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1 Obviously, sexual assault victims cannot be
2 photographed.

3 **MEDIA PERSON:** Yes.

4 **THE COURT:** So, I think your employer
5 has always been really good about that; but I just
6 wanted to mention it. And are you here to report or
7 take --

8 **MEDIA PERSON:** And I'm a photographer.

9 **THE COURT:** A photographer. So,
10 what -- do you want to take pictures of the lawyers
11 during opening statements or --

12 **MEDIA PERSON:** And the defendant.

13 **MEDIA PERSON:** Yes.

14 **THE COURT:** Okay.

15 **MEDIA PERSON:** Just the coverage of
16 the trial. I do not think -- you know, I don't
17 know -- I think -- I think --

18 **THE COURT:** There is no problem with
19 that. I'm willing to work with you.

20 **MEDIA PERSON:** Okay. Great.

21 **THE COURT:** So, this is the person you
22 wanted to open the blinds for?

23 **THE BAILIFF:** Yes, ma'am.

24 **THE COURT:** Okay. So, we can open the
25 blinds. That way we can all see who's out there. I

1 prefer to have them outside for security reasons
2 anyway. Although when the sexual assault victim
3 testifies, we might want to lower them.

4 **MEDIA PERSON:** That's probably --

5 **THE COURT:** Somebody might film her,
6 and then it would be too late to do anything about
7 it.

8 **MEDIA PERSON:** That's always a good
9 idea.

10 **THE COURT:** So, I think -- and I
11 take -- does your camera click or make noise?

12 **MEDIA PERSON:** Out there, I don't
13 think it -- I mean, it can be silenced. Still clicks
14 a little bit.

15 **THE COURT:** Okay. Okay.

16 **MEDIA PERSON:** On the other side of
17 the entrance, I don't think --

18 **THE COURT:** What you need to do is
19 just pick a spot so you're not moving around and
20 being -- you know the jurors are not allowed to be
21 photographed.

22 **MEDIA PERSON:** Yes.

23 **THE COURT:** Okay.

24 **MEDIA PERSON:** I will be on the other
25 side of the glass.

1 have you here.

2 **MEDIA PERSON:** Thank you.

3 **THE COURT:** If everyone is ready, we
4 will talk to Mr. Hernandez first. Thank you. Juror
5 No. 36.

6 **THE BAILIFF:** Hernandez?

7 **THE COURT:** Yes, ma'am.

8 **MR. VINAS:** Which issue?

9 **THE COURT:** We talked to him
10 yesterday.

11 **MR. VINAS:** He had vacation or a work
12 issue?

13 **THE COURT:** Work issue.

14 **MR. VINAS:** Okay.

15 **THE COURT:** A financial hardship for
16 him, I think. Do you happen to have the jury cards
17 still? Are they still up here?

18 **THE CLERK:** Yes, ma'am.

19 **THE COURT:** Okay. Thank you.

20 **(Juror No. 36 enters courtroom)**

21 **THE COURT:** Good morning,
22 Mr. Hernandez. You can just sit up here on the
23 witness stand so the lawyers can hear you because
24 there is a microphone there. So, you can have a
25 seat. Relax a minute.

1 **JUROR NO. 36:** Okay.

2 **THE COURT:** You're Juror No. 36,
3 aren't you?

4 **JUROR NO. 36:** Uh-huh (affirmative.)

5 **THE COURT:** How are you doing?

6 **JUROR NO. 36:** Good.

7 **THE COURT:** I know you told us
8 yesterday that you were concerned you would not be
9 paid and that might be a financial hardship. So,
10 tell me about that.

11 **JUROR NO. 36:** Well --

12 **THE COURT:** Talk loud so everybody can
13 hear you.

14 **JUROR NO. 36:** Well, I talked to my
15 boss; and they told me they wouldn't pay me only two
16 days.

17 **THE COURT:** Okay.

18 **JUROR NO. 36:** And this is day two. I
19 have bills and a little 1-year-old kid.

20 **THE COURT:** How much do you make an
21 hour?

22 **JUROR NO. 36:** Right now I'm not too
23 sure because my old boss just gave me a raise. So, I
24 got to check on like the account. I'm like at 16.

25 **THE COURT:** Okay. And does your wife

1 work?

2 **JUROR NO. 36:** She just got hired.

3 **THE COURT:** So, she hasn't been
4 working.

5 **JUROR NO. 36:** I'm the only one.

6 **THE COURT:** And then how many
7 children?

8 **JUROR NO. 36:** One.

9 **THE COURT:** One. And is that a baby,
10 or how old is that child?

11 **JUROR NO. 36:** He is 1 years old.

12 **THE COURT:** 1 years old.

13 **JUROR NO. 36:** And a couple months.

14 **THE COURT:** So, if you were to not get
15 paid for let's say two and a half weeks or so, would
16 that be a financial hardship for you?

17 **JUROR NO. 36:** Yes, big time. I mean,
18 I got another big issue, too.

19 **THE COURT:** What is that?

20 **JUROR NO. 36:** I don't know if I can
21 talk about it with you, but -- can I say it?

22 **THE COURT:** Sure. Do you feel like
23 you need privacy or what?

24 **JUROR NO. 36:** Yeah, little bit.

25 **THE COURT:** Well, before he has to

1 reveal something of a private nature, can I make a
2 suggestion? All the lawyers have a seat.

3 **MR. VINAS:** Certainly.

4 **THE COURT:** Okay. Thank you.

5 Ms. Primm, do you have any questions
6 of Mr. Hernandez?

7 **MS. PRIMM:** No, ma'am.

8 **THE COURT:** Mr. Vinas, do you have any
9 questions?

10 **MR. VINAS:** I do, Your Honor.

11 **THE COURT:** Okay.

12 **MR. VINAS:** Mr. Hernandez, safe to say
13 you need to get out of here as soon as possible?

14 **JUROR NO. 36:** What was that?

15 **MR. VINAS:** I'm sorry. I'm talking
16 too fast apparently. Is it safe to say that you need
17 to get out of here as soon as possible?

18 **JUROR NO. 36:** Kind of, yes.

19 **MR. VINAS:** Okay. And I missed it
20 when you were talking to the Judge. Are you the only
21 one in your household who works?

22 **JUROR NO. 36:** I was. Now my
23 girlfriend just got hired.

24 **MR. VINAS:** Okay. All right. And you
25 have a 1 -- 1-year-2-month-old?

1 **JUROR NO. 36:** Yes.

2 **MR. VINAS:** Any other children?

3 **JUROR NO. 36:** Just one boy.

4 **MR. VINAS:** Okay. And is your family
5 depending upon your income for financial support?

6 **JUROR NO. 36:** Well, we have my
7 girlfriend just started working. So --

8 **MR. VINAS:** So, she hasn't gotten paid
9 yet?

10 **JUROR NO. 36:** No.

11 **MR. VINAS:** Okay. That's all I have,
12 Your Honor.

13 I have one more question.

14 **THE COURT:** All right.

15 **MR. VINAS:** Will that be on your mind
16 while you're deliberating or while in this trial?

17 **JUROR NO. 36:** Yes. And something
18 else that I got, too.

19 **MR. VINAS:** Another personal issue?

20 **JUROR NO. 36:** Yes.

21 **MR. VINAS:** Okay. All right.

22 **THE COURT:** Okay.

23 **MR. VINAS:** That's all I have, Judge.

24 **THE COURT:** Thank you. Why don't you
25 step out in the hallway, and we will call you right

1 back in. You don't have to go back to the jury room.

2 **JUROR NO. 36:** Okay.

3 **THE COURT:** You can just step out in
4 the hallway.

5 **(Juror No. 36 exits courtroom)**

6 **THE COURT:** I would propose to excuse
7 this juror and substitute the alternate juror. Any
8 objections from the State?

9 **MS. PRIMM:** None from the State, Your
10 Honor.

11 **THE COURT:** From the Defense?

12 **MR. VINAS:** No, Your Honor.

13 **THE COURT:** Thank you. Then would you
14 ask him to step back in. And he will probably need
15 an excuse for today.

16 **(Juror No. 36 enters courtroom)**

17 **THE COURT:** We don't want your family
18 to suffer financial hardship. So, you have been
19 excused. And if you will step around and see the
20 clerk, she will give you your paperwork to show you
21 were in court today. Let me suggest the next time
22 you have jury duty -- I know it's hard to speak up in
23 front of a lot of people, but better to mention this
24 earlier instead of after you are on the jury.

25 **JUROR NO. 36:** Okay.

1 **THE COURT:** Okay. So, thank you. It
2 was nice to get to meet you. And I admire your work,
3 and you're a good family man. Thank you, sir.

4 **(Juror No. 36 excused from the jury**
5 **and released)**

6 **THE COURT:** Thank you. The next
7 juror, according to the bailiff, says that he has a
8 vacation on Friday and Monday. And I don't know if
9 he mentioned that. There were some people with those
10 vacations, but it was his wife who wanted him to
11 bring it to our attention.

12 **THE BAILIFF:** Yes, ma'am. He said it
13 can be rescheduled.

14 **THE COURT:** Okay. Well, let's talk to
15 him just a moment. Thank you.

16 **(Juror No. 43 enters courtroom)**

17 **THE COURT:** Hello, Mr. Free.

18 **JUROR NO. 43:** Yes.

19 **THE COURT:** We're going to ask that
20 you sit on the witness stand just because there is a
21 microphone there, and that makes it easier for
22 everybody to hear.

23 **JUROR NO. 43:** Okay.

24 **THE COURT:** So, please have a seat and
25 relax. Get comfortable there. And tell us what

1 issue has come up overnight.

2 **JUROR NO. 43:** I have travel plans to
3 leave Friday afternoon at 4:20 and returning Monday.
4 I believe my flight arrives like 11:00-something.
5 It's --

6 **THE COURT:** That's this coming Friday?

7 **JUROR NO. 43:** This coming Friday and
8 Monday. And it's travel -- I feel very strong that
9 this is important and I'm willing to cancel it, but I
10 wanted to ask --

11 **THE COURT:** Well, thank you.

12 **JUROR NO. 43:** -- if possible.

13 **THE COURT:** The problem is -- and
14 thank you for being willing to cancel it. We have
15 excused one juror this morning. So, we have no
16 alternates left.

17 **JUROR NO. 43:** It's okay.

18 **THE COURT:** So, we have to start over
19 again. So, I'm sorry. So, thank you for being
20 willing to work with us on that.

21 Does the State have the any questions?

22 **MS. PRIMM:** No, ma'am.

23 **THE COURT:** Does the Defense have any
24 questions?

25 **MR. GRAHAM:** Just briefly, Judge.

1 **THE COURT:** Thank you.

2 **MR. GRAHAM:** Sir, if we were to --
3 and, obviously, this is completely up to the Judge;
4 but if you were to be able to leave a little earlier
5 on Friday and possibly start later on Monday, would
6 you -- is there a time frame that would be
7 comfortable for you to be able to wrap up here on
8 Friday to be able to still make your flight?

9 **JUROR NO. 43:** Sure. The flight is
10 4:20 out of Hobby. And I would leave directly from
11 here. So, anytime within --

12 **MR. GRAHAM:** Like say if we broke at
13 2:00 --

14 **JUROR NO. 43:** Absolutely.

15 **MR. GRAHAM:** -- would be okay?

16 **JUROR NO. 43:** I work downtown. I was
17 going to leave at 2:00 anyways.

18 **MR. GRAHAM:** You arrive Monday at
19 11:00?

20 **JUROR NO. 43:** 11:30, I believe is
21 when it arrives at Hobby.

22 **MR. GRAHAM:** So, if we were to
23 possibly start on Monday a little later, like maybe
24 say 1:30 or 2:00, would you think you would be able
25 to do that?

1 **JUROR NO. 43:** Absolutely.

2 **MR. GRAHAM:** And then -- the reason
3 I'm asking that is with the fact that you have to
4 reschedule, would that weigh in your mind and somehow
5 affect your ability to sit as a juror? Would it
6 somehow affect your mood or ability to give both
7 sides a fair trial?

8 **JUROR NO. 43:** No, not at all. In
9 fact, I thought about that yesterday. I was going to
10 say something, but in my mind this is much more
11 important than the trip. I'm willing to cancel the
12 trip if that's what's most important, if that's what
13 needs to be done.

14 **MR. GRAHAM:** Is it going to --

15 **JUROR NO. 43:** Not at all.

16 **MR. GRAHAM:** Is it going to cause you
17 problems at home?

18 **JUROR NO. 43:** No, not at all.

19 **MR. GRAHAM:** Are you going to blame it
20 on us?

21 **JUROR NO. 43:** Well, now, I might do
22 that. But my wife was a court reporter for 20 years
23 in New Jersey. She totally understands how it
24 operates. And, again, we feel very strongly about
25 how important it is to serve jury duty.

1 **MR. GRAHAM:** Okay. Thank you, sir.

2 **MR. VINAS:** No further questions.

3 **THE COURT:** And you also have your
4 reservations.

5 **JUROR NO. 43:** Yes.

6 **THE COURT:** I guess you need to know
7 if we will be willing to quit at 2:00 on Friday and
8 start about 1:30 on Monday. So, let me discuss that
9 with the lawyers. We will do that over the lunch
10 recess. If I forget to tell you, remind me.

11 **JUROR NO. 43:** Yes, ma'am.

12 **THE COURT:** Okay. Thank you.

13 **JUROR NO. 43:** Okay.

14 **(Juror No. 43 exits courtroom)**

15 **THE COURT:** That was really smooth to
16 get Friday afternoon off.

17 **MR. GRAHAM:** I have a wife to keep
18 happy, too, Judge.

19 **THE COURT:** Oh, my goodness. Would
20 that cause any scheduling problems with the witness?

21 **MS. PRIMM:** It may with one witness,
22 the doctor out of Arizona. She has a special needs
23 child, cerebral palsy, having surgery next week. I
24 believe she is a single parent. She has to leave on
25 Tuesday because she has got to have that day to pick

1 up her child and get her child to New Mexico where
2 the surgery is going to take place.

3 **THE COURT:** Oh, my.

4 **MS. PRIMM:** So, she is not being a
5 whiny doctor. She has a real legitimate need.

6 **THE COURT:** I thought there were only
7 whiny lawyers, you know.

8 **MS. PRIMM:** No. No. Trust me.
9 Doctors are much worse.

10 **THE COURT:** I didn't quite follow all
11 of her schedule, but are you trying to put her on
12 before Friday or --

13 **MS. PRIMM:** Well --

14 **THE COURT:** When are you trying to put
15 her on?

16 **MS. PRIMM:** We have been in
17 communication. I thought Matt and I kind of pared
18 things down. I thought maybe we could get to her
19 Friday morning.

20 **THE COURT:** Okay.

21 **MS. PRIMM:** But it would be calling
22 her out of order because I don't think I could do
23 everything --

24 **THE COURT:** Okay.

25 **MS. PRIMM:** -- before her.

1 **THE COURT:** Okay.

2 **MS. PRIMM:** If we left at 1:30, I
3 don't know that that would happen.

4 **THE COURT:** Okay. I'm sorry. When
5 will you -- are you trying to put her on as a
6 witness -- what day?

7 **MS. PRIMM:** Punishment.

8 **THE COURT:** It's a punishment witness?

9 **MS. PRIMM:** She is a punishment
10 witness. My guilt -- we will be done with guilt by
11 then.

12 **THE COURT:** Okay. So, I guess
13 possibly then there is some flexibility with the
14 schedule at punishment because there is so many
15 witnesses.

16 **MS. PRIMM:** Not with her.

17 **THE COURT:** Okay.

18 **MS. PRIMM:** Not with her. I either
19 get her on Friday or Monday, or I don't get her.

20 **THE COURT:** Either this Friday or this
21 Monday?

22 **MS. PRIMM:** Or I don't get her.

23 **THE COURT:** Okay. Thank you. Okay.
24 So, in that case I don't think it's worth it since he
25 is willing to cancel his trip. So, good try,

1 Mr. Graham. Sorry.

2 Okay. And so, why don't I clear this
3 up with the juror now. Would you mind asking
4 Mr. Free to step back in?

5 And while she is doing that, since
6 there is a photographer -- excuse me. Since there is
7 a photographer here -- he knows not to photograph
8 sexual assault victims, of course, and the jurors.
9 But I was just going to mention to the jury there is
10 a photographer here, but the rules do not permit them
11 to be photographed. And so, they should pay no mind
12 whatsoever.

13 Is that all right with everyone if I
14 give that instruction?

15 **MS. PRIMM:** Yes, ma'am.

16 **MR. GRAHAM:** That's fine with us,
17 Judge.

18 **THE COURT:** Okay. And, of course, you
19 need to swear the jury.

20 **THE CLERK:** Yes, ma'am.

21 **THE COURT:** Okay. Thank you.

22 **(Juror No. 43 enters courtroom)**

23 **THE COURT:** I'm sorry to say that it
24 causes a major scheduling problem. We have a number
25 of witnesses scheduled, and there is kind of a

1 complicated schedule. So, I'm sorry. We would be
2 willing to recess but for that. So, I'm sorry.
3 Please apologize to your wife.

4 **JUROR NO. 43:** I will.

5 **THE COURT:** Okay.

6 **JUROR NO. 43:** Not a problem.

7 **THE COURT:** Thank you. If you want,
8 you can remain in here. We're going to bring out the
9 other jurors.

10 **JUROR NO. 43:** Okay.

11 **THE COURT:** Thank you.

12 We're still missing one?

13 **THE BAILIFF:** Yes.

14 **THE COURT:** Okay. Sorry. You get to
15 go back. Thank you.

16 *(Juror No. 43 exits courtroom)*

17 *(Brief pause)*

18 **THE COURT:** And that was Juror No. 40
19 that's missing.

20 *(Brief pause)*

21 **MR. VINAS:** Judge, are we working past
22 5:00?

23 **THE COURT:** I try not to work past
24 5:00.

25 *(Brief pause)*

1 **THE COURT:** Thank you. We're ready.

2 **THE BAILIFF:** All rise.

3 *(Jury enters the courtroom)*

4 **THE COURT:** And, jurors, I'm going to
5 ask that you remain standing because we're going to
6 give you the oath. Thank you.

7 Those in the courtroom other than the
8 jurors may be seated.

9 And Ms. Williamson will administer the
10 oath. Please raise your right hand.

11 *(The oath was administered to the*
12 *jury)*

13 **THE COURT:** Thank you. Please be
14 seated.

15 Members of the jury, there is a
16 photographer here this morning. The rules do not
17 allow some witnesses to be filmed or photographed and
18 do not allow the jurors to be photographed. So, you
19 don't have to worry about being in any of the
20 pictures. So, you should disregard anyone who's
21 taking a picture or filming. I think you will find
22 that pretty soon you forget they're here. Thank you.

23 If you would stand, please,
24 Mr. Whitfield.

25 And if you would arraign the

1 defendant.

2 **MS. PRIMM:** In Cause No. 1424070, in
3 the State of Texas Vs. Herman Whitfield.

4 In the name and by authority of the
5 State of Texas, the duly organized Grand Jury of
6 Harris County, Texas, presents in the District Court
7 of Harris County, Texas, that in Harris County,
8 Texas, Herman Whitfield, hereafter styled the
9 defendant, heretofore on or about June 11, 2008, did
10 then and there unlawfully, intentionally, and
11 knowingly cause the sexual organ of Jocelyn Batiz,
12 hereinafter called the complainant, to contact the
13 sexual organ of the defendant, Herman Whitfield,
14 without the consent of the complainant, namely, the
15 defendant compelled the complainant to submit and
16 participate by use of physical force and violence,
17 and in the course of the same criminal episode, the
18 defendant used and exhibited a deadly weapon, namely,
19 a knife.

20 Against the peace and dignity of the
21 State. Signed, the Foreperson of the Grand Jury.

22 **THE COURT:** Thank you. What plea is
23 entered?

24 **THE DEFENDANT:** Not guilty.

25 **THE COURT:** Thank you. You may be

1 seated, sir.

2 Will the State be giving an opening
3 statement?

4 **MR. PENEGUY:** Yes, Judge.

5 **THE COURT:** Thank you. You may
6 proceed.

7 **OPENING STATEMENT**

8 **MR. PENEGUY:** May it please the Court?

9 **THE COURT:** Yes, sir.

10 **MR. PENEGUY:** It's a woman's worst
11 nightmare. That's what you will hear from Jocelyn
12 Batiz. It's the one day in her life that she never
13 wants to remember but can never, never forget.

14 June 11, 2008, was a Wednesday. It
15 was 1:00 in the afternoon. Jocelyn and her friend
16 Denise will tell you that Jocelyn spent most of the
17 day over at Denise's apartment. It's an apartment
18 that's a little bit southeast from Houston. It's in
19 an area -- a part of town called Sunnyside.

20 Denise lived in that apartment with
21 her mom and her brother. And Jocelyn had come over
22 that day around 8:00, 9:00 in the morning. You will
23 hear from those witnesses that at some point in the
24 afternoon they got a call from Jocelyn's mother
25 saying it was time to come home. Jocelyn at that

1 time was -- was about 21 years old, still lived with
2 her mom.

3 In order for Jocelyn to get home, like
4 many people who lived in Sunnyside, she had to walk
5 from Denise's apartment to a bus stop. She knows the
6 bus stop. She knows the bus schedule. She knows
7 that she had to walk a couple of blocks in order to
8 get to Cullen and Reed Road, where the bus picks up
9 to go north back to where her mom lives.

10 It's 1:00 in the afternoon, the
11 summertime. And as she left Denise's apartment, she
12 will tell you that she took a shortcut, a little gap
13 in the fence outside at the dead end of the street on
14 Wilmington. And there is a pedestrian bridge that
15 kind of goes over a little -- little bayou, little
16 culvert; and it takes you to the other side of the
17 Wilmington.

18 It's a dead end road, but there is a
19 foot bridge for foot traffic to be able to cut across
20 it to get down to the Sunnyside Clinic that's on
21 Wilmington and Cullen and kind of save yourself the
22 trip of having to walk all the way around to get to
23 the bus.

24 1:00 is in the afternoon, she goes
25 outside, she left her friend's apartment. She was in

1 a hurry to get home. She wasn't exhibiting any type
2 of risky behavior. But we will tell you when she
3 walked across the bridge, she walked down Wilmington,
4 she will describe the street to you, kind of vacant,
5 abandoned. No houses on that street, no businesses.
6 And she had seen somebody up on the road that was
7 coming towards her, and she will describe him to you.

8 It was an African American male,
9 approximately 30, 40 years old. She will tell you he
10 was wearing a baseball cap and sunglasses. And it
11 looked like he had lost something. He was looking
12 kind of on the side of the road. She will tell you
13 that she didn't think anything of it. It wasn't
14 unusual for people to be walking on that road.

15 And as Jocelyn walked past that man,
16 her life changed forever. She will tell you that she
17 was grabbed by the neck, started to be pulled. She
18 will tell you that she was desperate, terrified.
19 Jocelyn would have screamed for help if only she
20 could have.

21 You will hear Jocelyn's voice. She
22 will tell you about the tracheotomy she had when she
23 was a baby, which literally makes it impossible for
24 her to scream.

25 Jocelyn will tell you that the man

1 overpowered her. He held a knife to her neck. She
2 will describe the knife to you. She will tell you
3 how he pulled her off the road and into some tall
4 weeds and an overgrown bush that was on the other
5 side of a wire fence, how he pushed her to the
6 ground.

7 Jocelyn will tell you how he pulled
8 her pants down and how she struggled with him. She
9 will tell you what his words were. She will tell you
10 what her fear was. She will tell you how he sexually
11 assaulted her at knifepoint.

12 She will also tell you that after he
13 left, she ran to the closest place that she could
14 think of, which was Denise's apartment just on the
15 other side of the foot bridge.

16 Denise will tell you what Jocelyn was
17 like when she got back, just minutes later. You will
18 learn -- and you will hear from police officers that
19 were dispatched to Denise' apartment.

20 You will hear how they went back to
21 the scene with Jocelyn, that -- hours after it
22 occurred and literally recovered her shoes. She had
23 run out of her shoes and left them at the crime
24 scene. She didn't have time to stop and grab them.
25 She just needed to get to safety.

1 You will hear, like witnesses and
2 victims of these cases, how she had a sexual assault
3 examination at the hospital. You will hear from the
4 nurse who is trained to perform sexual assault
5 examinations.

6 And you will learn how they treat the
7 body, the clothes -- and her clothing all of the
8 person as a crime scene. You will hear the process
9 by which they collect evidence and how they did that
10 in this case.

11 You will also hear from the follow-up
12 officers who met with Jocelyn in 2008, how they took
13 her sworn statement, how they documented the case,
14 how they requested evidence to be processed. And
15 they will tell you that Jocelyn thought maybe, just
16 maybe, if she could just see him again, she would be
17 able to pick that person.

18 But you will learn that she wasn't
19 able to pick out anyone. She never identified
20 anyone. This wasn't someone that she knew. This was
21 a stranger.

22 And while Jocelyn couldn't identify
23 anyone and point the finger at them for having
24 committed this crime, you will learn that science,
25 years later, was able to do what Jocelyn could not.

1 You will learn the DNA evidence that was recovered
2 from Jocelyn's clothes in 2008 -- and you will hear
3 from DNA analyst experts who were able to compare the
4 blood that was recovered from Jocelyn's shorts, blood
5 that belongs to the defendant.

6 Jocelyn will tell you that she knew
7 she could hear it, that condom going on right before
8 she was sexually assaulted; and somehow that knife
9 caused that defendant to bleed on her shorts. And
10 that is what solves this case.

11 You will hear from all of the
12 witnesses that the State can provide you to provide
13 testimony as to what happened back on June 11, 2008,
14 as to why we're here today.

15 At the end we will ask you to consider
16 all of the evidence and especially Jocelyn --
17 Jocelyn's words and to share that she is not just
18 some name in an indictment, but she is a person who
19 was terrified, who experienced her worst nightmare,
20 and who still can't shake the memories of that day.

21 And after weighing all of the
22 evidence, we will ask that you find the defendant
23 guilty for what he did to Jocelyn for the offense of
24 aggravated sexual assault.

25 Thank you.

1 **THE COURT:** Thank you.

2 Does the Defense wish to give an
3 opening statement at this time?

4 **MR. GRAHAM:** Yes, Your Honor.

5 **THE COURT:** Thank you. Mr. Graham.

6 **OPENING STATEMENT**

7 **MR. GRAHAM:** May it please the Court?

8 **THE COURT:** Yes, sir.

9 **MR. GRAHAM:** Ms. Primm, Mr. Peneguy,
10 ladies and gentlemen.

11 What you just heard from Mr. Peneguy
12 is very passionate, very well thought-out plan of
13 what they hope will come from this witness stand,
14 what they hope will come into evidence. But what you
15 have heard up to this point is not evidence.

16 What you have heard is essentially a
17 game plan, like a coach for a team has a game plan of
18 what they hope will happen on the field. But this is
19 the field. This is where you see what does or does
20 not happen.

21 So, what Joe and I are here to ask you
22 to do is what all of you promised that you could do
23 and why the 12 of you are sitting here and not the
24 other 108 that came here yesterday, and that's come
25 into this process with an open mind. You haven't

1 heard any evidence yet.

2 The evidence is not only what they
3 propose what their witnesses will say, but what we
4 question them about. And we encourage you to give us
5 all a fair chance to get all the information, all the
6 evidence out there.

7 And don't forget the constitutional
8 right that this man has. And this -- Judge Krockner
9 made sure you-all knew a bubble is over him, and that
10 bubble is still there. It hasn't been burst by the
11 game plan that the State says that they have. He is
12 presumed innocent. You have not heard any evidence.
13 And that bubble stays around him unless and until
14 they prove this case beyond a reasonable doubt.

15 Hold them to their job, kick the tires
16 of their case, and make sure that they do what they
17 say they hope to do. Because otherwise, that
18 presumption of innocence, that bubble, stays around
19 Mr. Whitfield and never bursts.

20 And unless they can prove this case
21 beyond a reasonable doubt, that bubble never bursts,
22 and you have no choice but to find him not guilty.

23 Thank you.

24 **THE COURT:** Thank you very much. The
25 Rule was invoked outside the presence of the jury.

1 Are there witnesses present?

2 **MS. PRIMM:** There should be two
3 witnesses right now in the hallway. Would you like
4 me to go get them?

5 **THE COURT:** Yes, ma'am. Or the
6 bailiff can ask them to step in. We need all
7 witnesses to come in and be sworn.

8 And members of the jury, this is the
9 Rule with no name. I guess it's the rule of
10 sequestration, but in Texas it's just called "the
11 Rule." So, I will instruct the witnesses about it.
12 Thank you.

13 Would you raise your right hand,
14 please, to take the oath?

15 **(Witnesses duly sworn)**

16 **THE WITNESS:** I do.

17 **THE COURT:** Thank you. The Rule has
18 been invoked. That means from now until this phase
19 of the trial is over, you may not discuss the case
20 with anyone except the lawyers or someone working for
21 the lawyers, such as a paralegal or an investigator.

22 Also, you may not hear any other
23 witness testify. So, you will have to wait outside
24 the courtroom until you're called as a witness.

25 And if the lawyers will please make

1 sure that any other witnesses know the Rule is
2 invoked --

3 **MS. PRIMM:** Yes, ma'am.

4 **THE COURT:** -- when they arrive.

5 And who will be your first witness,
6 then?

7 **MS. PRIMM:** Denise Thompson, Your
8 Honor.

9 **THE COURT:** So, Ms. Thompson, you may
10 come up to the witness stand.

11 And, Officer, you will need to step
12 outside. Thank you so much.

13 Just walk around that way. And you
14 may have a seat there and get comfortable.

15 **DENISE THOMPSON,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **Q.** (**BY MS. PRIMM**) Could you please introduce
19 yourself to the ladies and gentlemen of the jury?

20 **A.** Hi. I'm Denise Thompson.

21 **Q.** And, Ms. Thompson, this is a huge
22 courtroom. I need you to adjust the mike so you
23 speak into it so everybody can hear you. All right?

24 **A.** Yes, ma'am.

25 **THE COURT:** Cynthia, can you thump it

1 and let's make sure it's on?

2 **THE REPORTER:** Yes, ma'am.

3 No, ma'am, it's not on.

4 **THE COURT:** So, we need to take a
5 minute and see if we can get the microphone turned
6 on.

7 **(Brief pause)**

8 **THE COURT:** Okay. You got it. Thank
9 you.

10 **Q. (BY MS. PRIMM)** Okay. It wasn't you. It
11 was the microphone, Ms. Thompson.

12 **A.** Yes, ma'am.

13 **Q.** Ms. Thompson, can you tell the ladies and
14 gentlemen of the jury how old you are?

15 **A.** Twenty-seven.

16 **Q.** And are you working?

17 **A.** Yes, ma'am.

18 **Q.** How long have you been working?

19 **A.** Since I was 24.

20 **Q.** All right. And what type of work do you
21 do?

22 **A.** Retail.

23 **Q.** And have you done that for the three years?

24 **A.** Yeah.

25 **Q.** Okay. And did you grow up here in Houston?

1 **A.** Yes, ma'am.

2 **Q.** When you were in middle school and high
3 school, what part of town did you live in?

4 **A.** Sunnyside area.

5 **Q.** And where did you go to middle school?

6 **A.** Carnegie Elementary.

7 **Q.** Okay. And where did you go to high school?

8 **A.** Worthing High School.

9 **Q.** When you were going to Worthing High
10 School, where did you live? Do you remember the name
11 of the apartments?

12 **A.** Uh-huh (affirmative.) Wilmington
13 Apartments.

14 **Q.** How close were the Wilmington Apartments to
15 Worthing High School?

16 **A.** Right in back of the school.

17 **Q.** Okay. And do you know if Wilmington
18 Apartments are still there?

19 **A.** No.

20 **Q.** You don't know, or you do?

21 **A.** No. They're torn down.

22 **Q.** Okay. Do you remember when -- do you
23 recall when they tore them done?

24 **A.** Ma'am?

25 **Q.** Do you know when they tore them down?

1 **A.** No, ma'am.

2 **Q.** And how long did you live in the Wilmington
3 Apartments?

4 **A.** Since fifth grade.

5 **Q.** Fifth grade until what grade?

6 **A.** To the 12th grade.

7 **Q.** Okay. Did you graduate from high school?

8 **A.** Yes, ma'am.

9 **Q.** And that was Worthing High School?

10 **A.** Yes, ma'am.

11 **Q.** Who did you live in the Wilmington
12 Apartments with?

13 **A.** My grandmother.

14 **Q.** And did you have any siblings living there
15 with y'all?

16 **A.** My brothers and sisters.

17 **Q.** How many brothers and sisters?

18 **A.** I have -- it's three girls and two boys.

19 **Q.** Okay. So, the five of y'all and your
20 grandmother?

21 **A.** Uh-huh (affirmative.)

22 **Q.** Okay. And when did you move out of the
23 Wilmington Apartments?

24 **A.** After my granny passed. So, that was about
25 2013.

1 Q. Okay.

2 MS. PRIMM: May I approach the
3 witness, Your Honor?

4 THE COURT: Yes, ma'am.

5 Q. (BY MS. PRIMM) Ma'am, I'm going to show you
6 some photographs. The first thing I want you to do
7 is to look through the photographs that I show to
8 you.

9 A. Uh-huh (affirmative.)

10 Q. And then I'm going to ask you some
11 questions about them. All right?

12 A. Yes, ma'am. (Witness complies.)

13 Q. Thank you, ma'am.

14 A. You're welcome.

15 Q. And just for the record, I'm showing you
16 what's been marked as State's Exhibits 1 through
17 State's Exhibit 25; is that correct?

18 A. Yes, ma'am.

19 Q. Do you recognize what's shown in those
20 photographs?

21 A. Yes, ma'am.

22 Q. And what's shown in the photographs?

23 A. The back trail.

24 Q. Okay. And is that near the Wilmington
25 Apartments where you lived?

1 **A.** Yes, ma'am.

2 **Q.** Are the apartments on these pictures?

3 **A.** No, ma'am.

4 **Q.** Okay. So, the picture is taken after the
5 apartments are torn down; is that correct?

6 **A.** Yes, ma'am.

7 **Q.** All right.

8 **MS. PRIMM:** Your Honor, at this time
9 I'm going to offer State's Exhibits 1 through 25. I
10 will tender to opposing counsel for any objections he
11 may have.

12 **MR. VINAS:** I may have an objection,
13 Judge. May I take the witness on very brief voir
14 dire?

15 **THE COURT:** Granted.

16 **MR. VINAS:** May I approach the
17 witness?

18 **THE COURT:** Yes, sir.

