

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Alex Kinlaw, Jr., Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

OLANDIO R. WORKMAN,

Respondent.

Opinion No. 5922 (S.C. Ct. App. Filed July 13, 2022)
(S.C. Ct. App. Appellate Case No. 2018-001769)

APPENDIX
VOLUME II OF II

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Thirteenth Circuit Solicitor's Office
305 E. North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8282

KATHERINE H. HUDGINS
Appellate Defender
S.C. Commission on Indigent
Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343
ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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1 WEDNESDAY, SEPTEMBER 19, 2018

2 THE COURT: Some housekeeping matters before we --
3 before we get -- bring the jury back. First thing, on the
4 matter regarding the psychologist -- psychologist? That's
5 the -- he was --

6 MR. POLSINELLO: He is a senior psychotherapist.

7 THE COURT: Psychotherapist. I'm sorry. Let me tell
8 you what -- what I'm going to do on that. And then I'm
9 going to do it this way.

10 Mr. Eppes, I think you -- you cited the McKerley
11 case. And in that case, you had a -- and I thought so,
12 but I wanted to be absolutely certain. In that case, you
13 had a forensic interviewer who was -- who had interviewed
14 a child in an abuse case. And, you know, we see -- I -- I
15 saw a lot of this over in the Family Court where the
16 interviewer during his or her testimony would state
17 that -- or make a statement indicating that they thought
18 the -- the statements of the child was believable.

19 And that -- I think in the McKerley case, the Court
20 thought that that was improper and -- and did not
21 interpret that as how you -- how you couched it, putting
22 one witness against the other. And they didn't look at it
23 that way in that case.

24 In this case that we have now, the expert from what I
25 understand --

1 And, Counsel, you can correct me if I'm wrong.

2 And there's several cases. And I just wanted to have
3 the opportunity to look at them. And I'll give you some
4 cites and you can just take a look at them. State --
5 State v. Myers, and that's found at 301 S.C. 251. That's
6 a 1990 case. State v. Jones, 817 S.E.2d 268. And that's
7 a 2018 case. And then Robinson --

8 Am I going too fast?

9 (WHEREUPON, there was no response.)

10 THE COURT: Robinson v. State, 308 S.C. 74, 1992.

11 And in all of these cases -- and I'm just going to
12 read some language I think that sort of sums it up. I
13 think in Jones, the Court held -- and this is Justice
14 Hearn -- that expert testimony may be used to help the
15 jury determine a fact in issue, based upon the expert's
16 specialized knowledge, experience, or skill, and is
17 necessary in cases in which the subject matter falls
18 outside the realm of ordinary lay knowledge.

19 And the reason I say that, in that instance, based
20 upon what the solicitor indicated that the expert is
21 talking about -- for lack of a better word -- a better way
22 to couch it -- why victims of domestic violence don't
23 leave in certain instances. And -- and I think your --
24 your argument was that that was putting one witness
25 against the other.

1 And I think -- when you look at these cases, I think
2 it gives a window -- as a matter of fact, a big window
3 of -- including the expert testimony if it's -- if it's
4 structured and -- and limited in that window. And I'm
5 thinking based upon what the Solicitor indicated yesterday
6 that was where he was.

7 So having looked at these cases and having looked at
8 the case that you cited, I think there's a distinction
9 between the two. And I think -- so I'll be glad to hear
10 from you, but -- but I -- on that point.

11 MR. EPPES: Your Honor, those cases have to do with
12 juveniles and explaining why -- why juveniles behave the
13 way they do. In point of fact, what -- what
14 Mr. Polsinello is planning to use Dr. Sondov for is fairly
15 simple. It's -- he may not be a doctor. I may
16 have promoted him to doctor. He's trying to bolster his
17 witness.

18 He's -- as he stated, his witness said something that
19 was incredible. She said that there was a bomb, that she
20 believed some statement that my client supposedly made
21 that there was a bomb under the trailer, which is
22 ridiculous. And he knows it's ridiculous. And so he's
23 using this witness to bolster that by saying people under
24 stressful situations go crazy.

25 And -- and this woman has never -- if you listen to

1 her testimony and listen to what my client's charged with,
2 this is not a Stockholm situation where she was kept
3 prisoner for several years. This is a 48-hour event that
4 she's alleged here. And he's trying to use Mr. Sondov
5 to -- to bolster her testimony and explain why she's
6 telling stories. And that's not fair. That's not fair to
7 my client. That's not fair to the process.

8 He's trying to give a psychological reason for what,
9 frankly, is, clearly, untrue statements by this woman.

10 MR. POLSINELLO: Your Honor, the State would
11 respectfully disagree.

12 We keep hearing Mr. Eppes saying this witness is
13 bolstering the victim's testimony, bolstering. I think
14 Your Honor was crafting an assessment of McKerley. And we
15 can even look to Brown and then Kromah, the Supreme Court
16 cases in this state, Your Honor, where the Court when
17 allowing these forensic experts -- blind experts to
18 testify, the Court and the law, specifically, says that
19 the expert cannot testify to the victim's credibility,
20 whether or not that expert believes that victim is a
21 victim and her character for truthfulness.

22 So they don't want these experts meeting with these
23 victims. And they're testifying blindly to the
24 psychological reasons of why victims make the choices they
25 do. That is allowed. It's allowed under the statute.

1 And it's allowed in the case law. And I believe Your
2 Honor pointed that out in -- in Myers, Jones, and State.

3 An expert -- as Your Honor stated, an expert may be
4 needed and is proper if there's a specific issue that
5 is -- that is outside the purview of the layperson. And,
6 quite frankly, Your Honor, I don't -- I would like to
7 think most lay people have haven't experienced this
8 situation.

9 And so, therefore, it's easy to judge, to judge the
10 victim, to attack the victim. Why didn't she do this?
11 Well, she could have left. We heard her, that's true,
12 testify that on Monday when the Defendant left for work,
13 she didn't leave because she thought there was a bomb.
14 And I believe she had reason to think that.

15 But there were other instances before that, Your
16 Honor, in this fact pattern where she could have -- maybe
17 she could have left, but she didn't. And, therefore, we
18 believe that, according to case law, the expert should be
19 allowed to testify.

20 We're not going to ask the expert, do you think the
21 victim is credible? He wouldn't know. He hasn't talked
22 to her. We're going to have him explain reasons for
23 delay, not reporting. We saw that the victim said she got
24 in a bar fight. And she testified that's a lie. There's
25 a very specific psychological reason why she said that

1 lie, and why seven days later she apologized to our
2 investigator. We believe an expert is needed and it's
3 proper, according to case law, to explain that to the
4 jury.

5 THE COURT: You see -- and, Mr. Eppes, see, what --
6 in McKerley that you -- that you cited on yesterday -- and
7 I had an opportunity to read it again. See, in that case,
8 the reason the Court reversed the trial court's decision
9 in that case was that the forensic interviewer during his
10 testimony was making an assessment regarding credibility
11 of the child or -- of the child. And, in that case, that
12 was improper.

13 And -- and I can tell you that every case that I sat
14 in where that was attempted to do -- because we get this
15 same thing over in Family Court. Every case that I sat
16 in, that was not permissible -- permitted. And we all --
17 we all looked back to that McKerley case that you cited
18 yesterday. And I -- that's why I was familiar with it
19 over in -- when we were over in the Family Court.

20 But the difference in this case is that Counsel is
21 not putting the expert up to -- to testify as to the
22 credibility of the victim, but is putting the witness up
23 to give a -- for lack of a better word, a generic analysis
24 of what happens to persons who are put in that situation,
25 a -- a general category of persons who are victims of

1 domestic abuse. The expert -- expert is going to tell the
2 Court what occurs oftentimes when -- when those parties
3 are confined or not allowed to leave, not necessarily
4 talking about anything that has to do with the credibility
5 of the victim, but just to give that analysis.

6 And that's why I said when you look at -- when you
7 look at those cases I cited, the Myers case, the Jones
8 case, and that other one, the Robinson case, all those
9 cases, each and every single one of them, the premise was
10 that -- and I think this is -- this is just powerful
11 stuff. Expert testimony may be used to help the jury to
12 determine a fact in issue, based upon the expert's
13 specialized knowledge, experience, or skill. And this
14 is -- this is -- this is the crucial part right here, And
15 is necessary in cases in which the subject matter falls
16 outside the realm of ordinary lay knowledge.

17 And that's just -- that's just some powerful stuff,
18 Mr. Eppes.

19 MR. EPPES: And, Judge, those cases are about the
20 molesting of children, which is still a unique and
21 horrific crime.

22 THE COURT: I understand.

23 MR. EPPES: Every person on that jury is going to be
24 aware of issues about domestic violence. It permeates our
25 culture. It's on television every day. It's in the

1 movies every day. Every person on that jury is going to
2 be aware, for lack of a better way of describing it, of
3 Stockholm syndrome, that people are kidnapped sometimes
4 like Patty Hearst, go to the benefit of their captors.

5 This testimony is being put in to rationalize all her
6 testimony, including the testimony that was provided by
7 tape in 2016 when she was interviewed by Officer Perry
8 from what she admitted to be a safe space, and the
9 testimony that was offered on that witness stand
10 yesterday. He is trying to bolster her testimony with the
11 use of an expert. He is trying to rationalize through
12 psychological information that's really not relevant why
13 she might still not be telling the truth.

14 THE COURT: All right. Well, I -- I respectfully
15 disagree, Mr. Eppes. And I'm going to allow the testimony
16 subject to your objection.

17 MR. EPPES: Well, Your Honor, we have to, frankly --

18 THE COURT: You want -- you want --

19 MR. EPPES: -- in my view, hear a proffer to
20 determine --

21 THE COURT: You want a proffer?

22 MR. EPPES: -- whether he's an expert or not.

23 THE COURT: All right. So -- all right. There's
24 some question about that?

25 MR. EPPES: I -- I think there still is.

1 THE COURT: All right.

2 MR. EPPES: We haven't heard what he has to say.

3 THE COURT: All right.

4 MR. POLSINELLO: No objection --

5 THE COURT: All right.

6 MR. POLSINELLO: -- to proffering Mr. Sondov.

7 THE COURT: Call him up.

8 THE CLERK: Sir, please come forward.

9 If you would, please, place your left hand on the
10 Bible and raise your right hand.

11 WHEREUPON,

12 NEIL SONDOV,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 Please be seated.

16 And if you'll, please, state your name for the
17 record.

18 THE WITNESS: Neil Sondov, S-O-N-D-O-V.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. POLSINELLO:

22 Q Mr. Sondov, are you currently employed?

23 A Yes, sir, I am.

24 Q With whom?

25 A With Compass of Carolina.

1 Q How long have you been employed there?

2 A Since 1999.

3 Q What is your title?

4 A I am a senior therapist in the family violence
5 intervention program.

6 Q What is Compass of Carolina?

7 A Compass of Carolina is a United Way non-profit
8 counseling agency. We offer counseling to children,
9 adults, couples. And we, also, have a family violence
10 intervention program, which offers services to the
11 perpetrators, victims, and children impacted by domestic
12 violence.

13 Q What are your duties and responsibilities as a senior
14 therapist -- psychotherapist?

15 A I spend half my time seeing individuals and couples,
16 and the other half is in the family violence intervention
17 program facilitating the -- mostly, the perpetrator
18 groups. I, also, do individual treatment with folks in
19 the program. I do a lot of community outreach, education,
20 things along those lines.

21 Q Do you meet with both victims and defendants of
22 domestic violence?

23 A The vast majority of what I do is with perpetrators.
24 But you cannot deal with perpetrators without, also, being
25 aware of issues and safety concerns, things like that that

1 will impact the victims.

2 Q What's your educational background?

3 A I have a Master's Degree in Community Agency
4 Counseling from Winthrop University. My undergraduate
5 degree is from the University of South Carolina in
6 interdisciplinary studies. I have had advanced training
7 in domestic violence and its dynamics.

8 Q Do you hold any professional licenses or
9 certificates?

10 A I am a licensed professional counselor in the State
11 of South Carolina, and a nationally certified employee
12 assistance professional.

13 Q Do you have any specialized training in domestic
14 violence?

15 A Yes. I have attended over the years multiple
16 trainings from such organizations as Emerge, the Duluth
17 Project. These are some of the most well renowned
18 programs and deal with domestic violence issues.

19 Q Talk about what you primarily do when you meet with
20 defendants of domestic violence.

21 A For the most part, I do see them in the group
22 setting. Our program is a 26-week psychoeducation program
23 where we talk about the dynamics of domestic violence.
24 We -- we -- safety is paramount, certainly, foremost
25 safety for the victims, but, also, safety for the

1 perpetrators.

2 The whole concept is studies show that up to seven
3 incidents may occur before a victim reports or leaves. So
4 many couples who engage in domestic violence still live
5 together, still in the relationship. So we try to do what
6 we can to help reduce the opportunity for further
7 violence.

8 Q How many victims and defendants of domestic violence
9 would you say, if you had a best guesstimate, that you've
10 worked with over the years of your involvement in this
11 field?

12 A Probably thousands. I've been doing this 25 years,
13 so I've seen a lot of people.

14 Q So would that be the same number of years that you
15 counseled victims in domestic -- and defendants in
16 domestic violence?

17 A Yes, sir.

18 Q Other than women, can victims of domestic violence be
19 men and children?

20 A Yes, they can. Statistically, nationally, it is
21 shown that 85 percent is male on female domestic violence,
22 15 percent female on male. In the State of South
23 Carolina, it's probably more 75 to 25, or 70 to 30,
24 somewhere in that range.

25 Q Okay.

1 A And children are what we call the hidden victims that
2 we often -- they get the indirect issues of having
3 witnessed and being impacted by the fallout from domestic
4 violence.

5 Q Do you provide any professional training, or do you
6 teach others in your field?

7 A Yes. I provide trainings when asked. I've trained
8 on the local and regional level presenting on topics such
9 as domestic violence, and substance abuse, domestic
10 violence in the workplace, and other associated topics.

11 Q What -- what's the regional level where you've taught
12 this?

13 A The tri-state area of South Carolina, North Carolina,
14 and Georgia.

15 Q Okay. Have you ever been qualified as an expert in
16 court before?

17 A No, sir, I have not.

18 Q Do you know why you're here testifying today?

19 A I was requested to testify on the dynamics of
20 domestic violence.

21 Q Who subpoenaed you?

22 A You did, sir.

23 Q Okay. Is Compass of Carolina a law enforcement
24 agency?

25 A No, sir, we are not.

1 Q Is Compass a non-for-profit agency?

2 A Yes, sir, we are.

3 Q Okay. How do cases get referred to Compass?

4 A On an annual basis -- or at any time, we have
5 probably 150 to 200 perpetrators in our program.

6 Q Okay. Where does Compass funding come from?

7 A It comes from a variety of sources. It comes from
8 the United Way. It comes from the Violence Against Women
9 and Victims Crime Act on the federal level, grants from
10 those.

11 And we do charge the perpetrators for services. So
12 we do get some revenue there, which is, also, used to help
13 fund the victims programs for which there are no charge.

14 Q Is that funding in any way contingent upon what you
15 say here today?

16 A No, sir.

17 Q Are you being paid by the solicitor's office or a law
18 enforcement agency for your testimony today?

19 A No, sir.

20 Q Have you been promised anything in return for your
21 testimony today?

22 A No, sir.

23 Q Have you spoken with the victim in this case?

24 A No, sir, I have not.

25 Q Have you had any contact with the victim in this

1 case?

2 A No, sir.

3 Q Have you seen any evidence in this case?

4 A No, sir.

5 Q Other than the conversations you had with me, have
6 you done any investigatory work or interviewed anyone
7 involved in this case?

8 A No, sir.

9 Q Are you familiar with the term "delayed reporting" --

10 A Yes, sir.

11 Q -- in domestic violence cases?

12 A Yes, sir, I am.

13 Q What does delayed reporting by the victim mean as it
14 relates to victims of domestic violence?

15 A Delayed reporting is when the report comes after --
16 sometime after the incident. It can range from hours to
17 days to weeks.

18 Q Why would a victim not report the abuse right away?

19 A There's a variety of reasons, fear of reprisal, fear
20 that they don't -- won't be believed. Many victims don't
21 want the relationship to end. They want the abuse to end.
22 So they feel like maybe they can change their abuser.
23 They've got shame in thinking that maybe they caused the
24 abuse. There's the stigma of being abused.

25 And the one thing that is shown across many studies

1 is truly the fear of not being believed.

2 Q So is it uncommon for victims to delay reports of
3 abuse?

4 A No, it is not.

5 Q In your experience, what percentage of victims do not
6 report or disclose right away?

7 A National statistics suggest that domestic violence is
8 underreported by about 50 percent.

9 Q Is it uncommon for the victim, initially, when they
10 meet with law enforcement to give -- to lie for the
11 Defendant?

12 A No, it is not.

13 Q Why is that not uncommon?

14 A Again, it could be fear of reprisal. There could be
15 a financial, psychological dependence. Again, hope that
16 the relationship may work out.

17 Q Is it uncommon for family members of the victim to
18 want to try to help the victim?

19 A No, it is not.

20 Q Is it uncommon for the victim to not want to talk
21 to [sic] the incident when officers arrive on scene?

22 A I'm sorry, sir. Could you repeat the question?

23 Q In domestic violence scenarios, is it uncommon for
24 victims to not want to talk right away and disclose?

25 A No, it is not. As a result of trauma, they could not

1 really be processing or functioning cognitively at their
2 full capacity. And, sometimes, they're still trying to
3 figure out exactly what happened. Many times, they've
4 been violated by somebody very close to them. And that's
5 a difficult thing emotionally and psychologically.

6 Q Is it uncommon for victims to be concerned about
7 the -- about the suspect and whether or not the suspect
8 will be going to jail?

9 A No, it is not.

10 Q Why is that?

11 A Either two reasons. Either for their safety. Again,
12 if he's out -- he or she, excuse me, is out, there's a
13 chance of further reprisal. And, also, the damage it
14 could do to the relationship. Again, they love him, they
15 don't want anything bad to happen.

16 MR. POLSINELLO: Thank you, Mr. Sandefur.

17 THE WITNESS: Thank you, sir.

18 MR. POLSINELLO: No further questions.

19 THE COURT: Mr. Eppes.

20 CROSS-EXAMINATION

21 BY MR. EPPES:

22 Q Is Compass of Carolina related in any way to St.
23 Francis Bon Secours Hospital?

24 A No, sir.

25 Q You don't get any money from there, or anything?

1 A Not to my knowledge.

2 Q You do get your money -- and let me just start by
3 saying I'm familiar with your organization as you well
4 know; correct?

5 A Yes, sir.

6 Q I've given y'all money in the past; correct?

7 A Yes, sir, you have.

8 Q I, frankly, have sent several -- many -- a number of
9 my clients there over the years?

10 A Yes, sir. Yes.

11 Q And I know that a lot of your funding is from the
12 defendants that are sent there by the courts and the
13 solicitor's office; correct?

14 A A portion of it, yes, sir.

15 Q Okay. Have you ever testified for a defendant in a
16 domestic violence situation?

17 A No, sir, I have not.

18 Q How many times have you testified in court?

19 A Probably over the span of my career with different
20 cases, half a dozen.

21 Q Have you testified as an expert?

22 A No, sir.

23 Q Have you ever testified as an expert in delayed
24 reporting?

25 A No, sir. I have not previously.

1 Q Have you ever testified -- have you ever testified in
2 any other aspect of victim conduct?

3 A No, sir, I have not.

4 Q Do you believe yourself to be an expert in victim
5 conduct?

6 A I'm not comfortable with the word expert. But I do
7 have a great deal of knowledge.

8 Q But you don't believe you're an expert?

9 A As I said, that's a personal thing with the word
10 expert. But I have -- I feel I have greater knowledge
11 than most people.

12 Q Okay. Have you ever known victims to lie?

13 A I've known victims to falsely report, yes, sir.

14 Q Have you ever known victims to falsely exaggerate
15 what happened?

16 A I've -- reality is perception. I know that under
17 stress and trauma people can have exaggerated perceptions.

18 Q Have you ever known victims that -- that wanted to
19 punish their abuser?

20 A Yes, sir.

21 Q And have you ever known victims to act in a way that
22 punished their abuser that was not truthful or otherwise
23 ethical?

24 A Yes, sir.

25 MR. EPPES: Your Honor, subject to knowing what he

1 wants him to be an expert about, that's all my questions.

2 THE COURT: I wrote something down, Counsel. As a
3 matter of fact, these -- these are some of the first words
4 that came out of Mr. Sandefur's mouth. And I think
5 pursuant to your question, he said -- he was talking about
6 the dynamics of domestic violence. And I'm assuming
7 that's the -- that's the narrow window that you're going
8 to be asking questions about.

9 MR. POLSINELLO: Your Honor, the -- the questions
10 that I just asked Mr. Sandefur, those are them. I -- I
11 wouldn't -- I don't foresee myself going outside the
12 questioning that I've already asked.

13 THE COURT: All right. And I guess, Mr. Eppes,
14 that's subject -- subject to any -- to your objection. Do
15 you got another questions you want to ask him?

16 MR. EPPES: Your Honor, my client has one more
17 question.

18 THE COURT: Go ahead.

19 BY MR. EPPES

20 Q Are you ever familiar with cases where there's
21 multiple generations of abuse?

22 A Yes, sir.

23 Q And -- and are you familiar with any cases where an
24 individual who was abused at home, thereafter, took it out
25 on her husband -- abused in childhood by her parents, by

1 her father?

2 A Childhood abuse can lead to behaviors on either end
3 of the spectrum. It tends more to lean towards victim
4 behavior, but it can lead to aggressive behavior.

5 MR. EPPES: Thank you very much.

6 MR. POLSINELLO: Your Honor, I'm just -- I'm a little
7 cautious that that would cause a red flag for me right
8 now. Child abuse. This is, obviously, not a child abuse
9 case. This isn't a CSC.

10 So in terms of that line of questioning, if Mr. Eppes
11 were to go down that road on cross-examination, I probably
12 would object. We -- we be could venturing down -- getting
13 off the tracks here with child abuse. There's no
14 allegations of that. The Defendant is not on charge --
15 not on trial for child abuse.

16 THE COURT: I -- I tend to agree with you, Counsel,
17 on that.

18 Mr. Eppes, I -- I won't let you go down that -- that
19 line of questioning.

20 So you're offering him as an expert.

21 And you're objecting --

22 MR. EPPES: I'm objecting. That's correct.

23 THE COURT: So I'm going to -- I'm going to allow him
24 subject to your objection.

25 And the line of questioning -- Counsel, I want to be

1 very clear. I want to make -- okay. You've got them
2 written down?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: All right. I want to be clear. I don't
5 want you to ask any more questions than you just asked
6 just a minute ago.

7 MR. POLSINELLO: Yes, Your Honor.

8 THE COURT: All right. Sir, you can step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Before -- before --

11 MR. EPPES: Your Honor, we -- we have an issue that I
12 need to bring to the Court's attention right now.

13 THE COURT: All right. Before you do that,
14 Mr. Eppes, I just want to -- and I know the cases that
15 I -- that I cited -- obviously, we're talking about child
16 abuse cases. But I was really citing those cases to give
17 you what the Court thought about the dynamics of experts
18 in these kind of cases.

19 But I wanted to read some language into the record
20 out of a case that I was looking for earlier. And this
21 was the Jones -- State v. Jones case, which is found in
22 817 S.E.2d 268, which is a 2018 case. As a matter of
23 fact, this case was -- this case was heard by my
24 colleague, Judge Stilwell.

25 And, in this case -- I'm just going to read some

1 language, two portions. The expert's -- the Court said
2 that the expert -- appellate court, Expert witnesses
3 generalized testimony regarding child sex abuse dynamics
4 did not result in improper bolstering on behalf of the
5 victims in the prosecution for criminal sexual conduct.
6 And I understand what we've got here is different. And
7 where the witness did not evaluate or interview the
8 victim.

9 So, here, we've got a situation where the expert
10 witness did not evaluate or interview the witness. That's
11 parallel to what we've got here. And even though we're
12 talking sex -- child sex abuse in the -- in the Jones
13 case, we don't have that here. But the appellate court
14 made a finding that the expert witnesses generalized --
15 and that's pretty much what we've got here, generalized
16 testimony -- did not result in improper bolstering of
17 the -- on behalf of the victims. Now, let me say that.

18 Then, also, here's some other -- and I -- and I use
19 the word powerful stuff. And I -- and I probably use that
20 a little loosely. And I'm sorry. That's just -- that's
21 just some language in the case. And I hope you don't take
22 it anyway.

23 But it says, Testimony -- same case -- testimony
24 about the behavior of the non-offending caregiver often to
25 educate the jurors on why a non-offending caregiver may

1 fail to act after learning sexual abuse has occurred
2 failed within an area of specialized knowledge for which
3 expert testimony could be utilized in the prosecution of
4 criminal sexual conduct with a minor.

5 So the whole piece about educating the jurors,
6 that -- that's in this case. And then the whole piece
7 about that even though this expert didn't interview the
8 witness or had any interviews that that expert's
9 generalized testimony did in no way bolster the -- was not
10 improper bolstering on behalf of the victims. I
11 thought -- I wanted to say that because this was the
12 language I was looking for earlier.

13 But, now, I'll be glad to hear -- since I already
14 ruled on that issue, but I just wanted to have that on the
15 record.

16 What -- what else have we got, Mr. Eppes?

17 MR. EPPES: Your Honor, this morning, for the first
18 time in a while -- I'm going to tell you, my client has
19 corresponded with me regularly from the detention center.
20 And he's asked me about his preliminary hearing tape,
21 which I've discussed with him, but, frankly, never played
22 for him, and the tape of the interview with Ms. Workman,
23 which I've, also, discussed with him, but never played for
24 him, and a series of employment records for a woman named
25 Teresa Drummond that was Ms. Workman's supervisor at her

1 place of employment.

2 We have some of those records, which, frankly, I
3 don't know are particularly helpful. I've said this to my
4 client. He thinks they're critical to the case. He has
5 some other issues that he would like to raise himself for
6 the Court. Because I don't think he likes exactly the way
7 I'm explaining them.

8 I'd like him to raise them right now so that the
9 Court is aware of them as we conclude -- what I believe to
10 be conclude the State's case. Because I think we're going
11 to have to address them immediately following the State's
12 case. And I just want to get them on the record now.

13 I will, also, tell you, Your Honor, that we had
14 discussions about this issue last night with Dr. Maddox
15 here. And I had, frankly, hoped that -- that they would
16 not come to the fore. But my client's entitled to the
17 trial that he wants, not the trial that I want to give
18 him.

19 And so I'd like you to listen to what he has to say
20 and us decide an appropriate way forward. Because I don't
21 want to disregard his -- his feelings. But he and I do
22 not exactly agree on some of these things.

23 THE COURT: All right. Let me -- let me ask this
24 before, Mr. Workman, you speak.

25 Mr. Eppes, first of all, have you and your client

1 discussed whether or not he's going to testify in his
2 behalf?

3 MR. EPPES: We have discussed it. I do not believe
4 he has made a decision at this time.

5 THE COURT: All right. And that's a decision that
6 he'll make, I guess, soon.

7 MR. EPPES: That is a decision that I am hoping he
8 will make after we talk to the Court about these issues,
9 and, frankly, after Dr. Maddox gets here so that we can
10 all talk together. Because she has a way of translating
11 to each of us. Because we don't -- we aren't always on
12 the same page. And -- and she's frankly, a gentle
13 presence that helps me and my client communicate better.

14 THE COURT: All right. And my second question is --
15 And I'll be glad to hear from you, Mr. Workman.

16 But my -- here's my concern. And -- and I want to
17 make sure I couch it the right way.

18 You've got Mr. Eppes as your retained counsel; is
19 that correct?

20 MR. EPPES: I'm not retained. I was appointed by the
21 Court, Your Honor.

22 THE COURT: Appointed as your current lawyer; is that
23 correct?

24 DEFENDANT WORKMAN: (There was no verbal response.)

25 THE COURT: Speak up so I can hear you.

1 DEFENDANT WORKMAN: Yes, sir.

2 THE COURT: All right. And the issues that you would
3 like to raise with me are legal issues, factual issues. I
4 want to -- I want to make sure that we don't go down a
5 path that I can't address. Because we're going to -- if
6 you're going to ask me questions as it relates to factual
7 issues, then I can't address any of those. So --

8 MR. EPPES: Your Honor, he is -- he is going to tell
9 you about some items that he wants me to subpoena today
10 that I've just told him, quite frankly, we'll never have
11 for -- the way the Court is going to want this trial to
12 proceed. That's what it's about.

13 THE COURT: All right. Let me hear from you.

14 DEFENDANT WORKMAN: Yesterday, when Ms. Workman was
15 testifying, she both knowingly and willfully perjured
16 herself and lied. She said that we didn't have a house
17 phone, sir.

18 THE COURT: Okay. Hold on a second. Hold on a
19 second. Hold on. Hold on. That's -- that's -- that's
20 what I was trying to make sure -- the path that we didn't
21 follow is that if you're -- those are factual allegations
22 that you're making. I can't -- if you're asking --

23 DEFENDANT WORKMAN: Well, can I put it another way
24 then?

25 THE COURT: Well, you know, Counsel tells me that --

1 that these questions that you're asking me are some
2 procedural questions in terms of things that you would
3 want to present to the Court. But I don't know if you're
4 going down the road of making statements regarding the
5 facts and you want me, as the trial Judge, to comment on
6 them. And I can't do that.

7 DEFENDANT WORKMAN: Okay. I need my Charter bill
8 subpoenaed. It's my phone bill. It's my Internet. And
9 it's my cable. I had all three of those. I had a house
10 phone, a working phone, Internet, and cable TV.

11 THE COURT: All right. Let me ask you this. Prior
12 to Mr. Eppes representing you, you had another attorney;
13 is that correct?

14 DEFENDANT WORKMAN: Yes. Cassandra Gorton. Well,
15 she's still officially --

16 MR. EPPES: She's -- she's -- she has an order that
17 says she is to assist me in any way possible in this case.

18 THE COURT: All right. But she's not here?

19 MR. EPPES: She's not here.

20 DEFENDANT WORKMAN: And I need her, too, as well to
21 state my claim like the Solicitor has stated their claim.

22 THE COURT: You need her here?

23 DEFENDANT WORKMAN: Yes, sir. Because she is more
24 affiliated with this case than Mr. Eppes. And I want her
25 to handle my --

1 THE COURT: Well, hold on a second, Mr. Workman.

2 We've been -- we've been going at this for almost --
3 this is the third day --

4 DEFENDANT WORKMAN: Yes. This is the third day.

5 THE COURT: -- and this is the first time that I'm
6 hearing that there's an attorney involved in your
7 representation that's not here. Why am I just hearing
8 this today?

9 DEFENDANT WORKMAN: Because --

10 THE COURT: I mean, we had -- we had pre-trial
11 motions. We had -- we -- we had jury qualification. I've
12 not heard this.

13 I didn't -- I saw Mrs. Gorton's name on a document.
14 But I was under the impression -- at least, I heard that
15 you were not satisfied with -- with the prior -- your
16 previous attorney. And -- and that Mr. Eppes was -- was
17 coming in and he was now representing you. I -- I heard
18 nothing about you wanting Ms. Gorton here before just two
19 seconds ago.

20 DEFENDANT WORKMAN: Yes, sir. That's correct.

21 THE COURT: Why wasn't -- why wasn't that told to the
22 Court by either -- by you since you wanted her? Why
23 didn't you tell your lawyer to have him tell me that?

24 DEFENDANT WORKMAN: Because at the time, Your Honor,
25 it didn't really arise until after Mr. Eppes indicated

1 that -- cross-examining Ms. Workman, he didn't want to
2 just get into specifics with her. Because he didn't want
3 the jury to think that he was [inaudible] her or attacking
4 her.

5 But Ms. Gorton is a lady. And she would be able to
6 cross-examine her fairly and correctly, sir.

7 THE COURT: In other words, you're -- you think that
8 Ms. Gorton would be able to cross-examine the witness
9 better than Mr. Eppes. Is that what you're saying?

10 DEFENDANT WORKMAN: Yes, sir. Because they had their
11 chance to present all their evidence; right, and they
12 called -- and their witnesses?

13 And, now, he wanted expert testimony. Isn't it my
14 right that I get the same, to call the witnesses that I
15 want subpoenaed and to present the evidence that I need
16 presented?

17 THE COURT: Mr. Workman, this is a 2016 case. This
18 case -- I looked at -- I think these indictments are 2016.
19 This is a 2016 case. These things -- these occurred back
20 in -- these incidents -- alleged incidents occurred back
21 in 2016.

22 DEFENDANT WORKMAN: Yes, sir.

23 THE COURT: You had -- listen to me for a second.
24 You had Ms. Gorton, your prior lawyer. She could have
25 subpoenaed anything that you wanted. And then you had an

1 opportunity to meet with Mr. Eppes. But to come the third
2 day of the trial and -- and say now that you want some
3 things subpoenaed, I mean, the Court doesn't work that
4 way.

5 DEFENDANT WORKMAN: Yes, sir. But, basically, the
6 stuff I want subpoenaed, I already asked for and --

7 THE COURT: Your subpoenas were already issued?

8 DEFENDANT WORKMAN: They wasn't issued, sir.

9 THE COURT: Well, who do you -- well, what do you
10 mean you already asked for them? Who did you -- who did
11 you ask?

12 DEFENDANT WORKMAN: I wrote a letter two times to
13 Mr. Eppes. I don't know if it slipped his mind or he had
14 other cases. But I wrote two specific letters indicating
15 the things that I wanted.

16 THE COURT: Well, let me ask you this, Mr. Workman.
17 Okay. You wrote -- you allegedly wrote Mr. Eppes the
18 letter --

19 MR. EPPES: He wrote it, Judge. He did.

20 THE COURT: Okay. You wrote him a letter. All
21 right. You didn't get these things. I guess where I'm at
22 is, why wasn't the Court told about that at the outset, as
23 opposed to waiting until three -- almost three days of
24 trial that you didn't get those things?

25 DEFENDANT WORKMAN: This is my first jury trial, Your

1 Honor.

2 THE COURT: Well, but, you know, I don't think this
3 being your first jury trial has got to do with anything.
4 I mean, if you -- if -- if you knew that you needed
5 that -- those documents to go forward -- I mean, you're
6 putting the Court in a very difficult position at this
7 particular point, you know.

8 I -- throughout this process, I've -- I've listened
9 to both side. I've -- I've carefully evaluated the
10 objections as to evidence on both sides. I've excluded
11 evidence and testimony that I thought had no basis as it
12 relates to the applicability of the law. I've done all
13 that. But, now, to tell me that you're dissatisfied with
14 your lawyer --

15 DEFENDANT WORKMAN: Sir, I didn't say I was
16 dissatisfied with him. I said there was a couple issues
17 that needed to be discussed with the Court. And there's
18 information that I need that is very vital to this case.
19 And it would prejudice me, Your Honor, that -- if I don't
20 get it.

21 THE COURT: And that's a Charter phone bill?

22 DEFENDANT WORKMAN: Yes, sir. It's a Charter phone
23 bill that said that I had a phone and cable. It was in my
24 name. And --

25 THE COURT: Why didn't you get this -- why didn't you

1 get this yourself before today?

2 MR. EPPES: Your Honor, he's been incarcerated.

3 THE COURT: Well, why didn't you get somebody to get
4 it for you?

5 DEFENDANT WORKMAN: One thing, it didn't come up.
6 And I didn't know nothing about it, Your Honor, until she
7 said that -- yesterday on the bench that we didn't have a
8 telephone, we didn't have a house phone. She,
9 specifically, said that.

10 THE COURT: All right. And -- and you think that --
11 I'm -- I'm -- you know, I'm very careful how I'm choosing
12 my words. Because I don't want to say anything that is
13 interpreted as me commenting on the facts of the case.
14 You're -- you're saying that that information is vital to
15 your case? Is that what you're saying?

16 DEFENDANT WORKMAN: Yes, sir. It would impeach her
17 credibility as a witness.

18 And, also, her work attendance for August 16th --
19 August the 26th through the 29th of 2016 -- they gave me
20 the old one. What I'm saying, Your Honor, is I believe
21 every one of them was sent. But they done away with the
22 up-to-date ones and just gave me the old ones. And the
23 up-to-date one would clarify that Ms. Workman was supposed
24 to be at work Saturday morning at 6:00.

25 And Teresa Drummond, also, will verify that they --

1 that she received a phone call from Ms. Workman Saturday
2 morning. And that they didn't come up with the evening
3 thing until after my alibi and witness statement was
4 served over to the Court. It was, he came home. It was
5 no evening thing. That's something new that Derek
6 Polsinelli [sic] put into play.

7 MR. EPPES: Your Honor, if I may. Teresa Drummond
8 worked -- the way that Ms. Workman -- it's my belief, and,
9 certainly, Mr. Polsinello can correct me. But Ms. Workman
10 worked for an outside contractor that provides food
11 services to St. Francis Hospital. That is where this
12 Teresa Drummond worked.

13 I believe -- and, again, Mr. Polsinello can correct
14 me. He made a diligent search for Teresa Drummond. We
15 made a diligent search for Teresa Drummond. We couldn't
16 find Teresa Drummond. It is our understanding that the
17 turnover rate at the Morrison's facility in St. Francis is
18 weekly or biweekly.

19 Ms. Gorton provided us with the records of
20 employment. She had gotten them by subpoena, which that's
21 a carol for another Christmas. But she got those records.
22 And we've looked at them. And I didn't think they added
23 anything more than the police records that I brought out
24 on cross-examination that the caller said he -- she was
25 supposed to work Saturday, Sunday, and Monday and had not

1 been there. It's a fact that I plan to address in closing
2 argument. But -- but that particular thing has been a
3 long-standing issue. And we have tried to find the
4 information that Mr. Workman has been looking for in that
5 regard.

6 The thing about the house phone just came up today.
7 He thinks it's important, quite frankly.

8 And we'll deal with this after the State has rested
9 about his testimony. He and I have been in discussions
10 about that issue, and a couple of other issues, and
11 whether or not he should testify. And that is an ongoing
12 discussion.

13 And he has, also, informed me that he's going to want
14 an expert witness to attempt to rebut --

15 Is it Mr. or Doctor? I'm --

16 MR. NEIL SONDOV: Mr.

17 MR. EPPES: Mr. Sondov, and an expert on child abuse
18 and drug abuse. We do not have such an expert witness.
19 Frankly, right at this point, we don't have any evidence
20 in the record about drug abuse. Because I know that
21 Mr. Polsinello was addressing that issue.

22 We had attempted to find, at least, one individual
23 that my client believes was selling drugs to Ms. Workman.
24 Obviously, we're far afield of where the case has been
25 thus far. But I will tell you that we have attempted to

1 find them. We have been unable to find them.

2 And -- and Mr. -- my client is informing me that
3 Mr. Polsinello is aware of her [sic] communications my
4 client has had directly with him about these issues being
5 raised. But, obviously, that is not Mr. Polsinello's job.
6 That is my job. And -- and, Judge, that is where we are.

7 Judge, I would, also, remind you, although it's not
8 part of the record yet, that in the report where Ms. --
9 Dr. Maddox found Mr. Workman competent, she, also, talked
10 about his medication. And as she was on the stand, she
11 talked about his issues with paranoia. And I have asked
12 her to come over here. And I -- this is a unique
13 situation to me as well.

14 So I just wanted to get all that on the record to the
15 Court as early as possible today. Because it just came to
16 my attention today.

17 THE COURT: Yes, sir.

18 MR. POLSINELLO: Your Honor, this is the procedural
19 history of this case. This case is --

20 I'm sorry. Will you, please, give that to His Honor?

21 This case is 725 days old as of today. Your Honor,
22 you'll see on the procedural history that the State just
23 gave you this goes way back all the way to September 26,
24 2016. The first attorney was Dorothy Manigault with the
25 Public Defender's Office. The Public Defender's Office

1 moved to be relieved from the case entirely. The Court
2 granted that. Then Cass Gorton was appointed. And I
3 believe that was through 608.

4 Your Honor, you'll see I handed you a letter, a
5 hand-written letter by the Defendant that he sent our
6 office dated September 21st, 2017. In that letter, Your
7 Honor, you'll see that the Defendant wanted to fire
8 Cassandra. Those are -- that's his writing. Those are
9 his words. And he, specifically, requested Frank Eppes or
10 Larry Crane. Obviously, Frank was appointed by Judge
11 Verdin.

12 So the first issue, Your Honor, that the Defendant
13 feels that Cass will help him, however how, is contrary to
14 Mr. Workman's own letter in his own words. The State
15 feels that he's just trying to unduly delay this process.
16 He, clearly, wanted to fire Cass.

17 In terms of the -- and he got who he wanted. He,
18 specifically, requested Frank. And the Court did
19 Mr. Workman a favor by appointing Frank. And, quite
20 frankly, Your Honor, Ms. Manigault and Ms. Gorton are
21 fantastic attorneys. I'm sure Mr. Workman would have been
22 in great hands. But he could not be in better hands with
23 Mr. Eppes. I'm sure Your Honor will agree, he's one of
24 the finest attorneys in this state.

25 So with that said, Your Honor, in terms of these

1 records, these phone records, they had 725 days to get
2 these records. This -- they had 725 days. This is not an
3 emergency issue. This is not some -- you know, a big
4 ground breaking thing that has come to light.

