

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Abbeville County

Honorable Donald B. Hocker, Circuit Court Judge

KRISTY OLYMPIA DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001017

RECORD ON APPEAL

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1 State of South Carolina) Court of General Sessions
2 County of Abbeville) Eighth Judicial Circuit
3
4 State of South Carolina,) Transcript of Record
5 vs.) 2020-GS-01-0439
6 Kristy Olympia Davis,)
7 _____ Defendant._____))

8

9

August 11th-13th, 2021

10

Abbeville, South Carolina

11

12 B E F O R E:

13

The Honorable Donald B. Hocker, Judge

14

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

16

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On behalf of the State of South Carolina

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Myreon S. Williams, Jr., Esquire

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On behalf of the Defendant

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Reported by: Tara Scott,
Circuit Court Reporter

23

24

Transcribed by: Stacy S. Johnson,
Circuit Court Reporter

25

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1 (The following proceedings were held August 11,
2 2021, beginning at 2:07 PM.)

3 THE COURT: Solicitor.

4 MR. BLACK: Thank you, Your Honor. May it please
5 the Court? Are you ready?

6 THE COURT: Yes, sir. I'm ready.

7 MR. BLACK: Thank you, Your Honor.

8 Standing before you is Kristy Davis. Ms. Davis
9 is pleading under 2020-GS-01-439. She's pleading down
10 from a -- a CDV HAN to an A&B first. We have negotiated
11 a cap of four years, so it will be a range of zero to
12 four years at Your Honor's discretion.

13 And she is represented by Ms. Jane Merrill and
14 Mr. Myreon Williams of the Public Defender's Office.

15 THE COURT: Okay. Is this the -- the one that's
16 possibly gonna be called for trial tomorrow?

17 MR. BLACK: Yes, sir, Your Honor.

18 THE COURT: Okay.

19 All right. Madam Clerk, would you swear in
20 Ms. Davis, please.

21 THE CLERK: If you'll raise your right hand,
22 please.

23 (Whereupon, Kristy Olympia Davis was duly sworn
24 by the Clerk of Court.)

25 THE COURT: All right. Ms. Merrill, you represent

1 Kristy Olympia Davis?

2 MS. MERRILL: I do.

3 THE COURT: And you've had an opportunity to
4 explain this charge to her and her rights that she's
5 giving up as a result of the plea?

6 MS. MERRILL: I have.

7 THE COURT: And you believe your client has
8 understood your explanation?

9 MS. MERRILL: I do, Your Honor.

10 THE COURT: And how does your client wish to plead
11 to a reduced charge of assault and battery in the first
12 degree?

13 MS. MERRILL: Guilty.

14 THE COURT: As her attorney, do you agree with your
15 client's decision to plead guilty?

16 MS. MERRILL: I do.

17 THE COURT: Okay. Thank you.

18 All right. Ms. Davis, I'm gonna go through some
19 questions with you. If you'd pay close attention and
20 speak up loud when you respond.

21 You are Kristy Olympia Davis, aged 47?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And how far did you go in school?

24 THE DEFENDANT: I have my GED.

25 THE COURT: What kind of work do you normally do?

1 THE DEFENDANT: I work at Sage Automotive.

2 THE COURT: You work where?

3 THE DEFENDANT: Sage Automotive.

4 THE COURT: Okay.

5 All right. I've got the one charge before me, a
6 reduced charge, assault and battery of the first degree.

7 How do you plead to that charge?

8 THE DEFENDANT: Guilty.

9 THE COURT: Are you pleading guilty because, in
10 fact, you are guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anyone forced you to plead guilty
13 against your will?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty today freely,
16 voluntarily and intelligently?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you consumed any substance,
19 alcohol, drugs or medication, that would not only
20 affect your ability to understand these proceedings,
21 but also affect your ability to make decisions?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you suffer from any problem or
24 condition, physical, mental or emotional, that would
25 not only affect your ability to understand these

1 proceedings, but also affect your ability to make
2 decisions?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. I'm gonna ask the solicitor
5 to give me some facts behind this charge and then I'm
6 gonna ask you whether or not you agree with his statement
7 of facts.

8 Solicitor.

9 MR. BLACK: Thank you, Your Honor.

10 Your Honor, this occurred on January the 28th of
11 2020, so this was last year. Officers got a call to
12 [REDACTED] Ashcroft Road here in Abbeville, in the city of
13 Abbeville. Law enforcement got a call from a -- a lady
14 -- a girl by the name of Belicia Evans. She called
15 dispatch on this particular date just shy of 8 PM and
16 stated that she and her girlfriend, the defendant in
17 this case, Kristy Davis, had gotten into an altercation.

18 Law enforcement actually met the victim at a
19 church kind of right down the road from this particular
20 residence because the victim in this case left the house
21 after this altercation had occurred.

22 When officers got there, they noticed that the
23 victim had a large kind of gash, laceration, on her
24 head, and she actually received medical treatment --
25 was taken to the hospital and she was treated at the

1 hospital.

2 But what the victim stated had happened, she
3 stated that she was at this residence with her
4 girlfriend, Ms. Davis. They had gotten into a fight.
5 Ms. Evans stated that she had her back turned to
6 Ms. Davis and she was playing on her phone with a --
7 with another friend, I guess it was some kind of app
8 on a phone she was playing with, and Ms. Davis became
9 very upset. I'm -- Ms. Davis became very upset because
10 Ms. Evans was ignoring her and she got up from the couch
11 and ended up striking the victim and hitting her and at
12 that point the victim ended up pushing Ms. Davis away,
13 but Ms. Davis continued to assault her.

14 Ultimately Ms. Davis went into another bedroom and
15 got a golf club and took the golf club and actually
16 struck the victim on the head and that's where the
17 laceration occurred.

18 When they went to the hospital, they ended up
19 taking x-rays and doing a CT scan and she actually had
20 a fracture on her -- on her skull, and she was -- of
21 course, she was treated at the hospital.

22 So those are basic facts of this case, Your Honor.

23 THE COURT: Okay. Did I hear the bond on this by
24 some chance? The facts sound familiar to me.

25 MR. BLACK: I'm not sure if you did, Your Honor.

1 MS. MERRILL: No, sir, Your Honor. I believe she
2 got a -- she got a PR bond --

3 THE COURT: Oh.

4 MS. MERRILL: A PR?

5 THE DEFENDANT: Uh-huh.

6 THE COURT: Okay. Ms. Davis, did the solicitor
7 correctly state the facts behind the charge?

8 MS. MERRILL: Your Honor, if I -- if I may, she
9 and I discussed this. Some of the facts that are
10 alleged are not -- she does not agree with. She does
11 agree with striking her and that an injury occurred.
12 As far as the lead-up to it, she does disagree with
13 that part of the facts.

14 THE COURT: Okay. All right.

15 MS. MERRILL: So I'll let you question her further
16 if you need to, but I wanted to clarify that they were
17 actually in an argument and Ms. Evans pushed her first
18 into a glass coffee table. So the -- some of the facts
19 of the lead-up she does not agree with.

20 THE COURT: All right.

21 MS. MERRILL: Did I accurately state that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Thank you.

24 You agree that you struck Ms. Evans with a golf
25 club causing the laceration and -- and ultimately a

1 fracture to the skull?

2 THE DEFENDANT: I agree with hitting her with a
3 golf club.

4 THE COURT: So you agree with that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And you agree that you were not
7 acting out of self-defense or trying to pre -- prevent
8 any further harm to you?

9 THE DEFENDANT: I acted out of self-defense.

10 THE COURT: You were acting out of self-defense?

11 THE DEFENDANT: Yes, sir. Because she pushed me
12 through my glass table.

13 THE COURT: Okay. All right.

14 Well, if -- if you're claiming self-defense, then
15 why are you pleading guilty?

16 THE DEFENDANT: Because, I mean, the evidence
17 leads that -- that I hit her --

18 THE COURT: Well --

19 THE DEFENDANT: -- with the golf club.

20 THE COURT: All right. How much time between the
21 time that she pushed you over the coffee table and when
22 you struck her in the head with the golf club?

23 THE DEFENDANT: Not even three minutes later.

24 THE COURT: Well, after you were pushed over the
25 coffee table, were you able to leave the home?

1 THE DEFENDANT: I -- yes.

2 THE COURT: You could have left the home?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. So then how were you acting
5 out of self-defense if there was about a three-minute
6 gap between the coffee table and you striking her with
7 the golf club if you were able to leave your home? Why
8 was -- how's that self-defense?

9 THE DEFENDANT: Because I wasn't thinking. I was
10 just thinking that she pushed me and we was still
11 fighting. I mean, she was still coming towards me after
12 she --

13 THE COURT: All right. So even after -- even after
14 being pushed over the coffee table, she was still coming
15 after you --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- and that's when you picked up the
18 golf club and hit her?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Well, you know, I -- I don't see where
21 we need to go forward with this -- with this guilty
22 plea. This lady believes that she was acting out of
23 self-defense and protecting herself. How can we --
24 how can we get over what I've -- what the Court's just
25 heard?

1 MS. MERRILL: Your Honor, if I can have just a
2 minute to explain to her.

3 THE COURT: Let me -- let me see the lawyers back
4 in chambers, please.

5 (Whereupon, a recess was taken at 2:29 PM.)

6 (Back on the record at 2:36 PM.)

7 BAILIFF: All rise.

8 THE COURT: Just stay there. Y'all stay there.
9 You're not -- thank you.

10 Okay. We're back on the record in the Kristy
11 Davis plea and in light of what Ms. Davis has informed
12 the Court, the Court is not going to accept the plea.

13 And I -- we discussed in chambers whether or not
14 to go forward on the existing indictment as far as a
15 -- a trial tomorrow. The lawyers are gonna provide me
16 some case law and I'll take a look at it this evening
17 and I'll get with the -- with the clerk as far as what
18 we are to tell the jury panel about coming in, when to
19 call back, and I'll just make those arrangements.

20 So let's -- let's just go ahead and plan on --
21 let's say 9:30 to deal with -- with this.

22 MR. BLACK: Yes, sir.

23 THE COURT: Okay.

24 MS. MERRILL: Thank you, Your Honor.

25 THE COURT: All right. Thank you very much.

1 (Whereupon, the proceedings were concluded for
2 August 11, 2021, at 2:39 PM.)

3 (The following proceedings were held August 12,
4 2021, beginning at 2:12 PM.)

5 BAILIFF: All rise. The Honorable Judge Hocker
6 presiding.

7 THE COURT: Thank you. You can have a seat.

8 Good afternoon, ladies and gentlemen. I'm sure
9 some of you did not expect to be summoned back to court,
10 but we have another -- wait a second. Is that on? But
11 we do have another trial that's being called today, so
12 that's why you have been -- been summoned back.

13 You know, if you remember on Monday we went through
14 rollcall, which we don't have to do again, we went
15 through general qualifications, and now what we're gonna
16 do is go through the questions that are specifically
17 related to this case being called for trial. So we're
18 gonna go through that, but I first need to have you
19 sworn in.

20 So, Madam Clerk, if you'll assist the Court on
21 that.

22 THE CLERK: If you'll raise -- stand up and raise
23 your right hand, please.

24 (Whereupon, the jury panel was duly sworn by the
25 Clerk of Court.)

1 THE CLERK: If you accept this oath, please
2 indicate by saying I will.

3 (Whereupon, the jury responds.)

4 THE CLERK: You may be seated.

5 THE COURT: Ladies and gentlemen, the case that's
6 being called for trial is the case of the State of South
7 Carolina versus Kristy Olympia Davis.

8 And, Ms. Davis, if you would just stand and face
9 both sides for just a second.

10 Okay. Pull your mask down.

11 Okay. Thank you very much. You can have a seat.

12 Ms. Davis has been charged and indicted with one
13 criminal offense. Now as I explained to you in that
14 other case -- the first case that was tried this week,
15 I explained to you, ladies and gentlemen, that the fact
16 that Ms. Davis has been charged and indicted in this
17 case is not proof of any guilt on her part whatsoever.

18 As I explained to you, the indictment serves two
19 purposes. One, it puts the defendant and her attorneys
20 on notice of the charge that the State intends to try
21 her on, and, secondly, it's the mechanism to get the
22 case into court where we are today. It serves no other
23 purpose.

24 As I also told you on Monday, it's -- the burden
25 rests with the State and the State alone to prove the

1 allegations beyond a reasonable doubt. So, once again,
2 you cannot hold it against her or use it as evidence of
3 guilt the fact that she has been charged and indicted
4 in this case.

5 However, I will publish the indictment to you so
6 you can have an idea of what the charge is about. The
7 charge is domestic violence of a high and aggravated
8 nature and it reads as follows. The defendant, Kristy
9 Olympia Davis, on or about January 28th, 2020, in
10 Abbeville county, South Carolina, did cause physical
11 harm or injury to Belicia -- that's B-E-L-I-C-I-A --
12 Evans, a household member, or did offer or attempt to
13 cause physical harm or injury to said household member
14 with apparent present ability under circumstances
15 reasonably creating fear of imminent peril.

16 In addition, the offense was committed under
17 circumstances manifesting extreme indifference to the
18 value of human life and great bodily injury to the
19 victim resulted and/or the offense was committed with
20 or without an accompanying battery under circumstances
21 manifesting extreme indifference to the value of human
22 life, which would reasonably cause a person to fear
23 imminent great bodily injury or death.

24 All this in violation of Section 16-25-65,
25 Subsection (A), Code of Laws for South Carolina.

1 And if you'll remember, too, on Monday, I -- I
2 told you that any question that you needed to respond
3 to and didn't want to do so in front of everybody,
4 you'd rather speak with me privately, then I'll
5 certainly extend that invitation to you once again
6 concerning this case.

7 Any member of the jury panel related by blood or
8 marriage, either now or formerly, to either Kristy
9 Olympia Davis or Belicia Evans? If so, please stand.

10 Any member of the jury panel have or had in the
11 past a close personal or social relationship with either
12 Kristy Olympia Davis or Belicia Evans? If so, please
13 stand.

14 (Juror stands.)

15 THE COURT: Oh, I've got one.

16 PROSPECTIVE JUROR: I just need to see if I can
17 speak to you for just a few minutes.

18 THE COURT: Okay. Can -- can you not wait until --

19 PROSPECTIVE JUROR: Yes, sir. I can.

20 THE COURT: Yeah, I'll -- at the end of the
21 questioning, I will extend an invitation to anybody
22 that wants to speak to get in a little line and speak.
23 If you'd get in that line, ma'am.

24 All right. I'm gonna publish a list of potential
25 witnesses in this case. Again, Belicia Evans.

1 called forward.)

2 PROSPECTIVE JUROR: I'm self-employed at AB
3 Lifestyles. My wife's name is Janice and she works
4 with me.

5 THE CLERK: What say you for the State?

6 MR. BLACK: Please seat Mr. Ruddock.

7 THE CLERK: What say you for the defense?

8 MS. MERRILL: Please seat Mr. Ruddock.

9 THE CLERK: You may have a seat.

10 THE COURT: All right, ladies and gentlemen. We
11 have a jury selected.

12 Does the State have any exception or objections to
13 jury selection?

14 MR. BLACK: No, sir, Your Honor.

15 THE COURT: And from the defense?

16 MS. MERRILL: No, sir, Your Honor.

17 THE COURT: Okay. Thank you very much.

18 All right, ladies and gentlemen. I know I recognize
19 some of you who served on the jury in the case that we
20 started, I believe on Monday, and I just want you to
21 understand that that's a different case. This is a brand
22 new case, different facts, some different law, and so
23 just kind of put that behind you if you did serve on that
24 jury this week, but you're gonna hear me say some of the
25 same things that I said in that -- in that prior case.

1 What I want you to do in just a moment is go back
2 in the jury room and you need to select the foreperson
3 of you jury. Again, if it's a male it's the foreman
4 and lady is the forelady. And the foreman -- or
5 foreperson rather wears several different hats. One, I
6 need a person to serve as communicator between the jury
7 and the Court, so if at any time during the course of
8 this case or even after you get the case to begin your
9 deliberations, if there's a question, an issue, then
10 that needs to be brought up to the Court's attention
11 and I need the foreperson to write it out and sign on
12 the paper that's provided back there and have it
13 presented to -- to the Court.

14 Also, I need someone to make sure that all of my
15 instructions are being followed, even though that's
16 really everyone's responsibility.

17 And, thirdly, when I do give you the case to begin
18 your deliberations and if you were to reach a verdict
19 in the case, I need someone to organize and get those
20 deliberations, get those discussions, started.

21 And so you can go ahead and select your foreperson.

22 Mr. Alternate, you can participate in the election
23 process and, of course, if I don't have to excuse one of
24 the twelve, then, of course, you would not participate
25 in the deliberations for the verdict, but the election

1 process you can participate in, okay?

2 You can have no discussions about this case
3 whatsoever among yourselves. Those discussions
4 cannot start until I give you the case to begin your
5 deliberations. You can talk about anything else, just
6 don't talk about anything related to this case, and
7 I'm gonna be giving you some other instructions after
8 while.

9 I think I've got some pretrial matters that I need
10 to discuss with the lawyers, so I'm gonna ask you to go
11 back in the jury room and work on getting a foreperson
12 selected and then we'll get you back out just as soon
13 as we possibly can, okay?

14 All right.

15 (Whereupon, the jury retires to the jury room at
16 2:55 PM.)

17 THE COURT: And if you'd close the door, please.

18 All right, ladies and gentlemen. I know there's
19 probably some of -- we actually picked three juries;
20 the one that went forward on the trial on Monday and
21 then we picked another one and the case did not go
22 forward on, then did this one, and there's probably some
23 of you that didn't get picked on any -- any of the three
24 juries.

25 But, nonetheless, hopefully sometime in the future

1 -- if you were not selected on a jury, then hopefully
2 sometime in the future you will get selected, but for
3 now you are excused. You do not need to come back, you
4 do not need to call in and if you'd like to just sit and
5 watch the trial, you're more than welcome to do that,
6 but if you need to leave, then you are free to leave,
7 and thank you very much for coming back when we asked,
8 okay?

9 Have a great rest of the day.

10 (Whereupon, the remaining jury panel was excused
11 at 2:58 PM.)

12 THE COURT: Okay. We need to put I know one
13 matter on the record from the defense concerning the
14 definition of household member not being amended by the
15 Legislature.

16 Based upon our discussions in chambers, a reading
17 of Doe versus State would allow the case to go forward
18 just as long as that there's no discrimination against
19 same-sex couples.

20 But, Ms. Merrill, you want to get your position on
21 the record, so I'll be glad to hear from you.

22 MS. MERRILL: Your Honor, I do. If I could possibly
23 -- I understand the Court's ruling on the issue and I'm
24 fine if I just argue it at the DV -- directed verdict
25 stage if that's okay with the Court --

1 THE COURT: Sure.

2 MS. MERRILL: -- because I feel like I need to put
3 it on the record then anyway, so.

4 THE COURT: However you want to handle it would be
5 fine with me.

6 MS. MERRILL: As long as it's preserved from here
7 throughout the trial, but I'll also --

8 THE COURT: Well, which you may be -- I'm not trying
9 to tell you how -- how to do it because you're -- you're
10 a very experienced lawyer, a good lawyer, but you may
11 want to get it on the record before the jury is sworn.

12 MS. MERRILL: Your Honor, if you'd give me just a
13 minute to put my hands on the statute so I'm reading it
14 correctly.

15 THE COURT: Sure.

16 MS. MERRILL: And, Your Honor, under 16-25-10,
17 Subsection (3), household member is defined as a spouse,
18 a former spouse, persons who have a child in common or a
19 male and a female who are cohabitating or formerly have
20 cohabitated. Our client does not fit into any of these
21 definitions. She and Ms. Evans were never married. They
22 were not married and then divorced. They did not have a
23 child in common and they are both female, so they are not
24 a male and female who are cohabitating or formerly have
25 cohabitated. So our argument is that this DVHAN statute

1 does not apply because Ms. Davis does not fall into one
2 of those categories.

3 There is the Doe v. State case that the Court
4 referenced earlier, and that's at 421 S.C. 490, and as
5 we discussed in chambers, but just to put it on the
6 record, in the conclusion section I would argue this --
7 this holding is fairly narrow and, in fact, the opinion
8 discusses that this is unconstitutional as applied to
9 this case, and it states that to address this issue it
10 is unconstitutional as applied to Doe. Therefore, the
11 family court may not utilize these statutory provisions
12 to prevent Doe or those in similar same-sex relationships
13 from seeking an order of protection, and this is -- the
14 pinpoint of that 510 just for the record, Your Honor.

15 THE COURT: Okay.

16 MS. MERRILL: And we argue that that's a fairly
17 narrow holding and it does not apply and, in fact, it's
18 impermissible for the Court to expand the definition or
19 the meaning of the case to include a criminal statute
20 because -- or included in this definition when that
21 case was decided in 2017, it's 2021 and as of now the
22 Legislature still has not acted to change that.

23 And, Your Honor, I do have a few additional
24 arguments, but I'm fine, if the Court is, saving those
25 for the directed verdict stage.

1 THE COURT: Okay. All right. Very good.

2 Does the State want to put its position on the
3 record?

4 MR. BLACK: Your Honor, just -- just briefly, I
5 think the Doe case is pretty clear in declaring the
6 statute -- the definition of household member as
7 unconstitutional and I agree that in this particular
8 case they kind of limit it to the issue at hand, but I
9 -- I would say they did that because that was actually
10 what was before the Court.

11 So it's -- again, the opinion's very clear that,
12 you know, it's -- they're ruling it as -- as
13 unconstitutional and I think the hope was that they --
14 they hoped that the Legislature would fix it and for
15 whatever reason the Legislature hasn't, but it doesn't
16 change their ruling, their opinion, that the definition
17 set forth in -- in the household member section of this
18 DV statute is unconstitutional.