19 **VOIR DIRE EXAMINATION**

20 **Q.** **(BY MR. VINAS)** Ms. Thompson?

21 **A.** Hi.

22 **Q.** Good morning. I'm going to refer you to
23 State's Exhibits 1 through 25 again that Ms. Primm
24 just showed you. Are there any changes, anything
25 different about the scene as they are depicted in the

1 photographs than the conditions would have existed
2 back on June 11, 2008?

3 **A.** No.

4 **Q.** All right. And now, you said earlier that
5 the apartments are not in the pictures; is that
6 correct?

7 **A.** Uh-huh (affirmative.)

8 **Q.** And just for the record, can you say "yes"
9 or "no"?

10 **A.** Oh, yes.

11 **Q.** Thank you.

12 **A.** Sorry.

13 **Q.** She gets on me all the time. I don't want
14 her doing it to you.

15 So, would they be pictured if -- in
16 State's 1 through 25 if the photos had been taken
17 while the apartments are still there?

18 **A.** Yes.

19 **Q.** Okay. So, is it fair to say the apartment
20 complex should be in those photos but it's not?

21 That was a terrible question, wasn't
22 it? I'm sorry. Let me back up.

23 Okay. Show me on State's Exhibits 1
24 through 25 where the apartment complex would be if it
25 were still standing. You can flip through them.

1 **A.** Right here, along here (indicating).

2 **Q.** So, on the corner of Heno and Wilmington;
3 is that correct?

4 **A.** Uh-huh (affirmative.)

5 **Q.** Okay. And is that the area -- let me
6 borrow these from you -- that's depicted -- it's
7 okay -- that's depicted in State's Exhibit 1,
8 State's 2, State's 3, State's 4, State's 5? Is that
9 the same?

10 **A.** Uh-huh (affirmative.)

11 **Q.** State's 6, State's 7, State's 8, State's 9,
12 10, 11, 13, 14 -- I think that's it -- are those all
13 the photos that show the area where the apartment
14 complex was, or did I miss some?

15 **A.** (Indicating.) These are all where the
16 apartments were.

17 **Q.** Okay. So, this is a different wrought iron
18 fence that we pick up with State's Exhibit 11?

19 **A.** That's the trail.

20 **Q.** Okay. So, not where the apartments would
21 have been?

22 **A.** Yeah. On this, the apartments would have
23 been here (indicating.)

24 **Q.** Right here (indicating)?

25 **A.** This is the back gate to the apartment

1 complex (indicating.) That is the gate to go through
2 the trail (indicating.)

3 Q. Okay. And -- but this is from the
4 Wilmington Apartments, correct?

5 A. Correct.

6 Q. Okay. And same gate, same fence we see in
7 13?

8 A. Correct.

9 Q. And 14?

10 A. Correct.

11 Q. So, the complex was still there, they would
12 be pictured in all those exhibits that we just
13 identified; is that correct?

14 A. Correct.

15 Q. Okay.

16 **MR. VINAS:** Your Honor, I would object
17 to State's 1 through 10, 11, 13, and 14 as not fairly
18 and accurately depicting the scene as it would have
19 been on June 11, 2008.

20 **THE COURT:** Approach, please.

21 **(At the Bench)**

22 **THE COURT:** Even without the
23 apartments, as long as the jury understands there
24 used to be an apartment complex there --

25 **MR. VINAS:** Well --

1 **THE COURT:** Why is that --

2 **MR. VINAS:** I mean, at this point I'm
3 going to have to guess specifically why the State's
4 offering all these specific exhibits. I'm assuming
5 there is going to be -- and I have to assume -- that
6 there is going to be kind of a walk-through as to the
7 trail, the path, and where it started and ended, a
8 big part of that is that where the complex was, it is
9 not on here.

10 **MS. PRIMM:** No. It hasn't changed,
11 Your Honor, at all. The pathway from the apartment
12 complex to the trail, that has not changed at all.

13 **THE COURT:** Okay.

14 **MR. VINAS:** And those are --

15 **MS. PRIMM:** Just the fact that the
16 apartment --

17 **MR. VINAS:** Those, I haven't --

18 **THE COURT:** Okay. One at a time.

19 So --

20 **MR. VINAS:** Sorry, Judge.

21 **THE COURT:** And just so I can do a
22 probative/prejudicial balances, what would they show.

23 **MS. PRIMM:** It goes to show the
24 complainant -- also helps to show what the
25 complainant had to walk around if she didn't walk

1 through the trail. She would have to walk all the
2 way past the track, past Worthing High School, up and
3 around instead of taking the trail. That's part of
4 what these photographs -- it gives them an idea of
5 what they are looking at. I don't mind saying every
6 time there was an apartment complex right in this
7 location. I don't think it changes the outlay or the
8 geography of the neighborhood.

9 **THE COURT:** Thank you. Any other
10 argument?

11 **MR. VINAS:** No, Your Honor.

12 **THE COURT:** All right. Then I think
13 you can explain the apartments --

14 **MR. VINAS:** Sure.

15 **THE COURT:** -- aren't there. So, I
16 find that the probative value outweighs any
17 prejudicial value of the apartments being torn down.
18 Your objections are overruled.

19 **MR. VINAS:** Thank you, Your Honor.

20 **(End of Bench Discussion)**

21 **MS. PRIMM:** Are 1 through 25 admitted,
22 Your Honor?

23 **THE COURT:** Yes, ma'am.

24 **MS. PRIMM:** All right.
25

1 **DIRECT EXAMINATION (CONTINUED)**

2 **Q.** **(BY MS. PRIMM)** Ms. Thompson?

3 **A.** Yes.

4 **Q.** While living in the Wilmington Apartments,
5 did you come to meet or know somebody by the name of
6 Jocelyn Batiz?

7 **A.** Yes.

8 **Q.** Do you recall how old you were when you met
9 Jocelyn?

10 **A.** I was in the ninth grade. I was at least
11 about 14, I want to say.

12 **Q.** Okay. You were in the 9th grade at
13 Worthing High School; is that correct?

14 **A.** Correct.

15 **Q.** And Jocelyn, where did you meet her?

16 **A.** At school. Worthing High School.

17 **Q.** Was she older than you?

18 **A.** Yes, ma'am.

19 **Q.** How much older was Jocelyn than you?

20 **A.** She was about 17 or 18.

21 **Q.** Okay. So, a couple of years older than
22 you, maybe?

23 **A.** Yes, ma'am.

24 **Q.** All right. What -- after you met Jocelyn,
25 can you describe the relationship that you formed

1 with Ms. Batiz?

2 **A.** We became good friends. We were in track
3 together. She used to come over to visit my grandma
4 and my mother. We had a good friendship.

5 **Q.** How often during the week would you see
6 Jocelyn outside of school?

7 **A.** About twice a week.

8 **Q.** During the summertime, how often would
9 y'all spend time together?

10 **A.** She would come every other day, or she
11 would spend the night and then leave in the morning.

12 **Q.** Okay. Was Jocelyn your best friend?

13 **A.** Yes, ma'am.

14 **Q.** Do you still keep in touch with Ms. Batiz?

15 **A.** Yes, ma'am.

16 **Q.** Is it harder -- now is it harder to keep in
17 touch with Jocelyn?

18 **MR. VINAS:** Object to relevance at
19 this point, Judge.

20 **THE COURT:** Overruled.

21 **Q.** *(BY MS. PRIMM)* You can answer. That means
22 you can answer.

23 **A.** Yes. I'm always at work. So --

24 **Q.** Okay. And you live further apart now,
25 correct?

1 **A.** Correct.

2 **Q.** Now, when Jocelyn used to come over to your
3 house to spend time with you, how would she get to
4 your apartment?

5 **A.** She would either walk or catch the bus.

6 **Q.** Okay. And how far of a walk was where
7 Jocelyn lived from the Wilmington Apartments?

8 **A.** They used to live on the side -- on the
9 side of me. So, at first, she -- when she come
10 through the trail -- it's a trail -- side way through
11 the trail, it takes about 10 minutes because she
12 stayed across from me. But she had moved from over
13 there then. So, I didn't -- she lived -- after that
14 it was down MLK. So, she had to walk to me. So, it
15 took about -- 20, 30-minute walk to get to me.

16 **Q.** Okay. Did Jocelyn have access to using a
17 car?

18 **A.** No, ma'am.

19 **Q.** So, if she wanted to get anywhere, she
20 either had to walk and/or take the bus?

21 **A.** Yes, ma'am.

22 **Q.** Okay. Now, I want to draw your attention
23 to June 11, 2008. At that time were you living at
24 the Wilmington Apartments?

25 **A.** Yes, ma'am.

1 Q. Okay. Now, that was summertime, correct?

2 A. Yes, ma'am.

3 Q. So, are you in school?

4 A. No, ma'am.

5 Q. That day, does anybody come over to your
6 apartment?

7 A. Yes.

8 Q. Who?

9 A. Jocelyn.

10 Q. About what time of day is it that Jocelyn
11 comes over to your apartment?

12 A. About 9:00, 9:30.

13 Q. In the morning or at night?

14 A. In the morning.

15 Q. Okay. Did y'all have plans for the day?

16 A. No. We just sat around, just hanging out
17 at my granny house.

18 Q. Okay. Was that an usual thing for the two
19 of y'all to do?

20 A. Yes, ma'am.

21 Q. Okay. So, how does Jocelyn get to your
22 apartment there on June 11, 2008?

23 A. She walked.

24 Q. Okay. When she got there, what did y'all
25 do?

1 **A.** Watched TV, sit outside on a bench, sit and
2 eat, talk to my granny, just hanging out.

3 **Q.** Okay. Just being teenagers, correct?

4 **A.** Correct.

5 **Q.** All right. Now, is anybody else at the
6 apartment when y'all are there?

7 **A.** Yes, ma'am.

8 **Q.** Who?

9 **A.** My grandmother.

10 **Q.** Are any of your siblings there?

11 **A.** My little brother.

12 **Q.** Okay. Now, how long did Jocelyn stay at
13 your apartment?

14 **A.** About two or three hours, I want to say.

15 **Q.** Okay. What made Jocelyn decide to leave
16 from your apartment?

17 **A.** She had a phone call from her mom --

18 **Q.** Okay.

19 **A.** -- telling her to come home.

20 **Q.** All right. And after the phone call from
21 her mom, what did Jocelyn do?

22 **A.** We walked outside. I walked her to the
23 gate by the trail, and we departed from there.

24 **Q.** Okay. Now, I have heard you talk about the
25 trail a couple of different times. Can you tell the

1 ladies and gentlemen of the jury what the trail --
2 what are you talking about when you say "the trail"?

3 **A.** It's just a little way to walk. Like if we
4 wanted to get to the grocery store, we can walk down
5 the trail to get to it. But it's like a lot of
6 people don't go through there. It's not a lot of
7 cars. So, it's like where the woods at; but it's a
8 street.

9 **Q.** Okay. And does that save you time when
10 you're walking places?

11 **A.** Yes, ma'am.

12 **Q.** A lot of time or a little time?

13 **A.** It saves a little time and -- versus going
14 all the way around to the main street.

15 **Q.** Okay. And I'm going to show you State's
16 Exhibit 7.

17 **A.** Yes, ma'am.

18 **Q.** All right. If you look to the side of you,
19 you can see it, I believe. Should be able to see.

20 All right. We're seeing an open field
21 here in 7?

22 **A.** Yes, ma'am.

23 **Q.** What used to be in this area?

24 **A.** Apartments.

25 **Q.** Okay. The apartments that you used to live

1 in?

2 A. Correct.

3 Q. All right. Now, on the fence on -- if
4 you're looking at the picture, it would be the left
5 side of the picture.

6 A. Yes, ma'am.

7 Q. There is like a black iron fence. What is
8 on the other side of that fence, ma'am?

9 A. The school.

10 Q. What school?

11 A. Worthing High School.

12 Q. Okay. And behind where the apartments
13 would have been, you see like a red little building.
14 What is that behind the fence?

15 A. That is the daycare center.

16 Q. Okay. Now showing you State's Exhibit 11.
17 What do we see here in State's Exhibit 11?

18 A. The trail.

19 Q. Okay. Is that on the opposite side of the
20 fence that separates the apartments from Worthing
21 High School?

22 A. Yes, ma'am.

23 Q. All right. Now, you say a trail.

24 A. Uh-huh (affirmative.)

25 Q. Was there an opening here in this fence at

1 all to get to the trail?

2 **A.** Yes, ma'am. It was an opening.

3 **Q.** Was it a gate, or what was it?

4 **A.** It was a gate with a door.

5 **Q.** Okay. And this bridge right here, is this
6 what you -- the way to the trail?

7 **A.** Yes, ma'am.

8 **Q.** And State's Exhibit 12, is that the trail
9 looking from the Wilmington Apartments towards the
10 street that you would go down?

11 **A.** Correct.

12 **Q.** Now, what's under here? What is --

13 **A.** The bayou. I -- the bayou.

14 **Q.** Okay. Where does this trail come out?
15 Where does it end?

16 **A.** At Cullen and Wilmington.

17 **Q.** What's at the corner of Cullen and
18 Wilmington?

19 **A.** It's a Chase, a multipurpose center, and
20 Fiesta.

21 **Q.** Okay. So, a lot of places that you may
22 need to go?

23 **A.** Correct.

24 **Q.** If you didn't go down that trail, is there
25 a foot bridge to go down Wilmington to get to Cullen?

1 **A.** Yes, ma'am.

2 **Q.** How would you get around to go to the
3 grocery store or the service center?

4 **A.** You have to come out the apartments the
5 other way and go all the way around to Reed Road and
6 Scott.

7 **Q.** Okay. So, you would have to walk down
8 Wilmington the other way to -- I think it's Culver
9 Street. Is that -- what street is on the other side
10 of Wilmington by the high school?

11 **A.** This -- Reed Road and Scott.

12 **Q.** Reed?

13 **A.** Okay.

14 **Q.** Reed and Scott?

15 **A.** Uh-huh (affirmative.)

16 **Q.** Then you have to walk there?

17 **A.** And walk down Reed Road to Cullen.

18 **Q.** Okay. How much longer does that take than
19 walking down Wilmington?

20 **A.** The main street?

21 **Q.** Yes.

22 **A.** I want to say about 20 or 30-minute walk.

23 **Q.** Okay. So, it's hot in the summer. That's
24 a big distance, isn't it?

25 **A.** Correct.

1 **MR. VINAS:** Objection to leading, Your
2 Honor.

3 **THE COURT:** Sustained.

4 **Q.** **(BY MS. PRIMM)** Now -- sorry about that.
5 I'm going to show you State's Exhibit 18. What are
6 we looking at when we look at State's Exhibit 18?

7 **A.** You're looking at the walkway through the
8 trail.

9 **Q.** Okay. And is that street -- do many cars
10 come down that street?

11 **A.** No, not really.

12 **Q.** Okay. Does the city take good care of it?
13 Do they mow it?

14 **A.** No, ma'am.

15 **Q.** Okay. I'm going to show you State's
16 Exhibit 19. Is that another view of what we're
17 looking at?

18 **A.** Yes, ma'am.

19 **Q.** All right. And it's pretty wooded over
20 here. Is that how it's -- how it's always looked?

21 **A.** Yes, ma'am.

22 **Q.** Now, there are some places along the trail,
23 aren't there?

24 **A.** Yes, ma'am.

25 **Q.** Okay. Let me show you State's Exhibit 16.

1 Is this the trail, as well?

2 A. Yes, ma'am.

3 Q. All right. And that looks like --

4 A. A building. It was a business. I don't
5 know what kind of business it was, but it was there.

6 Q. Okay. How -- how busy is that business?

7 A. It wasn't really just that busy.

8 Q. Okay. Did you see a bunch of people in and
9 out of there?

10 A. Not really.

11 Q. Okay. So, when you talk about the trail --

12 A. Yes, ma'am.

13 Q. Jocelyn leaves your apartment complex,
14 correct?

15 A. Yes, ma'am.

16 Q. And she goes down the trail, correct?

17 A. Correct.

18 Q. When you saw -- did you leave out of your
19 apartment when Jocelyn left?

20 A. Yes, ma'am. I walked her to the end -- to
21 the entrance of the bridge.

22 Q. Okay.

23 A. Out the gate.

24 Q. Okay. So, when Jocelyn leaves her --
25 leaves you, she is walking down this bridge; is that

1 correct?

2 **A.** Correct.

3 **Q.** How long did you stay and watch her walk?

4 **A.** We just said bye and stuff to each other
5 and I went back in the house and she proceeded to the
6 trail.

7 **Q.** Okay. Anything strange about that day?

8 **A.** No, ma'am. It was a regular day.

9 **Q.** Okay. So, you walk down -- you see her
10 walk down, and you go back to your apartment. About
11 how long is Jocelyn gone?

12 **A.** Well, for about 20 minutes.

13 **Q.** Okay. And does she come back to your
14 apartment?

15 **A.** The same day?

16 **Q.** Yes, that same day. Does she come back
17 later that day?

18 **A.** Correct.

19 **Q.** Okay. And how much longer is it when she
20 comes back to your apartment?

21 **A.** She came back the next 30 minutes after
22 that.

23 **Q.** Okay. So, you see her leaving?

24 **A.** Correct.

25 **Q.** You go back to your apartment, and 30

1 minutes later she is back?

2 **A.** Uh-huh (affirmative.)

3 **Q.** Were you expecting her back?

4 **A.** No.

5 **Q.** When she came back, how did you know that
6 she was back?

7 **A.** She came back, and she didn't have on no
8 shoes or anything.

9 **MR. VINAS:** Object to nonresponsive,
10 Your Honor.

11 **THE COURT:** Sustained. That just
12 means you have to listen carefully to the question,
13 and answer the question that's asked.

14 Would you ask your question again?

15 **MS. PRIMM:** Yes, ma'am.

16 **Q.** (**BY MS. PRIMM**) I asked how did you know she
17 was back? Did she knock on the door? How did you
18 know that Jocelyn was back at your apartment?

19 **A.** She came to the door.

20 **Q.** Okay. When she came to the door, did you
21 go see what was going on?

22 **A.** Yes, ma'am.

23 **Q.** Did you notice anything about Jocelyn when
24 you came back to the door?

25 **A.** Yes, ma'am.

1 Q. What did you notice about her?

2 A. She was upset.

3 Q. How could you tell she was upset?

4 A. She was crying and shaking.

5 Q. And when you saw her crying and shaking at
6 the door, what did you do?

7 A. I asked her was she okay.

8 Q. And what did Jocelyn do when you asked her
9 if she was okay?

10 A. She said no.

11 Q. Did you ask her any additional questions?

12 A. I asked her what happened to her.

13 Q. Was she able to tell you what happened to
14 her?

15 MR. VINAS: Judge, I object to any
16 statements that --

17 A. Yes, ma'am.

18 MR. VINAS: -- that either of them
19 made at the time as hearsay.

20 THE COURT: Thank you. Do you want to
21 build the record a little bit or --

22 MS. PRIMM: Yes, ma'am.

23 Q. (BY MS. PRIMM) You said she was crying and
24 upset. And had you ever seen Jocelyn in the state
25 like that before?

1 **A.** No, ma'am.

2 **Q.** Was she -- was there anything wrong with
3 her hair or her clothing?

4 **A.** Yes, ma'am.

5 **Q.** What was wrong with her hair or her
6 clothing?

7 **A.** It was messed up.

8 **Q.** What do you mean "messed up"?

9 **A.** Like someone had drug her.

10 **Q.** Okay. And you mentioned her shoes earlier.
11 What about her shoes?

12 **A.** She didn't have them on when she came back.

13 **Q.** Okay. Did she have them on when she left?

14 **A.** Yes, ma'am.

15 **Q.** When you were trying to find out -- when
16 you asked her if she was okay, what were you trying
17 to figure out?

18 **A.** What happened to her, like why did she come
19 back like that.

20 **Q.** Okay. You said she was crying. Did -- was
21 she still upset over what had just occurred to her?

22 **A.** Yes.

23 **Q.** Now, did she still seem to be stressed out
24 or thinking about what had just happened to her?

25 **A.** Yes.

1 **Q.** Did you ask her what happened?

2 **A.** Yes, ma'am.

3 **Q.** What did she say?

4 **A.** She got raped.

5 **Q.** When she said that, what did you think?

6 **MR. VINAS:** Judge, I object to
7 relevance as to what she thought.

8 **THE COURT:** Over -- overruled.

9 **Q.** **(BY MS. PRIMM)** That means you can answer
10 it.

11 **A.** Okay. Like -- I was just like who could do
12 this to her, like I was -- it was a lot of things
13 going through my head, but I was more concerned was
14 she going to be okay.

15 **Q.** Okay. So, after she told you she had been
16 raped, what did you do?

17 **A.** I called 911.

18 **Q.** Why did you call 911?

19 **A.** So that they can check on her and make sure
20 she was okay.

21 **Q.** After you called 911, did you stay on the
22 phone with 911, the operator?

23 **A.** Yes, ma'am.

24 **Q.** Okay. And where was Jocelyn when you
25 called 911?

1 **A.** She was sitting on the couch.

2 **Q.** Can you describe how she was sitting on the
3 couch?

4 **A.** She was just sitting there. She was really
5 shaky. She was crying.

6 **Q.** Okay. And when you saw your friend like
7 that, what did you do?

8 **A.** I comfort her until the paramedics got
9 there and just helping her through it because, you
10 know, something bad had happened to her.

11 **Q.** Okay. How did you know something bad had
12 happened to your friend?

13 **A.** Because I never seen her like that. Her
14 clothes and stuff was like messed up. So, I knew
15 something bad -- and she didn't come back with any
16 shoes on. So, I knew something bad had happened.

17 **Q.** How long did it take for EMS to get there?
18 The ambulance?

19 **A.** I can't remember. It took not that long.
20 But they had to find -- they always got the cross
21 streets mixed up. So, about 15 minutes.

22 **Q.** Okay. And so, in that 15 minutes, you sat
23 with her?

24 **A.** Yes, ma'am.

25 **Q.** Did she ever stop being upset?

1 **A.** No, ma'am.

2 **Q.** Did she ever stop shaking?

3 **A.** No, ma'am.

4 **Q.** Did you call anybody else to come?

5 **A.** No. I just called the paramedics.

6 **Q.** Okay. Do you know if Jocelyn called
7 anybody else to come?

8 **A.** No, not that I remember.

9 **Q.** Did anybody else come to your apartment?

10 **A.** No, ma'am.

11 **Q.** Okay. Did any officers -- police officers
12 come?

13 **A.** Yes.

14 **Q.** Okay.

15 **A.** Police officers.

16 **Q.** But the ambulance got there first?

17 **A.** Yes, ma'am.

18 **Q.** What did the ambulance do when they got
19 there?

20 **A.** They took her in back and checked on her,
21 and then they took her to the hospital.

22 **Q.** All right. Now, did you talk to any
23 officers that came there that day? Do you recall?

24 **A.** Not that I remember.

25 **Q.** Okay. After Jocelyn was taken away in the

1 ambulance, did you see her any more that day?

2 **A.** No, ma'am.

3 **Q.** When did you see her next?

4 **A.** I want to say after that I didn't really
5 see her because she was so shaken up. She didn't
6 really come out of the house after that.

7 **Q.** Okay. So, she didn't come walking or
8 riding the bus to come back to your house?

9 **MR. VINAS:** Objection, leading.

10 **THE COURT:** Sustained.

11 **Q.** (**BY MS. PRIMM**) Did any police officers call
12 you to get in touch with Jocelyn a few days later?

13 **A.** It's been so long I don't remember.

14 **Q.** Okay.

15 **MS. PRIMM:** I pass the witness.

16 **THE COURT:** Thank you.

17 Cross-examination?

18 **MR. VINAS:** Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **Q.** (**BY MR. VINAS**) You said -- let me back up.
21 You said -- when did you graduate Worthing High
22 School?

23 **A.** 2006.

24 **Q.** 2006. Okay.

25 And you do retail now. Is that what

1 you said?

2 **A.** Correct.

3 **Q.** Okay. And, obviously, you don't still live
4 at that apartment complex, right?

5 **A.** No.

6 **Q.** Okay. And I'm not going to ask you the
7 address, but you still live in the same area?

8 **A.** No.

9 **Q.** Okay. You said earlier at first when
10 Ms. Primm was asking you about how long your friend
11 was gone, you said 20 minutes. Then a minute later
12 you said 30 minutes.

13 Safe to say you weren't timing it on
14 the stopwatch --

15 **A.** No, I wasn't.

16 **Q.** -- is that correct?

17 Okay. You're just estimating that
18 time as best you can remember. Is that fair to say?

19 **A.** Correct.

20 **Q.** Okay. Ms. Primm asked you earlier if
21 you -- if Jocelyn was your best friend?

22 **A.** Correct.

23 **Q.** And at the time is it fair to say that
24 y'all were best friends?

25 **A.** Correct.

1 Q. And you still keep in touch now?

2 A. Correct.

3 Q. Not as often, but I believe you said it was
4 just because y'all live a little further apart; is
5 that right?

6 A. Uh-huh (affirmative.)

7 Q. Is that a yes?

8 A. Oh, yes. I'm sorry.

9 Q. So, you know how important this is to her;
10 is that right?

11 A. Correct.

12 Q. And you weren't there when this happened to
13 her?

14 A. Correct.

15 Q. So, really all the information you have got
16 about what happened came from her. Is that fair to
17 say?

18 A. Came from who?

19 Q. Jocelyn.

20 A. No.

21 Q. About what happened while she was gone?

22 A. Oh. Correct.

23 Q. That's what I mean.

24 A. Sorry.

25 **MR. VINAS:** I pass the witness, Your

1 Honor.

2 **THE COURT:** Thank you.

3 Any redirect?

4 **MS. PRIMM:** No, ma'am.

5 **THE COURT:** Is this witness excused,
6 or is she on call?

7 **MS. PRIMM:** She is excused, Your
8 Honor.

9 **MR. VINAS:** She is excused, Your
10 Honor.

11 **THE COURT:** Thank you. That means
12 you're released as a witness in this case. Thank you
13 so much.

14 **THE WITNESS:** You're welcome.

15 **(Witness released)**

16 **THE COURT:** Who will be your next
17 witness?

18 **MS. PRIMM:** Officer Chillis.

19 **THE COURT:** Thank you.

20 **(Brief pause)**

21 **THE BAILIFF:** Your Honor, that witness
22 is indisposed at this time.

23 **THE COURT:** Okay. We will just wait a
24 minute.

25 **THE BAILIFF:** Yes, ma'am. That will

1 be fine.

2 **THE COURT:** Okay.

3 **(Brief pause)**

4 **THE COURT:** Jurors, if at any time you
5 cannot hear, would you be sure to raise your hand;
6 and we will see if we can get that issue resolved.

7 Come on up, officer.

8 **THE BAILIFF:** Your Honor, this witness
9 was previously sworn in.

10 **THE COURT:** Thank you.

11 **PRISCILLA CHILLIS,**
12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **Q.** **(BY MS. PRIMM)** Would you please introduce
15 yourself to the ladies and gentlemen of the jury?

16 **A.** Deputy Priscilla Chillis.

17 **Q.** And, ma'am, how are you employed?

18 **A.** Harris County Precinct 7.

19 **Q.** How long have you worked with Precinct 7?

20 **A.** About six and a half years.

21 **Q.** Prior to working at Precinct 7, where did
22 you work?

23 **A.** Houston Police Department.

24 **Q.** How long did you work at the Houston Police
25 Department?

1 **A.** Twenty-seven years.

2 **Q.** What did you do for the Houston Police
3 Department?

4 **A.** Patrolman.

5 **Q.** How long were you on patrol?

6 **A.** Twenty-seven years.

7 **Q.** Why did you choose to stay on patrol for 27
8 years?

9 **A.** I enjoyed patrol. I'm a patrolman.

10 **Q.** What about patrolling is enjoyable to you?

11 **A.** We get -- I get to meet a lot of different
12 people, and also it gives you an opportunity to help
13 a lot of times.

14 **Q.** All right. Now, when you worked with HPD
15 the 27 years and you patrolled with HPD, what area of
16 town did you patrol?

17 **A.** I only patrolled basically two areas,
18 Denver Harbor and southeast patrolman.

19 **Q.** Where is Denver Harbor located in the city?

20 **A.** The Harrisburg, 75N Macario Garcia area.

21 **Q.** Okay. And southeast, what part of
22 southeast did you patrol?

23 **A.** My area was basically from Yellowstone to
24 Alameda-Genoa and from, at that point, 288 to Mykawa.

25 **Q.** Okay. Now, in that area in southeast, how

1 long did you patrol that particular area in
2 southeast?

3 **A.** Tenty -- about 22 years.

4 **Q.** Is that where you -- when you were retired,
5 is that where you were patrolling?

6 **A.** That's where I was.

7 **Q.** Okay. Now -- so, would you say you're
8 pretty familiar with that area of town?

9 **A.** Just a little, yes.

10 **Q.** Okay. Would you describe that area of town
11 for the ladies and gentlemen of the jury?

12 **A.** Southeast is a -- has become a very diverse
13 area, but the majority is still an African American
14 or black community. It's a little -- it's just now
15 beginning to come back a little, but it has still --
16 still a -- I will say low income.

17 **Q.** Okay. And in the area -- is it common for
18 people to be walking in this particular part of town?

19 **A.** Exactly. Yes.

20 **Q.** Okay. How do -- in fact, how do most
21 people get around this part of town?

22 **A.** Mostly using the bus.

23 **Q.** Okay. Some people have to walk to and from
24 the bus stop to get places?

25 **A.** Yes.

1 **Q.** Now -- and I forgot to mention. You're now
2 Precinct 7?

3 **A.** Right.

4 **Q.** What do you do at Precinct 7?

5 **A.** Patrolman.

6 **Q.** And what area of town do you patrol?

7 **A.** Now I work in Brunswick, which is the
8 Beltway all the way up to Almeda-Genoa.

9 **Q.** All right.

10 **MS. PRIMM:** May I approach the
11 witness, Your Honor?

12 **THE COURT:** Yes, ma'am.

13 **Q.** **(BY MS. PRIMM)** Has the area -- when we go
14 back to southeast, what year did you start in
15 southeast?

16 **A.** 1981.

17 **Q.** Okay. And what year did you leave
18 southeast?

19 **A.** Probably 2009.

20 **Q.** Okay. And in that time period, has that
21 area of town changed much?

22 **A.** It has changed some. Like I said, it's
23 just now coming back.

24 **Q.** When you say "coming back," can you tell me
25 what you mean by that?

1 **THE COURT:** Admitted.

2 **Q.** **(BY MS. PRIMM)** So, ma'am, if I can, I will
3 put it up here.

4 **MS. PRIMM:** May I publish to the jury?

5 **THE COURT:** Yes, ma'am.

6 **Q.** **(BY MS. PRIMM)** All right. I'm going to put
7 it up here and -- oh, well, maybe not. Thank you,
8 ma'am.

9 All right. The major thoroughfares
10 that we're talking about, the line that goes across
11 the board here, the big orange line, what freeway is
12 that?

13 **A.** 610 freeway.

14 **MR. VINAS:** May I -- hang on.

15 Judge, may I ask to move around so I
16 can see?

17 **THE COURT:** Sure.

18 Let me stop just a moment. All of the
19 lawyers are so polite, and I really appreciate that.
20 But as long as you're not blocking somebody else's
21 view, you can feel free to move around; and you don't
22 have to ask permission to proceed or to publish or to
23 approach. The only rule I have is don't stand next
24 to the witness while questioning them unless you're
25 showing them something.

1 **MS. PRIMM:** Yes, ma'am.

2 **THE COURT:** So, you can feel free to
3 just present your case. Okay.

4 **MR. VINAS:** Thank you, Judge.

5 **Q.** **(BY MS. PRIMM)** So -- all right. So, that's
6 610 that goes across the map?

7 **A.** Yes.

8 **Q.** What goes, I guess, up and down on the map?

9 **A.** South Freeway, or 288.

10 **Q.** 288. Okay. So, when you would patrol,
11 what area -- can you see the area -- a portion of the
12 area that you worked?

13 **A.** A portion, yeah.

14 **Q.** Basically?

15 **A.** It starts back here, but it comes and ends
16 right here (indicating.)

17 **Q.** Ends right here (indicating)?

18 **A.** And then Yellowstone is up here
19 (indicating.)

20 **Q.** Okay.

21 **A.** And then come on down. You have got
22 Alameda-Genoa. Airport is further down here
23 (indicating.)

24 **Q.** Okay. And Cullen -- is Cullen also called
25 865?

1 **A.** 865, yes.

2 **Q.** Okay. And can you show the ladies and
3 gentlemen of the jury where Cullen or 865 is on the
4 map?

5 **A.** This is -- this is Cullen (indicating.)

6 **Q.** Okay. And Worthing High School -- can you
7 see Worthing High School on the map?

8 **A.** Here it is right here (indicating.)

9 **Q.** Okay. So, Worthing High School is here
10 (indicating.) And this is Cullen (indicating)?

11 **A.** Yes.

12 **Q.** Cullen and Reed?

13 **A.** Yes.

14 **Q.** Okay. All right. And down here at the
15 foot bridge would be -- that is foot bridge what goes
16 across?

17 **A.** Yes.

18 **Q.** Over there, isn't it?

19 **A.** Yes.

20 **Q.** And Wilmington is down there, as well, yes?

21 **A.** Right here (indicating), yes.

22 **Q.** Okay.

23 **A.** Back here, yes. In fact, it is -- it's
24 right here at the bottom.

25 **THE COURT:** Thank you.

1 **Q.** **(BY MS. PRIMM)** You can have a seat, ma'am.

2 Thank you.

3 **A.** (Witness complies.)

4 **Q.** So, that area near Worthing High School,
5 would that be part of your patrol area that you would
6 encompass?

7 **A.** Yes, ma'am.

8 **Q.** All right. What shift did you work in June
9 of 2008?

10 **A.** Day shift.

11 **Q.** What hours would that encompass?

12 **A.** From 6:00 to 2:00.

13 **Q.** Okay. From 6:00 in the morning until
14 2:00 in the afternoon?

15 **A.** Right.

16 **Q.** All right. Now, I want to draw your
17 attention back to June 11, 2008. Were you on duty on
18 that particular date?

19 **A.** Yes, ma'am.

20 **Q.** All right. And how do you get -- how do
21 you respond to calls, or how are you assigned calls?

22 **A.** We're dispatched from a dispatcher.

23 **Q.** Okay. When you get a dispatch from a
24 dispatcher, what information do they give you?

25 **A.** Normally, a location -- a location, a

1 complainant, and the type of call.

