as representatives of the State of South Carolina, should be held to an exacting standard in situations like this because of the perilous danger it creates for a defendant's right to a fair trial. Any juror knows immediately upon being seated for duty that the State has nearly unlimited law enforcement resources at its disposal for ferreting out crime and prosecuting criminals. By asking a question with no basis, the jurors were left with the belief that the State was in possession of more information than was being released to them. The damage caused by a representative of the State interjecting irrelevant and inflammatory material into a trial is far greater than if this information had been improperly elicited from a garden-variety witness, and far more difficult to remedy. The judge abused his discretion by not ordering a mistrial, given the gravity of the elicited material, and its inability to be adequately remedied. Respectfully, Byers asks this Court to reverse his convictions.

CONCLUSION

The trial court judge violated Byers's rights under the Sixth Amendment when he categorically disallowed Byers the opportunity to represent himself. He violated his right to self-representation, and his right to counsel of his choice. Also, the trial court judge abused his discretion by not granting his motion for a mistrial when the solicitor interjected wholly inflammatory and irrelevant information into the trial. Respectfully, Byers asks this Court to reverse his convictions.

Respectfully submitted,

Elizabeth A. Franklin-Best

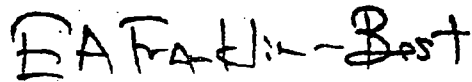
Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 12th day of November, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN BYERS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 12th day of November, 2008.

Elizabeth A. Franklin-Best

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 12th day of November, 2008.

Peggy L. Smith (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JONATHAN BYERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The defendant says the court told him, categorically, before closing arguments that he could not fire his lawyer and represent himself, and the defendant asks whether that denied him his rights to represent himself and to counsel of his choosing. (Appellant's Statement of Issues on Appeal top).

2. The defendant says the solicitor interjected improper and inaccurate Lyle evidence, and the defendant asks whether the court abused its discretion by denying his motion for mistrial. (Appellant's Statement of Issues on Appeal bottom).

STATEMENT OF THE CASE

The Cherokee County Grand Jury charged the defendant with first degree burglary (dwelling of Perrin, Dec. 6, 2006)(07-GS-11-0851), first degree burglary (dwelling of Giles, Dec. 11, 2006)(07-GS-11-0852), first degree burglary (dwelling of Payne, Dec. 13, 2006)(07-GS-11-0853), first degree CSC (Perrin, Dec. 6, 2006)(07-GS-11-0854), first degree CSC (Giles, Dec. 11, 2006)(07-GS-11-0855), first degree CSC (Payne, Dec. 13, 2006)(07-GS-11-0856), armed robbery (Payne, Dec. 13, 2006)(07-GS-11-0970), possession of firearm during violent crime (Dec. 13, 2006)(07-GS-11-0971), possession of firearm during violent crime (Dec. 11, 2006)(07-GS-11-0972), possession of firearm during violent crime (Dec. 6, 2006)(07-GS-11-0973). Defendant and his counsel came before the Honorable J. Derham Cole, Judge, and a jury on October 8-10, 2007. The jury found the defendant guilty. The court imposed three consecutive life sentences (burglary), three concurrent 30 year sentences (CSC), one concurrent 30 year sentence (armed robbery), and the court vacated sentences for possession of firearm during violent crime (§16-23-490). The defendant served opposing counsel with a timely notice of appeal.

ARGUMENT

I.

The court did not deny the defendant the right to represent himself.

At the conclusion of the trial testimony defense counsel announced that the defendant wanted to make his own closing argument. The court canvassed the wishes of the self-described school boy and Spartanburg Tech student:

The Court: Well, let me understand. When you were charged and when this case came to court did you ask to have a lawyer represent you in this case?

The Defendant: No, sir.

The Court: In other words, somebody made you have a lawyer?

The Defendant: No, sir. They asked me did I want a public defender, and I said yes.

The record shows that the defendant wanted to do his own closing argument. The record also shows that he assisted and participated in his own defense - testified, wanted to testify again, proposed questions for cross examination of the state's witnesses to counsel, shared his thoughts with counsel - but did not state that he wanted to terminate his counsel and to continue pro se.

The Court: Did you ever tell anybody at any time up until just this minute that you wanted to represent yourself?

The Defendant: No, sir. I just wanted to do the closing argument, sir.

The court noted that the defendant requested the assistance of counsel, and counsel was ably assisting him. The defendant did not want to terminate counsel, and there was no

reason to terminate counsel. (R. p. 186, lines 4-7; p. 209, line 23 - p. 212, line 21). There was no error.

If the defendant's just wanting to do his own closing argument is understood to be a request to terminate counsel and to proceed *pro se*, the lateness of the request, counsel's able representation, the defendant's participation in the trial, the defendant's assistance to his counsel, and the want of a clear request to proceed *pro se* all demonstrate a sound exercise of judicial discretion. See State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999)(right to waive assistance of counsel is not unlimited; request to proceed *pro se* must be clearly asserted by the defendant prior to trial; when the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge)(citation omitted); United States v. Lorick, 753 F.2d 1295 (4th Cir. 1985).

II.

The court exercised sound discretion in denying the defendant's motion for mistrial.

Victim Perrin went to bed on December 6, 2006. She awakened at light of day to find a masked assailant holding in his hand a silver, short gun pointed in her face. He raped her. She fled from her home, summoned the police, and underwent an examination at Upstate Medical. (R. pp. 5-15). The defendant's eyes were consistent with her assailant's. (R. p. 20).

Victim Giles left her boyfriend's and went home about 6:00 AM. She lived alone. An assailant armed with a small black and silver handgun confronted her, raped her (orally, vaginally, anally), and ejaculated. When he left, she got help and went to Upstate Carolina Medical Center within 30 minutes. She had never seen the defendant until the December 11, 2006 incident. (R. pp. 21-28; p. 32).

Victim Payne lived with her children. About 2:00 AM, December 13, 2006 her covers were pulled off of her. She saw a masked, young, not very tall, black male with a silver handgun. The hood of his gray sweater was up. The gun had a slide, and he cocked the gun. She attempted to use her cell phone, but her assailant took it. The assailant raped her vaginally. She did not know whether he ejaculated. After the attack, the victim got help and went to Upstate. She had not previously seen the assailant. (R. pp. 39-52).

An officer talked to the defendant December 16 about an unrelated matter and collected an oral DNA sample with a cotton swab. (R. p. 62, line 23 - p. 63).