19 So you're basically -- again, it's an equal
20 protection issue that has been decided over the past
21 five, six years, and I think it's pretty evident, you
22 know, kind of based on what the intent is that domestic
23 partnerships between same-sex couples should be equally
24 applied.

25 THE COURT: Well, even though the posture of

1 Doe versus State dealt with an order of protection in
2 family court, the Supreme Court in Doe versus State
3 was very consistent in referencing not only the order
4 of protection statute, but also the domestic violence
5 statute and the Court went further and said even though
6 we're finding it unconstitutional to deny any relief to
7 same-sex couples, it did not want to just completely
8 throw the statute out thereby leaving a lot of people
9 without any remedy in court, so apply the statute
10 without discrimination, apply the statute granting
11 equal protection to not only male and female couples,
12 but same-sex couples, and I think that's what the
13 Court is instructing us to do. Certainly taking into
14 consideration the argument that -- that you made.

15 And I think, too, the Court probably had
16 anticipated that the Legislature would have acted
17 quicker than -- than they have, but nonetheless they've
18 elected for whatever reason not to -- not to amend the
19 statute. I think they eventually will, but I think
20 Doe versus State allows the case to -- to go forward.

21 So your position, Ms. Merrill, is certainly noted
22 for the record and you are protected again.

23 Do we have anything else in pretrial that we need
24 to discuss?

25 MS. MERRILL: Your Honor, I just want to add one

1 thing. In chambers the Court had suggested to the State
2 that it had no objection if it chose not to call the
3 case this term and wanted to reindict for ABHAN and we
4 did not object to that had the Court --

5 THE COURT: Right.

6 MS. MERRILL: -- I mean, excuse me, had the State
7 chosen to do that, so I just wanted to add that.

8 THE COURT: Right.

9 MS. MERRILL: And if I can just add a few other
10 things just for the record.

11 I was not present for qualification of the 1:00
12 group of jurors, but the Court remedied my concern by
13 allowing each juror to state their occupation, the
14 things that I would have heard had I been there at the
15 1:00, so I appreciate the Court doing that.

16 And I just also wanted to put on the record one
17 other interruption, was my notifying the State and the
18 Court that my husband was a supervisor of one of the
19 folks in that 1:00 group and because I wasn't at
20 qualification I had not previously notified everyone
21 and I wanted that to be noted on the record, Your Honor.

22 THE COURT: All right. So noted. And -- and when
23 we had sidebar discussion, I did offer to go back through
24 the juror qualification questions of the 1:00 group,
25 but you were satisfied, which I appreciate, you were

1 satisfied with -- in the manner in which we conducted
2 the jury selection and having each juror to state their
3 name plus occupation, spouse, spouse's occupation, and
4 you were satisfied with that.

5 Okay. All right. Is the State aware of anything
6 else pretrial?

7 MR. BLACK: Not to my knowledge, Your Honor.

8 THE COURT: Okay. All right.

9 And, Defense, anything at this point, anything in
10 pretrial?

11 MS. MERRILL: No, Your Honor.

12 If we're about to start, could I just get a glass
13 of water real quick before we get started?

14 THE COURT: Yeah, I was -- I was gonna suggest
15 about a ten-minute break.

16 MS. MERRILL: Okay. I wasn't sure if you were.

17 THE COURT: Yeah. Yeah.

18 MS. MERRILL: That's great. Thank you.

19 MR. BROWN: And, Judge, we are gonna take the
20 doctor out of order just so you're aware of that. That
21 will be our first witness.

22 THE COURT: Dr. Weaver?

23 MR. BROWN: Yes, sir.

24 THE COURT: Yeah.

25 (Recess taken at 3:08 PM.)

1 (Back on the record at 3:19 PM.)

2 THE COURT: Are we ready for the jury?

3 MR. BLACK: The State's ready, Your Honor.

4 THE COURT: Okay. Defense?

5 MS. MERRILL: We're ready, Your Honor.

6 THE COURT: Okay. Thank you very much.

7 Let's bring the jury out, please.

8 (Whereupon, the jury returns to the courtroom at
9 3:21 PM.)

10 THE COURT: All right. Let the record reflect
11 the jury is back in and Carley Bannister has been
12 duly-elected as the forelady of the jury.

13 Congratulations.

14 Ladies and gentlemen, let me just give you a
15 couple preliminary comments. The lawyers will give
16 their opening arguments to you in just -- just a minute.

17 Let me explain to you it's real important to be
18 alert and attentive during this trial. It's not gonna
19 be a -- it will go into tomorrow, but it's not gonna be
20 a very long trial. But it's very important that you
21 listen very carefully, be very attentive, very alert,
22 so the point being is that when you go back to the jury
23 room to begin your deliberations then collectively you'll
24 have a pretty good memory of what was presented to you
25 by way of testimony of witnesses and other evidence.

1 I don't allow note-taking. The reason for that is
2 that I've found that jurors when taking notes are paying
3 more attention to the notes-taking than they are as to
4 what was being testified to.

5 So be alert, be attentive, get a good night's sleep
6 tonight. There's nothing more disappointing to me than
7 to look at a juror dozing off and so just be sure to get
8 you a good night's rest.

9 Keep in mind, once again, the burden is on the
10 State of South Carolina to prove the guilt of the -- the
11 defendant. A defendant never has to prove his or her
12 innocence. The burden is on the State to prove guilt
13 beyond a reasonable doubt, and I'll go into all that a
14 lot more at the end of the case, so keep that in mind.

15 Also, keep in mind that we have what's called a
16 legal presumption of innocence and Ms. Davis as she
17 sits here right now before you is presumed by law to be
18 innocent of the charge made against her, so keep that
19 in mind.

20 Lastly, keep an open mind as we go through this
21 case. Don't make any judgments until all of the evidence
22 is in and the lawyers have made their closing arguments
23 to you and I have instructed you on the law, okay?

24 And -- and, lastly, when -- when I excuse you for
25 the evening, the instruction or restriction of not

1 discussing the case or anything about the case among
2 yourselves also applies to whomever you come into contact
3 with this evening, whether it's family members, friends,
4 neighbors, a coworker, whoever it may be. You can say
5 I've been picked on a jury and leave it at that and have
6 no discussion with them.

7 And, lastly, don't do any independent research.
8 Don't go on the internet, don't go on social media and
9 try to find out something about this case because your
10 verdict in this case, whatever that verdict may be, must
11 be based 100 percent on what is brought out in this
12 courtroom and cannot come from any other source, okay?
13 So after the case is over with if you want to do some
14 research, you can -- you certainly can, but while the
15 case is going on don't research and don't go on the
16 internet or go on social media.

17 And just keep that in mind. It's very important.
18 I've had cases before where jurors have violated that
19 instruction and -- and it's not a very good situation,
20 okay?

21 All right. The lawyers are gonna make their
22 opening arguments. It's not evidence what they are
23 going to tell you. It's just gonna be a statement of
24 what they believe this case is about and what they
25 believe the evidence will -- will show you.

1 Is the State ready?

2 MR. BLACK: Yes, sir, Your Honor.

3 THE COURT: You may proceed.

4 MR. BLACK: Your Honor, does -- has the jury been
5 sworn?

6 THE COURT: Excuse me?

7 MR. BLACK: Has the jury been sworn yet?

8 THE COURT: I'm sorry, I can't hear you.

9 MR. BLACK: Has the jury been sworn yet?

10 THE COURT: They have not been sworn. Thank you
11 very much. I apologize for overlooking that housekeeping
12 matter.

13 THE CLERK: Will you please stand and raise your
14 right hand.

15 (Whereupon, the jury was duly sworn by the Clerk
16 of Court.)

17 THE CLERK: If you accept this oath, please
18 indicate by saying I will.

19 (All jurors respond.)

20 THE CLERK: You may be seated.

21 THE COURT: Okay. Now, Solicitor, are you ready?

22 MR. BLACK: Yes, sir. May it please the Court?

23 THE COURT: Yes, sir.

24 MR. BLACK: On January the 28th of last year, of
25 2020, officers responded just after 7 PM to the corner

1 of Washington and Chestnut Street to meet the victim in
2 this case, Ms. Belicia Evans, who's sitting over here at
3 the end of this bench.

4 They responded because Ms. Evans contacted dispatch
5 and informed them that she had been in an altercation
6 with her girlfriend at their residence at [REDACTED] Cambridge
7 Street, here in the city of Abbeville, and the defendant
8 in this case, Ms. Davis, had strick -- had struck her on
9 the head with a golf club.

10 Law enforcement met her out at this church, they
11 talked to her briefly. EMS was called, they treated her
12 on the scene, and ultimately they decided to transport
13 her to the hospital here in Abbeville where she was
14 further treated and had further testing.

15 In a few minutes you're gonna hear testimony from
16 the doctor that treated Ms. Evans at the hospital,
17 you're gonna hear from law enforcement, and you're gonna
18 hear from Ms. Evans herself eventually during the course
19 of this trial.

20 Pay close attention to the testimony that you hear,
21 to what the doctor has to say, to what Ms. Evans has to
22 say, what law enforcement has to say. You're gonna see
23 some photographs, likely some body camera. You're gonna
24 see a -- you're gonna hear a 9-1-1 call. And as the
25 juror -- and as a juror in this case, your job, of course,

1 as Judge Hocker indicated, is to listen to the evidence
2 that is presented, view the testimony, the evidence, and
3 ultimately your job is the finder of fact. Your job is
4 to determine what happened on January the 28th of 2020.

5 Now, of course, you heard that Ms. Davis is charged
6 with domestic violence of a high and aggravated nature
7 and at the end of this trial Judge Hocker is gonna
8 instruct you on the law and you're gonna hear what the
9 definition of what domestic violence of a high and
10 aggravated nature is, but just briefly as an overview,
11 domestic violence of a -- of a high and aggravated nature
12 is essentially if somebody is injured and great bodily
13 injury occurs as a result of a domestic dispute or if
14 great bodily injury could have occurred or death could
15 have occurred. So you either have great bodily injury
16 or because of the actions great bodily injury could have
17 occurred. So that is essentially what domestic violence
18 of a high and aggravated nature is and so that's what
19 Ms. Davis is on trial for.

20 And, of course, we have the burden to prove beyond
21 a reasonable doubt that Ms. Davis committed domestic
22 violence of a high and aggravated nature.

23 And, of course, I'm sure -- I recognize a few
24 faces. Some of you guys sat on the jury on -- on
25 Tuesday and if y'all have ever watched any shows about,

1 you know, Court TV or Law and Order or any -- any TV,
2 you know that in criminal cases the State has the burden
3 to prove its case beyond a reasonable doubt, and I'm sure
4 you guys have heard that, and essentially what that means
5 is are you firmly convinced, firmly convinced, of the
6 defendant's guilt.

7 Of course, we don't have to prove everything to
8 100 percent mathematical certainty. We just have to
9 prove it beyond a reasonable doubt are you firmly
10 convinced.

11 Again, we appreciate you guys being here. And,
12 again, like Judge Hocker asked, we just ask that you
13 listen to the evidence, to the testimony that's
14 presented, keep an open mind, and at the end of this
15 case we're gonna ask you to return a verdict of guilty
16 against Ms. Davis.

17 Thank you.

18 THE COURT: Thank you, Solicitor.

19 Is the defense ready for opening?

20 MS. MERRILL: Thank you, Your Honor. May it please
21 the Court?

22 THE COURT: Certainly.

23 MS. MERRILL: There's a few things that we are not
24 gonna dispute and one of those things as -- is that
25 Ms. Evans got hurt that night, but what we dispute is

1 how it happened.

2 Ms. Davis had broken up with her and told her she
3 wanted to move out -- she wanted her to move out of the
4 house and that made Ms. Evans angry and so she started
5 an argument with her and she pushed Ms. Davis into a
6 glass table and continued to fight with her and come at
7 her, and so Ms. Davis had to defend herself.

8 So, again, we're not disputing she got hurt, but
9 Ms. Davis was merely defending herself, which you're
10 allowed to do in your own home, and that's exactly what
11 she was doing.

12 There's also -- and I believe Ms. Evans knows that
13 she started that fight because there's a -- she didn't
14 want to prosecute. While she's in the hospital, she
15 tells them I don't want -- I don't want to file a
16 criminal complaint. She sends Ms. Davis messages
17 apologizing, telling her I know it was my fault. And
18 I think she didn't want to prosecute because she knew
19 that she had started that fight.

20 Nobody loves serving on jury duty, but we do
21 appreciate your being here and what we'd ask you to do
22 is exactly what the solicitor asked. Please pay careful
23 attention. And the State does have the burden of proof
24 and they have to prove every element beyond a reasonable
25 doubt.

1 And Judge Hocker will tell you about the law and
2 at the end when we get up and do our closing arguments
3 we'll probably tell you a little bit more about the law,
4 too, but you've got to consider did the State prove
5 every element. Not just some of them, maybe you don't
6 have doubt about a few things, but you do have doubt
7 about some of the other things, so we appreciate your
8 keeping that in mind.

9 This isn't just the day in court for the State.
10 This is Ms. Davis's day, too, and we hope that you will
11 give her and her case the attention it deserves and find
12 her not guilty.

13 Thank you.

14 THE COURT: All right. Thank you, Ms. Merrill.

15 Solicitor, are you ready to call your first witness?

16 MR. BROWN: Yes, sir, Your Honor.

17 The State calls Dr. Brian Weaver.

18 THE COURT: Put your left hand on the Bible and
19 raise your right hand, sir.

20 (Whereupon, Brian Weaver was duly sworn by the
21 Clerk of Court.)

22 THE COURT: Inside the cage there, Doctor, is the
23 witness stand.

24 BRIAN WEAVER,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. BROWN:

3 Q. Good afternoon, Dr. Weaver. If you want to, you can
4 take your mask off for this.

5 Dr. Weaver, where are you employed?

6 A. I'm sorry?

7 Q. Where are you employed?

8 A. I'm currently employed at two places; Newberry County
9 Hospital and then I do some part-time in Abbeville.

10 Q. And what is your -- what are your duties there?

11 A. I'm an ER physician, so my duties are to treat people
12 that come into the emergency room.

13 MR. BROWN: Judge, I think we're just taking a
14 moment to turn on the microphone.

15 THE COURT: Oh, yeah. Because we had it turned
16 off. I thought we had a little feedback there.

17 BY MR. BROWN:

18 Q. Now, Dr. Weaver, you said you work at Newberry and
19 Abbeville, the ERs there at the two hospitals?

20 A. Correct.

21 Q. Okay. And, Dr. Weaver, before you became a doctor,
22 can you just -- well, to become a doctor, will you tell a
23 little bit about your educational background.

24 A. Yes. I attended four years of medical school. I
25 graduated from the University of Texas Medical Branch in

1 Galveston and then I came out to South Carolina and did
2 a three-year residency in emergency medicine down at
3 Richland.

4 Q. Okay. And how many years have you been a medical
5 doctor?

6 A. Since 1993.

7 Q. And during that time of your four years of medical
8 school, three years of residency, since 1993 have you kept
9 up with continuing medical education?

10 A. Yes, sir.

11 Q. Okay. And are you Board-certified?

12 A. Yes, I'm Board-certified in emergency medicine.

13 MR. BROWN: Judge, at this time the State would
14 offer Dr. Brian Weaver as an expert in emergency medicine.

15 THE COURT: All right. Does the defense have any
16 examination of this witness concerning qualifications?

17 MS. MERRILL: I beg the Court's indulgence.

18 THE COURT: Sure.

19 MS. MERRILL: We have no questions, Your Honor,
20 and no objection.

21 THE COURT: Okay.

22 All right. I find that Dr. Weaver is an expert in
23 the area of emergency medicine.

24 Ladies and gentlemen, when the Court declares a
25 witness as an expert in a particular field by way of

1 experience, education and the like, an expert is
2 permitted to offer opinions concerning their area of
3 expertise and the reason for those opinions. Normally
4 witnesses, and I'll say lay witness with a -- with a
5 few exceptions, are not permitted to give opinions.
6 They can only just testify as to what they saw or heard
7 and that sort of thing, but experts are allowed to
8 render opinions.

9 Now the fact that Dr. Weaver has been declared an
10 expert in the field of emergency medicine, it's still
11 up to you whether -- you know, to give his testimony
12 whatever weight that you believe that it deserves. You
13 have to analyze his testimony like you would with any
14 other witness.

15 You may proceed.

16 MR. BROWN: Thank you, Judge.

17 BY MR. BROWN:

18 Q. Now, Dr. Weaver, back on January 28th of 2020, did you
19 have the opportunity to provide medical care for Belicia
20 Evans?

21 A. Yes.

22 Q. And where was that?

23 A. It was at the Abbeville Emergency Department.

24 Q. How did you become aware of Ms. Evans or when did you
25 first see her? Was she brought into the -- the ER?

1 A. Yes, I -- as I recall, she was brought in by EMS.

2 Q. And what were your observations of Ms. Evans?

3 A. She had a laceration or cut on her scalp. Otherwise,
4 she was awake and conversant.

5 Q. And with that laceration, did you also -- or do you
6 understand that there was some type of blunt force trauma
7 to that area?

8 A. Yes. As -- as I noted in the medical record, she had
9 told me she was struck with a golf club.

10 Q. Okay. And as part of that, your medical aid, other
11 than just looking at her injury visibly, were any other
12 orders -- anything ordered to have her brain and skull
13 examined?

14 A. Yes, we ordered a CT scan of her head.

15 Q. And what is a CT scan?

16 A. It's an x-ray study that creates multiple images of
17 the -- images of the area that you're examining and shows
18 the area in great detail.

19 Q. And so ultimately you could see below the surface of
20 your scalp and the -- the skull of a person?

21 A. Correct.

22 Q. Okay. Once that CT scan was ordered on Ms. Evans,
23 were you able to review that scan?

24 A. Yes.

25 Q. And what were the findings of that scan?

1 A. She had a skull fracture in the temporal area of the
2 scalp.

3 Q. And the temporal area would be in this area of her
4 head?

5 A. Correct.

6 Q. And would that -- where would that -- was there a
7 laceration above that skull fracture?

8 A. Yes.

9 Q. That front is the front -- right frontal temporal area
10 of the head?

11 A. Correct.

12 Q. Okay. What other documentation or notes did you
13 provide when looking at that CT scan or any other
14 observations that were noted?

15 A. Right. The CT scan also showed a little bit of air
16 just under the skull, the term pneumocephalus, and that
17 sort of indicates that the fracture is communicating to the
18 outside for the air to get in there.

19 Q. So it would have been a break through the skin to have
20 a laceration through the fracture of the skull and air
21 would be allowed to get under the skull to the -- where the
22 brain cavity, I guess, would be?

23 A. Correct.

24 Q. Okay.

25 A. It would be considered an open fracture.

1 Q. Okay. Were there any other complaints of -- of injury
2 from Ms. Evans to any other parts of her body?

3 A. I believe she had some right shoulder pain, although
4 on -- on exam we didn't feel like any x-rays were indicated
5 at that time.

6 Q. The main injury would have been to the head?

7 A. Correct.

8 Q. Okay. And, Dr. Weaver, with this being that blunt
9 force trauma, is that a pretty serious injury?

10 A. Definitely potentially is. You can have bleeding to
11 the brain or around the brain. You can also with an open
12 fracture get an infection that can develop.

13 Q. And with a fracture of the skull, how would you
14 consider that injury?

15 A. Well, for enough force to be applied to fracture the
16 skull, certainly you can have underlying brain injury or
17 bleeding or other more serious things, so it's definitely
18 a potentially very serious injury.

19 Q. It's a very -- so it's a very serious injury to have a
20 fracture?

21 A. Of the skull, yes, sir.

22 Q. Of the skull. Ms. Evans coming in and with that type
23 of fracture, other potential consequences from having a
24 fractured skull and -- and with that type of trauma, what
25 could have happened? I mean, with a fractured skull,

1 without treatment, in your opinion -- your expert opinion,
2 what could have that led to without treatment?

3 MS. MERRILL: Objection, Your Honor. Relevance.

4 THE COURT: Tell me the nature of your objection,
5 Ms. Merrill.

6 MS. MERRILL: Relevance, Your Honor. He's
7 testified to her treatment and what she had and I think
8 he's asking him to opine about whether or not -- if it
9 was more serious than he's already testified it was.

10 THE COURT: I'm gonna overrule. I think he's
11 already been allowed to testify as to what the potential
12 was, but I'll allow the State to follow up on that.

13 BY MR. BROWN:

14 Q. For this type of injury not to be treated, what could
15 have the possible damages or outcomes could be?

16 A. Well, the treatment for her specific injury was really
17 just observation and repairing of the laceration or cut
18 above the area. The reason for observation is to make sure
19 that there isn't any delayed bleeding or swelling that
20 developed over time.

21 Q. Yes, sir. Now after doing the CT scan and making sure
22 there's not any other type of bleeding on the brain, what
23 were -- what did you do to the -- to the laceration?

24 A. Well, the laceration was -- was cleaned out and
25 anesthetized or numbed up and then we put in, I think,

1 three staples.