2 Q. When we're talking about a complainant, in
3 layman's terms, what is a complainant?

4 A. A person who is a victim or someone who has
5 a problem that they are calling the police for.

6 Q. All right. So, on June 11, 2008, were you
7 dispatch -- dispatched to Wilmington Apartments?

8 A. Yes. It was 46 -- I'm sorry -- 4306
9 Wilmington.

10 Q. Okay. About what time of day was it that
11 you were dispatched?

12 A. It was about 1:58.

13 Q. Okay. And that's right before your shift
14 ends, isn't it?

15 A. Right.

16 Q. All right. So, when you get dispatched
17 or -- do you take a call at 1:58 p.m.?

18 A. Normally, we don't. But it may have been
19 that because at one point I shifted from -- from the
20 6:00 to 2:00 to 7:00 to 3:00. So, more than likely,
21 I had just shifted to 7:00 to 3:00.

22 Q. All right.

23 A. Still day shift.

24 Q. And when you were dispatched, what
25 information were you given?

1 **A.** That it was a -- it was a complainant at
2 the location.

3 **MR. VINAS:** Judge --

4 **A.** And she was --

5 **MR. VINAS:** Judge, objection --

6 **THE COURT:** Excuse me. When the
7 lawyer stands up, it's kind of a timeout --

8 **THE WITNESS:** Okay.

9 **THE COURT:** -- until I can rule.

10 **THE WITNESS:** I'm sorry.

11 **THE COURT:** And your objection is
12 sustained. Thank you.

13 **THE WITNESS:** I'm sorry, ma'am. I
14 missed the objection.

15 **THE COURT:** Can I tell you --

16 **THE WITNESS:** Yes.

17 **THE COURT:** -- when I make a ruling --

18 **THE WITNESS:** No. I meant I missed
19 what he was actually objecting to that I was
20 answering her question.

21 **THE COURT:** Well, you don't have to
22 worry about it because she will either ask you the
23 question again --

24 **THE WITNESS:** Okay.

25 **THE COURT:** -- or a different

1 question.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Thank you.

4 **Q.** (BY MS. PRIMM) So, you knew the -- without
5 saying what the alleged crime or what kind of call
6 you're responding to, correct?

7 **A.** Right.

8 **Q.** Now, why is it that the dispatcher -- why
9 do you want that information from the dispatcher,
10 what type of crime you're responding to?

11 **A.** Because it gives you an opportunity to
12 prepare yourself both mentally and physically for
13 what you're about to confront.

14 **Q.** Okay. So, you hear the dispatch. Do you
15 respond to the call?

16 **A.** Yes.

17 **Q.** About how long did it take you to get to
18 the call?

19 **A.** I arrived at approximately 1407, 2:07.

20 **Q.** Okay. And when you arrived at the
21 location, where did you go?

22 **A.** I went -- I don't think -- if I can recall
23 correctly, I didn't have an exact apartment number.
24 So, I just went to the actual apartments and just
25 went in the courtyard to -- and I was approached by a

1 complainant.

2 Q. All right. And a complainant. When you
3 were approached by her, did you notice anything about
4 her physically?

5 A. She seemed to be very upset, and she was
6 pretty well in disarray.

7 Q. When you say "disarray," describe what
8 you're talking about.

9 A. Her clothes was all messed up, and she was
10 scratched all up and shaking and kind of crying. And
11 she was a little, like, upset.

12 Q. Okay. And did you take her anywhere to
13 talk to her, or did you talk to her there?

14 A. Well, I talked to her a -- briefly where
15 she approached me at. And from there I took her back
16 to the location where she said the assault had
17 happened.

18 Q. Okay. While you're talking to her briefly
19 in the courtyard to the apartment complex, was she
20 able to relay to you what had happened to her?

21 A. Yes.

22 Q. Okay. And when she is relaying this
23 information to you, can you describe how she was
24 emotionally?

25 A. She was -- she was pretty distraught. She

1 was -- she kept telling me about --

2 **MR. VINAS:** Judge, I object. At this
3 point it's still hearsay until the predicate is laid.

4 **THE COURT:** Sustained.

5 **Q.** (BY MS. PRIMM) If you could, just describe
6 her -- how she was emotionally.

7 **A.** She seemed very upset. Like I said, she
8 was shaking, half crying, real nervous, watching her
9 back, looking around, making sure everything was --
10 and I kept explaining -- I'm sorry.

11 **Q.** Okay. It's all right.

12 When you saw that she was shaking and
13 half crying, kept looking around, what did you say to
14 her?

15 **A.** I told --

16 **MR. VINAS:** Judge, I object. That is
17 hearsay.

18 **THE COURT:** Overruled.

19 **Q.** (BY MS. PRIMM) Okay. What did you say?

20 **A.** I kept trying to comfort her and calm her
21 down. Because I couldn't understand exactly what was
22 going on at first. And I just would tell her, Just
23 calm down. It's okay. We're going to handle it.
24 What's the problem? Show me what's going on.

25 **Q.** Okay. Were you able to calm her down

1 enough to the point where she could actually relay
2 what had occurred that you could understand?

3 **A.** Exactly. Yes.

4 **Q.** All right. About how long do you think it
5 took to calm her down to the point that you could
6 understand her?

7 **A.** It took -- it took approximately maybe
8 about 10, 15 minutes just trying to soothe her.

9 **Q.** Was she still upset about what had just
10 occurred to her?

11 **A.** Yes.

12 **Q.** What did she tell you happened to her?

13 **A.** She told me she had been raped.

14 **Q.** After she told you that she had been raped,
15 what did you want her to do?

16 **A.** The main thing I told her was to -- I did
17 not want her to forget the intricate details of what
18 had happened to her.

19 **MR. VINAS:** Judge, again, I object to
20 Deputy' Chillis' portion of the conversation as her
21 statements are out of court, offered for the truth of
22 the matter asserted. They're hearsay and do not fall
23 under any exception.

24 **THE COURT:** Sustained.

25 **Q.** **(BY MS. PRIMM)** When you spoke to her --

1 **A.** Uh-huh (affirmative.)

2 **Q.** -- did you ask her to take you anywhere?

3 **A.** Yes. I asked her to show me --

4 **MR. VINAS:** Judge, again, her
5 statements are hearsay.

6 **THE COURT:** I think -- excuse me. I
7 think a lot of this we can bypass if you simply ask:
8 What did you do next, rather than having the words
9 relayed. Sustained.

10 **Q.** **(BY MS. PRIMM)** Did you go anywhere with the
11 complainant?

12 **A.** I actually took the complainant back to the
13 location where she said that the -- the assault had
14 occurred.

15 **Q.** And how did y'all get to that location?

16 **A.** We drove around in my patrol car.

17 **Q.** Okay. When you say "drove around," how did
18 you get around?

19 **A.** I had to go back to -- you have to go back
20 up Scott, come all the way back around Reed, and then
21 come all the way back down Cullen and then go over to
22 Wilmington.

23 **Q.** Okay. Because you can't go in the car
24 straight through on Wilmington, can you?

25 **A.** No, ma'am.

1 **Q.** So, you get around. When you go back to
2 the area, can you describe how -- what that area is
3 like to the jury?

4 **A.** It's a -- it's a -- it's a two-lane street,
5 but it's a very -- at that time it was not -- it was
6 not very well kept. So, it had a lot of potholes.
7 And, in fact, there was a watch group or persons out
8 there looking at the area at the time that I took her
9 back there. It was -- it's very wooded, a lot of
10 abandoned buildings, fence lines that are broken with
11 horses, and it's a pretty vacant area.

12 **Q.** Okay. If one were walking down that area
13 and were to scream, would there be anybody at a
14 nearby business or home to hear them?

15 **MR. VINAS:** Objection, speculation.

16 **THE COURT:** Sustained. You need to
17 rephrase.

18 **Q.** **(BY MS. PRIMM)** Are there any homes back
19 there, ma'am?

20 **A.** None where people live. They are abandoned
21 homes.

22 **Q.** All right. Is there businesses? Are they
23 active businesses where people are coming and going
24 to and from the businesses?

25 **A.** No. No.

1 **Q.** Are there other people waiting for buses or
2 in that area?

3 **A.** There would be other people waiting for
4 buses, but it would be about four blocks up.

5 **Q.** Okay. So, quite a distance from where
6 we're talking about?

7 **A.** Exactly.

8 **Q.** All right. Now, did you get out of the car
9 at some point?

10 **A.** Yes.

11 **Q.** Okay. Did the complainant get out of the
12 car, as well?

13 **A.** Yes, ma'am.

14 **Q.** Were you directed to a particular area?

15 **A.** It was an area inside a -- a field.

16 **Q.** Okay. And the field -- to get to the field
17 from the road, what -- is there anything prohibiting
18 you from getting to the field from the road?

19 **A.** There is a barbed wire fence. It was kind
20 of broken down. It's there.

21 **Q.** And on the other side of the barbed wire
22 fence, what does the area look like?

23 **A.** High weeds, junk, trees, debris.

24 **Q.** Does the state maintain this area at that
25 time at all?

1 **A.** No. City doesn't own it.

2 **Q.** Ma'am, I'm showing you what's been admitted
3 as State's Exhibit 21. There is --

4 **A.** Barbed wire fence.

5 **Q.** Barbed wire fence. Is that the fence that
6 we're talking about that separated the wooded area
7 from the paved area?

8 **A.** Yes, it is.

9 **Q.** All right. And did you get past that
10 barbed wire fence when you got out of the car?

11 **A.** Yes, we did.

12 **Q.** How did you get past it?

13 **A.** I just stepped on it and -- so that the
14 complainant could cross over it.

15 **Q.** All right. And when you went back to the
16 area, were you directed to a particular area?

17 **A.** Yes, ma'am. She showed me an area further
18 back up in the field. I can't see it here, but
19 further back up in the field. In fact, I found her
20 shoes in that particular spot.

21 **Q.** Did you -- when you -- the area you found
22 her shoe, did you notice anything about the grass or
23 field in this particular area?

24 **A.** In this particular area, there was a -- an
25 area where the grass had been mashed down, as though

1 people had been laying on it.

2 Q. Okay. Did that stand out in your mind in
3 that particular area?

4 A. Yes, because the other grass was so high.

5 Q. Okay. Her shoe. You said you found her
6 shoe.

7 A. Right.

8 Q. Where was it?

9 A. It was inside that little area, inside the
10 little area where the grass had been mashed.

11 Q. Okay. How did you know it was her shoe?

12 A. Because I asked her was this her shoe, and
13 she explained it was.

14 Q. All right. Did you find anything else in
15 that high grass area there?

16 A. Not that I can recall offhand.

17 Q. Were you looking for anything else there?

18 A. Yes, I was. I was looking for signs of
19 torn clothing. I was looking for blood. I was
20 looking for semen. I was looking for anything that
21 would help substantiate what her claims were.

22 Q. Okay. Were you able to locate anything
23 else other than her shoe?

24 A. None. Not that I recall at this time, no.

25 Q. After you took her there to the scene and

1 you saw the area that she pointed out, did you notice
2 anything about her -- her body, the way her body
3 looked?

4 **A.** She had minor cuts and bruises from the top
5 of her head to the bottom of her feet.

6 **Q.** And did that seem consistent with somebody
7 being in this area?

8 **A.** Yes.

9 **Q.** After she took you back there and you found
10 her shoe, what did you do with her shoe?

11 **A.** It was tagged into evidence in the property
12 room for the police department.

13 **Q.** Okay. When you say you tagged something in
14 evidence, can you tell the ladies and gentlemen of
15 the jury the process that you go through?

16 **A.** Well, first of all, I just take it; and I
17 put it in a -- usually, I use a brown paper bag to
18 preserve anything that's -- that might be evidence.
19 And then I will tag it or -- when I say "tag it," I
20 mean I will write -- we have a tag, literally a tag,
21 and write all the information -- the case number, the
22 complainant's name, the type of offense, and all of
23 that.

24 And then I will contact the -- the
25 division concerned. Once I contacted the division

1 concerned, I will get authorizations from one of
2 their supervisors in order to tag it under a
3 particular case number. I will take it to the
4 property room. Back then it was on Goliad, but I
5 think they moved now. And I just label it and tag it
6 into evidence there.

7 Q. Okay. And is that -- so, it's basically
8 for safekeeping?

9 A. Right.

10 Q. The general public doesn't have access to
11 it, correct?

12 A. No.

13 Q. All right. After you tagging the shoe,
14 where -- where was the complainant taken?

15 A. I had her transported to Hermann Hospital.

16 Q. Why did you want the complainant
17 transported to Hermann Hospital?

18 A. Because I wanted a rape kit done.

19 Q. Okay. And in your experience in law
20 enforcement, what is the point of having a sexual
21 assault kit done?

22 A. It is to obtain evidence from -- from the
23 suspect and also to substantiate what the complainant
24 has made statements about.

25 Q. Okay. Now, also, when you were talking to

1 the complainant, did you want to get any type of
2 description of the person that attacked her?

3 **A.** Yes.

4 **Q.** Why do you want that?

5 **A.** It's -- first of all, because it's just so
6 that we can -- I'm about to GB, which means general
7 broadcast. To be able to GB over the radio in
8 case -- in case the suspect is still in the area, in
9 case that there are other officers who are aware of
10 like cases.

11 **Q.** All right. And when you get a description
12 from somebody, what kind of questions do you ask
13 them?

14 **A.** Main thing, race, sex, and age, approximate
15 height, approximate build, tattoos, identifiers,
16 markings, cuts, deep cuts that would be permanent,
17 eye color, hair color, length, mustache, beard.

18 **Q.** Okay. And was the complainant able to give
19 you a description of the person that attacked her?

20 **A.** She was able to give me a description, yes.

21 **Q.** What description did she give you?

22 **A.** She told me it was a black male, about 5'8.

23 **MR. VINAS:** Judge, at this point I
24 object to hearsay.

25 **THE COURT:** Sustained. What exception

1 are you relying on?

2 **MS. PRIMM:** The statement made for
3 identification, Your Honor.

4 **THE COURT:** Statement made for
5 identification?

6 **MS. PRIMM:** Yes, ma'am.

7 **THE COURT:** Okay. Come on up and show
8 me which rule you're referring to.

9 **(At the Bench)**

10 **THE COURT:** Are you referring to the
11 rule we usually use with photospreads?

12 **MS. PRIMM:** Uh-huh (affirmative.)
13 Yes, ma'am.

14 **THE COURT:** I haven't seen it used in
15 this situation before. Let's see.

16 **MS. PRIMM:** It's up here.

17 **MR. VINAS:** Judge, for the record,
18 it's going to be 801(e).

19 **MS. PRIMM:** C?

20 **MR. VINAS:** It's 801(e)(1)(c). That
21 is the rule on that.

22 **THE COURT:** Sorry. I'm having a
23 little trouble hearing you. Give me just a minute.

24 **MR. VINAS:** Sure. I was just telling
25 you where to go.

1 **THE COURT:** Yeah.

2 **MR. VINAS:** Sorry. I think my voice
3 was blocked by the bench there.

4 **THE COURT:** For some reason I'm not
5 hearing as well up here.

6 **MR. VINAS:** The room is so big.

7 **MS. PRIMM:** It's big.

8 **THE COURT:** In my home court I can't
9 even hear the witnesses very well.

10 Let's see. Sorry. You said 801?

11 **MR. VINAS:** It's 801(e)(1)(c).

12 **THE COURT:** Okay. I always took that
13 to mean an identification, not a description.

14 **MR. VINAS:** And that is -- those are
15 exactly the words I was going to use. This is not a
16 -- my objection is that this is not a statement of
17 identification. It's a description. So, it's
18 hearsay.

19 **THE COURT:** Well, I remember when that
20 was added because before that it was hearsay who the
21 complainant identified. But they specifically -- I
22 never researched it, but the plain reading would be
23 identifies.

24 **MS. PRIMM:** Okay.

25 **MR. VINAS:** Thank you.

1 **THE COURT:** Sustained.

2 **(End of Bench Discussion)**

3 **Q.** **(BY MS. PRIMM)** Was she able to give you a
4 description, just yes or no?

5 **A.** Yes.

6 **Q.** Okay. And what did you do with the
7 description that you got?

8 **A.** I placed it in my offense report as well as
9 gave a general broadcast of it.

10 **Q.** All right. Did she -- previously when she
11 talked to you, did she say whether or not he used any
12 type of weapon?

13 **A.** Yes. She said he used a pocketknife.

14 **Q.** And you have been a police officer for a
15 long time. And in your training and experience, is a
16 pocketknife a deadly weapon?

17 **MR. VINAS:** Judge, I object. And I
18 would ask to take the witness on a brief voir dire?

19 **THE COURT:** Overruled.

20 **MR. VINAS:** Okay.

21 **Q.** **(BY MS. PRIMM)** That means you can answer.

22 In your experience is a pocket -- can
23 a pocketknife be used as a deadly weapon?

24 **A.** Yes, it can.

25 **Q.** Ma'am, I'm going to show you State's

1 Exhibit 39 and ask you if you would please take a
2 look at it.

3 Do you recognize State's Exhibit 39?

4 **A.** Yes.

5 **Q.** And what is that?

6 **A.** It's actually the -- a box that we tagged
7 evidence in.

8 **Q.** Okay. And did you make any markings or
9 writings on the box?

10 **A.** Oh, yeah.

11 **Q.** All right. And is that the tag you're
12 talking about, the tag that is hanging off State's
13 Exhibit 39?

14 **A.** Yes.

15 **Q.** And is that where you document the incident
16 number?

17 **A.** Yes.

18 **Q.** And what is the incident number, just for
19 the ladies and gentlemen of the jury?

20 **A.** It's just a number that is attached to each
21 individual call slip that is dropped.

22 **Q.** Okay. So, it's a unique number to a
23 particular event?

24 **A.** Right.

25 **Q.** All right. What else do you indicate on

1 there?

2 **A.** The type of case, the type of offense, the
3 location, the complainant's name, the party arrested,
4 the description of the property, and me.

5 **Q.** All right. And inside State's
6 Exhibit 39 --

7 **A.** Oh, yeah.

8 **Q.** -- do you recognize the contents of State's
9 Exhibit 39?

10 **A.** Yes.

11 **Q.** And what is that?

12 **A.** It's -- it was the complainant's -- what
13 they call it -- jelly shoes.

14 **Q.** Okay. And you found that out in the woods?

15 **A.** Yes.

16 **Q.** All right.

17 **MS. PRIMM:** Your Honor, at this time I
18 will offer State's Exhibit 39 and the contents
19 thereof.

20 **THE COURT:** And did she say "shoe" or
21 "shoes"?

22 **MS. PRIMM:** Shoes.

23 **THE COURT:** Two in there?

24 **THE WITNESS:** Yes, ma'am.

25 **MS. PRIMM:** Yes, ma'am.

1 **THE COURT:** Thank you.

2 **MR. VINAS:** Your Honor, may I approach
3 briefly, Judge?

4 **THE COURT:** Okay.

5 **(At the Bench)**

6 **MR. VINAS:** The only objection I would
7 have would be --

8 **THE COURT:** Sorry. I didn't hear.

9 **MR. VINAS:** I'm sorry.

10 **THE COURT:** I can't hear you.

11 **MR. VINAS:** The only objection I would
12 have would be to the tag on --

13 **THE COURT:** That's clearly hearsay --

14 **MR. VINAS:** Right.

15 **THE COURT:** -- isn't it?

16 **MR. VINAS:** That's my objection.

17 So --

18 **THE COURT:** It's sustained as to the
19 tag. So, Ms. -- just pull it off.

20 **MS. PRIMM:** Okay.

21 **MR. VINAS:** And that's my only
22 objection. Once that is remedied, no objection.

23 **THE COURT:** Okay.

24 **(End of Bench Discussion)**

25 **THE COURT:** Thank you. Once the tag

1 is removed, then the exhibit is admitted.

2 Q. (BY MS. PRIMM) And, Officer Chillis, you
3 said that when you were done speaking to the
4 complainant, that she left in an ambulance; is that
5 correct?

6 A. Yes. Yes, ma'am.

7 Q. And was it EMS that made the scene, ma'am?

8 A. Yes.

9 Q. One question I almost forget to ask. The
10 location that we're talking about, is that in
11 Houston, Harris County, Texas?

12 A. Yes, it is.

13 MS. PRIMM: Your Honor, at this time I
14 offer State's Exhibit 34, the -- oops. They are the
15 EMS records for Ms. Jocelyn Batiz. They have been on
16 file, and notice has been given to the Defense
17 counsel.

18 MR. VINAS3: 34, you said?

19 MS. PRIMM: 34, yes, sir.

20 (At the Bench)

21 MR. VINAS: No objection to most of
22 it, other than I would object to -- on the actual
23 pages that say "Houston Fire Department," Ms. Batiz
24 gives a recount brief of the events; and I would
25 object to that being hearsay. Obviously, it's

1 hearsay within hearsay. Obviously, the State has
2 cured one level of hearsay with the business records
3 affidavit they did give me way more than 14 days ago.
4 But just those two -- those two boxes of information
5 on here that talk about what happened.

6 **MS. PRIMM:** Made for medical diagnosis
7 and treatment.

8 **THE COURT:** I would say -- I think the
9 case law is pretty clear that anything regarding
10 identification is not for medical treatment, but
11 anything that describes the actual episode is.

12 **MR. VINAS:** Huh?

13 **THE COURT:** So, are you referring just
14 to that she was sexually assaulted and details or
15 something else?

16 **MR. VINAS:** Right. That's it. I
17 mean, she does -- she does describe the injury. She
18 was punched, and I think you're clear on that. But
19 where she talks about, you know, an unknown male --
20 there is even one, I think, where it says -- well,
21 uses the word "intentional" in here. I mean, if it's
22 more of a descriptive, then I think that would need
23 to be done for medical purposes.

24 **THE COURT:** I don't think that that's
25 what the law says.

1 **MR. VINAS:** Okay.

2 **THE COURT:** It's -- I say description.
3 I don't -- I think your objection would be good if
4 she gives height and weight.

5 **MR. VINAS:** I --

6 **THE COURT:** Right?

7 **MR. VINAS:** Clearly.

8 **THE COURT:** But if it's details about
9 the actual assault, I think that goes to medical
10 treatment.

11 **MR. VINAS:** I understand.

12 **THE COURT:** And highly probative.

13 **MR. VINAS:** Understood.

14 **THE COURT:** So, is there anything
15 about a description about the offender or just the
16 description?

17 **MR. VINAS:** Sexual assault. The only
18 description she says is unknown assailant, which is
19 no description.

20 **THE COURT:** Okay. Your objection is
21 overruled.

22 **MR. VINAS:** That's 34?

23 **THE COURT:** Yes.

24 **(End of Bench Discussion)**

25 **THE COURT:** 34 is admitted.

1 **MS. PRIMM:** Pass the witness.

2 **THE COURT:** Thank you.

3 Your witness.

4 **MR. VINAS:** Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 **Q.** **(BY MR. VINAS)** I'm going to jump around a
7 little bit. You said that it's Deputy Chillis now;
8 is that correct?

9 **A.** Exactly.

10 **Q.** Okay. Forgive me if I call you "officer."
11 I know you don't find it offensive, but I'm used to
12 reading your name as Officer Chillis.

13 You said you were with HPD for 27
14 years?

15 **A.** Yes.

16 **Q.** And then you went straight over to
17 Precinct 7?

18 **A.** Yes.

19 **Q.** Any gap in your employment?

20 **A.** Two weeks.

21 **Q.** What was the reason for you leaving HPD?

22 **A.** Retired.

23 **Q.** So, you're doubling up on that pension?

24 **A.** Yeah.

25 **Q.** Good for you.

1 Okay. So, what -- I know you were in
2 patrol when you were at HPD. What was your rank when
3 you retired?

4 **A.** Patrolman.

5 **Q.** Okay. And do they rank patrolmen at
6 levels, or is that the rank, patrolman?

7 **A.** I'm a senior deputy -- I mean, senior
8 officer. But, yeah, it's no more money.

9 **Q.** Okay. That's a shame.

10 **A.** Me, too.

11 **Q.** No sergeant, lieutenant, anything like
12 that?

13 **A.** No.

14 **Q.** And there are sergeants in the patrol
15 division at HPD; is that correct?

16 **A.** Yes, there are.

17 **Q.** And they, in fact, go all the way up the
18 chain probably to assistant chief?

19 **A.** Exactly, yes.

20 **Q.** And what is your rank over at Precinct 7?

21 **A.** Patrolman.

22 **Q.** Okay. And do they have the same similar
23 ranking system in Precinct 7 that they do in HPD?

24 **A.** Yes.

25 **Q.** And you gave some good reasons for wanting

1 to be on patrol. You never -- crime scene
2 investigation or anything like that just never
3 appealed to you?

4 **A.** Not really, no.

5 **Q.** Did you ever want to leave the patrol
6 division?

7 **A.** Not particularly.

8 **Q.** I see. Now, you said earlier that this
9 happened right before 2:00; is that correct?

10 **A.** Exactly.

11 **Q.** And when I say "this happened," that's when
12 you got dispatched, was right before 2:00?

13 **A.** Exactly. Yes.

14 **Q.** Okay. Okay. How late did you stay until
15 Ms. Batiz went in the ambulance?

16 **A.** I'm sure it took -- normally takes me
17 probably about 45 minutes to an hour or more.

18 **Q.** Okay. So, fair to say you left -- was it
19 4306 Wilmington?

20 **A.** Right.

21 **Q.** Roughly around 3:00 give or take?

22 **A.** I would say give or take, just about. I
23 wouldn't -- I can't be positive. Somewhere in there.

24 **Q.** Okay. Now, you said when you pulled up to
25 4306 Wilmington, you didn't have an apartment number;

1 is that right? Correct?

2 A. Uh-huh. Yes.

3 Q. Okay. And you have got to verbalize for
4 the record.

5 A. I'm sorry. My mistake.

6 Q. Okay. Rough estimate, how many units would
7 you say are in -- or were in the Wilmington
8 Apartments back on June 11, 2008?

9 A. You mean that check by with me?

10 Q. No, not police units. Apartment units.

11 A. Oh, that was one of the smaller units. And
12 I would not begin to venture to guess, but it's a
13 small complex. If there were -- if there were 30
14 apartments there, maybe.

15 Q. Okay. Before Ms. Batiz came up to you, did
16 you go knock on any doors to see if anybody knew?

17 A. No. I just walked -- mainly walked in the
18 courtyard.

19 Q. Okay.

20 A. Just trying to see -- waiting on a
21 complainant to come to me.

22 Q. Surveying, just kind of seeing who comes to
23 you?

24 A. Yes. Yes.

25 Q. Okay. So, you didn't talk -- at that point

1 didn't talk to any of the neighbors to see if anybody
2 had seen or heard anything?

3 **A.** No. No.

4 **Q.** Didn't knock on any doors?

5 **A.** None that I recall, no.

6 **Q.** After Ms. Batiz left in the ambulance, did
7 you come back and do that?

8 **A.** No.

9 **Q.** And, obviously, once you got there, once
10 you got dispatched, you understood what kind of call
11 this was; is that correct?

12 **A.** Yes.

13 **Q.** And so, I mean, obviously, a serious case?

14 **A.** Yes.

15 **Q.** One of the most serious that you will see
16 as a patrol officer or deputy?

17 **A.** Yes.

18 **Q.** You said also that -- that once Ms. Batiz
19 approached you, you obviously had some conversation
20 and then you took her over to the field?

21 **A.** Vacant field, yes.

22 **Q.** Okay. How -- on State's Exhibit -- what
23 was that exhibit number? 21, the picture of the
24 barbed wire fence.

25 How high would you say that barbed

1 wire fence was?

2 **A.** The -- as far as the top of it or the
3 whole --

4 **Q.** Just --

5 **A.** This piece here (indicating)?

6 **Q.** Just that wire, yes.

7 **A.** I wouldn't say it was no more than maybe
8 2 feet, 3 feet off the ground.

9 **Q.** Okay. Now, you stepped on it --

10 **A.** Uh-huh (affirmative.)

11 **Q.** -- to push it down.

12 So, you got it down to lower than like
13 your hip?

14 **A.** Yes.

15 **Q.** About knee height?

16 **A.** I would say -- actually, I think it was
17 actually a little lower.

18 **Q.** A little lower. So, somewhere between on
19 your shin?

20 **A.** Yes.

21 **Q.** Okay. And pretty loose because you were
22 able to step on it?

23 **A.** Exactly, yes.

24 **Q.** Had some slack in it?

25 **A.** Yes.

1 **Q.** Now, when you went out there, you said you
2 mentioned something about some other people had been
3 back there that you and the complainant passed; is
4 that correct?

5 **A.** No. Yeah, there was neighborhood
6 protection was back there. But they came up after
7 she and I had already gone into the area.

8 **Q.** Okay. You didn't talk to them?

9 **A.** Oh, yes.

10 **Q.** You did?

11 **A.** Yes.

12 **Q.** Okay. All right. And then -- so, once you
13 went into the field, you said you looked around and
14 you found -- and I believe your testimony was you
15 found one shoe, but we have got two shoes --

16 **A.** Right.

17 **Q.** -- in State's Exhibit --

18 **A.** Right.

19 **Q.** -- 39.

20 Okay. Did you find them both in the
21 field.

22 **A.** I think, if I recall correctly, one shoe
23 was like going in; and one shoe was like at the
24 actual location.

25 **Q.** All right. And you looked around --

1 **A.** Yes.

2 **Q.** -- you said.

3 Your words were you were looking for
4 something to help substantiate her claims; is that
5 correct?

6 **A.** Yes.

7 **Q.** You testified you didn't find any blood?

8 **A.** No.

9 **Q.** You didn't find any semen?

10 **A.** No.

11 **Q.** You didn't find a pocketknife?

12 **A.** No.

13 **Q.** You didn't find a condom?

14 **A.** No.

15 **Q.** Didn't find a condom wrapper?

16 **A.** No.

17 **Q.** And you would agree with me that based on
18 your experience as a peace officer, those kinds of
19 things could be -- could have some pretty good
20 evidentiary value in a case like this?

21 **A.** Yes.

22 **Q.** And you said that -- before I objected,
23 Ms. Primm asked you the question: Is a pocketknife a
24 deadly weapon? And then when she rephrased it, it
25 was: Can a pocketknife be a deadly weapon?

1 of pocketknife it was, can you?

2 **A.** No.

3 **Q.** Okay. What was the weather like at that
4 time? I mean, we know it is June in Houston. So, we
5 know it's hot. Even though there is a cold front,
6 it's hot.

7 Sunny? Cloudy? Raining? Do you
8 recall?

9 **A.** If I recall correctly, it was just -- it
10 was just a hot Houston day.

11 **Q.** Okay. And you testified that there was a
12 bus stop up the road from this field that we see in
13 State's Exhibit 21; is that correct?

14 **A.** Yes, it is.

15 **Q.** But you didn't go down there to see if
16 anybody saw or heard anything?

17 **A.** No.

18 **MR. VINAS:** I pass the witness, Your
19 Honor.

20 **THE COURT:** Thank you.

21 Redirect?

22 **MS. PRIMM:** Just a couple, Your Honor.

23 **REDIRECT EXAMINATION**

24 **Q.** **(BY MS. PRIMM)** How far is the bus stop at
25 the corner of -- I think it's Cullen and Reed from

1 this location?

2 **A.** From Cullen --

3 **Q.** Or --

4 **A.** Cullen and -- Cullen and Wilmington.

5 **Q.** Cullen and Wilmington. How far is Cullen
6 and Wilmington from this location?

7 **A.** It's about four -- four or five blocks.

8 **Q.** All right. And how far is this location
9 from actually the Wilmington Apartments?

10 **A.** That's only -- it's about one and a half to
11 two blocks, give or take.

12 **Q.** All right. And you mentioned -- and I
13 forgot to ask you earlier, neighborhood protection.
14 You mentioned that you ran into neighborhood
15 protection.

16 Can you tell the ladies and gentlemen
17 of the jury who and what neighborhood protection are?

18 **MR. VINAS:** Object to relevance.

19 **THE COURT:** Overruled. But I would
20 want something very brief.

21 **MS. PRIMM:** Yes, ma'am.

22 **THE COURT:** Thank you.

23 **Q.** (**BY MS. PRIMM**) Just quickly, if you can
24 tell the ladies and gentlemen of the jury what they
25 are.

1 **A.** Neighborhood protection just goes out
2 and -- to check for dangerous buildings and high
3 weeds and possible areas of criminal -- where a crime
4 could -- could be committed.

5 **Q.** Okay. And you said they came up after you
6 and the complainant came up; is that correct?

7 **A.** Yes.

8 **Q.** All right. Are they police officers?

9 **A.** No. No.

10 **Q.** Are they just citizens?

11 **A.** They -- basically, a lot of them are
12 retired officers and citizens, yes.

13 **Q.** Okay.

14 **MS. PRIMM:** I pass the witness.

15 **RECROSS-EXAMINATION**

16 **Q.** **(BY MR. VINAS)** The bus stop at Wilmington
17 and Cullen that you said is four blocks away, is that
18 the closest bus stop to that location?

19 **A.** If you're going to Cullen on -- different
20 buses go different ways. If you're going to Cullen,
21 yes, it would be the closer one there.

22 **Q.** Okay. Is there another one closer to that?

23 **A.** If you're going out Scott on the other
24 side, yes.

25 **Q.** Okay. Did you go to that bus stop?

1 **A.** No.

2 **MR. VINAS:** I pass the witness, Your
3 Honor.

4 **THE COURT:** Thank you.

5 **MS. PRIMM:** No further questions, Your
6 Honor.

7 **THE COURT:** Thank you.

8 Is this witness excused for all
9 purposes?

10 **MS. PRIMM:** Yes, ma'am.

11 **MR. VINAS:** I think we probably need
12 to keep her available.

13 **THE COURT:** Okay. So, you're free to
14 go today, subject to recall.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Thank you so much, Deputy.

17 **THE WITNESS:** All right.

18 **(Witness released)**

19 **THE COURT:** Do you have another
20 witness?

21 **MR. PENEGUY:** Jocelyn Batiz.

22 **THE COURT:** Thank you.

23 **THE BAILIFF:** What is the last name?

24 **MR. PENEGUY:** Batiz. She is across
25 the hall.

1 **THE BAILIFF:** Your Honor, this witness
2 will need to be sworn in.

3 **THE COURT:** Thank you.

4 Hello, Ms. Batiz.

5 **THE WITNESS:** Hello.

6 **THE COURT:** If you don't mind, would
7 you turn and look at the jury and raise your right
8 hand to take the oath.

9 *(Witness Duly Sworn)*

10 **THE COURT:** Thank you. Please have a
11 seat there.

12 **MR. PENEGUY:** May I proceed?

13 **THE COURT:** You may.