An analyst used the oral swab taken from the defendant to develop the defendant's DNA profile. (R. p. 90, line 18 - p. 93). The DNA profile of the semen found on [1] victim Perrin's vaginal swab and bed, [2] victim Giles's vaginal swab, and [3] victim Payne's vaginal swab all matched the defendant's DNA profile. (R. pp. 109 - 116, line 17; p. 116, line 18 - p. 118; pp. 119-121).

At the close of the state's case, defense counsel noted (out of the presence of the jury) that the defendant wanted to testify, and it would guarantee conviction. The court canvassed the defendant's decision, and the defendant chose to testify. (R. p. 146, line 12 - p. 150).

The defendant testified that he had a sexual relationship with each of the three victims, and they were trying to frame him. He expressly denied criminal conduct, including holding a gun on his victims. (R. pp. 151-155; p. 186, line 4 - p. 187, line 8).

On cross examination the defendant recalled the December 16th questioning about another matter and giving the police a mouth swab. He denied saying that he had a gray or silver pistol at home. Rather, he was asked where would he keep a pistol - if he had one. He said at home. (R. p. 156 - p. 157, line 8).

Ex mero motu the court held a voluntariness hearing. The defendant claimed the police made up the statement, attributed it to him, intimidated him, and forced him to sign it. (R. p. 157, line 16 - p. 161). The state offered a different version of the December 16 interview. Over objection, the court found that a limited portion of the statement about the defendant's having a gray and black handgun was admissible. (R. pp. 162-171).

On cross examination the defendant acknowledged that his signed, sworn statement referenced his having a gray .22 caliber pistol with a black handle: "I got the

.22 caliber pistol at my house that I took from her." Six or eight [police] forced him to sign the statement. Actually, he had no gun at his house. (R. p. 175 - p. 178, line 7). The defendant denied getting a gun [from Shasta]. The solicitor asked, "You do not remember stealing a gun from Shasta and telling the police about it?" Defense counsel objected and, in camera, moved for a mistrial. The question was leading. It went beyond the agreement limiting use of the statement to show that on December 16 the defendant had a gun, and it raised another crime. (R. p. 178, line 21 - p. 180).

In light of the defendant's denying the substance of his statement, the solicitor thought he could address the context of the statement and the defendant's getting the gun. The statement was *res gestae* in that both the gun and DNA sample came from the incident. The court found that the defendant's denial of everything in the statement was well established, and the use of the statement was limited to the defendant's possessing a pistol. Further, the court reviewed the statement and found the defendant did not say that he had stolen a weapon. That would be addressed and cleared up through further examination in that the defendant [according to the statement] had the weapon and told the officers where he got it. The solicitor agreed to do that and move on. The court denied the motion for mistrial. (R. p. 180, line 5 - p. 183; line 6). The solicitor prefaced a question by acknowledging his using the word "stolen" improvidently. The defendant then acknowledged [1] the statement about getting a .22 caliber pistol - "I got the gun from her[,] and [2] the police made up the statement and forced him to sign it. (R. p. 183, line 10 - p. 184).

In reply testimony, the state called the officer who interviewed the defendant on December 16. His testimony included the rights and the circumstances showing the

voluntariness of the defendant's statement and the defendant's saying he had acquired a .22 caliber gray pistol with a black handle about two to three weeks earlier. (T. pp. 201-208).

A defendant is entitled to a fair trial, not a perfect trial. E.g., State v. Perry, 278 S.C. 490, 299 S.E.2d 324 (1983). In the present case the trial judge considered the basis for the motion for mistrial and directed remediation. The solicitor acknowledged that he tried to characterize the defendant's statement and used a word improvidently. The court insured that the jury had the defendant's own testimony about the substance of the statement. Moreover, the defendant testified that the police made up the statement. A ruling on a motion for mistrial rests in the sound discretion of the trial judge. The trial court correctly exercises the greatest caution in declaring a mistrial and should declare a mistrial only upon plain and obvious causes stated in the record and when "an incident is so grievous that prejudicial effect can be removed in no other way." The trial court's ruling should not be reversed on appeal absent an abuse of discretion. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). There was no abuse of discretion.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 30, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Cherokee County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JONATHAN BYERS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(including social security numbers, names of minor children, financial account numbers, and home addresses).

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

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ATTORNEYS FOR RESPONDENT

October 30, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

Respondent,

vs.

JONATHAN BYERS,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 30th day of October, 2008.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jonathan Byers,

Appellant.

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-139
Submitted February 1, 2010 – Filed February 22, 2010

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

Senior Assistant Attorney General Harold M. Coombs, Jr., all of Columbia; Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: Jonathan Byers appeals his convictions for three counts of first-degree burglary, three counts of first-degree criminal sexual conduct, and armed robbery. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Byers the right to self-representation: State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999) ("If the request to proceed pro se is made after trial has begun, the grant or denial of the right to proceed pro se rests within the sound discretion of the trial judge.").

2. As to whether the trial court abused its discretion in denying Byers's motion for a mistrial: State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) ("Error is harmless when it could not reasonably have affected the result of the trial."); State v. Moyd, 321 S.C. 256, 263-64, 468 S.E.2d 7, 11-12 (Ct. App. 1996) (finding when a defendant does not object to the sufficiency of the instruction or ask for additional curative instructions the error is deemed cured).

AFFIRMED.

SHORT, WILLIAMS and LOCKEMY concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

011CP-110147

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Cherokee)

Jonathan Byers #324474)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 MAR - 10
BRANDY M. MOBEE
PD: 01
APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Cherokee County Detention Center
2. Name and location of Court which imposed sentence GENERAL SESSIONS, CHEROKEE COUNTY, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-65-11-851, 852, 853 (BURGLARY 1st) 2007-65-11-854, 855, 856 (CSC 1st)
2007-65-11-970 ARMED ROBBERY 2007-65-11-971, 972, 973 POSSESSION OF WEAPON DURING VIOLENT CRIME

011CP-110147

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct 16. 06
- (b) I got 3 life sentences for first degree burglary a 30 years for
- (c) CSC
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Both
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Supreme Court of direct appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Supreme Court Stated I had enough probable cause to go back on
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. I do not remember N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) ineffective assistance Counseling
 - (b) _____
 - (c) _____
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) The Charges I had were serious and I saw my public defender 3 time
 - (b) He did not know anything about my case
 - (c) When I told him things to do he said no
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
- 13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

011CP-110147

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

011CP-110147

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) I let an Appellate lawyer handle everything. I did
 - (b) not even speak with her.
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? yes
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Don Tompson Cherokee county Public defense office
 - ii. Mary A Beth Franklin Appellate defender of the Supreme Court.
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Don Tompson represented me in my trial and Sentencing.
 - ii. Mary A Beth Franklin represented me in my direct Appeal
 - iii. _____

011CP-110147

19. State clearly the relief you seek in filing this application:

The relief to get back in court and have a
retrial or a deduction of sentence so I can
live a peaceful life with family.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised '20

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Cherokee)

I, Jonathan Dye, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jonathan Dye
Jonathan Dye

SWORN to and subscribed before me this 28
 day of February, 2011.