5 I have a feeling, Your Honor, that the Defendant
6 doesn't like the way this trial is going, the evidence
7 that has been properly authenticated. I don't think he
8 likes what -- what he's going against. And so now, he's
9 trying to create a way to unduly delay the Court and the
10 proceedings.

11 Your Honor, in terms of them wanting to call an
12 expert to rebut our expert. We handed the Defense
13 attorney and the Court our witness list on Monday. His
14 name was on there. They've had all these days to research
15 that name and call their expert.

16 So the State just feels that these are non-material
17 issues and that they are unnecessarily unduly delaying
18 this trial. The State requests to proceed with this next
19 witness. And in terms of whatever evidence that
20 Mr. Workman may want to present, he'll have that
21 opportunity.

22 But the time has been, Your Honor. The time has
23 passed. It's 725 days old. It's been on the docket
24 multiple times. It's been continued multiple times. Once
25 for the Defendant himself because he was going to testify

1 as a State witness in a -- in a -- two cases, Your Honor.
2 And when he was called to testify at trial, he backed out.
3 And we have letters documenting that, if Your Honor would
4 like to see that.

5 MR. EPPES: One of those cases ended in a guilty
6 plea. Your Honor, I wanted to stand up to clarify one
7 issue.

8 THE COURT: Okay.

9 MR. EPPES: Judge Verdin and I both think the world
10 of Cass Gorton as an attorney. And when Cass got laid off
11 the case, I requested and Judge Verdin honored my wish
12 that Cass be available for consultation. And I have
13 consulted with her on a regular basis throughout my trial
14 preparation in handling this case.

15 So I wanted the Court to know that it wasn't a
16 situation where anybody expected her to be in the
17 courtroom for the trial. But she has been available. As
18 a matter of fact, I spoke with her last night. And she
19 has provided help and insight. As Your Honor will
20 remember, I had two motions that she had drafted many
21 months ago and filed over a year ago.

22 That said, Your Honor, that's where we are this
23 morning. And I just wanted you to be aware of it.

24 THE COURT: Let me make sure I'm reading this
25 correctly. And I'll tell you where we -- what we're going

1 to do.

2 I've got your letter, Mr. Workman. I'm reading a
3 portion of it. It says, I have -- I'm just reading a
4 portion of it. I have sent copies to the White House,
5 judges at the Supreme Court in D.C., the senate judiciary
6 committee. I have fired Cassandra Gorton six times.
7 Okay. I'm going to make sure she gets disbarred. I don't
8 want another woman lawyer. Okay. Mr. Frank. Okay.
9 Frank Eppes, I'm assuming. Okay. Frank Eppes or Larry
10 Crane, a man lawyer. Thank you.

11 So you asked for either Frank Eppes or Larry Crane;
12 is that correct?

13 DEFENDANT WORKMAN: (There was no verbal response.)

14 THE COURT: Sir, I'm talking to you.

15 DEFENDANT WORKMAN: Sir?

16 THE COURT: I'm reading your letter. Is that --

17 MR. EPPES: Your Honor, when he spoke with
18 Dr. Maddox, he told -- I don't know what the letter says
19 right this second because it's not in front of me. But
20 Dr. Maddox -- he told Dr. Maddox he trusted myself and
21 Mr. Crane. And that's how he got to that point.

22 THE COURT: All right. Anyway, I'm not going to --
23 sir, I just got -- first of all, I'm not going to delay
24 the proceedings. I'm not going to do that. I'm going to
25 make a finding on the record, based upon the procedural

1 history of the case, that this case has been ongoing since
2 September of 2016. It is now September of 2018, almost
3 two years later. So I'm not going to delay the process.

4 I am going to make a finding that you had ample
5 opportunity to -- you've had three different lawyers. You
6 had Dorothy Manigault, which I -- I find to be an
7 outstanding attorney. You've got Ms. Cass Gorton, which
8 I, also, find to be an outstanding attorney. And I
9 also -- you've got Mr. Frank Eppes, who is, also, a very
10 outstanding attorney.

11 So you've had the benefit of -- of three outstanding
12 lawyers, which I have had the opportunity to try cases on
13 this side with two of them, not Mr. Eppes, but two of
14 them. So I -- and I've been around a long time. I've
15 been around a long time. I know just about all the
16 lawyers in this county of the bar. And you've got --
17 you've had fine lawyers.

18 And now, I -- if you're sitting there and you're
19 telling me that you -- you don't like -- first of all, I'm
20 not going to continue the case. We're going to move
21 forward. I'm going to -- I'm going to find that you had
22 ample opportunity to -- to get all this information that
23 you're requesting since 2016, September of 2016.

24 However, if you're saying that -- that going forward
25 you're not satisfied with the cross-examination techniques

1 of your current lawyer and you want to do it yourself --
2 now, I want to make sure we understand.

3 You -- you -- are you okay with Mr. Eppes proceeding
4 forward?

5 DEFENDANT WORKMAN: I didn't say I wanted to
6 cross-examine myself. I said I wanted Cass to
7 cross-examine.

8 THE COURT: Well, we -- well, Ms. Gorton is not here.
9 She's not the attorney of record.

10 MR. EPPES: Your Honor, if I may, Ms. Gorton is in a
11 dental chair. And she said half her face is numb. I just
12 contacted her this morning. I told her to stay and do the
13 procedure and call when she could.

14 But, Your Honor, could I clear some things up on the
15 record?

16 THE COURT: Yes.

17 MR. EPPES: Are you done with your ruling? I'm
18 sorry.

19 THE COURT: I'm done. We're going to -- we're going
20 to continue in just a minute.

21 MR. EPPES: Well -- well, let me clear some things up
22 on the record. Because I want to make -- I want to
23 protect my client's record. Okay.

24 Your Honor, number one, I did not think about, nor
25 did I subpoena the records for his phone, cable, and

1 Internet bill at the house. I did not do that. There's
2 no question about it.

3 Number two, I was asked to find Teresa Drummond and
4 to subpoena her. I was not able to do that. I did not
5 find her. Nor did I find Virginia, the 911 caller. I was
6 asked to do that and I failed to do that.

7 Number four [sic], I was -- Mr. Workman and I have
8 been over those work -- those work records a little bit.
9 He has told me that they were incomplete. I have done
10 nothing to further complete those records. That's my
11 mistake, not his.

12 Is that everything you talked about?

13 And I did not -- I anticipated that the Government
14 might try to call a bolstering psychotherapy expert. I
15 did not get an -- an expert on that. I, frankly, did not
16 believe that there was any way to prove any drug use by
17 Ms. Workman. So I did not pursue an expert on that.

18 Any of these things that are found later to rise to a
19 failure of the standard of care, I accept full
20 responsibility for. And I want to put that on the record
21 right now so that he has that record preserved and he
22 doesn't have to create it out of whole cloth, depending on
23 how this trial goes.

24 I'm making no statement as to whether any of those
25 things fall below the standard of care. However, I do

1 want to say on the record right now I didn't do them.

2 THE COURT: Is there something you want to --

3 DEFENDANT WORKMAN: Yes, sir.

4 THE COURT: Stand up.

5 DEFENDANT WORKMAN: So are you saying, Your Honor,
6 I'm not going to have the opportunity to subpoena my phone
7 bill? Because I never had a chance. I never knew that
8 she was going to say that we didn't have a house phone. I
9 never knowed [sic] that. And --

10 THE COURT: Let me tell you what I'm saying. Let me
11 tell you exactly what I'm saying. I'm saying that I got
12 an order -- I got a scheduling order from the clerk's
13 office. This case was on the schedule. I was assigned to
14 come in here and hear the case. And I walked through that
15 door to hear a case that was indicted back in 2016. My
16 job, as mandated by the folks that put me here, is to hear
17 the case and apply the law.

18 My job is not to orchestrate trial strategy for
19 either side. My job is not to say -- to tell who -- who
20 can subpoena who and who should subpoena who. It's not my
21 job.

22 So in answer to your question, I have no position on
23 that. The only -- you've had lawyers. That's -- that's
24 not what I am assigned to do. My job is to hear the case.
25 I am the judge of the law. Those 12 people over there are

1 the judges of the facts. Your lawyer represents you.
2 Mr. Polsinelli [sic] represents the State. Everybody's
3 got a role.

4 So that's -- that's what I'm here to do. I don't
5 know if that answers your question. But that's the answer
6 that I'm giving you.

7 All right. Anything else before we move -- move
8 forward?

9 MR. EPPES: Your Honor.

10 THE COURT: Yes, sir.

11 MR. EPPES: Could we just take a short break and let
12 me get my head around cross-examining Dr. Sondov before we
13 start back?

14 THE COURT: All right. I'm going to -- you know, the
15 jury panel has been sitting back there since 9:30.

16 MR. EPPES: I understand, Judge.

17 THE COURT: I don't like the panel sitting back
18 there, you know, because lawyers out here can't -- you
19 know, are messing around. I don't like lawyers sitting
20 around here messing around when we've got a panel sitting
21 back there.

22 So I'll give you five minutes.

23 MR. EPPES: Thank you, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Bring the jury out.

2 MR. EPPES: Your Honor, this doesn't have to be on
3 the record. But Dr. Maddox is here. And assuming the
4 State rests after this next witness, I'm going to ask for
5 some time to go in the back and talk with my client with
6 Dr. Maddox present.

7 MR. POLSINELLO: No objection.

8 THE COURT: Okay. Bring the jury out.

9 (WHEREUPON, the jury came into open court at
10 approximately 10:41 a.m.)

11 THE COURT: Good morning.

12 All right. We're going to proceed in a minute.

13 Mr. Eppes, would you speak just a little louder for
14 the -- so the jury can hear you? They're having a tough
15 time trying to hear you.

16 So just kind of raise your tone just a little bit.
17 Help them out a little bit.

18 MR. EPPES: Yes, Your Honor.

19 I -- I learned in a class I took 25 years ago that
20 because I'm so big, I ought to be quiet because it
21 intimidates people. And I don't think I'm real
22 intimidating. But I do keep my voice probably lower than
23 I should. And I will try to be more vocal today.

24 THE COURT: All right. Counsel, are you ready to
25 proceed?

1 MR. POLSINELLO: Yes, Your Honor.

2 THE COURT: All right.

3 MR. POLSINELLO: The State calls Neal Sondov to the
4 stand.

5 THE COURT: Mr. Sondov, come on up.

6 THE CLERK: If you would, please, place your left
7 hand on the Bible and raise your right hand.

8 WHEREUPON,

9 NEIL SONDOV,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 MR. EPPE: Your Honor, I renew my objection.

14 THE COURT: All right. So noted.

15 THE CLERK: And, please, state your name for the
16 record.

17 THE WITNESS: Neil Sondov, S-O-N-D-O-V.

18 THE CLERK: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. POLSINELLO:

21 Q Mr. Sondov, are you currently employed?

22 A Yes, sir. I'm with Compass of Carolina.

23 Q What is Compass of Carolina?

24 A We are a United Way non-profit counseling agency
25 providing services -- counseling services for adults,

1 children, and couples. And we, also, have our family
2 violence intervention program providing services for the
3 victims and the perpetrators, as well as the children
4 impacted by domestic violence.

5 Q How long have you been employed there?

6 A I've been there 20 years.

7 Q What is your title?

8 A I am a senior therapist in the family violence
9 intervention program.

10 Q What are your duties and responsibilities as a senior
11 therapist?

12 A I spend half my time seeing couples and individuals
13 for general mental health issues. And the other half I
14 spend in the family violence intervention program
15 facilitating perpetrator groups, doing community outreach,
16 working on the curriculum, and various things to make that
17 program successful.

18 Q You stated that you meet with couples. Would that
19 imply both victims and defendants of domestic violence?

20 A The couples work is not with victims and perpetrators
21 together. That is dangerous and counter indicative,
22 especially if the abuse is ongoing. The couples work is
23 separate from domestic violence issues.

24 Q Okay. What is your highest level of education?

25 A I have a Master's Degree in Community Agency

1 Counseling from Winthrop University. And I am a licensed
2 professional counselor in the State of South Carolina.

3 Q Do you hold any professional licenses or
4 certificates?

5 A The LPC, licensed professional counselor, in the
6 State of South Carolina. And I am a certified employee
7 assistance professional.

8 Q Do you have any specialized training in domestic
9 violence?

10 A I have been fortunate enough to be trained under the
11 Emerge program out of Cambridge, Massachusetts, the Duluth
12 Program out of Duluth, Minnesota, the Oakland Men's
13 Project, obviously, out of Oakland. And these are
14 considered three of the forerunners in the domestic
15 violence field.

16 Q And what does that specialized training involve?

17 A It involved different strategies to help perpetrators
18 reduce the opportunity -- or the chance, actually, of
19 re-abusing, and, also, how to help assure safety of the
20 victims.

21 Q So do you have any training and experience in
22 counseling victims and defendants of domestic violence?

23 A While the vast majority of my experience is with
24 perpetrators, we believe that safety is paramount. And
25 you really cannot work with the perpetrators if you are,

1 also, not aware of the victims, their issues. And, again,
2 safety is -- is of the utmost concerns.

3 Q Okay. Do victims come to your organization?

4 A Victims -- we do have programs for perpetrators,
5 victims, and children of domestic violence.

6 Q So there's classes for them?

7 A Yes, sir.

8 Q And do you oversee the management?

9 A I -- I work, again, mostly with the perpetrators. I
10 do work with the curriculum of both the -- both the
11 victims and the perpetrators.

12 Q Okay. How many victims and defendants of domestic
13 violence have you worked with over your years?

14 A I'm not exaggerating. It would have to be thousands.
15 I've been doing it for 25 years, so.

16 Q Other than women, can victims of domestic violence be
17 men and children?

18 A Yes, they can. The accepted national average is --
19 it's about 85 percent male on female domestic violence,
20 15 percent, obviously, the other way. In the State of
21 South Carolina, the statistics show it's more 75/25. And
22 I would say in our program that at any time it probably
23 runs about 70/30.

24 Q 70/30?

25 A Male perpetrators, female perpetrators.

1 Q What are hidden victims?

2 A Hidden victims is a term that we use when it comes to
3 mostly children. There's the idea that if the children
4 are not in the room, if they're not witnessing it
5 directly, if they're not experiencing it directly, they
6 are not impacted. And that has been found to be untrue,
7 that, you know, children are a lot more aware than we give
8 them credit for. And, therefore, they can be impacted by
9 domestic violence.

10 Q Do you provide any professional training or teach
11 others in your field?

12 A Yes, I do. I've talked and presented on the regional
13 level and across different platforms. I've done live
14 trainings. I've done some media interviews. I've done
15 some Internet-based kind of interview programs, things
16 along those lines.

17 Q Do you provide any regional training?

18 A I've done trainings in the tri-state area being
19 Georgia, South Carolina, and North Carolina.

20 Q Do you lead those trainings?

21 A I'm sorry, sir.

22 Q Do you lead those trainings?

23 A Most of the time, I do lead or I will work with a
24 co-presenter.

25 Q Just generally speaking, what -- what's your

1 audience? What are the numbers in your audience?

2 A The audiences have ranged from, you know, the general
3 community educational type programs to programs for more
4 specific audiences, such as counselors, social workers,
5 victims advocates, law enforcement. So it's -- it's been
6 a range depending on the topic and exactly the audience
7 I'm speaking to.

8 Q Have you ever testified in court before?

9 A Yes, sir. But not in a domestic violence case.

10 Q How many times have you testified in court?

11 A Probably half a dozen.

12 MR. POLSINELLO: Your Honor, pursuant to South
13 Carolina Rule of Evidence 702, the State moves to submit
14 Mr. Sondov as an expert in domestic violence dynamics.

15 THE COURT: Mr. Eppes.

16 MR. EPPES: Your Honor, I continue my previous
17 objection.

18 THE COURT: All right. I'll so qualify him subject
19 to Mr. Eppes's objection.

20 MR. POLSINELLO: Thank you.

21 BY MR. POLSINELLO:

22 Q Mr. Sondov, do you know why you're testifying here
23 today?

24 A I was requested -- I was subpoenaed by the
25 solicitor's office to come and speak on the dynamics of

1 domestic violence.

2 Q Is Compass of Carolina a law enforcement agency?

3 A No, sir, we are not.

4 Q Is Compass of Carolina a non-for-profit agency?

5 A Yes, sir, we are.

6 Q How do cases get referred to Compass?

7 A Through a variety of sources. Mostly, there is law
8 enforcement involvement in that. It can be through the
9 court system, through the solicitor's office, other
10 branches of the judiciary, such as -- and law enforcement
11 such as PTI, Probation, Pardon, and Parole, the Department
12 of Social Services.

13 Q Where does Compass funding come from?

14 A The majority of Compass funding comes from grants
15 from the United Way, the family violence intervention
16 program. It is funded in -- in good part by grants from
17 the Victims of Crime Act and from the Violence Against
18 Women Act, both of which are federal grants.

19 And we, also, use the revenues that we generate from
20 our perpetrator programs to help fund the victim programs.
21 Because the programs for victims and children of domestic
22 violence are often at no cost.

23 Q Is that funding in any way contingent upon your
24 testimony here today?

25 A No, sir, it is not.

1 Q Are you being paid by the solicitor's office or a law
2 enforcement agency for your testimony today?

3 A No, sir.

4 Q Have you been promised anything in return for your
5 testimony today?

6 A No, sir.

7 Q Have you spoken with the victim in this case?

8 A No, sir.

9 Q Have you had any contact with the victim?

10 A No, sir.

11 Q Have you seen any evidence in this case?

12 A No, sir.

13 Q Other than the conversations you've had with me, have
14 you done any investigatory work, or interview anyone
15 involved in this case?

16 A No, sir, I have not.

17 Q Are you familiar with the term "delayed reporting" in
18 domestic violence cases?

19 A Yes, sir.

20 Q What does delayed reporting mean?

21 A Delayed reporting is the time in between the
22 occurrence of an incident and when a report is made to law
23 enforcement. This can be hours. This can be days. This
24 can be weeks. There's a myriad of reasons that that might
25 occur.

1 Q In your experience, how common is delayed reporting
2 among victims?

3 A It is nationally accepted that the rate for
4 nonreporting or underreporting of domestic violence is
5 approximately 50 percent. In my opinion, I think almost
6 all cases of domestic violence involve some form of
7 delayed reporting. Because it is very seldom a one-time
8 incident. This may be the one time things got this bad or
9 the one time somebody felt the need to report. But,
10 usually, there have been other incidents leading and
11 building.

12 So I think there is truly an aspect of underreporting
13 in almost all domestic violence cases.

14 Q Why would a victim not report abuse right away?

15 A Victims will not report for a variety of reasons.
16 One of the big ones is fear of reprisal, that they may get
17 harmed further. There could be some psychological or
18 emotional dependence upon the -- the abuser.

19 One of the things is many of the abusers -- I'm
20 sorry, many victims don't want the relationship to end.
21 They want the abuse to end. And they have hope that
22 the -- that that will happen and the relationship will
23 improve.

24 There's, also, a tendency for victims to blame
25 themselves for the abuse, that they did something to cause

1 the abuse.

2 Q What is fear of reprisal?

3 A Fear of reprisal could be that if -- if they report,
4 they will get harmed further, physically, financially,
5 families could be harmed, pets, children.

6 Q In your experience, your decades of experience with
7 thousands of cases, that's not uncommon?

8 A That -- that is, certainly, a -- I think a viable
9 threat.

10 Q Is it uncommon for victims not to want to talk about
11 the incident at first?

12 A Lots of times, victims aren't really fully aware of
13 what has happened. This is usually somebody they cared
14 about, somebody they've loved who has violated them in
15 some way. And that's a lot to process. There can be
16 trauma. And trauma affects the way we make our decisions,
17 the way we process the information that we receive. So,
18 no, it is not uncommon.

19 Q Is it uncommon for victims to be concerned about the
20 suspect and whether or not he or she's going to jail right
21 after the abuse?

22 A For a variety -- for probably opposite reasons,
23 that's a very real concern. On one side of the spectrum,
24 there is that fear of reprisal that we had previously
25 discussed. If he doesn't go to jail, you know, what might

1 happen to me further?

2 The other part is, again, it could be financial. If
3 he goes to jail, what's going to happen to his job?

4 Again, it could be the shame, oh, I put him in jail.

5 Again, as -- as we eluded to, often there's -- there are
6 strong emotional bonds. And they do not want to do what
7 they see as harming their perpetrator.

8 Q After the abuse occurs, is it uncommon for victims
9 to, eventually, open up and to want to give a truthful
10 account?

11 A I'm sorry, sir. Could you repeat?

12 Q After the abuse has occurred, domestic violence
13 abuse, is it uncommon for victims to want to, eventually,
14 open up and to give a detailed truthful account?

15 A That's not uncommon either. Again, so many factors
16 depend on, you know, the individual, their history. But
17 it's not uncommon for them to want to be able to try to
18 process this thing that is just a very unexpected and a
19 very hurtful thing that has happened to them.

20 Q After some time has gone by after the abuse occurred,
21 is it uncommon for victims to be apologetic?

22 A No. There -- one of the things in what we call the
23 cycle of violence is there is the honeymoon phase where
24 everybody says they're sorry. And, again, there's that
25 hope that the relationship will get better.

1 Q And once they get in a safe space, I think you
2 testified they often give truthful accounts?

3 A They can, yes, sir.

4 Q Okay. And -- but you've, also, been around victims
5 that say that they want the person that hit them to pay
6 for their crimes; correct?

7 A Yes, sir.

8 Q And you've been around victims that made up stories
9 and exaggerated stories in order to make their abuser pay
10 for their crimes, haven't you?

11 A There have been some. But I have not found that to
12 be common.

13 Q But you've seen it?

14 A I'm sorry, sir.

15 Q You've seen it?

16 A I've seen it, yes, sir.

17 MR. EPPES: Okay. Just one second, Your Honor.

18 (Pause.)

19 MR. EPPES: Thank you, Your Honor.

20 THE COURT: Anything on redirect?

21 MR. POLSINELLO: No further questions, Your Honor.

22 THE COURT: All right. I have no questions.

23 Thank you, sir.

24 You can step down.

25 THE WITNESS: Thank you, sir.

1 THE COURT: All right. Do you want this witness to
2 be excused?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. EPPES: Without objection, Your Honor.

6 THE COURT: All right. Sir, you're free to leave.

7 THE WITNESS: Thank you, sir.

8 THE COURT: All right. Does the State have any other
9 witnesses?

10 MR. POLSINELLO: Your Honor, the State rests its case
11 in chief. No further witnesses.

12 THE COURT: All right. Send the jury back. Take the
13 jury out.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 10:59 a.m.)

16 THE COURT: All right. Let's talk time. It's --
17 it's about 11:00 right now.

18 And, Mr. Eppes, you --

19 MOTIONS

20 MR. EPPES: Your Honor, as an initial matter, I'd
21 like to make a motion for a directed verdict based on the
22 failure of the evidence to prove the claims of kidnapping,
23 domestic violence of a high and aggravated nature, and
24 possession of a weapon during a violent crime.

25 MR. POLSINELLO: Briefly, Your Honor. Citing State

1 v. Wheeler, the Supreme Court of South Carolina 1972, it's
2 259 S.C. 571, If there is any evidence tending to support
3 an inference of guilt, the Court must submit the issue to
4 the jury. When a motion for a directed verdict was made,
5 the trial judge's concerns were the existence or
6 nonexistence of evidence. And it is his or her duty to
7 submit the case to the jury if there is evidence, either
8 direct or circumstantial, which reasonably tends prove the
9 guilt of the accused, or from which the guilt may be
10 fairly and logically deduced.

11 Your Honor, it's the State's position that there's a
12 substantial amount of evidence in this case, overwhelming,
13 25 exhibits. The State has produced over 10 witnesses.
14 That testimony is -- should be considered. Based on the
15 fore -- foregoing, we would ask that Your Honor rule
16 against Defense Counsel's motion and continue the case
17 forward.

18 THE COURT: All right. Anything -- anything else,
19 Mr. Eppes?

20 MR. EPPES: On that issue, no, Your Honor. I have no
21 reply.

22 THE COURT: All right. Motion's denied.

23 MR. EPPES: Your Honor, I'd like to renew my motion
24 as to the search warrant, to strike the guns from the
25 record and have them not a part of this case.

1 THE COURT: All right. Your motion is so noted. And
2 that's, also, denied.

3 MR. EPPES: Thank you, Your Honor.

4 THE COURT: All right. Mr. Eppes, previously, you
5 asked to be allowed to have some time -- well, first of
6 all, let me ask you this. How many witnesses do you have
7 for --

8 MR. EPPES: That's a good question, Your Honor. Your
9 Honor, I have to speak with my client about his right to
10 testify and his right to present evidence versus my right
11 for last argument. Although Justice Beatty has amended
12 that somewhat to relieve the burden on the Defense of
13 trying to guess about what the Prosecution is going to
14 say, I believe I still have a right to last argument with
15 no rebuttal. Because I've put up no evidence as -- up to
16 this time.

17 However, my client and I have to discuss that. We
18 would like to have Dr. Maddox in on the discussion. We're
19 happy to just go back here into the room and have it.

20 THE COURT: So the witness list that you provided,
21 none of those persons --

22 MR. EPPES: The witness list that I provided has
23 one -- one person on it, the representative of Hope
24 Industries. Mr. Motes is right back here. And he's
25 available to testify as to Mr. Workman's work on those

1 days.

2 THE COURT: But you haven't decided whether
3 you're going to call him.

4 MR. EPPES: We haven't decided because we've already
5 got into evidence that he went to work. And that's just
6 where we are. But I -- there may be another witness.
7 And -- and I, actually, have an expert here on drug abuse
8 that I've got to discuss the matter with my client and
9 with him.

10 THE COURT: All right. How much time do you need?

11 MR. EPPES: I need about 30 minutes, Judge. And I'm
12 sorry. I just -- I don't know -- know any way to tell you
13 how sorry I am. But I don't think there's any way we can
14 tell you a short period of time that will resolve this
15 issue. We just need some time to hash it out.

16 THE COURT: Let me tell you what I'm thinking.
17 I'm -- I'm just thinking about those jurors sitting back
18 there for another 30 to 45 minutes.

19 And because you say 30 minutes, but it could take
20 longer than that. It may very well take longer than that.
21 And I guess that's why I've got this job. I've got to
22 figure this thing out. That's why they gave it to me.
23 It's 11:00. I've got to figure it out. Let's see. It's
24 too early for lunch.

25 MR. EPPES: Your Honor, the only thing I would --

1 THE COURT: Now, I take --

2 MR. EPPES: I would tell you one thing about it.

3 THE COURT: Yes.

4 Mr. EPPES: This is the only thing. I promised
5 Mr. Motes I'd have him out of here by noon. And that
6 is -- I -- I want to honor that request. We're going to
7 make a decision about Mr. Motes in order for me to honor
8 that request.

9 MR. POLSINELLO: And I'm sorry. This Mr. Motes -- I
10 just -- I feel like I have to speak. This is the Defense
11 witness list that I was handed.

12 MR. EPPES: A representative from Hope Power and
13 Industrial. Mr. Motes --

14 MR. POLSINELLO: I believed that was Corie Burleson,
15 Your Honor. That's how it appears --

16 MR. EPPES: Your Honor, there's two numbers. I'll
17 hand this up. Corie Burleson, Hope Power and Industrial.
18 And then a representative from Hope Power and Industrial.
19 I subpoenaed them. And I didn't know what -- who I was
20 going to get. And I don't know any other way to do that.

21 MR. POLSINELLO: That would explain the appearance of
22 the witness list, Your Honor. But, obviously, Mr. Motes'
23 name is not on there. And the State assumed under that
24 Corie Burleson, that title, that that was her -- or that
25 could be a guy. I don't know --

1 THE COURT: Bring the jury back in. I'm going to
2 tell them something.

3 MR. POLSINELLO: Your Honor, may I propose an idea?
4 (WHEREUPON, there was no response.)

5 MR. POLSINELLO: It goes to Mr. Eppes request. The
6 State has no objection to allowing Mr. Eppes the
7 30 minutes he requested. If you were to give Mr. Eppes
8 30 minutes and then we would have an early lunch, that
9 might, obviously, give the jury a break and afford
10 Mr. Eppes more time, if need be. And we could say we
11 could start up at 12:30.

12 MR. EPPES: Your Honor, apparently --

13 MR. POLSINELLO: If that helps him out.

14 MR. EPPES: Apparently, I -- I -- in my new louder
15 voice, I don't communicate well.

16 THE COURT: Well, hold the jury. They're not
17 standing out there.

18 THE BAILIFF: They're right here.

19 THE COURT: Oh, okay.

20 MR. EPPES: I told Mr. Motes I would try to have him
21 out of here by noon.

22 THE COURT: Well, bring them back in. Bring them
23 back in.

24 (WHEREUPON, the jury came into open court at
25 approximately 11:06 a.m.)

1 THE COURT: Ladies and gentlemen of the jury, it is
2 September, and it's not December. And, you know,
3 oftentimes in December, you get Christmas presents in
4 December. Now, you don't get them in September. But I'm
5 going to give you a small Christmas present right now.
6 I'm going to let you leave to go to an early lunch, or
7 whatever you got to do. And I'm going to let you come
8 back -- I want you back in your jury room at 1:30.

9 Okay. Now, try to be back at 1:30. If you have any
10 issues -- you've got the bailiffs. But try to be back at
11 1:30. Don't talk about the case with anyone. Don't do
12 any research. Even though you're going to have some extra
13 time, don't go buy a newspaper, don't do any of that.
14 Don't talk -- so don't do any of that. I'll see you back
15 at about 1:30.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 11:07 a.m.)

18 THE COURT: And, Counsel, if -- I'm sure this is the
19 very first time you've ever tried a case in front of me.
20 But I try to give deference to not letting the jury sit
21 back for long periods of time. I don't think it's -- it's
22 productive for either side to have jurors just sitting
23 back there. And I don't think it benefits either side.

24 So this is what we're going to do.

25 Mr. Eppes, you're going to have an opportunity to

1 talk to your client, and whatever. But at 1:30, not 2:00,
2 not 2:15, not 2:20, at 1:30, we are going to start back.
3 Okay.

4 MR. EPPES: Yes, sir.

5 THE COURT: I'm going to get back here -- I'm going
6 to be coming -- I'm going to back in here at 1:00. And at
7 1:00, if there are any issues that we need to address,
8 we've only got a 30-minute window to address them.
9 Because we're starting back exactly at 1:30.

10 And then by that time, you should -- I'll bring --
11 and I'll tell you at 1:00, depending upon what kind of
12 conversation you have with the Defendant, then I'll
13 address that at 1:00 in terms of if I have to have any
14 dialogue with the Defendant regarding his right to
15 testify, or that kind of thing. We'll do that at 1:00.

16 MR. EPPES: Yes, sir.

17 THE COURT: So, Madam Court Reporter, I'll be back in
18 here at 1:00 to put some things on the record, if we need
19 to do that. It depends on where we are. Okay.

20 MR. EPPES: Thank you.

21 THE COURT: Then -- so y'all go and enjoy your lunch.
22 And I'll see you back here at 1:00. Okay.

23 Anything else before we --

24 MR. EPPES: Your Honor, if everybody's leaving the
25 courtroom, can we do like we did yesterday and leave

1 courtroom security in here and I have this conversation
2 with Dr. Maddox and Mr. Workman in here?

3 THE COURT: Well, let me ask you this. Because the
4 deputies, now, they -- they got to eat lunch, too.
5 They -- they eat.

6 MR. EPPES: We'll, certainly, have them out of here
7 by high noon so they can go eat and be back by 1:00.

8 THE COURT: Well, let me ask you this. Why can't
9 you -- you know, it's 11 -- it's 10 after 11:00. Do you
10 want them to sit here until 12:00?

11 MR. EPPES: We've got to sit somewhere.

12 THE COURTROOM DEPUTY: We're busy, too, Judge. But
13 we'll try to make Mr. Eppes --

14 THE COURT: Just -- just work -- just -- y'all just
15 work with him. He's a fine fellow. Just work with him.

16 MR. EPPES: Thank you, Your Honor.

17 THE COURT: Okay. We'll see you in a little bit.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Mr. Eppes, and, Mr. Postelli [sic].

20 MR. POLSINELLO: Yes, Your Honor.

21 MR. EPPES: Your Honor --

22 THE COURT: All right. What have we got?

23 Mr. Eppes, I guess I'll defer to you.

24 MR. EPPES: Mr. Workman, and I, and Dr. Maddox have
25 had a pretty good discussion. And he's, actually,

1 contributed to some of the things I'm going to say to the
2 jury, a couple really good things. And after going
3 through all that, I believe it is right now his
4 determination that we will rest and he will not exert his
5 right to testify.

6 THE COURT: Okay.

7 MR. EPPES: To the extent that you need to question
8 him about that, he is available for that. And I, also,
9 believe that because I am trying to make sure everything
10 is the best way it can be procedurally for him, regardless
11 of how this case goes, I think it's going to be
12 appropriate for Dr. Maddox to get up and report in general
13 terms her review of him and assessment of his current
14 mental state.

15 THE COURT: All right. And you want that to occur
16 after I make inquiry of him?

17 MR. EPPES: Yes, sir. I think that'd be the best way
18 to do it.

19 THE COURT: All right. Anything else? Just --
20 that's it so far?

21 MR. EPPES: That's it. I told him you were going to
22 have to talk to him about his right to testify.

23 THE COURT: All right. Mr. Workman, would you --
24 would you stand for me. Just raise your right hand for
25 me.

1 WHEREUPON,

2 OLANDIO R. WORKMAN,

3 after first having been duly sworn, testified as follows:

4 THE COURT: All right. Speak up so that Madam Court
5 Reporter can hear you.

6 DEFENDANT WORKMAN: Yes, sir.

7 THE COURT: All right. Now, you have been
8 represented by Mr. Eppes in this -- throughout this
9 proceeding; is that correct?

10 DEFENDANT WORKMAN: Yes, sir.

11 THE COURT: All right. And he has discussed with you
12 your right to testify; is that correct?

13 DEFENDANT WORKMAN: Yes, sir.

14 THE COURT: All right. And you understand that you
15 have an absolute right to testify if you desire to do so.
16 Do you understand that?

17 DEFENDANT WORKMAN: Yes, sir.

18 THE COURT: All right. And you, also, have the right
19 not to testify if you do not want to do so. In other
20 words, you could waive your right to testify. But it has
21 to be -- I have to make a finding that that waiver is
22 knowing and intelligently made by you.

23 So are you -- and I understand that you were under
24 some medication. And I was made privy to that information
25 at the beginning of the trial. And I understand that

1 we've been at this for almost our third day and that
2 you've been taking medication.

3 So I'm going to ask you this question not because
4 it's related directly to any medication you're taking, but
5 I have to ask you this question. Are you under the
6 influence today of anything at all that may impact your
7 decision, what you just told me, or what your -- let me
8 ask this question before -- before I do that.

9 Is it your desire not to testify in this case?

10 DEFENDANT WORKMAN: Yes, sir.

11 THE COURT: All right. Now, the record does reflect
12 that you hesitated when I asked you that question. So,
13 you know, I've got to not only just -- to look at what you
14 say, but I've, also, got to -- to examine your demeanor,
15 and all that. So you hesitated. So I'll ask this
16 question again.

17 This decision not to testify is your decision; is
18 that correct?

19 DEFENDANT WORKMAN: Yes, sir.

20 THE COURT: It's not your lawyer's decision. Is it
21 your decision?

22 DEFENDANT WORKMAN: Yes, sir.

23 THE COURT: All right. And you had ample time and
24 ample opportunity to discuss this decision with your
25 lawyer, Mr. Eppes?

1 DEFENDANT WORKMAN: Yes, sir.

2 THE COURT: All right. And you're satisfied with the
3 advice and counsel he has given you as it relates to your
4 decision to testify or not testify?

5 DEFENDANT WORKMAN: Yes, sir.

6 THE COURT: Okay. And the medication that you're
7 taking -- or are currently taking, that does not in any
8 way impact your ability to understand what I've just asked
9 you?

10 (WHEREUPON, there was no response.)

11 THE COURT: Do you understand my question? Let me
12 rephrase it this way.

13 The medication that you're on -- you -- you
14 understand the questions I just asked you?

15 DEFENDANT WORKMAN: (There was no verbal response.)

16 THE COURT: Is that a "yes"?

17 DEFENDANT WORKMAN: Yeah.

18 THE COURT: You've got to speak up.

19 DEFENDANT WORKMAN: Yes, sir.

20 THE COURT: All right. And is there anything that I
21 asked you that you got the slightest bit of hesitation or
22 question about?

23 DEFENDANT WORKMAN: While I'm waiving the right to
24 testify, what other kind of rights do I waive?

25 THE COURT: Well, you know, the only -- here again,

1 the only matter -- the issue before me presented by
2 Counsel is your -- whether or not you wanted to testify or
3 not. If you need time to talk with your lawyer, I'll be
4 glad to let you do that.

5 MR. EPPES: You're waiving your right to testify.
6 The Judge has to inquire about that.

7 We're, also, not putting up any evidence, which the
8 Judge doesn't have to inquire about. But you know because
9 we've talked about not putting up any evidence to get the
10 last argument.

11 And one thing I didn't mention to you. Because
12 you're waiving your right to testify, the Judge is going
13 to, specifically, instruct the jury that they cannot hold
14 your decision not to testify against you.

15 DEFENDANT WORKMAN: Okay.

16 MR. EPPES: It only -- it -- the evidence -- all the
17 evidence they have is the evidence they have. And the
18 fact that you chose to exert your right not to testify
19 cannot be held against you. And the Judge is going to
20 tell the jury that.

21 THE COURT: And Counsel is exactly correct. In my
22 charge to the jury, I will make specific reference to --
23 to what Counsel just stated. There'll be some language in
24 there that I will, specifically, state to the jury.

25 DEFENDANT WORKMAN: Yes, sir.

1 THE COURT: Is there any other -- any other questions
2 you have of me or your lawyer?

3 (WHEREUPON, Defendant Workman and Mr. Eppes had an
4 off-the-record conversation that was out of the
5 hearing of the court reporter.)

6 DEFENDANT WORKMAN: Yes, sir.

7 THE COURT: Yes what?

8 DEFENDANT WORKMAN: I understand.

9 THE COURT: All right. Let me ask this last
10 question. And I'm going to ask it again. I already asked
11 it, but I'm going to ask to be sure. In light of all the
12 questions that I've asked you and in light of all the
13 dialog that you've had with your lawyer, whether just a
14 few minutes ago or prior to us going to lunch, is it your
15 voluntary decision today not to testify in this case? Is
16 this your decision?

17 DEFENDANT WORKMAN: Yes, sir.

18 THE COURT: All right. And that was freely and
19 voluntarily made by -- by you?

20 DEFENDANT WORKMAN: Yes, sir.

21 MR. EPPES: Your Honor, I would, also, state that
22 based -- my advice is partly based on the fact that I have
23 informed him that in this particular case by not putting
24 forth any evidence, we get last argument.

25 I -- Mr. Polsinello and I have discussed this

1 briefly. He seems to think that if I misstate the record,
2 he has the right to get back up and say something about
3 it. In 30 years of practice, I've never seen that. But I
4 want to hash it out right here in case something happens
5 and I have Mr. Polsinello hopping back up after I have
6 assured my client that I'm going to get last argument.

7 THE COURT: Mr. Postinello [sic].

8 MR. POLSINELLO: Your Honor, I believe what Frank is
9 referring to -- I'm handing him a copy of the case law,
10 the State v. Beaty, a December 2016 opinion. I'm sure
11 Your Honor is familiar with it. And, Your Honor, I'm sure
12 you're aware when this opinion was issued, it kind of
13 caused a lot of confusion. And I'm sure I'm not the first
14 one to say that.

15 It's my understanding, Your Honor, interpreting --
16 and I've highlighted -- I've highlighted the relevant
17 sections. It's my interpretation that because of the
18 Defendant's choice, the State is going to close first.
19 Then Defense Counsel's going to close. And then the State
20 is allowed a brief rebuttal only as it's limited in scope
21 to the content of Defense Counsel's closing argument.
22 It's my understanding that that's what the current status
23 is. And I think Frank may disagree. But I -- I'm pretty
24 sure that's what it says.

25 It says, In a criminal trial where the party with the

1 middle argument requests the party with the right to the
2 first and last closing argument must open in full on the
3 law and the facts -- which the State will, Your Honor --
4 and in reply may respond in full to the other parties
5 argument, but not raise a new matter. And that was --

6 MR. EPPES: Judge --

7 MR. POLSINELLO: -- in case law, that was under
8 Subsection B.

9 MR. EPPES: I'm familiar with this decision. But I
10 don't think it's changed the right to absolute last
11 argument in a case where I choose not to put up any
12 evidence.

13 MR. POLSINELLO: Your Honor, I would just stress this
14 brief rebuttal I believe that the Supreme Court has laid
15 out, it's not -- it wouldn't be another argument. It's a
16 brief reply to the prior closing arguments -- closing and
17 has to be limited in scope in terms of if there's anything
18 that does not inline with the evidence, that it's
19 corrected for that. It's not to reteach the law or --

20 THE COURT: Here's -- here's -- and -- and I'm
21 familiar with this case. And I tried -- I don't know how
22 old you are, Counsel. But I've tried hundreds of cases in
23 this court. As a matter of fact, I've -- I've tried a lot
24 of cases, felony cases, death penalty cases. I've tried a
25 lot of them.