2 Q. Okay. Thank you. And she stayed in the hospital for
3 -- overnight for observation?

4 A. Correct.

5 MR. BROWN: No further questions.

6 THE COURT: Okay.

7 Any cross-examination from the defense?

8 MS. MERRILL: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. MERRILL:

11 Q. Dr. Weaver, do you recall that Belicia Evans's
12 demeanor was calm when she came in?

13 A. I believe she was.

14 Q. And the laceration was bleeding some, but it was under
15 control; is that right?

16 A. Correct.

17 Q. And other than observation and the staples, she didn't
18 need any additional treatment; is that correct?

19 A. Not to my knowledge.

20 Q. And she did not have any bleeding in the brain, did
21 she?

22 A. No.

23 Q. And the medical records indicate that this was a mild
24 fracture; is that correct?

25 A. I'm not sure about that term being used.

1 MS. MERRILL: I beg the Court's indulgence.

2 THE WITNESS: It was a fairly small fracture,
3 but...

4 MS. MERRILL: Dr. Weaver, I'm looking for one
5 note if you'll give me just a moment, please.

6 Your Honor, may I approach the witness?

7 THE COURT: You sure can.

8 BY MS. MERRILL:

9 Q. If I handed you a medical record, would it refresh
10 your recollection about --

11 A. Sure.

12 Q. -- your treatment?

13 Do you see the highlighted portion which indicates --

14 A. Yes.

15 Q. And what does that say?

16 A. So this is hospital discharge instructions that were
17 probably given to her the next day by the doctor who
18 admitted her to the hospital, so he did put on there mild
19 temporal skull fracture, but that's not anything that I put
20 on there.

21 Q. Okay. So these are not your notes, but these are the
22 hospital notes; is that correct?

23 A. Yes. The patient got admitted and one of the
24 hospitalists observed her overnight and then discharged
25 her.

1 MS. MERRILL: Your Honor, may I approach the
2 witness again?

3 THE COURT: Sure.

4 BY MS. MERRILL:

5 Q. I'm gonna hand you this and if you'll read
6 particularly the part in the -- with the pen mark beside
7 it. Just read it to yourself and then I'll ask you a few
8 questions.

9 A. Okay.

10 Q. Thank you. So would you agree that this was
11 considered a very low risk injury for having complications?

12 A. Yes.

13 THE COURT: What was your question, Ms. Merrill? I
14 didn't hear you. I'm sorry.

15 MS. MERRILL: Oh, if -- if he would consider this
16 -- if he would agree with me that this was a very low
17 risk injury for complications.

18 BY MS. MERRILL:

19 Q. And when a patient comes in, how an injury occurred is
20 reported solely by the patient; is that right?

21 A. Usually. Sometimes we have other information, but for
22 the most part, yes, it's provided by the patient.

23 Q. Okay.

24 MS. MERRILL: I beg the Court's indulgence.

25 Thank you. That's all the question I have.

1 THE COURT: Any redirect, Solicitor?

2 MR. BROWN: Just briefly, Judge.

3 REDIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Dr. Weaver, to have a -- to cause a fracture in the
6 brain, what type of force would be necessary to do that or
7 on the skull?

8 MS. MERRILL: Objection, Your Honor. I believe
9 this is outside of the witness's expertise in emergency
10 medicine.

11 THE COURT: All right. Repeat the question again,
12 Solicitor.

13 MR. BROWN: The type of force needed to have a skull
14 fracture like that.

15 THE COURT: If -- if the doctor's able to answer
16 that question, I'll allow him to -- to answer it if he's
17 able to.

18 THE WITNESS: Yes, I would say it has to be
19 significant force and a lot of skull fractures can be
20 associated as we talked about before with bleeding and
21 other injuries.

22 MR. BROWN: No further questions.

23 THE COURT: Any recross, Ms. Merrill?

24 MS. MERRILL: No, Your Honor.

25 THE COURT: Okay. Doctor, you can step down and

1 you're free to leave the courthouse.

2 (Witness excused.)

3 THE COURT: All right. Call the next witness.

4 MR. BLACK: The State calls Brittany Greene.

5 THE COURT: Okay.

6 Ladies and gentlemen, while this witness is coming
7 up, I typically try not to go more than an hour and a
8 half before we take a break, but sometimes we go beyond
9 that a little bit.

10 But any time you need to take a break and we haven't
11 taken that break, all you have to do is raise your hand
12 and I'll know that's your -- your signal that we need to
13 take a break then, okay?

14 All right. You may proceed.

15 (Whereupon, Brittany Greene was duly sworn by the
16 Clerk of Court.)

17 BRITTANY GREENE,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BLACK:

21 Q. Ms. Greene, can you please state your name for the
22 record?

23 A. Brittany Greene.

24 Q. And, Ms. Green, where do you work?

25 A. I would for Abbeville County Dispatch Center.

1 Q. And how long have you worked there?

2 A. Over five years.

3 Q. And what's your role at the -- the dispatch center?

4 A. I'm a supervisor.

5 Q. And how long have you been a supervisor?

6 A. Two years.

7 Q. And as a supervisor can you kind of tell the jury a
8 little bit about your day to day work that you do?

9 A. Yes. I ensure that all calls are answered in a timely
10 manner and we send out the appropriate responders.

11 Q. Okay. Ms. Greene, do you mind taking down your mask
12 so the court reporter can --

13 A. Yes.

14 Q. If you're comfortable with that.

15 A. Yes.

16 Q. Okay. Thank you.

17 Ms. Greene, were you -- were you actually working the
18 night of January the 28th of 2020?

19 A. Yes, sir.

20 Q. Okay. Did you take a -- a call from Ms. Evans?

21 A. I did. Yes, sir.

22 Q. I'm gonna show you what's been marked as State's
23 Exhibit Number 1. Do you recognize this?

24 A. I do.

25 Q. Have you listened to this?

1 A. Yes, sir.

2 Q. Are your initials on this CD?

3 A. It is.

4 Q. And you've dated it as well?

5 A. Yes, sir.

6 Q. Is this a fair and accurate representation of the call
7 that you received from Ms. Evans on that date?

8 A. Yes.

9 MR. BLACK: Your Honor, at this point the State
10 moves Number 1 into evidence and wishes to publish to
11 the jury.

12 THE COURT: Okay. What says the defense?

13 MS. MERRILL: No objection, your Honor.

14 THE COURT: All right. Without objection Number 1's
15 in evidence for the State.

16 (State's Exhibit Number 1, a 9-1-1 call, was marked
17 and admitted into evidence.)

18 (State's Exhibit Number 1 was played.)

19 THE COURT: Can you turn -- is it possible to turn
20 the volume up any, Solicitor?

21 MR. BLACK: I might have to use the microphone.

22 THE COURT: Okay. If you can, I would suggest
23 maybe starting it back over.

24 MR. BLACK: Yes, sir.

25 THE COURT: Did anybody on the jury have any

1 difficulties hearing?

2 All right.

3 (State's Exhibit Number 1 was restarted and played.)

4 BY MR. BLACK:

5 Q. Ms. Greene, did Ms. Evans initially tell you who
6 struck her when you were talking to her?

7 A. I had to ask her again to get her attention, but, yes.

8 Q. How many times did it take -- take you asking that
9 question before she responded?

10 A. Two.

11 Q. How many?

12 A. Two.

13 Q. Did you ever receive any calls or did dispatch ever
14 receive any calls from Kristy Davis that evening?

15 A. No, sir. Not that I'm aware of.

16 Q. Did you hear -- did you ask for the ages of the folks
17 involved in this incident?

18 A. I did.

19 Q. Do you remember what they were?

20 A. I believe it was 21 and 42 or 46.

21 Q. Did you end up sending the ambulance out there or did
22 -- did law enforcement do that?

23 A. We sent them.

24 Q. Okay. And why did you do that?

25 A. She said -- or she requested law and EMS. She had an

1 injury to -- she had an injury.

2 Q. Okay. And she described that she was feeling
3 lightheaded to you?

4 A. Yes.

5 Q. And that's the reason why you sent it?

6 A. Yes.

7 Q. Okay.

8 MR. BLACK: I don't think I have any other
9 questions. Please answer any questions that Ms. Merrill
10 has for you.

11 THE COURT: Ms. Merrill, any cross-examination?

12 MS. MERRILL: No questions, Your Honor.

13 THE COURT: Okay. Ma'am, you can step down. You're
14 free to leave the courthouse or you're more than welcome
15 to remain with us.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: Okay, ladies and gentlemen. This will
19 be a good time to take a short break, so I'm gonna ask
20 that you go back to the jury room. Again, I remind you
21 don't begin any discussions whatsoever about this case
22 and we'll get you back out shortly, okay?

23 (Whereupon, the jury retires to the jury room at
24 4:02 PM.)

25 THE COURT: Okay. Let's take a short break.

1 Let me talk with the lawyers just for scheduling
2 purposes to see where we are.

3 (Recess taken at 4:04 PM.)

4 (Back on the record at 4:15 PM.)

5 BAILIFF: All rise.

6 THE COURT: Thank you. Have a seat.

7 All right. Are we ready for the jury, State?

8 MR. BLACK: Yes, sir, Your Honor.

9 THE COURT: Defense?

10 MR. WILLIAMS: I beg the Court's -- the Court's
11 indulgence.

12 MS. MERRILL: If I can have just a minute, Your
13 Honor. Thank you.

14 Thank you, Your Honor. We're ready.

15 THE COURT: Okay. Let's bring the jury out,
16 please.

17 (Whereupon, the jury returns to the courtroom at
18 4:16 PM.)

19 THE COURT: All right. Let the record reflect the
20 jury is back in.

21 Solicitor, are you ready to call your next witness?

22 MR. BLACK: Yes, sir.

23 The State calls Belicia Evans.

24 THE COURT: Come around, please, ma'am.

25 (Whereupon, Belicia Evans was duly sworn by the

1 Clerk of Court.)

2 THE CLERK: You may be seated.

3 BELICIA EVANS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BLACK:

7 Q. Ms. Evans, can you please state your name for the
8 record?

9 A. Belicia Evans.

10 Q. All right. And can you spell your first name for the
11 court reporter?

12 A. B-E-L-I-C-I-A.

13 Q. Ms. Evans, how old are you?

14 A. 23.

15 Q. 23?

16 A. (No verbal response.)

17 Q. And, Ms. Evans, where do you currently live?

18 A. I stay at [REDACTED] Ashcroft Drive.

19 Q. Is that in Greenwood?

20 A. Yes.

21 Q. How do you know Ms. Davis?

22 A. We used to work together at Hardee's.

23 Q. When was that?

24 A. In 2017.

25 Q. Did anything romantically ever evolve between you and

1 Ms. Davis?

2 A. Not at the time, no.

3 Q. Not at the time?

4 A. Not in 2017, no.

5 Q. Did it ever eventually involve -- evolve into that?

6 A. In 2019, yes.

7 Q. Do you remember what month that was?

8 A. July the 27th.

9 Q. Of '20?

10 A. '19.

11 Q. Okay. And so at that point you started dating

12 Ms. Davis?

13 A. Yes.

14 Q. Did you eventually move into -- in with Ms. Davis?

15 A. Yes.

16 Q. Were y'all still working together at Hardee's at that
17 time?

18 A. No.

19 Q. Okay. Where did you move to?

20 A. [REDACTED] Cambridge Street in Abbeville.

21 Q. And that's in the city of Abbeville?

22 A. I'm not sure. I don't -- I don't know nothing
23 about --

24 THE COURT: Ms. Evans, can you speak up just a
25 little bit, please, ma'am?

1 THE WITNESS: I don't know nothing about Abbeville,
2 but I'm pretty sure it is.

3 BY MR. BLACK:

4 Q. Okay. Is it in Abbeville county?

5 A. Yes.

6 Q. Okay. All right. And what was that date again? I'm
7 sorry.

8 A. July 27th of 2019.

9 Q. All right. Did you and Ms. Davis ever have an
10 altercation on January the 28th of 2020?

11 A. We did.

12 Q. And was that at -- at that [REDACTED] Cambridge address here
13 in Abbeville?

14 A. Yes, it was.

15 Q. Okay. Can you -- can you walk me through what
16 happened that evening? How did the fight start?

17 A. She had texted me saying that she wanted me to leave
18 her home and she came in the house and talked to me and I
19 was playing a game on my phone.

20 Q. Okay. What game were you playing on your phone?

21 A. I was playing Fortnite.

22 Q. Okay. Did you put your phone down and have a
23 conversation with Ms. Davis?

24 A. I did not.

25 Q. Were y'all breaking up?

1 A. We was going through a hard time and she decided to
2 call it quits.

3 Q. Okay. And so when you didn't put down your phone,
4 what happened next?

5 A. That's when Ms. Davis stated that she was gonna jump
6 on me if I wasn't paying attention to her.

7 Q. And did she jump on you?

8 A. Yeah, she started punching me.

9 Q. Where were you at when this occurred?

10 A. We was sitting in the living room.

11 Q. Were you standing up or sitting down?

12 A. I was sitting down.

13 Q. Where exactly in the living room were you sitting?

14 A. Near the back door.

15 Q. On a couch or was there a different --

16 A. It was on the couch.

17 Q. On the couch. Okay. Did she jump on top of you?

18 A. No, she was standing up in front of me just hitting
19 me.

20 Q. Okay. Did you hit her first or did she hit you first?

21 A. She hit me first.

22 Q. And after she started hitting you, what did you do?

23 A. I grabbed her by both her arms and pushed her into a
24 coffee table.

25 Q. And what was the coffee table made of -- made out of?

- 1 A. Wood and glass.
- 2 Q. Okay. Did anything happen to the coffee table?
- 3 A. The glass had broke.
- 4 Q. It broke?
- 5 A. Yes.
- 6 Q. Okay. Did she fall onto the coffee table?
- 7 A. What do --
- 8 Q. Did she fall down on the ground?
- 9 A. Yeah, she did.
- 10 Q. Did you fall on the ground as well?
- 11 A. I did not.
- 12 Q. Okay. After she fell onto the coffee table when you
- 13 pushed her into the coffee table, what happened next?
- 14 A. I had went into her room and started packing my things
- 15 and she came in from behind and started punching me in the
- 16 head.
- 17 Q. Okay. Now in this particular residence, did you and
- 18 Ms. Davis share a bedroom or did y'all have separate
- 19 bedrooms?
- 20 A. We shared a bedroom.
- 21 Q. Okay. And so your stuff was in the same bedroom that
- 22 her stuff was in?
- 23 A. Correct.
- 24 Q. So at that point you were trying to leave?
- 25 A. I was.

1 Q. All right. Did you see her come up behind -- from
2 behind you and start punching you or was it -- did it catch
3 you off guard?

4 A. It caught me off guard.

5 Q. Okay. After she started punching you, what happened?

6 A. I had backed out and I had punched her in the face and
7 that's when she had -- had the shock of -- her face was in
8 total shock and she went and grabbed a golf club and came
9 back in the room and started hitting me with it.

10 Q. Okay. So let's back up. You said that -- when she
11 came in and started punching you in the back of your head,
12 where were you at?

13 A. I was facing the wall packing my things in the
14 bedroom.

15 Q. And so you were in the back -- was it the back
16 bedroom?

17 A. Yes, the back left.

18 Q. Describe for the jury kind of the makeup of the house.
19 How many bedrooms is it?

20 A. Three bedrooms, one bath. Her bedroom was on the
21 left, the bathroom, and then there was two bed -- two
22 bedrooms on the right.

23 Q. Okay. Is it kind of a smaller house?

24 A. It's a medium size house.

25 Q. Okay. So when she punched you in the back of the

1 head, where -- where exactly in the house were you located?

2 A. I was in the master bedroom.

3 Q. Okay. When you turned around and punched her in the
4 face to reciprocate, was that still in the back bedroom?

5 A. Yes, it was.

6 Q. Okay. And then you said she was stunned; is that
7 right?

8 A. Yes.

9 Q. What did you do after she -- when she was stunned,
10 what happened after that?

11 A. That's when she turned -- she went out of the room and
12 grab -- grabbed a golf club and came back in the room and
13 started hitting me.

14 Q. So there was a golf club. Was it in the bedroom or in
15 a different room?

16 A. It was in the living room.

17 Q. Okay. So she would have had to have exited the
18 bedroom to go to the living room to get the golf club?

19 A. Correct.

20 Q. Is there a door that enters into the living room?

21 A. There is.

22 Q. Is that the front door?

23 A. Yes.

24 Q. Okay. All right. Did she come back into the back
25 bedroom and further have a confrontation with you?

1 A. Well, she was shouting that she wanted me out of her
2 house and then she just starting hitting me with a golf
3 club.

4 Q. And that was in the back bedroom?

5 A. Yes.

6 Q. How many times did she strike you with the golf club?

7 A. Twice.

8 Q. Where did she strike you?

9 A. One was across my chest slash arm area and the other
10 one was my head.

11 Q. Okay. Do you play golf?

12 A. I don't.

13 Q. Do you know what type of golf club it was that she
14 used?

15 A. It was a driver.

16 Q. And how do you know that?

17 A. I just know sports.

18 Q. Was it a -- was it a bigger head or kind of a smaller
19 skinnier head?

20 A. It was a bigger head.

21 Q. Okay. I'm gonna show you what's been marked as
22 State's Exhibit Number 2. Do you recognize this item?

23 A. I do.

24 Q. And what is that item?

25 A. That's the golf club that she hit me in the head with.

1 Q. Okay.

2 MR. BLACK: Your Honor, at this point the State
3 moves Number 2 into evidence.

4 THE COURT: What says the defense?

5 MS. MERRILL: No objection, Your Honor.

6 THE COURT: All right. Without objection Number 2
7 into evidence for the State.

8 (State's Exhibit Number 2, a golf club, was marked
9 and admitted into evidence.)

10 BY MR. BLACK:

11 Q. Ms. Evans, this -- this golf club is missing part of
12 the shaft and the head of the golf club. Would you agree
13 with that?

14 A. I do.

15 Q. What happened to the end of the golf club?

16 A. It broke when she had hit me.

17 THE COURT: Can you speak up, Ms. Evans? I couldn't
18 hear you, ma'am.

19 THE WITNESS: It broke when she hit me.

20 BY MR. BLACK:

21 Q. It broke when she hit you?

22 A. Yes.

23 Q. And where did she hit you?

24 A. She hit me across my chest and in my head area.

25 Q. Where exactly on the head did she hit you? Can you

1 point that out for the jury to see?

2 A. In my front right temple.

3 Q. Okay. Did -- what happened when she hit you in the
4 head?

5 A. When she hit me, I heard a loud gush and a ringing in
6 my ear.

7 Q. Your head started ringing?

8 A. No, my ear started ringing, but I heard the gushing,
9 the blood, and I put my hand up to see that I was bleeding.

10 Q. Okay. Did -- did you fall on the ground or were you
11 still standing up when she hit you?

12 A. I was still standing up when she hit me, but when she
13 exited out of the room to go in the kitchen I had fell to
14 the ground.

15 Q. You fell to the ground?

16 A. Yes.

17 Q. Where exactly was that in the house?

18 A. It was still in the master bedroom.

19 Q. Did she ever come back to the back bedroom after she
20 exited and after she hit you?

21 A. She did.

22 Q. Did she say any thing to you?

23 A. She said now I'm really about to kill you.

24 Q. Say that again. I'm sorry.

25 A. She said now I'm really about to kill you.

1 Q. At that point what did you do?

2 A. I had -- she had exited back out after she seen that
3 I was bleeding and I had grabbed my phone and my charger
4 and I had walked out the front door and called the police.

5 Q. Okay. Did you walk out of the house or did you run
6 out of the house?

7 A. Kind of walked and run -- walked and ran at the same
8 time.

9 Q. Were you -- was your head and your ears still kind of
10 ringing?

11 A. No.

12 Q. They weren't?

13 A. Just the leaking.

14 Q. Did you have a rag or anything to put on there as you
15 were getting away?

16 A. No.

17 Q. When you left, did you call 9-1-1?

18 A. I did.

19 Q. And you talked to a dispatcher?

20 A. I did.

21 Q. And ultimately did -- where did you go?

22 A. I had went to Abbeville Hospital.

23 Q. Okay. Who transported you there?

24 A. The EMS.

25 Q. Did you stay overnight?

- 1 A. I did.
- 2 Q. And you got a CT scan?
- 3 A. Yes.
- 4 Q. And you had a fractured head?
- 5 A. Yes.
- 6 Q. Do you have any -- any issues today with -- as a
- 7 result of that injury?
- 8 A. Just a headache.
- 9 Q. Headaches?
- 10 A. Yes.
- 11 Q. How often do they come?
- 12 A. They come like every two or three weeks, but they can
- 13 last up to two to five days.
- 14 Q. So it's kind of like a migraine?
- 15 A. Yes.
- 16 Q. And you get those how often?
- 17 A. Every two to three weeks.
- 18 Q. Is there a certain part of your head that hurts worse?
- 19 A. The front right temple where she struck it with the
- 20 golf club.
- 21 Q. And you can feel it on the headaches?
- 22 A. Yes.
- 23 Q. When you get those headaches, are you holed up in bed
- 24 or are you able to function?
- 25 A. I stay in bed.

1 Q. And how -- how long does it take you to get over those
2 headaches?

3 A. About two to five days.

4 Q. Did you have those headaches before this injury?

5 A. I did not.

6 Q. Did you speak to officers at the hospital?

7 A. I did.

8 Q. Did you give officers permission to go inside of the
9 -- the residence and retrieve some items?

10 A. I did.

11 Q. And to look around?

12 A. Yes, sir, I did.

13 Q. And when -- when did you move into that residence? Do
14 you remember?

15 A. I don't remember.

16 Q. You don't remember?

17 A. No.

18 Q. But you'd been there for some time?

19 A. Yes.

20 Q. You told officers -- did you tell officers at the
21 hospital that initially you didn't want to prosecute?

22 A. I did.

23 Q. Why?

24 A. Because I knew that me and Ms. Davis would start
25 talking again.

1 Q. Start talking again?

2 A. Yeah.

3 Q. Was your relationship with Ms. Davis that toxic?

4 A. For the most part, yes.

5 Q. Ms. Evans, do you currently work?

6 A. I'm sorry. Can you repeat that?

7 Q. Do you -- do you currently work?

8 A. I do.

9 Q. Where do you work?

10 A. Colgate-Palmolive.

11 Q. And what shift do you work?

12 A. I work the nightshift. D shift. Third.

13 Q. Did you -- third shift?

14 A. Yes, sir.

15 Q. And did you work last night?

16 A. I did not.

17 Q. You work tonight?

18 A. I do.

19 Q. What's your -- what exactly is your shift?

20 A. 7:30 to -- 7:00 to 7:30 in the morning.

21 Q. 7P to 7A?

22 A. Yes.

23 Q. So basically a 12-hour shift?

24 A. Correct.

25 Q. And, again, did you strike Ms. Davis first?

1 A. I did not.

2 Q. She struck you first?

3 A. Correct.

4 Q. And when you went to the back bedroom, you were --
5 you said you were gonna leave, correct?

6 A. Correct.

7 Q. And after this evening you were done with your
8 romantic relationship with Ms. Davis?

9 A. Correct.

10 MR. BLACK: I think that's all the questions I
11 have. Please answer any questions that Ms. Merrill
12 might have for you.