14 **JOCELYN BATIZ,**

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **Q.** **(BY MR. PENEGUY)** Could you please introduce
18 yourself to the jury?

19 **A.** I'm Jocelyn Batiz.

20 **Q.** Ms. Batiz, could you pull your chair a
21 little bit forward and pull the microphone down
22 towards -- closer to your voice?

23 **A.** (Witness complies.)

24 **Q.** Jocelyn, how old are you?

25 **A.** Twenty-eight.

1 Q. And what is your date of birth?

2 A. September 21, 1986.

3 Q. And tell the jury kind of what part of town
4 you grew up in?

5 A. South Park.

6 Q. Okay. And is that an area that's kind of
7 in Houston, Texas?

8 A. Yes, sir.

9 Q. Is that where you're from?

10 A. No, sir.

11 Q. Okay. In Houston did you go to middle
12 school?

13 A. No, sir.

14 Q. Where did you go to middle school?

15 A. Flemming.

16 Q. Okay. And where was that?

17 A. North side.

18 Q. Where did you attend high school?

19 A. Worthing.

20 Q. And where is Worthing located?

21 A. On Scott and Reed.

22 Q. Okay. And is that an area that is kind of
23 Houston, Texas?

24 A. Yes, sir.

25 Q. Can you tell us how far you went at

1 Worthing?

2 **A.** I went all the way to half my 11th grade
3 year.

4 **Q.** Okay.

5 **A.** Then I left. Then I came back, and I
6 finished.

7 **Q.** And so, when you finished, were you a
8 little bit older?

9 **A.** I was probably 18.

10 **Q.** Can you tell us -- your voice -- it's a
11 little raspy. Does your voice always sound a little
12 raspy?

13 **A.** No. I had surgery.

14 **Q.** Okay. When did you have that surgery?

15 **A.** When I was a baby.

16 **Q.** And what kind of surgery was it? Do you
17 know?

18 **A.** A tracheotomy.

19 **Q.** Okay. And did that surgery leave a scar?

20 **A.** Yes, sir.

21 **Q.** Okay. Where is that scar?

22 **A.** Right here (indicating.)

23 **Q.** Okay. And what does it look like, for the
24 jurors that can't see it?

25 **A.** Like a circle.

1 **Q.** Okay. Because of that surgery, is it
2 difficult for you to talk loudly?

3 **A.** Yes, sir.

4 **Q.** Can you yell?

5 **A.** No.

6 **Q.** Can you scream?

7 **A.** No.

8 **Q.** The way that your voice sounds kind of soft
9 and raspy, is that how your voice normally sounds?

10 **A.** Yes.

11 **Q.** I want to talk now about back when you were
12 going to Worthing and then when you finished at
13 Worthing. Okay?

14 **A.** Okay.

15 **Q.** Can you tell the jury who you were living
16 with?

17 **A.** When I -- when I was going to Worthing?

18 **Q.** Yeah.

19 **A.** My mom.

20 **Q.** Okay. And you know Worthing is kind -- we
21 talked about -- a lot where it is. Kind of tell the
22 jury what street Worthing is on.

23 **A.** I think Wilmington.

24 **Q.** Okay. And is Wilmington -- does it go all
25 the way through past Worthing, or does it kind of

1 dead end there?

2 **A.** Like a dead end.

3 **Q.** I want to talk to you about when you were
4 21 years of age. And I want to talk to you about the
5 summer of 2008. Do you remember the summer of 2008?

6 **A.** Yes.

7 **Q.** And do you remember the date of June 11,
8 2008?

9 **A.** Yes.

10 **Q.** Can you tell the jury about how that day
11 started for you?

12 **A.** It was good.

13 **Q.** Okay. What did you do that day?

14 **A.** I got up, called my best friend, Denise.
15 And I told her I was fixing to come over to her
16 house.

17 **Q.** Okay. And Denise, is that Denise Thompson?

18 **A.** Yes.

19 **Q.** Okay. And you said she was your best
20 friend. How did you first meet Denise Thompson?

21 **A.** High school.

22 **Q.** Okay. What did you guys do together in
23 high school?

24 **A.** Hung around each other, talk, went to each
25 other houses, spend the night, stuff like teenagers

1 do.

2 Q. Okay. And you said on June 11, 2008, it
3 was a good day. You started by going to Denise's
4 house. Was that normal?

5 A. Yes.

6 Q. Were you living in that area when you went
7 to Denise's house?

8 A. No.

9 Q. Okay. How did you have to -- what did you
10 have to do to get to Denise's house that day?

11 A. Catch the bus.

12 Q. Okay. Do you remember where you caught the
13 bus?

14 A. I caught the bus from where I was staying.
15 And when I caught the bus, she say, Call me when you
16 halfway.

17 And I said, Okay.

18 Q. And back then, on June 11, 2008, did you
19 have a cellular phone?

20 A. Yes.

21 Q. What kind of phone was it?

22 A. The first Cricket phone that comes -- that
23 had came out. I didn't have no camera phone.

24 Q. Okay. So, it was like a Cricket phone,
25 right?

1 **A.** Yes.

2 **Q.** Okay. When you caught the bus, you took
3 the bus towards Denise's house. Where did the bus
4 let off?

5 **A.** By Fiesta.

6 **Q.** Okay. And where is Fiesta located?

7 **A.** On Cullen.

8 **Q.** Okay. How did you get from the Fiesta
9 where the bus let you off to Denise's house?

10 **A.** I walked.

11 **Q.** Okay. Was it far?

12 **A.** Uh-huh (affirmative.)

13 **Q.** About how long did it take you to walk
14 there?

15 **A.** Not that long. Because I like walking,
16 kind of like talk to myself --

17 **Q.** Okay.

18 **A.** -- to get to where I'm at.

19 **Q.** What time of the day was it when you took
20 the bus down and get let off by the Fiesta?

21 **A.** Probably around about 11:00 or 12:00.

22 **Q.** Okay. And did you call Denise while you
23 were on the way there?

24 **A.** Yes.

25 **Q.** And did you actually get to her apartment?

1 **A.** Yes.

2 **Q.** Kind of tell the jury where Denise's
3 apartment was.

4 **A.** She was staying on Wilmington -- and what
5 is the name -- what was the name of the apartments?

6 **Q.** Jocelyn, it's all right if you can't
7 remember the name of the apartments.

8 **A.** She was staying on Wilmington.

9 **Q.** Okay. Was it nearby Worthing High School?

10 **A.** Yes.

11 **Q.** Had you been there before?

12 **A.** Yes.

13 **Q.** And when you got there -- when you got to
14 Denise's house, what did you do?

15 **A.** Nothing. We talked, conversated. Then I
16 fell asleep.

17 **Q.** Okay. At some point did you need to leave
18 Denise's house?

19 **A.** Yes.

20 **Q.** Okay. Tell me about that. Why did you
21 have to leave Denise's house?

22 **A.** My mom called; and she say, Jocelyn, come
23 home so -- so you can see your sister and your
24 brother.

25 And I said, Okay.

1 **Q.** Okay. So, you got a call from your mom.
2 Is that a call on your cell phone?

3 **A.** Yes.

4 **Q.** Okay. And when you got a call from your
5 mom telling you it's time to come home, what did you
6 do?

7 **A.** I said, Okay. Well, Denise, I'm fixing to
8 get ready to leave.

9 And she said, Okay.

10 **Q.** Okay. And did you and Denise walk out of
11 her apartment front door?

12 **A.** Yes.

13 **Q.** Okay. And how were you -- to get back
14 home, right, how were you going to get back home?

15 **A.** I had -- when we walked out the gate,
16 she -- no, she didn't walk out the gate. I walked
17 out the gate.

18 **Q.** Okay.

19 **A.** And when I walked out the gate, instead of
20 me usually going the other way around, I took that --
21 that trail way.

22 **Q.** Okay. So, as opposed to going to Reed
23 Road, is it true that you took a shortcut?

24 **A.** I took a shortcut, yes.

25 **Q.** Okay. Now, I want you to tell me this:

1 When you were leaving Denise's house, did you have --
2 were you carrying a purse, did you have anything on
3 you? What were you carrying?

4 A. Nothing.

5 Q. Okay. Did you have your phone?

6 A. Yes.

7 Q. Okay. You said you took a shortcut?

8 A. Yes.

9 Q. Was that a little bridge?

10 A. Yes.

11 Q. Do you remember that bridge?

12 A. Yes.

13 Q. I want to show you what's been admitted
14 into evidence as State's Exhibit No. 11. Do you
15 recognize that?

16 A. Yes.

17 Q. Okay. Now, that fence wasn't there back
18 then, was it?

19 A. No.

20 Q. Okay. What type of fence was there?

21 A. It was like cut halfway, like --

22 Q. Okay.

23 A. Like cut open so you can just walk
24 straight.

25 Q. Okay. So, you could walk straight from

1 that part, that spot right to that fence -- that
2 bridge, right?

3 A. Yes.

4 Q. And on the other side of that bridge,
5 right, what's that bridge go over right there?

6 A. When you walk -- when you're walking
7 straight ahead where the bridge is at and walking
8 straight, it leads all the way -- all the way to like
9 Fiesta and the WIC office.

10 Q. Is that the Fiesta that's on Cullen?

11 A. Yes.

12 Q. And you said the WIC office. Is this like
13 a little area over there where the WIC office is
14 located?

15 A. Yes.

16 Q. Okay. Is that similar -- that Fiesta, that
17 grocery store, is that somewhere you have been
18 before?

19 A. Yes.

20 Q. Is that the Fiesta that's on Cullen?

21 A. Yes.

22 Q. So, this little path, you have gone over
23 that bridge before?

24 A. No.

25 Q. Okay. On June 11, 2008, why did you take

1 this way?

2 **A.** Because I thought maybe it would be the
3 quickest way for me to go home.

4 **Q.** Where did you need to get to to get home?

5 **A.** I would have to walk from the bridge all
6 the way towards Cullen to cross the street to catch
7 the 30 Cullen.

8 **Q.** Okay. And the 30 Cullen would have taken
9 you north, right?

10 **A.** Yes.

11 **Q.** And that would have been home?

12 **A.** Yes.

13 **Q.** When your -- you leave Denise, right?

14 **A.** Yes.

15 **Q.** When you're crossing the bridge, at that
16 point do you see anybody?

17 **A.** When I was walking on the bridge to walk
18 towards, I seen her mom.

19 **Q.** Okay.

20 **A.** And her mom said, Call us when you get
21 home.

22 **Q.** Okay.

23 **A.** And I said, Okay.

24 **Q.** And you said "her mom." Whose mom are we
25 talking about?

1 **A.** Denise Thompson.

2 **Q.** And was Denise Thompson's mom somebody that
3 you knew?

4 **A.** Yes.

5 **Q.** Okay. And where was she coming from?

6 **A.** She was coming from the store.

7 **Q.** Okay. Once you're past Denise's mom, all
8 right, are you just walking on that street?

9 **A.** Yes.

10 **Q.** I want to show you a picture. So, you see
11 that fence back there?

12 **A.** Yes.

13 **Q.** This is the continuation of that. Is that
14 kind of what it shows like on -- for the road once
15 you cross the bridge?

16 **A.** Yes.

17 **Q.** And this area, this Wilmington area, that
18 street, can you kind of describe that street to us?

19 **A.** It's a normal street.

20 **Q.** Okay. Like it had pavement on the ground?

21 **A.** Uh-huh (affirmative.)

22 **Q.** Is that a yes?

23 **A.** Yes.

24 **Q.** This is State's Exhibit 18. Does that kind
25 of look like what the street looked like?

1 **A.** Yes.

2 **Q.** Were there houses that you could see on the
3 street?

4 **A.** One. One house. This house right here
5 (indicating.)

6 **Q.** Okay. Were there -- was it basically just
7 a lot of field or woods, or what does it look like
8 out there?

9 **A.** It was a lot of woods and like the house,
10 and then it's like -- when you walk just a little
11 further on down, it's a building.

12 **Q.** Okay. And so, not a house but like some
13 type of building, right?

14 **A.** Uh-huh (affirmative.)

15 **Q.** What are you doing while you're walking
16 down the street?

17 **A.** Looking down.

18 **Q.** Why?

19 **A.** I always look down.

20 **Q.** Why is that?

21 **A.** I don't know. I just do it until I get to
22 where I'm going. When I be like this (indicating),
23 then when I look up, then I know I'm right there.

24 **Q.** When you're walking down the road, do you
25 see anything?

1 **A.** Yes.

2 **Q.** Tell the jury what you see.

3 **A.** I see this guy, but it looks like he was
4 looking for something. So, I didn't pay it no mind.

5 **Q.** Okay. Can you describe the guy to me?

6 **A.** He is black. He had a hat on his head with
7 some glasses on, sunshade glasses.

8 **Q.** Okay. Can you tell us about his skin
9 color? What color is his skin?

10 **A.** He was brown skinned.

11 **Q.** Okay. Dark or light?

12 **A.** My skin color.

13 **Q.** Okay. The hat -- can you describe the hat
14 to me?

15 **A.** It looked like a baseball hat.

16 **Q.** Okay. Do you remember what color it was?

17 **A.** No.

18 **Q.** What about the sunglasses? Do you remember
19 those?

20 **A.** Black.

21 **Q.** Can you tell us about how old you thought
22 he was?

23 **A.** It looked like he could be like in his 30s
24 or 40s.

25 **Q.** That would have been older than you, right?

1 **A.** Yes, sir.

2 **Q.** What is he doing?

3 **A.** He looked like he was looking for
4 something.

5 **Q.** Like looking where?

6 **A.** Like looking down.

7 **Q.** Okay. At that point was there -- I mean,
8 were you worried?

9 **A.** No. At the time, no.

10 **Q.** Okay. Why not?

11 **A.** Because I didn't think nothing of it.

12 **Q.** Is he on the side of the street, or is he
13 in the middle of the street?

14 **A.** He was like on the side. On the side of
15 the street.

16 **Q.** Is he standing on pavement, or is he
17 standing on grass?

18 **A.** He is standing on pavement.

19 **Q.** What do you do?

20 **A.** What did I do?

21 **Q.** Yeah.

22 **A.** He -- I thought -- I thought I could just
23 walk past, but I didn't even get a chance.

24 **Q.** Tell the jury what happened as you were
25 walking past.

1 **A.** I was walking; and like I said, I seen a
2 guy, looked like he was looking for something. So, I
3 didn't think nothing of it. So, when I walked like
4 right here and right here (indicating) before I -- I
5 thought I could walk past him, but I didn't get a
6 chance to.

7 **Q.** What happened when you were walking past
8 him?

9 **A.** When I was walking, he just grabbed me, put
10 the knife to my neck.

11 **Q.** Jocelyn, when he grabbed you, can you tell
12 us where his hands were?

13 **A.** His hand was like this. Like this and then
14 like this (indicating.)

15 **Q.** Now, what you are describing is that one of
16 his -- was it his hand or his arm kind of on your
17 neck?

18 **A.** His -- his hand, his arm was around my
19 neck.

20 **Q.** Okay. And could you go anywhere at that
21 point?

22 **A.** No.

23 **Q.** You said his -- one of his arms is around
24 your neck. Where is the other hand?

25 **A.** Right here on my neck, with the knife.

1 Q. Okay. At that point could you see the
2 knife?

3 A. Yeah. I felt it on my neck.

4 Q. Okay. What did it feel like?

5 A. It felt like -- like just -- could just go
6 through me -- go through my skin because how hard he
7 did it.

8 Q. Did it feel sharp?

9 A. Yes.

10 Q. What are you thinking?

11 A. I'm about die.

12 Q. Now, what are you -- he has got one arm
13 around your neck, and you can feel the knife on the
14 side of your neck. Is he in front of, or is he
15 standing behind you?

16 A. Behind me.

17 Q. Could you feel what -- was he taller than
18 you or shorter than you?

19 A. Like a little tall.

20 Q. Was he -- was he stronger than you were?

21 A. Yes.

22 Q. Did you try to get away?

23 A. No.

24 Q. Why not?

25 A. I don't know.

1 **Q.** What happened next?

2 **A.** We -- when he grabbed me, whatever, we went
3 underneath this little gate thing. And when we went
4 underneath the gate thing, he just --

5 **Q.** Jocelyn, I'm going to break it up a little
6 bit and ask you a couple of more details. Okay?
7 Were you -- were you on the road or off the road?

8 **A.** On the road.

9 **Q.** Okay. And when he took you, did he --
10 where did he take you?

11 **A.** Into the woods.

12 **Q.** Where were the woods?

13 **A.** On the left-hand side.

14 **Q.** And you described a gate. Can you kind of
15 describe for the jury what you saw just to your left
16 off the -- off the road?

17 **A.** On the left-hand side, it was a -- like a
18 wooden -- no, like a little -- like a -- like a
19 little -- like a little gate, but you can't really
20 see it because it had like a -- like this sticky
21 thing under the gate for -- like, back-in-the-day
22 kind of gate.

23 **Q.** Was it wood, or was it metal?

24 **A.** Metal.

25 **Q.** And I'm going to show you what's been

1 admitted as State's Exhibit No. 21. It's a
2 photograph. Does that show what you're talking
3 about?

4 **A.** Yes.

5 **Q.** Is that -- is that kind of -- is it fair to
6 say that's a wire type fence?

7 **A.** Yes.

8 **Q.** Okay. When you got to that, did you guys
9 go over it; or do you know how you got past that?

10 **A.** We went underneath it.

11 **Q.** So, how did you get underneath it?

12 **A.** I went first, and then he went like he was
13 already in the back of me already. So, I went under.
14 Then he went under.

15 **Q.** And when you are going under, does he still
16 have a hold of you?

17 **A.** Yes.

18 **Q.** At any point was there a chance for you to
19 break free?

20 **A.** In a way, yes. But I didn't want to
21 because I was afraid I might -- he might just kill
22 me.

23 **Q.** How far past that metal fence did you go?

24 **A.** We -- when we went underneath -- when we
25 went underneath the fence, we -- like over to that

1 side, like over that way in the area.

2 Q. So, was it just a couple more steps past
3 the fence?

4 A. Yes.

5 Q. What happens when you get beyond the fence?

6 A. We -- when we was -- we -- when we was
7 underneath the fence already, we went over here like
8 in this little area right here; and when we went over
9 there to the little area over there, that's when he
10 body slammed me. And when he body slammed me, he --
11 he raised my -- my butt up, and he --

12 Q. Jocelyn, I'm going to break it up a little
13 bit. Okay?

14 A. Okay.

15 Q. You said that he body slammed you. So, you
16 were standing up when he body slammed you. Where do
17 you end up?

18 A. On the ground.

19 Q. Are you on your stomach or on your back?

20 A. On my stomach.

21 Q. And where is he?

22 A. He -- he was already down already.

23 Q. Okay.

24 A. He was --

25 Q. Next to you or --

1 **A.** He was on his knees.

2 **Q.** You're down on your stomach. He is on his
3 knees. Where is he positioned?

4 **A.** From the back.

5 **Q.** Okay. So, is he -- fair to say that is
6 behind you?

7 **A.** He is behind me.

8 **Q.** When he slams you down on the ground, did
9 it hurt?

10 **A.** Yes.

11 **Q.** He is on his knees. You describe your
12 hips. What is -- what is happening when you guys are
13 on the ground?

14 **A.** He lifted me up.

15 **Q.** Okay. What part of your body does he lift
16 up?

17 **A.** From my waist. He lifted me up from my
18 waist, and he pulled my clothes down.

19 **Q.** Jocelyn, when he is pulling your waist
20 up -- right?

21 **A.** Yes.

22 **Q.** And he is trying to pull your clothes down,
23 can you -- are you struggling with him?

24 **A.** Yes.

25 **Q.** Are you -- are you -- are you trying to

1 look at him?

2 **A.** Yes.

3 **Q.** What is happening?

4 **A.** When I was trying to look at him, he was
5 forcing my head down, back down, so I won't look at
6 him.

7 **Q.** And tell me this. At any point in time
8 during that, do you get to see the knife?

9 **A.** Yes.

10 **Q.** Can you describe what the knife looked
11 like?

12 **A.** It was a like a pocketknife, and it was
13 sharp. Like real sharp.

14 **Q.** Can you describe what color the handle was?

15 **A.** Black.

16 **Q.** Now, when you saw it, is he holding onto
17 it?

18 **A.** Yes.

19 **Q.** Okay. And do you remember -- it's okay if
20 you don't. Do you remember what hand he had it in?

21 **A.** The left hand -- the left hand. The left
22 hand.

23 **Q.** Now, when you're looking at him and he is
24 trying to pull your pants down, you said that he is
25 pushing your face. Can you tell the jury, just with

1 your words, where is his hand touching your body?

2 **A.** He touched my face.

3 **Q.** And where is he pushing your face?

4 **A.** Like --

5 **MR. GRAHAM:** Objection to leading.

6 She didn't say "pushing."

7 **THE COURT:** Sustained.

8 **Q.** (**BY MR. PENEGUY**) Okay. What's happening
9 with his hands and your face?

10 **A.** He like smashed my head back down into the
11 grass. And he had his hand like this (indicating.)

12 **Q.** During this process, is he saying anything
13 to you?

14 **A.** Yes.

15 **Q.** What is the first thing you remember he
16 said to you?

17 **A.** Bitch, shut the fuck up.

18 **Q.** When you get back there, what is he saying
19 to you?

20 **A.** Bitch, shut the fuck up.

21 **Q.** What happens next?

22 **A.** When he said that, I -- I said, Sir,
23 please. You can do whatever you want to do to me,
24 but don't take me from my family and my daughter.

25 **Q.** And who were you talking about?

1 **A.** My mama them and my daughter.

2 **Q.** Is he able to take off any parts of your
3 clothing?

4 **A.** He took off -- raised my shirt up, and he
5 just took off my bottoms.

6 **Q.** What do you remember about him raising your
7 shirt up?

8 **A.** He raised up my shirt, and he -- he raised
9 up my shirt. He said, Who is Jocelyn?

10 And I said, That's my cousin name.

11 **Q.** And why did he ask you about Jocelyn?

12 **A.** I have no idea.

13 **Q.** Do you have any tattoos or markings or
14 anything?

15 **A.** Yes.

16 **Q.** Where?

17 **A.** Above my -- above my back and my arm -- my
18 other arm and my neck.

19 **Q.** Throughout this process, he is pulling
20 your -- he is pulling your pants, does he get -- does
21 he remove your shorts?

22 **A.** Yes.

23 **Q.** What happens next?

24 **A.** Well, when he pulled my clothes down, he
25 was kind of upset because his penis couldn't stay in.

1 So, he was, Bitch, what's wrong with you?

2 And I said, Sir, nothing.

3 And he say, Why it won't stay in?

4 And I said, I don't know.

5 Q. What happens next?

6 A. Like -- like the first time it didn't stay
7 in. Then the second time it didn't stay in. Then
8 the third time that's when it stayed in.

9 Q. Jocelyn, I need to ask you, when he is
10 behind you and this is happening, how are you
11 positioned? Where are you?

12 A. On my knees already.

13 Q. And you said that you're on your knees
14 lying forward, right?

15 A. Yes.

16 Q. And you said he pulled your hips up; is
17 that right?

18 A. Yes.

19 Q. He is behind you?

20 A. Yes.

21 Q. At any point in time during this, could you
22 see his penis?

23 A. No.

24 Q. At any point in time do you hear anything?

25 A. A condom wrapper.

1 **Q.** And what do you mean by that?

2 **A.** I could hear the wrapping, the way it
3 sounds.

4 **Q.** Okay.

5 **A.** (Indicating.)

6 **Q.** And is that like the sound -- like the
7 sound of like when you are tearing a condom wrapper?

8 **A.** Yes.

9 **MR. GRAHAM:** Objection to leading.

10 **THE COURT:** Sustained.

11 **Q.** **(BY MR. PENEГУY)** You're describing
12 something to me. Can you describe what type of noise
13 you're making, what type of noise you heard?

14 **A.** I heard like a wrapper rattling sound.
15 That's what I heard. A rattling sound.

16 **Q.** Have you ever heard a condom being opened
17 before?

18 **A.** Yes.

19 **Q.** Is that what it sounded like, what you
20 heard?

21 **A.** Yes.

22 **Q.** Could you see a condom?

23 **A.** No. But I know how it sounds.

24 **Q.** Where is your face?

25 **A.** Still facing down.

1 **Q.** You mentioned a couple of different times,
2 right; and you're saying it -- you're saying that it
3 didn't stay in; is that correct?

4 **A.** Yes.

5 **Q.** How many times are you describing that he
6 tried to put it in?

7 **A.** Three.

8 **Q.** Okay. What part of his body are we talking
9 about?

10 **A.** The penis.

11 **Q.** And what part of your body are we talking
12 about?

13 **A.** The vagina.

14 **Q.** So, tell me about the first time he tried
15 to put his penis in your vagina?

16 **A.** He got mad.

17 **Q.** What happened when he got mad?

18 **A.** He punched me in my face.

19 **Q.** Did it hurt?

20 **A.** Yeah.

21 **Q.** What happens next?

22 **A.** Then he tried it again, and he hit me
23 again.

24 **Q.** Where did he hit you?

25 **A.** In my face.

1 Q. Do you know why it couldn't stay in?

2 A. No.

3 Q. What happened the next time?

4 A. The third time it went in.

5 Q. What went in?

6 A. His penis went in.

7 Q. Could you feel it?

8 A. Yes.

9 Q. Did it hurt?

10 A. Yes.

11 Q. His body, was he moving fast or slow?

12 A. Fast.

13 Q. Can you describe what happens?

14 A. When -- when the third time it -- his penis
15 went in, and he was moving fast. Something went by,
16 and whatever went by it went by so fast he got
17 scared.

18 Q. Okay. How did -- how did you know
19 something -- did you hear something go by, feel it or
20 what?

21 A. Yes.

22 Q. Which?

23 A. I -- I heard something go by.

24 Q. Okay. How did he react?

25 A. He was like -- like I -- like something

1 went by. It went by fast. But I was still trying to
2 grab his hand because I seen -- I kept seeing the
3 knife go up. So, I kept reaching for it.

4 Q. Okay. Is that when you're still down on
5 your stomach?

6 A. Yes.

7 Q. How many times -- you said -- how were you
8 trying to grab his hands? What are you using to try
9 to grab his hand?

10 A. My hand. My left hand.

11 Q. Can you describe -- can you kind of show us
12 how you were reaching?

13 A. Like trying to grab it.

14 Q. Okay. And just for purposes of the record,
15 you're reaching behind your head?

16 A. I'm reaching behind my head to grab his
17 hand.

18 Q. And you're trying to grab his hand to stop
19 what?

20 A. To stop him from trying to stab me if he
21 was going to try to stab me.

22 Q. Were you scared about where that knife was?

23 A. Yes.

24 Q. While all of this is happening, was it
25 against your will?

1 **A.** No.

2 **Q.** Did you -- was it with your consent or
3 without your consent?

4 **A.** Without it.

5 **Q.** Were you in fear?

6 **A.** Yes.

7 **Q.** Were you struggling the entire time?

8 **A.** Yes.

9 **Q.** When you -- when you heard something go by
10 fast, what happens next?

11 **A.** Whatever went by, it went by so fast; and
12 he said, I'm fixing to put the knife up. See? Look.

13 And he made me feel it. And he put
14 the knife up. And he stood up. And when he stood
15 up, that's when he took off running the other way.

16 **Q.** You said "the other way." Can you describe
17 what direction he went?

18 **A.** It was -- that way (indicating.)

19 **Q.** Okay.

20 **A.** Going towards that way (indicating.)

21 **Q.** Towards the road or away from the road?

22 **A.** Away from it.

23 **Q.** What is going through your head?

24 **A.** I can't believe this happened to me.

25 **Q.** What do you do next?

1 **A.** I waited for a little bit because I was in
2 shock. And then my mind say, Now you need to get up;
3 and you need to run, too, before he come back and
4 kill you. So, I did.

5 **Q.** Where did you run to?

6 **A.** I ran back out this fence. I left
7 everything there, and I ran back towards Denise
8 Thompson's house.

9 **Q.** This person that grabbed you, that did this
10 to you, did you know that person?

11 **A.** No.

12 **Q.** You ever seen him before?

13 **A.** No.

14 **Q.** Is it fair to say he is a total stranger to
15 you?

16 **A.** Yes.

17 **Q.** This stuff that happened back there, was it
18 consensual; or was it force?

19 **A.** Force.

20 **Q.** When he left and he ran, you said, away
21 from the road, did you ever see him again?

22 **A.** No.

23 **Q.** You said you ran to Denise's house. How
24 did you get there?

25 **A.** I ran back.

1 **Q.** Okay. Did you take the same path that you
2 took to get to where you were?

3 **A.** Yes.

4 **Q.** Did you go across the bridge?

5 **A.** Yes.

6 **Q.** Did you get to Denise's house?

7 **A.** Yes.

8 **Q.** Do you know how much time passed?

9 **A.** Can you repeat that again?

10 **Q.** Like between when you left Denise's house
11 to when you get back to Denise's house, do you have
12 any way of knowing how much time passed?

13 **A.** No.

14 **Q.** Did you talk to the police that night?

15 **A.** Yes.

16 **Q.** And did you meet with paramedics that
17 night?

18 **A.** Yes.

19 **Q.** Did -- did you actually go back to the
20 police -- to the scene with the police officer?

21 **A.** Yes.

22 **Q.** Did you try to point out where things had
23 happened?

24 **A.** Yes. But I didn't want to go back. Like I
25 didn't want to go back in the inside.

1 Q. Okay. Why not?

2 A. Because I was scared.

3 Q. So, where did you stand?

4 A. In the street. On the side.

5 Q. Do you know if she went back to the scene,
6 the police officer?

7 A. Yes.

8 MR. PENEГУY: Judge, may I approach
9 the witness?

10 THE COURT: Yes, sir.

11 Q. (BY MR. PENEГУY) I'm going to show you
12 something that's already come into evidence. It's
13 State's Exhibit No. 39.

14 Okay. State's Exhibits 39 is a box.
15 Do you recognize what's inside that box?

16 A. Yes.

17 Q. Okay. What are these?

18 A. My shoes.

19 Q. Okay. Are there two of them?

20 A. Yes.

21 Q. Okay. And just for -- what kind of shoes
22 are these?

23 A. Jellies.

24 Q. Okay. And were these the shoes that you
25 were wearing on that day when you were at Denise's

1 apartment?

2 **A.** Yes.

3 **Q.** Okay. Do you remember where these shoes
4 were?

5 **A.** I left them.

6 **Q.** Where did you leave them?

7 **A.** In the woods.

8 **Q.** Why?

9 **A.** My mind say don't pick it up.

10 **Q.** So, when you left the woods, were these
11 shoes still there?

12 **A.** Yes.

13 **Q.** After going to the scene with the police
14 officer, Jocelyn -- Jocelyn, after going to the scene
15 with the police officer, did you -- did you go to the
16 hospital?

17 **THE COURT:** Excuse me, ma'am.

18 **THE WITNESS:** Thank you.

19 **A.** Yes.

20 **Q.** **(BY MR. PENEGUY)** Do you remember what
21 hospital it was?

22 **A.** Hermann.

23 **Q.** And when you went to Hermann Hospital, did
24 you meet with a nurse?

25 **A.** Yes.

1 Q. Okay. And did she do some exams?

2 A. Yes.

3 Q. And did you cooperate however you could?

4 A. Yes.

5 THE COURT: Perhaps this would be a
6 good time to break for lunch. And we're expecting
7 lunch shortly; is that correct?

8 THE BAILIFF: Yes, ma'am.

9 THE COURT: Okay. So, it's a little
10 after 12:00. So, we will stand in recess until 1:15.

11 Members of the jury, when you have a
12 break, you should not discuss the case among
13 yourselves. You should not begin to do that until
14 deliberations start. And if anyone wants to go out
15 and smoke, certainly they may do that.

16 THE BAILIFF: Yes, ma'am.

17 THE COURT: And then just come back by
18 1:15. Thank you.

19 All rise, please, for the jury,
20 please.

21 *(Jury released)*

22 THE COURT: Thank you. So, you can
23 have a break.

24 *(Lunch recess taken)*

25 *(AFTERNOON SESSION)*

1 **THE COURT:** Thank you. Please have a
2 seat.

3 **MR. PENEGUY:** Would you like me to get
4 the witness?

5 **(Brief pause)**

6 **THE COURT:** Okay. Did you get lunch?
7 Jocelyn, did you get lunch?

8 **THE WITNESS:** Huh-uh (negative.)

9 **THE COURT:** No?

10 **THE WITNESS:** No.

11 **THE COURT:** You didn't. You need a
12 kleenex?

13 **THE WITNESS:** Yes.

14 **THE COURT:** Thank you.
15 Okay. We're ready for the jury.

16 **(Jury enters the courtroom)**

17 **THE COURT:** Thank you. Please be
18 seated.

19 Mr. Peneguy, I believe you were on
20 direct examination.

21 **MR. PENEGUY:** Thank you. Thank you,
22 Judge.

23 **Q.** **(BY MR. PENEGUY)** Jocelyn, we were just
24 talking about you going to the hospital; is that
25 correct?

1 **A.** Yes.

2 **Q.** Okay. And do you remember going to the
3 hospital and being examined by a nurse?

4 **A.** Yes.

5 **MR. PENEGUY:** Judge, may I approach
6 the witness?

7 **THE COURT:** You may.

8 **Q.** **(BY MR. PENEGUY)** For purposes of the
9 record, I'm showing you what's been marked as State's
10 Exhibit No. 38, State's Exhibit 37, and State's
11 Exhibit 40. Okay?

12 I'm going to start by talking to you
13 about State's Exhibit No. 38. Before you took the
14 stand this morning, did you have an opportunity to
15 look at this?

16 **A.** Yes.

17 **Q.** And did we look at it together?

18 **A.** Yes.

19 **Q.** Okay. And can you tell the jury just for
20 purposes of the record, is this something that you
21 recognize?

22 **A.** Yes.

23 **Q.** Okay. And what is contained in the
24 envelope inside State's Exhibit 37?

25 **A.** My shirt.

1 Q. Okay. Is that the shirt that you were
2 wearing on June 11, 2008?

3 A. Yes.

4 Q. Okay. And when you went to the hospital,
5 did they take that shirt from you?

6 A. Yes.

7 Q. And next I'm going to ask you to look
8 inside the envelope that's marked State's Exhibit
9 No. 38 and ask you to look at these.

10 Prior to testifying this morning, did
11 you have an opportunity to look at what's contained
12 inside of State's Exhibit 38?