Dye (L.S.)
 Notary Public

My Commission Expires: Jan 28, 2018

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2011 MAR -7 P 2:01
 BRADY W. MCBEE

011CP-110147

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jonathan Byers, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jonathan Byers
Jonathan Byers
Applicant

SWORN or affirmed to and subscribed before me this
28 day of February, 2011.

[Signature]
Notary Public

My Commission Expires: Jan 28, 2018

BRANDY W. MOBEE

2011 MAR -7 P 2:01

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Jonathan Byers, #324474,	)	2011-CP-11-0147
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on March 7, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. The Applicant was indicted at the June 2007 term of the Cherokee County Grand Jury for three counts of burglary – 1st degree (2007-GS-11-0851, -0852, -0853) and three counts of criminal sexual conduct – 1st degree (2007-GS-11-0854, -0855, -0856). He was also indicted in August 2007 for armed robbery (2007-GS-11-0970) and possession of a weapon during commission of a violent crime (2007-GS-11-0971, -0972, -0973). Don A. Thompson, Esquire, represented the Applicant at trial. On October 10, 2007, the Applicant was convicted of all charges by a jury. The Honorable J. Derham Cole presided over the Applicant's trial and sentenced him to confinement for life on each burglary – 1st degree charge, concurrent terms of thirty years for each criminal sexual conduct - 1st degree and armed robbery, and consecutive terms of five years for each charge of possession of a weapon during the commission of a violent crime. The three consecutive five year sentences were later vacated pursuant to §16-23-490.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The

South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Byers, Op. No. 2010-UP-139 (filed February 22, 2010). The Remittitur was returned on March 10, 2010.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to see Applicant more than three times when Applicant was facing serious charges,
 - b. Counsel failed to adequately investigate the case,
 - c. Counsel failed to do things Applicant requested.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

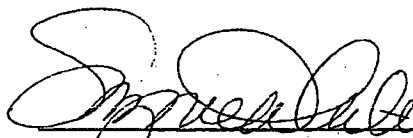
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:



Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 15, 2012.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) COURT OF COMMON PLEAS NONJURY

3
4 JONATHAN BYERS,)
5) TRANSCRIPT
6 APPLICANT,) OF
7 vs.) RECORD
8 STATE OF SOUTH CAROLINA,) 2011-CP-11-147
9 RESPONDENT.)

10 June 11th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 ALEXANDER P. LEWIS
17 ESQ.
18 Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
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P R O C E E D I N G S

1
2
3 THE COURT: All right. We're on the record in the case
4 of John Byers versus The State of South Carolina.

5 Ms. White.

6 MS. WHITE: Thank you, Your Honor.

7 This is Case Number 2011-CP-11-0147. Mr. Byers is
8 represented today by Alex Lewis. He filed this application
9 following an indictment in June of '07, June of '07, three
10 counts of burglary first degree and three counts of CSC
11 first degree, and he was also indicted August of '07 for
12 armed robbery, and three counts of possession of a weapon
13 during the commission of a violent crime. Proceeded to
14 trial and was represented by Mr. Don Thompson at that time,
15 and was convicted on all charges October 10th, 2007,
16 before Judge Cole.

17 He received concurrent sentences of three life
18 sentences for burg first, three 30 year sentences for the
19 CSC and armed robbery, and then consecutive five year
20 sentences for the possessions of a weapon charge, which were
21 later vacated because of the life without parole sentences.

22 The appeal was dismissed in February 2010 and he filed
23 this application March 2011 alleging ineffective assistance
24 of counsel and that counsel failed to visit him more than
25 three times, counsel failed to adequately investigate the

1 case, and counsel failed to do things that the applicant
2 requested.

3 So, I will turn it over to Mr. Lewis at this time.

4 THE COURT: Mr. Lewis, I'll hear from you at this time.

5 MR. LEWIS: Yes, Your Honor.

6 I'm here today representing Mr. Byers in regards to
7 this petition. Essentially we are alleging Mr. Thompson's
8 inadequate representation rendered prejudice to his case,
9 and that on several occasions Mr. Byers did, in fact,
10 attempt to seek new counsel or to represent himself and was
11 denied to do that. And, so, it was ineffective in that he
12 wanted to represent himself at times because Mr. Thompson
13 did not render the assistance that Mr. Byers needed.

14 And, so, with that, I'd like to call my first witness.

15 THE COURT: All right.

16 MR. LEWIS: I'd like to call Mr. Byers.

17 THE COURT: All right. Come forward, Mr. Byers.

18 WITNESS: All right.

19 THE COURT: If you will, please step up over here to my
20 left, and once you're to the witness stand, if you'll put
21 your left-hand on the Bible, raise your right-hand to the
22 best of your ability.

23 JONATHAN BYERS, having been first duly
24 sworn, testified as follows:

25 THE COURT: Have a seat.

Jonathan Byers - Direct examination
by Mr. Lewis

1 (Witness complies.)

2 THE COURT: State your name please.

3 WITNESS: Jonathan Byers.

4 THE COURT: Your witness, Mr. Lewis.

5 MR. LEWIS: Thank you, Your Honor.

6 May I move closer to the witness, Your Honor, if I may?

7 THE COURT: Oh, yes, sir.

8 MR. LEWIS: Thank you.

9 DIRECT EXAMINATION

10 BY MR. LEWIS:

11 Q Mr. Byers, are you currently seeking this post,
12 post-conviction relief action?

13 A Yes, sir.

14 Q Please speak into the --.

15 A Yes, sir.

16 Q Okay. And please, if you would, in your words, tell me
17 what you think Mr. Thompson did not do for you.

18 A He, he really didn't do nothing for me. He ain't let
19 me know when I was going like -- he ain't let me know what
20 to do like when I came to trial. Like he didn't help me
21 with nothing.