13 THE COURT: Any cross-examination?

14 MS. MERRILL: Thank you, Your Honor. May it please
15 the Court?

16 CROSS-EXAMINATION

17 BY MS. MERRILL:

18 Q. In June of this year you got in -- in a fight with
19 another girlfriend, didn't you?

20 A. Not that I remember.

21 Q. Do you recall sending a message to Ms. Davis telling
22 her you just got finished fighting?

23 A. I don't recall.

24 MS. MERRILL: Your Honor, may I approach the
25 witness?

1 THE COURT: You sure can.

2 BY MS. MERRILL:

3 Q. If you'll just take a minute to read over that and
4 then I'm gonna ask you some questions about it.

5 That's a message that you sent to Ms. Davis; is that
6 right?

7 A. Correct.

8 Q. And let me ask you again, did you get in a fight with
9 another girl in June of this year?

10 A. I did.

11 Q. Okay. And you told her that she came -- this other
12 person came to your house and broke your glass door --

13 A. Correct.

14 Q. -- is that right? What else -- she also tried to set
15 it on fire?

16 A. Correct.

17 Q. And you said this was a new relationship and you'd let
18 her come live with you; is that right?

19 A. Yes, ma'am.

20 Q. And then y'all got in a fight in June?

21 A. Yes.

22 MS. MERRILL: Your Honor, if I may retrieve that
23 from the witness.

24 BY MS. MERRILL:

25 Q. Did you also send Ms. Davis a message at some point

1 telling her that everything was your fault?

2 A. Yes. I was speaking to the arguments that we had got
3 into and the way that I treated her.

4 Q. And you also apologized for it; is that right?

5 A. Correct.

6 Q. Did tell you her at some point that everything that
7 happened between you was your fault?

8 A. Yes, but Ms. Davis referred that it -- that both of us
9 had a part in it.

10 MS. MERRILL: Your Honor -- Your Honor, may I
11 approach the witness?

12 THE COURT: Certainly.

13 BY MS. MERRILL:

14 Q. I'll give you a message -- or a minute to read over
15 that message.

16 Have you had a chance to review it?

17 A. Yes.

18 Q. When Ms. Davis -- after you told Ms. Davis that
19 everything that happened between you was your fault, she
20 responded I hear ya; is that right?

21 A. Correct.

22 Q. Okay. And then you told her you were serious and that
23 you pushed her into someone else's arms; is that right?

24 A. Correct.

25 Q. Okay. And she said you pushed her away but not into

1 someone else's arms; is that right?

2 A. Correct.

3 Q. Nowhere on there does she say that it was her fault,
4 does she?

5 A. No, but when we did have followup conversations, she
6 would say that it was both of our faults.

7 Q. And in that you also apologize to her; is that right?

8 A. Correct.

9 MS. MERRILL: Your Honor, may I approach again?

10 THE COURT: Sure.

11 MS. MERRILL: Thank you.

12 BY MS. MERRILL:

13 Q. And at the hospital when you talked to the officer,
14 you told him that you didn't want to file a complaint; is
15 that right?

16 A. That's correct.

17 Q. And did you sign a document saying that?

18 A. I did.

19 Q. And no one coerced you to say that; is that right?

20 A. Ma'am?

21 Q. No one coerced you to say that; is that right?

22 A. That's correct.

23 Q. And you said that of your own freewill?

24 A. I did.

25 Q. And no one pressured you to say that?

1 A. No.

2 MS. MERRILL: Your Honor, if I could get just a
3 moment.

4 THE COURT: Sure.

5 BY MS. MERRILL:

6 Q. At some point you told Ms. Davis that if anybody was
7 mean to her they were gonna catch these hands. Do you
8 recall doing that?

9 A. I don't recall that.

10 MS. MERRILL: Your Honor, may I approach the
11 witness?

12 THE COURT: Sure.

13 BY MS. MERRILL:

14 Q. Let me give you a minute to read over that and then
15 I'll ask you some questions about it.

16 Have you had a chance to read over that?

17 A. Yes, I have.

18 Q. After reading that, does that refresh your
19 recollection that you did tell Ms. Davis if anybody touched
20 her they were gonna catch these hands?

21 A. Yes.

22 Q. Does that mean you would fight somebody?

23 A. Yes, but I'm not a fighter. But I did say that.

24 Q. Did you also say that if somebody hurt her, they were
25 gonna get beat?

1 A. Beat up? Yes, I did.

2 MS. MERRILL: Your Honor, may I approach to retrieve
3 that?

4 THE COURT: Yes.

5 MS. MERRILL: Thank you.

6 BY MS. MERRILL:

7 Q. You and Ms. Davis were not married; is that right?

8 A. That's correct.

9 Q. And you were never married; is that right?

10 A. That's correct.

11 Q. And you don't have any children in common?

12 A. No.

13 Q. Is that correct?

14 A. Yes.

15 MS. MERRILL: I beg the Court's indulgence.

16 BY MS. MERRILL:

17 Q. So I'm looking at some of these messages when you
18 were willing to fight. Let's go back to that night. You
19 indicated that you only hit Ms. Davis -- or pushed
20 Ms. Davis after she attacked you; is that right?

21 A. Correct.

22 Q. And you pushed her so hard that she -- pushed her into
23 a glass coffee table that the table broke; is that right?

24 A. Yes. The glass on the coffee table was very thin, so
25 that's why that broke.

1 Q. And you also punched her that night?

2 A. I did.

3 Q. Is that the only way you defended yourself?

4 A. It is.

5 Q. So even though you were -- got in a fight with another
6 girlfriend recently and you'd fight somebody else for her,
7 all you did that night is push her into the glass coffee
8 table and then punch her?

9 A. That's correct.

10 MS. MERRILL: I beg the Court's indulgence.

11 BY MS. MERRILL:

12 Q. Since this has happened you sent Ms. Davis messages
13 telling her you miss her; is that right?

14 A. Correct.

15 Q. And you sent her messages telling her you wanted to be
16 with her again?

17 A. Yes, that's correct.

18 Q. You sent her messages telling her you can't get her
19 off your mind?

20 A. I have.

21 Q. And you sent Ms. Davis these messages about how much
22 you miss her and things after this night; isn't that right?
23 After January 28th, 2020?

24 A. Yes, it was all in -- at the end of 2020 or in 2021.

25 Q. So -- and you've sent her numerous messages saying

1 that; is that right?

2 A. Yes.

3 Q. At what -- at some point did you send her a messages
4 asking if you had a chance with her again?

5 A. I did. After we had, I think, got off the phone.
6 After that.

7 MS. MERRILL: That's all the questions I have right
8 now, Your Honor. Thank you.

9 THE COURT: Any redirect, Solicitor?

10 MR. BLACK: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. BLACK:

13 Q. Ms. Davis {sic}, I'll start with the one that we just
14 received. You texted -- I guess you texted Ms. Davis about
15 somebody that came in and broke your door?

16 A. Yes.

17 Q. That was somebody you were in a relationship with?

18 A. It was.

19 Q. So you ended up kicking her out of your house?

20 A. I did.

21 Q. Okay. And you were in a relationship with Ms. Davis
22 at some point back in the first part of 2020, correct?

23 A. Yes.

24 Q. 2019/2020?

25 A. Yes.

1 Q. And she hit you over the side of the head with a golf
2 club?

3 A. Correct.

4 Q. You're not too very -- you're not great at picking
5 relationships, are you?

6 A. No, I guess.

7 Q. Have you ever been arrested?

8 A. I have not.

9 Q. So this lady that broke your door that you were living
10 -- were you living with her at the time?

11 A. Yes, I was -- I had moved to North Carolina.

12 Q. So you -- you moved out after that?

13 A. Yes.

14 Q. And you were trying to kick her out of the house?

15 A. Yes.

16 Q. Okay. And then this text message with Ms. Davis, I
17 think you said, you know, everything's my fault and then
18 you -- there's a little bit and then you say I'm serious,
19 Kristy. I pushed you into someone else's arms.

20 A. Right.

21 Q. So you're talking about the relationship as a whole,
22 correct?

23 A. As me and her, yes.

24 Q. Were you talking about specifically this -- this
25 night, January the 28th of 2020?

1 A. Yes.

2 Q. You were talking about this particular incident?

3 A. No, I was talking about other incidents that had
4 occurred with me and Kristy when we'd get into arguments
5 and other altercations.

6 Q. And generally when people argue it's a two-way street,
7 right?

8 A. Yes.

9 Q. Okay. It takes two to tango, two to -- two to argue?

10 A. Correct.

11 Q. So the night you got hit over the head with the golf
12 club, who pushed -- who started the first -- who initiated
13 the first blow?

14 A. Kristy did.

15 Q. And you were trying to leave, correct?

16 A. Correct.

17 Q. And the golf club, where was it located?

18 A. In the living room by the door.

19 Q. And where were you at?

20 A. In the master bedroom.

21 MR. BLACK: I don't have any other questions.

22 THE COURT: Recross, Ms. Merrill?

23 MS. MERRILL: No, Your Honor. Thank you.

24 THE COURT: You can step down, ma'am.

25 (Witness excused.)

1 THE COURT: The next witness, Solicitor.

2 MR. BLACK: The State calls Aaron Crowe.

3 (State's Exhibit Numbers 2 through 26 were marked
4 for identification.)

5 (Whereupon, Aaron Crowe was duly sworn by the
6 Clerk of Court.)

7 AARON CROWE,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BLACK:

11 Q. Officer Crowe, can you please state your name for the
12 record.

13 A. Aaron Crowe.

14 Q. And do you -- where do you work?

15 A. I work for the Abbeville City Police Department.

16 Q. And how long have you been employed there?

17 A. I've been employed with the police department for
18 about five years.

19 Q. And what's your title?

20 A. I'm a sergeant for my shift. That means I -- I
21 supervisor only the shift.

22 Q. All right. And you said you've been there for about
23 five years?

24 A. Yes, sir.

25 Q. And you also were in the military as well, correct?

1 A. Yes, sir.

2 Q. How long?

3 A. For eight years.

4 Q. And you're a certified law enforcement officer?

5 A. Yes, sir.

6 Q. Were you working on the night of January the 28th of
7 2020?

8 A. Yes, sir.

9 Q. Did you -- where did you respond to that evening about
10 7 PM?

11 A. I responded to a victim of a domestic issue at the
12 corner of Washington Street and Chestnut Street, which is
13 a -- there's a small church there and a red light.

14 Q. Okay. And how did you get the call to come out?

15 A. It was given to us by our dispatch center.

16 Q. Were you -- and I'm assuming you were pretty close?
17 Abbeville city's somewhat small.

18 A. I can't recall exactly where I was, but fairly close
19 would probably be accurate. We can get to most areas
20 inside the city quick -- pretty quickly.

21 Q. Okay. When you got there to this church where
22 Ms. Evans was located, what did you see?

23 A. That's the -- I believe that's the first time I met
24 Ms. Evans. She was sitting on a bench outside the church
25 wearing a red shirt. She had some kind of red fluid that

1 I kind of presumed to be blood on her shirt. She was
2 holding a phone and talking to our dispatchers and as I
3 approached her there was blood coming from the right side
4 of her head. It looked like it had stopped bleeding, but
5 it was very obvious that it was still a decent amount of
6 blood. It was relatively fresh.

7 Q. Okay. Did you call EMS or had EMS already been
8 initiated?

9 A. Typically they're put onto standby for issues like
10 this with a known injury until we get there and deem the
11 scene safe for them to arrive. So I believe they were --
12 they were pretty close because they got there rather
13 quickly. They must have stationed nearby. Once I got
14 there and saw that it was safe for them to come in, I
15 advised our dispatch center they could come and respond to
16 the scene.

17 Q. So they got there right after you did?

18 A. Correct.

19 Q. All right. What did you do when you first got to the
20 scene with Ms. Evans? Obviously you kind of cleared the
21 scene and contacted EMS. What was your role after that?

22 A. After that it was trying to figure out the players in
23 the matter, if you will, who it was that she had had the
24 altercation with, where it happened to make sure we had
25 jurisdiction to -- to prosecute the case in the first place

1 if that's what the victim wishes, so I just started asking
2 her basic questions, where it happened, what happened and
3 with whom it happened.

4 Q. Okay. And then pretty quickly thereafter turned it
5 over to EMS to treat the patient?

6 A. Yes, sir.

7 Q. Did you find out where -- where this occurred, where
8 this incident occurred?

9 A. Yes, sir. She -- she was -- said that she was at
10 her house, which I was -- I was aware of Ms. Davis and
11 Ms. Evans --

12 Q. Well, let me --

13 A. -- stayed at that residence.

14 Q. Okay. You were?

15 A. Uh-huh.

16 Q. All right. Well, let me ask you this. How far was
17 this particular house from the location that you met Ms. --
18 Ms. Evans at?

19 A. It was about a block away.

20 Q. So relatively close?

21 A. Pretty close, yeah.

22 Q. Okay. Did you ultimately go over to the house?

23 A. I did.

24 Q. How many times did you go over to the house?

25 A. We went twice.

1 Q. Okay.

2 A. The first time we went over there we were trying
3 to make contact with Ms. Davis and see if she was there.
4 My partner at the time was familiar with a vehicle that
5 Ms. Davis drives. We got there and it was quickly apparent
6 that whatever vehicle that was wasn't there. We knocked
7 several times on the front and back and looked around the
8 house a little bit to try and get somebody to come to the
9 door, come speak to us, and nobody ever did. I believe we
10 got a call after that and left, but returned shortly
11 afterwards after my partner went and spoke with Ms. Evans
12 at the hospital.

13 Q. Okay. So then you -- when you came back the second
14 time, did you go inside the house?

15 A. Yes, sir, I did. Ms. Evans wanted us to retrieve some
16 items, mail and something else. I can't exactly remember
17 what she wanted us to get, but she wanted us to go in and
18 -- and get those items for her.

19 Q. Okay. When you went the second time, was there
20 anybody home?

21 A. No, sir.

22 Q. Did you notice anything -- did you notice anything
23 about the house the second time you went out there?

24 A. I did. I -- we didn't try any doors or anything to
25 see if they were open. We simply knocked to see if

1 somebody would come and speak to us. On the front porch
2 as I went up the stairs, there was a -- the porch was
3 painted blue and there was drops of some kind of red fluid
4 that looked like it could be blood on the front porch that
5 appeared to lead from the doorway to the stairs. Then as
6 I approached and opened the door, there was a drop in the
7 doorway and as you looked into the house there seemed to be
8 more drops of this fluid leading from the front door to the
9 hallway.

10 Q. And you ultimately collected what's been marked as
11 State's Exhibit Number 2; is that correct?

12 A. Yes, sir.

13 Q. Where -- where was this item located?

14 A. You first come into the house to the -- to the living
15 room. The living room kind of opens to the right.

16 Directly ahead of you there's a hallway. If you follow
17 that hallway to the left for a room or so down, at the end
18 you hang another little left and there's a large bedroom
19 back there. Right as you step into that bedroom there's a
20 bed on your right that takes up most of the room and down
21 by my feet underneath -- partially underneath the bed I
22 could see the golf club sitting out there in plain view.

23 Q. Okay. Did you look around for any other things or did
24 you just -- was it kind of a cursory look around?

25 A. The -- in my opinion, our -- our scope was relatively

1 limited. She wanted us to go in and retrieve some items
2 and I briefly looked around, but I -- I didn't open -- I
3 was -- I wasn't quite sure where -- if we had permission to
4 search the entire residence, so I looked around in areas
5 that I could see without digging into drawers or anything
6 like that, and the only thing I could locate was that half
7 of the golf club.

8 Q. And the items that Ms. Evans wanted you to retrieve,
9 where were they located?

10 A. Actually I didn't -- I never found those items that
11 night. I couldn't locate her mail or the other item she
12 wanted us to retrieve.

13 Q. Okay. Officer Crowe, do you wear a body camera?

14 A. Yes, sir.

15 Q. Did your -- was your body camera active that night
16 when you first showed up to the church to meet Ms. Evans?

17 A. Yes, sir, it was. It was active for our initial
18 response in speaking with Ms. Evans.

19 Q. And then until you went over to the residence the
20 first time to kind of look around?

21 A. Yes, sir.

22 Q. All right.

23 MS. MERRILL: Your Honor, may we approach briefly?

24 THE COURT: Sure.

25 Members of the jury, just sit tight, okay?

1 (Proceedings held at the bench; not reported.)

2 THE COURT: All right. You may continue.

3 (State's Exhibit Number 27 was marked for
4 identification.)

5 BY MR. BLACK:

6 Q. I'm gonna show you what's been marked as State's
7 Exhibit Number 27. Do you recognize this?

8 A. I do.

9 Q. What is it?

10 A. It's a copy of the body cam footage.

11 Q. And is your initials on here?

12 A. It is.

13 Q. As well as the date?

14 A. Yes, sir.

15 MR. BLACK: Your Honor, the State moves State's
16 Number 27 into evidence.

17 THE COURT: And what says the defense?

18 MS. MERRILL: Your Honor, could I ask just a few
19 questions of the officer about the body camera?

20 THE COURT: Concerning -- without going into the
21 contents of the -- of the video, you just want to ask him
22 some questions about -- in general terms?

23 MS. MERRILL: Just -- yes, very general terms.

24 THE COURT: Well --

25 MS. MERRILL: I can do it on cross if that's

1 better.

2 THE COURT: Or we can do it in-camera.

3 MR. BLACK: I think I can clarify it, Judge.

4 BY MR. BLACK:

5 Q. Is this -- have you viewed the body camera?

6 A. I have reviewed the footage, yes, sir.

7 Q. Of your body camera?

8 A. Yes, sir.

9 Q. Is this a fair and accurate representation of your
10 interaction that evening at the church with Ms. Evans and
11 later the first time you go out to the residence at 107
12 Cambridge?

13 A. Yes, sir.

14 MS. MERRILL: No objection, Your Honor.

15 THE COURT: All right. No objection to Exhibit 27
16 in evidence.

17 (State's Exhibit Number 27, a body cam video, was
18 admitted into evidence.)

19 MR. BLACK: And, Your Honor, per our agreement I'm
20 going to play the first part of the interaction at the
21 church and then when the officers leave, I will mute the
22 tape at that point for the duration of the tape.

23 THE COURT: Ladies and gentlemen, do not place
24 any significance whatsoever to the fact that the State
25 intends to mute part of this body cam video.

1 And about how long are we talking about, Solicitor?

2 MR. BLACK: It's sixteen minutes and forty-nine
3 seconds.

4 THE COURT: Okay. Very good.

5 (State's Exhibit Number 27 was played.)

6 BY MR. BLACK:

7 Q. Officer Crowe, can you just briefly describe for the
8 jury kind of what they see in that -- in that video?

9 A. Yes. So they see our initial response to the scene
10 and making contact with Ms. Evans, getting a brief synopsis
11 of what happened between talking to her and EMS, me helping
12 convince her that it might be appropriate that she seek
13 medical attention because of the injuries she could have
14 possibly sustained and then -- then you see me go to the
15 house with Officer Blackwell to try to make contact with
16 Ms. Davis, look around the house briefly. I knocked on the
17 back, she knocked on the front, and after we didn't make
18 contact we left and took another call.

19 Q. Okay. So you had another call to attend to?

20 A. Uh-huh. We had a -- some small call and it didn't
21 appear that we had any access to the house nor anybody was
22 home, so we left and attended to that call.

23 Q. Okay. So you showed up to the house, knocked on the
24 door, nobody showed up --

25 A. Correct.

1 Q. -- and then had to go take another call? Did you
2 eventually come back?

3 A. Yes. Actually Ms. Blackwell -- Ms. Blackwell went to
4 the hospital and I went to the other call. It was a dog
5 call and she didn't really do dogs, so I went and handled
6 that while she went and spoke to Ms. Evans.

7 Q. Okay. Did you ever show up back to the hospital?

8 A. I didn't go to the hospital, no, sir.

9 Q. Okay. When you went back the second time, is that
10 when you went inside the house?

11 A. Yes, sir.

12 Q. And I saw that you had --

13 MS. MERRILL: Your Honor, may -- may we approach
14 briefly?

15 THE COURT: Sure.

16 (Proceedings held at the bench; not reported.)

17 THE COURT: All right, ladies and gentlemen.

18 There's a legal issue that I need to take up with the
19 lawyers and it requires me to send you to your jury
20 room. I realize it's getting late in the hours. I'd
21 like to go a little bit longer, so if you'll go back
22 to your jury room we'll try to get you back out shortly
23 and proceed forward, okay?

24 Thank you very much for your understanding and
25 your patience.

1 don't know if it would be beneficial -- I don't know how
2 much longer it's gonna be with the officer, but we could
3 get the victim -- we can recall her and have her identify
4 and then let her go because she's got to go to work.