13 A. Yes.

14 Q. And can you tell the jury what these are?

15 A. My shorts.

16 Q. Okay. What color are they?

17 A. Red.

18 Q. Okay. Do you recognize these shorts?

19 A. Yes.

20 Q. What do you recognize these shorts as?

21 A. The clothes I was wearing.

22 Q. Okay. And is this the clothing that you
23 were wearing on June 11, 2008?

24 A. Yes.

25 Q. Okay. When you went to the hospital, what

1 happened to these clothes?

2 **A.** The nurse took them.

3 **Q.** And I'm going to show you State's
4 Exhibit 40. And prior to testifying today, did we
5 have an opportunity to look at these items -- this
6 item?

7 **A.** Yes.

8 **Q.** Okay. And can you tell the jury what's
9 contained inside the envelope, State's Exhibits 40?

10 **A.** My bra.

11 **Q.** Okay. And can you describe what kind of
12 color that is?

13 **A.** Like a brownish-whitish looking.

14 **Q.** Okay. And did you get that bra back the
15 day that you went to the hospital?

16 **A.** No.

17 **Q.** Okay. Did they take that when they took
18 your shorts and your T-shirt?

19 **A.** Yes.

20 **Q.** Okay. And tell me this, Jocelyn. You
21 know, it looks like these have had some markings that
22 have been placed on them; but are these -- do you
23 recognize these items?

24 **A.** Yes.

25 **Q.** Okay. And are these items that you have

1 owned?

2 **A.** Yes.

3 **Q.** Do they kind of appear -- I mean, they have
4 got some markings on them; but do they appear to be
5 in the same substantial condition when you last saw
6 them?

7 **A.** No.

8 **Q.** Because they have been processed, right?

9 **A.** Yes.

10 **Q.** But these are items that you recognize?

11 **A.** Yes.

12 **Q.** Thank you.

13 **Jocelyn,** I want to talk to you about
14 what you were wearing that day. Okay? Can you tell
15 me about -- can you tell the jury just a little bit
16 about those shorts? Were they yours?

17 **A.** Yes.

18 **Q.** Okay. Have you loaned those shorts out to
19 anybody?

20 **A.** No.

21 **Q.** Okay. You know, when you have clothes that
22 you use, do you put them through the washer at
23 different times?

24 **A.** No.

25 **Q.** Between them coming here today and when

1 they -- when they got to the -- to the doctor, you
2 tried to clean them up any?

3 **A.** No.

4 **Q.** So, is that kind of how they looked once
5 you walked down Wilmington road back to Denise's
6 apartment?

7 **A.** Yes.

8 **Q.** Okay. When clothes are kept at your home,
9 do you guys regularly do the laundry?

10 **A.** Yes.

11 **Q.** Okay. So, those would have been things
12 that you would have washed before; is that correct?

13 **A.** Yes.

14 **Q.** After the hospital, do you remember how you
15 got home that night?

16 **A.** My mama.

17 **Q.** Is that -- were you done, or did you ever
18 talk to any more police officers?

19 **A.** When it was done.

20 **Q.** Back in 2008, did you ever meet with any
21 detectives on the case?

22 **A.** Yes.

23 **Q.** Okay. Was that the same night, or was that
24 later?

25 **A.** The same day.

1 **Q.** Did you have an opportunity to meet with
2 another officer at a later date and go back to the
3 same -- that same scene?

4 **A.** Yes.

5 **Q.** Do you remember how many days it was?

6 **A.** No.

7 **Q.** Why did you go back? Do you remember why
8 you went back to the scene that day?

9 **A.** They wanted to see where it happened at.

10 **Q.** So, a detective, another person, another
11 law enforcement officer, wanted to see where it
12 happened?

13 **A.** Yes.

14 **Q.** Okay. Did you show them where?

15 **A.** Yes.

16 **Q.** Did you try to provide as much information
17 to that detective as possible?

18 **A.** Yes.

19 **Q.** Jocelyn, back when this happened, did --
20 did you do an interview with Channel 13?

21 **A.** Yes.

22 **Q.** Can you tell us -- do you remember when
23 that happened?

24 **A.** The same day.

25 **Q.** And did you call the news, or did your

1 mom -- who called the news?

2 **A.** My mama.

3 **Q.** Okay. Did you agree to do the interview?

4 **A.** Yes.

5 **Q.** Now, have you had a chance to go back and
6 look at that?

7 **A.** Yes.

8 **Q.** Why did you do the interview?

9 **A.** Because I felt like that everybody should
10 know that there was a rapist out there.

11 **Q.** Were you worried?

12 **A.** Yes.

13 **Q.** When you met with the news, did you let
14 them show your face?

15 **A.** No.

16 **Q.** Why not?

17 **A.** Because I didn't want nobody to recognize
18 my face.

19 **Q.** Jocelyn, did you try to answer all of the
20 questions that the law enforcement officers had for
21 you back that summer of 2008?

22 **A.** Yes.

23 **Q.** Did they ask you to sit down and try to
24 describe to them -- to a sketch artist kind of what
25 the person looked like?

1 **A.** Yes.

2 **Q.** Did you do that?

3 **A.** Yes.

4 **Q.** What happened next?

5 **A.** When I described them?

6 **Q.** I mean -- no. I mean, did -- did you --
7 did you ever get contacted again after you met with
8 them?

9 **A.** No.

10 **Q.** Years later do you meet again with police
11 officers?

12 **A.** Yes.

13 **Q.** Okay. Did you reach out to them, or did
14 they contact you? What happened?

15 **A.** They contacted me.

16 **Q.** Were they talking to you about this same
17 case?

18 **A.** Yes.

19 **Q.** What happened?

20 **A.** They contacted me and we met up at my
21 grandma's house and they was explaining to me about
22 the case.

23 **Q.** Jocelyn, I'm going to -- at any point in
24 time during that conversation, did they give an
25 opportunity to look at some photographs?

1 **A.** Yes.

2 **Q.** Were you able to pick anybody out of any of
3 those photographs?

4 **A.** No.

5 **Q.** Did you tell them your story, though?

6 **A.** Yes.

7 **MR. PENEGUY:** Judge, may I approach
8 the witness?

9 **THE COURT:** Yes.

10 **Q.** **(BY MR. PENEGUY)** I'm going to show you
11 what's been marked as State's Exhibit No. 83. Okay?
12 Whose shown in State's Exhibit No. 83?

13 **A.** That's me.

14 **Q.** Okay.

15 **MR. PENEGUY:** Judge, at this time we
16 offer State's Exhibit 83 and tender to opposing
17 counsel.

18 *(Sidebar discussion outside hearing of*
19 *the Court Reporter)*

20 **MR. GRAHAM:** No objection, Judge.

21 **THE COURT:** Thank you. Admitted.

22 **MR. PENEGUY:** Judge, may I publish
23 State's Exhibit 83?

24 **THE COURT:** You may.

25 *(Exhibit Published)*

1 **Q.** (**BY MR. PENEGUY**) Jocelyn, do you remember
2 exactly what year that was?

3 **A.** No.

4 **Q.** Okay. But does it show you a little bit
5 younger?

6 **A.** Yes.

7 **MR. PENEGUY:** I pass the witness.

8 **THE COURT:** Thank you.

9 Cross-examination?

10 **MR. GRAHAM:** Thank you, Judge.

11 **CROSS-EXAMINATION**

12 **Q.** (**BY MR. GRAHAM**) Hi, Ms. Batiz. My name is
13 Spence Graham. I'm going to be asking you some
14 questions. If there is anything that you want me to
15 rephrase, anything you have trouble understanding
16 what my question is, please let me know. If you need
17 a break at any point, please let me know. Okay?

18 **A.** Yes, sir.

19 **Q.** Are you doing okay right now? Do you need
20 a glass of water or anything?

21 **A.** I want to go home.

22 **Q.** Okay. I can certainly understand that. I
23 just have a few questions for you, just to make sure
24 that I understand everything that you have told us
25 here today. Okay?

1 Let's -- let's go back a little bit to
2 what you were talking about in the beginning with
3 your good friend Denise. You guys had been friends
4 for how long up in 2008?

5 **A.** A long time.

6 **Q.** Okay. And would you say that you went over
7 to her house on almost daily basis?

8 **A.** Yes.

9 **Q.** Okay. Did she come to your house
10 sometimes, too?

11 **A.** Yes.

12 **Q.** Okay. And the way that you would get there
13 normally is to use your card and take the Metro bus?

14 **A.** Yes.

15 **Q.** Okay. Sometimes you would walk?

16 **A.** Yes.

17 **Q.** Do you know about how long it takes to walk
18 from your place on Burns over to her apartments?

19 **A.** Probably not that long.

20 **Q.** Okay. Did you have a watch with you or
21 anything? Did you ever time it?

22 **A.** No.

23 **Q.** Okay. But a shorter bus ride? A
24 few-minute bus ride, I guess?

25 **A.** Yes.

1 **Q.** Okay. On June 11, 2008, did you -- first
2 of all, this was a Wednesday, right?

3 **A.** Yes.

4 **Q.** Okay. And it was summertime. So, were you
5 off from school at that time?

6 **A.** Yes.

7 **Q.** Okay. So, what were your days like
8 normally? Like during the day, what did you normally
9 do?

10 **A.** When I'm bored, I will just go to her house
11 and fall asleep. Sometimes I spend the night.
12 Sometimes when she know it's getting late, she will
13 tell me I need to go home and for me to call when I
14 get there.

15 **Q.** Okay. Right. Okay. So, you know you're
16 just, kind of summertime, trying to enjoy your time
17 off and enjoy your time with your friend, right?

18 **A.** Yes.

19 **Q.** Okay. And on June 11th, did you call her
20 from the house to let her know you were coming over
21 or --

22 **A.** Yes.

23 **Q.** Okay. And you said that you took your cell
24 phone with you?

25 **A.** Yes.

1 **Q.** And from -- from where you go to catch the
2 bus, about how long of a walk is it from your house
3 to that bus stop?

4 **A.** Not that long. Because it's right there.
5 Like the bus stop is like not that far from my house.

6 **Q.** Like a couple of blocks? A mile? You
7 know, how --

8 **A.** Like a street over.

9 **Q.** Street over. Okay. And then the bus stop
10 that you would ordinarily get off from, is that the
11 one on -- near Fiesta on Cullen?

12 **A.** Yes, sir.

13 **Q.** And in order to get to Denise's house?

14 **A.** Yes, sir.

15 **Q.** Okay. And do you know about what time it
16 was that you got on the bus to go over to Denise's?
17 Was it like morning time? Afternoon, you know?

18 **A.** It was like in the morning time.

19 **Q.** Okay. Like early in the morning or --

20 **A.** I just -- probably around about 10:00.

21 **Q.** Okay. And so, the bus rides -- did you
22 wait long at the bus stop or --

23 **A.** Yeah.

24 **Q.** Okay. Do you know about when you got to
25 the bus stop over at the Fiesta off Cullen?

1 **A.** Repeat that.

2 **Q.** Do you know about how long it was from the
3 time that you got to your bus stop over by your place
4 until you got off the bus over by Fiesta?

5 **A.** No.

6 **Q.** Okay. Thirty minutes? An hour? Two
7 hours? Any idea?

8 **A.** Probably like a good hour or like a good
9 minute. It didn't take me that long.

10 **Q.** Okay. Okay. So, fair to say maybe about
11 11:00 you're getting off the bus?

12 **A.** Yes.

13 **Q.** Okay. And then -- and then how long of a
14 walk is it from that Fiesta on Cullen to get to
15 Denise's place?

16 **A.** I want to say it's kind of like a longer
17 walk. Because when I get off, I have to walk down --
18 I have to walk down the sidewalk almost to where I
19 got to Worthing at.

20 **Q.** Okay. And when you're going towards
21 Denise's house -- you said she kind of lives near
22 Worthington, right?

23 **A.** Yes.

24 **Q.** Are you walking down Cullen, or which --
25 which major street are you walking down?

1 **A.** Walking down Cullen.

2 **Q.** Okay. And then what street do you turn
3 onto to get to where Denise is?

4 **A.** I walk -- walk towards Scott.

5 **Q.** Towards Scott. Okay.

6 And then is Wilmington -- does that
7 run into Cullen at all or --

8 **A.** Wilmington is on Scott. It's on Scott
9 Street where Worthing is at.

10 **Q.** Okay. Wilmington runs into Scott Street.

11 Okay. And there -- I think you talked
12 to Mr. Peneguy about there is a couple of different
13 ways that you can get to Denise's place; is that
14 correct?

15 **A.** Yes.

16 **Q.** Is it Reed street? Is that what --

17 **A.** Yes.

18 **Q.** Okay. And -- Reed Road?

19 **A.** Yes.

20 **Q.** Okay. And when you go, did you go that
21 way? Did you go the way of Reed Road whenever you
22 went to Denise's, or did you take the back way?

23 **A.** When I get off the bus, I walk down -- walk
24 down Cullen. Then I like turn. Then I be already on
25 Scott. And as I walk or whatever, I don't walk all

1 the way around. Because you can walk all the way
2 around, but I didn't walk all the way around. I
3 walked through the -- through the trail way.

4 Q. Is it -- is that the shortcut?

5 A. Yeah, the shortcut. Because --

6 Q. Okay. And that's where you cross the
7 bridge and then --

8 A. Huh-uh (negative.) I didn't -- I didn't go
9 over the bridge. I went the other way.

10 Q. Okay.

11 A. Like the other shortcut.

12 Q. Okay.

13 A. Because she will be standing outside the
14 gate waiting on me.

15 Q. So, there is basically three ways to get
16 into the complex then?

17 A. Uh-huh (affirmative.)

18 Q. I'm sorry. Make sure you answer out "yes"
19 or "no" --

20 A. Yes.

21 Q. -- so she can take it down.

22 A. Yes.

23 Q. Thank you very much.

24 Okay. So -- so, you took that -- that
25 separate -- the second shortcut to kind of get to

1 Denise's place to begin with?

2 A. Yes.

3 Q. Okay. And she was waiting at the gate for
4 you?

5 A. Yes.

6 Q. Okay. So, you called her whenever you got
7 off the bus to let her know you were on the way?

8 A. Yes.

9 Q. And does she wait there at the gate because
10 she has to -- there is some kind of code or something
11 to let you in or --

12 A. Huh-uh (negative.) It wasn't -- it wasn't
13 no code or nothing. You can just walk in and walk
14 out.

15 Q. Okay. And I think as we -- as you
16 discussed earlier, there appears to be this --
17 showing you State's Exhibit 11 -- a wrought iron
18 fence around that area now.

19 That wasn't there at the time; is that
20 correct?

21 A. Yes, sir.

22 Q. Okay. And I think you described maybe kind
23 of like a broken fence --

24 A. Yes.

25 Q. -- that you can get past?

1 **A.** Yes, sir.

2 **Q.** Okay. So, after Denise meets you at the
3 gate, you guys do what at that point?

4 **A.** Go in the house.

5 **Q.** Okay. And when you were at the house, I
6 think you said you just kind of hung out like
7 teenagers do?

8 **A.** Yes.

9 **Q.** Talking?

10 **A.** Yes.

11 **Q.** At some point did you say you actually went
12 to sleep for a little bit?

13 **A.** Yes.

14 **Q.** Okay. Do you know about how long you might
15 have been asleep?

16 **A.** No.

17 **Q.** Okay. And then at some point you got a
18 call from your mom?

19 **A.** Yes.

20 **Q.** Do you know about what time it was you got
21 a call from mom?

22 **A.** No.

23 **Q.** Okay. Do you know was it afternoon at that
24 point?

25 **A.** Yes.

1 Q. Was it still morning? It was afternoon?

2 A. Yes.

3 Q. Okay. And without going into, you know,
4 what your mom said, did she seem upset or what?

5 A. No.

6 Q. Anything going wrong at the time?

7 A. No.

8 Q. Okay. But based on your conversation, you
9 felt the need to leave Denise's and get home?

10 A. Yes.

11 Q. Okay. And were you -- were you upset
12 whenever you were leaving or frantic based on your
13 conversation with your mom or anything?

14 A. No.

15 Q. Okay. So, when you decided to leave, who
16 was there at the apartment with Denise and you?

17 A. Me, Denise, her grandma, her brother, her
18 sister, and I think her sister baby daddy and --

19 Q. Okay. And her brother's name?

20 A. Matt.

21 Q. Okay. And her sister, what is her sister's
22 name?

23 A. Tasha.

24 Q. Tasha. Okay.

25 And do you know grandma's name? Just

1 Grandma?

2 **A.** No.

3 **Q.** Okay.

4 **A.** Just Grandma.

5 **Q.** No problem. Okay.

6 So, if I understand correctly, there
7 is you, Denise, Tasha, Matt, Grandma?

8 **A.** Yes.

9 **Q.** So, five people are there whenever you
10 leave?

11 **A.** Yes.

12 **Q.** Okay. Is everybody awake or?

13 **A.** Yeah.

14 **Q.** Okay. And when you decide to leave, Denise
15 being a good friend, she decides to walk out with
16 you?

17 **A.** Yes.

18 **Q.** Okay. And she goes to the gate with you to
19 see you off --

20 **A.** Yes.

21 **Q.** -- is that correct?

22 Okay. And at that point you decided
23 to take the other shortcut, not the one that you had
24 taken originally to get to Denise's?

25 **A.** Yes.

1 **Q.** Showing you State's Exhibit 12. After you
2 go past the broken gate, you go on to this bridge --

3 **A.** Yes.

4 **Q.** -- correct?

5 Okay. And then after the bridge, we
6 see here at the end of the bridge, there is a street.
7 Do you know what street that is?

8 **A.** No.

9 **Q.** But that is the street that you actually
10 started walking down. Here, I will show you State's
11 Exhibit 15. It's a little closer up. Is this -- is
12 this the street that you walked down after you got
13 off the bridge?

14 **A.** Yes.

15 **Q.** Okay. And do you know which -- looks like
16 there is -- if we -- kind of zoom in here a little
17 bit. Looks like there is a street that you can turn
18 off where this vehicle is, or you can keep walking
19 straight.

20 Do you remember what you did?

21 **A.** I kept straight.

22 **Q.** Okay. And showing you State's Exhibit 18,
23 is this the same road?

24 **A.** Yes.

25 **Q.** Okay. And you described that when you --

1 when you walk, you just kind of keep your head down
2 as you're walking; and that was sort of your
3 customary thing that did you, right?

4 **A.** Yes.

5 **Q.** No matter where you were going?

6 **A.** Yes.

7 **Q.** Kind of keeping to yourself?

8 **A.** Yes.

9 **Q.** Did something happen? Like did you hear a
10 noise, or did you see something that kind of made you
11 lift your head up?

12 **A.** I seen this guy.

13 **Q.** Okay. And if you can -- and you can
14 actually -- if you press a little bit hard on the
15 screen, you can leave a mark on it. If you can, if
16 you see the general area where you were and where you
17 saw this guy that kind of made you look up as you
18 were walking down? Do you remember -- if it's
19 shown -- and I'm showing you again State's
20 Exhibit 18. If you can see it here. I will try to
21 back out a little bit more.

22 **A.** No. At that time, no.

23 **Q.** Okay.

24 **A.** When I was walking, I just still had my
25 head down until I got a little closer.

1 Q. Sure. Do you -- do you remember what side
2 of the road that he was on?

3 A. The right-hand side.

4 Q. Okay. So, you're walking this -- this way
5 on the road. Is that fair to say?

6 A. Yes.

7 Q. Okay. And would you agree with me that
8 that would be eastbound on this street?

9 A. Yes.

10 Q. Okay. So, the person you saw would be on
11 the right side where my finger is pointed.

12 A. Yes.

13 Q. Okay. So, did that person stay on the
14 right side of the roadway?

15 A. Yes.

16 Q. Okay. And when you first saw him, do you
17 know about how far away you were from him? Like let
18 me -- I can attest here. I will stand here. You
19 tell me was he further away than I am or closer?

20 A. He was like --

21 Q. Do you need me to back up? Like how far
22 away do you think he was?

23 A. Like a half.

24 Q. Like if I back up to here?

25 A. Yeah.

1 **Q.** About -- about this distance?

2 **A.** Yeah.

3 **Q.** So, I'm about -- well, maybe about 20 feet
4 away from you. Would that be fair to say?

5 Okay? Would that be fair to say?

6 **A.** No. He was like a little closer.

7 **Q.** He was a little closer. Okay. So, about
8 halfway between the court reporter and where the
9 prosecutor is sitting?

10 **A.** Yes.

11 **Q.** Okay. And when you looked up, what -- what
12 did you see when you saw that guy? What was he
13 doing?

14 **A.** Looked like he was looking for something.

15 **Q.** Okay. Did he have anything in his hands?

16 **A.** Not that I know of.

17 **Q.** Okay. Did you -- do you think he was like
18 doing anything in particular? Like you said he was
19 looking for something. Did you think -- like was he
20 taking pictures or anything like that? Did he have a
21 camera or --

22 **A.** No. No.

23 **Q.** Okay. Do you remember telling the police
24 at one point that you thought he may have been taking
25 pictures?

1 **A.** No.

2 **Q.** You don't remember doing that? Okay.

3 Now, when you -- when you saw him, did
4 you keep walking towards him?

5 **A.** I was trying to walk like he walking.

6 **Q.** And when you say that, I mean, like did you
7 keep walking in the direction you intended to go to
8 begin with?

9 **A.** Yes.

10 **Q.** Okay. And initially when you saw him, was
11 there anything about him that you noticed? Any --
12 anything particular about him?

13 **A.** No.

14 **Q.** I think you said you saw that he was
15 wearing a hat?

16 **A.** Yes.

17 **Q.** And some sunglasses?

18 **A.** Yes.

19 **Q.** Did you see anything on the hat, like a
20 team logo or --

21 **A.** Probably the letter C.

22 **Q.** The letter C?

23 **A.** Yes.

24 **Q.** Okay. Did you see like a picture of, you
25 know, any kind of animal or anything like a sports?

1 **A.** No.

2 **Q.** Okay. Do you remember what color the hat
3 may have been?

4 **A.** No.

5 **Q.** Okay. What about -- you said you saw the
6 letter C. Do you know what color that might have
7 been?

8 **A.** White.

9 **Q.** White. And then I think you described that
10 he was wearing some sunglasses?

11 **A.** Yes.

12 **Q.** Do you remember what the sunglasses looked
13 like? Like big sunglasses? Little?

14 **A.** Like a little big.

15 **Q.** Little big. Okay.

16 So, would it be fair to say kind of
17 covered a lot of his eyes and surrounding where his
18 eyes would be?

19 **A.** Like medium size.

20 **Q.** Like medium-sized sunglasses?

21 **A.** Yes.

22 **Q.** Okay. Did you -- did you ever get a look
23 at his eyes?

24 **A.** No.

25 **Q.** Okay. Did you -- did you feel like -- as

1 you were approaching this person, did you see him do
2 anything? Like move towards you?

3 **A.** Yes.

4 **Q.** Okay. About how far -- and I will get it
5 again. I think you said be about right here when you
6 first saw him. When he first started coming towards
7 you, about how close were you then?

8 Tell me when to stop.

9 **A.** Right here.

10 **Q.** Okay. So, you were walking -- you were
11 almost to where he was, and then at that point does
12 he just lunge towards you?

13 **A.** Yes.

14 **Q.** Real fast?

15 **A.** Yes.

16 **Q.** Okay. And was it from the front, or did he
17 wait until you walked past him?

18 **A.** He -- he waited until I got like a
19 little -- like a little close, like a little past
20 him.

21 **Q.** Okay. And then I think you described to
22 Mr. Peneguy that he put his arm around your neck?

23 **A.** Yes.

24 **Q.** Okay. So, at that point, are you on the
25 road way still?

1 **A.** Yes.

2 **Q.** Okay. And when did -- when did you first
3 see a knife? Did you see a knife at that point or --

4 **A.** Yes.

5 **Q.** Okay. When did you first see the knife?

6 **A.** When he wrapped his around -- wrapped his
7 arm around my neck.

8 **Q.** Okay. So, as you're coming up towards him,
9 you hadn't seen a knife yet?

10 **A.** No.

11 **Q.** Okay. And I think you said when
12 Mr. Peneguy was asking you that you actually felt the
13 knife on your neck?

14 **A.** Yes.

15 **Q.** And did it -- did it actually cut your
16 skin?

17 **A.** No.

18 **Q.** Okay. I think you said you described that
19 you felt it pushing in on your skin --

20 **A.** Yes.

21 **Q.** -- is that correct?

22 Okay. Do you know if you ever -- did
23 you ever check to see if you had any kind of mark or
24 anything?

25 **A.** No.

1 Q. Okay. But you weren't bleeding?

2 A. No.

3 Q. All right. All right. And then you said
4 that the person that you saw was a black male; is
5 that correct?

6 A. Yes.

7 Q. Brown skinned I think is what you described
8 to Mr. Peneguy?

9 A. Yes.

10 Q. Do you know -- was he like darker?
11 Lighter?

12 A. A little light.

13 Q. Kind of light skinned?

14 A. Yes.

15 Q. Okay. Do you remember when you talked to
16 the police describing the person that you thought did
17 this?

18 A. Yes.

19 Q. Okay. And do you remember what you said at
20 that time?

21 A. Can you repeat that?

22 Q. Do you remember what you said when you
23 described who did this to you?

24 A. I just described him.

25 Q. Okay. But, I mean, do you remember what

1 you said to the police when you described him back in
2 2008?

3 **A.** Yes. Yes.

4 **Q.** You do. Okay.

5 And do you remember -- was this person
6 taller than you?

7 **A.** Yes.

8 **Q.** How -- how tall are you?

9 **A.** I'm 5'6.

10 **Q.** 5'6. Okay.

11 Do you remember was the person just a
12 little bit taller than you or a lot taller than you?

13 **A.** A little.

14 **Q.** Just a little bit.

15 **A.** Yes.

16 **Q.** Okay. And I think you said to Mr. Peneguy
17 that you thought the person was kind of strong?

18 **A.** Yes.

19 **Q.** Do you know any idea like what we're
20 talking about as far as his weight? Any idea like
21 how much he weighed?

22 **A.** No.

23 **Q.** Do you remember telling the police that you
24 thought the guy may be very dark skinned?

25 **A.** No.

1 **Q.** You don't recall that?

2 Okay. Now, when this man in the hat
3 and glasses put his arm around your neck, choking
4 you, were you having trouble breathing?

5 **A.** Yes.

6 **Q.** Okay. And I would think that's probably
7 particularly hard given the tracheotomy. Do you have
8 trouble breathing in general ever or because of that?

9 **A.** Yes.

10 **Q.** Okay. Now, when this man did this, did
11 he --

12 **THE REPORTER:** Judge, the witness says
13 she needs a break.

14 **THE COURT:** You need a break?

15 **THE WITNESS:** Uh-huh (affirmative.)

16 **THE COURT:** Okay. We're going to take
17 a 10-minute recess. All rise, please.

18 **(Jury released)**

19 **THE BAILIFF:** Come on down, ma'am.

20 **(Witness released)**

21 **(Recess taken)**

22 **THE COURT:** Just so you know, the
23 rules do not allow sexual assault victims to be
24 filmed. So, you don't have to worry about that.
25 They may take pictures of the lawyers and the

1 defendants, they are not allowed to film the jury or
2 sexual assault victims. So I have been a judge 20
3 years; and I have never had them break a rule. So,
4 they are really good to work with. These people have
5 been here a long, long time. So, you don't have to
6 worry about being photographed or filmed. Okay?

7 **THE WITNESS:** (Nods in the
8 affirmative.)

9 **THE COURT:** All right?

10 **THE WITNESS:** (Nods in the
11 affirmative.)

12 **THE COURT:** Okay. Sweetheart. All
13 right.

14 *(Brief pause)*

15 *(Jury enters the courtroom)*

16 **THE COURT:** Thank you. Please be
17 seated.

18 **MR. GRAHAM:** May I proceed, Your
19 Honor?

20 **THE COURT:** You may.

21 **Q.** *(BY MR. GRAHAM)* Ms. Batiz, are you okay?
22 Are you feeling a little better?

23 **A.** Yes.

24 **Q.** Thank you for letting us know. If there is
25 any reason you need to stop again, please do not

1 hesitate to, you know, just wave me down. Okay?

2 A. Okay.

3 Q. All right. So, where I think we left off,
4 we were talking about where you were still on the
5 roadway. You had just passed this man, came up from
6 behind, put his arm around your neck which was
7 choking you where you were having trouble breathing?

8 A. Yes.

9 Q. And put the knife to your neck?

10 A. Yes.

11 Q. Okay. And if I understand your description
12 correctly, he -- he had -- I guess it would be his --
13 his left arm around your neck because he was behind
14 you?

15 A. Yes.

16 Q. And then his right hand had the knife to
17 your -- to the right side of your neck?

18 A. Yes.

19 Q. Is that -- if I understand correctly,
20 that's -- that's what you seem to be showing us both
21 during your direct examination and my questions?

22 A. Yes.

23 Q. Okay. So, at some point I think you said
24 you thought he might have been left handed?

25 A. No.

1 **Q.** You didn't think he was left handed?

2 **A.** No.

3 **Q.** Oh, okay. Do you remember telling
4 Mr. Peneguy that you thought that the knife was in
5 his left hand?

6 **A.** No.

7 **Q.** Okay. So, after this man did this to you,
8 do you -- do you have any idea about how long it was
9 between the time that he grabbed you from behind to
10 the time that you were being taken to the woods?

11 **A.** No.

12 **Q.** Was it -- were you there on the roadway for
13 very much time, or was it just a matter of seconds
14 before?

15 **A.** Matter of seconds.

16 **Q.** Okay. And at that time did you see anybody
17 else on the roadway --

18 **A.** No.

19 **Q.** -- walking around?

20 **A.** No.

21 **Q.** And it's June in Houston, right?

22 **A.** Yes.

23 **Q.** So, that's usually a pretty hot time of the
24 year?

25 **A.** Yes.

1 Q. It was daytime. Is that fair to say?

2 A. Yes.

3 Q. Was it raining out or --

4 A. No.

5 Q. Okay. Do you remember what kind of day it
6 was? Was it like cloudy? Sunny?

7 A. Sunny.

8 Q. Okay. And you -- I think you described
9 that there was a house on that roadway as you walked
10 down in the direction you were walking?

11 A. Yes.

12 Q. Had you passed the house already?

13 A. Yes.

14 Q. Do you know about how far back the house
15 was from where you were?

16 A. Very far.

17 Q. Okay. And I think you described that there
18 was a building down the roadway, too?

19 A. Yes.

20 Q. Had you come up to the building yet?

21 A. Yes.

22 Q. Had you passed the building?

23 A. Yes.

24 Q. Okay. And that building, is it occupied?
25 Do you know is that like a business or --

1 **A.** It was like a business.

2 **Q.** Okay. And was it like a working business?
3 Like people were there?

4 **A.** Yes.

5 **Q.** Okay. And do you know is it a one-story?
6 Two-story building? Three-story? Do you know?

7 **A.** No.

8 **Q.** Okay. Did it have windows or anything like
9 that?

10 **A.** I don't know.

11 **Q.** Okay. Was there a fence covering the
12 building?

13 **A.** No.

14 **Q.** No? Okay. Did you see anybody inside the
15 building as you walked by?

16 **A.** No.

17 **Q.** Okay. And do you know about how far back
18 behind you that building would be from where you were
19 when this man grabbed you?

20 **A.** Can you repeat it again?

21 **Q.** If you know, just -- you know, about how
22 far -- because you said you had passed the building.
23 Do you know about how far back it was?

24 **A.** No. I wasn't that far from the building.

25 **Q.** Okay. And if we look here at State's

1 Exhibit 18, I think you described that he was on the
2 right-hand side of the road where my finger is; is
3 that correct?

4 **A.** Yes.

5 **Q.** And when he grabbed you, did he pull you to
6 the same side of the road?

7 **A.** No.

8 **Q.** Okay. Where did he take you?

9 **A.** I was -- it was on this side (indicating.)

10 **Q.** Okay. So, to the other, the other side of
11 the roadway, like --

12 **A.** Yes.

13 **Q.** -- where my finger is pointing
14 (indicating)?

15 **A.** Yes.

16 **Q.** And I'm not saying that is where you were
17 taken. I'm just saying this side of the roadway?

18 **A.** Yes.

19 **Q.** Okay. And would it be fair to say that if
20 we would look here, we see some kind of overgrown
21 bush area, that it could be somewhere in that general
22 area that we're talking about?

23 **A.** Yes.

24 **Q.** Okay. And when you came up -- or when he
25 took you into this area, showing you State's

1 Exhibit 21, I think you described that he had you go
2 underneath this barbed wire --

3 A. Yes.

4 Q. -- is that correct?

5 Okay. Do you know about how high up
6 the barbed wire was on you?

7 A. No.

8 Q. Okay. And when you were coming into the
9 barbed wire, were you -- were you walking and facing
10 it where you could see it, or were you -- was your
11 back to the barbed wire?

12 A. I was walking so I could face it.

13 Q. Okay.

14 A. I was facing it.

15 Q. And so, how -- how was he dragging you to
16 that area? Was -- were you walking? Was -- or was
17 he like carrying you? Do you remember?

18 A. No.

19 Q. You don't remember?

20 A. No.

21 Q. Okay. At some point, did he let go of you
22 in order for you to go underneath the barbed wire?

23 A. No.

24 Q. Okay. So, he crawled with you?

25 A. Yes.

1 **Q.** Okay. So, at that point were you -- were
2 you on your hands and knees, or were you on your
3 back? Do you remember?

4 **A.** We -- I wasn't on my knees just yet.

5 **Q.** Okay.

6 **A.** So, we walked underneath it together.

7 **Q.** Okay. So, you walked -- did you like duck
8 down?

9 **A.** Yeah, we ducked down.

10 **Q.** Okay. So, the barbed wire would be kind of
11 high then?

12 **A.** Yes.

13 **Q.** Okay. And when you walked underneath the
14 barbed wire, do you know if you -- if it hit you at
15 all? Did it cut you at any point? The barbed wire?

16 **A.** No.

17 **Q.** Okay. What about the man? Did you see --
18 did he get cut by barbed wire or anything?

19 **A.** No.

20 **Q.** Okay. And when you went underneath the
21 barbed wire, where did he take -- did he just stop
22 right outside, right when you got past the barbed
23 wire; or did he take you further into that area?

24 **A.** He took me further.

25 **Q.** Do you have any idea how far in?

1 **A.** It was all the way in.

2 **Q.** Okay.

3 **A.** Like over here (indicating.) Like in the
4 middle.

5 **Q.** So, it wasn't near the roadway anymore?

6 **A.** No.

7 **Q.** Okay. And when you were there, did he keep
8 his -- his hat and sunglasses on?

9 **A.** Yes.