1 And what I think the -- what courts don't want to
2 happen is this, is that the Defendant doesn't put up any
3 evidence, the State goes first, Defense Counsel goes last.
4 You know, we wouldn't be here if your theory of the case
5 was the same as the Defendant's theory of the case.

6 So I want to -- the Court wants to avoid the State
7 getting up after the Defendant's argument and saying,
8 well, you know, I -- I disagree with that rendition of the
9 facts, you know. Because the facts are -- your facts are
10 your facts, his facts are his facts. But I -- I've
11 discouraged the Solicitor getting up and saying, well, you
12 know, I understand that's what Mr. Eppes said what the
13 facts were, but remember what I told you what the facts
14 were when you first got up. And then you get back and do
15 the same thing, you know. We try to avoid that.

16 So I'm just -- your rebuttal would be -- I mean, if
17 he -- if -- if he misstates anything as far as any of the
18 evidence that was presented and that kind of thing,
19 certainly, that needs to be addressed. In other words, if
20 there was some misstatement on the evidence. But I don't
21 want you jumping up because you disagree with how he --
22 how he -- his side construes the facts. Because the State
23 construed the facts one way, his side -- the Defense
24 construed it another way. And, you know, that's what --
25 that's what I think we want to avoid. We don't want to

1 get into that.

2 So if there's no misstatement regarding the evidence,
3 I don't see a need for the -- for you to get back up.

4 MR. POLSINELLO: I'm -- I'm in agreement with Your
5 Honor's assessment right there. Frank just told -- it was
6 my --

7 Frank, correct me if I'm wrong. When we were talking
8 before on this matter, it was my understanding he didn't
9 believe that we didn't have a right to a brief rebuttal.
10 And I just wanted to clarify --

11 MR. EPPES: He's right. I don't believe that.

12 MR. POLSINELLO: But that's contrary, I believe, to
13 this opinion. And it clearly -- it states, In reply may
14 respond in full to the other parties argument, but may --
15 but may not raise a new matter.

16 THE COURT: And you know what. And I didn't write
17 this opinion. And I've got my opinion. And I'll just
18 keep it to myself. But this is what this says. But I
19 think you've got to agree that if -- if Counsel doesn't
20 misstate the applicability of the evidence and anything as
21 it relates to the evidence that -- that was presented,
22 then I don't think that you would -- why would you jump
23 up?

24 MR. POLSINELLO: I -- I wouldn't. If -- I wouldn't,
25 Your Honor, if it was properly stated. You know,

1 obviously, we've had --

2 THE COURT: You know, sometimes lawyers jump up
3 because the other lawyer is -- is arguing better than he
4 or she is. And you want to -- you want to -- you know,
5 you go through that. You sound better than me. So I'm
6 going to jump up. And so I can -- so last -- to the
7 jury -- my voice will be the last thing the jury hears.
8 You know, I don't want to do that.

9 MR. POLSINELLO: Your Honor, it's my understanding
10 that this -- this opinion, this brief rebuttal, it would
11 be only limited to something such as, you know, I know
12 Frank is -- Mr. Eppes is not going to do this. But if he
13 picked up one of those guns and mischaracterized, you
14 know, whatever it is. It's something like that. Or maybe
15 testimony from -- from an officer where it's clear that
16 she knocked on the door and it was stated she didn't knock
17 on the door, issues like that.

18 THE COURT: Well, let me ask you this, Counsel.
19 You're giving your closing argument. Mr. Eppes is going
20 to give his closing argument. If he disagrees with --
21 with something you say in your closing argument, is it all
22 right for him to jump up and say --

23 MR. POLSINELLO: I don't think --

24 THE COURT: I don't mean about this case. I'm just
25 talking about --

1 MR. POLSINELLO: Do you mean during my closing?

2 THE COURT: Yeah, yeah.

3 MR. POLSINELLO: Your Honor, I -- I understand what
4 you're saying --

5 THE COURT: You know, that's --

6 Mr. POLSINELLO: -- but I'm going to object. We do
7 have different interpretations of the facts and evidence.

8 THE COURT: Well, yeah, you wouldn't be here if you
9 did -- if you did. If you had the same interpretation,
10 you wouldn't be here.

11 MR. POLSINELLO: Exactly.

12 THE COURT: But, see, I -- I just -- I'm just -- I
13 don't want to beat a dead horse dead.

14 MR. POLSINELLO: Yes, sir.

15 THE COURT: You know, I just don't want a situation
16 where we get a lot of jumping up and down and it's really
17 not necessary because you disagree with how he is stating
18 his version of the facts versus your version.

19 MR. POLSINELLO: I understand.

20 But would Your Honor allow --

21 THE COURT: I know you're trying to tie me in. I
22 know -- you keep asking me about this case. I know what
23 you're trying to do. I -- I'm just telling you that I see
24 the case. I know about the case. But what I'm saying is
25 that if, in fact, there's no misstatement about the

1 evidence presented, you agree that there's no reason for
2 you to jump up.

3 MR. POLSINELLO: Yes.

4 THE COURT: Now, you agree with that?

5 MR. POLSINELLO: Yes.

6 THE COURT: All right. So we're on the same page?

7 MR. POLSINELLO: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. POLSINELLO: So would the State -- if -- if it
10 comes to this point, if it's necessary -- if it's deemed
11 necessary, would Your Honor allow a brief rebuttal as it
12 relates to this opinion?

13 THE COURT: Madam Court Reporter, can we go off the
14 record for just a minute?

15 (Off the record.)

16 THE COURT: Go ahead.

17 MR. EPPES: I assume if I rest, we're going to argue
18 and charge.

19 THE COURT: I mean, unless y'all need a break or
20 something.

21 Well, let me ask you this. Have you got any -- we're
22 just going to charge on the law, the statute?

23 MR. EPPES: Yes, sir. The only -- the only thing
24 that --

25 THE COURT: What about a lesser included? Is -- that

1 was an issue.

2 MR. EPPES: The only thing I'm aware of --
3 Mr. Polsinello and I have already discussed a lesser
4 included of domestic violence first degree. And I believe
5 because of the way the domestic violence first degree
6 statute reads that if there's moderate bodily injury and
7 certain other factors that it has to be moderate bodily
8 injury meaning the definition of domestic violence second
9 degree with enhancing factors. I think you're going to
10 have to read domestic violence second degree as well.

11 And I just wanted to make sure about that before I
12 argue it and get objected to.

13 THE COURT: So what's your position on second degree?
14 I've got --

15 MR. EPPES: And, Your Honor, you can tell them that
16 you don't believe -- you can tell them whatever you want
17 about second degree. I'll argue it. But I'm not going to
18 argue second degree very much.

19 THE COURT: Have you got -- have you got a problem,
20 Mr. Poniselli, in charging second degree?

21 MR. POLSINELLO: Your Honor, Mr. Eppes and I are in
22 agreement with the lesser included charge of domestic
23 violence first degree being read. But I would object to
24 domestic violence second degree. I have the domestic --
25 domestic violence first degree statute in front of me.

1 THE COURT: Okay.

2 MR. POLSINELLO: Obviously, there's multiple ways to
3 prove it. I -- I don't see why -- how domestic violence
4 second degree can come in. Our legislature has defined in
5 this statute what great -- what great bodily injury means.
6 And there's multiple ways to prove it and you don't have
7 to have great bodily injury.

8 MR. EPPES: Your Honor, if I may. I'd point you to
9 South Carolina Code Section 16-25-20. And it says in
10 point B(5) regarding the definition of domestic violence
11 first degree, In the process of committing domestic
12 violence in the second degree, one of the following, also,
13 results: The offense is committed while in the presence
14 or being perceived by a minor, the offense is committed --

15 THE COURT: Are you reading -- are you reading second
16 degree or first?

17 MR. EPPES: I'm reading first.

18 THE COURT: B?

19 MR. EPPES: I'm reading the enhancements to first.

20 The offense is impeded -- is committed by impeding
21 the victim's breathing or air flow. The offense is
22 committed using physical force or the threatened use of
23 force against another to block that person's access to a
24 cell phone, telephone, or electronic communication device.
25 So I think you've got to read second to explain the

1 enhancements for first.

2 MR. POLSINELLO: And -- and the State would disagree
3 with that, Your Honor. I think first degree is, clearly,
4 laid out. And it says that first degree is a lesser
5 included offense of DVHAN. First degree, there are
6 multiple -- multiple ways to prove it, Your Honor. And I
7 think the legislature does a pretty good job of explaining
8 that.

9 I don't think we need second degree to explain first.
10 First degree is, clearly, laid out.

11 MR. EPPES: You can substitute the elements of second
12 degree, Judge, into the place where it says that. I'm
13 happy to do it that way so it doesn't say second degree.

14 THE COURT: The statute -- 16-25-65, I hear what
15 you're saying, Mr. Eppes. But it says, Domestic violence
16 in the first degree -- and I'm reading this -- repeating
17 what the Solicitor indicated. It, specifically, states
18 that's a lesser included. And I'm trying to get to where
19 you are on the enhancement argument regarding second
20 degree has to be read to get to first. Help me with that.

21 MR. EPPES: Well, Your Honor, there's evidence in
22 this case that the offense was committed in the presence
23 of or while being perceived by a minor. There's evidence
24 in this case that the offense is committed by impeding the
25 victim's breathing or air flow and it doesn't -- without

1 causing loss of consciousness, which is part of domestic
2 violence high and aggravated. There's evidence in this
3 case that this offense was committed using physical force
4 or the threat of use of force to block that person's
5 access to the telephone.

6 So that is three things that are factually in this
7 case that are enhancements to domestic violence second
8 degree. And I don't see any other way to read those
9 enhancements in that make it domestic violence first
10 degree, which is a lesser included of domestic violence
11 high and aggravated.

12 I don't want the jury to think for some reason that
13 choking somebody automatically rises to high and
14 aggravated, or that blocking somebody from using the
15 telephone automatically rises to high and aggravated.
16 And -- and so I think it's appropriate to fashion some way
17 to say criminal domestic violence -- and you can say it
18 like this.

19 You can say criminal domestic violence in the first
20 degree, also, may include moderate injury accompanied by
21 choking, blocking somebody from the telephone, or being
22 perceived by a minor. I -- I think that would be an
23 appropriate way to do it.

24 I'm not asking for the words criminal domestic
25 violence second degree. I'm asking for the enhancements

1 to be read in that would make something criminal domestic
2 violence first degree.

3 THE COURT: Let me ask you this. On first degree, as
4 I'm reading the statute, 16-25-20, it's unlawful to cause
5 physical harm or injury to a person's own household
6 member. That's the first provision; is that correct?

7 MR. POLSINELLO: Yes, Your Honor, A(1).

8 THE COURT: A(1).

9 A(2), Offer or attempt to cause physical harm or
10 injury to a person's own household member with apparent
11 present ability under circumstances reasonably creating
12 fear of imminent peril. That's A(2).

13 And then it goes on to say, Except as otherwise
14 provided in this section, a person commits the offense of
15 domestic violence in the first degree if the person
16 violates the provisions of Subsection A, and great bodily
17 injury to the person's own household member results or the
18 act is accomplished by means likely to result in great
19 bodily injury to the person's own household member.

20 MR. POLSINELLO: That's just -- Your Honor, that's
21 one. There are --

22 THE COURT: Then there's two.

23 MR. POLSINELLO: Two and three and four. There's
24 5(a), 5(b). There's multiple ways to get it.

25 THE COURT: Well, two -- it says, If -- three is --

1 I'm still talking first -- first degree. Three would be
2 as -- two more prior convictions.

3 Do you agree with that?

4 MR. POLSINELLO: Yes, Your Honor.

5 THE COURT: Four would be a person uses a firearm in
6 any manner that violates Subsection A.

7 Do you agree with that?

8 MR. POLSINELLO: Yes, Your Honor.

9 THE COURT: And five the process of committing
10 domestic violence in the second degree, one of the
11 following, also, results.

12 MR. POLSINELLO: Yes. And then the legislature goes
13 on A through E and how to get to that. And then there's
14 EI -- E(1) and E(2). It -- it is a road map, Your Honor.
15 And you've got to connect the dots. That's the way the
16 legislature wrote it.

17 I would -- you know, if Your Honor wants to -- if it
18 feels it's appropriate to explain what domestic violence
19 second degree is, in reading the charge to understand then
20 what that is, I don't think we'd have a problem with that.

21 But not reading it as a lesser included charge -- the
22 lesser included --

23 THE COURT: Are you okay with that?

24 MR. EPPES: Yes, sir.

25 MR. POLSINELLO: -- is first degree.

1 THE COURT: Are you okay with that?

2 MR. EPPES: Yes, sir.

3 THE COURT: All right. Well, this is what I want you
4 to do. I've got a copy of the statute in front of me. So
5 I won't miss -- misspoke -- misspeak when I get to that
6 portion, you just give me what you want me to say.

7 MR. EPPES: Your Honor, I really think that if you
8 look at domestic violence second degree, since there's no
9 previous conviction, there's no protective order, and no
10 issues with third degree, I think if you say -- instead of
11 domestic violence second degree you say, if a person
12 commits the offense -- if you violate subsection A and --
13 if the person violates subsection A and moderate bodily
14 injury to their own household member results or is
15 accomplished by means likely to result in the moderate
16 bodily injury of a person and the offense is committed in
17 the presence of or perceived by a minor. The offense is
18 committed during the commission of a robbery, burglary, or
19 kidnapping. The offense is committed by impeding the
20 victim's breathing or air flow, or by prohibiting somebody
21 from using the telephone to do anything. I'm okay with
22 it.

23 THE COURT: Yeah. But I'm -- I'm not defining
24 second.

25 MR. EPPES: You're defining -- you're using the

1 definition of second to say what the enhancements go to.

2 MR. POLSINELLO: But there's no way that the jury
3 would know that that's the definition of second degree.
4 We're, like, kind of mincing and dicing the statute now.

5 THE COURT: I'm -- I'm not comfortable doing it that
6 way because that -- that's confusing.

7 MR. EPPES: Then say the parties have agreed that --
8 I'm sorry. The parties have agreed that criminal domestic
9 violence first offense is a lesser included offense of
10 this statute.

11 However, there is -- I'm not charging you -- I'm only
12 charging you on the law of criminal domestic violence
13 second offense as it relates to second degree as it
14 relates to criminal domestic violence first degree when
15 you begin charging them on criminal --

16 THE COURT: I think that confuses them, Mr. Eppes. I
17 really do. I think -- you know, I think you either --
18 you -- you charge -- you charge what's in the indictment,
19 high and aggravated. You charge that, charge the law on
20 that. And then you charge -- you've got to charge first
21 degree because that's a lesser included of the ABHAN.

22 What -- I hear what you're telling me. But the way
23 I'm reading this and what Mr. Poniselli -- Poniselli --
24 I'm going to get your name before it's over with.

25 But, anyway, what he's saying is he's not opposed --

1 you know, I think I'm hearing him say he's not opposed to
2 the Court defining second degree, but he's absolutely
3 opposed to the Court charging that.

4 Is that -- is that what you're telling me? Charging
5 first degree and second degree as -- as an option by way
6 of --

7 MR. POLSINELLO: Your Honor, I would propose that,
8 you know. I have this statute printed out word for word,
9 you know, as it's online and in the current Code of Laws.
10 I think the easiest way is for domestic violence first
11 degree the lesser included charge -- jury charge, just to
12 read it just as it is in the law.

13 THE COURT: Let me see what you've got, to make sure
14 you've got the same thing I've got.

15 MR. EPPES: Judge, my fear is that -- my fear is that
16 what we're going to get is a question from the jury about
17 what is criminal domestic violence second degree.

18 (Pause.)

19 MR. EPPES: I -- if you want to charge it just like
20 that, fine. But, Judge, in my experience, what you're
21 going to get is a question of what's criminal domestic
22 violence second degree?

23 MR. POLSINELLO: And I think it'd be appropriate,
24 Your Honor, to maybe at that time explain to them.

25 THE COURT: You're -- you're okay with me giving --

1 MR. POLSINELLO: If they have that question --

2 THE COURT: If that question comes out?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: Otherwise, see, this is --

5 MR. EPPES: I understand.

6 MR. POLSINELLO: I do plan --

7 THE COURT: Go ahead and make a copy of it. I've got
8 the same thing, but it's smaller.

9 Now, if that question comes back, we've got -- we've
10 got an agreement now that we're not going to -- nobody is
11 going to be upset if I -- because it's probably going to
12 be a definition of what second degree is, and can that be
13 a potential verdict? I mean, you're talking about --

14 MR. EPPES: I don't have a problem with doing it
15 later. I just think you ought to say, you know, second
16 degree is not a lesser included of this, so I charge you
17 that you cannot consider this crime. However, because
18 it's part of the definition of criminal domestic violence
19 first degree, here's what it is and just do moderate
20 injury, just the -- number one. That's all we need.

21 MR. POLSINELLO: We're mincing and dicing the
22 statute, Your Honor --

23 THE COURT: I'm going to read -- I'm going to read
24 the entire statute. I mean, I'm going to read the statute
25 on first degree as -- you know, as it relates to being a

1 lesser included of the domestic -- high and aggravated.
2 I'm going to read that. What you just -- I'm going to
3 read that.

4 And I agree, Mr. Eppes, that it may come back and
5 they have a question as to what second degree is. And
6 we'll cross that bridge when we get to it.

7 MR. EPPES: Yes, sir.

8 THE COURT: But, you know, for -- for verdict form
9 purposes, you know, we're going to have that first degree.
10 We're going to have high and aggravated. And then we're
11 going to have a line for first degree. We're not going to
12 have a second degree.

13 MR. EPPES: That's what's absolutely the way it ought
14 to be, Judge.

15 THE COURT: We'll have first degree. We're going to
16 have ABHAN -- not ABHAN, domestic violence, ABHAN, and
17 then a line, then first degree, second line.

18 Do you agree with that on the verdict form?

19 MR. POLSINELLO: Yes, Your Honor.

20 MR. EPPES: I agree with that a hundred percent,
21 Judge.

22 THE COURT: All right. As a matter of fact, I'm
23 going to put you guys to work. Let's get your -- get this
24 fine lady sitting next to you to make sure that I get a
25 verdict form that has all that on there. She -- she'll do

1 that for me. And just bring that to me at the appropriate
2 time.

3 All right. So we've got that out of the way. I
4 think we've got that out of the way.

5 Did you get your copy back?

6 MR. POLSINELLO: Yes. Yes, Your Honor.

7 THE COURT: We -- what we got?

8 Anything else, Mr. Eppes, before we bring the jury
9 back?

10 MR. EPPES: No, just Ms. Maddox -- Dr. Maddox.

11 THE COURT: Oh, you, actually, want that on the
12 record?

13 MR. EPPES: I want to put her on the record, yes,
14 sir. I think it's appropriate.

15 THE COURT: All right. This is just regarding the
16 current state of the Defendant?

17 MR. EPPES: And our -- our discussions on the fact
18 that he understands.

19 THE CLERK: Ma'am, please, raise your right hand.
20 WHEREUPON,

21 DONNA SCHWARTZ MADDOX, M.D.,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 THE COURT: Good to see you again.

1 THE WITNESS: You too, Your Honor.

2 THE COURT: All right. Yes, sir, Mr. Eppes.

3 DIRECT EXAMINATION

4 BY MR. EPPES:

5 Q Dr. Maddox, just to review. You represent the
6 Department of Mental Health in this case; correct?

7 A Yes.

8 Q And you've been kind of on call because of your
9 diagnoses of Mr. Workman, which includes the fact that at
10 all times that you've observed him during this trial he's
11 been competent; correct?

12 A Yes. I've -- I've met with him yesterday in the
13 afternoon. I met with him again today and, actually, met
14 with him right before court this afternoon. And I've been
15 able to observe him firsthand working with you,
16 communicating with you, you two working on strategies
17 together.

18 And it's absolutely my opinion that he knows what
19 he's doing, Your Honor, and he's able to assist in his
20 defense.

21 Q And you've been privy to our communications; correct?

22 A I have.

23 Q And you've shared some of those conversations with
24 the State; correct?

25 A No. The -- the only --

1 Q Well, no. You've shared the information that you've
2 gleaned about his psychological condition with the State?

3 A Absolutely.

4 Q Because you are an unbiased observer retained by the
5 Department of Mental Health?

6 A That's right. And -- and I did have a conversation
7 with the Solicitor after court this morning to explain
8 that I was there to evaluate Mr. Workman again prior to
9 his waiving his right to testify.

10 MR. EPPES: That's all I have, Your Honor.

11 THE COURT: Anything, Mr. Poniselli?

12 CROSS-EXAMINATION

13 BY MR. POLSINELLO:

14 Q Dr. Maddox, so you had a chance to talk with the
15 Defendant today?

16 A Yes, sir, on two occasions.

17 Q Is it your opinion that he's competent?

18 A Yes. He remains competent.

19 Q Can someone have a mental illness, but still be
20 competent?

21 A Absolutely, yes.

22 Q In your professional opinion, observing the Defendant
23 and his interactions with Mr. Eppes, was he able to assist
24 his counsel?

25 A In my opinion, yes. They -- they had a difference of

1 opinions when they were working on trial strategies
2 together. And he was able -- he's self-protective. And
3 he -- they were able to communicate and work through those
4 differences together. And he was able to speak his mind
5 and get his points across.

6 So I observed them directly. And I -- I observed
7 him. He's very protective. And he's interested in his
8 well-being.

9 MR. POLSINELLO: Okay. Thank you.

10 THE WITNESS: You're welcome.

11 MR. POLSINELLO: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. EPPES:

14 Q Dr. Maddox, have you seen anything that made you
15 think that Mr. Workman was dilatory, malingering, or
16 trying to delay this proceedings --

17 A Not at all.

18 Q -- rather than just trying to defend himself?

19 A No, not at all.

20 In my opinion, Your Honor, as -- he's -- he's
21 following the testimony. And there's some things that
22 have caused him concern. And he was expressing those
23 concerns. I don't think he's malingered any symptoms of
24 illness.

25 In fact, he's -- he's -- continues to cooperate with

1 you, even when he may have some differences with you.

2 THE COURT: Anything else from either side?

3 MR. POLSINELLO: Nothing further from the State.

4 THE COURT: All right. And I have no questions,
5 ma'am.

6 Thank you, ma'am.

7 You can step down.

8 THE WITNESS: Thank you.

9 May I be excused?

10 THE COURT: Can she be excused? Any objection?

11 MR. POLSINELLO: No objection.

12 MR. EPPES: No objection, Your Honor.

13 THE COURT: All right. Thank you, ma'am.

14 THE WITNESS: Thank you.

15 THE COURT: I appreciate it. You're free to go.

16 All right. Gentlemen, when I bring the jury back in,
17 we'll go straight into closing arguments.

18 MR. POLSINELLO: Yes, Your Honor.

19 MR. EPPES: Yes, sir.

20 THE COURT: And I'll put on the record that the --
21 the Defendant has rested.

22 MR. EPPES: I will rest, Your Honor. If you would,
23 if you'll just go to Mr. Eppes. And I'll say, the Defense
24 rests.

25 THE COURT: I'll go to Mr. Eppes. All right.

1 MR. EPPES: And -- and, Your Honor, this may be
2 slightly premature. But I'm -- I'm going to say I rest.
3 And then I'm going to say, Your Honor, I'm making a --
4 again, a motion for directed verdict. And that way, you
5 can just deny it on the record and I'll be done with it.

6 THE COURT: We'll see what I do.

7 MR. EPPES: Oh, okay. Well, that's true.

8 Thank you.

9 THE COURT: Thank you, sir.

10 MR. POLSINELLO: Your Honor, I just -- I can't help
11 but notice. So, obviously, for the charges and
12 instructions, we've got DVHAN down and DV first. I'm
13 assuming kidnapping is going to be read.

14 THE COURT: The statute.

15 MR. POLSINELLO: The statute. As well as --

16 THE COURT: Possession of a weapon.

17 MR. POLSINELLO: Yeah. Word from word from the
18 statute?

19 THE COURT: A weapon -- possession of a --

20 MR. POLSINELLO: Yeah. During a violent crime --

21 THE COURT: Yeah. Word for word.

22 MR. EPPES: The only -- the only thing I have, Your
23 Honor, you're going to read the definition of great bodily
24 injury; correct?

25 MR. POLSINELLO: I -- I'm pretty sure that's

1 standard.

2 THE COURT: And let me get that statute.

3 (Pause.)

4 THE COURT: Gentlemen, come here for a second. Bring
5 me your -- bring me what you've got on -- on kidnapping
6 and possession of a weapon.

7 MR. POLSINELLO: Yes, Your Honor. And, again, this
8 is word for word from the SC Courts website and the
9 statute. I've, obviously, taken out the sentencing
10 ranges.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: All right. We're back on the record.

13 We've got a juror issue. I don't know Ms. Patel's
14 juror number, but both Counsel are fully aware of who she
15 is. She -- she was the juror who had the issue regarding
16 picking up a child. And she told me about that yesterday
17 and she told me about that the day before. I thought the
18 child was maybe picked up by now. But we've got to deal
19 with that issue.

20 So what's -- what's the pleasure? We've got two
21 alternates, Mr. Eppes, and, Mr. Poniselli.

22 MR. POLSINELLO: Your Honor, the State is indifferent
23 and stands by the Court's decision.

24 THE COURT: Well, you know -- you know, at the outset
25 on Monday, I said you're going to be inconvenienced a

1 little bit, you know. And the only issue I have with this
2 is if Ms. Patel had indicated -- and I, clearly, asked on
3 the record down there -- down in the qualification of the
4 panel whether or not anybody had a problem with small
5 children.

6 And I don't know what I would have done if she came
7 up and talked to me. But, I mean, she let us know about
8 this somewhere mid -- mid-trial. And I -- I just think as
9 bad as I would like to help her, I -- I just can't at this
10 point. She's just going to have to make a phone call.
11 Because we're -- we're in the -- we're in the stretch.
12 And I didn't tell her yesterday that I'd do it. I told
13 her I'd listen to her and we'd consult.

14 Tell her, unfortunately, I'm not going to be able to
15 let her go. She's just going to have to work it out.
16 She's going to have to call somebody and work it out. I
17 think she was able to call somebody yesterday.

18 Unless either one of Counsel has a different
19 position. I don't want to -- I want to make sure that I
20 don't have -- let me put it this way. I want to make
21 certain that I don't have a juror who's -- because of that
22 is not going to --

23 Do you see where I'm going with this?

24 MR. EPPES: That is my concern, Your Honor.

25 THE COURT: I don't want a juror who's -- who's going

1 to be -- let me just say, I don't want a juror sitting
2 there who's -- who's going to be mad, or whatever. And
3 she's sitting there and -- and she's going to be a -- a
4 virus to both sides, not necessarily just to the State,
5 but could be a virus to the Defense as well, you know.
6 Because -- and she's not focused.

7 And it's -- it's incumbent -- you know, as I told
8 everybody at the beginning of the week -- I told the
9 jurors, you've got to be focused. And I -- you know, I'm
10 starting to -- these cases -- this case is important
11 to -- to Mr. Workman as it is to the State. And he wants
12 the jurors to be focused and the State wants them to be
13 focused.

14 So even though I said that, I'm thinking that that
15 might not be -- I'll put it this way. I'm just going to
16 go ahead and -- and let one of the alternates serve. I
17 think Ms. Patel has -- has approached us too many times to
18 count.

19 So I'm going to let one of the alternates serve.

20 Bring her out.

21 MR. EPPES: Thank you.

22 THE COURT: I'm going to bring her out. And I'm
23 going to excuse her. And then I'm going to appoint
24 alternate number one. I don't know who the first
25 alternate was.

1 You got that?

2 THE CLERK: Uh-huh.

3 THE COURT: Whoever that first alternate was will
4 take her place.

5 And I -- I guess, Bailiff, you know who that is based
6 on where they're sitting at.

7 THE BAILIFF: Who is it?

8 THE COURT: #43 is the first alternate. That's my
9 recollection of it. So #43 will take the place of
10 Ms. Patel.

11 (WHEREUPON, Juror #152, Bhavisha Patel, entered the
12 courtroom.)

13 THE COURT: Ms. Patel, come up here.

14 All right. Ma'am, I'm going to -- I understand that
15 you had an issue a couple of days ago and you had an issue
16 yesterday regarding the pick up of -- of your child or
17 children.

18 JUROR #153, BHAVISHA PATEL: Correct sir.

19 THE COURT: All right. I don't know if you heard me
20 on Monday when I asked people -- or persons who had an
21 issue regarding a small child. You did not indicate that
22 to me. I think that's -- that was our concern. I don't
23 know -- I'm not sure what I would have done. But I am
24 going to let you go. And we're going to replace you with
25 an alternate.

1 So, Madam Clerk, how does that work?

2 I am going to -- she -- I think I got some directive
3 that she needs to go back in the pool.

4 THE CLERK: Yes.

5 THE COURT: Because -- so you're not -- I don't know
6 how the next pool is going to treat you.

7 THE CLERK: She has to -- there's a number on the
8 back of her badge. If she'll call back after 6:00 tonight
9 and find out what time to report tomorrow.

10 JUROR #153, BHAVISHA PATEL: Okay.

11 THE COURT: If you'll do that for me, ma'am.

12 JUROR #153, BHAVISHA PATEL: Sure. No problem.

13 THE COURT: All right. Thank you, ma'am.

14 JUROR #153, BHAVISHA PATEL: Thank you.

15 (WHEREUPON, Juror #152, Bhavisha Patel, exited the
16 courtroom.)

17 THE COURT: Before we bring the jury in -- so
18 alternate #43 will replace Ms. Patel. That'll be
19 alternate number one. Alternate number two is Juror #12.

20 And we don't have any other issues?

21 THE BAILIFF: I do not know of any right now.

22 THE COURT: Okay. If we don't have any other issues,
23 then we'll --

24 MR. EPPES: Your Honor, I just wanted to put on the
25 record my request that you clarify or somehow define

1 domestic violence second degree as -- as it relates to the
2 enhancements that -- domestic violence second degree, plus
3 certain elements create the lesser included offense of
4 domestic violence first degree. And I believe that's a
5 mistake on the charge, but Your Honor's ruled. I just
6 wanted to make it clear that I did object to --

7 THE COURT: Yes. And I -- and I kind of addressed
8 that. Just to be clear, I am going to charge the
9 following. I'm going to charge domestic violence high and
10 aggravated nature pursuant to the statute. I am going to
11 charge kidnapping pursuant to the statute. I am going to
12 charge possession of a weapon during the commission of a
13 violent crime pursuant to the statute. I'm, also, going
14 to charge domestic violence first degree as a lesser
15 included of domestic violence high and aggravated nature.
16 Those -- those are the charges.

17 And let the record reflect that I've reviewed these
18 charges with both lawyers, both of the attorneys. And
19 we're clear. And I will also -- at some point during the
20 charge, I will give a definition of great bodily injury,
21 but would not address the issue of moderate bodily injury.

22 However, if there was a question of -- by --
23 potential question by the jury panel regarding second
24 degree, then we'd address that at the appropriate time, if
25 that came up. And that's my understanding of where we are

1 on the charges.

2 Where are we on the verdict forms? We --

3 MR. POLSINELLO: We're working on it.

4 THE COURT: She's working on that?

5 MR. POLSINELLO: Yes.

6 THE COURT: But we're talking kidnapping, NG or G.

7 We're talking domestic violence high and aggravated

8 nature, NG or G. We're talking domestic violence first

9 degree, NG or G. And then we're talking possession of a

10 weapon during the commission of a violent crime, NG or G.

11 And that's pretty much what you're working on; right?

12 (WHEREUPON, there was no response.)

13 THE COURT: Is that -- that -- we're clear?

14 Everybody's clear on that?

15 (WHEREUPON, there was no response.)

16 THE COURT: Okay. Other than that, it's just going

17 to be the standard -- standard charge that I normally do.

18 And, of course, I'll give you an opportunity to see if you

19 have any exceptions.

20 And, of course, your -- your objection, Mr. Eppes, is

21 continuing and it's noted for the record.

22 MR. EPPES: Thank you, Your Honor.

23 THE COURT: All right. Anything else before we bring

24 the jury back?

25 MR. POLSINELLO: Nothing from the State, Your Honor.

1 MR. EPPES: Nothing from Defense, Your Honor.

2 THE COURT: All right. Bring the jury out.

3 (WHEREUPON, the jury came into open court at
4 approximately 2:11 p.m.)

5 THE COURT: Okay. Mr. Eppes, anything from the
6 Defense?

7 MR. EPPES: Your Honor, the Defense rests.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, the -- the State has presented you all the witnesses
10 and evidence they intend to present. And the Defendant
11 has also -- has rested.

12 Now, the next thing that happens is both sides are
13 going to present to you what is called closing arguments.
14 And I probably said that to you at the beginning. Your
15 attentiveness during the entire trial, obviously, is a
16 must. And your attentiveness at closing arguments is real
17 important.

18 So I want you to focus upon what these lawyers have
19 got to tell you. Because this is their -- their
20 opportunity to summarize the facts and evidence as seen
21 through the Defendant's -- Defendant's eyes, as well as
22 the State -- through the Prosecution's eyes. So listen to
23 them and listen to them very carefully as they do that.

24 Solicitor, are you ready?

25 MR. POLSINELLO: Yes, Your Honor.

1 THE COURT: All right.

2 MR. POLSINELLO: May it please the Court.

3 THE COURT: Yes, sir.

4 CLOSING ARGUMENTS

5 MR. POLSINELLO: Your Honor.

6 Ladies and gentlemen of the jury, good afternoon.

7 Domestic violence is a very unique crime in itself.

8 It's its own separate animal, if you will.

9 Mr. Bailiff, could you get the lights, please?

10 If you think about it, a lot of crimes occur out in
11 public. In this day and age, you know, everyone has their
12 cell phones. We all have video recording devices.
13 There's a lot of cameras on the streets these days. A lot
14 of crime happens out in public, if you will.

15 Domestic violence is so unique because, oftentimes,
16 as in this case, it happens within the confines of
17 someone's home. It's very sensitive in nature. It's
18 intimate, close quarters. The public's not aware of it
19 most of the time, as in this case. It's really sort of
20 the Defendant controlling, manipulating and using his
21 presence to dominate.

22 Why don't -- why didn't it happen out in public?
23 It's because they would be challenged, we would like to
24 think. And that wasn't the case. There was no -- nobody
25 to challenge the Defendant and what he did to the victim

1 in this case. It was brutal. She took a beating.

2 And you know what? I just referred to Ms. Workman as
3 victim. I'm not going to refer to her with that word any
4 more, the "V" word because she's a survivor. The survivor
5 took a beating.

6 It's secretive in nature. Like I said, the Defendant
7 can't be challenged. And you heard from Ms. Workman about
8 the ordeal that she went through from August 27, 2016, to
9 August 29, 2016, that Saturday starting at around 4:30
10 p.m. when the Defendant came home. He did not work
11 Sunday. And it continued all then until Monday when he
12 left for work, she said Monday morning.

13 If you think about that, how many hours is that him
14 in the home with her? So he gets there Saturday after
15 work at 4:30. We're talking well over 24 hours. Look at
16 the damage that can be done in 24 hours. He had control.
17 No one challenged him. It was his world.

18 What the survivor endured this weekend, it's
19 despicable what happened to her. It's deplorable. And
20 that's why we have a domestic violence law is to try to
21 prevent and deter people from committing this crime. And
22 when people do commit this crime, it's to hold them
23 accountable to the law. No one's above the law. I submit
24 to you, ladies and gentlemen of the jury, that this should
25 not be allowed in our community. No wife, no mother, no

1 victim deserves to be beaten up like this.

2 Now, in a few moments towards the end of this trial,
3 His Honor is going to instruct you on the law. Remember,
4 at the beginning of the closing [sic] arguments, I told
5 you that I'm not going to get into the law and the
6 elements, that there's an appropriate time to do that
7 towards the end of this trial. And that's now.

8 And, unfortunately, it's -- it's sort of mechanical.
9 You're going to be instructed on the law, you know.
10 Obviously, there's adjectives in there, specific criteria
11 that the State has to meet. And the way that we meet that
12 is by the evidence.

13 And as I told you earlier, that evidence can come in
14 two forms. It can come from up here in the form of
15 testimony. That is evidence. And then it comes in the
16 form right here, tangible evidence, if you will, audio
17 recordings, photos, guns. I just -- I'm going to try to
18 briefly run through this with you all, going over the
19 elements.

20 So this is domestic violence of a high and aggravated
21 nature. This is the law that our legislature has created.
22 And this is how they define it. As you can see, there's
23 one way to meet the elements of this law. That's number
24 one right there.

25 Number two, I want you to focus on number two.

1 Commits the offense with or without an accompanying
2 battery and under circumstances manifesting extreme
3 indifference to the value of human life and would
4 reasonably cause a person to fear imminent great bodily
5 injury or death. That's it. That's one way to prove
6 domestic violence of a high and aggravated nature.

7 So think about all the evidence, all the testimony
8 that's happened. I submit to you, I stand here firmly
9 convinced based on the evidence that the State has met
10 those elements.

11 The Judge is going to instruct you when he instructs
12 you about the law about the standard of proof, beyond a
13 reasonable doubt. And that is correct. The State has to
14 prove its case, each charge beyond a reasonable doubt.
15 Customarily, that's thought that it's that type of doubt
16 that would cause a reasonable, ordinary, prudent person to
17 hesitate to act, to have to think about it. It's not an
18 absolute doubt. It's not a hundred percent doubt. It's
19 just a hesitation, if you will.

20 If you think about this, what the survivor
21 experienced in this case, clearly, she was beaten at the
22 hands of this Defendant. So that's battery, if you will.
23 So we met with -- battery.

24 Under circumstances manifesting extreme indifference
25 to the value of human life. I submit to you that holding

1 up your wife over 24 hours with minor children present,
2 that's showing an extreme indifference to the value of
3 human life. How's that valuing life if you're doing this
4 and your children are present, you're not letting your
5 life -- wife leave? It's a great indifference to the
6 value of human life. Human life should be -- it's
7 precious. It should be cherished. It should be
8 celebrated. It shouldn't be beaten, and downtrodden, and
9 suppressed.

10 And would reasonably cause a person to fear imminent
11 bodily injury or death. Based on the evidence that you
12 heard, was Ms. Workman, the survivor, undergoing that?
13 Would that cause her to reasonably fear great bodily
14 injury or death? Would a reasonable person think that? I
15 submit to you, ladies and gentlemen, being beaten,
16 intimidated with weapons, how is this a kind act? This is
17 normally used for either target practice, training, or
18 self-defense. And that sometimes implies shooting someone
19 or killing someone.

20 Well, how did the Defendant -- he wasn't using this
21 for target practice. There's no evidence of that. He was
22 using it to intimidate her and coerce her. I submit to
23 you that that would cause a reasonable person, especially
24 if they couldn't fight back, to fear great bodily injury
25 or death.

1 You heard testimony that there was a live round in
2 the chamber when the officers confiscated that. That
3 means that gun was ready to go. There was a bullet in
4 there. And all you needed to do was click that trigger.
5 And the survivor knew that. She had to experience that.
6 Based on the evidence, ladies and gentlemen, the State
7 submits to you confidently that DVHAN has been met.

8 This follows the statute, the first page that you
9 saw, circumstances manifesting extreme indifference to the
10 value of human life include, but are not limited to using
11 a deadly weapon. Do you see that one? Look at number
12 three. Committing the offense in the presence of a minor.
13 And then look at number five. Committing the offense
14 during the commission of a robbery, burglary, kidnapping,
15 or theft.

16 So our legislature has laid out multiple ways that
17 are including but not limited to -- it's not an exhaustive
18 list -- exhaustive list to meet these elements. And the
19 State has met multiple elements right here, even though it
20 didn't have to. It's an or statute.

21 Clearly, you heard from the victim's testimony that a
22 gun was used. She -- it -- it seemed like she was about
23 to be struck in the head and she put her hand up in
24 self-defense. That's using a deadly weapon. That is a
25 deadly weapon. I think we're all in agreement. That's

1 not a toy gun. It's not a squirt gun. It's a nine
2 millimeter. And it had -- was loaded with a bullet.

3 Number three, committing the offense in the presence
4 of a minor. There he is, ladies and gentlemen. And
5 that's just one minor. That's Little Ray, six years old
6 at the time. Don't forget about Anu, who was two years
7 old at the time.

8 And then right here in number five, another way to
9 meet that element is by a kidnapping. And I'm going to
10 get to that shortly with you all.

11 Likewise, when the Judge -- when His Honor reads
12 the -- that statute to you, he's, also, going to read a
13 lesser charge of domestic violence first degree. There's
14 the statute. Not only has the State met the original
15 charge, DVHAN, but it's, also, met this statute, this
16 lesser charge. As you can see, it's unlawful to cause
17 physical harm or injury to a person's own household
18 member. As you heard, household member -- the survivor is
19 married to the Defendant. They have children in common.
20 And they formerly lived together. They're household
21 members.

22 Offer or attempt to cause physical harm or injury to
23 a person's own house [sic] member with the apparent
24 present ability under circumstances that reasonably create
25 fear of imminent peril. I believe we've already gone over

1 that.

2 You can see in Section B, you can -- also, can meet
3 first degree if the person violates right here above in A.
4 And there's multiple ways to prove it. I want you to look
5 at number four. The person uses a firearm in any manner
6 while violating the provisions of Subsection A, using the
7 firearm in any manner. You don't have to shoot someone.
8 You don't have to point at them. You can just merely use
9 this as an intimidation tactic while you're hitting the
10 person. And that's what the Defendant did. The State
11 meets that element.