22 He came to see me two times within ten months, and he
23 ain't tell me nothing. I kept asking him -- he said he
24 knew -- he told me to go along with what he was doing, what
25 he was gonna say, but I told him I ain't do it. So, he was

Jonathan Byers - Direct examination
by Mr. Lewis

1 like if you don't go along with this, you gonna lose your
2 life. So, I was like man, shoo, I ain't do it though. It
3 was like I take a plea. I was like I ain't do it. So --
4 and he --.

5 Q Okay. On, on some of those points, let's, let's talk
6 about some of those points.

7 Now, when you met with Mr. Thompson, how long did he
8 meet with you for each time?

9 A Probably I'd say ten to fifteen minutes.

10 Q Okay. And you feel that the charges you had were
11 serious?

12 A Real serious.

13 Q And do you think that he should of met with you longer
14 than that?

15 A Yes, sir.

16 Q Do you -- are you under the impression or -- strike
17 that.

18 Did -- what steps did Mr. Thompson take to help prove
19 your case?

20 A He really ain't know nothing about my case. He ain't
21 know, know nothing about it. I got on trial, on the stand.
22 He didn't know nothing about my case period, and it states
23 in the transcript that he knew about it, but he ain't even
24 know nothing about my case. He was fighting something else
25 during the trial.

Jonathan Byers - Direct examination
by Mr. Lewis

1 When I got on the stand I was saying something totally
2 different. That's what I was trying to tell him. He ain't
3 never come to find out what was going on with my case or
4 nothing.

5 Q Did you communicate to Mr. Thompson that you were
6 unhappy with his representation?

7 A Yes.

8 Q Did you attempt, at times, to direct your case in a way
9 that you wanted it directed?

10 A Yes.

11 Q Did Mr. Thompson follow your wishes?

12 A No.

13 Q Okay. What do you think Mr. Thompson should have done
14 at trial that he didn't do in the courtroom for you?

15 A He could of gave me my motion of discovery. He should
16 of took me to my preliminary hearing. He should of told me
17 how to act during a trial cause that was my first trial
18 ever. When I got back to the prison, that's when I start
19 learning all this stuff that I should of been helped on.
20 But he ain't tell me nothing.

21 Q And he -- did he ever -- did he ever try to teach you
22 how to behave in front of a jury?

23 A Hu huh. (Negative).

24 Q Did he tell you -- did he try to teach you about
25 looking people in the eye or, or try to teach you how to,

Jonathan Byers - Direct examination
by Mr. Lewis

1 how to converse with, with the jury?

2 A No, sir.

3 Q Did he ever make any motions or attempt to seek any
4 ability to have your shackles removed during the procedure?

5 A No, sir.

6 Q And, so, do you feel as if those things had been done
7 that your case might have gone differently?

8 A Yes, sir.

9 Q Do you -- did Mr. Thompson explain to you what he was
10 doing at, throughout the trial as you went along?

11 A No, sir, I ain't even know what was going on.

12 Q Now, you said Mr. Thompson, he didn't, he didn't
13 provide you with your discovery. So, you weren't able to
14 assist in your trial as to discovery, were you?

15 A No, sir.

16 Q Okay. All right. Is there anything else that you want
17 to tell the Court at this time that you feel you want to get
18 off your chest that you want to say?

19 A Yeah, I would like to get a retrial so I can get my
20 life back. That's, that's it.

21 Q Okay. All right. That's, that's all I have for you.
22 If you would answer any questions that Ms. White's gonna
23 have for you.

24 Okay?

25 A All right.

Jonathan Byers - Cross-examination
by Ms. White

1 THE COURT: You may cross-examine.

2 MS. WHITE: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. WHITE:

6 Q Mr. Byers, this was a, a pretty lengthy trial with
7 several, with lots of witnesses, wasn't it?

8 A Yes.

9 Q Okay. And your attorney went through each of those
10 witnesses generally and cross-examined them, didn't he?

11 A Yes.

12 Q Okay. And, in fact, this was a case obviously that had
13 some DNA evidence that linked you to these crimes, isn't
14 that right?

15 A Yes.

16 Q And he tried to maybe attack the, the, the science
17 behind the DNA or the connection, the lack of fingerprints
18 at the scene or the lack of identification otherwise?

19 A Yes.

20 Q Okay. So, when you talk about he wouldn't tell you how
21 to act at trial or, or how to behave in front of the jury,
22 your counsel advised you that he didn't want you to testify,
23 didn't he?

24 A No, he said that it's my choice --

25 Q Right.

Jonathan Byers - Cross-examination
by Ms. White

1 A -- if I want to testify or not. I told him I wanted
2 to.

3 Q Okay. Did he offer his suggestion or his advice as to
4 whether or not that would help your case?

5 A Yes, he did. But I told him the point, the point that
6 he was fighting on wasn't that I ain't -- it wasn't nothing
7 to do, to do with my case. I ain't know what he was talking
8 about.

9 Q Okay. But -- so, he advised against testifying, but
10 you wanted to testify?

11 A Yes, sir.

12 Q Okay. And ultimately you did testify before the jury,
13 right?

14 A Yes, ma'am.

15 Q Okay. And your testimony is you were shackled during
16 the trial?

17 A Yes.

18 Q Okay. And you never received any discovery -- you
19 never saw the witness statements?

20 A No, ma'am, I just recently got my transport, I mean
21 transcript. I ain't --.

22 Q All right. You just got your transcript from the trial
23 obviously which happened after the trial, but when you
24 talked with your attorney during the times you met, what did
25 you talk about then if you didn't go over discovery

Jonathan Byers - Cross-examination
by Ms. White

1 materials?

2 A We was talking about a plea bargain.

3 MS. WHITE: Okay. Your Honor, that's all I have for
4 this witness.

5 THE COURT: Redirect.

6 MR. LEWIS: Just a couple points, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LEWIS:

9 Q Ms. White mentioned witnesses at your trial.

10 Did Mr. Thompson make any effort to call any witnesses
11 on your behalf other than yourself?

12 A No, sir.

13 Q Did he bring forth anyone else that would of ever
14 testified?

15 A He did -- he tried to say that I had a witness like at
16 the end, but I ain't even said that, and they -- that's why
17 they had stopped the trial the day and they came back and
18 did it and I ain't have nobody up there. I ain't never said
19 that.

20 Q Right.

21 Now, Ms. White brought up your testimony, and you did
22 testify, but when Solicitor Gowdy went in and he
23 cross-examined you and he, he -- it was very heated.