5 THE COURT: Okay.

6 MR. BROWN: I don't know --

7 THE COURT: All right.

8 Solicitor Black, how much longer do you anticipate
9 with this officer?

10 MR. BLACK: Probably not too much longer. I do
11 have to get these pictures in.

12 THE COURT: Okay. All right.

13 Ms. Merrill, do you have any idea about the length
14 of cross?

15 MS. MERRILL: I don't think I have a lot on cross,
16 Your Honor.

17 THE COURT: Well, let's -- let's try to finish up
18 -- well, you wanted -- what you're suggesting, Solicitor
19 Brown, is to put Ms. Evans up for the one sole purpose
20 of ID and then cutting her loose and then putting Officer
21 Crowe back on the stand? Is that what you're asking?

22 MR. BROWN: Yes, sir. That would work.

23 THE COURT: Okay.

24 All right. Let's -- let's do that.

25 Officer Crowe, if you would just step down, please,

1 sir.

2 THE WITNESS: Yes, sir.

3 MS. MERRILL: Your Honor, can you give me just a
4 moment to read the rule about recalling witnesses just
5 to refresh myself briefly?

6 THE COURT: It's pretty discretionary, I believe.

7 MS. MERRILL: I believe it is, too, Your Honor.

8 I'm just making sure I'm --

9 THE COURT: Sure.

10 MS. MERRILL: -- protecting our record here.

11 (Pause in proceedings.)

12 MR. BLACK: I think she needs to put something on
13 the record.

14 MS. MERRILL: Judge, I -- I know your decision. I
15 just feel like I need to kind of make a record of one
16 thing real quick about recalling the witness. I know
17 you're -- it's broad discretion. I understand.

18 THE COURT: All right. Yeah, go ahead.

19 MS. MERRILL: Your Honor, I just would object to the
20 State recalling Ms. Evans. My understanding is they're
21 recalling her because they failed to identify Ms. Davis
22 and it allows her to testify twice in front of the jury,
23 which, I think, makes it appear that her testimony is --
24 gives it more weight that the jury heard from her twice
25 and so I -- I'd object to them recalling her.

1 THE COURT: Okay. So noted.

2 MS. MERRILL: And is that overruled, Your Honor?

3 THE COURT: Ma'am?

4 MS. MERRILL: My objection's overruled; is that
5 correct?

6 THE COURT: Yes.

7 MS. MERRILL: Thank you.

8 Your Honor, may I add just one more thing?

9 THE COURT: Sure.

10 MS. MERRILL: Can my -- my objection to the witness
11 recalled being -- be preserved without my having to renew
12 it in front of the jury?

13 THE COURT: That's fine.

14 MS. MERRILL: Thank you.

15 BAILIFF: Are we ready?

16 THE COURT: Yes, we are.

17 (Whereupon, the jury returns to the courtroom at
18 6:02 PM.)

19 THE COURT: All right. Let the record reflect the
20 jury is back in.

21 Thank you, ladies and gentlemen. I hope you got
22 your calls made and everything's still good. We're
23 hopeful to be finished up in about twenty minutes. Don't
24 hold me to that exactly, but that's what we're shooting
25 for.

1 Solicitor, I think you want to recall a witness
2 for one question?

3 MR. BLACK: Yes, sir, Your Honor.

4 THE COURT: All right.

5 MR. BLACK: The State recalls Belicia Evans.

6 THE COURT: Okay.

7 Come around, Ms. Evans. I remind you you're still
8 under oath.

9 BELICIA EVANS,
10 having been previously sworn, was recalled to the
11 stand, and testified as follows:

12 FURTHER REDIRECT EXAMINATION

13 BY MR. BLACK:

14 Q. Ms. Evans, is Ms. Davis here in court?

15 A. Yes.

16 Q. Can you identify her, please?

17 A. She's right there in the braids.

18 Q. I'm sorry?

19 A. She's right there with the braids.

20 Q. Braids?

21 A. Yes.

22 Q. Okay. And is she the one that struck you with the
23 golf club that night?

24 A. She is.

25 Q. Okay.

1 MR. BLACK: Your Honor, the witness has
2 identified --

3 THE COURT: All right. Let the record reflect
4 that the witness has identified the defendant.

5 MR. BLACK: Thank you. That's all the questions
6 I have.

7 THE COURT: Thank you, ma'am. You can step down.
8 (Witness excused.)

9 THE COURT: Okay. Officer Crowe, we're still in
10 your testimony. Come back around, please.

11 AARON CROWE,
12 having been previously sworn, testified as follows:

13 CONTINUED DIRECT EXAMINATION

14 BY MR. BLACK:

15 Q. Officer Crowe, I'm gonna show you what's been marked
16 as State's Exhibit Number 2 through 13 and 25 through 26.
17 You've actually already looked at these; is that correct?

18 A. Yes, sir.

19 Q. And can you -- do you remember what they are?

20 A. Yes, sir. Those are the photos I took that evening in
21 January.

22 Q. And these are photos of Ms. Evans and her injuries?

23 A. It is. As well as I believe the front of the house,
24 the porch where some blood was located, and the golf club
25 that was recovered.

1 MR. BLACK: Your Honor, at this point the State
2 would move to put in these photographs. Again, they
3 are 2 through 13 and 25 and 26.

4 THE COURT: 2 through 13 and 25 and 26 subject to
5 what is already put on the record into evidence for the
6 State.

7 (State's Exhibit Number 2 through 13, 25 and 26,
8 photographs, were admitted into evidence.)

9 BY MR. BLACK:

10 Q. And, Officer Crowe, again, can you tell the -- can
11 you tell us what address that these photographs were taken
12 at?

13 A. Yes. The photographs of Ms. Evans was taken at the
14 corner of Washington and Chestnut Street and then the
15 photographs of the porch and the golf club was taken at
16 [REDACTED] Cambridge Street.

17 Q. And you've seen Exhibit Number 28, correct?

18 A. Yes, sir.

19 Q. And this is -- can you identify this?

20 A. Yes, sir. That's the photograph of the golf club and
21 the one I recovered from inside the house.

22 Q. And is that in Abbeville county?

23 A. It is.

24 Q. Officer Crowe, did you -- did you eventually arrest
25 Ms. Davis or somebody at your department eventually arrest

1 Ms. Davis?

2 A. Somebody did. We -- we issued the warrant and I --
3 I don't know exactly when she was arrested, but sometime
4 after -- after the incident she was arrested.

5 Q. And is she here at court today?

6 A. Yes, ma'am -- yes, sir.

7 Q. Can you identify her, please?

8 A. Yes, sir. The young lady over there in the black
9 shirt with the braids in her hair.

10 THE COURT: All right. Let the record reflect this
11 witness has identified the defendant.

12 BY MR. BLACK:

13 Q. Your shift that day, can you tell the jury what your
14 shift was that evening?

15 A. As far as the timeframe or --

16 Q. Yes, sir. So this would have been January the 28th
17 and I believe you responded about 7 PM; is that correct?

18 A. Yes, sir. We -- we typically work from six to six;
19 either 6P to 6A or vise versa. We were on nightshift that
20 month from 6 PM till 6 AM.

21 Q. So you would have gotten off at 6 AM the next morning?

22 A. Yes, sir.

23 Q. And I know at this particular time you initially
24 responded to the church and dealt with Ms. Evans, then you
25 had another call that you had to attend to.

1 A. Yes, sir.

2 Q. Were you busy that night or do you remember?

3 A. Besides -- besides this call and I think maybe just
4 that -- that one, it wasn't incredibly busy, but, yeah,
5 we -- with a couple -- it doesn't take much with just two
6 officers in the city to be kind of stretched out thin.

7 Q. So it was just you and Officer Blackwell working that
8 evening?

9 A. Yes, sir.

10 Q. Did y'all ever receive any calls from Ms. Davis?

11 A. I did not.

12 Q. Did she ever show up at the police department that
13 evening attempting to talk to an officer?

14 A. No, sir.

15 Q. And when you went back out to the residence, was she
16 there?

17 A. No, sir.

18 Q. Was her vehicle there?

19 A. No, sir.

20 Q. When you went inside the house to recover the -- look
21 for the mail and recover the golf club, was she there?

22 A. No, sir.

23 MR. BLACK: I think that's all the questions I
24 have. Please answer any questions that Ms. Merrill
25 might have for you.

1 THE COURT: Cross-examination.

2 MS. MERRILL: Thank you, Your Honor. May it
3 please the Court?

4 CROSS-EXAMINATION

5 BY MS. MERRILL:

6 Q. You were taking a lot of calls that night, is that
7 what you said?

8 A. We had, I believe, a -- some kind of dog call right
9 there right at the same time we were out with Ms. Evans
10 and as far as after -- that's all I remember in this same
11 timeframe of trying to deal with this incident. It was a
12 call kind of in between initially speaking to Ms. Evans
13 and coming back to the residence on Cambridge Street.

14 Q. You were out on the road for most of your shift; is
15 that fair?

16 A. Yes, ma'am.

17 Q. Okay. So you weren't at the police station, so you
18 can't say for certain whether Ms. Davis went there or not;
19 is that right?

20 A. That's accurate. Yes, ma'am.

21 Q. And your understanding of this incident comes from
22 what you learned from Ms. Evans; is that right?

23 A. Yes, ma'am.

24 Q. And when you went into their -- to Ms. Davis's home,
25 that was based on Ms. Evans telling you it was okay; is

1 that right?

2 A. Yes, ma'am.

3 Q. And you didn't have a search warrant to go in that
4 home?

5 A. No, ma'am.

6 MS. MERRILL: Thank you.

7 THE COURT: Anything in redirect?

8 REDIRECT EXAMINATION

9 BY MR. BLACK:

10 Q. What time does the police department close?

11 A. It doesn't. The -- you might not find a -- somebody
12 in the office to let one of us know that we have someone
13 there waiting for us; however, there's numbers on the door
14 that tell you to call -- call a number if nobody's there
15 if you need some kind of -- to make a report or you need
16 law enforcement or fire department.

17 Q. And one of those numbers is dispatch?

18 A. Yes, sir.

19 MR. BLACK: No further questions.

20 THE COURT: Anything on recross, Ms. Merrill?

21 MS. MERRILL: No, Your Honor.

22 THE COURT: Okay.

23 You can step down, sir.

24 (Witness excused.)

25 MR. BLACK: Judge, I think that's probably a good

1 stopping point for tonight.

2 THE COURT: Okay. Let me -- let me talk with the
3 lawyers and -- just for scheduling purposes for tomorrow
4 to figure out what would be a good time to get started
5 back.

6 So, ladies and gentlemen, be patient with me and
7 just keep your seat.

8 (Proceedings held at the bench; not reported.)

9 THE COURT: Okay. We are back on the record.
10 It's twenty after six. We've kept you a long time.
11 I appreciate your hard work. I appreciate your
12 understanding and patience. We're gonna go ahead and
13 break for the evening. I want you back at 10:30.

14 I've got some work to do with the lawyers on the
15 case and we need to do that before you get here, so
16 10:30 in the morning you'll come and report straight to
17 the jury room.

18 Remember all my instructions. Keep those in mind
19 and please follow those. It's very important that
20 you follow my instructions. Have a good evening, get
21 some rest, and we'll see you in the morning at 10:30.

22 (Whereupon, the jury was excused for the day at
23 6:20 PM.)

24 THE COURT: All right. Y'all have a good -- good
25 evening and we'll see you in the morning.

1 (Whereupon, the proceedings were concluded at
2 6:21 PM for August 12, 2021.)

3 (The following proceedings were held August 13,
4 2021, beginning at approximately 10:38 AM.)

5 (Whereupon, the jury enters the courtroom at
6 10:38 AM.)

7 THE COURT: Okay. Let the record reflect the
8 jury is back in.

9 And good morning, ladies and gentlemen. I hope
10 everyone is doing well, feeling well.

11 Okay. State.

12 MR. BLACK: The State rests.

13 THE COURT: Okay. All right.

14 Ladies and gentlemen, as a result of the State
15 resting, I have some legal issues that I need to discuss
16 with the lawyers, so we have to send you right on back
17 to your jury room, okay, so get on back.

18 It's just the way it works, okay? Just be patient
19 with us.

20 (Whereupon, the jury retires to the jury room at
21 10:40 AM.)

22 THE COURT: Okay. Does the defense have any motions
23 they'd like to make at this time?

24 MR. WILLIAMS: Yes, Your Honor. At this -- yes,
25 Your Honor. At this point we would like to first make

1 sure that we renew all of our earlier objections
2 throughout this trial.

3 THE COURT: Certainly.

4 MR. WILLIAMS: And then, secondly, we would like
5 to make a motion for directed verdict due to the fact
6 that we don't believe that the State has actually proven
7 their burden in this case.

8 We do have a memorandum of support of our --

9 THE COURT: Okay.

10 MR. WILLIAMS: -- of our directed verdict if you --
11 Your Honor would like it?

12 THE COURT: Okay.

13 MR. WILLIAMS: First and foremost, we would like
14 to argue that in this case based off of the plain
15 language of the domestic violence statute that
16 indicates that there has to be some type of showing
17 that there is a household member in order to fall
18 within the domestic violence statute, and then with the
19 statute further clarifying in Section Code 16-25-10 (3)
20 that a household member is one, either a spouse, a
21 former spouse, a person who has a child in common, or
22 a male and a female cohabitating or formerly have
23 cohabited.

24 In this sense, we did bring forth the understanding
25 that the South Carolina Supreme Court in Doe v. State

1 they did address this matter briefly. We would like
2 to state that there was an interpretation where they
3 previously invalidated the domestic violence statute,
4 but that -- that has since been substituted with a
5 declaratory judgment that has narrowed that holding of
6 that case specifically to the family court proceedings
7 in regards to orders of protection.

8 THE COURT: Okay. Wait a minute. Are you saying
9 that there's been a case since Doe v. State?

10 MR. WILLIAMS: There was a prior holding in Doe v.
11 State. There was a prior opinion that was withdrawn
12 and substituted.

13 THE COURT: Okay. So we're still dealing with
14 Doe v. State? There's not been a case addressing this
15 issue since Doe v. State?

16 MR. WILLIAMS: Yes, Your Honor.

17 THE COURT: I just wanted to make sure I was clear
18 on that.

19 MR. WILLIAMS: Yes, Your Honor.

20 THE COURT: Okay. I thought you indicated that
21 there was and I wanted to make sure I was clear on that.

22 Okay. You may proceed.

23 MR. WILLIAMS: Also in regards to the plain
24 language of the statute, in State v. Morgan, citing
25 State v. Fowler, they have stated that when we're

1 dealing with penal statutes the Court is supposed to
2 interpret the law in the light most favorable to the
3 defendant.

4 In this case we would argue that by stating that
5 the domestic violence -- in expanding that definition
6 of the domestic violence statute to include same-sex
7 couples who are unmarried without children in common,
8 it's -- it's not within the plain language of the --
9 the statute or within the confines of what Doe v. State
10 actually held.

11 We also would like to say that by expanding the
12 statute's plain language, in effect, the Court is --
13 is legislating, which is a violation of separation of
14 powers, the due process for my client, as well as the
15 Rule of Lenity.

16 The statute here is clear and unambiguous. It
17 clearly states and defines what classifies as a
18 household member and the four things that we have here
19 the State has yet to prove any of those things. My
20 client is not a spouse of the -- of the victim, she was
21 never married to the victim, they have no children in
22 common. This is a female, that is a female. The statute
23 says male and female cohabitating.

24 Further, I do say that we would argue -- the defense
25 argues that equal protection also does not apply because

1 it does not allow for the State or the Court to actually
2 expand the definition of -- of the DV -- of the DV
3 statute. It would violate the constitutional doctrine
4 of separation of power for us to do that.

5 Finally, cohabitation is not specifically defined
6 in the DV statute; however, in Doe v. State that narrowed
7 their decision down to family court proceedings, we would
8 argue that if we're going to -- if they -- since they
9 narrowed that decision to family court proceedings in
10 regards to orders of protection, domestic violence in a
11 sense is a family court situation so we would say that
12 the definition of cohabitation should be -- should be --
13 should follow the definition of what family court has
14 described cohabitation is.

15 They have -- the Supreme Court case actually
16 defines co -- cohabitation in the context of family
17 court as setting forth a requirement that the supported
18 spouse live under the same roof as the person with whom
19 they are romantically involved for at least ninety days.
20 The State has made no showing that there was cohabitation
21 between our client, Ms. Davis, and the victim. There's
22 only -- the haven't made any -- they haven't made any
23 showing of that. They have not -- there was no witness
24 that stated that Ms. -- that she was staying there, her
25 -- she had multiple belongings there.

1 THE COURT: Excuse me, Mr. Williams.

2 I think Ms. Evans testified in -- starting in 2019
3 they started living together and became romantically
4 involved.

5 Did I misunderstand what was testified to?

6 MR. BROWN: No, sir. I --

7 THE COURT: I just want to make sure that I'm --

8 MR. BROWN: Judge, I believe Ms. Evans stated that
9 they moved in together -- or she moved in with Ms. Davis
10 July 2019 and the relationship ended on January 28th.

11 THE COURT: Okay. I just wanted to make sure that
12 I -- because I had that in my notes --

13 MR. BROWN: Yes, sir.

14 THE COURT: -- and, of course, I am subject to
15 making mistakes at times.

16 Go ahead. I didn't mean to interrupt you,
17 Mr. Williams.

18 MR. WILLIAMS: Your Honor, correction. We did
19 think -- we thought that that's what -- how Ms. Evans
20 testified; however, she did state on the stand that they
21 were in an on again, off again relationship. We would
22 argue that that is not cohabitation, that's merely an
23 on and off again guest of the defendant's home. She
24 also stated that she moved into the defendant's home.
25 There was no evidence that the State has presented that

1 her name was on the lease, that she had any belongings.
2 In fact, she asked Officer Crowe to go back and retrieve
3 her two belongings. One belonging that Officer Crowe
4 could not remember exactly what that belonging was and
5 the other one was some mail that the State never went
6 into questioning in regards to whether that mail was
7 actually delivered to the defendant's home, whether that
8 mail was postmarked to the defendant's address. It's
9 just stated that it was mail.

10 Under that -- under that description, anyone could
11 fall into cohabitating. I have left a pen and two shoes
12 at my boss's residence. That would not classify me as
13 cohabitating with her.

14 And for those reasons we are asking that you grant
15 our motion for directed verdict considering that the
16 State has not proven their burden of meet -- of meeting
17 the statutory requirement.

18 THE COURT: All right. Thank you, Mr. Williams.
19 Solicitor.

20 MR. BROWN: Thank you, Judge.

21 Judge, as -- before this trial started, we hashed
22 out Doe v. State and I believe the plain -- the plain
23 language in that case is clear. They do bring in the
24 DV statute, which the DV statute is a criminal statute
25 passed by the Legislature as applied to all of the state

1 of South Carolina. I know Doe v. State was dealing with
2 the order of protection in family court, but clearly in
3 the opinion they are debating the domestic violence
4 statute.

5 Mr. Williams stated that they didn't believe
6 -- equal protection to not apply in this case and I
7 didn't know equal protection could be selectively
8 chosen. I think equal protection applies to everybody.
9 It's clear in 2017 in Doe v. State that they did not --
10 they ruled the statute or the language of male and
11 female unconstitutional. It's clearly stated in that
12 opinion; however, they did not deem the whole statute
13 unconstitutional because as I think they stated it
14 would be a detriment to all the people of South
15 Carolina.

16 So I believe, and I think the Court's already
17 ruled on this, that the language of male and female
18 would be redacted or taken out and household member
19 would also include same-sex couples in addition to male
20 and female. So I do believe that is what that case
21 states -- says and it's not limited to a family court
22 jurisdiction or just a holding on permanent restraining
23 orders because permanent retaining orders or order of
24 protections do cross over between the Court of General
25 Sessions where a circuit court judge can order that as

1 part of a sentence, as part of a DV case, as can a
2 family court judge when dealing with the offshoot of
3 children or any other things of that matter. So they
4 -- they do -- the lines are blurred on that and both --
5 the DV statute is actually applied in both courts.

6 With regard to the facts of this case, Judge,
7 that's been testified to, Ms. Evans did state that she
8 had moved into -- they -- there was actually a romantic
9 relationship with Ms. Davis. She moved in in July of
10 2019, lived with her up until the -- the date of this
11 incident, January 28th of 2020. That is cohabitating.
12 She did not say there was a one night stand and left
13 her shoes at her house. She was there, she had her
14 items in both -- the bedroom where they both lived. I
15 think there was multiple bedrooms in the house, but they
16 both shared the master bedroom. She had mail there, she
17 had clothes there, so they were cohabitating. To not
18 apply the DV statute, the DVHAN or any of the DV statutes
19 in this would violate equal protection.

20 So I think we've already applied that and already
21 gotten past that threshold in pretrial matters, but
22 based off the -- the facts that were presented or the
23 testimony presented during this trial by Ms. Evans, by
24 law enforcement, by Dr. Weaver, that there is evidence
25 there for the jury to make the determination and finding

1 that Ms. Davis is guilty of domestic violence of a high
2 and aggravated nature, and in the light most favorable
3 to the State we would respectfully ask Your Honor to
4 deny the directed verdict motion at this time.

5 THE COURT: Okay. Thank you, Solicitor.

6 Viewing the evidence in the light most favorable
7 to the State, I will remain consistent with my
8 interpretation of Doe v. State and find that it is
9 proper to move forward on this case and I find that
10 there is sufficient evidence or the existence of
11 sufficient evidence to send this case to the -- to
12 the jury.

13 All right. What I would like to do next before
14 we bring the jury out is I've got a verdict form and a
15 standard charge and I'd like for us to go ahead and get
16 that cleared up as to any changes we need to make. I
17 know the position of the defense and certainly at the
18 appropriate time you can put your position on the record
19 so then when we bring the jury out, the defense rest,
20 then we can go ahead and start into closing arguments,
21 okay?

22 So just take a few minutes to go over it and we can
23 discuss it.

24 All right. When y'all have looked at it, how about
25 just coming on back in the little office there and we

1 can informally discuss it.