12 Likewise, if the offense is committed in the presence
13 or well-being perceived by a minor. We've already gone
14 over that. Also, C, the offense is committed during the
15 commission of a kidnapping. That's what we're going to
16 discuss right now.

17 There's the kidnapping statute. That's it. Whoever
18 shall unlawfully seize, confine, inveigle, decoy, kidnap,
19 abduct, or carry away any other person by any means
20 whatsoever without authority of law, except when a minor
21 is seized or taken by its parents is guilty. Our
22 legislature did not put a time limit. There's no required
23 time limit to kidnap someone. I think that's often a
24 common misconception in our society. Unfortunately, in
25 the movies, you know, in a lot of kidnappings, you see

1 people abduct someone out of a van, haul them in, and
2 there's a ransom, and days go by. That's one form of
3 kidnapping.

4 Unlawfully confining, abducting, preventing someone's
5 movement from leaving in any way, however long, is
6 kidnapping. The survivor wanted to leave throughout that
7 Saturday night, throughout that Sunday. She couldn't
8 leave. You heard from her.

9 He had her cell phone. She couldn't call on her cell
10 phone. If she had her cell phone at any point, don't you
11 think she would have called 911? I mean, it's hard to
12 imagine him, the Defendant, for 48 hours, or whatever,
13 constantly watching over her, even though it -- it does
14 sound like that's what happened. But maybe there was a
15 brief moment when she was alone, if she had her cell
16 phone, a reasonable person would have probably tried to
17 call 911 or sought help, but she couldn't. She was being
18 confined. Her movement was being restrained by this
19 Defendant. So the kidnapping has been met.

20 And, lastly, His Honor is going to read to you all
21 possession of a weapon during the commission of a violent
22 crime. That's the other charge the Defendant is on trial
23 for. I can tell you right now and His Honor will let you
24 all know that DVHAN and DV first degree are violent
25 crimes. Kidnapping is a violent crime. So if you believe

1 through the evidence that the Defendant is guilty of
2 DVHAN, or DV first, or kidnapping and that he possessed
3 this weapon while doing so in any manner whatsoever, you
4 will likely find him guilty.

5 I think some -- some very compelling testimony was
6 from Deputy McHale, the State's second witness, the female
7 officer with the Greenville County Sheriff's Office. She
8 was patrolling this area on August 27th, 2016. She gets a
9 call from dispatch to do a welfare check. And you heard
10 on this 911 call, the survivor's employer called because
11 she'd missed work. That's how Deputy McHale came out
12 there. Great police work. She got their address right
13 away and showed up.

14 You can take this exhibit back with you. All this
15 evidence, you have a right to view, if you want. If you
16 notice on State's Exhibit No. 2, the call was placed
17 around 8:08, that anonymous call from Virginia. Deputy
18 McHale arrived in minutes, knocked on the door. Who
19 answers? The Defendant. You heard all she was trying to
20 do was make sure the victim was safe. It was a welfare
21 check. And you heard the Defendant's response, She's not
22 here. She's with her mother. And we all know that's a
23 lie, because you heard from the victim. She hadn't seen
24 her mother in years.

25 And why is it a lie? Because the victim is terrified

1 for her life with her children hiding in the room because
2 she was told to do so. He wouldn't -- the Defendant
3 wouldn't let Deputy McHale in, and we all know why. We
4 all know what he was concealing, confining.

5 So Deputy McHale can't force entry. She didn't have
6 reason to legally. She did what she was supposed to. But
7 her suspicions -- if you notice, she was suspicious, and
8 she had reason to be so.

9 Well, you heard from her. She called for back up.
10 She called for assistance. One deputy came, one other
11 man. And, you know, someone's in the front. Someone's at
12 the side. A few minutes go by before that deputy could
13 get there. And then SWAT was called. But that -- we all
14 heard that that took about 30 minutes to happen.

15 So think about it. The Defendant was there at one
16 point. And by the time SWAT came and surrounded the house
17 and when they breached, the Defendant wasn't inside. We
18 all know what happened. We heard from the victim there's
19 a door here, and there's a window to a bathroom here. He
20 likely went out one of these areas and scurried back here
21 to Crooked Creek Circle and Rosalee Drive.

22 We heard testimony from the Investigator that it's --
23 it's a short distance, you know. There's trails here.
24 You can walk. Even though it has thick brush, you can
25 just zip on back there. And that's what happened.

1 (WHEREUPON, State's Exhibit No. 1 was played in open
2 court.)

3 MR. POLSINELLO: State's Exhibit No. 2, this CAD
4 report showing a male calling from this Rosalita --
5 Rosalee Drive and Crooked Creek Circle in reference to a
6 stabbing. This call was made, it looks like, 40 minutes
7 after that initial call was made by Virginia to do the
8 welfare check. You can match up the times. So that call
9 was made 40 minutes after the welfare check.

10 So Deputy McHale arrived shortly after the welfare
11 check, knocks on the door, meets the Defendant, slams the
12 door. He comes out, comes to this -- around to this
13 location, Crooked Creek Circle and Rosalee Drive, and says
14 he got stabbed.

15 And we heard from Sergeant Rivera, there was no
16 stabbing. This is where he responded first. He took a
17 loop in his car. He got out, talked to neighbors. There
18 was no stabbing. If there's a stabbing, there's blood,
19 neighbors come out. There was no stabbing. You heard --
20 on this CAD report, you can see where the -- this call
21 came from, (864)478-9522. I showed that to the survivor
22 up here. She was familiar with this number. This was the
23 Defendant's number.

24 That tactic of making that 911 call, think about
25 that. Law enforcement presence starts getting heavy.

1 McHale calls for back up. SWAT comes. And you make that
2 call. Why? You're trying to get law enforcement presence
3 away from this area to report to this area. It's so
4 manipulative. It's disturbing. Fortunately, no -- no
5 more harm was done to the victim.

6 It took a while for her to come out. And that was --
7 that was unfortunate. SWAT came. You heard the callouts
8 for an hour. Think about what the survivor went through
9 in the last 48 hours. She was in there with her children
10 terrified because the Defendant told her not to come out.

11 The last time she heard, he told her to go in that
12 room and she did. She didn't know he left. She didn't
13 know that he jumped out. She had a right to be scared and
14 terrified after the beating that she took. She didn't
15 want any more. She was going to do what he said. So I
16 think a reasonable person should understand why she didn't
17 come out and why SWAT had to breach down the door.

18 So the survivor comes out to the end of the driveway.
19 She gets checked out by EMS. And she, first, tells
20 Investigator Perry she got in a bar fight. She got in a
21 bar fight. That's as believable as if I stated she got in
22 a fight with Ronda Rousey, or Matthew Justice, or Holly
23 Holm. Holly Holm did this to her. It's ludicrous, and so
24 is this bar fight. And that's what the Defendant wants
25 you to believe and what Defense Counsel may say.

1 But we heard from Mr. Sondov and the survivor herself
2 why she said that. I'm asking you, the jury, not to
3 victimize the victim, not to judge her. I don't know what
4 she went through. I'm probably never going to. I'm
5 never -- I'm not a woman. I'm not going to be a woman in
6 domestic violence. But I can understand using a
7 reasonable prudent person -- I can understand the decision
8 making that she did. And I don't think it's fair to judge
9 her.

10 And another sign of that is on September 7th, when,
11 you know, a few -- a week went by, she, finally, was able
12 to talk to Investigator Perry. She apologized is one of
13 the first things she did. I think that's strong, that
14 should tell you something. She apologized for not telling
15 the truth and lying. It's not that it didn't happen. She
16 was scared. She was terrified. The Defendant's
17 whereabouts were unknown at the time. He was not
18 apprehended.

19 So after having experienced that and talking to
20 officers, I can -- I think it's reasonable that someone
21 was afraid. You know, maybe they're out in the bush.
22 Maybe they're watching us from afar. From that 911 call,
23 the CAD report, the matching number, the time frame, we
24 all know he was at one point. There was no stabbing. So
25 I ask you not to judge her for this whole bar fight thing.

1 I think it's interesting to note -- you heard
2 Investigator Perry say and you heard the survivor say that
3 the Defendant's sister, Tammy Green, came to the scene and
4 drove them to her house for that night with the children,
5 the Defendant's sister. I think that says something. The
6 Defendant's own sister wanted to protect her and the
7 children. She invited her into their home where
8 Ms. Workman stayed with her children. But then on that --
9 early the next morning, she fled. She fled the state with
10 her children out of fear.

11 And last night, I was watching, I think, the Blue
12 Planet National Geographic something and there was a
13 scene, a momma polar bear with her cubs going up a
14 mountain, you know, the helicopter viewpoint capturing
15 this moment in nature. And the male polar bear was going
16 after them. It was his own cubs. This happens in nature.
17 Nature's a violent thing. And it's crazy how that can
18 happen.

19 And the momma polar bear goes back and tries to fight
20 him off protecting her cubs. And they're running, you
21 know, running away. And they, eventually, got away. If
22 you want to just boil it down to its elementary status, I
23 think we know there's some animalistic things that we
24 experience sometimes when we're held down and we're
25 confined. We want out. When we're losing air,

1 consciousness, we're going to fight to survive. And
2 that's what the survivor did with her children that early
3 morning deciding to flee, deciding to flee. She wanted to
4 get out because she knew the danger that she and her
5 children were in. You can't forget it. You would be --
6 you would be traumatized.

7 So I ask you not to find fault in judging her for the
8 reason and the decision making that she did. But she came
9 here this week. We all know she lives far away. She came
10 here with her children.

11 Why'd she come here? You heard her testimony. I
12 asked her, Why did you come here? It was her testimony
13 she came here to make sure the Defendant's held
14 accountable, to send a message that this should not be
15 tolerated, to send a message to her boys and to show them
16 that this is not acceptable and that you can stand up and
17 fight. She could not fight and stand up during this
18 period, reasonably so. She doesn't look like a fighter.
19 She doesn't look like she's capable of fighting back. But
20 she stood up now. She stood up this week.

21 In a moment Mr. Eppes, Defense Counsel, is going to
22 have an opportunity to speak to you all. He's probably
23 going to highlight that the victim said she got in a bar
24 fight. We all know that that's not true. And we all know
25 why the victim said that. Mr. Sondov, the expert himself

1 in domestic violence dynamics with over 20 years of
2 experience in this type of work, explained why victims may
3 lie at first, the reason, the factors, the fear of
4 reprisal.

5 Defense Counsel might, also, mention, well, if the
6 children were present, why didn't -- the State could have
7 called them as a witness. First of all, Anu, at the time,
8 was two. And you heard Investigator Perry, he couldn't
9 illicit any information from a two-year-old. He's out of
10 the question. Little Ray was six years old at the time.
11 Haven't the children been through enough trauma?

12 At one point during the cross-examination, Defense
13 Counsel asked the victim was she hospitalized.
14 Irrelevant. You don't need to be hospitalized to be a
15 victim of domestic violence. It's not required under the
16 statute, as you saw. Yeah, she was pulverized and
17 pummelled. She was more concerned about getting out of
18 the state for her children.

19 We heard testimony from the victim that the Defendant
20 cut her hair during this ordeal. And on scene when
21 Investigator Perry was coming through the house, he didn't
22 find any hair. He didn't find a knife. So much time had
23 gone by. And, you know, it doesn't sound like -- I don't
24 think there's any evidence that they searched every room.
25 It seems like they focused on that master bedroom where

1 the guns were found.

2 Take a look at this clean line right here. Do you
3 think it's reasonable to infer that that's either scissors
4 of a knife. That's -- that's a very smooth line. The
5 victim's telling the truth. Why -- why would she want to
6 do that to her own hair? She had long hair. It would be
7 odd to just want to snip. She didn't because he did it.
8 And you don't have to find a lock of hair or the knife to
9 prove this any further. The evidence is here. It just
10 goes to show further the brutality, the seriousness of the
11 situation resorting to that type of tactic to control.

12 During opening argument, Defense Counsel talked about
13 his client's freedom. Those were his own words. His
14 freedom is at stake. What about the survivor's freedom
15 during August 27th, 2016, to August 29th, 2017 -- 2016?
16 Sorry. Her freedom was deprived. Her movement was
17 deprived. What about her freedom?

18 In light of the evidence, I don't see how a
19 reasonable, prudent person would hesitate to answer the
20 following questions. Do you remember those four questions
21 that I asked you to constantly ask yourself throughout the
22 course of this trial? Did the Defendant physically
23 assault the survivor, Ms. Workman? Clearly, he did. Were
24 minor children present? Clearly, they were. Was a weapon
25 such as a firearm used in any manner? Which it was. And,

1 lastly, were her -- was her freedom, was her movement
2 confined or restrained in any manner? Which it was.

3 I believe we heard her say she was supposed to report
4 to work on Monday. And she didn't report because she was
5 terrified. He told her -- the Defendant, don't leave the
6 house. And he went to work. And she was so scared she
7 didn't. Think about it. That triggers the calling from
8 her work from this Virginia. She's not there.

9 Thank God this Virginia called law enforcement, 911
10 to do this welfare check. Thank God Deputy McHale arrived
11 on scene, confronted the Defendant, and immediately had a
12 suspicion that the victim and her children were in there.
13 The car was in the front of the driveway. The Defendant
14 slammed the door on her. He wouldn't allow her in.

15 All these answers, all these questions, is he guilty?
16 Based on the evidence -- taking the evidence and applying
17 it to the elements, there's no hesitation to act.

18 I ask that you render a true and just verdict, not
19 only finding the Defendant guilty, but, also, granting the
20 survivor the justice she deserves.

21 Thank you.

22 THE COURT: Mr. Eppes.

23 MR. EPPES: I don't stand behind this. I just need a
24 place to put my paper. I'd like to say I'm not absent
25 minded, but I write stuff down, so y'all bear with me.

1 We've got, as you know, a lot of ground to cover.

2 I want to start where Mr. Polsinello ended just for a
3 second. And I want you to think about what he didn't talk
4 about that Ms. Workman said, that Mr. Workman had told her
5 there was a bomb. He didn't say that. And I've been
6 studying about that story because I really -- I don't
7 think it's true. I don't think you have any reason to
8 find it true. And -- and I've been studying about it and
9 it got me to thinking about the whole case.

10 Because in point of fact, everybody has their reasons
11 for what they do. You know, we're a nation. And we have
12 competitors like Mr. Polsinello that want to win. And we
13 have people like Officer Perry that have their opinions
14 and hunches about what appears and make their decisions
15 and decide to do it. But, frankly, we have too many
16 people with too many doggone opinions. I'm not talking
17 about Officer Perry. I'm talking about politics, which I
18 guess I shouldn't talk about. And we have lawyers.

19 Now, I said Mr. Polsinello, you know, wants to win, a
20 college athlete and all. He still kind of looks like it.
21 I, a college athlete, do not look like it. It's my fault.

22 And I like to think of myself as a lawyer. And I,
23 sometimes, talk slow about being a lawyer because I grew
24 up in the courthouse. And I've been around this stuff my
25 whole life. But it -- it -- I take it seriously. And I

1 don't have any illusion that I don't know that you know
2 that I'm trying to persuade you with something. I'm
3 trying to focus your attention on what I think is
4 important. Because that, I think, is what's important to
5 your decision. And I'm counting on you to make that
6 decision.

7 And the law is what this is all about. The Judge is
8 going to tell you the law. And I'm going to talk about it
9 a good bit. But the Judge is going to tell you the law.
10 And anything I say that's wrong, you go with the Judge.
11 And y'all are the decider of the facts. Y'all are all 12
12 strangers to Mr. Workman, 12 strangers to everybody in the
13 courtroom, really.

14 You're going to apply the law to the facts you've
15 seen and the evidence you've seen from the witness stand
16 to decide whether Mr. Workman is found guilty or not
17 guilty of the crimes he's charged with. And it's
18 terrifying. And I get a little emotional when I talk
19 about this because I always tell the same story.

20 My old man was a Judge, like Judge Kinlaw. And when
21 I was a boy, I struggled with the ideas of law, and
22 justice, and how things could go awry. And he -- he
23 always said the same thing. He'd say it exactly the same
24 way. He'd say, Oh, it's a terrible system. It's terrible
25 that 12 people in a box get the evidence that they're

1 allowed to see and make a decision about a man or woman's
2 life. It's a terrible thing. And then he'd look at me
3 and he'd grin and he'd say, But it's the best system
4 anybody has ever come up with.

5 Because y'all as a group and individually, y'all have
6 a way of cutting through a bunch of bologna and seeing
7 that I'm a lawyer for the Defendant, that Mr. Polsinello
8 is a lawyer for the State. That the Defendant is a
9 defendant. That Officer Perry is an officer that has his
10 agenda, which he's told you. That Ms. Workman has her
11 life.

12 And -- and you cut through all that and at the end of
13 the day, frankly, juries do good jobs. They work hard.
14 They listen. They follow the Judge's instructions. And
15 they do what they're supposed to do. And that's my way of
16 saying everybody knows what they're doing here. But I
17 just need you to listen to the evidence we've got.

18 Now, I told you, you know, Mr. Polsinello, the
19 competitor, wants to win. I want you to see the facts the
20 way I want you to see the facts. I think you'll remember,
21 because I read it to him, Officer Perry said, I don't
22 think this guy should get away with what he did to you
23 scot-free. It's ridiculous. I mean, he should be held
24 accountable. And I'm the one that's going to hold him
25 accountable. So we know that's there. And Ms. Workman

1 said, I want him to pay for what he did to me, or I want
2 him to be accountable for what he did to me, whatever it
3 was.

4 And you've heard from a bunch of other witnesses.
5 And you've heard a bunch more facts. And -- and I want to
6 kind of go through those with you. But you have to
7 evaluate the witnesses. You've seen them, you've heard
8 from them. You have to decide what you believe and what
9 you don't believe. And I believe it's fair to say
10 everybody's version of facts is a little bit different.
11 But you have to parse through them and figure out what
12 happened.

13 Now, we started with this 911 call. The 911 call, I
14 think you can listen to it again, said that she hadn't
15 been to work in several days. And you think about it,
16 Saturday, Sunday, Monday, that's several days. If they
17 said she didn't come to work two, yesterday and today is
18 what I would have said, not several days on the 911 call.

19 So it begs the question, what's the big deal about
20 Saturday? Ms. Workman said she didn't have to go to work
21 that day. Now, you know, we have this evidence that --
22 that she called into work on Saturday. And she says --
23 when I asked her about it, because she'd already said she
24 didn't work Saturday, she said, oh, I called in that
25 night. Well, that's -- it's hard to believe she worked in

1 food service at St. Francis, and food service don't work
2 at night.

3 And she's testified that Mr. Workman got home from
4 work at 4:30, 5:00, went out for three or four hours, and
5 came home, which makes it 9:00, 9:30, I guess, 8:30, 9:30.
6 And, thereafter, all of this supposedly started.

7 And she never said anything during her testimony
8 about calling work. And if she'd, actually, called work
9 that night, don't you think her supervisor that got there
10 and heard the call would have said, oh, she called Sunday
11 morning, not Saturday morning? That's what I think. It's
12 just an odd little thing that doesn't jive with -- with
13 the story.

14 Now, we've got this crime scene on Saturday night.
15 I -- I keep wanting to say Saturday, it's Monday night,
16 because, honestly, most of the time, stuff happens on
17 Saturday night. We've got this 911 call.

18 And Mr. Polsinello said, you know, the police came to
19 the house and she was in the room. Well, she said -- no
20 dispute, she debated who took -- you know, she said
21 Mr. Workman made her take a shower. But she took a
22 shower. She said, I was in the shower when the police
23 came. She said that. I don't know why, if that's the
24 deal or not, if that's important or not.

25 So the police come and they stay. And Mr. Workman

1 left. And there's no question about any of that. The
2 SWAT call -- the 911 call about the knifing and all, he's
3 not charged with making a fake 911 call. It happened.
4 Frankly, I believe if you look at the time on the CAD's of
5 everybody, it happened either before or right after SWAT
6 got to the house. I think it was before. And I -- I just
7 don't know that it's relevant for any purpose. But let's
8 go back to the house.

9 So, now, this entire long four-hour standoff, however
10 long it was, four or five hours with this focused sound
11 thing that I'm scared to ever have near me because it
12 sounds like it'd break your teeth or something, it goes on
13 while Ms. Workman is in a room with her guns that she
14 owned. And it went on and on and on.

15 And, you know, I understand that the SWAT team comes
16 out and uses all their stuff. And the Prosecutor wants to
17 talk about it and tell you to set the stage for
18 everything. But the SWAT team didn't do very much. They
19 banged on the door. Nobody answered. They knocked the
20 door in. They found the people. They got the kids out.
21 Okay. And at that point, no charges were brought.

22 So we're -- we're now at Saturday night.
23 Ms. Workman's out of the house. The officers have gone in
24 the house. We've had this elaborate show about these guns
25 and the rubber gloves. And that just may be the

1 difference in me and Mr. Polsinello. But I hate those
2 gloves.

3 And when Ms. Workman gets out of the house, she says
4 something about a bar fight. Well, you know, I don't know
5 if there was a bar fight or not. What I do know is the
6 evidence indicated from that night in the police reports
7 that she had bruising on her neck and throat before
8 Saturday night.

9 Investigator Perry said -- he testified at the
10 preliminary hearing that he -- that she had bruising of
11 her face that she covered up with makeup before Saturday
12 night. So it was before Sunday and Monday, too. So her
13 injuries, whatever they may be, are her injuries. But at
14 the same time, we don't know which injuries were before
15 and which injuries were after.

16 As a matter of fact, the forensic examiner went in --
17 that's Ms. Wills-Eskew. And Ms. Wills-Eskew says that she
18 gathered the guns. And she says, I found no other
19 pertinent evidence. Well, you know, from television and
20 anything you've ever seen or read, they don't walk in the
21 house and say, whoa, there's two guns, and take them.
22 They come study the whole house looking. If they'd have
23 found hair cut on the floor, they would have done
24 something with it. If they had found a knife that was
25 thrown on the floor or sitting on a night stand, they'd

1 have done something with it.

2 And they took these pictures. And the pictures are
3 the pictures. And y'all can judge them. And I -- I want
4 you to use your reasonable judgment. But I want to show
5 you this picture, which I've got upside down, because I
6 think it is significant. You look at this picture.

7 And I'm really not a hundred percent on that hair,
8 but I see strands of hair coming all the way down here.
9 And I see this strand of hair here. But then when I look
10 at this picture and Ms. Workman's shoulder, I don't see a
11 gap. I don't see anything that indicates that the hair on
12 either side is missing, or gapping, or has been cut. And
13 I'm just, frankly, not sure that this isn't an optical
14 illusion. But I'll leave that to your judgment.

15 I will remind you, though, that she said and
16 everybody said that he never threatened her with a knife.
17 So I feel like there's a grain of truth in that.

18 Now, the forensic examiner was interesting for
19 another reason. And she said it. And I don't know that
20 anybody was paying attention to it. But she said the
21 house was filthy. She said the house was filthy and we
22 called DSS about the kids.

23 They didn't call DSS because Ms. Workman was the
24 victim of a crime. They called DSS because the house was
25 filthy. They called DSS. And, sometime, while they were

1 calling DSS, Ms. Workman perked up and said, I'll go
2 anywhere. I'd like to go to my sister-in-law's house, and
3 went to Mr. Workman's sister's house. She left and that's
4 where she went. And the rest of what the forensic person
5 said was nothing pertinent to the crime.

6 I'd, also, like to point out about these two guns two
7 things. Number one, there's no fingerprints. There's no
8 DNA. There's no place where somebody would have hit
9 somebody and put anything on them. And, you know, they've
10 checked.

11 And the most important thing -- and I, frankly, got
12 this out of the transcript that the court reporter's
13 taking, because I think it's a critical thing from that
14 night. I asked Investigator Perry, Okay, did she --
15 before you entered the home, did she tell you where the
16 guns were? Meaning Ms. Workman.

17 And he said -- and you can ask the court reporter to
18 read it back to you herself, because it's in there. He
19 said, I think she did. I think she told me there was
20 something under the bed and there was something in the
21 night drawer. And there was one somewhere else that we
22 never located.

23 Now, there's this third gun that they don't talk
24 about, or they talk about -- and I've never been clear on
25 what the heck they think about it. But Mr. Polsinello

1 told you, the black and silver gun is the gun she said did
2 everything, the gun that she owned that was in the night
3 stand by the bed where she says she was. So she knew
4 where the guns were that night, but things changed.

5 Well, that -- and -- and let me go back to judging.
6 Because this is a different kind of judging. But
7 Mr. Polsinello referred to my client, or his actions, or
8 however you want to say it as despicable, deplorable, no
9 one's above the law. Y'all have got to punish him for
10 what he did. I don't know. But I don't like it when
11 people call my clients despicable, deplorable.

12 And he, also, said it's not fair to ask you to judge
13 her. I'm not asking you to judge anybody. I'm asking you
14 to listen to the facts and try to determine who's telling
15 the truth, and what they're telling the truth about, and
16 what they're not telling the truth about. The why I don't
17 really -- I don't think anybody has told us about the why,
18 so you'd have to use your common sense.

19 I'm not asking you to judge anybody. I'm not saying
20 anybody that testified in this case is in the wrong. All
21 I'm saying is the facts don't add up to proof beyond a
22 reasonable doubt of kidnapping, domestic violence high and
23 aggravated, and possession of a weapon during a violent
24 crime, which are the three things my client's charged
25 with. That's all I'm saying.

1 Now, after this night, everything was set up for the
2 next morning. And the next morning, Investigator Perry is
3 supposed to see her -- to see Ms. Workman, but she's left
4 the state.

5 Now, again, the interesting fact that comes in that
6 nobody has really thought about is she's, also, supposed
7 to meet with DSS. And DSS was called, I'll say again, not
8 because of her injuries, but to make sure the kids were
9 okay because of the condition of the house.

10 And so Ms. Workman left. She left the state. She
11 had a meeting with law enforcement and DSS. And for
12 whatever reason, she left the state.

13 Now, the DSS thing just -- it keeps coming up. And I
14 think it's more important. And I think if you look at the
15 evidence in its entirety, you'll see why it's more
16 important.

17 So a week, 10 days later, Ms. Workman is in a safe
18 place. Excuse me one second. One thing I'll tell y'all
19 while I'm studying, you may have seen me sweating. I
20 sweat because I'm big. It ain't because I'm nervous. I
21 get nervous, but I sweat whether I'm nervous or not.

22 So, now, we get to the rest of the stories. And the
23 reason I say "stories" is because we've kind of got --
24 we've kind of got six stories. We've got the stories of
25 the night of the incident from Investigator Perry and

1 Ms. Workman. We've got the interview with Investigator
2 Perry with Ms. Workman. And we've got their testimony
3 here.

4 Now, you'll remember the interview. She said she was
5 in a safe place. And I asked a lot of questions about it.
6 And they talked about a lot of things. But there's one
7 thing they didn't talk about in that interview. Because
8 you heard no testimony that they talked about it, which is
9 they didn't talk about the fact that Mr. Workman went to
10 work Monday morning.

11 The interview took place a week later. Ms. Workman's
12 in a safe place. But nothing comes up about him being at
13 work. She says it all started after her husband got off
14 work at 4:30 and then left for three or four hours.

15 Now, you'll remember in that interview, Investigator
16 Perry when he was describing, he said she got hit in the
17 face with a pistol. And she said later on the stand here
18 and at the interview, too, that it wasn't true.

19 Now, the other thing they left out of the interview,
20 but I -- the other thing that's part of the interview that
21 we don't talk about very much and I may have mentioned it
22 already is DSS was on the phone during that interview.

23 So with DSS on the phone, they're talking about a lot
24 of things. Ms. Workman said that although Olandio put his
25 hands on her neck, he never choked her close to losing

1 consciousness. And Mr. -- Investigator Perry told you
2 later, he didn't think the long gun, the AK-47, was
3 implicated in this at all because she never mentioned
4 anything about it in that interview or since then, as far
5 as I know, until she got on the stand.

6 Officer Perry told her that he was going to hold
7 Mr. Workman accountable. I've read that quote to you
8 already. He got up. He got his file together and he
9 brought charges, one of which wasn't even supported by the
10 law at all. He brought this kidnapping charge. He
11 brought this domestic violence HAN charge. And he brought
12 the possession of a handgun during a violent crime charge.
13 He brought them all. He brought them all to hold
14 Mr. Workman accountable.

15 And, now, the file's in the system. It's handed off
16 to a competitor, Mr. Polsinello. And the case proceeds
17 for almost two years.

18 And what happened during that period of time? Well,
19 according to Ms. Workman, the -- DSS looked in on her
20 once, figured things were fine wherever she is, and they
21 went away. And here we are this week. Here we are at the
22 trial. And you've heard the story, but it's -- it's
23 simply -- the story has been adjusted to get where we are
24 now with the goals that everybody has to win, and hold
25 people accountable, and all that.

1 Ms. Workman told you that during this event, her
2 husband had her car keys. And, yet, the day after -- the
3 day after that morning, she got in her car and drove away.

4 Now, Officer Perry pointed out to you that he
5 believes she went back to the house, got things for the
6 children, and walked away. She says she didn't do that.
7 But she drove away in the car with her car keys.

8 And -- and we heard this story that, apparently, you
9 know, Mr. Polsinello didn't think enough of it to mention,
10 that he told her the trailer was rigged to explode. Well,
11 why did that story come up now? Because there's no
12 question that Mr. Workman went to work. There's no
13 question that he left the house and went to work. So
14 there has to be a reason in the eyes of somebody that's
15 making up a way to make somebody pay on the fly.

16 And, yesterday, she admits that she owned the guns.
17 She had a concealed weapons permit. But she says in a
18 trailer, I was being terrorized with guns that somehow got
19 secreted in my bedside stand, and under my bed without me
20 knowing it. And that's where they were found. And,
21 remember, Investigator Perry said she knew they were
22 there. She told him that night after the thing. That
23 night, she said -- I think he said that. I think she told
24 me where they were.

25 They want to make Olandio pay. Nobody being held

1 prisoner loses track of a gun. Nobody being held prisoner
2 forgets about a bomb in an interview when they're in a
3 safe place. The witnesses are not credible. They are
4 adjusting their stories to fit the facts that are before
5 them on the day in question. Ms. Workman adjusted her
6 story in a steady line from the time that the DSS arrived
7 until now. And it does not prove the case that the
8 Prosecution is -- has submitted.

9 If someone -- if someone is beaten about the face and
10 head, and kicked and stomped, and grabbed, and everything
11 else -- and I apologize to you for making this argument
12 because it's an awful argument to be making, but they look
13 much worse than that. If someone is terrorized and beaten
14 repeatedly in the face and head with closed fists --
15 again, I apologize for making the argument, but they look
16 much worse than that.

17 This story is not true. Ms. Workman may have her
18 reasons for being gone from her husband. That's between
19 her and her husband. But this story is not true.

20 It's interesting, Mr. Polsinello used the -- used the
21 polar bear analogy. There's -- there's no -- they say
22 there's no more dangerous animal on earth than a polar
23 bear. It's the only one that eats people.

24 And I was thinking about that. And I was, also,
25 thinking about the other analogy -- the other analogy of

1 danger that my daddy and momma used to always say, which
2 is there's no -- nothing on earth worse than a woman
3 scorned. And you heard their own expert say -- you heard
4 their own expert say, sometimes, victims want revenge and
5 they lie.

6 Now, I want to talk to you about the law. I'll bet
7 y'all thought I was getting that paper up and I was done.
8 And I'm sorry about that.

9 Mr. Polsinello showed you the law of domestic
10 violence high and aggravated. And he told you about
11 committing the offense under circumstances manifesting
12 extreme indifference to the value of human life and great
13 bodily injury to the victim results. Well, there's no
14 great bodily injury here. Ms. Workman, her injuries look
15 bad. I'm not disputing them. She never went to the
16 hospital. She never went to the doctor about them.

17 Now, he focused on number two, committing -- because
18 I think he may concede that point. But I don't know for
19 sure. Commits the offense with or without an accompanying
20 battery under circumstances manifesting extreme
21 indifference to the value of human life, and would
22 reasonably -- reasonably cause a person to fear imminent
23 great bodily injury or death.

24 Ladies and gentlemen, he went to work. She did not
25 leave. If she thought he was going to kill her, she would

1 have left. If she thought he was going to deprive her of
2 the use of life, of her limbs, her organs, she would have
3 left. But that is not the reason I put this on here.

4 The reason I put this on here is to talk about the
5 elements that you can -- the circumstances that manifest
6 this, which Mr. Polsinello talked about. And he showed
7 them to you. And he said, Using a deadly weapon,
8 knowingly impeding normal breathing or circulation. Look
9 down here at the bottom. I don't think he mentioned this
10 one. Thereby causing stupor or loss of consciousness for
11 any period of time. Now, you'll remember she,
12 specifically, told Officer Perry she never lost
13 consciousness.

14 Committing the offense. And the offense would be the
15 actual battery, the -- the domestic violence, the hitting
16 in the presence of a minor. I'll remind you that the
17 testimony is that Ray -- I guess they call him "O" now --
18 Workman, Little Ray perceived -- perceived the injuries,
19 but did not see them. I'll show -- I'll tell you why I
20 think that's important later.

21 And, you know, the whole idea that I'm going to worry
22 about -- worry about whether they called a kid or not,
23 golly-bum, everything the kid said was always -- already
24 in the record. That was their business whether they
25 wanted to call him. I sure wouldn't have.

1 Using physical force to block a person's access to a
2 cell phone and committing the offense during the
3 commission of a kidnapping. Okay. So that's domestic
4 violence high and aggravated.

5 Now, let's go to domestic violence first degree,
6 which the Judge is going to tell you is a lesser included
7 offense. And that is to cause physical harm or injury to
8 a household member, or to offer to charge it -- cause it
9 with the apparent ability to do so. And that one,
10 interestingly enough, just like high and aggravated
11 without the threat of death or great bodily injury, it
12 includes an actual great bodily injury.

13 If the great bodily injury results or the act is
14 accomplished by means likely to result in a great bodily
15 injury, then that can be it. So if you believe that she
16 didn't fear for her death even if you believe these
17 injuries rose to a great bodily injury, that would be
18 domestic violence first degree.

19 The third one -- no, there's the third one. Okay.
20 Now, look at number four. Remember, this is domestic
21 violence first degree, not high and aggravated. The
22 person uses a firearm in any manner while violating the
23 provisions of Subsection A, which is up here about causing
24 physical harm or threatening to. So a firearm's included
25 in this one. And then in the process of committing

1 domestic violence in the second degree, which is less than
2 great bodily injury -- did I lose that? Well, now, I've
3 lost my page. Here it is. Sorry.

4 So this -- we're still on domestic violence first
5 degree, a lesser included offense of domestic violence
6 high and aggravated. The offense is committed in the
7 presence of or while being perceived by a minor. The
8 offense is committed during a kidnapping. And the offense
9 is committed by impeding the victim's breathing, flow --
10 or air flow. And it doesn't include them passing out.

11 And there's, also, keeping somebody away from a
12 telephone. But, you know, the whole telephone thing is
13 interesting. Because, again, either Ms. Workman called
14 work in the morning, which means she's telling a story
15 about that, or she called in the evening, which means she
16 had a telephone. It's unclear to me which. But it seems
17 like that's something that would have been clarified.
18 Now, so that's domestic violence high and aggravated.

19 And I'm, frankly, not going to talk about the gun
20 very much. Because y'all are either going to decide the
21 gun was there or not. And I think I made it pretty clear
22 that these guns belong to Ms. Workman. She knew where
23 they were. They were in the room she was in. So that
24 whole thing just gives me pause. She was in the house
25 that whole day by herself with the guns.

1 Now, Mr. Polsinello's four questions, the interesting
2 thing about three of them is they could apply to domestic
3 violence first degree. Did the Defendant physically harm
4 the victim at any time? Did the Defendant possess a
5 weapon at any point? And were children present? Did they
6 perceive the injury? Yes. So I really think at the end
7 of the day, if you look at that, you're going to see
8 domestic violence first degree, not domestic violence high
9 and aggravated.

10 I, also, think that the motive of keeping DSS away
11 from this problem is a pretty compelling -- the two -- the
12 twin motives of keeping DSS away from this problem and
13 making sure that Olandio Workman pays for this are the
14 primary motivators for her testimony. And I think that
15 you should look with great skepticism on the truthfulness
16 of that testimony.

17 Again, about the gun, about the phone. She had the
18 phone. She said -- well, she said she had the phone and
19 called work at night. So I really think something about
20 that is untrue. And the idea that someone is kept
21 prisoner for this period of time or for any period of
22 time, rather than simply she chose not to go to work
23 Saturday. She chose not to go to work or anywhere Sunday.
24 I think given the way this story has unfolded, that is,
25 quite frankly, the more reasonable interpretation.

1 I, also, think that at the end of the day, you should
2 return a verdict of not guilty on all three of these
3 charges. And I'll leave it to you to decide whether you
4 should return a verdict of guilty as to domestic violence
5 first degree.

6 Thank you.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, I'll tell you what we're going to do. I'm going to
9 charge you on the law, but that's going to take a minute.
10 And I'm going to be talking a little while. And the
11 lawyers have talked a little while. So I'm going to let
12 you stretch your legs. I'm going to let you take about a
13 10-minute break before you hear from me.

14 And be sure not to talk to each other about the case
15 yet. Don't have any conversations with each other. But
16 I'm going to let you go use the bathroom and stretch your
17 legs before you hear from me.

18 Okay. Take the jury out.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 3:32 p.m.)

21 THE COURT: We'll take a 10-minute break.

22 (WHEREUPON, a break was taken.)

23 THE COURT: Gentlemen, anything before we bring the
24 jury out?

25 MR. POLSINELLO: Nothing from the State, Your Honor

1 open.

2 MR. EPPES: Nothing from the Defense, Your Honor.

3 THE COURT: Have you got that verdict form that I can
4 take a look at?

5 MR. POLSINELLO: Yes, Your Honor.

6 THE COURT: Have you seen this?

7 MR. EPPES: No, sir.

8 THE COURT: Let me ask Counsel, I'm going to -- when
9 we get to that portion -- obviously, this is a -- a
10 verdict form. And I understand. I've seen it like that.
11 I'm just going to read it exactly as it is.

12 And don't be surprised if the panel may have a
13 question. Because that -- that's a little different when
14 you've got the lesser included and you've got -- are
15 trying to stick that in there. It's if this, then that,
16 you know, that kind of thing. So they -- they may not
17 have a question about it. And I'm hoping they won't, but
18 they -- they may have.

19 MR. POLSINELLO: I suspect they will, Your Honor.

20 THE COURT: Yeah. Because that's -- that's kind
21 of --

22 MR. EPPES: Your Honor, I think that should say, You
23 may then answer -- I'd put this last, but. You may then
24 answer question two.

25 THE COURT: Which paragraph is that?

1 MR. EPPES: I understand what he said. If your
2 answer is guilty, proceed to question three and do not
3 answer question two. Okay. Well, I don't know how to do
4 it, but that ain't the way I'd do it.

5 THE COURT: You know --

6 MR. EPPES: They should do it. They're a pretty
7 smart jury.

8 THE COURT: Yeah. Well, oftentimes, you have a
9 situation like that and they'll come back and have a
10 question about the format. And we'll just have to deal
11 with that if we have to, maybe we may not. But I think
12 it's pretty clear, but we'll see.

13 MR. POLSINELLO: Your Honor, we had another person in
14 DV -- in the DV unit type this up. I'm pretty sure she
15 got it off --

16 MR. EPPES: Is that person Judy Munson?

17 MR. POLSINELLO: -- of the judicial website.

18 THE COURT: Okay.

19 MR. EPPES: Was it Judy or someone else?

20 MR. POLSINELLO: Was it Candace?

21 MS. DONNA SMITH: Candace.

22 MR. EPPES: If that's off the website --

23 THE COURT: Gentlemen, I'm going to -- I'm just going
24 to -- just so you know, I'm just going to read it exactly
25 like you have it on here.

1 may have. And that means that you must decide this case
2 solely on the evidence before you and according to the law
3 as I give it to you. You may recall you took an oath at
4 the beginning of this trial to do exactly that.

5 Now, in following my instructions, you must follow
6 them all and not single out some of the instructions and
7 ignore the others. You must follow them all. Because all
8 of my instructions are equally important in this case.

9 And do not read into these instructions or anything
10 that I may have said or done during the trial as any
11 indication as to what I think the facts are or what your
12 verdict should be. I have no opinion. Because as I told
13 you at the outset, under our system of justice and the
14 Constitution that we are governed, you, all 12 of you, are
15 the sole judges of the facts. And I am the judge of the
16 law.

17 You decide what the facts are by evaluating and
18 weighing the evidence that you've heard during this trial.
19 There's no way for you to do that in a literal sense.
20 I'm, certainly, not going to give you a set of scales to
21 go back and forth for you to conduct any experiments.
22 What I'm talking about is weighing the evidence --
23 weighing the evidence and evaluating it by using your good
24 common sense, your sense of logic and reason, and your
25 life experiences that you've had. And you bring all of

1 those things to bear with you during the time you've heard
2 this trial.