10 **Q.** At any point did the hat and sunglasses
11 come off?

12 **A.** No.

13 **Q.** Okay. Do you remember speaking about the
14 hat? Do you remember talking to the police about him
15 wearing a hat and sunglasses?

16 **A.** Yes.

17 **Q.** Do you remember describing a dark blue hat?

18 **A.** Yes.

19 **Q.** And no logo?

20 **A.** No.

21 **Q.** You don't remember that?

22 **A.** No.

23 **Q.** Okay. So, you told the police that there
24 was the letter C on there?

25 **A.** Yes. And it was a dark blue hat.

1 **Q.** Okay. So, the police, they should have
2 documented that if you told them about the letter C,
3 right?

4 **A.** Yes.

5 **Q.** Okay. All right. And when you -- he took
6 you into this field, I think you -- you described
7 that he pushed you down onto the ground?

8 **A.** He body slammed me.

9 **Q.** Body slammed you. Okay. He actually
10 picked you up and threw you down?

11 **A.** Yes.

12 **Q.** Okay. And at that point were you on your
13 back or on your stomach?

14 **A.** Stomach.

15 **Q.** And could you see where his hands were?

16 **A.** No.

17 **Q.** When he body slammed you, could you see or
18 feel if he still had that knife in his hand?

19 **A.** No.

20 **Q.** Okay. And then I think you described that
21 he was grabbing you by the hips?

22 **A.** Yes.

23 **Q.** And picking you up?

24 **A.** Yes.

25 **Q.** Do you know -- did he still have that knife

1 in his hand?

2 A. Yes.

3 Q. When he was picking you up?

4 A. Yes.

5 Q. Do you recall which -- which side of your
6 body you felt that knife on?

7 A. On my left side.

8 Q. On your left side?

9 A. Yes.

10 Q. Okay. Did you -- did he ever stab you with
11 the knife?

12 A. No.

13 Q. Okay. Were you ever cut with the knife?

14 A. No.

15 Q. Okay. And you said you got a good look at
16 the knife, right?

17 A. Yes.

18 Q. Did it -- was it just like -- you said it
19 was sharp?

20 A. Yes.

21 Q. Did it have just kind of a straight
22 sharpness to it, or did it have like little ridges on
23 it like serration?

24 A. It was straight.

25 Q. Okay. Did you ever describe a serrated

1 knife? Do you know what a serrated knife is?

2 **A.** No.

3 **Q.** Okay. Like little -- little edges on the
4 actual blade.

5 **A.** No.

6 **Q.** Did -- it didn't have that?

7 **A.** No.

8 **Q.** Okay. Did you ever describe that to the
9 police?

10 **A.** No.

11 **Q.** Okay. So, obviously, if they had said you
12 described a serrated knife, that would be a mistake
13 by the police, correct?

14 **A.** Yes.

15 **Q.** Okay. And the knife, was it the kind of
16 knife where you like push a button and it goes back
17 down or you fold it?

18 **A.** No. It was a pocketknife.

19 **Q.** Okay. And so meaning that you fold it?

20 **A.** Yes.

21 **Q.** Okay. And I believe you described it at
22 some point that this man actually gave you the knife
23 or put the knife in your hand?

24 **A.** No.

25 **Q.** Oh, he didn't?

1 **A.** No.

2 **Q.** Okay. Did you ever -- did you ever touch
3 the knife with your hand like when you were reaching
4 for it?

5 **A.** Yeah.

6 **Q.** Okay. Did you -- did your fingers hit the
7 blade at all?

8 **A.** No.

9 **Q.** Okay. So, your fingers weren't cut?

10 **A.** No.

11 **Q.** Okay. And when he body slammed you onto
12 the ground and you were on your stomach -- were you
13 on your stomach the entire time that he did this to
14 you?

15 **A.** Yes.

16 **Q.** Okay. So, during that time did you ever
17 get a look at his face?

18 **A.** No.

19 **Q.** You could hear the things that he was
20 saying, though, correct?

21 **A.** Yes.

22 **Q.** Okay. And how would you describe his
23 voice?

24 **A.** Deep.

25 **Q.** Deep. I think you said he seemed angry?

1 **A.** Yes.

2 **Q.** Okay. You described at some point that you
3 heard kind of a rattling sound?

4 **A.** Yes.

5 **Q.** Like a wrapper?

6 **A.** Yes.

7 **Q.** Okay. And, actually, as this was being
8 done to you, did you feel like the person may be
9 wearing a condom?

10 **A.** Yes.

11 **Q.** Okay. And you know what the difference is?

12 **A.** Yes.

13 **Q.** As far as when somebody is wearing a condom
14 or not?

15 **A.** Yes.

16 **Q.** Okay. And do you know whether or not this
17 person actually ejaculated?

18 **A.** No.

19 **Q.** You don't?

20 **A.** No.

21 **Q.** Okay. Did you ever tell the police that
22 you thought he might have ejaculated?

23 **A.** No.

24 **Q.** Okay. And so, at some point I think you
25 described that something happened, something went by.

1 Do you have any idea what it was?

2 **A.** No.

3 **Q.** Was it possibly an animal or a bird or a
4 person?

5 **A.** No.

6 **Q.** Okay. At that point what exactly did he do
7 as soon as this goes by, whatever it is? Did it make
8 a sound?

9 **A.** Yes.

10 **Q.** What kind of sound did it make?

11 **A.** Like -- like a vehicle, like a car.

12 **Q.** Like a vehicle?

13 **A.** Yes.

14 **Q.** Okay. And that vehicle, would it be going
15 through the field?

16 **A.** No.

17 **Q.** Or going through -- going on that roadway?

18 **A.** Going on the roadway.

19 **Q.** Okay. But you were, I guess, close enough
20 in the field that you would be able to hear that
21 vehicle?

22 **A.** Yes.

23 **Q.** Okay. And at that point he stops doing
24 what he had been doing, stops assaulting you?

25 **A.** Yes.

1 Q. Okay. Does he say anything to you?

2 A. No.

3 Q. No?

4 A. No.

5 Q. Did he hit you again?

6 A. No.

7 Q. Okay. At that point I believe you talked
8 about in your questioning with Mr. Peneguy that he
9 says to you, See, look?

10 A. Yes.

11 Q. Okay. And at that point what is he doing?

12 A. Putting the knife up.

13 Q. Okay. Does -- does he actually put it in
14 your hand?

15 A. No.

16 Q. Okay. And that could be my
17 misunderstanding. I thought during direct
18 examination you said that he actually put the knife
19 in your hand. Is that not correct?

20 A. No.

21 Q. Okay. So, after he folds the knife, what
22 does he do with the knife?

23 A. Put it in his pocket.

24 Q. Okay. And then at that point what does he
25 do?

1 **A.** Stood up.

2 **Q.** Okay. And he -- does he walk away? Does
3 he --

4 **A.** No.

5 **Q.** -- run away?

6 **A.** No.

7 **Q.** Okay. Do you -- did you see where he went?

8 **A.** No. I didn't even make -- I didn't even
9 make -- I went back the other way. He ran back the
10 other way.

11 **Q.** Like in the field or down the roadway?

12 **A.** In the field. It was a trail right back
13 that way.

14 **Q.** Okay. So, within the field there is
15 another way to get out?

16 **A.** Yes.

17 **Q.** Okay. And, obviously, very upsetting
18 everything that you went through. You said that
19 there was a period of shock that you were in?

20 **A.** Yes.

21 **Q.** And you don't know how long you were
22 actually in the field before you got up and left?

23 **A.** No.

24 **Q.** But it is still daylight when you left,
25 right?

1 **A.** Yes.

2 **Q.** Okay. If -- now, I think you described
3 that when you left Denise's apartment you had your
4 cell phone with you?

5 **A.** Yes.

6 **Q.** And the clothing that Mr. Peneguy showed
7 you that you were wearing, if you can kind of
8 describe that for the ladies and gentlemen of the
9 jury. What is that?

10 **A.** I had on some red -- some red shorts with
11 pockets. And I had on this -- this like yellow -- it
12 looked like yellow-whitish shirt that say "baby girl"
13 on it. "Baby girl," that was the name of the words,
14 "baby girl." And it was written in red.

15 **Q.** Okay. And the shorts that you had, did
16 they have -- they had pockets on them?

17 **A.** Yes.

18 **Q.** Did they have front and back pockets?

19 **A.** Yes.

20 **Q.** Okay. And your cell phone, do you know
21 where you put that as you were walking home?

22 **A.** My cell phone was in my right pocket.

23 **Q.** Your right pocket?

24 **A.** Yes.

25 **Q.** Okay. In the front or back?

1 **A.** Front.

2 **Q.** Okay. And did you keep it there the whole
3 time?

4 **A.** Yes.

5 **Q.** When you were taken to the field, did your
6 cell phone fall out?

7 **A.** No.

8 **Q.** Okay. So, even like when he pulled your
9 pants down, the cell phone stayed in your --

10 **A.** Yes.

11 **Q.** Okay. Did he take your cell phone?

12 **A.** No.

13 **Q.** Okay. So, when you were able to collect
14 yourself and finally leave the field, you still had
15 your cell phone with you?

16 **A.** Yes.

17 **Q.** And at that point, as you were going back
18 to Denise's place, did you -- did you call Denise or
19 call anyone else?

20 **A.** I -- when I ran back, I just knocked on the
21 door.

22 **Q.** So, you hadn't called her ahead of time?

23 **A.** Nope.

24 **Q.** Okay. And if she had said that you had
25 called her beforehand and she was looking for you in

1 the courtyard, that would be just be a mistake by
2 Denise?

3 A. Yes.

4 Q. Okay. When you came to the door, Denise
5 was there at her apartment?

6 A. Yes.

7 Q. Were Tasha and Matt and Grandma there?

8 A. Yes. Yes.

9 Q. Okay. So, they all saw the condition that
10 you were in?

11 A. Yes.

12 Q. And how upset you were?

13 A. Yes.

14 Q. And do you know if anybody called for help,
15 like the paramedics or police?

16 A. Yes.

17 Q. Who called?

18 A. Matt.

19 Q. Okay. And did you talk to anybody on the
20 paramedics or 911 on the phone, or was it just Matt?

21 A. Just Matt and Denise.

22 Q. Okay. Now, the clothes that you were
23 wearing, the white shirt with "baby girl" on it, the
24 red shorts -- there at your house do you have like a
25 washing machine and dryer or did you back in 2008 or

1 did you guys go to the laundromat? How did you do
2 your laundry?

3 **A.** We went to the washateria.

4 **Q.** Washateria. Okay. Do you remember the
5 last time you washed those clothes prior to you
6 wearing them on June 11th?

7 **A.** No.

8 **Q.** Okay. Now, once Matt called for help for
9 you, do you remember about how long it was -- was it
10 a short time or long time until the police and the
11 paramedics arrived?

12 **A.** A -- probably a short time.

13 **Q.** Okay. Do you know who got there first, the
14 paramedics or the police?

15 **A.** I can't remember.

16 **Q.** Are you seen by the paramedics?

17 **A.** Yes.

18 **Q.** Before you left with the police officer?

19 **A.** No, I was seen.

20 **Q.** Okay. So, they said it was okay for you to
21 leave with the police officer to go back to the
22 scene?

23 **A.** Yes.

24 **Q.** And when you went back there with the
25 officer, did you -- did you go back past the barbed

1 wire to show Officer Chillis where you had been?

2 A. Yes.

3 Q. Okay. And did you -- did you see your
4 shoes?

5 A. Yes.

6 Q. Okay. And did Officer Chillis do any
7 investigation around that area? Did you see -- was
8 she trying to like find any kind of evidence?

9 A. Yes.

10 Q. Okay. And do you know if she was able to
11 recover anything, like a --

12 A. No.

13 Q. -- condom --

14 A. No.

15 Q. -- condom or wrapper or anything like that?

16 Okay. And I think you described the
17 person that did this was a little bit older than --
18 at that time you were 21?

19 A. Yes.

20 Q. All right. And this person you thought was
21 maybe in their 30s or 40s?

22 A. Yes.

23 Q. And you had never seen them before?

24 A. No.

25 Q. And you haven't seen them since?

1 **A.** No.

2 **Q.** Okay. And at any point did the person's
3 glasses or hat come off?

4 **A.** No.

5 **MR. GRAHAM:** Sorry, Judge. If I could
6 just have one minute?

7 **THE COURT:** Yes, sir.

8 **(Brief pause)**

9 **MR. GRAHAM:** I pass the witness,
10 Judge.

11 **THE COURT:** Thank you.

12 Any redirect?

13 **MR. PENEGUY:** No, Judge.

14 **THE COURT:** Is this witness excused,
15 or do you need her to remain on call?

16 **MR. PENEGUY:** Excused.

17 **THE COURT:** Excused.

18 **MR. GRAHAM:** Just like to keep her on
19 call.

20 **THE COURT:** Okay. Thank you.

21 So, you're free to go today and always
22 a chance you might have to testify again. Maybe not.

23 **THE WITNESS:** Okay.

24 **THE COURT:** Okay. Thank you. So, you
25 may step down from the witness stand. Thank you so

1 much.

2 **(Witness released)**

3 **THE COURT:** Ms. Primm, do you have
4 another witness?

5 **MS. PRIMM:** Yes, ma'am. State would
6 call Susan Spjut.

7 **THE COURT:** Thank you.

8 **THE BAILIFF:** Your Honor, this witness
9 will need to be sworn in.

10 **THE COURT:** Thank you. Good
11 afternoon. If you would come around that way and if
12 you would turn and face the jury and raise your right
13 hand to take the oath.

14 **(Witness Duly Sworn)**

15 **THE COURT:** Thank you.

16 **SUSAN SPJUT,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **Q. (BY MS. PRIMM)** Can you please introduce
20 yourself to the ladies and gentlemen of the jury?

21 **A.** Hi. My name is Susan Spjut.

22 **Q.** And, ma'am, what profession are you in?

23 **A.** I'm a registered nurse.

24 **Q.** How long have you been a registered nurse?

25 **A.** Thirty-nine years now.

1 **Q.** Can you tell the ladies and gentlemen of
2 the jury your training and experience -- your
3 training and education that lead you to becoming a
4 registered nurse?

5 **A.** I graduated from the University of St.
6 Thomas in 1976 with a Bachelor of Science degree in
7 nursing. And then I held various nurses jobs since
8 then. And in 2002 I joined the Memorial Hermann
9 forensic nursing team.

10 **Q.** Okay. You said 2002 you joined the
11 forensic nursing team?

12 **A.** Yes, ma'am.

13 **Q.** Do you have to have any additional training
14 to be a part of the forensic nursing team?

15 **A.** Yes. It was two classes, one week of 80
16 hours. 40 hours of adult training for -- to be
17 certified as an adult SANE nurse and then another 45
18 hours to be certified as a pediatric SANE nurse. And
19 then you take about six months of precepting, which
20 is you follow a practicing SANE nurse and learn and
21 show her that you know what you are doing. And then
22 you apply to the State, the Office of the Attorney
23 General, and get certified as a SANE nurse, sexual
24 assault nurse examiner.

25 **Q.** What is a sexual assault nurse examiner?

1 **A.** A sexual assault nurse examiner is a nurse
2 who's been specially trained, like we just went
3 through additional class, about 10 speakers speaking
4 on violence, sexual -- sexual assault, domestic
5 violence, child abuse, and conduct a medical forensic
6 exam looking for injury, collecting evidence, and
7 collect -- yeah, that's it.

8 **Q.** All right. Now, prior to 2002, you had
9 been a nurse for quite some time?

10 **A.** Yes.

11 **Q.** Prior to there being actual SANE nurses or
12 certified nurses to do sexual assaults, in your
13 nursing career, prior to being certified, had you
14 participated or helped in a sexual assault exam?

15 **A.** A few times.

16 **Q.** Okay. Now, once you're certified, you join
17 the Memorial Hermann team is what you said?

18 **A.** Yes.

19 **Q.** Okay. And how long did you work there at
20 Memorial Hermann?

21 **A.** Twelve years.

22 **Q.** What shift did you work?

23 **A.** All shifts.

24 **Q.** Okay. I'm going to draw your attention to
25 2008. Were you working at Memorial Hermann at that

1 time?

2 **A.** Yes.

3 **Q.** Okay. Specifically, I want to draw your
4 attention to June 11, 2008. Were you working on that
5 particular date?

6 **A.** Yes.

7 **Q.** Now, while you're working as a sexual
8 assault nurse examiner, do you also have other
9 patients other than sexual assault victims?

10 **A.** No.

11 **MS. PRIMM:** May I approach the
12 witness?

13 **THE COURT:** You may.

14 **Q.** (**BY MS. PRIMM**) Ma'am, I'm going to show you
15 what's been previously marked as State's Exhibit 35
16 and ask if you can please take a look at that and see
17 if you recognize those documents?

18 **A.** (Witness complies.) Yes, I do.

19 **Q.** And are these copies of the originals?

20 **A.** Yes.

21 **Q.** And are these maintained by the hospital?

22 **A.** Yes.

23 **Q.** And are they maintained in the regular
24 course of business?

25 **A.** They are -- the forensic documents are kept

1 within the forensic nursing department.

2 Q. Okay. And are the entries in the records
3 made at or near the time of the events?

4 A. Oh, yes.

5 Q. Are they made by somebody who has personal
6 knowledge of the event?

7 A. Yes.

8 MS. PRIMM: Your Honor, at this time I
9 will offer State's Exhibit 35, the records that have
10 been on file with the Court; and notice has been
11 given to Defense counsel.

12 MR. VINAS: No objection, Your Honor.

13 THE COURT: Admitted. I'm sorry, give
14 me the number again.

15 MS. PRIMM: 35, Your Honor.

16 THE COURT: Thank you.

17 Q. (BY MS. PRIMM) And Ms. Spjut, I'm going to
18 leave these up here next to you.

19 Ms. Spjut, did you come in contact
20 with a patient by the name of Jocelyn Batiz on June
21 11, 2008?

22 A. Yes, I did.

23 Q. When a victim of sexual assault comes into
24 the emergency room at Memorial Hermann, can you tell
25 us what the first thing that happens with them is?

1 **A.** When they present to the emergency room,
2 they are triaged. They are supposed to be medically
3 cleared. The triage nurse called the forensic nurse
4 on call, which was me at that time; and I would come
5 to the hospital and see the patient.

6 **Q.** All right. And you said at first they are
7 triaged by a nurse. Can you tell us what you mean by
8 that?

9 **A.** Any patient that presents to an emergency
10 room first has to speak with a triage nurse who he or
11 she determines your level of acuity and whether you
12 need to be seen now or whether you can wait.

13 **Q.** Okay.

14 **A.** So, that's the triage system.

15 **Q.** All right. And you said you were the on
16 call nurse. So, you were called?

17 **A.** Yes.

18 **Q.** Were you directly in the hospital, or did
19 you have to come from somewhere else?

20 **A.** I don't remember. At that time we covered
21 nine hospitals.

22 **Q.** Okay. Did you just cover the Memorial
23 Hermann downtown or more than that one hospital?

24 **A.** At that time the Memorial Hermann team had
25 two nurses on call. One would cover the Medical

1 Center, Southwest, and Woodlands. And the other
2 nurse covered the other six hospitals in the mobile
3 unit. And I don't remember which one I was at that
4 time.

5 **Q.** Okay. So, you could have been called to a
6 variety of different hospitals?

7 **A.** Yes.

8 **Q.** Okay. When you first come in contact with
9 a sexual assault victim, what do you -- do you tell
10 them anything?

11 **A.** I always introduce myself, and I explain
12 things to them -- the exam to them, you know, who I
13 am, what I'm doing, why we're doing it. And I did
14 explain the exam to them. And I get their consent
15 for the exam.

16 **Q.** All right. And did you do that with
17 Ms. Batiz?

18 **A.** Yes.

19 **Q.** When you're about to start a sexual assault
20 exam, do you allow the victim of sexual assault to
21 have anybody else in the room with them?

22 **A.** The first thing I do when I perform a
23 pediatric forensic exam is take a patient history;
24 and when I take a patient history, I always try very
25 hard to just have just myself --

1 **MR. VINAS:** Judge, I object,
2 nonresponsive to the question: Do you allow someone
3 to be in the room?

4 **THE COURT:** Sustained.

5 **Q.** **(BY MS. PRIMM)** Okay.

6 **A.** No.

7 **Q.** No? Okay.

8 Throughout the whole thing --
9 throughout the whole time you won't allow somebody
10 else to be in the room or just different parts of the
11 exam?

12 **A.** Well, that's what I was trying to explain.
13 Depends on the patient.

14 **Q.** Okay. What do you mean by that?

15 **A.** If a patient is very upset and they need
16 someone in the room during the exam, because it's a
17 very personal exam, I allow that. During the
18 history, it's just me and the patient.

19 **Q.** Okay. All right. Okay. So, after you
20 have explained who you were and what you're doing,
21 you get a history for the patient. Why do you want
22 to get a history from the patient?

23 **A.** The history helps a nurse make -- every
24 patient that comes into the emergency room gets --
25 takes -- gives a history, which is why they are

1 there. And that gives the nurse an opportunity to
2 make a nursing diagnosis, assessment, and form a care
3 of, a plan of treatment.

4 **Q.** Okay. And with Ms. Batiz -- when you're
5 doing a history, you said you want to know what
6 brought them there to the hospital, correct?

7 **A.** Correct.

8 **Q.** And with Ms. Batiz, did you ask her that
9 question?

10 **A.** Yes.

11 **Q.** Was she able to relate to you what brought
12 her to the hospital that day?

13 **A.** Yes.

14 **Q.** What did she tell you brought her to the
15 hospital that day?

16 **A.** Can I just read it?

17 **Q.** Sure.

18 **A.** Okay. What I wrote is: "Patient states:
19 'I just got raped. He came towards me. He pulled
20 me -- pulled out his knife. He grabbed me, his arm
21 around my neck. He had his knife to my throat. He
22 drug me in the woods. He messed up my hair and he
23 laid me down on my stomach. And he said, Shut up.
24 This won't take long. He took my bottoms off. I
25 tried to get up. He punched me in the face. He

1 said: If you keep on talking, I will kill you. He
2 stuck his stuff in me, his thing in my vagina. When
3 he got finished, he held my head down. He had his
4 knee in my -- on my back -- on my back."

5 Q. And when -- after they relate to you what
6 happened, what is the next thing that you do?

7 A. We have some clarifying questions, like,
8 prior to the exam, has the patient washed, bathed,
9 changed clothes, eaten?

10 Q. Why do you want to know those things?

11 A. Because it could help me determine whether
12 there is going to be any DNA to be able to collect in
13 that area.

14 Q. Okay. And when you asked Ms. Batiz those
15 questions, if she had showered or changed, was she
16 able to answer you?

17 A. She answered "no" to everything.

18 Q. Okay. And as a nurse examiner, is that
19 significant to you?

20 A. Well, it just lets me know that if there is
21 any DNA there, I have a better chance of collecting
22 it.

23 Q. Okay. Are there any other questions that
24 you ask, any other details that you want to know from
25 them?

1 **A.** Well, we ask them if a contraceptive was
2 used, foam or condom, any Vaseline, any lubricants.
3 We ask if she had a tampon in, if she was on her
4 period. Did she injure the assailant -- because if
5 she scratched him, there could be DNA under her
6 fingernails -- and if there was any penetration.

7 **Q.** All right. And when you asked her if a
8 condom was used by the assailant, what did she say?

9 **A.** She said she didn't know.

10 **Q.** In your years as a nurse, is that unusual
11 for someone not to know?

12 **A.** No.

13 **Q.** Why not?

14 **A.** Because in my experience, when a woman is
15 being, or a man is being assaulted like that, you're
16 not paying attention to the details. You're just --
17 you're -- there are a lot of people that are very
18 afraid that they are going to die. So they are just
19 trying to get out of the situation, trying to
20 survive.

21 **Q.** Okay. Did you ask if there was
22 penetration?

23 **A.** Yes.

24 **Q.** And did she -- was she able to respond to
25 that?

1 **A.** She said yes to penetration to her female
2 sexual organ.

3 **Q.** Okay. Now, you also asked her if
4 ejaculation had occurred, didn't you?

5 **A.** Yes.

6 **Q.** Was she able to give you a definitive
7 answer on that?

8 **A.** She said she didn't know.

9 **Q.** Again, you have been a nurse for a very
10 long time. Is that unusual?

11 **A.** No.

12 **Q.** Why not?

13 **A.** Again, because emotional trauma at the
14 time, you are just -- people, when they are being
15 emotionally traumatized, aren't paying attention to
16 the details.

17 **Q.** Okay. After you asked her the details, was
18 she able -- after you get the details, what is the
19 next thing that you do?

20 **A.** We ask when her last period was; ask, you
21 know, how her -- she is -- need of birth control plan
22 B, just put general appearance down, that she is calm
23 and cooperative, tearful at times --

24 **Q.** Okay.

25 **A.** -- during the exam.

1 Q. And?

2 A. And then we do a head to toe.

3 Q. Let me back you up for a minute.

4 You said the general appearance, you
5 document their emotional behavior at the time?

6 A. Yes.

7 Q. Okay. And I believe you said she was calm,
8 cooperative, but tearful at times?

9 A. Yes.

10 Q. Was there anything unusual, in your
11 experience, about her emotional demeanor when she was
12 with you?

13 A. No.

14 Q. Do you expect your sexual assault victims
15 to be hysterical and crying the whole time they are
16 with you?

17 A. No.

18 **MR. VINAS:** Objection to relevance as
19 to what any other sexual assault victims would be
20 going through.

21 **THE COURT:** Overruled.

22 Q. **(BY MS. PRIMM)** I'm sorry. What did you
23 say?

24 A. No. By the time that I see them, they
25 are -- they have already -- most of them have already

1 spoken to the police. They are in the safe
2 environment, which is the hospital. They were with
3 me, and I have -- if they are upset, I spend time
4 talking to them until they are ready to do the exam.
5 I don't try to hurry them through there. So, most of
6 them, by the time I see them, are pretty -- they are
7 calm. They are in a safe place. So, they are not --

8 Q. They are not still hysterical?

9 A. No, not -- some women aren't. Some women
10 are. Everybody's different.

11 Q. Okay. And then do you document their
12 physical injuries that you can see on their body?

13 A. Yes.

14 Q. You note there an overall body diagram that
15 is there.

16 A. Yes.

17 Q. Okay. And on that body -- what is the
18 purpose of that body diagram in your records?

19 A. It's to document the injuries that we find.

20 Q. Okay. And did you, in fact, see injuries
21 on Ms. Batiz?

22 A. Yes.

23 Q. And did you document them on that diagram?

24 A. Yes.

25 Q. Ma'am, I'm going to show you what's been

1 marked for identification purposes as State's
2 Exhibit 36. Is this an exact duplicate of what's in
3 your records except there is no -- your writing is
4 not on it and it's much larger?

5 **A.** Yes. Yes.

6 **Q.** Do you think that would help the jury see
7 the injuries that were documented on Ms. Batiz?

8 **A.** Yes.

9 **Q.** All right. In the records themselves, are
10 there notes next to each line?

11 **A.** Yes.

12 **Q.** I'm sorry.

13 **MS. PRIMM:** At this time, Your Honor,
14 I'm going to offer State's Exhibit 36 for
15 demonstrative purposes.

16 **MR. VINAS:** No objection, Judge.

17 **THE COURT:** Admitted for demonstrative
18 purposes means that it may be used in the courtroom
19 and may be used in final argument, but the jury does
20 not receive it into evidence during deliberations.

21 **Q.** **(BY MS. PRIMM)** The diagram that we're
22 looking at, is that the same diagram that's in the
23 actual medical records that have been admitted?

24 **A.** Yes.

25 **Q.** All right. And this is your signature here

1 at the bottom; is that correct?

2 A. That's correct.

3 Q. All right. Now, this diagram, this shows
4 the front side of a female anatomy; is that correct?

5 A. Yes.

6 Q. All right. Now, what I want to do,
7 Ms. Spjut, is I want to go -- and I will try and make
8 it so both you and the jury can see what I'm doing.

9 This top line right there, do you see
10 that line on the medical records in front of you?

11 A. Yes.

12 Q. Okay. There is a line, and there is also a
13 mark on the chest -- middle chest of the body?

14 A. Yes.

15 Q. What type of injury were you trying to
16 document there?

17 A. Acute linear scratch.

18 Q. So, acute linear scratch; is that correct?

19 A. That's correct.

20 Q. All right. And what is an acute linear
21 scratch?

22 A. It's just a long scratch that was recent.

23 Q. Okay. And any other documentation about
24 that in particular?

25 A. I had measured it at 0.4 centimeters.

1 Q. Okay. Is that accurate?

2 A. Yes.

3 Q. Okay. Then there is a line below it?

4 A. Uh-huh (affirmative.)

5 Q. Further down on the chest. What are you
6 trying to document -- what injury are you trying to
7 document there?

8 A. Another scratch, acute red scratch.

9 Q. Did you measure that scratch?

10 A. 1.4 centimeters.

11 Q. Okay. There is also another line beneath
12 that, a smaller mark on the chest. What are you
13 trying to document there?

14 A. Acute red scratch.

15 Q. Did you measure that one?

16 A. 0.6 centimeters.

17 Q. Okay. And then if you stay on that side of
18 the body and go down towards the upper thigh, there
19 is also a line coming from the thigh.

20 What injury are you trying to document
21 there?

22 A. Acute red abrasion.

23 Q. Is there a difference between an abrasion
24 and a scratch?

25 A. The scratches were more linear. Abrasions

1 measured 2 by 0.3 centimeters, so because it was
2 wider, I probably put it as an abrasion.

3 Q. Okay. Now, if we move down towards the
4 foot of that same side of her body, there at the top
5 line near the ankle, what injury are you trying to
6 document there?

7 A. Linear scratch.

8 Q. And was that scratch measured?

9 A. Three centimeters.

10 Q. Okay. There is one more mark at the end
11 of -- well, right on the top of the foot?

12 A. Uh-huh (affirmative.)

13 Q. What are you trying to document there?

14 A. Another linear scratch, 2 centimeters.

15 Q. Okay. Now, if we move over to the other
16 side of the body, if we go back towards the top,
17 towards the chest, the top line, what type of injury
18 did you find there on Ms. Batiz?

19 A. Acute linear scratch, 2.5 centimeters.

20 Q. Okay. Just below it on the chest, I see
21 another indication of an injury. What is that?

22 A. It's a 4-centimeter acute linear scratch.

23 Q. Okay. And moving down that same side of
24 the body towards the waist, looks like there is
25 another injury at that point?

1 **A.** I documented acute red abrasion,
2 1.5 centimeters.

3 **Q.** Sorry. 1 point --

4 **A.** 5.

5 **Q.** Here on the forearm, top line, what type of
6 injury do we see there?

7 **A.** That one I have 3.5-centimeter scratch.
8 Acute linear scratch.

9 **Q.** Okay. Then we go to the next one below
10 that.

11 **A.** I have all three of those as red scratches.

12 **Q.** Okay. Were they measured?

13 **A.** Yes. The first one was 1 centimeter, the
14 next one is 0.8 centimeters, and the third one was
15 1.2 centimeters.

16 **Q.** And then if we move to the interior of the
17 wrist?

18 **A.** Red scratch.

19 **Q.** Okay. Was that measured?

20 **A.** 1 centimeter.

21 **Q.** On, I think, the outside of the hand, there
22 is another line indicating another injury?

23 **A.** Acute red abrasion.

24 **Q.** And was that measured?

25 **A.** 0.4 centimeters.

1 **Q.** Oops. I'm sorry. Let me go down. I'm
2 sorry. On the interior of the finger, there is
3 another indication of an injury. What do we see
4 there?

5 **A.** Acute scratch.

6 **Q.** And was that measured?

7 **A.** 0.3 centimeters.

8 **Q.** Okay. Now, if we go down her leg, some
9 marks near her knee?

10 **A.** I documented all three of those as linear
11 scratches.

12 **Q.** Okay. Were they measured?

13 **A.** Yes. The first one is 5 centimeters.

14 **Q.** Okay.

15 **A.** Second was 0.3 centimeters.

16 **Q.** Okay.

17 **A.** And 0.5 centimeters.

18 **Q.** All right. We move further down her leg.
19 Are there any further injuries on her leg?

20 **A.** I have documented on her legs that 30-plus
21 stickers removed from left arm leg, right leg, and
22 from bottoms of both feet.

23 **Q.** Let's see. Thirty stickers?

24 **A.** Thirty plus.

25 **Q.** And where are they removed from?

1 **A.** From her left arm, left leg, right leg, and
2 from the bottoms of both feet. That go up to there
3 (indicating.)

4 **Q.** Up here (indicating)?

5 **A.** Yeah.

6 **Q.** Okay. That is the area that you removed
7 the stickers from on her legs?

8 **A.** Yeah.

9 **Q.** All right. And you said both -- both legs
10 and left arm and bottom of both feet; is that
11 correct?

12 **A.** Yes.

13 **Q.** And did you document all the injuries that
14 you documented in the medical records?

15 **A.** The very last one, which was on the right
16 ankle, the very last.

17 **Q.** Okay. This one right here (indicating)?

18 **A.** Yes. That was an area of small scratches,
19 and that area measured 2 point by 1 centimeters.

20 **Q.** Two by what?

21 **A.** One.

22 **Q.** Centimeters?

23 **A.** Yes.

24 **Q.** Okay. Do I have them all down there now?

25 **A.** Yes.

1 **Q.** The markings that you saw on the -- on
2 Ms. Batiz' body, the injuries that you saw, did they
3 seem consistent with the history that she had given
4 you?

5 **A.** Yes.

6 **Q.** Okay. Did you find injuries on the back
7 half of her body for the most part?

8 **A.** No.

9 **Q.** Okay. Now, after you have documented all
10 of the physical markings and injuries on the
11 complainant's body, what is the next thing you do
12 with them?

13 **A.** As I do the head-to-toe assessment, I also
14 collect evidence as I go down. I swab out her mouth,
15 under her fingernails. And once I have done that
16 head to toe, then I do a detailed genital exam, the
17 same thing, looking for injury and collecting
18 evidence.

19 **Q.** Genital exam of a person that's just been
20 sexually assaulted, is that -- can you characterize
21 how that is for the complainant or the victim?

22 **MR. VINAS:** Objection to relevance at
23 this point, Judge.

24 **THE COURT:** Overruled.

25 **A.** It's difficult.

1 **Q.** **(BY MS. PRIMM)** Okay. Was Ms. Batiz able to
2 tolerate the exam?

3 **A.** Yes, she did.

4 **Q.** Now, when you examined her genitalia, did
5 you -- did it indicate that she had any injuries?

6 **A.** No.