2 Ms. Merrill, just let -- let me know when you're
3 ready.

4 MS. MERRILL: I'm hitting print right now. Thank
5 you.

6 (Recess taken at 10:47.)

7 (Back on the record at 11:11 AM.)

8 THE COURT: All right. We're back on the record
9 and had an informal charge conference with the lawyers,
10 reviewed the proposed charge.

11 Does the State have any objections or exceptions
12 to the charge?

13 MR. BLACK: No, sir, Your Honor. The State does
14 not have any objections.

15 I did want to put one thing on the record and I can
16 do that in just a minute.

17 THE COURT: Okay.

18 MR. BLACK: Or I can go ahead now. Whatever you
19 prefer.

20 THE COURT: Is it related -- it's not related to
21 the charge? Something else?

22 MR. BLACK: No, sir.

23 THE COURT: Let's go ahead and...

24 Ms. Merrill, anything that you want to put on the
25 record concerning the charge?

1 MS. MERRILL: Yes, Your Honor. As we discussed
2 in the informal conference, the defendant objects to
3 the lesser included A&B -- I'm sorry, domestic violence
4 first, domestic violence second and domestic violence
5 third degree being included. We would -- we'd prefer
6 for it just to be DVHAN or not -- you know, guilty or
7 not guilty for that one charge.

8 THE COURT: Okay.

9 MS. MERRILL: I understand the Court is including
10 it, but just noting that -- our objection on the record.

11 THE COURT: Okay.

12 MS. MERRILL: And also I'm trying to find the page
13 number. As it relates to our argument on the DV motion,
14 we object to the definition of household member as it is
15 stated in this. It's on page 12 and goes over to the
16 top of 13. The first part correctly states the statute,
17 but at the top of 13 it adds or a same-sex couple who
18 are cohabitating or formerly cohabitated together, and
19 I believe that is -- violates my client's due process
20 rights, separation of powers, the Rule of Lenity.

21 And I also believe that's a charge on the facts.
22 And I know we've -- we talked a little bit about that
23 earlier in the charging conference about deleting
24 certain sections of the DVHAN statute that didn't
25 apply. We all agreed that was appropriate in this

1 instance, but here I believe adding that line is also
2 a comment on the facts.

3 And if I can just for the record state a couple
4 of cases to support the lesser included argument.
5 State vs. Sims, which is 426 S.C. 115. State v. Golston,
6 399 S.C. 393.

7 And then, Your Honor, if we can make our written
8 memo either a Court's exhibit or whatever we need to do
9 to make sure that our -- that's part of the file.

10 THE COURT: Sure. We'll -- we'll do a Court's
11 exhibit --

12 MS. MERRILL: Okay. And then --

13 THE COURT: -- as I mentioned in chambers,
14 Ms. Merrill.

15 MS. MERRILL: Thank you.

16 (Court's Exhibit Number 1 was marked for
17 identification.)

18 MS. MERRILL: And I wanted to also see if I can
19 go ahead so we don't have to send the jury back out
20 -- and obviously when they get in I will rest. Instead
21 of having to renew all of my motions again, can we --

22 THE COURT: Sure.

23 MS. MERRILL: -- agree that they are renewed then
24 so we don't have to --

25 THE COURT: Right. The record -- you are protected

1 on the record with respect to all of the motions
2 previously made and they are renewed.

3 MS. MERRILL: Thank you.

4 THE COURT: But given that I have decided to charge
5 the lesser included, other than defining household
6 member, you're okay with the -- the lesser included
7 charges?

8 MS. MERRILL: I'm sorry. Yes. I believe the
9 text of them in the jury instructions is correct. I'm
10 objecting to they're even being in there.

11 THE COURT: And I -- and I understand that.

12 Okay. Thank you very much.

13 All right. We're gonna bring the -- oh, you had
14 the other matter.

15 MR. BLACK: Just one housekeeping matter, Judge.
16 State's Number 27, which was Aaron Crowe's body camera
17 that the jury watched yesterday, the jury watched the
18 first six and a half minutes with volume and then after
19 six and a half minutes there's some stuff in there that
20 would be redactable, so at that point the State and the
21 defense agreed to just mute it and allow the jury to
22 finish watching the video. It was another ten minutes
23 or so video, but just so the record's clear the first
24 six and a half minutes were played with the audio for
25 the jury to hear and then after that the video was

1 played and just muted.

2 THE COURT: Okay. I'm a little -- so you're
3 wanting --

4 MR. BLACK: I'm just making a record of it just
5 -- just in case.

6 THE COURT: Oh, okay. But if the jury after
7 they've been in deliberations wants to view Exhibit
8 Number 27, then we'd show them just what was shown during
9 the trial?

10 MR. BLACK: Correct. And then once -- if it gets
11 to the six and a half minute mark, then they watch from
12 the mute point thereon after.

13 THE COURT: Right.

14 All right. Very good. So noted.

15 All right. We'll bring the jury out and,
16 Ms. Merrill, you can rest on the record and then we'll
17 go into closing.

18 Okay. Let's bring the jury out.

19 (Whereupon, the jury return to the courtroom at
20 11:17 AM.)

21 THE COURT: Okay. Let the record reflect the jury
22 is back in.

23 Defense?

24 MS. MERRILL: Your Honor, the defense rests.

25 THE COURT: Okay. Very good.

1 The evidentiary record in this case is now closed.

2 Ladies and gentlemen, what we have left to do in
3 this trial is the lawyers now will -- will deliver
4 their closing arguments to you. The State will go first
5 and then the defense. After that is done we may need to
6 take a little short break just depending upon how long
7 the closing takes, but then I will charge you the law
8 that applies to this case and then I'll give you the
9 case to begin your deliberation.

10 So this is the last opportunity, ladies and
11 gentlemen, that these fine lawyers have to advocate for
12 their respective sides, so I need for you to give these
13 lawyers your undivided attention.

14 Solicitor, are you ready?

15 MR. BLACK: Thank you, Your Honor. Yes, sir. May
16 it please the Court?

17 On January the 28th of 2020, last year, Ms. Belicia
18 Evans was struck in the head by her girlfriend, the
19 defendant in this case, Ms. Kristy Davis.

20 You guys sat here yesterday and you heard testimony
21 from numerous witnesses and you've seen some photographs
22 and you'll see those further photographs when you go back
23 to the jury room and deliberate, as well as the other
24 evidence, the golf club that was admitted, and you'll
25 have all that, and you'll have all that to examine and

1 determine what actually happened.

2 Your role in this case is the finders of fact.

3 Your job is to determine what happened. As the judge's
4 position is to be the judge of the law, you judge --
5 your -- your job in this particular case is to find out
6 what exactly happened.

7 As you've heard in this particular case, this is a
8 domestic violence case, and the defendant in this case
9 has been charged with domestic violence of a high and
10 aggravated nature. In a few moments, Judge Hocker is
11 going to read to you what the law is, but I'm gonna go
12 ahead and go over that a little bit now.

13 Domestic violence of a high and aggravated nature
14 is that the offense was committed under circumstances
15 manifesting extreme indifference to the value of human
16 life and great bodily injury results or it was a
17 committed offense with or without an accompanying battery
18 under circumstances manifesting extreme indifference to
19 the value of human life and would reasonably cause a
20 person to fear either great bodily injury or death, and
21 that is the definition of what domestic violence of a
22 high and aggravated nature is.

23 Extreme indifference to the value of human life such
24 that either great bodily injury resulted or death could
25 have resulted -- or it could have resulted. That's what

1 Ms. Davis is charged with and that's what was proven.
2 That's what the State proved in this particular case
3 through the testimony of the witnesses, the evidence
4 that you've seen and that you'll see and further examine
5 once you get back to the jury room.

6 You're also going to have a couple of lesser
7 includeds to consider. You're gonna have domestic
8 violence of a high and aggravated nature. Under that
9 is domestic violence in the first degree. Under that
10 is domestic violence in the second degree. And under
11 that is domestic violence in the third degree. So
12 you're going to actually have to consider all of these
13 charges as the finder of fact to determine what actually
14 happened.

15 And I'll give you the definition of domestic
16 violence in the first degree. It is basically evidence
17 that shows essentially an assault and that great bodily
18 injury occurred or great bodily injury could have
19 occurred as a result of this particular assault and as
20 a result of this injury.

21 And I'm not gonna go over domestic violence in the
22 second degree. You're -- you're actually gonna have the
23 jury instructions. Judge Hocker's gonna read the jury
24 instructions to you and you're actually gonna have these
25 back there. He'll read them up here on the bench after

1 we get done talking, but you'll actually have these
2 jury instructions as well to consult.

3 But, ladies and gentlemen of the jury, I submit
4 to you that what happened to Ms. Evans was domestic
5 violence of a high and aggravated nature and we have
6 to prove that beyond a reasonable doubt. And, again, I
7 know you guys -- I recognize a couple of familiar faces
8 that were on the first jury and I know that y'all have
9 seen television shows and movies that deal with courtroom
10 drama and stuff like that so you know that in our -- in
11 our country that the State in any criminal prosecution
12 we have the burden to prove the case beyond a reasonable
13 doubt, and that simply is the kind of doubt that leaves
14 -- leaves you firmly convinced, firmly convinced, of the
15 defendant's guilt.

16 So I submit to you that from what the witnesses
17 testified to in this witness box and the evidence that
18 has -- has been submitted and what you will view, that
19 we have proven our case beyond a reasonable doubt that
20 the defendant in this case, Ms. Davis, with an extreme
21 indifference to human life, took a golf club and whacked
22 Ms. Evans not once, but twice, struck her on the chest
23 and the head, that ultimately bent the shaft, broke the
24 shaft and knocked the head off the club. That was
25 manifesting extreme indifference to human life to the

1 head, neck area region. That's what happened out there
2 at [REDACTED] Cambridge here in the city of Abbeville on
3 January the 28th of last year.

4 Let's talk about the witnesses that you heard from.
5 The first witness you guys heard from was Dr. Weaver.
6 Dr. Weaver is a medical doctor. He worked and he still
7 works at the emergency room in Abbeville. That night
8 Ms. Evans showed up at the hospital with a deep
9 laceration and a cut on her head. Of course, they
10 cleaned it out. That's pretty much the first step
11 that's gonna happen when anybody shows up to the
12 hospital with any kind of deep wound. Try to stop the
13 bleeding. I believe the bleeding was -- was stopped
14 when law enforcement had shown up, but stop the
15 bleeding, clean it out and treat it.

16 And Dr. Weaver, as a medical doctor who's worked
17 in the ER for pretty much his whole career, since 1993,
18 knows that head injuries are very, very serious. I
19 mean, you can't turn on the TV and watch ESPN without
20 them talking about head injuries in football. The head
21 is a very, very important and a very fragile part of
22 the human body and we've -- this is very evident in how
23 we deal with head injuries today and how we deal with
24 sports that involve potential head injuries. And,
25 again, you can see that on any kind of -- if you watch

1 ESPN and just football or some basic sports, you --
2 you know this.

3 So Dr. Weaver ordered a CT scan and what did that
4 CT scan show? It showed she had a fracture in her head.
5 A fracture of the skull. Right here in her front
6 temporal. He also said that air had gotten underneath
7 and kind of penetrated the skull and he said that can be
8 very dangerous in these types of situations and he said
9 in these types of situations we kept her overnight to
10 ensure that there was no bleeding on the brain because
11 if you have bleeding on the brain that could -- that
12 could cause serious injury, possibly death.

13 Thankfully, Ms. Evans was able to be released and
14 after a couple of staples she ultimately was able to heal
15 up. But she's not completely healed up. You heard her
16 testimony. She still has migraines. She has to hole up
17 in the bed when she gets these migraines and she never
18 had these migraines before this incident. She'll be in
19 the bed from anywhere to two to five days when she gets
20 these and it's -- and it hurts her right here on this
21 one spot exactly where she was struck in the head by
22 Ms. Davis.

23 So you know the seriousness of this injury.
24 A fracture to the skull and the possible ramifications
25 that could come from that. It's serious business,

1 folks. This isn't some toy golf club. This isn't some
2 Wal-Mart branded golf club. This is a Cleveland golf
3 club with a steel shaft and Ms. Davis used enough force
4 striking her twice, once in the shoulder and finally
5 over the head, that this thing broke, bent it, snapped
6 the head off, and fractured Belicia Evans's skull. This
7 is serious business, folks.

8 After Dr. Weaver we heard from Ms. Greene who is a
9 supervisor at dispatch and Ms. Greene actually took the
10 call that Ms. Evans made that evening. And you obviously
11 heard that call, and if you want to hear it again, you're
12 more than welcome to hear it again. That's in evidence.
13 It's not gonna go back with you because there's not any
14 equipment back there to listen to it, but if you want to
15 listen to this call again you're certainly more than
16 welcome to.

17 But Ms. Evans in that call with Ms. Greene she
18 told Ms. Greene a couple of things. It took Ms. Greene
19 asking her three times who did this to you, who did this
20 to you, who did this to you, and finally on the third
21 time Belicia Evans told her that it was Kristy Davis that
22 struck her in the head.

23 And why is that important? Why is that significant?
24 Because Ms. Evans was in a relationship with Ms. Davis
25 and while it happened to her, love makes us do some

1 crazy things. And I think at the time, and you can tell
2 from Ms. Evans, the way she acted on the stand and how
3 she responded in that 9-1-1 call, she didn't really want
4 Ms. Davis to get in any kind of trouble. She had to ask
5 her three times who it was. But, folks, when you have a
6 fractured skull it's a game changer.

7 I also asked Ms. Greene another question that I
8 thought was very important. I said Ms. Greene, did you
9 receive any calls from anybody else that evening, from
10 Ms. Davis? And what was her answer? No. She did not
11 receive any calls from Ms. Davis that evening. The only
12 call she got was from Ms. Evans.

13 After Ms. Greene, you did hear from Ms. Belicia
14 Evans, the victim in this case. What was Ms. Evans's
15 testimony when she got up here on the witness stand?
16 Ms. Evans stated that she had been in an on and off
17 again relationship. About the end of July of 2019 she
18 moved in with Ms. Kristy Davis here in Abbeville and
19 on that particular night she was on her phone playing
20 a game and when Ms. Davis tried to start talking to her
21 she ignored her and was in the middle of this game on
22 her cell phone and when she didn't show her any attention,
23 when she didn't pay attention to her, Ms. Davis came
24 over there and started hitting on her, and when Ms. Davis
25 started hitting on her, she pushed her off of her.

1 I believe at that point the testimony was that
2 Ms. Evans pushed her off onto the coffee table, the
3 coffee table ended up breaking, and at that point
4 Ms. Davis got up, told her to get out. Ms. Evans
5 testified that she was walking from the back -- to the
6 back bedroom where they both resided and the next thing
7 she knows she gets punched in the back of the head as
8 she's going back there to try to get her stuff to leave
9 the situation so things can calm down.

10 Then Ms. Evans stated I turned around and I punched
11 her in the face and that stunned her, meaning she wasn't
12 anticipating that, she wasn't anticipating Ms. Evans
13 to fight back, and when she was stunned Ms. Davis got
14 angry. She got angry and she marched from the back
15 bedroom down the hall to the front room and either in
16 the front room picked up this golf club or outside --
17 in the body camera video that you saw from the officers
18 there's two sets of golf clubs right at the front door
19 -- went and retrieved a golf club, marched back to the
20 back bedroom and started whaling on Ms. Evans. Not
21 once, not twice -- but twice. Enough to break this
22 golf club. This ain't no Wal-Mart brand. This is a
23 Cleveland golf club. Broke it on top of her skull
24 enough to fracture her skull. That was Ms. Evans's
25 testimony.

1 At that point Ms. Evans stated that she eventually
2 fell down because she started getting very dizzy. She
3 stated that Ms. Davis was over the top of her and said
4 that she was gonna kill her now. At that point Ms. Evans
5 got up off the ground, took off out the front door,
6 bleeding from the head, and you'll see the pictures,
7 you'll see the blood on the doorstep here in these
8 photographs, ran out the house, went down the street,
9 called 9-1-1, and law enforcement met her, EMS met her,
10 and they ultimately were able to treat her. That was
11 Ms. Evans's testimony.

12 Now something I want to talk about that the
13 defense brought up with Ms. Evans during their
14 cross-examination, and also what they talked about in
15 their opening statement, they told you that Ms. Evans
16 had sent messages to Ms. Davis stating that she was
17 responsible for this whole thing and it was her fault
18 that this particular incident occurred that night and
19 she's the one that started the fight. That's what they
20 said in their opening statement and that's what they
21 talked to Ms. Evans about when she was on the witness
22 stand.

23 But what do the messages actually say? You say
24 otherwise because if you had interest in someone else
25 and I -- that I caused it, but I do want to apologize

1 for my actions and how treated you in the relationship.

2 I also apologize for the times that I made you cry.

3 Now this text messages is not into evidence, but
4 this message, they're trying to spin it and say that
5 her apology, and this message is from December of 2020,
6 a year later, this apology for the relationship, for
7 what happened in the relationship, is admitting that
8 she started the fight on this particular night. That
9 is far from the truth. That is misleading, that is
10 mischaracterizing what's in the message, it's
11 mischaracterizing what Ms. Evans said on the stand.

12 We've all been in relationships where things have
13 not worked out and when breakups happen things can get
14 heated, you know, things can be emotional. Rarely are
15 they very easy and people just amica -- amicably part
16 their ways. This is a year later and Ms. Evans is
17 apologizing for things that happened in a relationship
18 because, again, it takes two to tango in any relationship,
19 whether it's a good relationship or a bad relationship.
20 It's -- it's a two-way street.

21 All Ms. Evans is doing in this message that was
22 sent a year later is saying hey, I'm sorry for my part
23 that -- that caused our demise of this relationship. It
24 is not saying I admit to starting this fight on this
25 particular evening. That is not what these messages say.

1 So keep that in mind as you continue to listen to
2 closing arguments and remember how Ms. Evans talked
3 about this on the witness stand when she was talking
4 about these messages.

5 The final witness you heard from was Aaron Crowe,
6 an Abbeville city police officer, and Officer Crowe did
7 exactly what he was supposed to do that night. He got
8 the call from dispatch. He showed up relatively quickly
9 on the scene. He talked to Ms. Evans, cleared the scene
10 to make sure EMS could come in. EMS -- EMS came in,
11 started treating her. He spoke briefly with Ms. Evans.

12 And you saw the body cam. After that they went to
13 the house to go see what was going on and you watched
14 that body camera when they showed up to the house. You
15 saw the golf clubs on the front steps of that -- of that
16 residence. You saw him knock on the door. Where was
17 Ms. Davis? She wasn't there. She wasn't there when
18 Officer Crowe and Officer Blackwell showed up. They
19 knocked on the doors, they look around. Her car wasn't
20 there, but she wasn't there. Why was she not there?
21 Why had she left the house? Because she knew that
22 she'd done something wrong. She knew the police may be
23 showing up because she just assaulted her girlfriend
24 with a golf club, put a laceration in her head and
25 fractured her skull. That's why she wasn't there. They

1 -- they did their job. They took care of Ms. Evans.
2 They went back and took photographs. You're gonna see
3 those photographs. They collected the golf club that's
4 here in evidence. They did their job that night.

5 The other thing I want to talk about, and I'll say
6 this, what the lawyers say and I believe the judge is
7 gonna say this, too, what we say is not evidence. We're
8 just arguing what the evidence and the testimony shows.
9 The same's true with what I say. The same is true with
10 what Ms. Merrill's about to say, but in Ms. Merrill's
11 opening statement she talked about self defense. Ladies
12 and gentlemen of the jury, as I mentioned previously,
13 these are the jury instructions. You are to consider
14 the evidence, the testimony and the law. The law is
15 what is in this sheet of paper. There is nothing in
16 this paper about self-defense. The only person what
17 was defending themselves that night was Ms. Evans, but
18 because she was assaulted initially this isn't
19 self-defense.

20 So I -- I've never been in the back of a jury room.
21 I don't know what people talk about, but self-defense is
22 not in here and it's something that you can't consider.
23 And Ms. Merrill talked about it in her opening statement,
24 but it's not something that you guys can consider because
25 it's not in this charge. And you can flip all through

1 this charge when you get back there, but self-defense
2 is not something to consider here because the only
3 person that started this fight is Ms. Davis and she's
4 here on trial for domestic violence of a high and
5 aggravated nature. This is not a self-defense case.

6 Again, folks, and I'll wrap up just shortly, but
7 your job, again, is the finder of facts, to determine
8 what happened, and your job is to look at the evidence
9 that's presented that you will have back in the jury
10 room, the 9-1-1 call, the body camera, the photographs,
11 the golf club, and the testimony from what the witnesses
12 say. That is what you are to consider in ultimately
13 determining what happened and you are to take those
14 items, the testimony of the witnesses, the evidence,
15 apply that to the law and ultimately determine what
16 happened.

17 Folks, I've said this before and I'm sure this is
18 -- again, I see a couple of familiar faces, but you have
19 no friends to reward, you have no enemies to punish.
20 You are an objective jury to look at the facts and
21 determine what happened and once you deliberate, once
22 you talk about everything, once you consider the evidence
23 and the testimony, there's only one conclusion. That
24 conclusion is the defendant in this case with extreme
25 indifference to human life took a golf club not once,

1 but twice, struck Ms. Evans in the head, fractured her
2 skull, could have caused her great bodily injury or
3 even possible death because we're talking about the head
4 here.

5 I ask you to consider everything that you have
6 heard and find Ms. Davis guilty of these -- of this
7 charge of domestic violence of a high and aggravated
8 nature.

9 Thank you for your time.

10 THE COURT: Ms. Merrill, are you ready for your
11 closing?

12 MS. MERRILL: Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Certainly.

15 MS. MERRILL: When I spoke to you at the beginning
16 of the trial I did talk about self-defense, but one of
17 the great things about being a defense attorney is that
18 I don't have to put up a case. The State has the burden
19 of proving their case and when they put a liar on the
20 stand to prove their case, they haven't proved it and I
21 don't have to put up a case.