3 And I told you at the beginning of the case that
4 evidence consists of several things. The first is the
5 sworn testimony that came from that witness stand. The
6 other form of evidence is exhibits that are displayed not
7 only on that table, but anything that was marked as an
8 exhibit. Those are the two forms of evidence that you are
9 to adhere to.

10 Now, you, as jurors, have to gauge the credibility.
11 When I say "credibility," I'm talking about believability
12 of the evidence. But I will tell you that you, also, may
13 consider in deciding the credibility of witnesses
14 testimony in such a way that you might believe everything
15 a witness says, you may believe nothing a witness says, or
16 you may believe parts of a witnesses testimony and
17 disbelieve other parts. You may believe one witness over
18 several or several over one. But I know you will decide
19 this matter of credibility using your logic, your reason,
20 and your good common sense.

21 Now, there are, also, two sources of types of
22 evidence. And what I'm talking about now is direct
23 evidence and circumstantial evidence. Direct evidence is
24 the testimony of someone who claims to have direct and
25 actual knowledge of a fact such as an eyewitness. Direct

1 evidence is evidence that, if it is believed, immediately
2 establishes a fact.

3 Circumstantial evidence. Circumstantial evidence is
4 indirect evidence. Put another way, circumstantial
5 evidence is proof of a claim -- of a chain of facts from
6 which you could find that another fact exists, even though
7 it has not been proven to you directly. The law makes no
8 distinction between the weight or value to be given to
9 either direct or circumstantial evidence. You may
10 consider both kinds. And there's not a great degree of
11 certainty required of one over the other.

12 Now, ladies and gentlemen, there are certain
13 witnesses who come in here, and as it was in this case,
14 who are qualified and described as what you may call
15 experts. These are people who by reason of their
16 training, education, and experience have achieved a
17 certain expertise in a certain field. And they are,
18 unlike other witnesses, entitled to give their opinion
19 about things that they have observed.

20 However, expert witnesses share this with all other
21 witnesses. And what am I saying? And that is that you
22 are the jury -- you, the jury, are the sole judges of
23 their credibility as well. You may accept their
24 testimony. You may reject it. Or you can give it
25 whatever weight you think it deserves. You're not

1 required to accept even the uncontradicted opinion of an
2 expert.

3 Now, there are certain principles that apply in a
4 criminal case. And I'm going to go over those with you
5 again. And I probably said it to you at the outset, but
6 I'll go over it again. The first is the mere fact that a
7 Defendant is indicted -- and these two documents that I
8 made reference to at the outset are considered
9 indictments.

10 The mere fact that this -- a Defendant is indicted
11 and charged does not constitute evidence of any kind. The
12 fact that a person has been indicted does not even create
13 a suspicion of guilt. I explained to you that these
14 indictments are simply the formal manner in which this
15 case begins. And, certainly, that does not constitute any
16 evidence against this Defendant.

17 This Defendant has pled not guilty to these two
18 indictments. So the burden is put squarely on the
19 shoulders of the State to prove the Defendant's guilt
20 beyond a reasonable doubt. And he can only be convicted
21 if all 12 of you agree that the State has proven each and
22 every element of the charge beyond a reasonable doubt.

23 This Defendant is presumed innocent. And that
24 presumption of innocence is not some legal technicality.
25 It's a fundamental right that every person enjoys in this

1 country. And it can only be removed if the State
2 convinces you with proof beyond a reasonable doubt as to
3 every element of the offense.

4 So what is reasonable doubt? Reasonable doubt is
5 defined as the kind of doubt that would cause a
6 reasonable, sincere, honest, and conscientious person to
7 hesitate to act in an important matter in their own
8 affairs. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the Defendant's guilt. The
10 law does not require proof that overcomes every possible
11 doubt.

12 So if, based on your view of the evidence, you are
13 firmly convinced that the Defendant is guilty of the
14 offenses charged, then you must find him guilty. On the
15 other hand, if you think there is a real possibility that
16 he is not guilty, you must give him the benefit of the
17 doubt and find him not guilty.

18 A reasonable doubt may arise from the evidence or
19 lack of evidence. And a Defendant is entitled to every
20 reasonable doubt and that may arise -- that may arise in
21 the -- in the case. And that means that as to the issue
22 of fact that is essential to a finding of guilt, you have
23 some reasonable doubt as to how that issue should be
24 resolved, it is your duty to resolve it in the Defendant's
25 favor.

1 Now, ladies and gentlemen, the fact that a defendant
2 in a criminal trial does not testify -- and in this case
3 the Defendant did not testify -- that is something that
4 you cannot consider in any way in your deliberations, or
5 your consideration of guilt or innocence of the Defendant.
6 The fact that a defendant in a criminal trial does not
7 testify and claims his right to not testify, which is
8 guaranteed by both our state and federal Constitution, is
9 not something that you can even discuss in the jury room.
10 And it would not be in keeping with your oath to consider
11 it, discuss it, or give it any weight whatsoever.

12 A defendant has the Constitutional right to remain
13 silent. And the claiming of this right cannot be
14 considered in any way. You are not -- you are not to draw
15 any conclusions whatsoever from the fact that the
16 Defendant did not testify in this case. The burden of the
17 proof -- burden of proof still remains entirely on the
18 shoulders of the State. And the Defense has no obligation
19 or requirement to prove himself innocent or not guilty.

20 Now, in order to establish criminal liability, the
21 State must prove criminal intent. And criminal intent is
22 a -- is a matter that must be determined by you from the
23 facts. And there is no way to prove criminal intent to a
24 mathematical certainty.

25 So the law says that criminal intent may be inferred

1 from the circumstances. It is not necessary to establish
2 intent by direct evidence. Intent may be established by
3 circumstantial evidence taking into account the
4 circumstances that are at issue. Criminal intent is a
5 mental state of conscious wrongdoing. It is up to you to
6 determine what the Defendant intended to do based on the
7 circumstances shown to have existed.

8 Now, let's go to the offenses upon which this
9 Defendant is charged. First of all, there will be some
10 discussion of domestic violence. But I'm going to read to
11 you the definition of great bodily injury as set forth in
12 Section 16-25-10 of our South Carolina Code of Laws.

13 Great bodily injury is defined and means bodily injury
14 which causes a substantial risk of death, or which causes
15 serious permanent disfigurement, or protracted loss of
16 impairment of the function of a bodily member or organ.

17 Now, this Defendant is charged under an indictment
18 with domestic violence of a high and aggravated nature.
19 And this is set forth in Section 16-25-65 of our South
20 Carolina Code of Laws. And that offense -- and I'll read
21 the law as it applies to that offense. A person who
22 violates Section 16-25-20 Subsection A is guilty of the
23 offense of domestic violence of a high and aggravated
24 nature when one of the following occurs, the person,
25 number one, commits the offense under circumstances

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

OLANDIO R. WORKMAN,

APPELLANT

APPELLATE CASE NO. 2018-001769

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEY FOR APPELLANT

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North Street
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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1 manifesting extreme indifference to the value of human
2 life and great bodily injury to the victim results.

3 Number two, the person commits the offense with or
4 without an accompanying battery and under circumstance
5 manifesting extreme indifference to the value of human
6 life, and would reasonably cause a person to fear imminent
7 great bodily injury or death.

8 Circumstances manifesting extreme indifference to the
9 value of human life include, but are not limited to the
10 following, one, using a deadly weapon. Two, knowingly and
11 intentionally impeding the normal breathing or circulation
12 of the blood of a household member by applying pressure to
13 the throat or neck, or by obstructing the nose or mouth of
14 a household member and, thereby, causing stupor or loss or
15 consciousness.

16 Three, committing the offense in the presence of a
17 minor, committing the offense during the commission of a
18 robbery, burglary, kidnapping, using physical force
19 against another to block that person's access to any cell
20 phone, telephone, or electronic communication device.

21 That is the law as it applies to domestic violence of a
22 high and aggravated nature as set forth in the statute
23 that I just outlined.

24 I'm, also, going to give you the law on what is a
25 lesser -- what is called a lesser included offense of

1 criminal domestic violence of a high and aggravated
2 nature, and that would be criminal domestic violence first
3 degree.

4 The law states it is unlawful to cause physical --
5 number one, to cause physical harm or injury to a person's
6 household member. Two -- and keep in mind this is a
7 lesser included offense of criminal domestic violence of a
8 high and aggravated nature. Two, offer or attempt to
9 cause physical harm or injury to a person's own household
10 member with the apparent present ability under the
11 circumstances reasonably creating fear of imminent peril.

12 B, except as otherwise provided in this section, a
13 person commits the offense of domestic violence in the
14 first degree if the person violates the provisions of
15 Subsection A that I just said and great -- number one,
16 great bodily injury to the person's own household member
17 results or the act is accomplished by means likely to
18 result in great bodily injury to the person's own
19 household member.

20 Two, the person violates the protection order and in
21 the process of violating the order commits domestic
22 violence in the second degree. Three, has two or more
23 prior convictions of domestic violence within 10 years of
24 the current offense. Four, the person uses a firearm in
25 any manner while violating the provisions of Subsection A.

1 Five, in the process of committing domestic -- the
2 violence in the second degree, one of the following, also,
3 results, A, the offense is committed in the presence of or
4 while being perceived by a minor. B, the offense is
5 committed against a person known, or reasonably known,
6 or -- or should have been known by the Defendant to be
7 pregnant.

8 And, C, the offense is committed during the
9 commission of a robbery, burglary, kidnapping, or theft.
10 D, the offense is committed by impeding the victim's
11 breathing or air flow. E, the offense is committed using
12 physical force or threatened use of force against another
13 to block that person's access to any cell phone,
14 telephone, or electronic communication device with the
15 purpose of preventing, obstructing, or interfering with
16 the report of a criminal offense, bodily injury, or
17 property damage, a request for an ambulance or emergency
18 medical assistance to any law enforcement officer.

19 Domestic violence in the first degree here, as I said
20 earlier, is a lesser included offense of domestic violence
21 of a high and aggravated nature as defined in the previous
22 code section, the code section that I outlined.

23 Now, this Defendant is, also, charged with
24 kidnapping. And that code section -- applicable code
25 section is found in 16-3-910 of our South Carolina Code of

1 Laws.

2 The law as it applies to kidnapping: Whoever shall
3 lawfully seize, confine, inveigle, decoy, kidnap, abduct,
4 or carry away any other person by any means whatsoever
5 without the authority of law, except when a minor is
6 seized or taken by his parent is guilty of kidnapping.
7 That is the applicable law as it relates to the offense of
8 kidnapping upon which this Defendant is charged and upon
9 which this indictment speaks to.

10 Lastly, the other offense upon which this Defendant
11 is charged is possession of a weapon during the commission
12 of a violent crime. This is set forth in Section
13 16-23-490 of our South Carolina Code of Laws. And the law
14 as it relates to that offense reads as follows: If a
15 person is in possession of a firearm or visibly displays
16 what appears to be a firearm, or visibly displays a knife
17 during the commission of a violent crime and is convicted
18 of committing or attempting to commit a violent crime, he
19 must be in prison -- he must be imprisoned. That is the
20 law as it relates to possession of a weapon during the
21 commission of a violent crime.

22 Now, those are the principles of the substantive law
23 that's applicable in this case. Now, let me -- let me
24 just give you a few closing instructions on your
25 deliberations.

1 I -- I -- I have prepared a verdict form that you
2 will take back to you -- in your -- in your jury room. I
3 am going to read to you this verdict form. And keep in
4 mind that the verdict form has the word "guilty" and "not
5 guilty" as it relates to each offense. Do not pay any
6 attention to the order upon which it is listed, because it
7 had to be listed in some order.

8 As to indictment 2016-GS-23-10112, which charges the
9 Defendant with domestic violence of a high and aggravated
10 nature, the verdict form states, We, the jury, find the
11 Defendant guilty or not guilty. If your response is not
12 guilty, then you are to proceed to question two. You may
13 then answer questions two through four. If your answer is
14 guilty, proceed to question three and do not answer
15 question two. You may then answer question three through
16 four.

17 Now, I know that when I'm reading this to you, you --
18 it's sort of -- there's a blur until you, actually, get
19 this document in front of you. The jury Foreman is going
20 to -- the -- this document will be given to him.

21 Now, as to the other -- second page as to indictment
22 2016-GS-23-10113, which charges the Defendant with
23 kidnapping, we, the jury, find the Defendant guilty or not
24 guilty.

25 Four, as to indictment 2016-GS-23-10113, which

1 charges the Defendant with possession of a weapon during
2 the commission of a violent crime, we, the jury, find the
3 Defendant guilty or not guilty.

4 And I want to make sure that I read this correctly.
5 I'm going to go back to the first page. It, also,
6 indicates as to indictment 2016-GS-23-10112, which
7 includes the charge of domestic violence first degree, we
8 find the Defendant guilty or not guilty. And this is the
9 verdict form that will be given to you when you begin your
10 deliberations.

11 Now, here again, your job as a juror in this case is
12 not to be a partisan or an advocate for either the State
13 or the Defendant. Your job as a juror in this case -- you
14 were chosen because you indicated that you could be fair
15 to both sides and you could decide this case based on the
16 facts and not based upon any bias, any prejudice, or any
17 preconceived ideas.

18 So you're the judges of the facts. I'm the judge of
19 the law. And your sole interest is to determine what the
20 facts are. Take the law as I give it to you and apply
21 those facts to your -- using your life experiences, and
22 your common sense, and your sense of logic and reason.
23 And once you do that, you'll be able to reach a verdict in
24 this case.

25 Now, each of you have a vote in this case. And your

1 vote is exactly that, it's your vote and no one else's.
2 It's your vote. So don't be afraid to change your mind if
3 you're of different minds and discussion that you have --
4 and discussion that you have persuades you that you should
5 change your mind. Don't change your mind simply to get
6 the case over with or to reach a unanimous verdict
7 because, obviously, this case is very important to both
8 sides.

9 The record is closed now in this matter. And there's
10 not going to be any more witnesses. You've heard all the
11 witnesses that you're going to hear. You've looked at all
12 the exhibits that you're going to see. Don't start
13 talking about the case until you get the verdict form.
14 And then the bailiff will, also, bring to you the exhibits
15 as well.

16 So I am going to send you back to your jury room.
17 And do not begin deliberating. Do not talk about the case
18 to each other. Do not have any discussions whatsoever
19 until you get specific instructions from me, which I will
20 deliver through the bailiff. All right.

21 And Juror #12, all right, sir --

22 Let -- take the jury out and then send him back.

23 Before you bring back #12, hold on a second. I want
24 to hear from these lawyers.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 4:16 p.m.)

3 THE COURT: Any exceptions or corrections to the
4 charge?

5 MR. EPPES: Your Honor, I renew my objection to the
6 failure to read or somehow explain domestic violence
7 second degree as it applies in the charge for domestic
8 violence first degree, as well as the definition of -- I
9 can't remember the word. It was not moderate assault. It
10 was --

11 THE COURT: Moderation?

12 MR. EPPES: It was something --

13 THE COURT: Moderate bodily injury?

14 MR. EPPES: Moderate bodily injury, yes, sir.

15 THE COURT: All right. Your -- your objection is
16 noted and it's denied.

17 MR. EPPES: Thank you.

18 MR. POLSINELLO: No objections from the State, Your
19 Honor.

20 THE COURT: Any objections as to the charge from the
21 Defense?

22 MR. EPPES: I have no other objections for the
23 charge -- as to the charge, Your Honor.

24 But as to the jury itself, I would remind the Court
25 that one of the jurors said she needed to leave by

1 lunchtime tomorrow. I thought we might be done a lot
2 earlier than this today. And I have a concern that she
3 will somehow be pressured or anxious about that. And I
4 would ask that the Court consider excusing her and putting
5 in the last alternate.

6 MR. POLSINELLO: I think that's a big assumption, a
7 big leap right there. We very well could have a verdict.

8 THE COURT: I think the -- I think the juror that
9 you're -- that you're referencing, Mr. Eppes, I think this
10 is the young lady who had the beauty salon?

11 MR. EPPES: Yes, sir.

12 THE COURT: If I recall correctly, she said she
13 was -- she was okay. She thought that she could handle
14 Thursday. I think she said that.

15 MR. EPPES: I thought she said Thursday at lunchtime,
16 Your Honor.

17 THE COURT: Well, I'm not going to -- I'm not going
18 to -- she hasn't voiced any -- any further concerns. So
19 I'm not going to -- unless she -- unless she voices some
20 concerns -- but she hasn't said anything. So I'm assuming
21 she's worked it out.

22 MR. EPPES: Thank you, Your Honor.

23 THE COURT: Could you get -- bring #12 back out?

24 THE BAILIFF: The alternate?

25 THE COURT: The alternate.

1 (WHEREUPON, Juror #12, Nicholas Banks, entered the
2 courtroom.)

3 THE COURT: All right. Sir, I -- I'm going to --
4 Let's go off the record, Madam Court Reporter for a
5 second.

6 (Pause.)

7 THE COURT: Now, let's go back on the record.

8 Sir, I'm going to excuse you now. But, here -- here
9 again, I've been instructed that you've got a number.
10 Madam Clerk, on the back of his badge?

11 THE CLERK: On the back of his badge, yes.

12 THE COURT: That you've got to call after 6:00; right?

13 THE CLERK: After 6:00.

14 THE COURT: After 6:00 to get further instructions.
15 So you're not quite off the hook yet. So just call after
16 6:00 and get further instructions.

17 But as it relates to this trial, we appreciate your
18 service. We appreciate you sitting in here. And come
19 down to USC one time and visit them.

20 All right. Good luck to you.

21 JUROR #12, NICHOLAS BANKS: Thank you.

22 THE COURT: Take care of yourself.

23 JUROR #12, NICHOLAS BANKS: Thank you, Your Honor.

24 (WHEREUPON, Juror #12, Nicholas Banks, exited the
25 courtroom.)

1 THE COURT: Okay. Anything else before I instruct
2 the bailiff to take the verdict form and the -- let me ask
3 you this. How do -- I read the -- Judge -- the -- the
4 order on firearms, and that kind of stuff in terms of
5 jury -- let me get that thing -- in terms of how the jury
6 would handle it if they wanted to see it. And it had some
7 specific language in there about if they wanted to see --
8 let me make sure I get this right. You can't put the
9 weapon and the -- and the bullets all back at the same
10 time.

11 Am I on the right track?

12 THE CLERK: Yes, sir. You are.

13 THE COURT: So -- so -- and I'm sure y'all know that.
14 I'm just not telling you -- y'all have done this all --
15 everybody has done this a hundred times. So y'all know
16 that. So I'm not telling you what you don't know.

17 But -- but right now -- what exhibits would go back
18 right now? And I'm just asking that for my own
19 edification just to -- just -- I know the verdict form
20 goes back and any -- what exhibits -- do you take any
21 exhibits back now? How do you -- what's --

22 THE CLERK: Yes.

23 THE COURT: You take them all back, except what?

24 THE CLERK: If -- if it's a Court's Exhibit, it stays
25 out here.

1 THE COURT: Okay.

2 THE CLERK: Like, if they're going to take the guns
3 and everything, the bullets have to stay here.

4 THE COURT: Okay.

5 THE CLERK: If they want to see the bullets, then
6 we'll swap.

7 THE COURT: All right. But I guess my question is do
8 we -- do you -- and this is a question for a newbie since
9 I'm a newbie. Is it -- is it -- do you wait until they
10 ask for the -- to see the gun, or do you take them all
11 back now?

12 THE CLERK: Take it all back.

13 THE COURT: All right. Y'all do what you do.

14 THE CLERK: Okay.

15 THE COURT: Y'all have done this before.

16 MR. POLSINELLO: Your Honor, may I --

17 THE COURT: Yes, anything else, Mr. Poniselli?

18 MR. POLSINELLO: Regardless of the outcome of the
19 verdict in trial, as in every type of case like this, the
20 State always wants to make sure it protects, you know, the
21 victim and the victim's sense of information. It's my
22 understanding -- you know, throughout -- there's a lot of
23 material in here that may reference to where the victim
24 currently is, her current whereabouts. And, obviously,
25 she has a right for that to be redacted and protected.

1 And I'm -- I'm talking about for, you know, future --
2 future court actions, if you will.

3 So would -- would Your Honor be willing -- if I were
4 to type up an order directing -- Your Honor would be
5 directing any and all information about the victim's
6 current whereabouts as it relates to this case must be
7 redacted or must -- I would -- obviously, I would word it
8 properly, but not get out in future proceedings.

9 THE COURT: Now, I've signed a lot of those orders
10 over there at the other tribunal. And I -- and I don't
11 have a problem signing it over here, unless you've got an
12 objection, Mr. Eppes.

13 MR. EPPES: Your Honor, no. I know of one instance
14 where there's a location mentioned and, frankly, it's
15 wrong, so.

16 THE COURT: I don't have a problem signing that
17 order.

18 MR. POLSINELLO: But on the audio tape, Your Honor --
19 the unredacted audio, the -- multiple times, the location
20 is -- even in one of the reports -- I know Frank said the
21 location's wrong. But just -- just to err on the side of
22 caution.

23 THE COURT: All right.

24 MR. EPPES: Your Honor, I would ask -- just ask
25 Mr. Polsinello in -- in the order, it is my understanding

1 from the South Carolina Supreme Court that it is
2 Mr. Workman's file in its entirety. It belongs to him.

3 So if there's going to be a court order about
4 something that's redacted from a tape or an audio, I would
5 request that the order state that redacted with the
6 agreement of Defense Counsel, or something like that so
7 that I can listen to it and make sure I agree with the
8 redactions. And then to the extent Mr. Workman or his
9 appellate or post-conviction relief counsel gets the
10 order, they'll be aware of it.

11 MR. POLSINELLO: I just want to make sure I'm clear,
12 Frank. So the order will reflect that Defense -- Defense
13 Counsel will be with your client and --

14 MR. EPPES: No. If you'll -- if you have a way you
15 want a particular tape to be kept, then you need to redact
16 it and give it to me. So when I send it to him, that's
17 the way it will be.

18 MR. POLSINELLO: It's already been redacted.

19 MR. EPPES: I've got a copy that ain't redacted.
20 Draft an order and we'll work it out.

21 THE COURT: Do y'all want to work that out and just
22 get me something --

23 MR. POLSINELLO: Yes.

24 MR. EPPES: Judge, thank you very much.

25 THE COURT: Not a problem.

1 MR. EPPES: Judge, do you have any thoughts about
2 when you might break for the night?

3 THE COURT: It's -- I'll tell you what, it's 4:25.
4 Why don't we just start deliberations in the morning. Is
5 anybody opposed to that?

6 MR. EPPES: No, sir.

7 MR. POLSINELLO: I think that's the right call, Your
8 Honor.

9 THE COURT: Yeah. Let's just let them -- let them
10 rest. Just tell them we're going to break for the night.
11 And don't send anything back yet.

12 THE BAILIFF: Right. What time?

13 THE COURT: Let's -- let's say 9:30. Just tell them
14 we're going to -- let me bring them back in and tell them.

15 THE BAILIFF: Bring them back in?

16 THE COURT: Yeah. I'm going to bring them back in
17 and tell them that.

18 (WHEREUPON, the jury came into open court at
19 approximately 4:25 p.m.)

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, I know it's been a long day. And we've -- we've
22 done a lot -- covered a lot of stuff. But what I'm going
23 to do is I'm going to let you go home. I'm going to let
24 you go home tonight, get some rest. And we're going to
25 start deliberations tomorrow morning.

1 So what I'm asking you to do is to report back at
2 9:30 to the same room that you were reporting to earlier.
3 Please, ma'am, more importantly than anything else,
4 because you've heard all the case and you've heard
5 everything that's going to ever be said by me, or the
6 lawyers, and everybody.

7 You've got the case in your head. But even though
8 you have it in your head, you cannot talk to anybody about
9 the case. You can't go home and talk to your spouse, your
10 children, or anybody about anything in this case. You're
11 going to have to act like you never heard anything about
12 this case. You're going to have to act like you've never
13 been up here. I know it's hard. But you're going to have
14 to act like you've never been up here.

15 And then report tomorrow morning at 9:30. At which
16 time, I'll give you some instructions on deliberations.
17 But I'm going to let you go for the night so you can
18 have -- rest up. Okay.

19 MR. EPPES: Your Honor --

20 THE COURT: Yes.

21 MR. EPPES: -- if I may.

22 THE COURT: Yes, sir.

23 MR. EPPES: I don't think anything is going to be
24 there, but would you just ask them for tonight and
25 tomorrow not to read the paper or watch the news.

1 THE COURT: All right.

2 MR. EPPES: Because I just -- I've seen that happen.

3 THE COURT: All right. Don't watch the news tonight.
4 There are a lot of other channels that don't have the news
5 on it, Disney, Discovery channel, those. But don't --
6 don't turn to the news channel. And don't look for a
7 paper, please, ma'am, please, sir. Do that for me.

8 All right. We'll see you in the morning at 9:30.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 4:27 p.m.)

11 THE COURT: Okay. Gentleman, anything else before we
12 retire for the evening?

13 MR. POLSINELLO: Nothing from the State.

14 MR. EPPES: Nothing from the Defense, Your Honor.

15 THE COURT: All right. Y'all have a good evening.
16 See you tomorrow morning at 9:30.

17 (WHEREUPON, the proceedings were concluded at
18 approximately 4:28 p.m., to be reconvened on
19 Thursday, September 20, 2018.)
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THURSDAY, SEPTEMBER 20, 2018

THE COURT: All right. Anything we need to cover before I bring the jury out?

The only I thing I'm going to do is bring them out and send them back, along with the exhibits and the verdict form.

Anything from the State?

MR. POLSINELLO: Nothing from the State, Your Honor.

THE COURT: Mr. Eppes?

MR. EPPES: Nothing from the Defense, Your Honor.

THE COURT: All right. Bring the jury out.

(WHEREUPON, the jury came into open court at approximately 9:35 a.m.)

THE COURT: All right. Good morning.

Mr. Foreman, and ladies and gentlemen of the jury, yesterday, I -- we ended early because I wanted you to go home and get some rest. And I hope that you are well rested. And -- and we're going to begin deliberations in this case.

And I hope that you didn't talk to anybody about the case from yesterday, you didn't talk to each other or anybody. I'm sure you followed my instructions. I'm going to send you back in the jury room in just a minute. And the bailiff as well will bring the exhibits and the verdict form back there. And I went over the verdict form

1 with you.

2 So anything before I send the jury back, Mr. Eppes?

3 MR. EPPES: Your Honor --

4 THE COURT: Or Mr. Polsinello?

5 MR. EPPES: -- I just ask that you confirm that
6 pursuant to your instructions nobody watched the news last
7 night.

8 THE COURT: All right. I just asked you a minute ago
9 if anybody talked -- did you talk to each other. But did
10 anybody turn on the television and watch anything other
11 than the Disney channel?

12 (WHEREUPON, all of the jurors indicated in the
13 negative.)

14 MR. EPPES: Thank you, Your Honor.

15 THE COURT: Okay. Take the jury back.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 9:36 a.m.)

18 THE COURT: All right. And -- and it's my
19 understanding that -- Madam Clerk, that the ammunition,
20 just to be on the safe side, was counted?

21 THE CLERK: Yes, sir.

22 THE COURT: And I think you have two bags of
23 ammunition.

24 THE CLERK: Three.

25 THE COURT: Three bags?

1 THE CLERK: Three bags, yes, sir.

2 THE COURT: And all three bags were counted?

3 THE CLERK: Yes, sir.

4 THE COURT: And all -- everything that's in the bags
5 was in here previously; right?

6 THE CLERK: Yes, sir.

7 THE COURT: All right.

8 MR. EPPES: Your Honor --

9 THE COURT: Anything, Mr. Eppes?

10 MR. EPPES: Not about the deliberations.

11 THE COURT: Okay.

12 MR. EPPES: But I have three issues. First, I'll
13 just note for the Court that I cut on the news last night
14 and there was a shooting at a magistrate's court involving
15 a domestic violence situation. So I felt really glad that
16 we'd given that instruction -- that you'd given that
17 instruction.

18 Secondly, we have a disk that includes the items that
19 we played for cross-examination in the case that I'd like
20 to include --

21 Is it two disks?

22 MS. MADDY VARIN: It's one.

23 MR. EPPES: Did you make copies?

24 MS. MADDY VARIN: Yeah.

25 MR. EPPES: I made -- we made three copies. So I

1 made an exact copy of it for Mr. Polsinello so it'd be in
2 his files. And these are only the tapes that we played
3 during cross-examination.

4 THE COURT: All right.

5 MR. EPPES: And I just want them marked as a Court's
6 Exhibit for purposes of the record.

7 THE COURT: All right. Hold on. Mr. Polsinello has
8 got that look on his face like he -- there's an objection.

9 No objection, Mr. --

10 MR. POLSINELLO: No objection, Your Honor.

11 THE COURT: All right. We'll be at --

12 Make it a Court's Exhibit, Madam Court Reporter.

13 (WHEREUPON, Court's Exhibit No. 2 was marked for
14 identification and admitted into evidence.)

15 MR. EPPES: And, finally, Your Honor, Mr. Polsinello
16 and I spoke about this last night. And while we have no
17 idea when the jury is going to come back or what they're
18 going to come back with, we've eluded several times to
19 Dr. Maddox's six-page report -- I think it's six pages --
20 six-page report about Mr. Workman that I would be
21 submitting as mitigation in this matter.

22 And since I don't think there's any problem with the
23 Court reading it, regardless of the verdict, I'd like to
24 go ahead and hand it up to you so that should you wish to
25 do it, you'd be in a position to review it prior to the

1 juries verdict so it would help streamline our process.
2 It's up to you.

3 THE COURT: Well, I prefer Mr. Eppes not to read it
4 at this point.

5 MR. EPPES: Yes, sir.

6 THE COURT: But you can give it to me at the
7 appropriate time.

8 MR. EPPES: Yes, sir.

9 THE COURT: And I'll -- I'll read it then.
10 Anything further?

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay. We'll be at ease.

13 (WHEREUPON, the proceedings were recessed at
14 approximately 9:39 a.m.)

15 QUESTIONS FROM THE JURY

16 THE COURT: The jury has two questions. And I'll
17 read them into the record. The first question is, How did
18 she flee from the state, and in what vehicle? And it's
19 signed by the Foreman.

20 I think that's a factual determination that they have
21 to make. I don't think that that's a question that's on
22 the law that we need to address.

23 Is that agreed?

24 MR. POLSINELLO: Yes, Your Honor.

25 MR. EPPES: Yes, Your Honor.

1 THE COURT: Okay. Next question, Domestic violence
2 of a high and aggravated nature versus domestic violence
3 first degree, difference?

4 I'll be more than happy to -- to read those -- that
5 charge again as to both of them.

6 Or how do you -- what's your -- what's your position
7 regarding that?

8 MR. POLSINELLO: Your Honor, I think it's absolutely
9 necessary to, I guess, reiterate both charges and the
10 differences. I'm just wondering. Visually, it does help
11 to see the statute.

12 THE COURT: Okay. So are you thinking about maybe
13 putting it up?

14 MR. POLSINELLO: In this particular case, because
15 that DV first, there's so many ways to get to it, it's the
16 same thing with DVHAN.

17 What do you think, Frank?

18 MR. EPPES: I don't like juries to have copies of the
19 statute in the jury room. If you wanted to put them up
20 for them to read along on the screen while you read it,
21 I'm happy with that. But I wouldn't want a copy of that
22 to go back to the jury absent the entire charge.

23 THE COURT: So it's agreed to put both of them up and
24 just re-read it -- read it again to them.

25 Is that --

1 MR. EPPES: Yes, sir. But, like I say, I -- I have
2 no objection --

3 THE COURT: Let's put it on the screen.

4 MR. EPPES: -- if you wanted to put it on the screen
5 for them to look at it, too. I have no objection to that.

6 THE COURT: All right. Let's do that.

7 MR. EPPES: Judge, again, I would like to renew my
8 request that some explanation be given to domestic
9 violence second degree as part of this charge.

10 THE COURT: All right. And I'll deny your request.
11 It's noted for the record.

12 Okay. You've got -- so we're putting up ABHAN and
13 then we're putting up first?

14 MR. POLSINELLO: DVHAN.

15 THE COURT: DVHAN.

16 MR. POLSINELLO: Would you like me to put it up, Your
17 Honor, or --

18 THE COURT: On the screen?

19 MR. POLSINELLO: Yeah.

20 THE COURT: Yeah. Let me just take a look at what
21 you're putting up.

22 MR. POLSINELLO: This is the first -- the first
23 charge. And this is the explanation of manifesting
24 extreme indifferences as to the value of human life under
25 HAN. So these go together.

1 THE COURT: All right. Do you think you need to mark
2 them when you put them on the screen so they'll know which
3 one is which?

4 MR. EPPES: Yes.

5 THE COURT: I mean, just write something on the top.

6 MR. POLSINELLO: Okay.

7 THE COURT: As to which one is which.

8 MR. POLSINELLO: Okay.

9 THE COURT: You know, so they'll know what we're
10 talking about. Maybe -- you can put initials. That might
11 be okay.

12 (Pause.)

13 THE COURT: Are we ready from the State?

14 MR. POLSINELLO: Yes, sir.

15 MR. EPPES: Yes, sir, Your Honor.

16 THE COURT: You've seen both of them?

17 MR. EPPES: I've seen both of them. I think we're
18 right.

19 THE COURT: All right. Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:17 a.m.)

22 MR. EPPES: Your Honor, may we approach?

23 THE COURT: Yes.

24 MR. EPPES: I forgot one thing. I'm sorry.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: All right. Ladies and gentlemen, it's my
2 understanding you have two questions that were submitted
3 to the bailiff to me. And the first question that you had
4 was, How did she flee from the state, and in what vehicle?
5 That's a factual determination that -- that I can't
6 answer. And the -- the testimony has been presented.

7 You have to use your common sense. And you have to
8 make a -- make that factual determination because you're
9 the judge of the facts. That's not a question of the law
10 that I'm -- that I'm -- that I can address. So you'll
11 have to make that determination based upon the testimony
12 and evidence that has been presented to you.

13 Okay. Now, as it relates to your second question,
14 Domestic violence of a high and aggravated nature versus
15 domestic first degree and the difference. What I'm going
16 to do is I'm going to -- or what we have done is put both
17 of those statutes back up on the screen. And I'm going to
18 read it to you again. And you take a look at it.

19 But before you do that, I'm going to define to you
20 what is great bodily injury. And statute 16-25-10 is not
21 on there, but listen to me just a second. Great bodily
22 injury means bodily injury which causes a substantial risk
23 of death, or which causes serious permanent disfigurement
24 or protracted loss or impairment of the function of a
25 bodily member or organ. That is the definition of great

1 bodily injury.

2 Now, one of the indictments charges the Defendant
3 with domestic violence of a high and aggravated nature.
4 And that's what those initials stand for, domestic
5 violence of a high and aggravated nature.

6 The definition as set forth in the statute -- and I'm
7 going to read it because I want you to follow with me. A,
8 a person who violates Section 16-25-20 Subsection A is
9 guilty of the offense of domestic violence of a high and
10 aggravated nature when one of the following occurs: The
11 person either commits the offense under circumstances
12 manifesting extreme indifference to the value of human
13 life and great bodily injury to the victim results. I'll
14 read it again. Commits the offense under circumstances
15 manifesting extreme indifference to the value of human
16 life and great bodily injury to the victim occurs.

17 Two, commits the offense with or without an
18 accompanying battery and under circumstances manifesting
19 extreme indifference to the value of human life and would
20 reasonably cause a person to fear imminent great bodily
21 injury or death.

22 Or, three, violates a protection order and in the
23 process of violating the order commits domestic violence
24 in the first degree. We're still on domestic violence
25 high and aggravated nature.

1 D, circumstances manifesting extreme indifference to
2 the value of human life, but are not limited to the
3 following, one, using a deadly weapon. Two, knowing and
4 intentionally impeding the normal breathing or circulation
5 of the blood of a household member by applying pressure to
6 the throat or neck, or by obstructing the nose or mouth of
7 a household member and, thereby, causing stupor or loss of
8 consciousness for any period of time.

9 Three, committing the offense in the presence of a
10 minor. Four, I will read that, but am not saying it's
11 applicable in this case. Committing the offense against a
12 person he knew or should have known to be pregnant. Five,
13 committing the offense during the commission of a robbery,
14 burglary, kidnapping, or theft.

15 Six, using physical force against another to block
16 that person's access to any cell phone, telephone, or
17 electronic communication device with the purpose of
18 preventing, obstructing, or interfering with, A, the
19 report of any criminal offense, bodily injury, or property
20 damage to a law enforcement agency or, B, a request for an
21 ambulance or emergency medical assistance to any law
22 enforcement agency or emergency medical provider.

23 This is domestic violence in the first degree, which
24 is a lesser included offense of domestic violence of a
25 high and aggravated nature. This particular statute

1 states, It is unlawful to cause physical harm or injury to
2 a person's own household member or, two, offer or attempt
3 to cause physical harm or injury to a person's own
4 household member with the apparent present ability under
5 circumstances reasonably creating fear of imminent peril.

6 B, except as otherwise provided in this section, a
7 person commits the offense of domestic violence in the
8 first degree if the person violates the provisions of
9 Subsection A, which was above, and, number one, great
10 bodily injury to the person's own household member results
11 or the act is accomplished by means likely to result in
12 great bodily injury to the person's own household member.

13 Two, the person violates a protection order and in
14 the process of violating the order commits domestic
15 violence in the second degree. Three, has two or more
16 prior convictions of domestic violence within 10 years of
17 the current offense.

18 Four, the person uses a firearm in any manner while
19 violating the provisions of Subsection A above. Or, five,
20 is in the process of committing domestic violence in the
21 second degree and one of the following, also, results.
22 The offense is committed in the presence of a minor or
23 while being perceived by a minor. B, the offense is
24 committed against a person known or who reasonably should
25 have known by the offender to be pregnant. C, the offense

1 is committed during the commission of a robbery, burglary,
2 kidnapping, or theft. D, the offense is committed by
3 impeding the victim's breathing or air flow.

4 Or E, the offense is committed using physical force
5 or the threatened use of force against another to block
6 that person's access to any cell phone, telephone, or
7 electronic communication device with the purpose of
8 preventing, obstructing, or interfering with, one, the
9 report of any criminal offense, bodily injury, or property
10 damage to a law enforcement agency or, two, a request for
11 an ambulance or emergency medical assistance to any law
12 enforcement agency or emergency medical provider.

13 Domestic violence in the first degree is a lesser
14 included offense of domestic violence of a high and
15 aggravated nature as defined in the previous code section
16 I outlined, 16-25-65.

17 All right. Ladies and gentlemen of the jury, that
18 is -- I -- I reviewed again with you my charge as it
19 relates to three things. One, I defined great bodily
20 injury to you. And I, also, went over the statute as it
21 relates to domestic violence of a high and aggravated
22 nature. I went over that with you.

23 Domestic violence in the first degree is a lesser
24 included offense of domestic violence of a high and
25 aggravated nature. And we outlined what the requirements

1 for -- that would have to be met for the implementation of
2 that particular statute.

3 So I hope that that assists you in some manner. And
4 I want you, at this time, to continue in your
5 deliberations.

6 Okay. Thank you, ma'am. Thank you, sir.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 10:26 a.m.)

9 THE COURT: Counsel, I'm going to -- I'm going to get
10 both of these notes marked by the court reporter. Do
11 y'all need to see them?

12 MR. EPPES: No, sir, Your Honor.

13 MR. POLSINELLO: No need to see them, Your Honor.

14 MR. EPPES: Your Honor, continuing to beat the dead
15 horse. I need to renew my objection as to not putting in
16 the definition of moderate bodily injury or domestic
17 violence second in the charge for domestic violence first
18 degree.

19 THE COURT: And the objection is noted. It's denied.

20 MR. EPPES: Thank you, Your Honor.

21 THE COURT: All right. We'll stand at ease.

22 (WHEREUPON, Court's Exhibit Nos. 3 and 4 were marked
23 for identification and admitted into evidence.)

24 (WHEREUPON, the proceedings were recessed at
25 approximately 10:28 a.m.)

1 THE COURT: All right. The jury has another
2 question. And I'll just read it to you. And then I'll
3 tell you what I think. It says, Can we have a copy of the
4 laws?

5 Now, before you respond to that, let me just tell you
6 what I'm -- I am assuming that they've read this. They've
7 looked at it. All right. And we lawyers, we've been to
8 these law schools and we see all this stuff all the time.
9 And as a matter of fact, we talk to each other using the
10 law, because that's what we've been around for three
11 years. I mean, we even say, hi, lawyer, and all those
12 kinds of things. We use these terms.

13 And sometimes, we forget that the average person
14 don't see these terms on a regular basis as we see them.
15 And, for example, I think in the statute the word "stupor"
16 is used. Well, the only -- people off the street you
17 could talk to and say what does stupor mean? You'd
18 probably get somebody that says, does that mean -- that
19 might be one of those questions where somebody says, is
20 that synonymous with stupid. I don't know. I'm just
21 being real. I'm just being real with you. I'm just being
22 real. You've just got to be real in these types of cases.
23 You've got to be real.

24 So you've got a panel back there who I -- I can come
25 back and put -- you can come back and put that that thing

1 on there six or seven times. And, I mean, we lawyers
2 who've been to law school, how many times have we sat in
3 a -- in a law school class and the professor went over the
4 rule of perpetuities? And -- and you didn't get it the
5 first time. He put it on the -- he put it on the -- he
6 put it up there three or four times. I left law school
7 three years later and I still didn't know what it meant.