24 Did Mr. Thompson attempt to reexamine you after that?

25 A No, sir.

Jonathan Byers - Redirect examination
by Mr. Lewis

1 Q He didn't attempt to rehabilitate your witness
2 testimony at all, did he?

3 A No, sir.

4 MR. LEWIS: All right. Nothing further, Your Honor.

5 THE COURT: Anything further, ma'am?

6 MS. WHITE: State has no other questions, Your Honor.

7 THE COURT: You may step down, sir.

8 WITNESS: All right.

9 THE COURT: The applicant may call its next witness.

10 MR. LEWIS: I believe Ms. White's gonna call Mr.
11 Thompson. So, at this point the applicant will rest, Your
12 Honor.

13 THE COURT: Okay. Ms. White.

14 MS. WHITE: Your Honor, the State would call Don
15 Thompson to the stand.

16 THE COURT: Mr. Thompson, come forward to be sworn.

17 DON THOMPSON, having been first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat please. Once you're seated,
20 state your name.

21 WITNESS: My name is Don Anthony Thompson.

22 THE COURT: Your witness.

23 MS. WHITE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. WHITE:

Don Thompson - Direct examination
by Ms. White

1 Q Mr. Thompson, how were you involved in the case for the
2 applicant?

3 A I was appointed to represent Mr. Byers.

4 Q And this case happened in October of 2007.

5 How long had you been appointed to represent him prior
6 to that trial?

7 A I'll have to dig through this box and see.

8 Q Okay. Do you have a general idea?

9 I don't need necessarily an exact date.

10 I mean was it six months?

11 Was it more than a year?

12 A My best recollection would be about a year.

13 Q Okay. And do you recall having meetings with the
14 applicant during that time?

15 A I did.

16 Q He said that, that during a ten month period you met
17 with him maybe twice for ten or fifteen minutes.

18 Do you recall?

19 A I met with him more than twice. Now, I will say this,
20 and people get -- this morning I got in the office and I had
21 a dozen cry letters from clients in jail that I hadn't been
22 to see them. Lots of people are sitting in jail awaiting
23 court. We've already got their case prepared and done
24 everything. I don't need to go hold a hand, and sometimes
25 it's several months in-between visits. We just don't have

Don Thompson - Direct examination
by Ms. White

1 the resources to go hold hands.

2 Q Okay. Now, how long, in general, have you been
3 practicing law here in South Carolina?

4 A I was admitted November of 1980.

5 Q And what does your practice generally consist of?
6 Has it consisted of criminal law that time or --?

7 A No, I was in general practice up until 1990, and I've
8 been in criminal practice since then.

9 Q And in your representation in criminal practice, have
10 you represented folks on burglary first degree, CSC cases
11 that are risking life?

12 A I have. In fact, I've had five death penalty cases.

13 Q Okay. And, in this case, was there any discussion of
14 plea bargaining prior to the trial?

15 A We tried.

16 Q And was it the State that didn't want to plead or was
17 it---

18 A It was the State that didn't want to plead.

19 Q Okay. In your discussions with the applicant did you
20 have a chance to review discovery materials with him?

21 A I did.

22 Q What did some of those materials consist of that y'all
23 went over?

24 A The case, case consisted of and the way they identified
25 Mr. Byers, he had hired a prostitute and had sex with her.

Don Thompson - Direct examination
by Ms. White

1 There was an argument over money. He shot her. She knew
2 him. She went to the police or called the police. When
3 they came, he had used a condom and there was semen in the
4 condom that was left behind. So, they got that condom and
5 had that semen. They matched it up to the semen from these
6 women that had been broken in and raped and it matched
7 Mr. Byers.

8 So, basically the only thing they had identifying him
9 as to these three woman was the DNA. We were successful in
10 keeping out of this trial the, the lady that was shot, any
11 testimony as to that. So, it boiled down to DNA.

12 I hired a DNA expert. He looked at the DNA. He told
13 me it was the best DNA case against a defendant he had ever
14 seen. I told him thank you, go back to North Carolina,
15 don't show up in South Carolina again cause we don't want
16 the State to subpoena you.

17 I decided our defense -- and I talked with Mr. Byers.
18 Mr. Byers wanted to put up a defense of consensual sex.
19 Well, these were three women that were of different ages,
20 different positions in life, different, lived in different
21 areas. Really had -- none of these three had anything in
22 common, and none of them -- I mean they all accused -- their
23 story was pretty much the same. Somebody broke into their
24 house, held them at gunpoint, and raped them. There was no
25 indication that they even knew each other.

Don Thompson - Direct examination
by Ms. White

1 I told him that was not gonna be a defense that would
2 fly. The, the defense I saw was a defense of attacking the,
3 the identification through the DNA, and that's what, that's
4 the trial tactics I chose. And to be honest with you, I
5 think they would have been successful and I'll tell you why
6 if you want me to, but---

7 Q Go ahead. I was gonna say -- so, you did attempt to
8 attack, and, in fact, cross-examined everybody from the DNA
9 experts that, from SLED to Sheriff's officers and the
10 victims, right?

11 A Right. But basically I cross-examined the SLED DNA
12 experts, and I think they saw what I was doing. I was
13 basically trying to muddy the water, and I think they saw
14 what I was doing. But they didn't, you know, try to back up
15 and say well, this is, this is what you're doing. I mean
16 they just answered my questions and went forward, and the
17 State never pursued it after that.

18 Q And, so, at that point, following some of those
19 questions, did you think you had an opportunity for
20 reasonable doubt?

21 A I thought we had an opportunity for reasonable doubt
22 and I know we had it now, and the reason I know it is
23 because, after the jury was dismissed for the week, and I
24 was walking out of the courthouse, one of the jurors called
25 for me, came over, wanted to know why I put Mr. Byers on the

Don Thompson - Direct examination
by Ms. White

1 stand, and three other jurors came over with him that was
2 on---

3 MR. LEWIS: Your Honor, I'd object to hearsay of this.
4 I mean this is what he's saying happened. I mean there's
5 no, there's no---

6 THE COURT: He hasn't quoted anyone. He just said they
7 wanted, what they, the type question they asked.

8 MR. LEWIS: I understand.

9 THE COURT: He didn't, he didn't quote them. So, I
10 find that not to be hearsay. He said they wanted to know
11 why he had put him on the stand.

12 A And I explained to them that he had the right to make
13 that decision, not me, and I was told -- and this is
14 probably hearsay. So, I won't, I won't answer.

15 Q Okay. So, at the time you had discussed with him his
16 right to testify, and whether or not it was in his best
17 interest?