22 And the judge will tell you that. You can't use
23 Ms. Evans's -- I mean, excuse me -- Ms. Davis's silence
24 against her. Ms. Davis works at Sage on the line. She
25 doesn't routinely speak to people. It's terrifying when

1 your hands -- I mean, when your life is in the hands of
2 the jury.

3 Now let's talk about the evidence. The State
4 presented evidence and you can have evidence that comes
5 in through testimony, and we heard that through witnesses.
6 You can also have other evidence such as pictures and
7 9-1-1 calls and things like that, and you've seen some
8 of that. And one thing that can really help in a case
9 is if you've got a witness and you have objective,
10 tangible evidence to back that up.

11 For example, ten years ago today my father passed
12 away and he's from Abbeville and he's buried in Abbeville.
13 So if you wanted to objectively look at that, you could
14 probably find an obituary or cemetery records. The U.S.
15 Women's Soccer Team won bronze at the Olympics just a
16 few weeks ago. You could verify that by looking at
17 official Olympic records. What were the scores?

18 Here we've just got someone speaking. We've just
19 got someone speaking. Ms. Evans is just speaking and
20 there is no objective independent evidence.

21 This case hinges on the testimony of the complaining
22 witness and you saw three times -- I asked her about
23 recently getting into a fight with another person.
24 Denied it. And I came up here and brought objective
25 statements that she had written at the time a month ago

1 and then she admits it. You saw me do that with other
2 information. Three different times she denied things,
3 I showed her where she had said differently in texts,
4 and then she agreed. It was clear she was not telling
5 the truth. Can you rely on any of her testimony?
6 That's for you to decide. So I do think the State has
7 proven that its -- its star witness lies under oath.

8 Now let's talk for a minute about the law. As the
9 solicitor stated, the judge will instruct you on the law
10 and you'll see those definitions, but there's one thing
11 I -- in particular there's a definition for household
12 member and it is -- I'm gonna read it to make sure I
13 don't misquote it. A spouse, a former spouse, persons
14 who have a child in common, a male and female who are
15 cohabit -- cohabitating or formerly have cohabitated,
16 or a same-sex couple who is cohabitating or formerly
17 cohabitated. We know they weren't married, never been
18 married, so it's not a spouse or former spouse. There's
19 no child in common.

20 So another thing you've got to consider has the
21 State proven beyond a reasonable doubt that they were
22 cohabitating? The complaining witness said that she
23 stayed there some, they had been dating, but then she
24 also told the officer she just needed to get a few
25 things -- two things. She also in the 9-1-1 call said

1 she didn't know Abbeville well. Was she actually living
2 with Ms. Davis or did she just stay there sometimes? If
3 you find she just stayed there sometimes and she wasn't
4 actually living, then she's not a household member and
5 she cannot be -- and Ms. Davis cannot be convicted of
6 any of the domestic violence from high and aggravated
7 all the way to third. So if you find the State hasn't
8 proven that they cohabitated beyond a reasonable doubt,
9 then the statute doesn't apply.

10 So I want you to think about some of the things she
11 said. We didn't hear any testimony that she went back
12 after this and, you know, took her uncle's truck and got
13 a few boxes of things. We didn't hear anything like
14 that, so that's also something that you should consider.

15 The State also -- I want to touch on one other
16 thing. Officer -- or, excuse me, the complaining witness
17 said, and I think Officer Crowe alluded to it as well,
18 she was hopefully packing her -- her things. If she
19 was packing her things, why didn't she tell Officer Crowe
20 yeah, please go get my things, I packed them, they're in
21 this bag, or something like that? There's no evidence
22 other than the complaining witness's word that she
23 actually packed anything. That's all we have. That's
24 her word.

25 And the State did spend a great deal of time talking

1 about the complaining witness's injuries and as I told
2 you in the opening we don't dispute that she was injured.
3 What we're disputing is that Ms. Davis caused those
4 injuries with great indifference to human -- extreme
5 indifference to human life.

6 The golf club. The solicitor held that a lot
7 during his closing argument. It seems to me if you are
8 grabbing a golf club, he -- he mentioned they were in
9 the living room, you're probably defending yourself.
10 Ms. Davis didn't get a knife or a gun. She grabbed the
11 closest thing she could find.

12 So let's talk a little bit about this fight you
13 heard the complaining witness talk about. Now on the
14 9-1-1 -- no, I'm sorry, the video with the officer, we
15 don't hear the complaining witness admit to pushing
16 Ms. Davis so hard that she broke a glass coffee table or
17 punching her in the face. We did hear that this week.
18 Why? Why did they even have this fight? Because
19 Ms. Davis broke up with the complaining witness. She
20 told her she didn't want to be with her anymore. That's
21 probably happened to each of us at some point in our
22 lives, and it hurts. Of course, it does, but you can't
23 react in a physical way.

24 Also thinking about the complaining witness's
25 injury, you know, the doctor testified that it was mild

1 and also -- I want to make sure I get the language right
2 -- a very -- I'm trying to find it in my notes so I make
3 sure I state what he said correctly -- very low risk of
4 complications of bleeding -- complications or bleeding.
5 There was no permanent disfigurement. If there was a
6 scar, I'm certain she would have shown you. There was
7 no permanent disfigurement. That's also something in
8 the statute that you can consider.

9 You saw her testify, the complaining witness. You
10 see Ms. Davis. You can look at their sizes. You can
11 think about a fight between the two of them. She's
12 already admitted she pushed her so hard -- pushed
13 Ms. Davis so hard she broke a glass coffee table. She
14 punched Ms. Davis in the face.

15 I also want you to consider the demeanor of the
16 complaining witness on the 9-1-1 call and in the
17 officer's video. She's calm. She didn't ask if she
18 needed to go to the hospital. Of course, an injury is
19 hurting, I don't mean to say that it does not, but she's
20 not very upset, she's not shocked that this has happened
21 or anything like that. And, in fact, in the medical
22 records the doctor said she was calm when she came in.

23 The complaining witness did not want to prosecute.
24 Perhaps if you start a fight and then end up getting
25 hit really hard and lose the fight, you don't want to

1 prosecute, but she told them she didn't want to prosecute
2 in the hospital. This wasn't something that maybe a
3 month later she called them back. In the hospital she
4 said I don't want to prosecute this. She even signed a
5 form. You heard on the stand nobody coerced her, forced
6 her, to sign this. She signed it on her own freewill.
7 She wanted to get back together with Ms. Davis. That
8 was one of the things that she initially denied. I
9 showed it to her and she had to admit it. They're not
10 back together. Ms. Davis never said yes to getting back
11 together, but the complaining witness asked.

12 And I also want you to think about the complaining
13 witness's propensity for violence. She got in a fight
14 with somebody else in June of this year. There was no
15 evidence presented that Ms. Davis has been in a fight
16 with anybody since this January 28, 2020, incident.

17 So I want to recap.

18 MR. BLACK: Your Honor, I object to that.

19 THE COURT: You object to what?

20 MR. BLACK: May we approach?

21 The COURT: Certainly.

22 Ladies and gentlemen, we'll be right back. Keep
23 your seat.

24 (Proceedings held outside of the courtroom; not
25 reported.)

1 THE COURT: All right. Ms. Merrill, you may
2 continue.

3 MS. MERRILL: Thank you, Your Honor.

4 So I just want to recap and then I want to talk to
5 you about the jury form -- the verdict form that you will
6 have in the jury room when you're deliberating.

7 The complaining witness did not tell you the truth
8 and you saw that. You saw that I had to keep reminding
9 her and then when presented with evidence she would admit
10 the truth. She admits that she pushed Ms. Davis pretty
11 hard. So hard it broke a glass coffee table. She punched
12 her in the face. You have to consider were Ms. Davis's
13 -- what was her response? Why would she have responded
14 that way when she's admitted -- I mean, when the
15 complaining witness has admitted to attacking Ms. Davis?

16 Now you'll get this form and I know I can't -- it's
17 hard being on opposite sides of the courtroom and even
18 if I could show it to you, you won't be able to read it
19 unless I give it to each one of you, and you'll have it
20 in the jury room, but there's four questions and the
21 first one asks what you find as far as whether Ms. Davis
22 is guilty of domestic violence of a high and aggravated
23 nature, and you have two options. And if you choose not
24 guilty, and that's what I urge you to do, I don't think
25 the State has proven their case.

1 The same thing here. The second questions is about
2 domestic violence in the first degree. You would check
3 that not guilty. The third one, domestic violence in
4 the second degree. And question four, domestic violence
5 in the third degree. Not guilty.

6 Ms. Davis and I thank you for you attention and
7 hope that you will consider all of the evidence as you
8 deliberate and find her not guilty.

9 Thank you.

10 THE COURT: All right. Ladies and gentlemen, what
11 we're gonna do is take a very short break and then I'll
12 get you back out and then I will charge you the law that
13 applies to the case. When you go back to the jury room,
14 again, don't begin your deliberations yet, but I do want
15 you to decide whether or not you would like for us to
16 order you lunch. It's 12:00 noon. If you would like
17 lunch, it will be pizza, and I just need for you to
18 decide whether or not you want us to order lunch and
19 then when I am charging you the law, the pizza will be
20 ordered and hopefully when you start your deliberations
21 or soon thereafter you would have that if you want -- if
22 you want, okay?

23 So once you decide, if you'll, Ms. Madam Forelady,
24 just write a little note to me, hand it to one of the
25 deputies or bailiffs and we will -- we will proceed

1 forward on that.

2 Okay. Go back to the jury room for just a few
3 minutes. Don't begin your discussions yet.

4 (Whereupon, the jury retires to the jury room at
5 12:00 PM.)

6 THE COURT: Okay. We'll be in a break for just a
7 few minutes.

8 (Recess taken.)

9 (Back on the record.)

10 MS. MERRILL: Judge, can I put --

11 THE COURT: Huh?

12 MS. MERRILL: Can I put one quick thing on the
13 record after they shut that door?

14 THE COURT: Sure.

15 MS. MERRILL: I just wanted to note in closing
16 argument that I stated the law as it was written in the
17 jury charge. I'm not waiving any of our arguments by
18 stating it that way.

19 THE COURT: Right.

20 MS. MERRILL: In our in-chambers discussion I asked
21 if I could argue about the statute and you informed me
22 I should argue the law as it's written in the jury
23 instructions, so that's what I did, but I just wanted
24 to --

25 THE COURT: Sure.

1 MS. MERRILL: -- be certain I was not waiving any
2 of our objections to that.

3 THE COURT: No, you did not.

4 MR. BROWN: And, Judge, also so the record's clear,
5 in Ms. Merrill's closing Mr. Black objected to a portion
6 or to a statement Ms. Merrill made. I just wanted to put
7 on the record, you know, what that was.

8 Ms. Merrill stated the State has not shown that my
9 client -- that Ms. Davis has been in any fights since
10 the incident. That clearly is out of bounds. There's --
11 even if there was or if there is, there's no way for us
12 to be able to prove that. I mean, any evidence that
13 would happen after this incident has no relevance
14 whatsoever to the incident at hand, so we do believe
15 that was outside the bounds and that's why we objected.
16 So we just wanted to make that clear on the record.

17 THE COURT: All right. Right. And -- and I
18 acknowledged the fact that it could have been outside
19 of the bounds, but I didn't feel like it necessarily
20 justified any sort of curative instruction from the
21 Court.

22 MR. BROWN: Yes, sir.

23 THE COURT: Yes, you're noted on the record.

24 (Discussion off the record.)

25 THE COURT: All right. Let's bring the jury out,

1 please.

2 (Whereupon, the jury return to the courtroom at
3 12:18 PM.)

4 THE COURT: All right. Let the record reflect the
5 jury is back in.

6 Ladies and gentlemen, I now will charge you the
7 law applicable to this case. You must consider the
8 charge as a whole and not focus on some portions to the
9 exclusion of others.

10 The indictment charges the defendant with domestic
11 violence of a high and aggravated nature. I remind you
12 the fact that the defendant was arrested, charged and
13 indicted in this case is not evidence in this case and
14 cannot be considered by you as evidence of guilt in this
15 case, nor does it create any presumption or inference
16 of guilt. This document is simply the formal written
17 instrument which contains the charge made against the
18 defendant. It is the formal document by which this case
19 is brought into this court.

20 The defendant has pled not guilty to this indictment
21 and that plea puts the burden on the State to prove the
22 defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent. I charge you that it is an
25 important rule of the law that the defendant in a criminal

1 trial, no matter what the seriousness of the charge may
2 be, will always be presumed to be innocent of the crime
3 for which the indictment was issued unless guilt has
4 been proven by evidence satisfying you of that guilt
5 beyond a reasonable doubt. This presumption of innocence
6 does not end when you begin your deliberations, but it
7 accompanies the defendant throughout the trial unless you
8 reach a verdict of guilt based on evidence satisfying you
9 of that guilt beyond a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the defendant
12 which remains with the defendant unless it has been
13 stripped from the defendant by evidence satisfying you
14 of the defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not mere legal
16 theory, it's not just a legal phrase, it is a substantial
17 right to which every defendant is entitled unless you,
18 the jury, are satisfied from the evidence of the
19 defendant's guilt beyond a reasonable doubt.

20 Once again, the State has the burden of proving the
21 defendant guilty beyond a reasonable doubt. Some of you
22 may have served as jurors in civil cases where you were
23 told that it is only necessary to prove that a fact is
24 more likely true than not true, such as by the greater
25 weight or preponderance of the evidence. In criminal

1 cases, the State's proof must be more powerful than
2 that. It must be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that
4 leaves you firmly convinced of the defendant's guilt.
5 Now there are very few things in this world, ladies and
6 gentlemen, that we know with absolute certainty, and in
7 criminal cases the law does not require proof that
8 overcomes every possible doubt. If, based on your
9 consideration of the evidence, you are firmly convinced
10 that the defendant is guilty of the crime charged, you
11 must find the defendant guilty. If, on the other hand,
12 you think there's a real possibility that the defendant
13 is not guilty, you must give the defendant the benefit
14 of the doubt and find her not guilty.

15 I remind you, ladies and gentlemen, that during this
16 trial you and I have had certain duties to perform. As
17 the trial judge, it is my responsibility to preside over
18 the trial of this case and I also have the duty to rule
19 on the admissibility of evidence offered during this
20 trial. You are to consider only the competent evidence
21 before you. If there was any testimony ordered stricken
22 from the record in this case during this trial, I don't
23 recall that being the case, but if there was you must
24 disregard that testimony. You are to consider only the
25 testimony which has been presented from the witness

1 stand, any exhibits which have been made a part of the
2 record in this case and any stipulations of counsel.

3 I have the additional duty to charge you the law
4 that applies to this case. As the presiding judge, I'm
5 the sole judge of the law of this case and it is your
6 duty as jurors to accept and apply the law as I now state
7 it to you. If you already have any ideas of what the
8 law is or what the law ought to be and it does not agree
9 with what I now tell you the law is, you must abandon
10 your idea because you are sworn to accept the law and
11 apply the law exactly as I state it to you.

12 In every case tried in this court before a jury,
13 the jury becomes the sole and exclusive judge of the
14 facts in the case. A trial judge cannot intimate, state,
15 comment on or make any statement to a trial jury about
16 the facts of the case. Since you, the jury, are the sole
17 judge of the facts of this case, you are not to infer
18 from what I have said during the progress of this trial
19 in ruling upon the admissibility of evidence or otherwise
20 or anything that I say now during the course of this
21 instruction to you that I have any opinion about the
22 facts in this case. The law does not allow me to have an
23 opinion about the facts in this case. This is a matter
24 solely for you, the jury, to determine. As jurors, it
25 is your duty to determine the effect, value and weight

1 of the evidence presented during this trial.

2 Now, ladies and gentlemen, there are two types of
3 evidence which are generally presented during a trial;
4 that being direct evidence and circumstantial evidence.
5 Direct evidence directly proves the existence of a fact
6 and does not require deduction. Circumstantial evidence
7 is proof of a chain of facts and circumstances indicating
8 the existence of a fact. Crimes may be proven by
9 circumstantial evidence. While direct and circumstantial
10 evidence are different types of evidence, the law makes
11 no distinction between the weight or value to be given
12 to either direct or circumstantial evidence; however, to
13 the extent the State relies on circumstantial evidence
14 the circumstances must be consistent with each other
15 and when taken together point conclusively to the guilt
16 of the accused beyond a reasonable doubt. If these
17 circumstances merely portray the defendant's behavior
18 as suspicious, the proof has failed.

19 The State has the burden of proving the defendant
20 guilty beyond a reasonable doubt. This burden rests
21 with the State regardless of whether the State relies
22 on direct evidence, circumstantial evidence or some
23 combination of the two.

24 Necessarily, ladies and gentlemen, you must
25 determine the credibility of the witnesses who have

1 testified in this case and the evidence presented.
2 Credibility simply mean believability. It becomes your
3 duty as jurors to analyze and to evaluate the witnesses
4 and the evidence and determine the credibility of the
5 witnesses and the evidence.

6 In determining the credibility of witnesses who have
7 testified in this case, you may believe one witness over
8 several witnesses or several witnesses over one witness.
9 You may believe a part of the testimony of a witness and
10 reject the remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness in
12 its entirety or reject the testimony of a witness in
13 its entirety. You may consider whether any witness
14 has exhibited to you any interest, bias, prejudice or
15 other motive in this case. You may also consider the
16 appearance and manner of the witness while on the witness
17 stand.

18 Now in order to establish criminal liability,
19 criminal intent is required. For example, the mental
20 state required to be proven by the State for a particular
21 crime might be purpose, intent, knowledge, recklessness
22 or criminal negligence. Criminal intent must be proven
23 by the State beyond a reasonable doubt. Criminal intent
24 is always a matter that must be determined by the jury
25 from the circumstances surrounding the situation.

1 Now there's no way to prove intent to a mathematical
2 certainty. There's no way medical science can dissect
3 a person's brain and determine what the person had in
4 mind, so the law says that criminal intent may be
5 inferred from the circumstances shown to have existed.
6 This is how you make a determination of whether or not
7 the element requiring intent was present. It's not
8 necessary to establish intent by direct and positive
9 evidence, but intent may be established by inference
10 in the same way as any other fact by taking into
11 consideration the acts of the parties and all the facts
12 and circumstances of the case. Criminal intent is a
13 mental state, a conscious wrongdoing. It is up to you
14 to determine what the defendant intended to do based on
15 the circumstances shown to have existed.

16 Now as I explained yesterday, the rules of evidence
17 ordinarily do not permit witness to testify to opinions
18 or conclusions. An exception to this rule exists for
19 witnesses we call expert witnesses. A witness who by
20 education and experience has become an expert in some
21 art, science, profession or calling, may state an opinion
22 as to relevant and material matter in which the witness
23 claims to be an expert and may also state the reasons for
24 the opinion. You should consider any expert opinion
25 received in evidence in this case and like any other

1 evidence give it the weight you think it deserves. If
2 you decide that the opinion of an expert is not based
3 on sufficient education and experience or if you conclude
4 that the reasons given in support of the opinion are
5 not sound or that the opinion is outweighed by other
6 evidence, you may disregard the opinion entirely. An
7 expert witness's testimony is to be given no greater
8 weight than that of other witnesses simply because the
9 witness is an expert. Furthermore, you are not required
10 to accept an expert's opinion even though it is not
11 contradicted.

12 Now, Madam Forelady and ladies and gentlemen of
13 the jury, I instruct you and emphasize that the fact
14 the defendant did not testify is not a factor to be
15 considered by you in any way in your deliberations
16 and in your consideration on the question of the guilt
17 or the innocence of the defendant. It must not be
18 considered by you in any manner whatsoever. A defendant
19 has the constitutional right to remain silent and the
20 assertion of this right must not be considered by you in
21 your deliberations. I repeat. Under your oath you are
22 to draw no conclusion whatsoever from the fact that the
23 defendant in this case did not testify. The fact that
24 this defendant did not testify should not even be
25 discussed in the jury room. The burden of proof, as

1 I've already stated to you, is on the State. The
2 defendant is not required to prove her innocence. The
3 burden of proof remains on the State to prove guilt beyond
4 a reasonable doubt.

5 Now let me explain to you the -- the offense of
6 domestic violence of a high and aggravated nature.
7 The State must prove beyond a reasonable doubt that
8 the defendant either, one, commits the offense on a
9 household member under circumstances manifesting
10 extreme indifference to the value of human life and
11 great bodily injury to the victim results, or, two,
12 commits the offense on a household member with or
13 without an accompanying battery and under circumstances
14 manifesting an extreme indifference to the value of
15 human life and would reasonably cause a person to fear
16 imminent great bodily injury or death.

17 Circumstances manifesting extreme indifference to
18 the value of human life may include the use of a deadly
19 weapon. A deadly weapon can be a pistol, dirk, slingshot,
20 metal knuckles, razor or other instrument which can be
21 used to inflict deadly force. Great bodily injury means
22 bodily injury which causes a substantial risk of death
23 or which causes serious permanent disfigurement or
24 protracted loss or impairment of the function of a
25 bodily member or organ.

1 Household member means a spouse, former spouse,
2 persons who have a child in common, male and female who
3 are cohabitating or formerly have cohabitated together
4 or a same-sex couple who are cohabitating or formerly
5 cohabitated together.

6 Now, ladies and gentlemen, if you find that the
7 State has failed to prove the offense of domestic
8 violence of a high and aggravated nature beyond a
9 reasonable doubt, you then may consider the lesser
10 included offense of domestic violence in the first
11 degree. The State must prove beyond a reasonable doubt
12 that the defendant committed the offense on a household
13 member and inflicted great bodily injury to the victim
14 or the defendant took -- took actions accomplished by
15 means likely to result in great bodily injury. Great
16 bodily injury and household member have been defined
17 above.