8 MR. EPPES: Judge, I --

9 THE COURT: And I read it a hundred different times.
10 I couldn't tell you what it means today.

11 MR. POLSINELLO: Something about 26 years.

12 THE LAW CLERK: 21 years.

13 MR. POLSINELLO: Okay.

14 THE COURT: So -- so do you see what I'm saying? So,
15 you know, I'm just -- I'm assuming -- you know, and I
16 tried a number of these cases. I tried a bunch of cases.
17 The is not the first time I've seen this question. This
18 is the first time I've seen this question from this side.
19 But I've seen this question from where you guys sit all
20 the time.

21 And my conclusion has been over the years is that the
22 law is written for lawyers to understand. And it's not
23 written a lot of times for lay people to understand. And
24 the people you get on the jury are lay people. And
25 they -- they speak lay -- lay terms. And, sometimes,

1 to -- for the benefit of -- and, you know, it's -- it's
2 really for the benefit of both sides that, at least, you
3 get a jury panel as informed as they can be about what the
4 law says as much as they can decipher. So that's my two
5 cents on what I think this means.

6 So I know you, Mr. Eppes, a minute ago said that you
7 are adamantly opposed to putting the copy of statutes back
8 and letting them look at it. And, of course, I just
9 wanted to say what I just said before we -- you know, you
10 comment on this. But I'm thinking this is where this is
11 at.

12 They -- they've looked at this. And then they
13 said -- then it goes into -- you know, it's almost not
14 like a four line thing where it says, you know, you've got
15 a charge on shoplifting. That's pretty straightforward.
16 I mean, anybody could look at that and see what the deal
17 is. But when you get into these types of matters, the
18 legislature -- the way it's drafted, a lot of times I read
19 these statutes and I would -- I would hope it was drafted
20 a little bit differently and clearer. But, you know,
21 we've got what we've got.

22 So let me hear from you. What do you want to do?

23 MR. EPPES: Your Honor, I remain -- I'm opposed to
24 it. I just -- I think if they start parsing the statute,
25 it runs every risk that you just spoke about. And it

1 doesn't mean they'll read it correctly. And -- and so --

2 THE COURT: But, you know, it could cut both ways.

3 MR. EPPES: Huh?

4 THE COURT: It can cut both ways.

5 Mr. EPPES: I agree with you a hundred percent.

6 THE COURT: It can -- I mean, I don't think there's
7 an advantage either way. It can cut both ways as to --
8 What's your position, Counsel?

9 MR. POLSINELLO: Your Honor, if it is allowed under
10 the law and if Your Honor believes it's appropriate, the
11 State would support that decision. You -- you're right,
12 shoplifting or anything, it's pretty simple.

13 Now, obviously, we all saw that statute. It's like
14 putting a puzzle together for a lay person, I imagine.

15 THE COURT: I think it's probably within my
16 discretion whether I do it or not from the way -- I mean,
17 from what I've read. I don't think there's anything that
18 prohibits me from doing it.

19 So you're on the record, Mr. Eppes, opposing it
20 vehemently.

21 MR. EPPES: Your Honor, I'm on the record opposing
22 it. And I'm on the record renewing my request that you
23 provide them with the definition of domestic violence
24 second degree and moderate bodily injury.

25 MR. POLSINELLO: Your Honor, just to add for the

1 record. I -- I agree I believe the law allows the
2 discretion to be in Your Honor's judgment. And with this
3 particular statute, the State can see why a lay person on
4 the jury would want to see it again. I -- I just wanted
5 to make sure that that was on the record.

6 THE COURT: Well, this is what I'm -- this is what
7 I'm going to do. I've -- I've been -- I've been around
8 the block a minute or two. I've seen this come up so many
9 times.

10 And back in -- back in the day when I used to try
11 these cases, cases like this, and we had those words that
12 I thought that jurors might not understand, at some point,
13 during the course of my colloquy, for lack of a better
14 word, I would define it -- define it. Because I knew that
15 down the road that there would be an issue, you know. And
16 I'd say something like, well, you know, I know the statute
17 is using this word "stupor." And I'm going to -- and I'd
18 say, let me tell you what stupor is. And I'd just throw
19 it out there and, of course, just to kind of -- because I
20 know that might be an issue down the road. So those
21 difficult words, I used to try to define them to them.

22 I'll tell you what I'm going to do. I'm going to --
23 I think -- and I'm going to make -- make my finding on the
24 record. First of all, I'm going to find that there was a
25 question from the jury regarding the offense of domestic

1 violence high and aggravated nature and domestic violence
2 first degree, and they needed to know the difference. I
3 brought the panel back in. I put the respective
4 definitions on the screen and was very deliberate in going
5 over that with them.

6 I have now received another note from the jury panel
7 indicating, Can we have a copy of the law? What that
8 indicates to this Judge is that even though I put that on
9 the screen, they're not clear as to the differences. And
10 I think when you've got a -- you've got your primary
11 offense and then you've got a lesser included, sometimes,
12 for lack of a better word, those things bleed a little --
13 bleed in -- in your mind if you're not thinking clearly.

14 So I'm going to allow a copy of the -- of the statute
15 as it relates to those two -- I don't -- I'm not going
16 to -- because they didn't ask a question about kidnapping
17 and they did not ask a question about possession of a
18 weapon during -- in the commission of a violent crime.
19 The questions that they previously asked was about the
20 domestic violence.

21 So unless there's an objection --

22 I understand you object, Mr. Eppes, to any of it
23 going back.

24 MR. EPPES: Yes, sir.

25 THE COURT: But I'm assuming your objection now is

1 not to piecemeal.

2 MR. EPPES: My other -- my other request on that
3 would be simply that you include the definition of great
4 bodily injury.

5 THE COURT: Well, since I read that to them, I don't
6 have a problem doing that. So --

7 MR. EPPES: And I'm renewing my previous objection.

8 THE COURT: Yes, sir. And I -- and that's noted for
9 the record.

10 MR. EPPES: And I -- frankly, Judge, while I believe
11 Mr. Polsinello's typed version is right, I think for it to
12 be serious, I would prefer that it was the one printed off
13 the computer from the South Carolina -- I think she --

14 Aren't you getting it from the legislative branch?

15 THE LAW CLERK: Uh-huh.

16 THE COURT: Well, what I'd like to do, Mr. Eppes, is
17 I'd like to give them what they read.

18 MR. EPPES: Okay.

19 THE COURT: What was on the screen.

20 MR. EPPES: Well, I'm -- it's the same so that's --

21 THE COURT: It's the same.

22 MR. EPPES: If that's what you'd like to do, then in
23 that case I have no objection.

24 THE COURT: All right. I'd like to give them the
25 exact documents that were on screen.

1 MR. EPPES: I think we might have more pages.

2 THE BAILIFF: Your Honor, they have two more.

3 THE COURT: Two more questions.

4 All right. While we're here, we've got two more
5 questions.

6 MR. EPPES: Your Honor, before those go back to the
7 jury, could we have a copy of them marked and put in the
8 Court's record?

9 THE COURT: Yes. And I think we marked the previous
10 one, didn't we, Hollie, the previous question?

11 THE COURT REPORTER: Yes, sir.

12 MR. EPPES: No, I mean the charges.

13 THE COURT: Okay.

14 MR. POLSINELLO: I would support that, Your Honor.

15 THE COURT: Well, let me -- let me read -- I think
16 this is going to really tie into -- to why we're doing
17 this, based on the other questions I received. And I'll
18 tell you what they are.

19 The next question that was asked, Explain kidnapping.
20 So the next question -- another question, Can the Judge
21 read what is bodily harm? Can he state that fear of what?

22 So what that tells this Court is we need to send the
23 kidnaping -- your -- your kidnaping charge, as well as
24 the bodily harm. Everybody's agreed to send that back
25 anyway, so.

1 MR. POLSINELLO: Your Honor, I don't have a typed out
2 version of bodily harm.

3 THE COURT: Was it the one -- oh, that's the one I
4 read. What did I do with it?

5 I can get Shedricka to just take out all this other
6 language on here and just have bodily harm on here.

7 Could you do that real quick?

8 THE LAW CLERK: Uh-huh.

9 THE COURT: Just give her a second to do that.

10 So we're -- we're in agreement to send back bodily
11 harm, reference to bodily harm, send back the two charges,
12 ABHAN and -- I mean domestic violence HAN and the CDV
13 first.

14 MR. EPPES: Your Honor --

15 THE COURT: And then -- then based on this other
16 question, is it okay to send back that kidnapping, that
17 little short piece? And you've given that, so.

18 MR. EPPES: Your Honor, to the extent that you're
19 going to send back all of them, I -- I renew my objection.

20 But as far as the kidnapping, the way it's done on
21 Mr. Polsinello's sheet, I have no objection.

22 THE COURT: All right. So --

23 MR. POLSINELLO: Your Honor --

24 THE COURT: Yes.

25 MR. POLSINELLO: Just for clarification for the

1 record. So the jurors, they didn't have a question about
2 possession of a weapon during the commission of a violent
3 crime?

4 THE COURT: No.

5 MR. POLSINELLO: Okay.

6 THE COURT: They didn't -- no -- no question was sent
7 to me addressing that.

8 MR. POLSINELLO: Your Honor, I would support
9 Mr. Eppes recommendation that this kidnapping statute and
10 the DVHAN and the DV first that are being sent back, could
11 we mark those just as exhibits for the record and get
12 copies?

13 THE COURT: Right. And we're going to, also, mark
14 this definition of bodily harm that my law clerk is
15 getting ready to print out in just a minute.

16 MR. POLSINELLO: Thank you, Your Honor.

17 THE COURT: This is the Court's Exhibit -- we're
18 going to make this a Court's Exhibit -- all this a Court's
19 Exhibit and send that back.

20 Is that -- everybody is on the page?

21 MR. EPPES: Yes, sir. But I've had jurors write on
22 stuff. I've had jurors write on stuff like that before.
23 I'd just like to have a copy the way it's being sent back
24 marked as an exhibit.

25 THE COURT: And then send a copy back?

1 MR. EPPES: Well, you can send either one back. I
2 don't care. I just want one here that's exactly what goes
3 back there in case they mark on it, or something, we'll
4 know which one was marked on.

5 THE COURT: Okay. So we'll probably need to make
6 copies of all of them.

7 THE CLERK: Okay.

8 THE COURT: And then we'll keep the -- those
9 ones you -- the originals as Court's Exhibit and then send
10 a copy back.

11 (Pause.)

12 THE COURT: Do y'all want to take a look at it?
13 Just show them that.

14 MR. EPPES: Yeah. That's it.

15 THE COURT: All right. I've got two copies. You
16 don't have to make another copy. I've got an extra copy
17 right here behind you.

18 THE CLERK: Okay.

19 MR. EPPES: Are you just going to send it in, Judge,
20 or are you going to bring them out?

21 THE COURT: Bring them out and tell them what I'm
22 giving them.

23 MR. EPPES: Yes, sir.

24 THE COURT: Hold on a second. Let's get these
25 marked.

1 Okay. Bring the jury back.

2 (WHEREUPON, Court's Exhibit Nos. 5, 6, 7, 8, 9, 10, and
3 11 were marked for identification and admitted
4 into evidence.)

5 (WHEREUPON, the jury came into open court at
6 approximately 11:37 a.m.)

7 THE COURT: Ladies and gentlemen of the jury, I
8 have -- I've been given by the bailiff now three
9 questions. And I've got -- I've got the first question.
10 And then a few moments later, I got two other questions.
11 I'm going to address them all and then tell you what we're
12 going to do.

13 The first question that I've shared with the lawyers
14 from both sides that you posed and is signed by the
15 Foreman is, Can we have a copy of the laws? I'm going to
16 read all the questions and then I'll address them.

17 The next two questions came in at the same time from
18 the bailiff from the -- from you, the jury panel, signed
19 by the Foreman. The next question is, Can the Judge read
20 what is bodily harm? Did he state that fear of? And then
21 there's a question mark.

22 Then the third question that was, also, shared with
23 the lawyers, the question was, Explain kidnapping. And
24 that's signed by the jury Foreman.

25 After having discussed these matters with Counsel for

1 both sides, what I have decided to do -- and I'll give an
2 explanation on the record as to why. And this is the
3 exact same thing I told Counsel, pretty much that we -- we
4 lawyers see this language all the time. And, sometimes,
5 lay individuals don't see this language on a regular
6 basis.

7 So because of that, I -- in my discretion, I am going
8 to send back with you a copy of what was on the screen,
9 all three of those -- all two of those offenses, domestic
10 violence of a high and aggravated nature, you will get a
11 copy of the exact same thing that you saw on the screen.
12 And you will, also, get a copy of domestic violence first
13 degree, the same exact thing you saw on the screen for
14 your review.

15 I will, also, send you back the charge on kidnapping
16 that I gave a day ago. And even though that was not on
17 the screen when you came out, because you didn't request
18 it, but, now, you did request an explanation of
19 kidnapping, and I -- I find it necessary just to send that
20 charge back to you so you can read it and review it.

21 I will, also, send back with you another document
22 that will define -- it's the same -- define bodily harm.
23 That is the same definition that -- that I addressed when
24 I gave my charge. But you will have that document with
25 that definition in front of you.

1 So having said all that, I hope that me giving you
2 these documents for your perusal so you can take a look at
3 them will help you on answering some of the questions --
4 or answering the questions that you posed. So that's what
5 I've decided to do.

6 So the bailiff is going to deliver those documents to
7 you in your jury room as soon as you go back there. Okay.

8 All right. Thank you, ma'am. Thank you, sir.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 11:40 a.m.)

11 THE COURT: All right. We'll stand at ease.

12 MR. EPPES: Your Honor.

13 THE COURT: Yes, sir.

14 Anything else?

15 MR. EPPES: I don't mean to beat my dead horse.

16 THE COURT: You want to renew your motion [sic]?

17 MR. EPPES: I renew my objection as far as second
18 degree, the definition being a necessary part, and the
19 moderate bodily injury definition, as well as I renew my
20 objection about giving them the paper.

21 THE COURT: All right. Objection -- I mean your
22 objection is so noted and denied.

23 MR. EPPES: Thank you, Your Honor.

24 (WHEREUPON, the proceedings were recessed at
25 approximately 11:41 a.m.)

1 THE COURT: All right. Gentlemen, I have another
2 question. I'll read it to you. We're back on the record.
3 What is the difference between peril or fear of great
4 bodily injury?

5 MR. POLSINELLO: Your Honor, the State would just
6 respond that they have to use ordinary language, you know,
7 that -- from a reasonable person perspective in applying
8 their knowledge and all their educational background --
9 like, that's not defined in the statute, I don't believe.
10 And for that, you have to just use your own common sense.

11 THE COURT: I think that's probably -- comes from
12 that definition on great bodily fear, I'm assuming.

13 MR. EPPES: No. The definition of domestic violence
14 high and aggravated says a fear of great bodily injury.
15 And the definition of domestic violence in the first
16 degree says fear of imminent peril.

17 THE COURT: Yeah.

18 MR. POLSINELLO: But DVHAN, the second element -- the
19 way to prove it, it does say fear of imminent peril.

20 THE COURT: Right.

21 MR. POLSINELLO: So they might be looking at that
22 second part of the DVHAN section.

23 MR. EPPES: I have no idea. It's in both of them.

24 MR. POLSINELLO: Yeah.

25 THE COURT: See, I -- it's -- I don't know if I

1 can -- I can define that to them. I mean, if -- that's a
2 slippery slope --

3 MR. EPPES: No, sir.

4 THE COURT: I can't -- I can't -- I mean, if I -- I
5 can't do that.

6 MR. EPPES: I think in the -- I think in the cases
7 that I've been involved in, Judge, what I've seen, at
8 most, is a charge that says you are to use your best
9 judgment to use the words as you understand them to be.

10 THE COURT: That's -- that's what I was -- that's
11 what I was thinking about saying, Mr. Eppes. I'm just
12 going to --

13 Mr. Poniselli.

14 MR. POLSINELLO: Yes, Your Honor.

15 THE COURT: That's what I was going to bring them out
16 and tell them. Is that all right with you?

17 MR. POLSINELLO: Yes, Your Honor.

18 THE COURT: All right. Bring them out.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:35 p.m.)

21 THE COURT: Mr. Foreman, it's my understanding that
22 the question that was given to the bailiff to be submitted
23 to me is, What is the difference between peril or fear of
24 great bodily injury?

25 And what I -- what I will tell you is that you have

1 to use your own common sense, your judgment, your -- your
2 dissemination -- your determination of what that means.
3 Just use your common sense, your -- your -- what you --
4 what you believe that those terms mean to you. And I know
5 that's not what you wanted to come out and hear. But
6 that's, basically, what I can tell you.

7 So -- and you remember at the outset, I said life
8 experiences, common sense, your judgment. You're the
9 judge of the facts. So that's -- that's within your
10 purview. So to the best of your ability, you -- you have
11 to make a determination to the applicability of these terms.

12 Okay. I'm going to send you back to continue your
13 deliberations.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 1:37 p.m.)

16 THE COURT: Counsel, I -- I didn't say it exactly
17 like you said it. But any exceptions?

18 MR. POLSINELLO: No, objection, Your Honor.

19 MR. EPPES: None from the Defense, Your Honor.

20 THE COURT: All right. Madam Court Reporter, this
21 will be Court's Exhibit, I guess, No. 10, 11?

22 THE COURT REPORTER: Court's Exhibit No. 12.

23 THE COURT: Court's Exhibit No. 12.

24 (WHEREUPON, Court's Exhibit No. 12 was marked for
25 identification and admitted into evidence.)

1 THE COURT: All right. We'll stand at ease.

2 (WHEREUPON, the proceedings were recessed at
3 approximately 1:38 p.m.)

4 THE COURT: I have another question from the jury.
5 It says, Domestic violence high and aggravated, if one
6 point is met, can you not look at domestic violence first
7 degree?

8 I think the answer to that would be -- I've got an
9 answer, but I'll let y'all -- I'll read it again. It
10 says, Domestic violence high and aggravated, if one point
11 is met -- now, I will say this. Because I don't want you
12 to -- it says if one -- they had the word "thing," but
13 somebody scratched out the word "thing" and put point --
14 is met, can you not -- then they tried to spell the word
15 "consider." And then they scratched out "consider" and
16 put the word "look." So that's what it say.

17 I want to be clear. So it says, Domestic violence
18 high and aggravated, if one point is met, can you not look
19 at domestic violence first degree? That was the question.

20 MR. POLSINELLO: I would interpret that as if
21 domestic violence high and aggravated -- high and
22 aggravated nature has been met, can you, also, find him
23 guilty of domestic violence first degree? That's what it
24 sounds like.

25 THE COURT: Yeah. That's what it sounds like.

1 MR. EPPES: I'll take the opposite. I would say if
2 one factor is met, can you still consider domestic
3 violence first degree? If they found one factor there,
4 they could find in both places.

5 THE COURT: So the answer is "yes" or "no"?

6 MR. EPPES: I think the answer is yes.

7 THE COURT: I think the answer is yes.

8 Are both sides in agreement?

9 Because I think what -- the way I interpret this is
10 since you've got domestic violence first degree as a
11 lesser included -- and that's what they're asking -- can
12 they consider it? I think the answer is yes.

13 MR. POLSINELLO: I would agree, Your Honor.

14 THE COURT: All right. Now, here's my question. I
15 hate to -- well, I've got to bring them out because I'm
16 going to -- what I was going to do is write on here "yes."
17 But, you know, when you send these things back in there,
18 it's hard to get them back out.

19 So I probably need to bring them back out. And I'll
20 just read the question on the record and I'll say "yes."

21 Are both sides in agreement on that?

22 MR. POLSINELLO: Yes, Your Honor.

23 THE COURT: Okay. Bring the jury out.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:44 p.m.)

1 THE COURT: We've got another question from the jury
2 panel. And it says -- and I'm going to read it, it says,
3 Domestic violence high and aggravated nature, if one point
4 is met, can you not look at domestic violence first
5 degree? And I've consulted with Counsel from both sides
6 and the answer to that is yes.

7 All right. Y'all go back.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 3:45 p.m.)

10 THE COURT: Okay. This will be Court's Exhibit No.
11 14, I think.

12 THE COURT REPORTER: Court's Exhibit No. 13.

13 THE COURT: Court's Exhibit No. 13?

14 THE COURT REPORTER: Yes, sir.

15 THE COURT: Anything else before we go back and --

16 MR. EPPES: Well, Judge, now, I'm concerned. Can you
17 not look -- you couldn't look -- I think it was meant
18 colloquial as, can we still look at it? But now that I've
19 heard it, it confuses me.

20 THE COURT: Well, I read it twice.

21 MR. EPPES: I know. Did you understand it to mean
22 can you still look at it?

23 THE COURT: I -- I understood it. And -- and my
24 response was that "yes" -- "yes" would be the answer. But
25 that's why I wanted to dialogue with you two lawyers to

1 make sure that you understood it the way I did. And I
2 thought I did. And I asked both of you and you said
3 "yes." And that's what we did.

4 MR. EPPES: Okay.

5 THE COURT: And I read it twice.

6 Okay. We'll stand at ease until further notice.

7 (WHEREUPON, Court's Exhibit No. 13 was marked for
8 identification and admitted into evidence.)

9 (WHEREUPON, the proceedings were recessed at
10 approximately 3:46 p.m.)

11 THE COURT: Anything before I bring the jury out?

12 MR. POLSINELLO: Nothing from the State.

13 THE COURT: All right. Bring them out. Bring the
14 jury out.

15 (WHEREUPON, the jury came into open court at
16 approximately 3:52 p.m.)

17 THE COURT: All right. Madam Clerk.

18 THE CLERK: Does the jury have a unanimous verdict?

19 (WHEREUPON, there was no verbal response.)

20 THE COURT: All right. Would you give that to the
21 bailiff.

22 THE CLERK: I'm sorry. I don't usually do that. I'm
23 sorry, sir.

24 THE COURT: All right. Madam Clerk, you can publish
25 it.

1 Thank you.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, your -- your service as jurors for this -- this
4 particular case is over. I appreciate you being here
5 this week. I appreciate you exercising your service as
6 jurors.

7 As I said at the beginning, jury service is a very
8 important service. And it's up there with the right to
9 vote, and all that. So we appreciate your time.

10 I hope I tried to make this as convenient for you as
11 I possibly could. And I wanted to make sure that you were
12 comfortable during the period of time that you were up
13 here. And I made extra effort to try to do that. The --

14 Madam Clerk, it's my understanding that we've
15 completed all trials for the week?

16 THE CLERK: That's correct.

17 THE COURT: And that they will no longer be needed
18 for the rest of the week; is that correct?

19 THE CLERK: And did -- and Judy provides a workman
20 statement -- a work statement for you. And the bailiff
21 has that.

22 THE COURT: All right. So you're free to stay or you
23 can leave, or you're free to go, if you'd like to.

24 So thank you for your service.

25 And if you'll just follow the bailiff.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 3:55 p.m.)

3 THE COURT: Any motions?

4 MOTIONS

5 MR. EPPES: Your Honor, I'd make a motion that you
6 act in your role as the thirteenth jury to strike the
7 verdict -- thirteenth juror to strike the verdicts.

8 THE COURT: I didn't quite hear you.

9 MR. EPPES: Huh?

10 I'd ask that you act in your role as the thirteenth
11 juror to strike the verdicts.

12 THE COURT: All right. And I'll deny that motion.
13 Anything else?

14 MR. POLSINELLO: Nothing from the State, Your Honor.

15 THE COURT: Okay. Are the parties ready for
16 sentencing?

17 MR. EPPES: Yes, sir, Your Honor.

18 THE COURT: All right. Come forward, Mr. Workman.

19 MR. EPPES: Your Honor, as I previously discussed,
20 I'm handing up a copy of Dr. Maddox's report concerning
21 Mr. Workman. It's approximately six pages.

22 THE COURT: All right. What do you want to tell me,
23 Mr. --

24 Mr. Poniselli, are you coming up, or are you going to
25 stand back there?

1 THE CLERK: He's getting the sentencing sheets.

2 THE COURT: Oh, he's getting -- okay. I'm sorry.

3 MR. POLSINELLO: Sorry, Your Honor.

4 (Pause.)

5 THE COURT: Mr. Polsinello, do you want to go ahead?

6 MR. POLSINELLO: Yes, Your Honor.

7 I know, as Your Honor's aware, the victim is here.
8 She's been with us all week. It's my understanding she
9 does not wish to speak.

10 In terms of sentencing, Your Honor, I have the
11 Defendant's criminal history, if Your Honor is inclined to
12 see it.

13 THE COURT: Go ahead and tell -- tell -- go ahead and
14 tell me about it.

15 MR. POLSINELLO: 1990, assault and battery, false
16 name, resisting arrest; 1993, assault and battery; 1997,
17 unlawful carrying of a weapon; 1998, criminal domestic
18 violence; 2001, public disorderly conduct; 2001, a CDVHAN
19 that was reduced and pled to a CDV first.

20 MR. EPPES: Your Honor, that is, actually, I believe
21 a criminal domestic -- is that the one, or is that the
22 probation revocation?

23 That's the probation revocation of the previous
24 domestic violence charge, Your Honor.

25 THE COURT: All right.

1 MR. POLSINELLO: Okay. 2002, possession of a stolen
2 vehicle; 2003, simple assault; 2011, reckless driving.
3 That's it. Your Honor.

4 THE COURT: All right. Mr. Eppes.

5 MR. EPPES: Your Honor, as you heard, from 2003
6 onward, Mr. Workman has not had a criminal record. He's,
7 as far as I know, been working and providing for his
8 family. As his wife said at one point in her statement --
9 I don't know that it was put into evidence -- they were
10 married for 13 -- 12 years and together for 13. And until
11 the last 18 months or so of that, she believed they had a
12 good family situation.

13 Mr. Workman has been diagnosed by Dr. Maddox as
14 paranoid with some schizophrenia. He takes medicine for
15 that. He has been, since I have represented him, very
16 cooperative across the board.

17 However, Dr. Maddox would tell you if she was here
18 that elements of his disease process have -- have gone on
19 in his thinking. And that was unfortunate because it led
20 him to reject some offers early on that would have had him
21 already, basically, maxed out of his sentence. He's been
22 in jail for two years.

23 He has no interest in renewing his relationship with
24 his wife. He has no interest in finding out where she is.
25 He does, you know, hope that at some point he'll be able

1 to see his children again. But he understands to do that
2 he'll have to go through the Family Court.

3 Your Honor, when you're trying to fashion a sentence
4 with a case like this, it seems to me that with an
5 individual that hasn't been in trouble really since 2003,
6 except for a reckless driving, you want to couch something
7 that incarcerates him as required and then puts him in a
8 position to show that he can behave.

9 The five-year sentence on the pistol -- the
10 possession of a pistol during a violent crime is something
11 that, unfortunately, I'm very familiar with. It is a
12 five-year day-for-day sentence, which means if he turned
13 himself in on September 24th, 2016, the earliest he can
14 get out on that is September 24th, 2021.

15 I would ask that you consider a five -- a concurrent
16 five or six-year sentence on the kidnapping. I believe --
17 well, I don't like the kidnapping charge. And I'm not
18 going to get into that. But I believe that would be
19 appropriate.

20 And I would ask that you consider hanging 10 or 20 on
21 him on the domestic violence high and aggregated --
22 aggravated. Give him five years of probation. And
23 require as part of that probation that he comply with
24 mental health treatment and mental health counseling. If
25 he spends five years doing what he's supposed to do with

1 his appropriate mental health counseling, I think he'll
2 be -- you know, if you gave him that sentence, 10 years
3 older than he is right now. He will have conformed his
4 behavior for eight or 10 years. And I guess he'd be eight
5 years older from this point because he's done two years.
6 But I'd ask you to consider that.

7 I think that one of those charges needs to be five
8 years of probation. I think that way, we'll know, once he
9 gets out, what he's doing. And he'll do what he's
10 supposed to do. He's been doing that for 15 years. And I
11 just feel like if he has his medicine right, he'll do that
12 going forward.

13 THE COURT: All right. Mr. Workman, anything you
14 want to tell me?

15 DEFENDANT WORKMAN: I just throw myself on the mercy
16 of the Court, sir.

17 THE COURT: Anything else from either side?

18 MR. POLSINELLO: One thing, Your Honor. With the
19 sheet, Your Honor should, also, have a permanent
20 restraining order that the victim would like as a
21 definite [phonetic].

22 Also is that order, Your Honor, directing any
23 potential redaction of the victim's current address,
24 whereabouts. That order should be with the paperwork.

25 THE COURT: Right. I've got that.

1 Anything else?

2 MR. EPPES: No, sir, Judge.

3 THE COURT: How long has he been in jail day wise?

4 MR. POLSINELLO: I believe 726 days, Your Honor.

5 THE COURT: Is that about right, Mr. Eppes?

6 MR. EPPES: Yes, sir. That's going to be about right
7 because it was the 24th of September. And we're right
8 under 730 days. Although 2016 was a leap year. So I
9 guess that would have been before he went in to jail.

10 SENTENCING

11 THE COURT: All right. On indictment
12 2016-GS-23-10113, State v. Olandio R. Workman, charged
13 with the offense of kidnapping, the sentence of the Court
14 is that you be confined to the South Carolina Department
15 of Corrections for a period of 15 years. 726 days of jail
16 time credit is given.

17 On indictment 2016-GS-23-10112, State v. Olandio R.
18 Workman, charged with domestic violence of a high and
19 aggravated nature, the sentence of the Court is that you
20 be sentenced to the South Carolina Department of
21 Corrections for a period of 12 years. That sentence is to
22 run concurrent with the previous sentence. 726 days of
23 jail time credit is given.

24 On indictment 2016-GS-23-10113, the State v. Olandio
25 R. Workman, charged with possession of a weapon during a

1 violent crime, the sentence of the Court is that you be
2 confined to the South Carolina Department of Corrections
3 for a period of five years. That sentence is to run
4 concurrent with the previous sentence. 726 days of jail
5 time credit is given.

6 Good luck to you, sir.

7 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 17th, 18th, 19th, and 20th days of September, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 25, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

RJP

Robert Joseph Perry

Greenville County Sheriffs Office

9/24/2016

ARREST WARRANT NUMBER
2016A2330208655

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of GRAND JURY

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-_{DFP} 010112

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM ²⁰¹⁷ 2016

THE STATE

vs.

OLANDIO R WORKMAN

Indictment for

3814 ✓

DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § 16-25-0065

ENTERED
ACCT. *10/1*

RECEIVED

NOV 10 2016

Clerk of Court
Greenville County

APP'X 568

563

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)


INDICTMENT FOR
DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
NATURE

At a Court of General Sessions, convened on **FEB 21 2017** the Grand Jurors of Greenville

County present upon their oath:

That OLANDIO R WORKMAN did in Greenville County, between the 27th day of August 2016, and the 29th day of August 2016, did unlawfully cause physical harm or injury to LORETTA WORKMAN, a household member or did unlawfully offer or attempt to cause physical harm or injury to LORETTA WORKMAN, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril and OLANDIO R WORKMAN committed the offense with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death. This is in violation of § 16-25-0065 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR 10/058
BAR # 101058

WITNESSES

[Handwritten signature]

Robert Joseph Perry

Greenville County Sheriffs Office

9/24/2016

ARREST WARRANT NUMBER

2016A2330208657 and 2016A2330208658

ACTION OF GRAND JURY

TRUE BILL

[Handwritten signature]

Foreperson of GRAND JURY

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
DFP

010113

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM ²⁰¹⁷ 2016

THE STATE

vs.

OLANDIO R WORKMAN

Indictment for
0095 and 0549

KIDNAPPING
and
POSSESSION OF A WEAPON DURING THE
COMMISSION

VIOLATION § 16-3-10 and § 16-23-0490

ENTERED
ACCT. LEX

RECEIVED

NOV 10 2016

Clerk of Court
Greenville County

565

APP'X 570

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING and POSSESSION OF A WEAPON DURING THE
COMMISSION

FEB 21 2017

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT I - KIDNAPPING

That OLANDIO R WORKMAN did in Greenville County, between the 27th day of August 2016, and the 29th day of August 2016, unlawfully seize, abduct, confine, inveigle, decoy or carry away LORETTA WORKMAN, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That OLANDIO R WORKMAN did in Greenville County, between the 27th day of August 2016, and the 29th day of August 2016, possess or visibly display a a handgun during the commission or attempted commission of a violent crime, to wit: KIDNAPPING. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

10/058
BAR # 101058

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Olandio R Workman

AKA:

Race: BLACK Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Piedmont, SC 29673

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Domestic / Domestic Violence Of A High And Aggravated Nature

IN THE COURT OF GENERAL SESSIONS

567

125230

INDICTMENT/CASE#: 2016GS2310112

A/W#: 2016A2330208655

Date of Offense: 8/27/2016

S.C. Code § : 16-25-0065

CDR Code #: 3814

Gun/Sp
NCIC

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-25-0065 of the S.C. Code of Laws, bearing CDR Code # 3814

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 101058 Defendant EPPES, FRANK L. 07839 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPS _____

Recipient:		\$
*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly prmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Paul B. Wikenheim
Court Reporter: [Signature]

Presiding Judge: [Signature]
Judge Code: 2763
Sentence Date: 9-25-18

568

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Olandio R Workman)
AKA:)
Race: BLACK Sex: M Age: 46)
DOB: [redacted] SS# [redacted])
Address: [redacted])
City, State, Zip: Piedmont, SC 29673)
DL#: [redacted] SID#: [redacted])

IN THE COURT OF GENERAL SESSIONS 0-3070
INDICTMENT/CASE#: 2016GS2310113 J
A/W#: 2016A2330208657 G. W. S. G. v.
Date of Offense: 8/27/2016 NCRV
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping (ps)

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 101058 07839
Polinello, Derek SC Bar# Defendant EPPES, FRANK L. SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk Paul S. Wickman
Court Reporter: [Signature]
SCCA/217 (04/2018)

Presiding Judge [Signature]
Judge 2763
Sentence 9-20-18
ENTERED ACCT. 10/1

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

569
31

COUNTY OF Greenville)
STATE VS.)

Olandio R Workman)

INDICTMENT/CASE#: 2016GS2310113

A/W#: 2016A2330208658

Date of Offense: 8/27/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

Gun Stop
ACREV

AKA: _____)

Race: BLACK Sex: M Age: 46)

DOB: [REDACTED] SS#: [REDACTED])

Address: [REDACTED])

City, State, Zip: Piedmont, SC 29673)

DL#: [REDACTED] SID#: _____)

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who as

CONVICTED OF or PLEADS

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____

101058

07839

Polsinello, Derek

SC Bar#

Defendant

EPPES, FRANK L.
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOD.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Set by SCDPPPS _____

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$

§14-1-206 (Assessments 107.5 %) \$

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114(BUI Breath Test Fee) \$50 \$

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Paul B. Wickens

Court Reporter: _____

Duckin

Presiding Judge

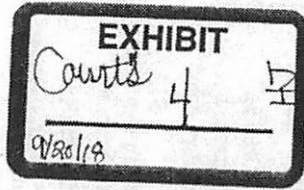
Judge Code: 2263

Sentence Date: 9-20-16

[Signature]

ENTERED
ACCT

SCCA/217 (04/2018)

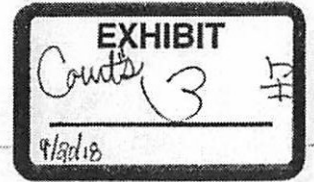


~~Victim~~

How did she flee
From the STATE

in what vehicle

Moss Beine



Domestic Violence of
a High and Aggravated
Nature
VS.

Domestic Violence
First Degree

"D. Florence"

Moss Beine

EXHIBIT
Count 6
9/20/18
HJ

Can the Judge
Read "What is
Bodily harm."

Did he STATE that
fear of?

Mark Beebe

EXHIBIT
Count 5
9/20/18
HJ

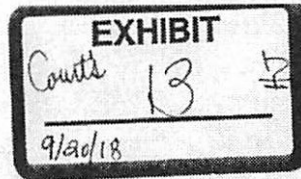
Can we have
copy of the
"Laws"

Mark Beebe

EXHIBIT
Court 7
9/20/18

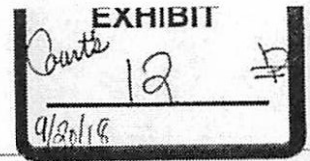
Explain kidnappings

Maria Keen



Domestic Violence High
and aggravated, if one
~~thing~~ point is met, can
you not ~~consider~~ look
at Domestic Violence
first Degree?

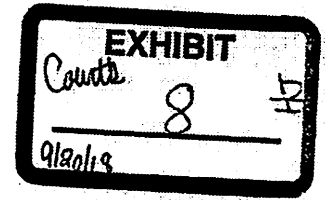
Maria Berris



What is the
different between
Peril OR Fear of
great Bodily Injury:

Maria Berris

DV 1st



(A) It is unlawful to:

(1) cause physical harm or injury to a person's own household member; or

(2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

(1) great bodily injury to the person's own household member results or the act is accomplished by means likely to result in great bodily injury to the person's own household member;

(2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;

(3) has two or more prior convictions of domestic violence within ten years of the current offense;

(4) the person uses a firearm in any manner while violating the provisions of subsection (A); or

(5) in the process of committing domestic violence in the second degree one of the following also results:

DV 1st

(a) the offense is committed in the presence of, or while being perceived by a minor;

(b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;

(c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;

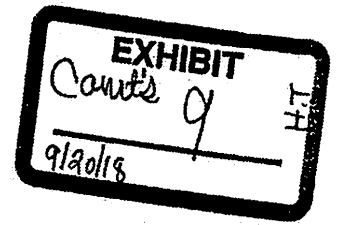
(d) the offense is committed by impeding the victim's breathing or air flow; or

(e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

(i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

(ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

Domestic violence in the first degree is a lesser included offense of domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

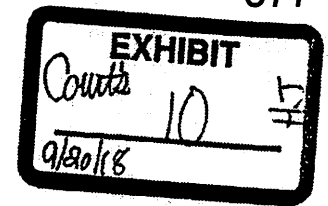


Code 1976 § 16-25-10

§ 16-25-10. Definitions.

As used in this article, the term:

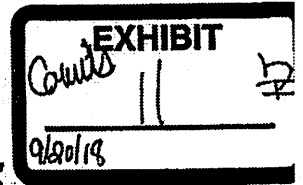
“Great bodily injury” means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.



SECTION 16-3 910.

Kidnapping.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty



(A) A person who violates Section 16-25-20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:

(1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;

(2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or

(3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.

DV HAN

(D) Circumstances manifesting extreme indifference to the value of human life include, but are not limited to, the following:

(1) using a deadly weapon;

(2) knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time;

(3) committing the offense in the presence of a minor;

(4) committing the offense against a person he knew, or should have known, to be pregnant;

(5) committing the offense during the commission of a robbery, burglary, kidnapping, or theft; or

(6) using physical force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:


(a) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

(b) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of January, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Jr. Circuit Court Judge

THE STATE,

RESPONDENT,

V.

OLANDIO R. WORKMAN,

APPELLANT

APPELLATE CASE NO 2018-001769

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

When instructing the jury on the law, did the trial judge err by refusing to properly define the lesser included offense of domestic violence first degree?

STATEMENT OF THE CASE

In February of 2017, the Greenville County Grand Jury indicted Appellant, Olandio R. Workman, for domestic violence of a high and aggravated nature, kidnapping and possession of a weapon during the commission of a violent crime, indictments #2016-GS-2310112, 10113.¹ (R. pp. 563-566). On September 17, 2018, Mr. Workman proceeded to jury trial before the Honorable Alex Kinlaw, Jr. Frank L. Eppes represented Mr. Workman at trial. Derek R. Polsinello prosecuted the case. The jury found Mr. Workman guilty as charged. Judge Kinlaw sentenced Mr. Workman to twelve (12) years for domestic violence, fifteen (15) years concurrent for kidnapping and five (5) years concurrent for the weapon charge. A timely notice of intent to appeal was served on September 26, 2018. This appeal follows.

¹ The date below the witness name on the indictment is September 24, 2016. The received stamp from the clerk of court is dated November 10, 2016. The term year, typed as 2016, is scratched out and replaced with a hand written 2017. The indictment number begins with 2016.

STANDARD OF REVIEW

“In criminal cases an appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Id.

ARGUMENT

When instructing the jury on the law, the trial judge erred by refusing to properly define the lesser included offense of domestic violence first degree.

Appellant was indicted for domestic violence of a high and aggravated nature. Prior to the judge instructing the jury on the law, Appellant requested a charge on the lesser included offense of domestic violence first degree. (R. pp. 425-437; pp. 447-449). The State did not oppose the charge on the lesser included offense. (R. p. 426, lines 21-23). Domestic violence first degree is defined by S.C. Code §16-25-20 as follows:

(A) It is unlawful to:

- (1) cause physical harm or injury to a person's own household member; or
- (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

- (1) great bodily injury to the person's own household member results or the act is accomplished by means likely to result in great bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;
- (3) has two or more prior convictions of domestic violence within ten years of the current offense;
- (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or
- (5) **in the process of committing domestic violence in the second degree** one of the following also results:
 - (a) the offense is committed in the presence of, or while being perceived by a minor;

- (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
- (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
- (d) the offense is committed by impeding the victim's breathing or air flow; or
- (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - i. the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - ii. a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years. (emphasis added).