18 A I did and I tried my best to keep him from testifying
19 cause his testimony sabotaged everything we had done in the
20 trial.

21 Q Okay. In regards to him being in the courtroom in
22 shackles, do you recall that?

23 A I don't, and if he'd had been in shackles I would of
24 said something.

25 Q Okay. Is that -- do you generally present someone in

Don Thompson - Direct examination
by Ms. White

1 defense in their jail clothes and shackles---

2 A No.

3 Q ---or how does that generally work?

4 A No, in fact, he had on a red suit.

5 Q Okay.

6 A I remember that. It was around Christmas. He had on a
7 red suit. But, you know, I don't remember any shackles. I
8 can't say there wasn't any. But had I realized there had of
9 been, I would have done something about that.

10 Q Okay. In regards to talking with the applicant about
11 how to behave either during trial or while he was
12 testifying, I guess once you knew he was gonna testify
13 before the jury, did you talk to him a little bit about
14 mannerisms or behavior in the court?

15 A No, that decision was made in the courtroom as the
16 judge had taken the bench and was about to call the jury
17 back out as to whether or not he was gonna testify.

18 Q Okay.

19 A So --.

20 Q In regards to the additional witnesses, at the end of
21 one of the days you did ask for a continuance to obtain, to
22 try to locate a couple witnesses that you said the applicant
23 had asked for.

24 Can you tell us -- do you recall that?

25 A I don't recall that.

Don Thompson - Direct examination
by Ms. White

1 Q Okay.

2 Okay. Your Honor, I think that's all the questions I
3 have at this time.

4 THE COURT: All right. You may cross-examine.

5 MR. LEWIS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. LEWIS:

8 Q Typically how much time do you spend on a case like
9 this with, with the accused?

10 A However much time it takes, and I know that's a short
11 answer, but each case is different. It depends on what's
12 involved with it.

13 Q I mean with three life sentences, do you think life---

14 A Well, I don't look at it as to what the sentence is as
15 to how much time I spend. I look at it as to what the facts
16 of the case are, what's involved in it, what the law is.
17 That's how I determine how much time I spend.

18 Q Okay. So, this would of been two times or three times
19 would been of typical for, for what he was facing?

20 A No, I met with him more than that. I met with him more
21 than that.

22 Q Okay. Let's see here. What sort of steps, other than
23 the DNA expert, did you have when attempting to able defend
24 him, ably defend him?

25 A Okay. I knew, as a client, the girl who was shot. I

Don Thompson - Cross-examination
by Mr. Lewis

1 talked with her to see what went on.

2 I knew one of the witnesses as a former client, and I
3 talked with her to see what went on.

4 I talked to the other two witnesses, who I did not
5 know, two victims, who I did not know. I basically just
6 checked out their stories, and their stories pretty well
7 stayed consistent. At that point in time I started trying
8 to figure out what we were gonna do and the only, the only
9 tact I saw was the DNA.

10 Q Do you feel that, in anyway, knowing any of these
11 witnesses hindered your representing him?

12 A No, I mean in the Public Defender's Office we're always
13 representing people who we represented before who are now
14 victims or, or witnesses or something like this. There's
15 just a continuous cross-hatch there.

16 Q Now, why -- I mean was there, was there no one that
17 would come forward on Mr. Byers behalf or would it simply
18 didn't take the time to find someone?

19 I mean---

20 A Well, number one, I didn't know who to find, okay, and
21 I did, while I was sitting back there just a minute ago, I
22 was digging through my notes. There is a note in there
23 where I asked Mr. Byers what witnesses he knew of I needed
24 to get for him. He told me he didn't have any. So --.

25 Q Okay. Now, during his testimony there was a pretty

Don Thompson - Cross-examination
by Mr. Lewis

1 heated, a back and forth I believe between you and the then
2 solicitor at the time regarding some, some things that may
3 or may not have been admissible at that point, but---

4 A He violated the motion in limine.

5 Q He did.

6 And, now, why, after he continued to violate on the
7 same track of witness pitting, why was there no redirect in
8 an attempt to rehabilitate Mr. Byers' testimony?

9 A I assume you're talking about the gun. You said
10 witness pitting.

11 Are you talking about the gun?

12 Q Well, that was considered -- Judge Cole referred to
13 that as witness pitting.

14 A Okay.

15 Q But also as to statements that were made concerning
16 grass cutting with one of the victims. There was -- he, he
17 employed the same tactic according to you, but there was no
18 redirect to rehabilitate.

19 A Honestly I don't remember that.

20 Q Okay.

21 A But, quite honestly, as to the gun, I thought we should
22 of had a mistrial and I moved for it. The judge felt the
23 solicitor could rehabilitate himself.

24 Q Okay. Is it common practice to, to not inform the
25 accused, prior to a trial, as to, as to the conduct of the

Don Thompson - Cross-examination
by Mr. Lewis

1 trial and behavior?

2 I mean I know you said you did that on a fly, but is
3 that common practice?

4 A Well, no. As far as the conduct of the trial, he was
5 advised of that. As to what he should do while he was
6 testifying, that was on the fly when he decided he was gonna
7 testify.

8 Q Okay.

9 All right. I think that's all I have.

10 THE COURT: Anything further of this witness, Ms.
11 White?

12 MS. WHITE: Just one follow-up question.

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. WHITE:

16 Q In regards to any redirect of, of Mr. Byers in regards,
17 once you made the motion for mistrial when he mentioned a
18 gun being stolen and things, was there anything, after
19 reviewing the testimony now, that you think redirect would
20 have helped or made a difference in the trial?