7 **Q.** Okay. Is that common or uncommon?

8 **A.** It's common not to find injuries.

9 **Q.** Why is that?

10 **A.** Because the area is -- especially in a
11 woman who still has estrogen, the area is very
12 elastic, very moist.

13 **Q.** And so, with a woman that still has
14 estrogen in her body, is it uncommon to find actual
15 trauma to the genital area if they have been sexually
16 assaulted?

17 **A.** Yes, it's uncommon.

18 **Q.** Okay. The -- is there a kit that you are
19 supposed to use when you collect evidence?

20 **A.** Yes.

21 **Q.** And did you do so in Ms. Batiz' case?

22 **A.** Yes.

23 **Q.** Ms. Spjut, I'm going to show you what's
24 been marked for identification purposes. It's the
25 envelope that's actually marked, but the contents of

1 that -- can you see the contents?

2 **A.** Yes, ma'am.

3 **Q.** Do you recognize the contents?

4 **A.** Yes.

5 **Q.** And what is that?

6 **A.** It's the sexual assault evidence collection
7 kit that I used for Ms. Batiz.

8 **Q.** Okay. And after you collect all the
9 specimens or samples that are required, what do you
10 do with the kit?

11 **A.** Once I have collected the evidence, I seal
12 them in little -- each swab in little boxes, seal
13 those and put them into an envelope that is marked
14 from wherever the sample was taken, like from the
15 mouth. And that is sealed and labeled and then
16 everything is put in a box and that is sealed with a
17 copy of the records.

18 **Q.** What -- what is the purpose of sealing and
19 labeling everything that you collect in the exam?

20 **A.** It's to maintain the chain of -- make sure
21 that none of the evidence is contaminated from when I
22 collected it to when it gets to the lab.

23 **Q.** And do you write all the information on the
24 front of the kit?

25 **A.** Yes.

1 **Q.** So, it is known whose it is?

2 **A.** Yes.

3 **Q.** And you seal it when you're done with this,
4 correct?

5 **A.** Correct.

6 **Q.** And it's picked up by law enforcement?

7 **A.** Correct.

8 **Q.** And the next time you see it, if you see it
9 again, is in court; is that correct?

10 **A.** That's correct.

11 **Q.** I got gloves in here if you would like some
12 gloves.

13 **A.** Sure.

14 **Q.** Probably very large and ill fitting. All
15 right. Basically what I want to do is -- the
16 contents of State's Exhibit 41, I want to go through
17 them.

18 **A.** Okay.

19 **Q.** Okay. We see here they all have step
20 numbers on them; is that correct?

21 **A.** That's correct.

22 **Q.** Is that the order in which you were
23 supposed to conduct the sexual assault, or does it
24 matter?

25 **A.** It doesn't matter.

1 **Q.** Okay. And on each envelope, you have the
2 patient's name; is that correct?

3 **A.** Correct.

4 **Q.** The date that it was collected?

5 **A.** Yes.

6 **Q.** And your -- the time it is collected and
7 your actual initials; is that correct?

8 **A.** Yes.

9 **Q.** And then the envelope is actually sealed,
10 correct?

11 **A.** Yes.

12 **Q.** All right. And there are also initials
13 over there. Whose initials are those?

14 **A.** Mine.

15 **Q.** All right. We'll just go how they come
16 out. Step 9 envelope is what?

17 **A.** Vaginal swabs.

18 **Q.** All right. Step 8, the envelope?

19 **A.** Anal swabs.

20 **Q.** Step 12?

21 **A.** Fingernail scrapings.

22 **Q.** And what do you do to get the fingernail
23 scrapings?

24 **A.** Just go under each fingernail and scrape it
25 into a white piece of paper which I fold up and --

1 Q. Okay.

2 A. -- seal.

3 Q. And step 7, what do we have here in step 7?

4 A. These are labeled stickers and thorns
5 removed from patient.

6 Q. Okay. Are those the 30-plus stickers that
7 you retrieved from Jocelyn's body?

8 A. Yes.

9 Q. All right. Step 14?

10 A. Known saliva sample that's for the
11 patient's DNA.

12 Q. Okay. And does that say 1600 is the time?

13 A. It says 1650. Sorry.

14 Q. That's okay. And step 5?

15 A. Head hair combings and the comb.

16 Q. How do you do that?

17 A. While the patient is sitting up, I go
18 behind her or him and comb the hair into a piece of
19 paper so any debris will fall into the paper.
20 Collect it and seal it in the envelope.

21 Q. Okay. And item -- step 10?

22 A. The pubic hair combs.

23 Q. Okay.

24 A. Combing and combs.

25 Q. And is that process the same way with pubic

1 hair?

2 **A.** Yes. I comb into a piece of paper and seal
3 it.

4 **Q.** All right. Step 4 what do we have in step
5 4?

6 **A.** Patient's panties.

7 **Q.** Okay. And you collect those for evidence,
8 as well, correct?

9 **A.** Yes.

10 **Q.** And we have step 11. What is step 11?

11 **A.** Labia minora.

12 **Q.** Okay. And what is that?

13 **A.** It's the thinner inside the -- you have the
14 labor majora, which is a thicker outer lip and inside
15 the labia minora, a lot of creases and moisture in
16 there. So, I always swab those, and the hymen just
17 in case any secretions come out.

18 **Q.** Looking for any potential evidence,
19 correct?

20 **A.** Correct.

21 **Q.** And these two flat items?

22 **A.** These are -- we used to do swabs, slides.
23 But the crime lab said we made them too thick. So,
24 we stopped doing them.

25 **Q.** All right. And on each of these you see

1 some times. This times says 1810. Can you tell he
2 me what time that is in?

3 **A.** 6:10 p.m.

4 **Q.** All right. And I think the earliest one is
5 at 1645?

6 **A.** 1645, yes.

7 **Q.** Okay.

8 **A.** 4:45.

9 **Q.** So, for over an hour, you were doing a
10 physical exam of Ms. Batiz?

11 **MR. VINAS:** Objection, leading.

12 **THE COURT:** Sustained.

13 **Q.** (**BY MS. PRIMM**) Can you tell from your
14 records what time the actual process was started?

15 **A.** I started the exam at 4:00.

16 **Q.** Okay.

17 **A.** 4:00 p.m.

18 **Q.** And based on the collection -- the items
19 collected, approximately when did you end the exam?

20 **A.** The end of the exam with my patient would
21 be after I collected the last specimen and let her
22 get dressed and take her back to her room.

23 **Q.** Okay. And some of -- I believe the last
24 time on the collection was at 1810 -- or let's see.
25 There is 18:13. Okay. So, would that be 6:13?

1 **A.** Yes, ma'am.

2 **Q.** And after that is done, are there still
3 additional steps that have to happen with the
4 patient?

5 **A.** Depending on which hospital I'm in, we
6 either take her back to her original room if we -- we
7 have an exam room, like in the Medical Center, or she
8 is -- I go and speak to the doctor to get -- talk to
9 her about STD's, prophylactics and pregnancy
10 prophylactics, HIV prophylactics if she wants those.

11 I go speak to the doctor and tell him
12 my findings of the exam and get those medications
13 ordered. Usually, a urine to the lab for pregnancy
14 test. And then I come back and finish up my
15 paperwork and document.

16 **Q.** Okay. So, is it a pretty lengthy time they
17 are there with you doing this?

18 **A.** That's at least another hour. Sometimes
19 they are still there when I leave.

20 **Q.** Okay. Now, you mentioned you allow them to
21 get dressed. Do they get to put their own clothes
22 back on?

23 **A.** No. If they brought clean clothes with
24 them, they put those on; but I have double gowned
25 patients and send them home in double gowns.

1 **Q.** And you say you don't let them take their
2 clothes home. What do you do with their clothes?

3 **A.** I collect those for possible evidence.

4 **Q.** All right. And let me show you what's been
5 previously marked as State's Exhibit 38. Do you
6 recognize State's Exhibit 38?

7 **A.** It's red shorts and has my name on it.

8 **Q.** Okay. Would that have been her shorts that
9 you collected on that particular day?

10 **A.** Yes.

11 **Q.** And State's Exhibit No. 37, do you
12 recognize the packaging in State's Exhibit 37?

13 **A.** That is a white shirt with my name on it.

14 **Q.** Okay. And is that your writing on there?

15 **A.** Yes.

16 **Q.** Would that have been the shirt that you
17 collected from --

18 **A.** Yes.

19 **Q.** -- Ms. Batiz?

20 And State's Exhibit 40. State's
21 Exhibit 40, do you recognize the handwriting?

22 **A.** My signature. And I wrote "beige bra."

23 **Q.** Okay. And would these have been the items
24 that you took from Ms. Batiz on that particular day?

25 **A.** Yes.

1 **MS. PRIMM:** Your Honor, at this time
2 I'm going to offer State's Exhibits 40, State's
3 Exhibit 38, and State's Exhibit 37.

4 **MR. VINAS:** I would object to State's
5 Exhibit -- well, actually, may I take the witness on
6 a very brief voir dire regarding the exhibits?

7 **THE COURT:** All right.

8 **VOIR DIRE EXAMINATION**

9 **Q.** **(BY MR. VINAS)** Okay. Ms. Spjut, I will
10 show them to you in order. Pardon my intrusion here.
11 This witness box is really wide, wider than the
12 stand.

13 Okay. So, we have got 37 -- State's
14 37, State's 38, and State's 39. The black
15 handwriting on here, who is that?

16 **A.** Mine.

17 **Q.** And is that the same on State's Exhibit's
18 37, 38, and 39?

19 **A.** Excuse me. It's 37, 38, and 40, top part,
20 yes.

21 **Q.** Just in the part up here like on State's 37
22 appears to have a time, 1645?

23 **A.** Yes.

24 **Q.** Your signature?

25 **A.** Yes.

1 **Q.** And then it says "white shirt"?

2 **A.** Yes.

3 **Q.** And then on State's 38, got a time of 1645,
4 your signature, and "red shorts"?

5 **A.** Yes.

6 **Q.** And then State's Exhibit 40, got a time of
7 1645, your signature, and "beige bra"; is that
8 correct?

9 **A.** Correct.

10 **Q.** All right. Now, the other black
11 handwriting that appears on State's 37, 38, and 40,
12 is that your handwriting?

13 **A.** No.

14 **Q.** Do you know whose that is?

15 **A.** Yes.

16 **Q.** Okay. Was that from the hospital, or was
17 that from another agency?

18 **A.** That was from Sandra Sanchez. She -- I say
19 she -- she was another forensic nurse who was there
20 at the time when the police came to collect the
21 evidence.

22 **Q.** Okay.

23 **A.** She released it to them.

24 **Q.** Did you see that happen, or you just know
25 that because it's written on the items?

1 **A.** Yes.

2 **Q.** Okay. And then the green handwriting that
3 appears on State's 37, 38, and 40, is that your
4 handwriting?

5 **A.** No.

6 **Q.** Do you know whose handwriting that is?

7 **A.** No.

8 **Q.** Is it fair to say that State's 37, 38, and
9 40 changed hands from the time you collected them
10 until the time they came to court today?

11 **A.** Yes.

12 **Q.** Okay. And you don't know what has been
13 done to State's 37, 38, and 40, between June 11,
14 2008, and today?

15 **A.** No.

16 **Q.** And you can't testify that they are in the
17 same or substantially the same condition as they were
18 the last time you saw them; is that correct?

19 **A.** That's correct.

20 **MR. VINAS:** Judge, I object to the
21 chain of custody not been proven at this point.
22 Obviously, the State can probably shore that up
23 later; but at this point I believe they are
24 inadmissible.

25 **THE COURT:** Thank you. Do you still

1 offer?

2 **MS. PRIMM:** Yes, ma'am, I do.

3 **MR. VINAS:** We still object.

4 **THE COURT:** Excuse me?

5 **MR. VINAS:** And we still object.

6 **THE COURT:** Thank you. 37, 38, and 40
7 are admitted. For the record, objection overruled.

8 **MR. VINAS:** Thank you, Your Honor.

9 **DIRECT EXAMINATION (CONTINUED)**

10 **Q.** (**BY MS. PRIMM**) Do you see in your records
11 whether or not Ms. Batiz had anybody with her?

12 **A.** She -- yes. It said she was -- her sister
13 was with her.

14 **MS. PRIMM:** I pass the witness.

15 **THE COURT:** Thank you.

16 Cross-examination?

17 **MR. VINAS:** Thank you, Your Honor.

18 May we approach briefly?

19 **THE COURT:** Yes, sir.

20 (**At the Bench**)

21 **MR. VINAS:** I'm just keeping an eye on
22 the clock. It's been over an hour since Ms. Batiz
23 had a 10-minute break. I don't know if the jury
24 needs a rest. This would be a good point to take 15.
25 I'm fine if you don't want to do it. I wanted to

1 bring it to your attention.

2 **THE COURT:** Mrs. Lee, do you need a
3 break at this time?

4 **THE REPORTER:** I can wait, Judge.

5 **THE COURT:** How are the jurors? Do
6 you need your afternoon recess at this time? No?
7 Then let's try and finish with this witness.

8 **MR. VINAS:** Certainly, Judge.

9 **THE COURT:** Then we will take the
10 afternoon recess.

11 **MR. VINAS:** And, obviously, if you
12 need to cut me off, please do.

13 **CROSS-EXAMINATION**

14 **Q.** (BY MR. VINAS) Okay. Ms. Spjut, I was
15 going to tease you and call you Nurse Cratchett, but
16 I will call you Nurse Spjut. Is that all right?

17 **A.** That's fine.

18 **Q.** Are you related to Dan Spjut?

19 **A.** Yes.

20 **Q.** How are you related to him?

21 **A.** He is my brother.

22 **Q.** Okay. A lot of Spjuts around here.

23 **A.** Yes.

24 **Q.** And he is a former police officer; is that
25 right?

1 **A.** Yes.

2 **Q.** And did some legal work and now is a Judge;
3 is that correct?

4 **A.** That's correct.

5 **Q.** You have been an RN for 39 years?

6 **A.** That's correct.

7 **Q.** Between 1976 and 2002, what kind of nursing
8 did you do?

9 **A.** Emergency room nursing down at John Sealy
10 in Galveston, cardiac recovery at the Methodist
11 Hospital and St. Luke's Hospital. Operating room
12 nurse, ICU nurse, home health nurse, and back to ER
13 nurse.

14 **Q.** Pretty well rounded practice, I guess?

15 **A.** Yes.

16 **Q.** I meant to say this right off the bat. And
17 I know this is the pot calling the kettle black. You
18 talk really fast.

19 **A.** I'm sorry.

20 **Q.** So do I. So, the two of us together,
21 Mrs. Lee is going to go crazy. So, can we both
22 commit that we will do our best to slow it down a
23 bit?

24 **A.** Yes.

25 **Q.** Okay. Okay. So, you started as a SANE

1 nurse in 2002 at Hermann?

2 A. Correct.

3 Q. Okay. Did you do any SANE work -- sounds
4 so weird -- but did you do any SANE work before 2002?

5 A. Couple of times down at John Sealy and one
6 time prior to my forensic nursing career at
7 Southwest, Memorial Southwest.

8 Q. Was that before they had the SANE nurse
9 certification?

10 A. That was before I was certified, yes.

11 Q. Okay. But the program still existed?

12 A. It was -- they were just beginning it.

13 Q. Okay. And how many hospitals did you say
14 you were on call for at the time on June 11, 2008?

15 A. If you were in the mobile unit, which had
16 the equipment, I believe Memorial Hermann had nine
17 hospitals. So, six.

18 Q. Okay.

19 A. And then the SANE nurse would go to the
20 Medical Center, Southwest, and The Woodlands.

21 Q. So, you had which? Did you have the three
22 or the six?

23 A. I don't remember which hospital I saw her
24 at. I'm sorry.

25 Q. Would it be depicted in State's Exhibit 35,

1 your report?

2 **A.** It's not on there. I looked.

3 **Q.** Okay. Does it make any difference on how
4 your exam is conducted, how you conduct your exam
5 based on which hospital you see the patient in?

6 **A.** No.

7 **Q.** Okay. So, if we don't know what hospital
8 occurred at, do you specifically remember the exam;
9 or are you going off of your recollection as reported
10 in your report?

11 **A.** I'm going off my report.

12 **Q.** So, State's Exhibits 37, 38, and 40, do you
13 specifically remember the shirt, the bra, the shorts;
14 or is it you recognize your handwriting and remember?

15 **A.** It would be my handwriting. And I also
16 usually put a label on the clothing.

17 **Q.** So, I know it's been some time but we're
18 going off of your records, both the label that's on
19 those bags and in your report; is that correct?

20 **A.** That's correct.

21 **Q.** Okay. And you said you started the exam
22 around 4:00 p.m. I believe -- I believe the front of
23 your report actually says you started at 4:00 p.m. or
24 1600; is that correct?

25 **A.** That's correct.

1 **Q.** All right. Now, does that include -- is
2 that just the physical exam; or does that include the
3 history and kind of the interview portion of it,
4 also?

5 **A.** That includes when I first meet my patient.
6 Because as a nurse, I start assessing as soon as I
7 see the patient. So, I start my exam when I first
8 meet my patient.

9 **Q.** How long does the history portion -- you
10 asking questions about not only that day but any
11 medical conditions or anything like that, how long
12 does that typically take?

13 **A.** Depends on the patient.

14 **Q.** Do -- do you have any independent
15 recollection on how long it took for you to conduct
16 the Houston Forensic Science Center history for
17 Ms. Batiz?

18 **A.** No.

19 **Q.** And I see that someone took her vital signs
20 other than you; is that correct? Or did you do
21 everything?

22 **A.** Those were the vital signs from the triage.

23 **Q.** So, the triage nurse did all that?

24 **A.** So, that way I have kind of a remembering
25 time for when they came in there. They arrived to

1 the hospital around 3:00.

2 Q. Okay. Now, you went through the history.
3 And about how long after you meet a patient do you
4 start going through the written history, but the --
5 history portion of the exam? Pretty immediately?

6 A. I'm with my patient, room, I'm sitting with
7 my patient. I ask them what happened. They tell me.
8 I write it down as verbatim as possible. And then we
9 start talking about the rest.

10 Q. Okay. So, as soon as you see them, I mean,
11 you're obviously assessing them visually; but then
12 you pretty immediately start -- after you introduce
13 yourself, start the history?

14 A. I get the consent signed, answer any
15 questions, explain the exam. Then when the patient
16 is ready, go into the history; and that -- at that
17 point my patient and I are by ourselves in the room
18 with a locked door.

19 Q. And I remember you said that. We will get
20 to that. And you ask various questions of Ms. Batiz
21 before you start the actual physical portion of the
22 exam -- whether she washed her hair, brushed her
23 teeth, showered, changed clothes, vomited, gone to
24 the bathroom, few other questions; is that correct?

25 A. That's correct.

1 **Q.** And she indicated "no" on all of those; is
2 that correct?

3 **A.** That's correct.

4 **Q.** I'm reading that right? There is not
5 anything that she had done that would -- could cause
6 any sort of evidence to dissipate or go away?

7 **A.** That's what she said.

8 **Q.** Okay. No reason to --

9 **A.** No doubt.

10 **Q.** -- doubt that?

11 Okay. During the interview portion --
12 interview portion of the exam, you said you asked if
13 the assailant was injured; is that correct?

14 **A.** Yes.

15 **Q.** Okay. And in -- in many of these, if
16 they're not just a "yes" or "no" question, like have
17 you showered or have you brushed your teeth, but
18 these other -- these other questions, there are three
19 options, yes, no, and unknown; is that correct?

20 **A.** That's correct.

21 **Q.** And she didn't know if the assailant was
22 injured; is that right?

23 **A.** That's correct.

24 **Q.** And it's important for you to know that
25 because then that could be a transfer of some

1 biological material, correct?

2 **A.** Correct.

3 **Q.** And that might contain DNA. So, that's why
4 you ask that question.

5 **A.** Yes.

6 **Q.** And she said her response to that question
7 was that she didn't know if he was injured; is that
8 correct?

9 **A.** That's correct.

10 **Q.** And, again, I believe Ms. Primm asked you
11 this question; but she said that it was also unknown
12 whether or not the assailant used a condom?

13 **A.** That's correct.

14 **Q.** And then you started to -- what did you do
15 first? Did you -- did you collect the evidence that
16 is now in State's --

17 **MS. PRIMM:** 41.

18 **Q.** (**BY MR. VINAS**) -- 41, the sexual assault
19 kit; or did you do the visual head to toe? Which did
20 you do first?

21 **A.** I start with the head, and I palpate for
22 tenderness in the head. I comb the hair, collect
23 that; and then I do the swabbing of the mouth. And
24 then I go down. I work down. And when I get to the
25 hands, I document the injuries as I go down; and I

1 scrape under the nails. And I just work my way down
2 to the bottom of the feet.

3 Q. Okay. So, visual inspection is -- is
4 contemporaneous, at the same time, with the evidence
5 collection. Is that fair to say?

6 A. Yes. Yes.

7 Q. And you said you started at the head; is
8 that correct?

9 A. Yes.

10 Q. Visually. And you also feel on it to see
11 if there is any tenderness; is that correct?

12 A. Yes.

13 MR. VINAS: May I approach the
14 exhibit, Your Honor?

15 THE COURT: Yes, sir.

16 Q. (BY MR. VINAS) And you noted -- you noted
17 several -- I lost count. Fair to say that --
18 physically, medically -- that these injuries are all
19 minor?

20 A. Yes.

21 Q. Okay. I mean, nothing life threatening?

22 A. No.

23 Q. In fact, most of them are less than an inch
24 for those of us who are metrically illiterate? I
25 think what, 2 and a half centimeters or so, about an

1 inch? Is that -- did I totally get that wrong?

2 **A.** I think you're about right.

3 **Q.** Okay. So, most of these are under an inch.
4 Some of them are really minor, like .4 centimeters.
5 So, about, you know, 16th of an inch, something like
6 that. Fair to say that none of these required any
7 real serious medical treatment?

8 **A.** That's correct.

9 **Q.** Now, if a patient does require medical
10 treatment, is that done -- before she would get to
11 you, would you do it; or would it be done after she
12 gets to you?

13 **A.** The patients are supposed to be medically
14 cleared because the patient's health and wellbeing
15 comes first before evidence collection.

16 **Q.** Okay.

17 **A.** So, if I am seeing a patient and I find
18 something the doctor needs to see, I will go get the
19 doctor and bring him in.

20 **Q.** So if someone's got a gunshot wound, you're
21 not going to let them bleed out on the table?

22 **A.** No.

23 **Q.** Do you know if any of this even required
24 any medical attention, the scratches and cuts that
25 are -- that are noted in State's Exhibit 36, that is?

1 **A.** I don't remember, but I would have
2 recommended a tetanus shot if she hadn't had one.

3 **Q.** Okay. And the highest injury that I'm
4 seeing is the first injury that you and Ms. Primm
5 went over is that acute linear scratch that's about
6 right on her sternum, that's .4 centimeters?

7 **A.** Yes.

8 **Q.** And probably about, I don't know, a few
9 inches below the collarbone there; is that correct?

10 **A.** Correct.

11 **Q.** And then there were several more on her
12 torso there down into her left arm and then fewer --
13 looks like fewer injuries on her legs. Is that fair
14 to say?

15 **A.** That's correct.

16 **Q.** And then just the one on the back of her
17 left hands; is that correct?

18 **A.** Correct.

19 **Q.** Nothing on her head that you noted in the
20 head-to-toe exam?

21 **A.** I did not document any, no.

22 **Q.** Okay. And you looked at her whole head,
23 front and back, right?

24 **A.** Yes.

25 **Q.** No bruising?

1 **A.** Not that I saw, no.

2 **Q.** No abrasions?

3 **A.** No.

4 **Q.** No scratches?

5 **A.** No.

6 **Q.** No cuts?

7 **A.** No.

8 **Q.** What about her neck? Did you -- did you
9 note anything in your report on the exam about
10 injuries to her neck?

11 **A.** I did not -- I did not document that I saw
12 any injuries on her neck.

13 **Q.** And even if you didn't see anything, you
14 said you palpated the head for tenderness. If she
15 would have said her head hurts, you would have noted
16 that?

17 **A.** Yes. I document tenderness, point
18 tenderness.

19 **Q.** Sure. And since we don't see it in your
20 report or on the diagram, which is part of your
21 report, fair to say that you didn't observe any
22 injuries to her head and her neck?

23 **A.** That's correct.

24 **Q.** And also fair to say that she didn't tell
25 you of any injuries unseen on her head or neck; is

1 that correct?

2 **A.** Except in the history. She said she was
3 punched in the face.

4 **Q.** Okay. But she didn't tell you while you're
5 doing the exam that there was sore spots or bruising
6 around the face?

7 **A.** That's correct.

8 **Q.** And the -- I will get back to that.

9 Now, you and Ms. Primm went over
10 pretty detailed the steps that are included in
11 State's Exhibit No. 41, which is the kit that you
12 collected; is that correct?

13 **A.** That's correct.

14 **Q.** I mean, I am no mathematician; but I
15 noticed there are some steps that are missing, like
16 1, 2, and 3. What are those steps?

17 **A.** Those steps are paperwork.

18 **Q.** Okay.

19 **A.** This front page is labeled step 2.

20 **Q.** Okay. And what about step 6? I notice you
21 start with step 4, which are underwear?

22 **A.** 6? I should know this. I don't remember.

23 **Q.** Okay. Any reason it would not be included
24 in the kit if you conducted that step?

25 **A.** I conducted all the steps. It's just that

1 when you do it for a while, you don't really pay
2 attention to the step numbers.

3 Q. Okay.

4 A. Because you do each exam for that patient.

5 Q. Sure. Like you said earlier, I believe, it
6 doesn't matter. You don't have to go in the order of
7 the steps. I mean, obviously, you have to do the
8 paperwork first, correct?

9 A. We -- I'm sorry?

10 Q. You obviously start -- I mean, you said
11 with Ms. Primm it doesn't really matter what order
12 you go in, as far as the physical exam goes; but
13 clearly you're going to do step 2 --

14 A. Yes.

15 Q. -- before you do any of the evidence
16 collection steps; is that correct?

17 A. That's correct.

18 Q. All right. What is step 1? We established
19 that.

20 A. One -- step 1 was the consent.

21 Q. Okay. Okay. Consent, then history form?

22 A. Yes.

23 Q. Then we move into the -- no, what is step
24 3?

25 A. Step 6 is going to be one of the evidence

1 collection envelopes. I don't remember which one.

2 Q. Okay. I missed it. But I was --

3 A. Step 2 is the paperwork.

4 Q. Right.

5 A. Step 3 through however many envelopes.

6 Q. There were the two slides in there. Is it
7 possible that 3 and 6 are the slides?

8 A. No. Those go with the -- whatever step the
9 vaginal swabs are.

10 Q. Okay.

11 A. And whichever steps the oral swabs are.

12 Q. So, that's with the swabs, vaginal swab
13 smear I guess?

14 A. Yes.

15 Q. And the other anal swab smears?

16 A. Yes.

17 Q. And the lab got mad at y'all for whatever
18 reason?

19 A. We had heard.

20 Q. Okay. And so, 3 and 6 we will look in
21 there in a little bit and see if we can find them.
22 Now, you said that the -- sexual assault physical
23 portion of the exam can be difficult, I think was
24 your word?

25 A. Yes.

1 Q. For the patient; is that correct?

2 A. Yes.

3 Q. So, you're not going to do anything
4 unnecessary, right?

5 A. No.

6 Q. I mean, you just -- you're doing what's
7 necessary for evidence collection?

8 A. And to make sure the patient is okay.

9 Q. Right. Well, I -- certainly. And
10 hopefully that had been done at triage before she
11 even got to you, right?

12 A. No, because I'm the one that really does
13 it, unless there is -- they are complaining of trauma
14 or injury, or bleeding, they are not going to undress
15 the patient until the forensic nurse gets there. So,
16 I'm the one really doing the detailed assessment.
17 So, I could find something that the -- they had
18 overlooked. Because they had -- they hadn't
19 undressed the patient because there is no concern at
20 that time.

21 Q. I guess triage is just to address the level
22 of emergency -- medical emergency at that point, and
23 then you do the better exam?

24 A. Correct.

25 Q. More complete exam, I guess. Okay.

1 But you're doing some things that
2 aren't normal medical procedure outside of this; is
3 that correct? Like, I mean -- and I'm not suggesting
4 that you're doing anything crazy. But like vaginal
5 swabs, that's not something that's in a lot of
6 medical practice, correct?

7 **A.** Depends on what the patient's complaint is.

8 **Q.** If someone goes to see that OB/GYN, that
9 could be done?

10 **A.** Or in the ER.

11 **Q.** But if you go see your GP for tennis elbow,
12 that's not going to happen, right? Hopefully -- I
13 guess it could. Okay.

14 But, anyway, you do those swabs, the
15 vaginal swabs?

16 **A.** Yes.

17 **Q.** And anal swabs?

18 **A.** Yes.

19 **Q.** Fingernail scrapings?

20 **A.** Yes.

21 **Q.** In this case, in step 7, you collected
22 stickers and thorns. Is that typical to do?

23 **A.** They were there.

24 **Q.** Okay.

25 **A.** It was consistent with her history, and

1 they were there. So, I couldn't leave the stickers
2 in her.

3 Q. Sure.

4 A. So, I pulled them out and collected them,
5 sent them to the lab.

6 Q. You took -- step 14 was known saliva for
7 her; is that correct?

8 A. Yes.

9 Q. And the method you did there was buccal
10 swab?

11 A. Yes.

12 Q. And that's where you just take one of those
13 long Q-tip looking things and rub it on the inside of
14 someone's cheeks?

15 A. That's correct.

16 Q. Sometimes people will do one swab for both
17 sides. Sometimes people do one swab for one side,
18 one for the other?

19 A. That's correct.

20 Q. Do you remember what you did -- or what
21 your standard practice is?

22 A. I generally do both sides.

23 Q. Okay. With one swab?

24 A. Two swabs.

25 Q. One swab for each?

1 **A.** Yes.

2 **Q.** Okay. You do the hair combings and put the
3 comb in there, also?

4 **A.** Yes.

5 **Q.** And is the purpose -- well, tell me what is
6 the purpose for including the comb in the hair
7 combings?

8 **A.** Just in case there is anything that is
9 clinging to the comb.

10 **Q.** Same thing for step 2, pubic hair --

11 **A.** Yes.

12 **Q.** -- combings?

13 **A.** Yes.

14 **Q.** Obviously you collect her underwear, and we
15 have seen you collected her clothing?

16 **A.** Yes.

17 **Q.** All right. And you do labia minora swabs.
18 Is that something that's routine across the practice?
19 Seems like when you were describing it that's
20 something you do as kind of an extra precaution.

21 **A.** It is up to the forensic nurse. It's not
22 one of the steps.

23 **Q.** Okay.

24 **A.** I have found that that was a place where I
25 captured DNA on a frequent basis. So, I kind of

1 include it as part of my practice.

2 Q. And my point with going back through all
3 this is that this is all -- these are all necessary
4 steps because they are places where you at least
5 suspect you can get some sort of biological evidence;
6 is that correct?

7 A. That's correct.

8 Q. These are going to be good areas to get
9 potential DNA or something like that?

10 A. Yes.

11 Q. Now, this -- this answer I think we did
12 like three triple negatives. I think the question
13 was asked twice. There were no injuries to her
14 genitalia, correct?

15 A. That's correct.

16 Q. Now, did you say -- let me get rid of the
17 "no" injuries to genitalia.

18 Is that common or uncommon?

19 A. It's -- it's uncommon.

20 Q. Injuries are uncommon. Okay. All right.
21 So, no injuries would be common?

22 A. Correct.

23 Q. Okay. Now, the exam started at 4:00 p.m.
24 thereabouts?

25 A. That's correct.

1 **Q.** The time of the reported assault that she
2 gave you was at about 1:30; is that correct?

3 **A.** That's correct.

4 **Q.** So, looking at about two and a half hours
5 between the assault and the time that your portion of
6 the exam started; is that correct?

7 **A.** That's correct.

8 **Q.** Any reason to believe that any biological
9 evidence that was there would have dissipated and
10 gone away in that two and a half, three hours?

11 **A.** No.

12 **Q.** If it was there, it should still be there?

13 **A.** Hopefully.

14 **Q.** And you asked the question about injuring
15 the assailant because that's a potential source for
16 biological evidence; is that correct?

17 **A.** Correct.

18 **Q.** And is that specifically why -- I believe
19 you answered this question -- why you scrape under
20 the fingernails is to see if they got ahold of the
21 assailant; is that correct?

22 **A.** Correct.

23 **Q.** So, if someone were to, say, reaching back
24 behind them and struggling for a knife, potential for
25 some biological material transfer under these

1 fingernail scrapings in that scenario?

2 **A.** I don't understand.

3 **Q.** If someone is struggling over a knife with
4 the assailant, is there potential for biological
5 transferring to be under the fingernail scrapings?

6 **A.** If the person scraped their skin, yes.

7 **Q.** Right. And if they're reaching for
8 somebody else's hand pretty frantically to try to get
9 a knife from them, possible that you would get some
10 biological transfer there?

11 **A.** Yes.

12 **Q.** Okay.

13 **MR. VINAS:** May I have just a moment,
14 Your Honor?

15 **THE COURT:** You may.

16 **(Brief pause)**

17 **Q.** **(BY MR. VINAS)** Now, we just talked about
18 the question about was the assailant injured during
19 the assault. Three questions before that, was a
20 condom used by the assailant.

21 Again, in this case, the answer was
22 unknown, correct?

23 **A.** Correct.

24 **Q.** Now, if she said yes, obviously, you would
25 have completed the full exam, right?

1 **A.** Yes.

2 **Q.** And is that because there still -- even if
3 someone -- if the patient knew 100 percent that the
4 assailant used a condom, you're still going to look
5 for some biological transfer in the vaginal swabs and
6 anal and that sort of thing; is that correct?

7 **A.** That's correct.

8 **Q.** Okay. So, still possible, even if we know
9 someone used a condom, for biological evidence to
10 transfer during that exchange?

11 **A.** That's correct.

12 **MR. VINAS:** I pass the witness, Your
13 Honor.

14 **THE COURT:** Thank you.
15 Any redirect?

16 **MS. PRIMM:** No, ma'am.

17 **THE COURT:** Is Ms. Spjut excused?

18 **MS. PRIMM:** Yes, ma'am.

19 **MR. VINAS:** Yes, Your Honor.

20 **THE COURT:** Thank you. You're
21 released as a witness in this case. Thank you so
22 much.