Pursuant to S.C. Code §16-25-20(B)(5), domestic violence first degree includes domestic violence second degree, with aggravating factors, as defined by the statute. Because domestic violence second degree becomes first degree when there are specific statutory aggravating factors, Appellant specifically requested that the judge define domestic violence second degree. (R. p. 426, lines 2-10; p. 427, lines 8-14; p. 428, line 21 – p. 429, 430, lines 1-2; p. 432, lines 7-22; p. 435, lines 14-20). Defense counsel told the judge:

I don't want the jury to think for some reason that choking somebody automatically rises to high and aggravated, or that blocking somebody from using the telephone automatically rises to high and aggravated. And – and so I think it's appropriate to fashion some way to say criminal domestic violence – and you can say it like this.

You can say criminal domestic violence in the first degree, also, may include **moderate injury** accompanied by choking, blocking somebody from the telephone, or being perceived by a minor. I – I think that would be an appropriate way to do it.

(R. p. 429, lines 12-23)(emphasis added). Appellant did not request domestic violence second degree as a lesser included offense. (R. p. 431, lines 17-24; p. 436, lines 8-21). Instead, Appellant requested a definition of domestic violence second degree when the judge instructed the jury on the lesser included offense of domestic violence first degree pursuant to subsection (B)(5).

The judge refused to initially define domestic violence second degree when instructing the jury on the law of domestic violence first degree. (R. p. 432, line 23 – pp. 433, lines 4-21). The judge, however, indicated that if the jury asked for a definition of domestic violence second degree, “. . . [W]e’ll cross that bridge when we get to it.” (R. p. 435, line 23 – p. 436, lines 1-6). Counsel for Appellant again requested an instruction on domestic violence first degree that included a definition of domestic violence second degree. (R. p. 447, line 24 – p. 448, lines 1-6). The judge again denied the request and the objection was noted for the record. (R. p. 448, line 7 – p. 449, lines 1-21).

During the instruction the judge defined great bodily injury pursuant to S.C. Code §16-25-10(2). The judge told the jury, “Great bodily injury is defined and means bodily injury which causes a substantial risk of death, or which causes serious permanent disfigurement, or protracted loss of impairment of the function of a bodily member or organ.” (R. p. 500, lines 13-16). The judge, however, did not define moderate bodily injury. The judge charged the jury with the law on domestic violence of a high and aggravated nature. (R. p. 500, line 17 – p. 501, lines 1-23).

The judge then charged the jury with the law on domestic violence first degree. (R. p. 501, line 24 – p. 502, 503, lines 1-22). The judge included the following language in the charge on domestic violence first degree:

Five, in the process of committing domestic – the violence in the second degree, one of the following, also, results, A, the offense is committed in the presence of

or while being perceived by a minor. B, the offense is committed against a person known, or reasonably known, or -- or should have been known by the Defendant to be pregnant.

And, C, the offense is committed during the commission of a robbery, burglary, kidnapping, or theft. D, the offense is committed by impeding the victim's breathing or air flow. E, the offense is committed using physical force or threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with the report of a criminal offense, bodily injury, or property damage, a request for an ambulance or emergency medical assistance to any law enforcement officer.

Domestic violence in the first degree here, as I said earlier, is a lesser included offense of domestic violence of a high and aggravated nature as defined in the previous code section, the code section that I outlined

(R. p. 503, lines 1-22). The judge, however, did not define domestic violence second degree.

After the charge Appellant objected to the failure to explain domestic violence second degree and the failure to define moderate bodily injury. (R. p. 508, lines 5-16). The judge declined to instruct the jury on the definitions of domestic violence second degree and moderate bodily injury. The jury then had several questions. The jury first asked how the witness fled from the State and in what car. (R. p. 522, lines 16-25; Court's Exhibit #4, R. p. 570). The jury then asked the difference between domestic violence of a high and aggravated nature and domestic violence first degree. (R. p. 523, lines 1-3; Court's Exhibit #3, R. p. 570). The judge agreed to re-charge the jury and display the statutes on a screen so that the jury could follow along as the judge read the charge. (R. p. 523, line 4 – p. 524, lines 1-6). Counsel for Appellant asked that the judge explain domestic violence second degree. The judge denied the request. (R. p. 524, lines 7-11). After the re-charge counsel for Appellant stated, "I need to renew my objection as to not putting in the definition of moderate bodily injury or domestic violence second in the charge for domestic violence first degree." (R. p. 531, lines 14-19).

The jury then asked for a copy of the “laws.” (R. p. 532, lines 1-4; Court’s Exhibit #5, R. p. 571). Appellant objected to providing the jury with a written copy of the statutes and renewed the request to define domestic violence second degree and moderate bodily injury. (R. p. 535, lines 21-24). The judge decided, over objection by Appellant, to provide the jury with a written copy of the statutes addressing domestic violence of a high and aggravated nature and domestic violence first degree. (R. p. 537, lines 14-23). Before the judge could provide the written statutes the jury asked the judge to explain kidnapping and asked, “Can the judge read what is bodily harm? Can he state that fear of what?” (R. p. 539, lines 19-21; Court’s Exhibits #6 and #7, R. pp. 571-572). The judge provided the jury with written copies of the statutes addressing domestic violence of a high and aggravated nature, domestic violence first degree and kidnapping. (R. p. 544, lines 7-20; Court’s Exhibits #8, 10 and 11, R. pp. 574, 577-578). The judge also provided the jury with the written definition of great bodily harm, as he instructed earlier. (R. p. 544, lines 21-25; Court’s Exhibit #9, R. p. 576). Counsel for Appellant renewed the objection stating, “I renew my objection as far as second degree, the definition being a necessary part, and the moderate bodily injury definition, as well as I renew my objection about giving them the paper.” (R. p. 545, lines 17-20).

The jury then asked, “What is the difference between peril or fear of great bodily injury?” (R. p. 546, lines 3-4; Court’s Exhibit #12, R. p. 573). The judge answered:

And what I – what I will tell you is that you have to use your common sense, your judgment, your – your dissemination – your determination of what that means. Just use your common sense, your – your – what you—what you believe that those terms mean to you. And I know that’s not what you wanted to come out and hear. But that’s, basically, what I can tell you. So – and you remember at the outset, I said life experience, common sense, your judgment. You’re the judge of the facts. So that’s – that’s within your purview. So to the best of your ability, you – you have to make a determination to the applicability of these terms.

(R. p. 547, line 25 -p. 548, lines 1-11).

The jury returned with one final question, “Domestic violence high and aggravated, if one point is met, can you not look at domestic violence first degree?” (R. p. 549, lines 17-19; Court’s Exhibit #13, R. p. 573). The judge noted, “I think the answer is yes. Are both sides in agreement? Because I think what – the way I interpret this is since you’ve got domestic violence first degree as a lesser included – and that’s what they’re asking – can they consider it? I think the answer is yes.” (R. p. 550, lines 7-12). The judge then told the jury, “We’ve got another question from the jury panel. And it says – and I’m going to read it, it says, Domestic violence high and aggravated nature, if one point is met, can you not look at domestic violence first degree? And I’ve consulted with Counsel from both sides and the answer to that is yes.” (R. p. 551, lines 1-6).

After the jury returned for deliberations, counsel for Appellant said, “Well, Judge, now, I’m concerned. Can you not look – you couldn’t look – I think it was meant colloquial as, can we still look at it? But now that I’ve heard it, it confuses me.” (R. p. 551, lines 16-19). Seven minutes after the judge answered the final question with, “Yes” the jury returned with a verdict of guilty of domestic violence of a high and aggravated nature. (R. p. 551, line 9 – p. 552, lines 1-16). The jury’s numerous questions reflect that they did not understand the difference between domestic violence of a high and aggravated nature and domestic violence first degree. The judge’s charge on domestic violence first degree was incomplete without defining domestic violence second degree and moderate bodily injury. The trial judge erred.

Domestic violence second degree is defined by S.C. Code §16-25-20 as follows:

- (C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:

- (1) **moderate bodily injury** to the person's own household member results or the act is accomplished by means likely to result in **moderate bodily injury** to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;
- (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or
- (4) in the process of committing domestic violence in the third degree one of the following also results:
 - a. the offense is committed in the presence of, or while being perceived by, a minor;
 - b. the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
 - c. the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
 - d. the offense is committed by impeding the victim's breathing or air flow; or
 - e. the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - i. the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - ii. a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

Domestic violence in the second degree is a lesser-included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

(emphasis added).

Moderate bodily injury is defined by S.C. Code §16-25-10(4) as:

[P]hysical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

Domestic violence of a high and aggravated nature is defined by S.C. Code §16-25-65 as follows:

- (A) A person who violates Section 16-25-20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:
 - (1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;
 - (2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or
 - (3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.
- (B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years.
- (C) The provisions of subsection (A) create a statutory offense of domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.
- (D) Circumstances manifesting extreme indifference to the value of human life include, but are not limited to, the following:
 - (1) using a deadly weapon;
 - (2) knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time;
 - (3) committing the offense in the presence of a minor;
 - (4) committing the offense against a person he knew, or should have known, to be pregnant;

- (5) committing the offense during the commission of a robbery, burglary, kidnapping, or theft; or
- (6) using physical force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
 - a. the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
 - b. a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

The judge's charge on domestic violence first degree was incomplete because it failed to explain domestic violence second degree and moderate bodily injury pursuant to section (B)(5) of the domestic violence first degree statute. As a result, and as evidenced by the numerous questions, the jury, under the facts of this particular case, understandably struggled with the difference between domestic violence of a high and aggravated nature and domestic violence first offense. The degree of injury was a critical determining factor in this case.

On August 29, 2016, officers with the Greenville County Sheriff's Office went to the home of Appellant, Olandio Workman, and his wife, Loretta Workman, for a welfare check on Loretta. The Sheriff's Office had received a call from an individual who was concerned because Loretta had not been at work for a few days. (R. p. 116, line 13 – p. 117, lines 1- 21; p. 121, lines 7-13). When the officers knocked on the door, Mr. Workman answered and told them that Loretta was not at home. (R. p. 122, lines 19-24). The officers did not believe Mr. Workman and eventually the SWAT team was called in. (R. pp. 124-129).

The SWAT team parked their armored vehicle in the drive way and began to announce over the public address system, "This is Greenville County Sheriff's Office SWAT team. We're not here to harm you. We just need to talk to you. Please come to the door or answer your

phone.” (R. p. 224, line 25 – p. 225, lines 1-3). This went on for over an hour before they broke down the door. (R. p. 225, line 3 – p. 226, line 1). Once inside the officers found Loretta and their two children but not Mr. Workman. (R. p. 226, lines 2-6). When asked about the condition of Loretta, an officer testified, “She was rough. She had bruises, like, all over her visible parts of her body that were visible. Her face was swollen and bruised. It was obvious that some type of altercation had occurred.” (R. p. 227, lines 19-22). That night Loretta told the officers the injuries came from a bar fight. (R. p. 228, lines 3-7). Loretta was not hospitalized. (R. p. 274, lines 15-17).

When asked why she did not come to the door, Loretta told the officer she was sleeping. (R. p. 229, lines 2-7). The officer questioned Loretta and testified at trial, “And I said, you know, I find it hard to believe that anybody could sleep through that. Why aren’t you coming out? Why didn’t you just come to the door? I think I said – she was very irritated at everything, and – and just seemed very angry.” (R. p. 230, lines 3-7). The officer also testified that he talked to one of the children who told the officer that he heard the SWAT team but his mother would not let him come out of the room. (R. p. 230, line 23 – p. 231, lines 1-17). The child also told the officer that he heard his parents fighting but did not see the fighting. (R. p. 231, line 18 – p. 232, line 1). Loretta and the two children spent the night with Mr. Workman’s sister, Tammy Green. (R. p. 234, line 16 – p. 235, lines 1-9). DSS was notified. (R. p. 235, line 10 – p. 236, line 1).

Before officers searched the house, Loretta told them that there was a gun under the bed in the master bedroom and a gun in the nightstand in the same bedroom. (R. p. 237, lines 13-20). Loretta had purchased both guns and had a concealed weapons permit. (R. p. 237, lines 7-12; p. 320, lines 14-15). The next morning Loretta took her two children and fled the State, without

speaking with DSS. (R. p. 241, lines 11 –19; p. 243, line 9 – p. 244, lines 1-16). On September 6, 2016, Loretta called the investigator and provided a recorded telephone statement that was very different from the statements she made on the evening the SWAT team was at her house. (R. p. 244, line 18 – p. 245, 246, 247).

At trial Loretta testified that on Saturday night, August 27, 2016, her husband, the Appellant Mr. Workman, came home, accused her of cheating and began hitting her. (R. p. 292, line 2 – p. 293, 294, lines 1-19). According to Loretta this continued into Sunday until Monday when Mr. Workman left for work. (R. pp. 295-296). Loretta testified that Mr. Workman had the gun and hit her once in the hand while holding the gun. (R. p. 299, lines 1-13). Loretta testified that Mr. Workman broke her phone on Sunday night. (R. p. 301, lines 16-24). Loretta claimed that she did not go to work on Monday because Mr. Workman told her if she opened the door, the trailer would explode. (R. p. 300, lines 3-4). She also claimed that Mr. Workman took the keys to the cars although she had a car key to flee the State. (R. p. 300, lines 4-5; p. 311, lines 21-25). Loretta told the investigator that Mr. Workman choked her but agreed that she never lost consciousness. (R. p. 320, lines 21-24). Loretta testified that when Mr. Workman returned from work on Monday, August 29, 2016, he continued to hit her. (R. p. 304, lines 15-25).

Domestic violence first degree includes domestic violence second degree with aggravating factors. S.C. Code §16-25-20(B)(5). The judge's refusal to define domestic violence second degree and moderate bodily injury effectively omitted section (B)(5) from the domestic violence first degree statute and prevented the jury from properly considering the lesser included offense of domestic violence first offense pursuant to S.C. Code §16-25-20(B)(5). The charge on domestic violence first degree was incomplete. The incomplete charge prevented the jury from deciding between great bodily injury and moderate bodily injury. When section (B)(5) is

omitted there is very little difference between domestic violence first degree and domestic violence of a high and aggravated nature, both require great bodily injury. The incomplete charge confused the jury, as evidenced by their questions about the difference between the two statutes. The trial judge abused his discretion in refusing to define domestic violence second degree and moderate bodily injury. The error is not harmless. The record supports a finding of moderate bodily injury with aggravating factors.


In State v. Williams, 367 S.C. 192, 195–96, 624 S.E.2d 443, 445 (Ct. App. 2005), the South Carolina Court of Appeals wrote:

“An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge.” Id. at 390, 529 S.E.2d at 539. If there is any evidence to support a charge, the trial court should grant the request. State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The requesting party must have been prejudiced by the trial court's failure to give the instruction in order to warrant reversal on appeal. Clark, 339 S.C. at 390, 529 S.E.2d at 539.

Defining domestic violence second degree and moderate bodily injury is a sound principle of law when instructing the jury on domestic violence first degree because first degree includes second degree with aggravating factors. The principle applies to the facts of this case where there was evidence that the bodily injury was moderate rather than great. Domestic violence and moderate bodily injury were not defined in other parts of the instruction. Appellant was prejudiced by the failure to define the terms as part of the lesser included offense. Appellant faced a maximum sentence of twenty years for domestic violence of a high and aggravated nature. The lesser included offense of domestic violence first degree, however, carries a maximum sentence of ten years. The judge erred in refusing to properly define the lesser included offense of domestic violence first degree.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's conviction and sentence for criminal domestic violence of a high and aggravated nature and remand for a new trial.



Kathrine H. Hudgins
Appellate Defender


ATTORNEY FOR APPELLANT

This 11th day of February, 2020.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief of Appellant complies to the best of my ability with Rule 211 (b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 11th day of February, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Jr. Circuit Court Judge

THE STATE,

RESPONDENT,

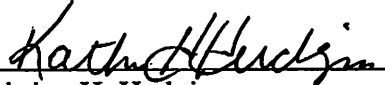
V.

OLANDIO R. WORKMAN,

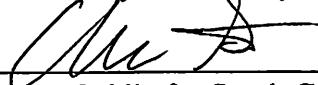
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 11th day of February, 2020.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of February, 2020.



Notary Public for South Carolina
My Commission Expires: September 30, 2029

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Honorable Alex Kinlaw Jr., Circuit Court Judge

Appellate Case No. 2018-001769

THE STATE,

Respondent,

v.

ORLANDIO R. WORKMAN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 E. North Street
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

A trial court should not instruct the jury on irrelevant matters. In this DVHAN case, the jury was instructed on DV 1st as a lesser included offense. Defense counsel requested the court to define DV 2nd because it may form an element of DV 1st in some circumstances, but it was not the pertinent aggravating circumstance here. Did the trial court err by refusing to define DV 2nd?

STATEMENT OF THE CASE

On February 21, 2017, a Greenville County Grand Jury indicted Appellant, Olandio R. Workman, for domestic violence of a high and aggravated nature (DVHAN), kidnapping, and possession of a weapon during the commission of a violent crime. Appellant proceeded to jury trial before the Honorable Alex Kinlaw, Jr., on September 17–20, 2018. The State presented testimony from the victim, Loretta Workman, as well as the law enforcement officers who investigated the case and an expert in delayed disclosure of domestic violence. The evidence showed that Appellant confined and beat Mrs. Workman over a period of three days, and used two guns to intimidate, and at one point strike, Mrs. Workman. The events happened in the presence of the couple's two children and Appellant took Mrs. Workman's phone during the incident. Appellant did not testify. The court instructed the jury on the law of domestic violence first degree (DV 1st) as a lesser included of DVHAN. The parties agreed a charge on domestic violence second degree (DV 2nd) as a lesser included offense was not warranted by the evidence. Appellant was convicted as charged of each offense and sentenced to 12 years for DVHAN, 15 years for kidnapping, and 5 years for possession of a weapon during the commission of a violent crime, with the sentences to run concurrently. This direct appeal follows. Though Appellant conceded at trial that it was not appropriate to charge DV 2nd as a lesser included offense, he contends the trial court erred by refusing his request to define DV 2nd and its element of moderate bodily injury as it related to a potential basis of guilt for DV 1st.

STATEMENT OF FACTS

On August 29, 2016, Deputy Shannon McHale was dispatched to 440 Davis Rd. in Greenville County regarding a welfare check on Loretta Workman. (R. p. 121, ll. 7-9). One of Mrs. Workman's coworkers had called 911 because Mrs. Workman had not shown up for work. (R. p. 121, ll. 9-12). Deputy McHale arrived just before 7:00 p.m. and Appellant, Orlando Workman, answered the front door. (R. p. 122).

Deputy McHale informed Appellant she was there to speak to Mrs. Workman, but Appellant replied that Mrs. Workman was not home. (R. p. 122, ll. 22-24). Appellant told Deputy McHale that she could not search the residence and that Mrs. Workman was with her mother and would be back in an hour. (R. p. 123). Appellant claimed Mrs. Workman's cell phone was broken and he did not know her mother's phone number. (R. p. 124, ll. 14-21).

Deputy McHale spoke with neighbors who informed her that they had not seen Mrs. Workman in a few days, but if Mrs. Workman's vehicle was in the driveway and the children were home, then Mrs. Workman was home. (R. pp. 124, l. 25 – 125, l. 4). Deputy McHale had dispatch contact local hospitals and learned none of them had admitted Mrs. Workman as a patient. (R. p. 125, ll. 16-19). Police contacted Mrs. Workman's boss who stated she had not been at work and that this was out of the ordinary for her. (R. p. 125, ll. 20-24). Mrs. Workman's boss further informed police that Mrs. Workman left her a voicemail on Saturday but it was "garbled" and she had been unsuccessful at reaching Mrs. Workman since then. (R. pp. 125, l. 25 – 126, l. 4). Police also made contact with the original complainant, Mrs. Workman's co-worker. (R. p. 206, ll. 6-15). She told police she had noticed scratches on Mrs. Workman a few weeks earlier and it was enough to "raise an eyebrow." (R. p. 206, ll. 17-22). Deputy McHale testified that Mrs. Workman's cell phone provider informed them that Mrs.

Workman's cell phone had been off for at least 27 hours but the last known location was 440 Davis Rd. (R. p. 126, ll. 11-20). After conducting a thorough investigation, Deputy McHale believed that Mrs. Workman was inside the home and obtained a search warrant and the assistance of SWAT. (R. p. 127, ll. 7-13).

SWAT officers responded to the scene and attempted to get the occupants of the home to come out, calling over a loudspeaker for over an hour. (R. p. 225). Around this time, police received a 911 call from a male caller stating he had been stabbed at an address that backed up to the Workmans' home through the woods. Police were unable to locate any stabbing victim. (R. pp. 130, l. 15 – 131, l. 4). The phone number that called to report the stabbing belonged to Appellant. (R. p. 131, ll. 1-16).

Eventually, SWAT entered the home and located a battered Mrs. Workman and her two children in a bedroom. Appellant was no longer there. (R. p. 129, ll. 15-21). When asked why she refused to come out, Mrs. Workman originally told officers she was asleep and did not hear them calling. (R. p. 229, ll. 6-7). However, the Workmans' 6-year-old son told police he heard them calling but his mother refused to let him leave the bedroom. (R. p. 231, ll. 14-17). He said his parents had been "fighting" and "his daddy" caused the injuries to Mrs. Workman. (R. p. 280, ll. 16-23).

Police searched the home and located two guns in the master bedroom. They found an AK-47-style rifle under the mattress on the bed and a 9mm handgun in a nightstand. (R. pp. 163-64). Each gun was loaded, with a bullet in the chamber. (R. p. 138, l. 19). They also found a container full of ammunition. (R. pp. 168-70; 183). Mrs. Workman also told officers about a third gun that was never located. (R. p. 237, ll. 13-18).

Deputy McHale testified that Mrs. Workman “had bruising to her face” and two black eyes that were “really badly swollen. I -- I'd assumed she could barely see out of them as to how swollen they were.” (R. p. 130, ll. 5-9). Sergeant Ramon Rivera testified Mrs. Workman “had two black eyes” and “swelling around her [cheek] bone area” and “finger marks” on her arms and neck. (R. pp. 212, l. 21 – 213, l. 21). She also seemed disoriented and confused. (R. pp. 212-13).

Sergeant Robert Perry attempted to interview Mrs. Workman, but she appeared “traumatized . . . irritable, irritated at us for being there.” (R. p. 226, ll. 15-24). Mrs. Workman originally told him her injuries occurred during a bar fight. (R. p. 228, ll. 6-8). Sergeant Perry testified he wanted to get Mrs. Workman into a shelter for battered women, but Mrs. Workman and her children left to stay with her sister-in-law. (R. pp. 232, l. 9 – 235, l. 9). Sergeant Perry set up a meeting with DSS with Mrs. Workman for the following morning, but learned that Mrs. Workman had left the state with her children. (R. pp. 240, l. 21 – 241, l. 19).

Days later, Mrs. Workman contacted Sergeant Perry. (R. pp. 244, l. 17 – 246, l. 10). Sergeant Perry testified Mrs. Workman was “very apologetic . . . for not cooperating more [on the] night of the incident.” (R. p. 246, ll. 11-17). Sergeant Perry recounted Mrs. Workman’s “story of a continual cycle of domestic violence, control, abuse, fear, intimidation” at the hands of Appellant. (R. p. 247, ll. 15-18). Mrs. Workman told him the last incident began after Appellant accused her of cheating and this was not the first time she and Appellant had had issues. (R. pp. 247-48).

Mrs. Workman testified and described the incident in detail. She explained that on Saturday the 27th, Appellant arrived home that evening and immediately began asking: “Where's your phone? Who have you been talking to? I know you've been cheating on me, you cheating,

lying bitch” (R. p. 293, ll. 8-24). Mrs. Workman testified that this was common behavior for Appellant and she gave him her phone to search. (R. p. 294, ll. 1-5). Appellant then began “constantly” and “repeatedly” punching Mrs. Workman about her face and body. Mrs. Workman testified that the children were present and were “running in and out, watching TV, playing.” (R. p. 294, ll. 20-25). The abuse “continued the whole three days.” Mrs. Workman testified Appellant kept accusing her of cheating: “Every time I even opened my mouth, ‘you’re lying.’ And he’d smack me again, or he’d punch me again, or choke me, and throw me to the floor.” (R. p. 295, ll. 5-14).

Mrs. Workman did not go to work on Monday because Appellant told her the trailer would blow up if she attempted to open any of the doors or windows.¹ (R. pp. 299, l. 21 – 300, l. 11). She testified Appellant “wasn’t allowing me to go anywhere. He took the keys to the cars, everything.” (R. p. 300, ll. 4–5). Mrs. Workman no longer had access to a phone because Appellant “broke it.” (R. p. 301, ll. 18–19). She testified she would have called her mom if she could have. (R. pp. 301–02).

Mrs. Workman further testified that Appellant at various times held a gun as he beat her. When asked why he was holding the guns, Mrs. Workman responded, “I guess for intimidation. And he was threatening me with them.” (R. p. 298, ll. 14–15). She testified that at one point Appellant struck her with the pistol as she raised her hands to defend herself. (R. p. 299, ll. 1–13). She testified Appellant was “holding [the gun], carrying it around the house” in front of the children. (R. p. 299, ll. 13–20).

¹ She testified, “I don’t know what he’s capable of. You see what he did to my face.” (R. p. 300, ll. 10–11).

On Monday when the police arrived to check on her, Mrs. Workman did not hear the initial knock on the door because she was in the shower. (R. p. 305, ll. 2-4). Appellant told her the police were at the door and ordered her to put makeup on to “cover up the bruises on [her] face” and “lay down in the bedroom with the kids and not to make a sound.” (R. p. 305, ll. 10-20). Mrs. Workman also testified that she was unaware that the guns were in the bedroom at that time because she thought Appellant had kept them in the living room with him. (R. pp. 305, l. 25 – 306, l. 1). Mrs. Workman testified she could hear the police horn asking them to exit the home, but she did not leave because she thought Appellant was still there and would hurt her. (R. p. 306, ll. 4-18). She testified she wanted the police to “rescue” her. (R. p. 306, l. 22).

Charge conference

Before closing arguments, the court held a charge conference. The attorneys agreed that DV 1st should be charged as a lesser included offense of DVHAN. (R. p. 426, ll. 21–23). The attorneys also agreed DV 2nd should not appear on the verdict form as a lesser included offense. (R. p. 436, ll. 8–21). However, defense counsel argued the court should nevertheless define the offense of DV 2nd and moderate bodily injury “as it relates to” DV 1st because the presence of moderate bodily injury forms a potential basis of guilt for DV 1st when combined with other aggravating factors. (R. pp. 426–36). Defense counsel argued, “my fear is that we’re going to get a question from the jury about what is criminal domestic violence second degree.” (R. p. 434, ll. 15–17). The trial court declined to charge the jury on DV 2nd, reasoning it would confuse the jury to instruct them on an uncharged offense. (R. p. 433). However, the court agreed to define DV 2nd for the jury “if they have that question.” (R. pp. 435–36).

STANDARD OF REVIEW

“To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. A trial judge's failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion.” State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011) (internal citation omitted).

bodily injury.² Instead, the case was based on Appellant’s use of a gun and other facts showing an extreme indifference to the value of human life that would cause Mrs. Workman to fear death or great bodily injury. Accordingly, the definition of moderate bodily injury and DV 2nd were not at issue and the trial court was not required to instruct the jury on these irrelevant matters. State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257, 259 (1944) (“The trial court should not instruct the jury on irrelevant matters because it may confuse the jury.”); State v. Leonard, 292 S.C. 133, 138, 355 S.E.2d 270, 273 (1987) (explaining that defining an uncharged offense runs the danger of confusing the jury).

The trial court wisely decided not to muddy the waters by instructing the jury on inapplicable portions of the DV statute when the jury was already tasked with deciphering the complicated DV 1st and DVHAN provisions. These portions of the statute are confusing in their own right. Adding additional elements related to factors not at issue would have frustrated the purpose of a jury charge—helping jurors understand the key issues they are being asked to decide. State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016) (“The purpose of a trial judge’s jury instructions should be to enlighten the jury and aid it in arriving at a correct verdict.”); State v. Gates, 269 S.C. 557, 561, 238 S.E.2d 680, 681 (1977) (“The evidence in a case determines the law which must be charged and every charge of the law must be reviewed in

² “‘Moderate bodily injury’ means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.” S.C. Code Ann. § 16-25-10 (4). Mrs. Workman’s injuries consisted of severe bruises and facial swelling.

ARGUMENT

The trial court correctly refused to instruct the jury on the uncharged offense of DV 2nd and moderate bodily injury because Workman's use of a gun made the degree of injury immaterial. Even if erroneous, the court's instruction on the lesser included offense was harmless because the jury convicted Workman of the more serious offense.

Appellant claims the trial court erred by refusing to define DV 2nd and "moderate bodily injury" within its charge on DV 1st. Specifically, Appellant contends that the definition of "moderate bodily injury" was necessary because it provides a potential basis for guilt for DV 1st. His argument fails because the presence of DV 2nd or "moderate bodily injury" was not an issue in this case. The State did not rely on the degree of injury as a circumstance of aggravation. Instead, the case was based primarily on Appellant's use of a gun, an aggravating circumstance that stands apart from the degree of injury. There was no evidence that Appellant committed the lesser, rather than the greater, offense and a charge on DV 2nd would only have confused the jury. Furthermore, even if the DV 1st charge was deficient, Appellant suffered no prejudice because the jury found him guilty of DVHAN and never reached DV 1st. This Court should affirm.

a. Structure of the domestic violence statute.

Domestic violence is "causing physical harm or injury to a person's own household member," or offering or attempting to do the same "with the apparent present ability under circumstances reasonably creating fear of imminent peril." S.C. Code Ann. § 16-25-20 (A)(2015). Domestic violence may be enhanced to DV 2nd, DV 1st, or DVHAN depending on the presence of certain aggravating factors. Many of the aggravating factors overlap between the various degrees of DV. For example, the presence of minor children will enhance a simple DV to a DV 2nd. If combined with moderate bodily injury, the presence of minor children will

enhance a DV 2nd to a DV 1st. S.C. Code Ann. § 16-25-20 (2015). Combined with “great bodily injury,” the presence of minor children will enhance the crime to a DVHAN. S.C. Code Ann. § 16-25-65 (A)(1)(2015). The same is true with other aggravating factors, including kidnapping or limiting access to a telephone. In these scenarios, the degree to which an aggravating factor will enhance a DV depends on the degree of injury. DVHAN may also be accomplished without bodily injury if committed by actions causing fear of “imminent great bodily injury or death” along with another circumstance of aggravation. S.C. Code Ann. § 16-25-65 (A)(2)(2015).

However, there is one aggravating circumstance that automatically enhances a simple domestic violence to a DV 1st or DHVAN: the use of a gun. Under § 16-25-20 (B), an act constituting domestic violence will be enhanced to a DV 1st if “the person uses a firearm in any manner.” S.C. Code Ann. § 16-25-20 (B)(4). This enhancement, unlike those enumerated in subsection (5), does not depend on the person accomplishing the act while “in the process of committing domestic violence in the second degree.” S.C. Code Ann. § 16-25-20 (B)(5). Likewise, an act constituting domestic violence will be enhanced to a DVHAN if the person uses a deadly weapon in circumstances which “would reasonably cause a person to fear imminent great bodily injury or death.” S.C. Code Ann. § 16-25-65 (D)(1). This is true “with or without an accompanying battery.” S.C. Code Ann. § 16-25-65 (A)(2). This distinction—fear of imminent great bodily injury or death—separates DV 1st and DVHAN when a gun is involved. The degree of injury, if any, is not relevant.

b. It was unnecessary to define DV 2nd and moderate bodily injury because these were not issues in the case.

The State did not present evidence or argue that Mrs. Workman suffered moderate bodily injury. In fact, it is questionable whether her injuries met the statutory definition of moderate

the light of the evidence.”). When asked to introduce complicated, extraneous statutory language into the charge, the trial court correctly recognized: “that’s confusing.” (R. p. 433, line 6).

There was no view of the evidence where Appellant was guilty of DV 2nd. Defense counsel conceded it would have been improper to charge DV 2nd as a lesser included offense. (R. p. 436). But he nevertheless requested a definition of DV 2nd because moderate bodily injury combined with other aggravating factors is one way to enhance a DV 2nd to a DV 1st. However, the State did not rely on this aggravating circumstance in the presentation of its case. Instead, the State presented evidence that Appellant used guns while committing domestic violence. Appellant did not testify or offer any evidence to rebut this testimony. The possibility that the jury may have disbelieved part of Mrs. Workman’s testimony is insufficient to warrant a charge on a matter not supported by the evidence. See State v. Fields, 356 S.C. 517, 523–24, 589 S.E.2d 792, 795–96 (Ct. App. 2003) (collecting cases standing for the proposition that “the [p]resence of evidence to sustain the crime of a lesser degree determines whether it should be submitted to the jury and the ‘mere contention that the jury might accept the State’s evidence in part and might reject it in part will not suffice.’”) (emphasis added); State v. Cooney, 320 S.C. 107, 110, 463 S.E.2d 597, 599 (1995) (explaining in order to be entitled to an instruction, the “Appellant must have presented facts” putting a matter in controversy) (emphasis added).

The un rebutted fact that Appellant used a gun to strike and intimidate Mrs. Workman made the issue of moderate bodily injury immaterial. If the State had based its case on Mrs. Workman’s degree of injury, arguing that the combination of moderate bodily injury and another aggravating factor listed in § 16-25-20 (B) transformed what would have been a DV 2nd into a DV 1st, it would have been necessary to define moderate bodily injury. But in the under the specific facts of this case, such a charge would not have aided in the jury’s understanding of the

true issue in the case—whether Appellant’s conduct manifested an extreme indifference to the value of human life reasonably causing Mrs. Workman to fear death or great bodily injury. As it relates to DV 1st, the use of a firearm “in any manner” will enhance a domestic violence to a DV 1st regardless of the degree of injury, if any. Because of Appellant’s use of a firearm, moderate bodily injury was not an issue in the case. See State v. Golston, 399 S.C. 393, 400, 732 S.E.2d 175, 179 (Ct. App. 2012) (explaining trial court was not required to charge lesser included offense of simple CDV because “the State necessarily proved at least one aggravating circumstance—serious bodily injury. The fact that there may be conflicting evidence as to other aggravating circumstances, or that there may be other serious bodily injuries the victim did not sustain, does not affect the existence of some serious bodily injury, and therefore the necessity that, on these facts, Golston was either not guilty or guilty of CDVHAN.”). The trial court correctly refused to introduce yet another complicated, confusing statute into the jury’s deliberations when it would have served no useful purpose to do so.

Looming large over this discussion is the standard of review: “An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion.” State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011). The trial court’s judgment that giving the requested charge would be confusing is entitled to deference from this Court. This is not a case where the trial court erroneously defined the charged crime. Instead, he merely declined to elaborate on the definition of an aggravating factor that was not at issue in the case. His decision was based on sound logic: that the extraneous instruction was irrelevant, unnecessary, and potentially confusing. Where reasonable minds can differ on the propriety of giving an instruction, the trial court’s ruling should stand. This Court should affirm.

c. Workman suffered no prejudice because he was convicted of the greater offense.

Even if the court's instruction on the lesser included offense of DV 1st was erroneous, Workman cannot show prejudice because the jury never reached DV 1st. Instead, they convicted him of DVHAN, which bears no relationship to moderate bodily injury or DV 2nd. Accordingly, Workman has not demonstrated reversible error.

In order to merit reversal, "a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232 (Ct. App. 2006). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining issues." Id. Such was the case here, where the instructions correctly and adequately defined the offense charged and the lesser included offense according to the evidence. That the jury did not even consider DV 1st is evidenced by their note asking whether they were required to consider DV 1st "if one point is met" for DVHAN. (R. p. 549, ll. 4-7). Because the jury found Workman guilty of the greater offense, any deficiency in the definition of the lower offense is harmless. See State v. Bunnell, 340 N.C. 74, 82, 455 S.E.2d 426, 430-431 (N.C. 1995) (finding no error in the trial judge's refusal to instruct the jury on voluntary manslaughter where the jury was instructed on the greater offenses of first-degree murder and second-degree murder and convicted Bunnell of first-degree murder).

CONCLUSION

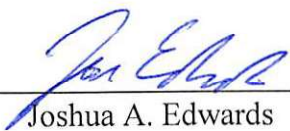
For all the foregoing reasons, it is respectfully submitted that the conviction and sentence of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 7, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Hon. Alex Kinlaw Jr., Circuit Court Judge

Appellate Case No. 2018-001769

THE STATE,

Respondent,

v.

ORLANDIO R. WORKMAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 

Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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APPEAL FROM GREENVILLE COUNTY
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THE STATE,

Respondent,

v.

OLANDIO R. WORKMAN,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by delivering two copies of the same addressed to his attorney of record, Kathrine H. Hudgins, Esquire, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 7th day of February, 2020.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Olandio R. Workman, Appellant.

Appellate Case No. 2018-001769

Appeal From Greenville County
Alex Kinlaw, Jr., Circuit Court Judge

Opinion No. 5922
Heard October 14, 2021 – Filed July 13, 2022

REVERSED AND REMANDED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua Abraham Edwards, of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

KONDUROS, J.: Olandio R. Workman appeals his conviction for criminal domestic violence of a high and aggravated nature (CDVHAN), arguing the trial court erred in refusing to instruct the jury on the definition of second-degree criminal domestic violence (CDV) and moderate bodily injury as part of its first-degree CDV jury instruction. We reverse and remand.

FACTS/PROCEDURAL HISTORY

A Greenville County grand jury indicted Workman for CDVHAN, kidnapping, and possession of a weapon during the commission of a violent crime for events occurring between August 27 and 29, 2016.

At trial, the victim, Workman's wife, testified Workman returned home on a Saturday evening and accused her of cheating on him. She stated he demanded she turn over her cellphone, "repeatedly" slapped and punched her, and was "constantly smacking [her] in the face, hitting [her] . . . head, [and] punching [her] . . . arms." According to the victim, when she tried to explain, Workman would "smack [her] again, or he'd punch [her] again, or choke [her], and throw [her] to the floor." The victim asserted this continued through the next day and night and Workman did not allow her to sleep or eat. The couple's two young children, who were two and six years old at the time, were in the home during this time. The victim testified she owned two firearms, which were registered in her name and were inside the home during this incident. She stated that during these two days, Workman "was holding [and] carrying [one of the firearms] around the house" to intimidate and threaten her. The victim explained that at one point, Workman struck her hand with a firearm.

The victim testified that before Workman left the home for work on Monday morning, he "was doing something outside." She stated that before he left, he warned her that their home would explode if she opened any of the doors or windows while he was gone. The victim stated she was unable to call for help because Workman had broken her cellphone and she was unable to leave because Workman took the car keys with him. Additionally, the victim provided that when Workman returned home on Monday evening, he continued physically assaulting her and told her to "shower because [she] was disgusting." The victim explained that when she exited the shower, Workman informed her that law enforcement was outside their home. She asserted Workman instructed her to apply makeup to cover her bruises and then lie "down in the bedroom with the kids and not make a sound." The victim stated that while she was in the bedroom, law enforcement repeatedly knocked on the door to the home and called out for her and Workman.

The victim explained she did not answer the door because she believed Workman was still inside their home and she was afraid he would hurt her or their children. Eventually, law enforcement entered the house, discovered the victim and her children inside, and determined Workman had fled the house through the back door or a window. The victim claimed she initially lied to law enforcement about

how she got her injuries to avoid "mak[ing] it worse" in case Workman returned home.

After the State rested, Workman waived his right to testify and declined to present any other testimony or evidence. During a discussion as to the charges on which the trial court would instruct the jury, the State agree with Workman's request for a jury instruction on the lesser included offense of first-degree CDV. However, the State initially opposed Workman's request that the trial court define second-degree CDV and moderate bodily injury as part of its first-degree CDV jury instruction. Workman argued both definitions were necessary because the first-degree CDV statute indicates a person is guilty of first-degree CDV if the State proves second-degree CDV along with at least one of several aggravating circumstances. The State did not object to the court "explain[ing] what [second-degree CDV] is," but it opposed charging the jury on the law of second-degree CDV as a lesser included offense. Workman agreed. The trial court ultimately denied Workman's request because the court believed such an instruction would confuse the jury. Workman expressed his concern that the jury would come back with a question "about what is" second-degree CDV. The State responded that it would be "appropriate . . . to maybe at that time explain to them." Workman replied that he did not "have a problem with doing it later." The court then indicated it would read the entire statute on first-degree CDV. The court further stated "it may come back and [the jury has] a question as to what second degree is. And we'll cross that bridge when we get to it." Workman later renewed his objection to the trial court's not defining second-degree CDV when instructing the jury on first-degree CDV.

During closing arguments, the State maintained the evidence demonstrated Workman had beaten the victim, threatened her with a firearm in the presence of their minor children, and prevented the victim and their children from leaving their home for more than twenty-four hours. The State asserted these circumstances—Workman's possession of a gun, the presence of minor children, and Workman's preventing the victim and their children from leaving the house—were sufficient for the jury to find Workman guilty of CDVHAN because they were "circumstances manifesting extreme indifference to the value of human life" under the CDVHAN statute. Workman argued the State failed to prove the victim suffered a great bodily injury because the State did not present any evidence she went to a hospital or otherwise sought medical care. Workman also asserted the victim's decision to remain in the house when Workman left for work showed she did not believe Workman was going to kill her and she was not in fear of great bodily injury or death as required for CDVHAN.