21 A No, Mr. Byers testimony basically sabotaged the trial.

22 MR. WHITE: Okay. That's all I have, Your Honor.

23 THE COURT: Anything further?

24 RE CROSS EXAMINATION

25 BY MR. LEWIS:

Don Thompson - Recross examination
by Mr. Lewis

1 Q Mr. Thompson, now everything you testified to, do you
2 consider that to be the truth?

3 A I do.

4 MR. LEWIS: That's, that's all we have, Your Honor.

5 THE COURT: You may step down.

6 MS. WHITE: The State has no other witnesses, Your
7 Honor.

8 THE COURT: All right. Wish to argue the case,
9 counselor?

10 MR. LEWIS: Your Honor, I would simply argue that
11 certain steps that were not taken in terms of maybe some
12 more investigation that could of been taken on my client's
13 behalf in terms of looking to other witnesses possibly---

14 THE COURT: What specific witnesses are you talking
15 about and what specifically would they have said?

16 What, what have you proven that they would of said had
17 they been called?

18 MR. LEWIS: Your Honor, I've just been told that he was
19 not able to present witnesses and that's, that's all I
20 really know in terms of that specific---

21 THE COURT: All right.

22 MR. LEWIS: ---with possibly even---

23 THE COURT: But you don't have any specifics on it
24 today?

25 MR. LEWIS: No, Your Honor. I do not.

1 THE COURT: okay.

2 MR. LEWIS: However, what, what I do have is that I
3 think that possibly, while Mr. Thompson says that redirect
4 may not have helped, I think that redirect could of helped.
5 Mr. Byers initial testimony was severely beaten up by the
6 solicitor, and at several points the solicitor attempted to
7 witness pit, as, as Judge Cole referred to it, and I think
8 that that was very prejudicial to Mr. Byers and---

9 THE COURT: well, those occasions were objected to from
10 what I could tell?

11 MR. LEWIS: One was, one was not I believe, Your Honor,
12 if I remember the transcript correctly. But I would
13 argue---

14 THE COURT: And Judge Cole did not rule in favor of the
15 defense on that.

16 MR. LEWIS: No, sir, not on one. He allowed solicitor
17 Gowdy to rehabilitate as best he thought it could happen. I
18 would still say that was prejudicial at that point in time,
19 but---

20 THE COURT: wouldn't that have been a grounds for
21 appeal?

22 MR. LEWIS: Yes, sir, I believe---

23 THE COURT: It was the---

24 MR. LEWIS: I believe it was, but I'm, I'm still
25 raising that I think that that's still ineffective

1 assistance of counsel. It was raised from a, from a
2 standpoint of, of impropriety on the whole by the solicitor.
3 But I'm just making the arguments before---

4 THE COURT: Oh, I understand. I don't know anything
5 about the case other than what I've heard and seen today.
6 So, I'm trying to educate myself.

7 Go ahead.

8 MR. LEWIS: Yes. Yes, Your Honor. I'm sorry about
9 that.

10 THE COURT: Okay.

11 MR. LEWIS: I would just argue that I think there's
12 more that could of been done to help Mr. Byers in his
13 defense, and I think that by not maybe spending some more
14 time with him or not maybe making some more objections or
15 following up with some more witnesses that I think that that
16 was ineffective.

17 THE COURT: One thing, counsel, in your opening
18 statement to me you indicated that Mr. Byers had made
19 motions to represent himself.

20 MR. LEWIS: He did, yes, Your Honor.

21 THE COURT: And aren't those appealable issues as to
22 whether or not the judge granted that?

23 MR. LEWIS: They, they were appealed initially, and the
24 Court of Appeals struck that down, but Mr.---

25 THE COURT: Okay.

1 MR. LEWIS: ---Mr. Byers did allege ineffective
2 assistance of counsel verbally on the record at the trial
3 and attempted to represent himself. Judge Cole did not
4 allow that. However, I was stating, in opening, that I
5 think that things of that nature illustrate that he, he had
6 an issue with his counsel then, and clearly those issues
7 still remained.

8 THE COURT: Well, I mean I don't have any problem with
9 having issues with counsel. I'm just trying to sift through
10 what would of been matters that should of been raised or
11 were raised on appeals, and what are matters that would
12 constitute ineffective assistance of counsel.

13 MR. LEWIS: Yes, sir.

14 THE COURT: Obviously if he's trying to fire his
15 lawyer, and the judge doesn't allow it, that seems to me to
16 be an issue that should be taken up with the Court of
17 Appeals concerning the Judge's actions.

18 MR. LEWIS: Yes, sir, it was.

19 THE COURT: All right. Cause Mr. Thompson didn't make
20 that decision. The judge made that decision whether he
21 proceeded or not.

22 MR. LEWIS: Yes, sir, I understand that, and -- but
23 throughout -- I think what I'm getting at is, throughout the
24 course of the trial, Mr. Byers vocalized that, that he felt
25 that he could of done a better job representing himself and

1 that by possibly Mr. Thompson not raising these issues prior
2 to when they were raised, which was just before closing
3 arguments, it, that if, at that point, that Mr. Byers could
4 of been prejudicially impacted from that.

5 THE COURT: Now, is it -- I didn't hear any testimony
6 or evidence that would indicate that your client, that the
7 attorney didn't advise your client not to testify.

8 MR. LEWIS: Your Honor, he did advise him not to
9 testify. I can, I can---

10 THE COURT: And he did in spite of that advice?

11 MR. LEWIS: That's correct.

12 THE COURT: Okay. Anything further?

13 I'm sorry. I've asked some questions and maybe I got
14 you off message. I'll give you a chance to get back on.

15 MR. LEWIS: Just, just one moment, Your Honor. I
16 think---

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. LEWIS: Your Honor, he, he would like me to point
20 out that, as Mr. Thompson testified regarding the issue of
21 the gun and the young lady that was shot, that by not
22 objecting more vehemently to such and making more argument
23 on it that that completely destroyed his credibility and his
24 character in the eyes of the jury, and he feels that that
25 is, was a prejudicial impact from Mr. Thompson's---

1 THE COURT: Well, now maybe I misunderstood the
2 testimony. But Mr. Thompson testified that the fact that
3 that young lady had been shot was, was kept out of the
4 trial.

5 MR. LEWIS: It, it was in portion. It was some back
6 and forth, some banter back and forth that came out
7 regarding the young lady and being, and that where the gun
8 had been acquired that came into evidence even though that
9 was agreed to not be allowed in, and, as such, Mr. Byers
10 feels that that, that damaged his credibility with the jury
11 at that point. On that issue, he, he, again, states that,
12 that he was young and impressionable, and that he feels that
13 that was damaging to his credibility in terms of the jury,
14 and that's, that's---

15 THE COURT: Did the gun come in when he testified?

16 MR. LEWIS: It came in through the testimony. During
17 his testimony it came in through a statement that was
18 made---