23 **(Witness released)**

24 **THE COURT:** All right. And we will
25 take a 20-minute recess. It's about a quarter of

*Jennifer Landrum - September 15, 2015
Direct Examination by Ms. Primm*

1 4:00. So, if you want to walk around the courthouse,
2 try to head back about 5 after and we will get
3 started right after that. Thank you.

4 All rise, please, for the jury.

5 *(Jury released)*

6 *(Recess taken)*

7 *(Jury enters the courtroom)*

8 **THE COURT:** Thank you. Please be
9 seated. You can stand or sit, whichever you prefer,
10 to take the oath.

11 Would you call your witness for the
12 record?

13 **MS. PRIMM:** State would call Sergeant
14 Landrum.

15 **THE COURT:** Thank you. If you would
16 raise your right hand to take the oath.

17 *(Witness Duly Sworn)*

18 **THE WITNESS:** Yes, ma'am.

19 **THE COURT:** Thank you. Please have a
20 seat.

21 **JENNIFER LANDRUM,**
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **Q. (BY MS. PRIMM)** Can you please introduce
25 yourself to the ladies and gentlemen of the jury?

*Jennifer Landrum - September 15, 2015
Direct Examination by Ms. Primm*

1 **A.** Hi. My name is Jennifer Landrum. I'm a
2 sergeant with HPD, and I have been on the department
3 for approximately 14 years.

4 **Q.** When did you start with the department?

5 **A.** I started at south central patrol, and then
6 after that I started picking up evidence.

7 **Q.** Okay. And you promoted to sergeant. When
8 did you promote to sergeant?

9 **A.** I promoted a little over a year ago.

10 **Q.** Okay. And where are you assigned right
11 now?

12 **A.** The command center.

13 **Q.** And what do you do for the command center?

14 **A.** Crime analysis.

15 **Q.** All right. Now, I want to draw your
16 attention back to June of 2008. Where were you
17 assigned in June of 2008?

18 **A.** In 2008 I was assigned to south central
19 picking up evidence.

20 **Q.** When you say "picking up evidence," can you
21 tell the ladies and gentlemen of the jury what you're
22 referring to?

23 **A.** I would go to various hospitals and collect
24 rape kits and articles of clothing.

25 **Q.** And were you given any instruction or

1 training in what you needed to look for or pay
2 attention to when you picked up rape kits?

3 **A.** Yes. Any time a rape kit -- rape kit was
4 picked up, it had to be sealed and signed.

5 **Q.** Okay. What do you mean "sealed and
6 signed"?

7 **A.** The actual box had to be sealed completely,
8 make sure that it wasn't tampered with at all.

9 **Q.** All right. How -- how long did you work at
10 collecting evidence, the rape kits, at the hospitals?

11 **A.** Approximately five years.

12 **Q.** And in that five years, did you pick up
13 hundreds or thousands of rape kits?

14 **A.** Probably hundreds.

15 **Q.** All right. And each time you picked them
16 up from the hospital, were they always sealed?

17 **A.** They were always sealed.

18 **Q.** Ma'am, I'm going to draw your attention --
19 I think it was June 12th of 2008. Did you make a
20 pickup of a rape kit that particular day?

21 **A.** Yes.

22 **Q.** All right. Did you go to Memorial Hermann
23 Hospital?

24 **A.** Yes, ma'am.

25 **Q.** Ma'am, I'm going to show you what's been

1 marked for identification purposes as State's
2 Exhibit 41. Do you recognize what State's Exhibit 41
3 is?

4 **A.** Yes, ma'am.

5 **Q.** What is State's Exhibit 41?

6 **A.** This is a rape kit.

7 **Q.** Okay. Did you put any markings of
8 significance on State's Exhibit 41?

9 **A.** Yes, ma'am.

10 **Q.** What markings are significant on State's
11 Exhibit 41?

12 **A.** Received by my name, date, and time.

13 **Q.** Okay. And as -- when you sign it -- by
14 "sign it," are you saying that it's sealed?

15 **A.** Yes, ma'am.

16 **Q.** Okay. After you collect it and you sign
17 it, what do you do with it?

18 **A.** I then place it in a bag, and I seal the
19 bag.

20 **Q.** Okay. And do you make any writings or
21 identification on the actual bag?

22 **A.** Yes, I do.

23 **Q.** Okay. And the writing on the outside of
24 that bag, whose writing is that?

25 **A.** This is my writing on the bag.

1 **Q.** Okay. And what type of information do you
2 want to indicate on that envelope?

3 **A.** I put the case number, the victim's name,
4 the location of recovery that I recovered it, and the
5 reason it was seized for evidence.

6 **Q.** Okay. And where do you take that?

7 **A.** I then take this to the property room.

8 **Q.** All right. And when you take it to the
9 property room, is there a process for checking
10 evidence into the property room?

11 **A.** Yes, ma'am. They make sure everything is
12 sealed, also; and then they make sure all the
13 signatures are correct before they actually accept it
14 into the property room.

15 **Q.** Okay. And how about getting evidence out
16 of the property room, is that a process, as well?

17 **A.** That's normally the investigating officer.
18 They go out there and pick up the evidence.

19 **Q.** Okay. But do they just hand it over to
20 anybody?

21 **A.** No, they do not.

22 **Q.** Okay. And, ma'am -- also, what's been
23 admitted as State's Exhibit 35, I'm going to ask if
24 your signature appears on the last page of State's
25 Exhibit 35?

1 **A.** Yes, that is my signature.

2 **Q.** Okay. And do you typically sign when you
3 pick up a sexual assault kit?

4 **A.** Yes, I sign and date it.

5 **Q.** All right.

6 **MS. PRIMM:** Your Honor, at this time I
7 will offer State's Exhibit No. 41 into evidence.
8 Tender to opposing counsel for any objections that he
9 may have.

10 **MR. GRAHAM:** Thank you. Can I take
11 the witness on a brief voir dire?

12 **THE COURT:** Granted.

13 **VOIR DIRE EXAMINATION**

14 **Q.** **(BY MR. GRAHAM)** Ma'am, would it be fair to
15 say when you get the rape kit, you don't actually
16 look inside to see what's inside the actual box?

17 **A.** No, I do not. It's sealed.

18 **Q.** Okay. So when you receive it, it is
19 already sealed up?

20 **A.** Yes, sir.

21 **Q.** Okay. And so, you have no idea what the
22 contents of this box are?

23 **A.** No, sir.

24 **Q.** Okay. And we see several different
25 writings on here. Is this all your handwriting, or

1 is this -- multiple people's handwriting?

2 **A.** The handwriting -- I put the case number,
3 the offense, the description, the victim's name,
4 location, recovered by, and evidence.

5 **Q.** Okay.

6 **A.** My writing.

7 **Q.** And then here at the bottom, your writing?

8 **A.** No, this is not my writing.

9 **Q.** Okay. Do you know whose this is?

10 **A.** No, I do not.

11 **MR. GRAHAM:** At this time, Your Honor,
12 I would object based on chain of custody and this
13 witness' lack of knowledge of what potential evidence
14 is inside here as to State's 41 because it's not just
15 the bag; but it would be the entire contents of this.
16 Plus, there is writing that she can't even identify.

17 **THE COURT:** Thank you. Overruled.
18 That would be -- 41 is admitted.

19 **DIRECT EXAMINATION (CONTINUED)**

20 **Q.** (BY MS. PRIMM) Ma'am, in addition to
21 picking up the actual rape kit itself, do you often
22 also pick up clothing that comes along with the rape
23 kit?

24 **A.** Yes, ma'am.

25 **Q.** All right. Showing you a box, State's

1 Exhibit 84, that tag that's on the box, whose writing
2 is on that?

3 A. This is my handwriting.

4 Q. Okay. And do you put also the same case
5 number on it?

6 A. Yes, ma'am.

7 Q. All right. And do you also put the
8 complainant's name on it, as well?

9 A. Yes, ma'am.

10 Q. And date and time?

11 A. Yes, ma'am.

12 Q. Okay. And did you, in fact, tag a box of
13 clothing in this case, as well?

14 A. Yes, ma'am.

15 Q. Okay. And was the box sealed when you
16 picked it up? Do you recall?

17 A. The clothed -- most -- the majority of the
18 times, the clothing bags are then placed in the box.

19 Q. Okay.

20 A. And then they are sealed, yes.

21 Q. Okay. So, the clothing bags would have
22 been placed in here, the box sealed, and then you
23 take it with you?

24 A. Yes, ma'am.

25 Q. All right.

1 **MS. PRIMM:** Pass the witness.

2 **THE COURT:** Thank you.

3 **MR. GRAHAM:** May I proceed, Judge?

4 **THE COURT:** Yes, sir.

5 **CROSS-EXAMINATION**

6 **Q.** **(BY MR. GRAHAM)** Okay. Sergeant Landrum --
7 congratulation on your promotion to sergeant, by the
8 way.

9 **A.** Thank you.

10 **Q.** If you can, just kind of educate those of
11 us that aren't familiar with how everything works
12 over there at Houston Police Department, what all do
13 you have to do in order to achieve the rank of
14 sergeant?

15 **A.** Take a promotional exam.

16 **Q.** Okay. Do you have to have a certain number
17 of years of service in?

18 **A.** You have to have at least five years of
19 service.

20 **Q.** Okay. And that exam, is it a difficult
21 process to pass and become sergeant?

22 **A.** You just study and take your test and then
23 go into assessment and then you're ranked in order
24 and then you're promoted.

25 **Q.** Okay. And you did a number of years in

1 southwest patrol. I think you said southwest patrol?

2 **A.** South central.

3 **Q.** South central patrol. Okay.

4 So, in addition to working in the
5 duties you have described in 2008 where you go to the
6 hospitals and collect evidence, did you actually make
7 scenes at some point, as well?

8 **A.** Yes.

9 **Q.** Okay. Like calls for possible sexual
10 assault?

11 **A.** Yes.

12 **Q.** Okay. So, you knew the process of how
13 you're supposed to gather up evidence?

14 **A.** Yes.

15 **Q.** And look for evidence at a scene --

16 **A.** Yes, sir.

17 **Q.** -- right?

18 And when you were working in south
19 central in 2008, involving this case, did you have
20 any interaction with the complaining witness at all?

21 **A.** No, sir, I did not.

22 **Q.** Okay. What about -- did you have any
23 interaction with Ms. Spjut, the SANE nurse involved
24 in this case?

25 **A.** No, sir, I did not.

1 **Q.** Okay. When you come to the hospital, where
2 do you go to actually gather up the evidence?

3 **A.** I go to -- the Memorial Hermann Hospital
4 forensic nurse gives us the rape kit or clothing
5 bags, evidence. We pick it up from them.

6 **Q.** Okay. And fair to say you don't really
7 discuss any of the allegations in the case?

8 **A.** No, sir, I do not.

9 **Q.** Okay. And then once you take the evidence
10 to the property room, do you have any input or
11 interaction as far as getting that from the property
12 room to a laboratory to get some sort of further
13 testing done?

14 **A.** No, sir, I do not.

15 **Q.** Do you know in this case if the rape kit or
16 the clothes were ever taken to the lab?

17 **A.** I have no knowledge of that, no, sir.

18 **Q.** Okay. You certainly never did that in this
19 case?

20 **A.** No, sir, I did not.

21 **Q.** Okay. And, I mean, do you report back to a
22 detective and say, you know, All this evidence is in
23 the property room. You guys might want to do
24 something about this?

25 **A.** It's documented in the report, a

1 supplemental report. It's documented what I did that
2 particular day for that particular case.

3 Q. And so, a detective that can get that
4 supplemental report can see that the evidence is
5 there and can now be further tested?

6 A. Yes, sir. That's correct.

7 Q. Okay. And that would be appropriate
8 procedure for a detective to follow up and try to get
9 that rape kit tested. Would that be fair to say?

10 A. I do not know exactly what the detective
11 does after that.

12 Q. Okay. Okay. All right. Fair enough.

13 MR. GRAHAM: I pass the witness. No
14 further questions.

15 THE COURT: Thank you.

16 Any redirect?

17 MS. PRIMM: No, ma'am.

18 THE COURT: Is this witness excused?

19 MS. PRIMM: Yes, ma'am.

20 MR. GRAHAM: Yes, Your Honor.

21 THE COURT: You're released as a
22 witness. Thank you so much.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Sergeant.

25 (Witness released)

1 **THE COURT:** Do you have another
2 witness?

3 **MR. PENEGUY:** Yes, Judge.

4 **THE COURT:** Who would that be?

5 **MR. PENEGUY:** Retired officer
6 McMurtry.

7 **THE COURT:** Thank you.

8 **THE BAILIFF:** What is the last name?

9 **MR. PENEGUY:** McMurtry.

10 **THE BAILIFF:** Thank you.

11 This witness will need to be sworn in.

12 **THE COURT:** Hello, sir. Good
13 afternoon. Thank you. If you don't mind, I like the
14 witnesses -- for the jury to be able to see them when
15 they take the oath. I know nobody else does it that
16 way.

17 **THE WITNESS:** Okay.

18 **THE COURT:** Thank you.

19 **(Witness Duly Sworn)**

20 **THE WITNESS:** I -- yes, ma'am.

21 **THE COURT:** Thank you, sir. You may
22 have a seat.

23 **MR. PENEGUY:** May I proceed?

24 **THE COURT:** Yes, sir.
25

1 **KEITH MCMURTRY,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **Q.** **(BY MR. PENEГУY)** Sir, would you please
5 introduce yourself to the jury?

6 **A.** Hello. My name is Keith McMurtry.

7 **Q.** And where were you formally employed?

8 **A.** Most recently with the Houston Police
9 Department.

10 **Q.** And how long have you been at the Houston
11 Police Department?

12 **A.** I was with Houston Police Department for 25
13 years.

14 **Q.** And that spans roughly from the beginning
15 date to what end date?

16 **A.** Oh, golly. October of '89 to last October.

17 **Q.** Are you currently retired?

18 **A.** I am.

19 **Q.** I want to talk to you about where you were
20 assigned in 2008. What division?

21 **A.** Yes, sir. I was an investigator with the
22 homicide division sex crimes unit.

23 **Q.** And throughout the course of your time in
24 that division, that unit, had you investigated sexual
25 assault cases --

1 **A.** Yes, sir.

2 **Q.** -- on few or many occasions?

3 **A.** I'm sorry?

4 **Q.** On few or many occasions?

5 **A.** Very many.

6 **Q.** I want to talk to you just a little bit

7 about the type of work that you do in that area.

8 Were you working with adult victims or child victims?

9 **A.** All adult victims.

10 **Q.** Back in 2008, did you become familiar with
11 a case involving a complainant named Jocelyn Batiz?

12 **A.** Yes, sir.

13 **Q.** And can you kind of tell the jury how you
14 became involved in that investigation?

15 **A.** Yes, sir. The victim in that case,
16 Ms. Batiz, she reported to the Houston Police
17 Department on June 11, of 2008, that she had been
18 attacked and sexually assaulted by a man that she did
19 not know. And the officer who took that report
20 generated the written report; and because it was a
21 sexual assault or aggravated sexual assault, it came
22 to our unit.

23 Our unit investigated -- still
24 investigates crimes against people that are sexually
25 motivated. The vast majority of those are sexual

1 assaults or aggravated sexual assaults, such as in
2 this case. This occurred on the --

3 **MR. VINAS:** Judge, I object at this
4 time to nonresponsive and narrative.

5 **THE COURT:** Sustained. And, sir,
6 you're allowed to answer in a sentence or two but not
7 in a whole paragraph.

8 **THE WITNESS:** Okay.

9 **THE COURT:** You have to wait for the
10 next question.

11 **THE WITNESS:** Okay.

12 **THE COURT:** Thank you.

13 **Q.** (**BY MR. PENEГУY**) Can you tell us is there a
14 unique offense number that is assigned to Ms. Batiz'
15 case?

16 **A.** Yes, sir.

17 **Q.** And what is that offense report number?

18 **A.** It is 085993808 and W, as in William.

19 **Q.** And can you tell us from the report
20 essentially who was the responding officer to that
21 scene?

22 **A.** Yes, sir. That was Officer P. Chillis,
23 C-H-I-L-L-I-S.

24 **Q.** Were you involved in the investigation on
25 the date of the offense?

1 **A.** No, sir, I was not.

2 **Q.** When did you receive your responsibilities
3 in regards to the case?

4 **A.** The case was assigned to me the following
5 morning, on the 12th.

6 **Q.** And when you first get an investigation,
7 what do you do?

8 **A.** First step with any of these cases, but
9 especially this case, is to review the information
10 that had been obtained by Officer Chillis on scene,
11 review the report; go over all the different aspects
12 of it; and determine what, if any, I have as is to --
13 would be best and most productive to take next in an
14 effort to identify the unknown suspect.

15 **Q.** Officer McMurtry, in regards to this
16 investigation, did you review the report from the day
17 before?

18 **A.** Yes, sir.

19 **Q.** And did you begin to analyze what type of
20 evidence might be available to you?

21 **A.** Yes, sir.

22 **Q.** What did you do next?

23 **A.** I do background checks on any people
24 involved, look at the location of the -- of the
25 offense, also approach our crime analysis people and

1 ask them to check and see if there might be any other
2 cases or crimes related to this particular one,
3 although that is early on in the stage and, most
4 importantly, make contact with the complainant,
5 Ms. Batiz.

6 Q. Did you attempt to make contact with
7 Ms. Batiz in this case?

8 A. I did.

9 Q. And were you able to make contact with her?

10 A. I did later in the -- in that same day;
11 but, yes.

12 Q. Okay. Were you able to make contact with
13 any other individuals who were witnesses to the
14 offense?

15 A. Yes, sir.

16 Q. Who did you make contact with?

17 A. A girlfriend of hers and -- Denise, I
18 believe, and her brother, I believe.

19 Q. Okay.

20 A. They were aware of what had happened the
21 day before.

22 Q. And did you talk to them in person or over
23 the telephone?

24 A. Over the phone originally.

25 Q. And did -- were they able to relay some of

1 the events from what they had seen?

2 **A.** Yes.

3 **Q.** And did that assist you in your
4 investigation?

5 **A.** Yes, sir.

6 **Q.** What did you do next?

7 **A.** When I was able to speak with the victim,
8 Ms. Batiz, I learned that she had issues with
9 talking. I'm a little hard of hearing, and I was at
10 that time. She had a very light raspy voice. So,
11 over the phone it was a struggle for me to understand
12 clearly what she was saying. And we were able to
13 communicate, but I had to struggle to understand her.

14 **MR. VINAS:** Judge, I object to
15 nonresponsive and narrative.

16 **THE COURT:** Sustained.

17 **Q.** (BY MR. PENEГУY) Were you able to meet with
18 her in person?

19 **A.** Yes, sir.

20 **Q.** And on what date did you meet with her in
21 person?

22 **A.** Two days later.

23 **Q.** And that's two days after the incident?

24 **A.** I will give you the exact date here. That
25 would be Friday. So, three days after the offense.

1 **Q.** Can you describe to the jury when you met
2 with Ms. Batiz, did you learn what was going on with
3 her voice?

4 **A.** I'm sorry. The last part again?

5 **Q.** Did you learn what was going on with her
6 voice, Ms. Batiz' voice?

7 **A.** Yes, sir. Yes. She had had a tracheotomy
8 when she was younger.

9 **Q.** Can you describe to the jury where you met
10 with her first?

11 **A.** I drove and met, excuse me, at -- at her
12 residence. I believe it was on Burma.

13 **Q.** Were you able to discuss the case with her
14 in person there?

15 **A.** Yes, sir.

16 **Q.** What did you guys do next?

17 **A.** I asked her if she would be willing to go
18 with me and show me where this crime occurred. It's
19 one thing to read about it in the report; it's
20 another to see it first.

21 **Q.** Was she cooperative?

22 **A.** Very much so.

23 **Q.** Okay. What did you guys do next?

24 **A.** She did go with me -- or really I went with
25 her, and we walked to the location where this

1 occurred.

2 Q. Let's --

3 MR. PENEGUY: Judge, may I approach
4 the witness?

5 THE COURT: Yes, sir.

6 Q. (BY MR. PENEGUY) I'm going to show you a
7 couple of items. First of all, are you familiar with
8 the part of town where this occurred?

9 A. I am.

10 Q. Okay. Showing you a map that's State's
11 Exhibit No. 33. Does that show the relative
12 neighborhood where this occurred in relationship to
13 where downtown Houston is located?

14 A. It does.

15 Q. Does it fairly and accurately depict the
16 approximate location of that neighborhood, broader
17 neighborhood?

18 A. Yes, sir.

19 Q. Okay. And what neighborhood is that?

20 A. Sunnyside.

21 Q. Okay. And does the markers that's on
22 that -- that map, State's Exhibit 33, does it show
23 where Sunnyside is located?

24 A. Yes, sir.

25 Q. Showing you what's already been admitted

1 into evidence as State's Exhibit 32. Are you
2 familiar with this area?

3 **A.** Yes, sir.

4 **Q.** And is this a blowup of part of the
5 neighborhood of Sunnyside?

6 **A.** It is.

7 **Q.** Okay. This area, Sunnyside, is that a
8 location in Houston, Harris County?

9 **A.** Yes, sir.

10 **MR. PENEГУY:** Judge, at this time we
11 offer State's Exhibit 33 and tender to opposing
12 counsel.

13 **MR. VINAS:** No objection, Your Honor.

14 **THE COURT:** Admitted.

15 I'm sorry. What was the number?

16 **MR. PENEГУY:** It was 33, Judge.

17 **THE COURT:** Thank you.

18 **Q.** (**BY MR. PENEГУY**) In relationship to where
19 downtown is located, where is Sunnyside?

20 **A.** South of downtown and east of 288. South
21 of the loop.

22 **Q.** And can you tell us what the address is or
23 the approximate address of where Jocelyn directed
24 you?

25 **A.** Approximately the 4300 block of Wilmington.

1 **Q.** Okay. Can you describe what Wilmington
2 looks like?

3 **A.** Yes, sir. It's -- it was -- I haven't been
4 there since then, so I can't say what it is now. I
5 presume it's real close to the same. It's basically
6 abandoned warehouses and unkempt weeded lots,
7 abandoned land, some trash and dumps, things like
8 that.

9 **Q.** Okay. And did you have an opportunity to
10 walk that area with Ms. Batiz?

11 **A.** Yes, sir.

12 **Q.** And did she show you and identify areas
13 where the events took place?

14 **A.** Yes, sir.

15 **Q.** What were you guys looking for? Or what
16 were you looking for?

17 **A.** It -- it has been beneficial to me over the
18 years if possible for the victim --

19 **MR. VINAS:** Object to nonresponsive,
20 Your Honor.

21 **THE COURT:** Okay. I guess that's
22 true. Sustained.

23 **Q.** **(BY MR. PENEГУY)** Why did you want to go to
24 the scene?

25 **A.** I wanted to see if the possibility existed,

1 any evidence that Officer Chillis might have missed
2 that might aid in the investigation.

3 Q. What types of evidence were you talking
4 about?

5 A. Anything that would be forensic in nature.
6 Condom; cigarette butt; anything that she, the
7 victim, surviving victim, might be able to point out
8 that I would not recognize as being a part of the
9 crime.

10 Q. Ultimately, were you able to find any
11 evidence out there?

12 A. No, sir. No.

13 Q. But did you kind of learn what the area
14 looked like?

15 A. Yes, sir.

16 MR. PENEGUY: Judge, may I approach
17 the witness?

18 THE COURT: Yes, sir.

19 Q. (BY MR. PENEGUY) Showing you a series of
20 photographs, State's Exhibits 26, 27, 28, 29, and 30.
21 And can you review those?

22 A. Okay. (Witness complies.)

23 Q. Do you recognize what's contained in those
24 images?

25 A. I do.

1 **Q.** Okay. And can you just briefly tell --
2 what is that area?

3 **A.** This appears to be the -- approximately the
4 4300 block of Wilmington.

5 **Q.** Okay. And do those images fairly and
6 accurately depict what the area looked like back in
7 2008?

8 **A.** They do.

9 **Q.** And, in fact, do they appear to be still
10 shots from Channel 13 coverage of the incident?

11 **A.** That's what I recognize them as, yes.

12 **MR. PENEGUY:** Judge, at this time we
13 offer State's Exhibits 26 through 30. Tender to
14 opposing counsel.

15 **MR. VINAS:** No objection to State's 26
16 through 30, Judge.

17 **THE COURT:** Admitted.

18 **Q.** **(BY MR. PENEGUY)** Mr. McMurtry, just
19 describe what this area looked like.

20 **A.** It is an unimproved weeded lots on the
21 north side of Wilmington. Wilmington runs east and
22 west. The north side, vast majority is weeded
23 unimproved lots.

24 **Q.** Does State's 28 -- does that show the
25 perspective from Wilmington facing towards the east,

1 which would be Cullen Boulevard; and does it show
2 kind of the -- the approximate area to the north and
3 to the south of Wilmington?

4 **A.** Yes, sir.

5 **Q.** And, for instance, State's Exhibit 29, does
6 that show kind of what some of the overgrown areas
7 looked like back in 2008?

8 **A.** Yes, sir. That -- to me, that would be
9 standing on the street looking northward.

10 **MR. PENEГУY:** Judge, may I approach
11 the witness?

12 **THE COURT:** Yes, sir.

13 **Q.** (BY MR. PENEГУY) I'm going to show you
14 what's been marked for identification purposes as
15 State's Exhibit No. 31, ask you to hold it. Don't
16 show the jury yet.

17 **A.** Okay.

18 **Q.** Do you recognize these two images contained
19 in State's Exhibit No. 31?

20 **A.** I do.

21 **Q.** Okay. And are those two different images
22 of the same 4300 block of Wilmington?

23 **A.** Yes, sir.

24 **Q.** Okay. Do they fairly and accurately depict
25 what you perceived Wilmington to be back in 2008?

1 **A.** Yes, sir.

2 **Q.** And what you -- it appeared to be near your
3 retirement in 2015?

4 **A.** Yes, sir.

5 **Q.** Okay.

6 **MR. PENEGUY:** Judge, at this time we
7 offer State's Exhibit 31. Tender to opposing
8 counsel.

9 **MR. VINAS:** No objection, Your Honor.

10 **THE COURT:** Admitted.

11 **MR. PENEGUY:** Judge, may I publish
12 State's Exhibit 31 to the jury?

13 **THE COURT:** Yes, sir.

14 **MR. PENEGUY:** Judge, may the witness
15 step down?

16 **THE COURT:** Yes, sir.

17 Sir, you may step down.

18 **THE WITNESS:** Okay.

19 **Q.** **(BY MR. PENEGUY)** I want to show you on the
20 map real quick. This is State's Exhibit 32. Can you
21 show us with a sticky, first of all, where is
22 Wilmington located on State's Exhibit 32?

23 **A.** South Reed -- this is Scott.

24 **Q.** This is Scott, and that is Cullen.

25 **A.** This portion right in here (indicating.)

1 **Q.** Okay. And can you show us with this marker
2 kind of the area approximately where Jocelyn told you
3 this occurred?

4 **A.** Approximately (indicating.)

5 **Q.** Okay. And so for purposes of the record,
6 is that a part of Wilmington that is to the east of
7 Worthing High School?

8 **A.** Yes, sir.

9 **Q.** To the south of the Reed Road?

10 **A.** Yes, sir.

11 **Q.** And this being Wilmington. It's marked on
12 the exhibit.

13 **A.** Uh-huh (affirmative.)

14 **Q.** Is it to the west of Cullen Plaza?

15 **A.** Yes.

16 **Q.** Okay. Does State's Exhibit No. 31 -- does
17 it show kind of two enhanced visuals of Wilmington
18 and Reed Road?

19 **A.** Yes, sir.

20 **Q.** Okay. And one of these is from 2008 and
21 one of them from 2014; is that correct?

22 **A.** Yes, sir.

23 **Q.** Okay. Can you show us on the 2008 image
24 approximately what part of Wilmington we're talking
25 about?

1 **A.** That would be right in this vicinity here
2 (indicating.)

3 **Q.** Okay. Do you know what this is right here
4 (indicating)?

5 **A.** That's, I presume, the running track for
6 the high school.

7 **Q.** Okay. And so, the area that you're talking
8 to, is that literally on the 2008 map, does it say
9 Wilmington Street right there?

10 **A.** Yes, sir.

11 **Q.** And you're kind of talking about -- just
12 above that, is that the T or O? What area are you
13 talking about?

14 **A.** Oh. Oh. Just above there, right. Right
15 on the north side of the roadway.

16 **Q.** Okay. And on this map, that would be kind
17 of north of the N and the I. of Wilmington; is that
18 correct?

19 **A.** Yes, sir.

20 **Q.** Showing you the document to see that he
21 pointed above the N and I.

22 Does this show some of the changes to
23 the neighborhood from 2008 to 2014?

24 **A.** I don't see any substantial changes.

25 **Q.** Okay. But it kind of does. It does kind

1 of depict what the area looks like; is that correct?

2 **A.** Yes, sir.

3 **Q.** Thank you. You said that you were able to
4 go to the scene with Jocelyn. What did you guys do
5 after you visited the crime scene?

6 **A.** I interviewed her in more detail in person.

7 **Q.** Where?

8 **A.** For the most part, there in my car and
9 street side; and also I transport -- transported her
10 downtown to my office here at 1200 Travis.

11 **Q.** And is that the Houston Police Department
12 headquarters?

13 **A.** Yes, sir.

14 **Q.** Why did you meet with her there?

15 **A.** There is one of the more controlled and
16 comfortable areas to interview her in more detail and
17 get eventually from her a sworn statement.

18 **Q.** And did you obtain a sworn statement from
19 her?

20 **A.** I did.

21 **Q.** And was that on that Friday of 2011?

22 **A.** No, sir. That would be the next day.

23 **Q.** Okay.

24 **A.** Saturday.

25 **Q.** Okay. So, that would be on June 14, 2008?

1 **A.** I believe that's correct. Let me double
2 check that.

3 June 14th. Yes, sir. Saturday,
4 June 14th.

5 **Q.** Was she able to answer your questions?

6 **A.** She was.

7 **Q.** Was she able to provide a description of
8 the suspect?

9 **A.** She did.

10 **Q.** Did she swear out to her statement?

11 **A.** She did.

12 **Q.** After the statement, did you ask her if she
13 was willing to sit down with a sketch artist, you can
14 make arrangements for her to do a sketch?

15 **A.** Yes, sir. After conversing with her in
16 detail, I was convinced that it might be productive
17 to have the composite sketch done.

18 **Q.** After you met with Jocelyn, did you feel
19 like you had a better idea of what had happened that
20 day?

21 **A.** Yes, sir. Very much so.

22 **Q.** Follow-up work to that, did you learn of
23 any evidence that could allow for testing in Jocelyn
24 Batiz' case?

25 **A.** Eventually, yes, sir.

1 Q. And what types of evidence was that?

2 A. DNA.

3 Q. From what item?

4 A. From the shorts, I believe.

5 Q. Okay. Did you learn whether or not there
6 was a rape kit performed in this case?

7 A. Yes, sir.

8 Q. Did you request that that evidence be
9 tested?

10 A. Yes, sir.

11 Q. Can you tell us when you requested that
12 evidence to be tested?

13 A. On June 13th, which I believe is going to
14 be Friday, of 2008.

15 Q. After meeting with Jocelyn, did you request
16 a copy of her medical records?

17 A. Yes, sir.

18 Q. Did you have an opportunity to review them?

19 A. Yes, sir.

20 Q. Were you able to look at the 911 tape, the
21 call slip in this case?

22 A. Did I review that? Yes, sir.

23 Q. At some point did you even make an attempt
24 to go to local businesses to see if you could find
25 any surveillance video?

1 **A.** I did.

2 **Q.** Any leads?

3 **A.** No, none that were beneficial to the case.

4 **Q.** At any point in time, did you put out kind
5 of a -- basically a description of the suspect?

6 **A.** Yes, sir.

7 **Q.** Why?

8 **A.** That attempt --

9 **MR. VINAS:** Judge, may we approach
10 just briefly?

11 **THE COURT:** All right. Come on up,
12 please.

13 **(At the Bench)**

14 **MR. VINAS:** My concern here is -- and
15 this is not directed at Mr. Peneguy at all.

16 **THE COURT:** Just a touch louder for
17 me.

18 **MR. VINAS:** I'm sorry. I just didn't
19 want the jury to hear me. My concern is that we have
20 talked about a composite sketch and now putting the
21 description out. I want to make sure the witness
22 understands that he is only talking about identifying
23 a suspect in this case and not --

24 **THE COURT:** I presume you-all talked
25 with him about that already?

1 **MR. PENEGUY:** Yes, ma'am.

2 **MR. VINAS:** Thank you.

3 **THE COURT:** Thank you.

4 **(End of Bench Discussion)**

5 **Q.** **(BY MR. PENEGUY)** Officer McMurtry, did you,
6 in fact, put out a description of the suspect in this
7 case?

8 **A.** I did.

9 **Q.** And who did that go to?

10 **A.** It went to the officers who work in the
11 Sunnyside area and also to Crime Stoppers, I believe.

12 **MR. PENEGUY:** Pass the witness.

13 **THE COURT:** Thank you.

14 Do you prefer to begin cross tomorrow?
15 Since I promised everyone we would quit on time.

16 **MR. VINAS:** I believe that is probably
17 best, Judge. That clock is slow.

18 **THE COURT:** Yes, I have been told that
19 clock is slow.

20 Members of the jury, it's important
21 you remember all of the instructions I have given you
22 before. Of course, don't communicate about the case
23 at all. It's very important that you not listen to
24 the news, whether it's radio or TV; that you not look
25 at any -- any local news. And that would also

1 include anything online.

2 So, we just don't want you to be
3 exposed to anything about the case outside of the
4 courtroom. So, please don't do that. And we will
5 see you tomorrow. 9:00 -- does 9:15 work out okay
6 for everybody?

7 All right. See you at 9:15 tomorrow.
8 Have a great evening.

9 All rise, please, for the jury.

10 **(Jury released)**

11 **(END OF TODAY'S PROCEEDINGS)**

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1 STATE OF TEXAS
2 COUNTY OF HARRIS
3

4 I, CYNTHIA J. LEE, Official Court Reporter in
5 and for the 184TH District Court of Harris, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included
10 in this volume of the Reporter's Record in the
11 above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 I further certify that this Reporter's Record of
15 the proceedings truly and correctly reflects the
16 exhibits, if any, offered by the respective parties.
17

18 /s/Cynthia Lee

19 CYNTHIA J. LEE, CSR 3732
20 Official Court Reporter
21 184TH District Court
22 1201 Franklin, 17th Floor
23 Houston, Texas 77002
24 Telephone: (713) 755-6358
25 Expiration: 12/31/2015

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