The trial court instructed the jury on (1) the definition of "great bodily injury," (2) the CDVHAN statute, and (3) the entire first-degree CDV statute, without defining second-degree CDV. The court also instructed the jury on the kidnapping and possession of a weapon during the commission of a violent crime statutes. Workman then renewed his request for an instruction on the definition of second-degree CDV and moderate bodily injury, which the trial court denied.

The order of the charges on the jury's verdict form listed CDVHAN first and first-degree CDV second. The trial court instructed the jury that if it found Workman guilty of the first charge, it did not need to make any decision for the second charge.

While deliberating, the jury submitted several questions to the trial court. Throughout the discussion of the trial court's responses to the jury's various questions, Workman continuously renewed his request for jury instructions on the definitions of second-degree CDV and moderate bodily injury. When the jury asked about the difference between CDVHAN and first-degree CDV, the trial court responded by reading both the CDVHAN and first-degree CDV statute and definition of "great bodily injury" to the jury.

During deliberations, the jury requested a hard copy of the relevant statutes. While the court was discussing the request with Workman and the State, the jury submitted additional requests for the trial court to "Explain kidnapping" and to "read what is bodily harm" and "state that fear of what." Over Workman's objection, the trial court responded to the jury's requests for clarification about the law by providing copies of the statutes that defined great bodily harm, CDVHAN, first-degree CDV, and kidnapping.

The jury then asked the court to identify "the difference between peril [and] fear of great bodily injury." After discussing with counsel that the relevant statutes did not define the terms, the trial court told the jurors they should rely on their own judgment and common sense to answer the question.

Finally, the jury submitted the following question to the court: "[CDVHAN], if one point is met, can you not look at [first-degree CDV]?" The State indicated it "interpret[ed] that as if [CDVHAN] has been met, can you, also, find him guilty of [first-degree CDV]?" Workman stated, "I'll take the opposite. I would say if one factor is met, can you still consider [first-degree CDV]? If they found one factor there, they could find [it] in both places." The court responded, "So the answer is 'yes' or 'no'?" The State and Workman each responded, "I think the answer is yes."

The court stated "the way [it] interpret[ed] this is since you've got [first-degree CDV] as a lesser included -- and that's what they're asking -- can they consider it? I think the answer is yes." After the court informed the jury the answer was "yes" and the jury returned to deliberations, Workman stated that after hearing the question again, he was concerned he may have misunderstood the jury's question. Workman stated he thought the jury meant "can we still look at it?"; the trial court agreed. The trial court did not give any further instructions.

The jury found Workman guilty of CDVHAN, kidnapping, and possession of a weapon during the commission of a violent crime. The trial court sentenced him to concurrent terms of twelve years' imprisonment for the CDVHAN conviction, fifteen years' imprisonment for the kidnapping conviction, and five years' imprisonment for the weapon possession conviction, with credit for 726 days of time-served. This appeal followed.

STANDARD OF REVIEW

"An appellate court will not reverse a [trial] court's decision regarding a jury instruction unless there is an abuse of discretion." *State v. McGowan*, 430 S.C. 373, 379, 845 S.E.2d 503, 505 (Ct. App. 2020). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Brooks*, 428 S.C. 618, 625, 837 S.E.2d 236, 239 (Ct. App. 2019) (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007)).

LAW/ANALYSIS

I. First-Degree CDV Jury Instruction

Workman argues the trial court erred by refusing to define second-degree CDV and moderate bodily injury as part of its first-degree CDV jury instruction. He maintains the jury needed the definitions to determine his guilt because both terms are used in the first-degree CDV statute. He also asserts the court needed to provide the requested definitions because the degree of the injury inflicted on the victim was "a critical determining factor in this case." Workman contends the jury's submission of several questions demonstrated that the failure to define these terms caused the jury to "struggle[] with the difference between" CDVHAN and first-degree CDV. According to Workman, the trial court "effectively omitted [sub]section (B)(5) from the [first-degree CDV] statute and prevented the jury from properly considering the lesser included offense." We agree.

"[T]he purpose of jury instructions is to enlighten the jury as to what law is applicable to a certain state of facts in order that a just, fair[,] and proper verdict can be reached." *State v. Peer*, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). "The trial court is required to charge only the current and correct law of South Carolina." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). "The evidence presented at trial determines the law to be charged to the jury." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012).

"The test for the sufficiency of a jury charge is what a reasonable juror would have understood the charge to mean." *State v. Benjamin*, 345 S.C. 470, 474, 549 S.E.2d 258, 260 (2001).

"It is error for the trial court to refuse to give a requested instruction [that] states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." *State v. Brandt*, 393 S.C. 526, 549-50, 713 S.E.2d 591, 603 (2011) (quoting *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)). In most cases, "if the purpose is to enlighten the jury regarding the issues before it," reading "the jury a statute defining a crime with which the defendant is not charged" is not error. *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "When, however, the inclusion of the non-charged offense has the effect of confusing the issues the jury must determine, the statute should not be read to the jury." *Id.*

The supreme court has held a trial court erred in failing to give a defendant's requested charge that was a correct statement of the law when the trial court's given charge did not adequately cover the substance of the defendant's request. *State v. Kimbrell*, 294 S.C. 51, 56, 362 S.E.2d 630, 632 (1987). In *State v. Rye*, the supreme court reversed a conviction after the trial court's instructions on the defenses raised addressed only one possible scenario when differentiating two defenses and another scenario also applied. 375 S.C. 119, 124-25, 651 S.E.2d 321, 324 (2007). The court explained, "Though [the trial court's instruction] was most of the picture, it was not the complete picture." *Id.* at 123, 651 S.E.2d at 323. In *State v. Ezell*, this court found instructing a jury on only one part of the statute defining an offense when the offense could be accomplished in multiple manners would have been error. 321 S.C. 421, 426, 468 S.E.2d 679, 681 (Ct. App. 1996) (per curiam).

Section 16-25-20(A) of the South Carolina Code provides, "It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer

or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril." S.C. Code Ann. § 16-25-20(A) (Supp. 2021). A defendant is guilty of first-degree CDV if in addition to violating section 16-25-20(A), at least one of the following occurs: "(1) great bodily injury to the [defendant's] own household member result[ed] or the act [was] accomplished by means likely to result in great bodily injury"; (2) the defendant committed second-degree CDV while violating an order of protection; (3) the defendant was previously convicted of CDV at least twice during the ten years preceding the current offense; (4) the defendant used a firearm; or (5) *the defendant committed second-degree CDV* (a) "in the presence of, or while being perceived by[,] a minor;" (b) against a person the defendant knew or should have known was pregnant; (c) "during the commission of a robbery, burglary, kidnapping, or theft;" (d) "by impeding the victim's breathing or air flow; or" (e) using physical force or the threat of force to block the victim's access to a phone to prevent the victim from reporting a crime or injury. S.C. Code Ann. § 16-25-20(B) (Supp. 2021). A "[g]reat bodily injury" is a "bodily injury [that] causes a substantial risk of death or [that] causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-25-10(2) (Supp. 2021).

A defendant is guilty of second-degree CDV if in addition to violating section 16-25-20(A), (1) moderate bodily injury resulted or the act was "accomplished by means likely to result in moderate bodily injury" to the defendant's own household member; (2) the defendant committed third-degree CDV while violating an order of protection; (3) the defendant was previously convicted of CDV once during the ten years prior to the current offense; or (4) the defendant committed third-degree CDV (a) "in the presence of, or while being perceived by, a minor;" (b) against a person the defendant knew or should have known was pregnant; (c) "during the commission of a robbery, burglary, kidnapping, or theft;" (d) "by impeding the victim's breathing or air flow; or" (e) using physical force or the threat of force to block the victim's access to a phone to prevent the victim from reporting a crime or injury. S.C. Code Ann. § 16-25-20(C) (Supp. 2021). A "[m]oderate bodily injury" is a physical injury that causes prolonged loss of consciousness, temporary or moderate disfigurement, or temporary loss of the function of a bodily member or organ, or an injury that requires the use of regional or general anesthesia during treatment or "results in a fracture or dislocation." S.C. Code Ann. § 16-25-10(4) (Supp. 2021). "Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care." *Id.*

The trial court erred in its jury instruction on first-degree CDV by not defining second-degree CDV. Although the trial court's instruction was a correct statement of law, the jury likely would not have known what the trial court meant when it referenced second-degree CDV during the instruction. Because the trial court did not define second-degree CDV nor moderate bodily injury, the jury could not have understood subpart (A)(5) of the first-degree CDV statute. The evidence supported a jury instruction on the *definition* of second-degree CDV under section 16-25-20(B)(5) of the first-degree CDV statute. Additionally, because second-degree CDV uses the term moderate bodily injury, the court also should have given the statutorily provided definition of that term. Accordingly, the trial court erred in failing to give the definition of second-degree CDV.¹

II. Harmless Error

The State argues that even if the trial court erred, any error was harmless because Workman cannot show prejudice as the jury found him guilty of the greater offense—CDVHAN²—and never reached first-degree CDV. The State asserts

¹ In its respondent's brief, the State contends it "did not present evidence or argue that [the victim] suffered moderate bodily injury" at trial and "whether her injuries met the statutory definition of moderate bodily injury" is questionable. The State provides it based its case on the "use of a gun and other facts showing an extreme indifference to the value of human life that would cause [the victim] to fear death or great bodily injury." It argues it "did not rely on [moderate bodily injury combined with other aggravating factors] in the presentation of its case. Instead, [it] presented evidence that [Workman] used guns while committing domestic violence." It therefore maintains that any instruction as to second-degree CDV was irrelevant and not at issue. However, in closing arguments at trial, in addition to asserting that Workman had used a firearm, the State also asserted the offense occurred in the presence of a minor and during the commission of a kidnapping. The State referenced those two conditions first in relation to the circumstances manifesting extreme indifference to the value of human life needed for CDVHAN and second as a method of proving first-degree CDV, under the basis of meeting the elements of second-degree CDV along with an aggravating factor. Accordingly, the State argued at trial it met the elements in ways other than the use of a firearm, and we disagree with its assertion that the disputed instruction was irrelevant and not at issue.

² First-degree CDV is a lesser included offense of CDVHAN. S.C. Code Ann. § 16-25-20(B). A defendant is guilty of CDVHAN if the defendant violated section 16-25-20(A) and "(1) commit[ted] the offense under circumstances

because the jury convicted Workman of CDVHAN, which it contends bears no relationship to moderate bodily injury or second-degree CDV, Workman has not demonstrated reversible error. The State contends that "[b]ecause the jury found Workman guilty of the greater offense, any deficiency in the definition of the lower offense is harmless." We disagree.

"Errors, including erroneous jury instructions, are subject to harmless error analysis." *State v. Burdette*, 427 S.C. 490, 496, 832 S.E.2d 575, 578 (2019) (quoting *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), *overruled on other grounds by Burdette*, 427 S.C. at 504 n.3, 832 S.E.2d at 583 n.3). "In making a harmless error analysis, [this court's] inquiry is . . . whether the erroneous charge contributed to the verdict rendered." *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998)). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *Id.* (quoting *Kerr*, 330 S.C. at 144-45, 498 S.E.2d at 218).

manifesting extreme indifference to the value of human life and great bodily injury to the victim results;" "(2) commit[ted] the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death;" "or (3) violate[d] a protection order and, in the process of violating the order," committed first-degree CDV. S.C. Code Ann. § 16-25-65(A) (Supp. 2021). The statute contains a nonexclusive list of "[c]ircumstances manifesting extreme indifference to the value of human life," including "(1) using a deadly weapon;" "(2) knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time;" "(3) committing the offense in the presence of a minor;" "(4) committing the offense against a person he knew, or should have known, to be pregnant;" "(5) committing the offense during the commission of a robbery, burglary, kidnapping, or theft;" or "(6) using physical force" to block the victim's access to a phone to prevent the victim from reporting a crime or injury. S.C. Code Ann. § 16-25-65(D) (Supp. 2021). The statute defines deadly weapon as "any pistol, dirk, slingshot, metal knuckles, razor, or other instrument [that] can be used to inflict deadly force." S.C. Code Ann. § 16-25-10(1) (Supp. 2021).

The State relies on a case from the North Carolina Supreme Court in which that court found any error in the trial court's refusal to instruct the jury on voluntary manslaughter was harmless when the jury was instructed on the greater offenses of both first-degree and second-degree murder and convicted the defendant of first-degree murder. *State v. Bunnell*, 455 S.E.2d 426, 430-31 (N.C. 1995). The supreme court relied on a previous case, *State v. Shoemaker*, 432 S.E.2d 314, 324 (N.C. 1993), in which the trial court had instructed the jury on the same possible offenses and the defendant asserted he was entitled to a voluntary manslaughter charge. *Bunnell*, 455 S.E.2d 426 at 430. In *Shoemaker*, which in turn relied on a previous case, the supreme court had stated, "A verdict of murder in the first degree shows clearly that the jurors were not coerced, for they had the right to convict in the second degree. That they did not indicates their certainty of [the defendant's] guilt of the greater offense." 432 S.E.2d at 324 (quoting *State v. Freeman*, 170 S.E.2d 461, 465 (N.C. 1969)). The supreme court further stated, "The failure to instruct [the jurors] that they could convict of manslaughter therefore could not have harmed the defendant." *Id.* (quoting *Freeman*, 170 S.E.2d at 465).

However, in *State v. Wallace*, the North Carolina Supreme Court found a jury's convicting a defendant of *second-degree murder* did not cure the trial court's "error in failing to instruct [the jury] on involuntary manslaughter." 305 S.E.2d 548, 552 (N.C. 1983). The court noted it had previously stated that "when there is evidence of guilt of the lesser charge, '[e]rroneous failure to submit the question of defendant's guilt of lesser degrees of the same crime is not cured by a verdict of guilty of the offense charged.'" *Id.* (alteration by court) (quoting *State v. Wrenn*, 185 S.E.2d 129, 132 (N.C. 1971)). The court held that "in such case, it cannot be known whether the jury would have convicted of a lesser degree if the different permissible degrees arising on the evidence had been correctly presented in the court's charge." *Id.* (quoting *Wrenn*, 185 S.E.2d at 132). The court provided that "[t]his is also true when the jury returns a verdict convicting the defendant of the highest offense charged, even though the conviction could have been of an intermediate offense." *Id.* But, the court noted "an error in an instruction on manslaughter may be cured by a verdict of murder in the first degree when there was a proper instruction as to murder in the first degree and murder in the second degree." *Id.*; see also *Freeman*, 170 S.E.2d at 464 ("Ordinarily, when the jury is instructed that it may find defendant guilty of murder in the first degree, murder in the second degree, manslaughter, or not guilty, and the verdict is guilty of murder in the second degree, an error in the charge on manslaughter will require a new trial. In such event[,] it cannot be known whether the verdict would have been manslaughter if the jury had been properly instructed. But where, as here, the jury

was properly instructed as to both degrees of murder and yet found defendant guilty of murder in the first degree rather than the second degree, it is clear that error in the charge on manslaughter was harmless.").

Our supreme court has reversed convictions in which the trial court failed to charge a lesser included offense supported by the evidence, thus implicitly rejecting the theory that a jury's conviction of a higher offense shows the error was harmless. However, the supreme court has not explicitly ruled on harmlessness in these situations. In *State v. Lowry*, "[t]he trial [court] instructed the jury as to murder and self-defense, but declined to charge the jury as to voluntary manslaughter. Lowry was found guilty of murder," and this court affirmed. 315 S.C. 396, 398, 434 S.E.2d 272, 274 (1993). However, the supreme court reversed the conviction, finding the evidence supported a jury instruction on voluntary manslaughter. *Id.* at 399-400, 434 S.E.2d at 274. The supreme court noted that this court had improperly relied on *State v. Gandy*³ "to support its conclusion that failure to charge voluntary manslaughter was harmless, because once the jury returned the verdict of murder, it had determined that the defendant had acted with malice, and thus could not have returned a verdict for the lesser offense." *Lowry*, 315 S.C. at 399-400, 434 S.E.2d at 274. The supreme court noted it had previously rejected this reasoning in *Casey*, in which it had expressly overruled in part *State v. Patrick*,⁴ and implicitly overruled *Gandy*, upon which *Patrick* relied. *Lowry*, 315

³ *State v. Gandy* affirmed a defendant's conviction for murder when "[t]he trial [court] charged the jury on the law of murder and voluntary manslaughter" but not involuntary manslaughter. 283 S.C. 571, 573, 324 S.E.2d 65, 66-67 (1984), *implicitly overruled in part by Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991). The court noted because the jury convicted the defendant of murder, it necessarily found malice present at the time of the killing and "both [voluntary and involuntary manslaughter] are distinguished from murder because the vital element of malice is missing." *Id.*

⁴ In *State v. Patrick*, our supreme court affirmed a defendant's conviction for murder even though the trial court incorrectly blended the elements of voluntary and involuntary manslaughter during the jury charge, when the court clearly instructed the jury that manslaughter was distinguished from murder by the absence of malice, because the jury, by returning a verdict of murder—which necessarily included a finding of malice—determined the defendant acted with malice and therefore "it could not have returned a verdict for manslaughter, voluntary or involuntary." 289 S.C. 301, 306, 345 S.E.2d 481, 484 (1986), *overruled in part by Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991), and

S.C. at 399-400, 434 S.E.2d at 274. The *Lowry* court determined that "[e]ven though the jury was not convinced that Lowry acted in self-defense, the jury could have discerned, consistent with the evidence, that there was sufficient legal provocation and heat of passion to find Lowry guilty of voluntary manslaughter." *Id.* at 400, 434 S.E.2d at 274.

In *Bunnell*, the jury had the option of finding the defendant guilty of first-degree or second-degree murder or finding him not guilty, and the jury chose to convict of first-degree murder. In *Lowry*, the jury's only options were to find the defendant guilty of murder or not guilty. However, the South Carolina Supreme Court seemingly rejected applying harmless error even in a situation like *Bunnell* in its *Casey* opinion. In *Casey*, the trial court "refused Casey's request to charge the law of involuntary manslaughter; [it] did, however, charge the law of murder, voluntary manslaughter, accident[,] and self-defense. Casey was found guilty of murder . . ." 305 S.C. at 446, 409 S.E.2d at 392. The supreme court initially affirmed the refusal to charge involuntary manslaughter on the basis that "[t]he jury returned a verdict of murder, which, necessarily embraced a finding of malice." *Casey v. State*, Op. No. 23402 (S.C. Sup. Ct. filed May 20, 1991) (Davis Adv. Sh. No. 13 at 13, 14-15), *vacated*, 305 S.C. 445, 446, 409 S.E.2d 391, 391 (1991). The initial opinion found because "the jury determined that Casey acted with malice, 'it could not have returned a verdict for manslaughter, voluntary *or* involuntary.'" *Id.* (emphasis added by court) (quoting *Patrick*, 289 S.C. at 306, 345 S.E.2d at 484). The initial opinion held, "*Patrick* and *Gandy* are consistent with decisions in a majority of jurisdictions [that] hold that, when a defendant has been convicted of murder, the correctness of instructions relating to manslaughter becomes immaterial." *Id.* at 15. The supreme court quoted an opinion from the Supreme Court of Kansas that stated "where the jury, under proper instruction, have found a defendant guilty of every element of the *superior* offense, erroneous instructions, or a total failure to instruct, with reference to an offense *inferior* in degree, and including less criminality cannot, logically, be said to have influenced the jury." *Id.* (emphasis added by court) (quoting *State v. Metcalf*, 452 P.2d 842, 845 (Kan. 1969)). The court further quoted, "The failure of the court can only be said to be prejudicial to the defendant on the theory that the jury failed to fully comprehend the definition of the superior degree, or misconstrued and misapplied the law to the facts." *Id.* (quoting *Metcalf*, 452 P.2d at 845). Additionally, the court stated, "To indulge in such presumptions, even though we know that mistakes are made by juries and courts alike, is to overturn the whole theory of the

overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

administration of justice." *Id.* (quoting *Metcalf*, 452 P.2d at 845). The vacated *Casey* opinion thus found the trial court's failure to instruct the jury on involuntary manslaughter did not prejudice the defendant. *Id.*

Subsequently, the supreme court vacated its prior opinion and substituted a new opinion in its place. *Casey*, 305 S.C. at 446, 409 S.E.2d at 391. The substituted opinion reversed the trial court's refusal to instruct the jury on involuntary manslaughter. *Id.* at 447, 409 S.E.2d at 392. In the substituted opinion, the supreme court found "testimony supports an involuntary manslaughter charge. Accordingly, the trial court erred in refusing the charge, and the case is reversed and remanded for a new trial." *Id.* The substituted *Casey* opinion did not mention harmless error or discuss prejudice.

Other states have expressly determined when the trial court has failed to charge a lesser included offense in similar situations such error is not harmless simply because the jury convicted a defendant of the higher offense.⁵ Many courts have recognized a distinction in finding harmless error that hinges on whether the jury is charged with an intermediate offense or not. A few states have gone further in noncapital⁶ cases to find even if the jury is not instructed on an intermediate

⁵ Unlike the present case, most of these cases involve degrees of murder and manslaughter.

⁶ In *Beck v. Alabama*, the United States Supreme Court held unconstitutional in capital cases a statute that prohibited instructing the jury on lesser included offense instructions supported by the evidence. 447 U.S. 625 (1980). The Court noted "forcing the jury to choose between conviction on the capital offense and acquittal" could "encourage the jury to convict for an impermissible reason—its belief that the defendant is guilty of some serious crime and should be punished," even when the jury has "some doubt with respect to an element" of the offense. *Id.* at 632, 637, 642; *see also Keeble v. United States*, 412 U.S. 205, 212-13 (1973) (finding when "the jury was presented with only two options: convicting the defendant of [the charged offense] or acquitting him outright" it could not "say that the availability of a third option . . . could not have resulted in a different verdict" because when "one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction"). In a subsequent case, the Court explained, "Because the scheme in *Beck* created a danger that the jury would resolve any doubts in favor of conviction, we concluded that it violated due process." *Bobby v. Mitts*, 563 U.S. 395, 397 (2011) (citing *Beck*, 447 U.S. at 638, 643). However, the *Beck* Court expressly declined to address the issue of whether the Due Process Clause

charge, the error can still be harmless.⁷ However, most states distinguish between the two situations. Additionally, some courts have seemed to find an error in failing to charge the jury with a lesser included offense supported by the evidence can never be harmless.⁸

One state that has distinguished these situations in several cases is Tennessee. The Tennessee Supreme Court has held, "Omitting an instruction on a lesser-included offense denies the jury the option of rejecting a greater offense in favor of a lesser offense." *State v. Allen*, 69 S.W.3d 181, 189 (Tenn. 2002). That court has further explained, "The omission precludes the jury from finding that the element distinguishing the greater offense from the lesser offense was not proven beyond a reasonable doubt and that the defendant is therefore guilty of the lesser offense." *Id.* at 189-90. The court noted it had found an "error may be harmless when the jury, by finding the defendant guilty of the highest offense *to the exclusion of the immediately lesser offense*, necessarily rejected all other lesser-included offenses." *Id.* at 189 (emphasis added) (citing *State v. Williams*, 977 S.W.2d 101, 106 (Tenn. 1998)). However, the supreme court distinguished that situation from a situation in which the jury convicted the defendant of the only lesser included offense instructed, noting that in the latter case, "the jury . . . did not reject an intermediate offense." *Allen*, 69 S.W.3d at 189. The court has emphasized the *Williams* analysis is used when the jury has rejected the immediately lesser offense but not when the jury was given no option to convict of any lesser included offense.

mandates instructing the jury on lesser included offenses in noncapital cases. *Beck*, 447 U.S. at 638 n.14; *see also Schad v. Arizona*, 501 U.S. 624, 646 (1991) (differentiating *Beck* from a case in which "the jury . . . was given the option of finding [the defendant] guilty of a lesser included noncapital offense"), *overruled on other grounds by Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

⁷ "Some courts have gone even farther, finding harmless error even when no intermediate instruction was offered." *Mata-Medina v. People*, 71 P.3d 973, 983 (Colo. 2003) (en banc); *id.* (noting the Hawaii Supreme Court did not require an intermediate instruction based on the reasoning that "jurors are presumed to follow the court's instructions," to determine that in arriving at a verdict on the charged offense, the jury would not have reached the lesser offense the trial court erroneously failed to charge (quoting *State v. Pauline*, 60 P.3d 306, 331 (Haw. 2002))).

⁸ *Commonwealth v. Covil*, 378 A.2d 841, 843-44 (Pa. 1977) (finding the "denial of a voluntary manslaughter instruction [wa]s not harmless error simply because the jury returned a verdict of murder of the first degree" and had the option of convicting the defendant of murder of the second degree).

Moore v. State, 485 S.W.3d 411, 421-22 (Tenn. 2016). In *Williams*, the Tennessee Supreme Court pointed to numerous cases from that state as well as fifteen other states holding a trial court's error in not charging the jury on a lesser included offense was harmless when the jury had the option of convicting a defendant of an intermediate lesser included offense but instead convicted of the higher offense. 977 S.W.2d at 106-08.

Colorado is another state that has examined similar situations. In *Gallegos v. People*, the Colorado Supreme Court held "[t]he refusal of the trial court to instruct the jury on the lesser degrees of the alleged crime is error, requiring. . . a new trial," when the trial court charged the jury only on first-degree murder and not second-degree murder or manslaughter, despite evidence supporting the lesser offenses. 316 P.2d 884, 884 (Colo. 1957). In *Mata-Medina*, the Colorado Supreme Court noted *Gallegos* was not instructive in cases "in which the jury received an intermediate offense instruction and declined to convict on that charge." 71 P.3d at 980. The Colorado Supreme Court distinguished the situation in *Gallegos* from the one in which "[c]ourts across the country agree that jury convictions for a certain charged offense inherently constitute a rejection of *offered* lesser offenses, or findings that the defendant was necessarily guilty of lesser included offenses." *Id.* at 982 (emphasis added); *id.* at 983 ("[C]ourts throughout the country that have considered the issue have concluded that a jury's *rejection of an intermediate* offense constitutes an implicit rejection of omitted lesser offenses." (emphasis added)); *see also id.* at 980, 983 (finding an error harmless when the "jury receive[d] an instruction on an intermediate offense and decline[d] to render a conviction on that offense" because by doing so, the jury implicitly rejected the uncharged lesser included offense).

The situation here is not exactly like *Bunnell* or *Lowry*. In the present case, the trial court charged a lesser included offense, but that charge was incomplete. Although, the jury had the options of finding Workman guilty of CDVHAN, guilty of the lesser included offense of first-degree CDV, or finding him not guilty, the instruction for first-degree CDV was incomplete. In the *Lowry* and *Casey* cases, if the supreme court had agreed with the harmless error theory expressed by the State, it could have found the error in giving the lesser jury instruction harmless and affirmed the convictions instead of reversing them. *See also State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110 (2003) (reversing a voluntary manslaughter conviction when the trial court denied the defendant's request to charge involuntary manslaughter); *State v. Knoten*, 347 S.C. 296, 309, 555 S.E.2d 391, 398 (2001) ("Because there was evidence . . . supporting a conviction for the lesser included offense of voluntary manslaughter, we reverse Appellant's conviction [of

murder]."). Because the supreme court has not opted to find the failure to give instructions harmless when the jury convicted of the higher offense, we will not find the error in failing to give a complete charge on the lesser offense harmless here. Accordingly, the trial court's error in giving an incomplete charge on first-degree CDV was not harmless despite the jury's conviction of Workman of the offense of CDVHAN.

CONCLUSION

The trial court erred in its jury charge on first-degree CDV by not defining second-degree CDV and moderate bodily injury. Additionally, that error was not harmless. Accordingly, Workman's conviction for CDVHAN is

REVERSED AND REMANDED.

HILL and HEWITT, JJ., concur.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Honorable Alex Kinlaw Jr., Circuit Court Judge

Appellate Case No. 2018-001769

THE STATE,

Respondent,

v.

OLANDIO R. WORKMAN,

Appellant.

PETITION FOR REHEARING

On July 13, 2022, this Court issued a published opinion reversing Appellant Olandio Workman's conviction for Domestic Violence of a High and Aggravated Nature. State v. Workman, Op. No. 5922 (S.C.Ct.App. filed July 13, 2022) (Howard Adv.Sh. No.25 at 21). The Court held Workman was prejudiced by the trial court's refusal to define the offense of Domestic Violence in the Second Degree within in its charge on the lesser-included offense of Domestic Violence in the First Degree. Because DV 2nd may, in some circumstances, form an element of DV 1st, the Court held the trial court's charge on DV 1st was incomplete. The Court held that Workman was prejudiced because the jury was not given the option of finding him guilty of DV

1st under § 16-25-20 (B)(5). Pursuant to Rule 221(a) of the South Carolina Appellate Court rules, Respondent respectfully petitions this Court for rehearing.

While the State disagrees with the Court's holding that the trial court abused its discretion, the State's argument on this issue is sufficiently laid out in its brief and will not be repeated here. Rather, the State's primary purpose in filing this petition is to respectfully ask this court to reconsider its ruling finding Workman was prejudiced by the charge. Even if the trial court should have included a definition of DV 2nd within its charge on DV 1st, the omission did not contribute to the verdict in this case because: 1) the unrebutted evidence showed Workman used a gun; and 2) even if the trial court had defined DV 2nd, the jury would not have found guilt under that subsection.

1. The question whether a jury charge is prejudicial is a fact-specific question.

The Court's opinion in this case focused primarily on the prejudice analysis. Noting the State's reliance on State v. Bunnell, 455 S.E.2d 426 (N.C. 1995), the Court surveyed relevant South Carolina precedent and out-of-state law addressing the "skip rule," which stands for the proposition that when a jury is given the choice between a charged offense and two lesser-included offenses and the trial court gives an erroneous instruction on the lowest offense, the jury's finding of guilt on the highest offense will render the error harmless. The Court explained that this exact scenario is not presented in this case because DV 2nd was not charged as a lesser-included offense, but rather stood as a potential basis for guilt as an element of DV 1st. Nonetheless, the Court focused almost exclusively on the State's argument that the jury's verdict of guilt of DVHAN rendered the defect in the charge on DV 1st harmless.

However, there is much more to the prejudice analysis in this case. The question whether an erroneous jury instruction is prejudicial to a defendant depends on the evidence presented and

arguments of counsel. The question is "whether the erroneous jury charge affected the jury's deliberations" and, thus, contributed to the verdict. State v. Bowers, Op. No. 2019-001776, 2 (S.C. Sup.Ct. filed June 29, 2022) (Howard Adv.Sh. No.23 at 23). To say that an error did not contribute to the verdict is to find that error **"unimportant in relation to everything else the jury considered** on the issue in question, as revealed in the record." Arnold v. State, 309 S.C. 157, 166, 420 S.E.2d 834, 839 (1992). The significance of the erroneous charge must be judged based on its probable impact on "reasonable jurors, when measured against other evidence considered by those jurors" Id. "Harmless error review looks to the basis on which the jury **actually rested its verdict.**" Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) (emphasis added).

Near the end of its opinion, this Court wrote the following: "Because the supreme court has not opted to find the failure to give instructions harmless when the jury convicted on the higher offense, we will not find the error in failing to give a complete charge on the lesser included offense harmless here." State v. Workman, Op. No. 5922 (S.C.Ct.App. filed July 13, 2022) (Howard Adv.Sh. No.25 at 37). Respectfully, this passage gives the reader the impression that an error in a jury instruction on a lesser offense cannot be harmless. As discussed above, a finding of prejudice from an erroneous jury instruction will always turn on the facts of each particular case. While it may not always be appropriate to find error harmless when a trial court gives an incomplete charge on a lesser-included offense, neither is it appropriate to always find such an error prejudicial. While the jury's verdict for DVHAN strongly indicates that Workman was not prejudiced by the instruction on the lower charge, there is even greater support to be found in the larger context of the record.

2. The un rebutted evidence showed Workman used a gun while committing domestic violence against Ms. Workman.

The un rebutted evidence presented in this case was that Workman used a firearm while assaulting Ms. Workman. Ms. Workman testified that Workman threatened her with guns while he beat her, and at one point struck her with the butt of a gun. (R.299). During his cross-examination of Ms. Workman, defense counsel did not question Ms. Workman's testimony that Workman threatened and hit her with a gun. (R.319). Again, during his cross-examination of the investigator, defense counsel merely questioned the details of the manner in which the gun was used without rebutting the fact. (R.270). Workman did not present any contradictory evidence.

In his closing argument, defense counsel more or less ignored the evidence that Workman used a gun. He argued: "And I'm, frankly, not going to talk about the gun very much. Because y'all are either going to decide the gun was there or not. And I think I made it pretty clear that these guns belong to Ms. Workman. She knew where they were. They were in the room she was in. So that whole thing gives me pause. She was in the house that whole day by herself with the guns." (R.488).

That the jury found Workman guilty of DVHAN shows they believed he used a gun. The facts did not support a conviction for DVHAN under § 16-25-65 (A)(1) or A(3). The jury therefore must have believed Workman's conduct "would reasonably cause a person to fear great bodily injury or death" to find him guilty under § 16-25-65 (A)(2), as the solicitor argued. (R.454). Based on the evidence presented in this case, the only conduct reasonably supporting a conviction under this section would be Workman's use of a gun, as the solicitor argued. (R.p.455). Thus, the facts of this case, when applied to the law, tend strongly to show the jury properly found Workman guilty of DVHAN on that basis. Accordingly, it is not only the jury's finding of guilt of the greater offense which proves harmlessness. Rather, it is the greater factual

and legal context that shows the jury did not even reach DV 1st.¹ This was the "actual basis" for the jury's verdict. See Lowry, 376 S.C. at 508, 657 S.E.2d at 765. Nothing in the omitted charge would have changed it.

3. Even if the trial court defined DV 2nd, the jury would not have found guilty under that subsection.

Even if the jury would have reached DV 1st, they would not have found guilty under §16-25-20 (B)(5), the subsection at issue in this case. If anything, the jury would have found Workman guilty under § (B)(4), which provides that a person is guilty of DV 1st if he "uses a firearm in any manner" while committing domestic violence. This is what the solicitor argued. (R.458).

Ms. Workman's injuries as detailed in this case did not meet the statutory definition of moderate bodily injury. S.C. Code Ann. § 16-25-10 provides: "Moderate bodily injury" means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. **Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.**" (emphasis added). Ms. Workman's injuries consisted of bruises and facial swelling, for which she was seen at her home by first responders. She did not go to the hospital or receive any follow-up treatment. (R.274; 305; 311). The definition of moderate

¹ As the Court notes in its opinion, the jury sent a note asking whether they were required to consider DV 1st "if one point is met" as to DVHAN. (R.549). This further supports a finding of harmlessness.

bodily injury seems to preclude that finding under the facts of this case. Even defense counsel made a point in closing that her injuries should have been "much worse" if her story was true. (R.484). Workman could not have been guilty of DV 1st under §16-25-20 (B)(5) and could not have been prejudiced by the court's failure to elaborate on this portion of the statute.

In footnote 1 of its opinion, the Court noted that the solicitor referenced other aggravating factors in its closing argument: that the offense occurred in the presence of a minor and during the commission of a kidnapping. The Court points out that the solicitor referenced these factors first in relation to their significance as aggravating factors to support a finding of DVHAN. The Court then points out that the solicitor also referenced these aggravating factors in relation to DV 1st, where they may be used as enhancers in conjunction with the presence of moderate bodily injury.

While the solicitor did briefly and summarily mention that these aggravating factors when discussing DV 1st, this was apparently unintentional. The solicitor did not argue that Ms. Workman suffered moderate bodily injury, a necessary predicate for these factors to have any significance in relation to DV 1st. He mentioned these aggravating factors in passing, noting that he had already discussed these factors in his argument related to DVHAN.

The solicitor had just argued explicitly that Workman met the elements for DV 1st under §(B)(4) by virtue of his use of a gun: "[T]here's multiple ways to prove it. I want you to look at number four. The person uses a firearm in any manner **That's what the defendant did. The State meets that element.**" (App.458, lines 2–11). By contrast, the solicitor did not argue that the State met the elements of (B)(5). He stated: "Likewise, if the offense is committed in the presence or [while being] perceived by a minor. We've already gone over that. Also, C, the offense is committed during the commission of a kidnapping. That's what we're going to discuss

right now." (App.458, lines 12–16). This passing reference was the extent of the solicitor's argument relating to (B)(5).

The solicitor was not arguing for guilt under this subsection, and likely did not really intend to quote from it. He barely mentioned the fact that the offense was perceived by a minor, noting he had "already gone over that" when discussing DVHAN. Likewise, his passing reference to kidnapping was not an argument in earnest that this aggravating factor was present in the context of DV 1st. Rather, the solicitor merely noted that kidnapping "[is] what we're going to discuss right now" because Workman was charged with kidnapping. The solicitor immediately went on to discuss the elements of kidnapping. Accordingly, while the solicitor did briefly mention these aggravating factors in passing while discussing DV 1st, he did not argue that Workman was guilty under subsection (B)(5) of the DV 1st statute, and a reasonable juror would have understood the comments in that way. As noted above, the solicitor never argued Ms. Workman suffered moderate bodily injury and never uttered the words "moderate bodily injury" or "Domestic Violence in the Second Degree" during his entire closing argument. The State respectfully disagrees with the Court's finding that the State argued "it met the elements [of DV 1st] in ways other than the use of a firearm" But regardless of the solicitor's argument, the facts did not support a finding of guilt under (B)(5) and so the jury could not reasonably have convicted under that subsection.

4. This case is distinguishable from Casey and Lowry.

In its opinion, the Court relied on State v. Casey, 305 S.C. 445, 409 S.E.2d 391 (1991), and State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993). This case is distinguishable. In Casey, the trial court refused to instruct the jury on involuntary manslaughter despite evidence that the defendant and victim struggled over a gun, and in spite of the legal maxim that trial

courts should give requested charges on lesser included offenses if there is any evidence whatsoever that the defendant committed the greater rather than the lesser crime. Casey was entitled to an involuntary manslaughter charge because the evidence supported the charge.

Likewise, in Lowry, the supreme court reversed Lowry's conviction because the trial court refused to give a charge on voluntary manslaughter. This was because the evidence supported a finding that Lowry acted in the heat of passion, but the jury was not given the option to consider the lesser offense. The court explained that even "though the jury was not convinced that Lowry acted in self-defense, the jury could have discerned, consistent with the evidence, that there was sufficient legal provocation and heat of passion to find Lowry guilty of voluntary manslaughter." State v. Lowry, 315 S.C. 396, 400, 434 S.E.2d 272, 274 (1993).

In this case, Workman was entitled to a charge on DV 1st because there was evidence tending to show he committed DV 1st rather than DVHAN; the jury could have found he did not act with extreme indifference towards the value of human life despite using a gun. But that evidence had nothing to do with moderate bodily injury or DV 2nd, the aggravating factor laid out in subsection (B)(5) and requested by Workman. In fact, there was only one aggravating factor that could have supported guilt for DV 1st: the use of a gun "in any manner," which is proscribed by subsection (B)(4). Workman was not prejudiced by the trial court's refusal to define DV 2nd because Workman would not have been found guilty under subsection (B)(5) under the evidence presented in this case. The jury could not "have discerned, consistent with the evidence" that Workman was guilty under subsection (B)(5) rather than (B)(4) or DVHAN. See Lowry, 315 S.C. at 400, 434 S.E.2d at 274. This distinguishes this case from Lowry and Casey and precludes a finding of prejudice.

CONCLUSION

In this case, Workman was not prejudiced because, based on the evidence, arguments of counsel, and the verdict itself, the omission of the definition of DV 2nd did not contribute to the jury's verdict finding Workman guilty of DVHAN. This Court should grant respondent's petition and affirm Workman's conviction for DVHAN.

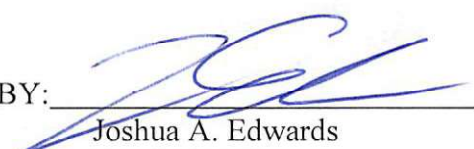
Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____



Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 28, 2022

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Hon. Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-001769

THE STATE,

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v.

OLANDIO R. WORKMAN,

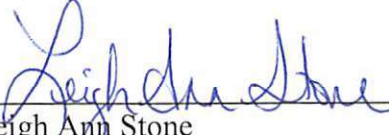
Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Kathrine H. Hudgins
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady St., Ste. 401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.
This 28th day of July, 2022.



Leigh Ann Stone
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

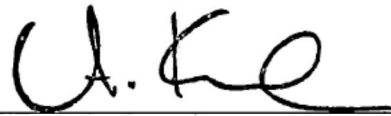
v.

Olandio R. Workman, Appellant.

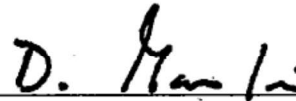
Appellate Case No. 2018-001769

ORDER

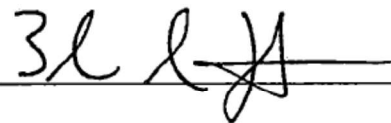
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
Joshua Abraham Edwards, Esquire
William Walter Wilkins, III, Esquire
The Honorable Alex Kinlaw, Jr.

FILED
Aug 12 2022

APP'X 654