19 THE COURT: Okay. So, had he not testified it wouldn't
20 have come in?

21 MR. LEWIS: Well, I can't say that for sure, but I mean
22 arguably---

23 THE COURT: Well, it didn't otherwise. It didn't
24 otherwise.

25 MR. LEWIS: It didn't otherwise.

1 THE COURT: All right.

2 MR. LEWIS: That's correct, yes, Your Honor.

3 APPLICANT: It came in.

4 THE COURT: Yes, ma'am, Ms. White.

5 MS. WHITE: And, Your Honor, just briefly.

6 The State would submit that the, that the evidence and
7 testimony presented today, in addition to the record itself,
8 is very strong that Mr. Thompson obviously was well prepared
9 and went in there with a strategy to attack the DNA in an
10 attempt to call into reasonable doubt for the jury. The,
11 the issue of the gun coming in, the statement was made it
12 was objected to, and, in fact, that's when Mr. Thompson made
13 his motion for mistrial. The judge denied that, and, and
14 offered, I guess, the chance to kind of -- it was a
15 statement I think about the gun was stolen, and that, you
16 know, it was resaid in a different manner so that it would
17 not appear to be prejudicial, but---

18 THE COURT: Well, now, was that during the defendant's
19 testimony?

20 MS. WHITE: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. WHITE: It was during cross-examination I believe.

23 THE COURT: Okay.

24 MS. WHITE: And, you know, Attorney, Mr. Thompson, was
25 well experienced. He's very experienced in, in doing these

1 type of cases. He obviously went through, had prepared
2 cross-examination for most if not all of the witnesses, and
3 tried to present the best case he can. But with the facts
4 and the evidence and then the testimony of the applicant,
5 against counsel's advice, he was put in a position of, of
6 trying to argue a defense maybe that, that he didn't
7 necessarily felt was the strongest.

8 The motion to relieve him was made right prior to
9 closing as well, and that was denied by the judge. But it
10 was put on the record before the Court.

11 So, we would just ask that you deny---

12 THE COURT: Well, it was an appealable issue?

13 It was done in the trial?

14 MS. WHITE: Right, and it was appealed before the Court
15 of Appeals.

16 THE COURT: Okay.

17 MS. WHITE: And that's all I have, Your Honor.

18 THE COURT: All right. Anything further, counsel?

19 MR. LEWIS: Nothing further, Your Honor.

20 THE COURT: All right. I find that the attorney for
21 the applicant did articulate a trial strategy, which I find
22 to be reasonable, and I do not find, however, that if the
23 applicant has established that there were any witnesses that
24 were not called or what they would of said. So, he's failed
25 in his burden of proof of showing what, if any, other

1 witnesses may have testified to. I also find that it
2 appears to me that the efforts or the attention to the case
3 given by the attorney was adequate and meets the standard
4 for attorneys in his position.

5 So, I find that the applicant has failed to meet his
6 burden of proof in the matter.

7 I'll ask the State to prepare an order denying the
8 applicant.

9 Thank you very much.

10 MS. WHITE: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Also, Ms. white, you might indicate it appears there
13 was overwhelming proof against the defendant at trial as
14 well.

15 MS. WHITE: Okay. Yes, Your Honor.

16 THE COURT: Thank you.

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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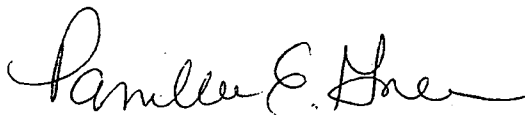
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 11th day of June, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 5th, 2012



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF CHEROKEE) FILED IN OFFICE OF SEVENTH JUDICIAL CIRCUIT
 CLERK OF COURT
 Jonathan Byers, #324474,) CHEROKEE COUNTY, S.C. 2011-CP-11-0147

2012 AUG 9 PM 3 37
 Applicant,
 BRANDY W. MCBEE

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 7, 2011. The Respondent made its Return on or about February 15, 2012. An evidentiary hearing into the matter was convened on June 11, 2012, at the Spartanburg County Courthouse. The Applicant was present and represented by Alexander P. Lewis, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Don A. Thompson, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. The Applicant was indicted at the June 2007 term of the Cherokee County Grand Jury for three counts of burglary – 1st degree (2007-GS-11-0851, -0852, -0853) and three counts of criminal sexual conduct – 1st degree (2007-GS-11-0854, -0855, -0856). He was also indicted in August 2007 for armed

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robbery (2007-GS-11-0970) and possession of a weapon during commission of a violent crime (2007-GS-11-0971, -0972, -0973). Don A. Thompson, Esquire, represented the Applicant at trial. On October 10, 2007, the Applicant was convicted of all charges by a jury. The Honorable J. Derham Cole presided over the Applicant's trial and sentenced him to confinement for life on each burglary - 1st degree charge, concurrent terms of thirty years for each criminal sexual conduct - 1st degree and armed robbery, and consecutive terms of five years for each charge of possession of a weapon during the commission of a violent crime. The three consecutive five year sentences were later vacated pursuant to §16-23-490.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Byers, Op. No. 2010-UP-139 (filed February 22, 2010). The Remittitur was returned on March 10, 2010.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to see Applicant more than three times when Applicant was facing serious charges,
 - b. Counsel failed to adequately investigate the case,
 - c. Counsel failed to do things Applicant requested.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant

findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

See
p 3

The Applicant testified that he tried several times to relieve counsel and obtain new counsel or to represent himself and he was not allowed. Applicant testified that Counsel did nothing for him, only met with him twice for ten to fifteen minutes in ten (10) months, and only discussed plea bargains with Applicant when they met. Applicant testified that Counsel did not give him the motion of discovery, request a preliminary hearing, or tell him how to behave in front of a jury. Applicant also testified that Counsel allowed the jury to see him during trial in shackles. Counsel testified that they met more than twice and he did review the discovery materials with the Applicant and discussed how to behave at trial. Counsel acknowledged that he did not go over how to behave on the stand because the decision for Applicant to testify was made during trial. Applicant testified that Counsel never made a motion to have shackles removed during the trial. Counsel testified that he did not recall the Applicant wearing shackles, but would have made a motion to have them removed prior to trial if he were. Counsel further testified that he specifically recalled the Applicant wearing a red suit when he took the stand.

Counsel testified that he became a member of the South Carolina Bar in 1980, tries generally criminal cases, and had tried five (5) death penalty cases prior to the time of Applicant's trial. Counsel testified that the State had DNA evidence against the Applicant, from condoms used in the attacks. Counsel hired a DNA expert and attempted to "muddy the water" during his cross-examination of the SLED DNA expert. Counsel testified that the Applicant wanted to proceed with a defense of consensual sex; however, the stories of the different witnesses were never inconsistent and each victim claimed she did not know the Applicant, so he believed that defense would be unsuccessful. Counsel testified that this trial strategy was to focus on attacking the DNA evidence. Counsel also testified that he asked the Applicant whether there were any witnesses that could be called on his behalf and the Applicant told him there were not.

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