18 Now if you find, ladies and gentlemen, that the
19 State has failed to prove the offenses of domestic
20 violence of a high and aggravated nature and domestic
21 violence in the first degree beyond a reasonable doubt,
22 you may consider the lesser included offense of domestic
23 violence in the second degree. The State must prove
24 beyond a reasonable doubt that the defendant committed
25 the offense on a household member and inflicted moderate

1 bodily injury or took actions which were accomplished
2 by means likely to result in moderate bodily injury.
3 Moderate bodily injury means physical injury that
4 involves prolonged loss of consciousness or that causes
5 temporary or moderate disfigurement or temporary loss of
6 the function of a bodily member or organ or injury that
7 requires medical treatment when the treatment requires
8 the use of regional or general anesthesia or injury that
9 results in a fracture or dislocation. Moderate bodily
10 injury does not include one-time treatment and subsequent
11 observation of scratches, cuts, abrasions, bruises,
12 burns, splinters or any other minor injuries that do not
13 require extensive medical care. Household member has
14 been defined above.

15 Ladies and gentlemen, if you find that the State
16 has failed to prove the offenses of domestic violence
17 of a high and aggravated nature, domestic violence first
18 degree and domestic violence second degree beyond a
19 reasonable doubt, you may consider the lesser included
20 offense of domestic violence in the third degree.

21 The State must prove beyond a reasonable doubt that
22 the defendant committed the offense on a household member
23 and either actually inflicted physical harm or injury
24 to a household member or offered or attempted to cause
25 such harm or injury to a household member with the

1 apparent present ability under circumstances reasonably
2 creating fear of imminent peril. Household member has
3 been defined above.

4 Now, ladies and gentlemen, there are -- I'm gonna
5 come down in just a minute, Madam Forelady, and show you
6 the verdict form. There are two possible verdicts which
7 you may find, guilty or not guilty, and I've listed
8 guilty above not guilty on the verdict form and there's
9 absolutely no significance in the Court doing that. One
10 simply has to be stated above the other.

11 Ladies and gentlemen, your verdict must be unanimous
12 among the twelve of you and when you reach a verdict,
13 complete the verdict form, Madam Forelady, and notify
14 the bailiff or the deputy outside of the jury room that
15 the verdict has been reached.

16 Now in the event that during your deliberations
17 there is a split in the vote, the Court does not at any
18 time want to be informed of the actual split by number
19 in the vote if one exists.

20 Lastly, ladies and gentlemen, your verdict must be
21 based on the evidence and the law presented and cannot
22 be based on sympathy, emotion, bias, prejudice or public
23 opinion.

24 Now I'm going to provide this charge to you because
25 I -- I certainly realize and understand that that was a

1 lot given to you.

2 Madam Forelady, the verdict form is divided up
3 into four parts. First you consider the indicted
4 charge, domestic violence of a high and aggravated
5 nature. You will initial what the verdict is, guilty or
6 not guilty. If you find the defendant guilty, you stop,
7 sign the verdict form. If you find the defendant not
8 guilty on this charge, then you go to number two, which
9 is the lesser included offense of domestic violence in
10 the first degree. And, again, you'll initial what your
11 verdict is, guilty or not guilty. If you find the
12 defendant guilty, stop, sign the verdict form. If you
13 find the defendant not guilty on that charge, then you
14 go to number three and state your verdict, guilty or not
15 guilty on domestic violence in the second degree. If
16 you find the defendant guilty of that, stop, sign the
17 verdict form. If you find the defendant not guilty,
18 then you'll go to number four and consider the lesser
19 included charge of domestic violence in the third degree
20 and you'll initial your verdict, guilty or not guilty,
21 and sign the verdict form.

22 Now what I'm gonna ask that you do, all thirteen
23 of you go back to the jury room for a second. I want to
24 make sure that I don't need to make any corrections or
25 changes or additions to the jury charge. I need to talk

1 with the lawyers for just a moment.

2 If I don't need to, then when the bailiff or the
3 deputy brings back the verdict form, a copy of the
4 written charge and the exhibits in the case, that will
5 be your cue for two things to happen. One, I need the
6 alternate to come back into the courtroom for further
7 instructions, and you can begin your deliberations.

8 Now during the course of the deliberations if a
9 juror has to use the restroom, deliberations have to
10 stop. Deliberations can only be conducted while the
11 twelve are in the room at the same time, okay?

12 All right. Go back to the jury room. Don't begin
13 your deliberations yet. Let me just touch base with the
14 lawyers one more time.

15 (Whereupon, the jury retires to the jury room at
16 12:37 PM.)

17 THE COURT: All right. Other than what's already
18 been noted on the record, does the State have any
19 additional objections or exceptions to the Court's
20 charge?

21 MR. BLACK: No, sir.

22 THE COURT: Okay. And other than what's been
23 already noted on the record, does the defense have any
24 objections or exceptions to the Court's charge?

25 MS. MERRILL: I just want to add one thing because

1 I honestly can't remember if I put this on this, but
2 by having to argue that the statute include the
3 additional language that prevented us from being able
4 to present a complete defense. Other than that, nothing
5 else.

6 THE COURT: Okay. Very good. Thank you.

7 All right. Just bring the alternate back in here,
8 please.

9 BAILIFF: Yes, sir.

10 (Whereupon, the alternate enters the courtroom and
11 the evidence and verdict form was sent back to the jury
12 at 12:40 PM.)

13 (Recess taken.)

14 (Back on the record.)

15 BAILIFF: They said they're ready whenever you are.

16 THE COURT: All right.

17 Okay. The jury has indicated they've reached a
18 verdict and is the State ready for them to come out and
19 we'll receive the verdict?

20 MR. BLACK: Yes. Yes, sir, Your Honor.

21 THE COURT: Defense?

22 MS. MERRILL: Yes, sir.

23 THE COURT: Okay.

24 All right. If you'll bring the jury out, please.)

25 (Whereupon, the jury returns to the courtroom at

1 1:33 PM.)

2 THE COURT: Madam Forelady, you can just hand the
3 exhibits to the bailiff. Hold onto the verdict form.
4 He -- no, you don't need to hold onto that. He'll get
5 it.

6 John, if you'd get that from her.

7 You can keep the verdict form.

8 All right. Let the record -- record -- we're
9 missing one.

10 Okay.

11 All right. Now let the record reflect the jury is
12 back in.

13 Madam Forelady, without telling me what the verdict
14 is, have you reached a verdict in this case?

15 FORELADY: Yes, sir.

16 THE COURT: And is the verdict unanimous among the
17 twelve of you?

18 FORELADY: Yes, sir.

19 THE COURT: Okay. If you'd hand the verdict form
20 to the bailiff and he'll hand it to me.

21 Okay.

22 All right. Madam Clerk, if you'd publish the
23 verdict.

24 THE CLERK: We -- the verdict form. The State of
25 South Carolina versus Kristy Davis, 2020-GS-01-00439.

1 We, the jury, unanimously find the defendant on the
2 charge of domestic violence of a high and aggravated
3 nature not guilty.

4 We, the jury, unanimously find the defendant on the
5 lesser included charge of domestic violence in the first
6 degree not guilty.

7 We, the jury, unanimously find the defendant on the
8 lesser included charge of domestic violence in the second
9 degree not guilty.

10 We, the jury, unanimously find the defendant on the
11 lesser charge of domestic violence in the third degree
12 guilty.

13 Madam Forelady, ladies and gentlemen of the jury,
14 is this your verdict so say you all? Please signify by
15 raising your right hand.

16 THE COURT: All right. Let the record reflect the
17 twelve hands were raised.

18 Thank you, Madam Clerk.

19 Does either side wish for individual polling of the
20 jury?

21 State?

22 MR. BLACK: No, sir, Your Honor.

23 THE COURT: Defense?

24 MS. MERRILL: No, sir.

25 THE COURT: Okay. Ladies and gentlemen, let me

1 thank you for your -- your jury service. The verdict
2 that you -- y'all can have a seat. The verdict that
3 you reached in this case does not matter to me. What
4 matters to me is that my jury performs its duty
5 efficiently, conscientiously, and you have done that.
6 You have done that.

7 I -- one of my jobs being the judge is to keep my
8 eyes on the jury to make sure everybody's paying attention
9 and -- and every time I looked at you, you were. And I
10 told you at the very beginning that's extremely important
11 to be alert and attentive, and you were.

12 So I thank you for your jury service. I hope this
13 has been an educational experience for you. I know
14 I've got a couple people that got a double dose of jury
15 service.

16 And what I'd like to do, if you would go back to
17 the jury room I want to come back and talk with you.
18 Not about the case, but just to see if you have any
19 suggestions because we're still in the environment where
20 the chief justice is requiring us to practice safety
21 protocols with the masks and the social distancing and
22 disinfecting and that sort of thing, and I just want to
23 make sure if you -- or see if you have any suggestions
24 on how we can improve things.

25 So if you don't mind, I'm not gonna hold you up

1 long, just go back to the jury room. I'll be back there
2 in just a few minutes with the clerk and -- and then
3 I'll -- I'll let you go, okay?

4 Thank you very much.

5 Oh, the -- Madam Forelady, I need for you to sign
6 the back of the indictment indicating the verdict,
7 guilty on DV third.

8 (Whereupon, the jury was dismissed at 1:39 PM.)

9 THE COURT: All right. We're gonna take just a
10 few minutes. I know the State needs to put together a
11 sentencing sheet and then we'll -- we'll take care of
12 sentencing.

13 (Recess taken.)

14 (Back on the record.)

15 THE COURT: Okay. We are now in the sentencing
16 phase of the case of State versus Kristy Olympia Davis.
17 I'll -- I'll hear from the -- the State as to sentencing.

18 MR. BLACK: Judge, do you have -- do you still have
19 the plea information sheet that we had passed forward?
20 I guess it was Wednesday.

21 THE COURT: I have the plea information sheet that
22 -- where she started off where she was gonna plead to
23 A&B one, I think.

24 MR. BLACK: Yes, sir.

25 THE COURT: Yeah, I -- I still have that.

1 MR. BLACK: I believe her record is on the back,
2 but I had filled it out the day before. But Ms. Davis
3 has a very extensive record that Your Honor can see.
4 She's been to prison a couple of times. I think her
5 last stint she had a ten-year sentence on some shoplifting
6 charges back in 2011. She's got a bunch of fraud checks
7 and charges like that.

8 She does have a prior DV from 2007. I just wanted
9 to put that on the record. And that's -- you know,
10 that's pretty much it, Judge.

11 THE COURT: Okay.

12 MR. BLACK: Obviously it's your -- it's your
13 discretion, zero to ninety days.

14 THE COURT: Okay. Ms. Merrill, I'll be glad to
15 hear from you concerning sentencing.

16 MS. MERRILL: Thank you, Your Honor. May it please
17 the Court?

18 Ms. Davis does work at Sage and she works second
19 shift, Monday through Friday. If the Court is inclined
20 to give her time, I'd ask if the Court would consider
21 allowing her to do that on weekends. I've explained to
22 her that would likely end up being day for day, which
23 might mean she would actually end up doing more time,
24 but if you -- but that would allow her to keep her job.
25 So I'd ask the Court to consider that in its sentencing,

1 Your Honor.

2 MR. BROWN: And, Judge, just for the record we did
3 pass forward a gun prohibition form --

4 THE COURT: Right.

5 MR. BROWN: -- that goes with all DV.

6 THE COURT: Right, and -- and I've already signed
7 the -- the firearms prohibition.

8 Well, you know, given the terrible record that --
9 that you have, Ms. Davis, while the maximum is only
10 ninety days for a domestic violence third, that's what
11 I'm going to impose, a ninety-day sentence, one day
12 credit, day for day service, and I will not allow for
13 weekend service of the time.

14 The sheriff will be taking Ms. Davis into custody.

15 MS. MERRILL: Your Honor, for Ms. Davis's case,
16 can we have ten days to file any post-trial motions if
17 we're gonna file any?

18 THE COURT: Do you -- do you contemplate any --

19 MR. WILLIAMS: We are.

20 THE COURT: -- post-trial?

21 I mean, if you want ten days, you've got it, Jane,
22 but I believe I would be jumping up and down and -- and
23 high-fiving and celebrating and that sort of thing, but
24 if you want ten days, you're allowed.

25 MS. MERRILL: I -- I don't disagree with you,

1 Judge. It's just like I've been doing the whole time
2 making sure we've covered all of our bases.

3 THE COURT: I understand.

4 MS. MERRILL: That's the main thing. I appreciate
5 it.

6 Thank you.

7 (Whereupon, the proceedings were concluded at
8 1:50 PM.)

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1 STATE OF SOUTH CAROLINA

TRANSCRIPT OF RECORD

2 COUNTY OF ABBEVILLE

CASE NO. 2020-GS-01-00439

3

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6

7

August 26, 2021

8

BEFORE: The Honorable Donald B. Hocker

9

10

11 State of South Carolina,

12 Plaintiff,

13 vs.

14 Kristy Olympia Davis

15 Defendant.

16

17

18 APPEARANCES:

19

Micah E. Black
Senior Assistant Solicitor
Eighth Circuit Solicitor's Office.

20

21

Tristan M. Shaffer
Attorney for the Defendant.

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23

24

Betty R. Lyons, Court Reporter I
South Carolina Judicial Department
747 Bishops Circle, Evans, Georgia 30809

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PAGE

Reporter's Certificate

07

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: South Carolina versus Kristy O. Davis.
3 It's a -- Indictment 2020GS010439. Ms. Davis was tried and
4 convicted of domestic violence in the third degree. She
5 received a maximum of 90 days.

6 This trial was week before last, is that right,
7 Solicitor?

8 MR. BLACK: Yes, sir. The week of August the
9 9th.

10 THE COURT: And the Defense has filed a -- kindly
11 filed a motion for a new trial, in the alternative motion
12 for reconsideration of sentence, or in the alternative
13 motion set an appeal bond.

14 I don't think at this point the -- going forward
15 today on the motion for an appeal bond. I think that may be
16 for later on or am I ---

17 MR. SHAFFER: Your Honor, actually we'd like to go
18 ahead and make that, and try to see if the Court would set a
19 bond, even if the Court is taking it under advisement.

20 That's basically what I was going to ask for. If
21 you're going to take it under advisement ---

22 THE COURT: Right.

23 MR. SHAFFER: --- consider still setting an
24 appeal. Or consider -- consider still setting an appeal
25 bond/bond while it's under advisement.

1 THE COURT: Glad to hear from you, Mr. Shaffer.

2 MR. SHAFFER: Thank you, Your Honor. And I've
3 laid out a good bit of this in the written order -- I mean
4 the written motion. Obviously, we're -- we believe that the
5 plain language of the DV Statute does not include her as a
6 household member. I understand the Court's ruling.
7 Although I was not present at the trial, I got play-by-play
8 so I sort of know what's going on.

9 Your Honor, I think that the -- I understand the
10 Doe Case. I think that the difference that we have here
11 with the Doe Case is that in Doe you have someone asserting
12 protection from the Government as opposed to the Government
13 trying to exercise their power. And you get a situation
14 here where the due process clause is sort of working against
15 the clause of -- you know, the equal protection clause that
16 they discuss in Doe.

17 So that's the reason that we don't think that
18 under the constitutional grounds -- we also made the
19 argument, obviously, under the statutory grounds as well.

20 Your Honor, also in addition to what was argued
21 beforehand, it's my understanding that the Court limited the
22 ability of Counsel to argue to the jury that, you know, this
23 is what DV means, this is what household members means.

24 And I understand the way the Court charged the
25 law, but I think that it's somewhat hindering her ability to

1 present a full and complete defense when we can't argue what
2 the law is as written. So we would also make it under that
3 as well.

4 And, Your Honor, I can do a proposed order for the
5 appeal bond if the Court wants one. She has a job. She's,
6 you know -- she had a PR bond -- you know, she showed up to
7 court on a PR bond, facing 20 years. I don't think that
8 she's in any way a flight risk for showing up for jail time
9 if she's facing only, you know, another month and a half.

10 THE COURT: Thank you. Mr. Black, you want to put
11 anything on the record?

12 MR. BLACK: Judge, just that we would incorporate
13 all the arguments that we made at trial. And just briefly,
14 we think that the Doe Case, it specifically mentions the DV
15 statute in the Doe Case.

16 And, you know, as we've mentioned on the record,
17 we think that the Supreme Court, obviously, overruled what
18 household member was prescribed in the statute. They were
19 hoping that the legislature would change it, and they
20 haven't gotten around to changing it since this case was
21 heard and decided back in 2017.

22 But based on the equal protection clause and the
23 U.S. Constitution, we think the statute -- or household
24 member should apply for domestic violence cases. And, you
25 know, obviously, the Supreme Court overruled the definition

1 of the household member.

2 As far as the appeal bond, Judge, we just ask that
3 you deny that. I think she's got probably a month and a
4 half or two months left to serve, and then her sentence will
5 end. You know, I hate to predict what the Supreme Court or
6 The Court of Appeals would do on this, but I think based on
7 the Doe Case, it's pretty evident, you know, what they're
8 going to decide if it goes forward.

9 THE COURT: All right. Thank you very much. I
10 will take it under advisement. I'll make a decision
11 concerning the appeal bond before I issue a ruling on the
12 motion for a new trial. I'll make a decision fairly soon on
13 the appeal bond and let everybody know that, okay.

14 Thank you very much.

15 (END OF REQUESTED TRANSCRIPT.)

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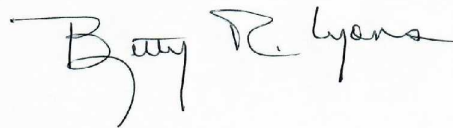
1 State of South Carolina

2 Certificate of Reporter

3 I, Betty R. Lyons, Official Court Reporter for the
4 Second Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing pages, numbered 1 through
6 6, constitute a true, accurate Transcript of Record of all
7 the proceedings had and evidence introduced in the hearing
8 of the above captioned case, relative to appeal, in the
9 Circuit Court for Abbeville County, South Carolina on the
10 26th day of August 2021.

11 I FURTHER CERTIFY that I am neither kin, counsel,
12 nor interest to any party hereto.

13
14
15 November 10, 2021

16 
17 _____

18 Betty R. Lyons
19 Official Court Reporter
20 State of South Carolina
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25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)

IN THE COURT OF GENERAL SESSIONS

RECEIVED

Sep 14 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 vs.)
 KRISTY O. DAVIS)
)
 Defendant)
 _____)

ORDER AS TO MOTION FOR NEW TRIAL
 2020-GS-01-00439

The Defendant timely filed a Motion for New Trial.

The Defendant was convicted on August 13, 2021 for the lesser-included offense of Domestic Violence Third Degree. She was indicted for the offense of Domestic Violence High and Aggravated Nature.

This Order will confirm and/or supplement what was put on the record during trial.

At the outset of trial, the Defendant objected to the case going forward and moved for a dismissal based upon the fact that the Domestic Violence statute defining "Household Member" does not include couples of the same sex. See Section 16-25-10. The Defendant and the victim are both females and were residing together in the same household at the time of the offense. The Defendant moved for a directed verdict at the end of the State's case based upon the same argument and renewed this Motion at the close of the evidence in the case. The Court at trial relied on the case of Doe v. State, 421 S.C. 490 (2017) in denying the Defense Motions and allowed the trial to proceed forward. The Court once again relies on Doe, supra in denying this Motion for a New Trial. Each argument raised by the Defense will be addressed here:

#1
 JSA

I. The plain language of the Domestic Violence Statute excludes un-married same-sex couples who do not have a child in common from the definition of household member.

It certainly is not in dispute that 16-25-10 has not been amended to include un-married same-sex couples and without Doe there is no question the State in this case would not have been able to go forward on the Domestic Violence charge. However, since this Court is relying heavily on Doe, this Court will set forth the applicable holdings, rulings, and analysis found therein:

a. While the Doe Court dealt with a Family Court Order of Protection (Protection from Domestic Abuse Act), it was specifically clear that its rulings also applied to Domestic Violence cases (Domestic Violence Reform Act). It held unconstitutional the disparate treatment afforded to same-sex couples who were living together or had lived together as opposed to other couples in the current definition of "Household Member."

b. The Doe Court, after finding Sections 16-25-10(3) and 20-4-20(b) unconstitutional, then stated that the Family Court "may not utilize these statutory provisions to prevent those in similar same-sex relationships from seeking an order of protection." The clear implication here is that a criminal court is likewise prevented from relying on the current definition of "Household Member" in domestic violence situations.

c. The Doe Court further stated that "we decline to invalidate the ACTS (emphasis added) in their entirety. Such decision would result in grave consequences for victims of domestic

#2
Doe

violence. To leave these victims unprotected for any length of time would be a great disservice to the citizens of South Carolina."

d. Finally, Doe relied on an Iowa case which held a parentage statute unconstitutional on the same grounds as Doe and quoted from the Iowa case "Accordingly, instead of striking...from the Iowa code, we will preserve it as to married opposite-sex couples and require the [Iowa Department of Public Health] to apply the statute to married lesbian couples."

In effect, the Doe court judicially amended the statutes concerning the definition of "Household Member" to include same-sex couples.

II. The Equal Protection Clause cannot be used to expand the definition of household members when the statute is penal in nature:

The Doe Court carefully analyzed the constitutional issues of equal protection and due process, and this Court is not going to make any rulings contrary to what the Doe Court held.

Also, both the Domestic Violence Reform Act and Protection from Domestic Abuse Act are both penal in nature. There are criminal penalties involved for violations under both Acts. To suggest otherwise would involve a faulty reading of the statutes.

III. Defendant respectfully submits that the Court erred in expanding the statutory language in its jury instruction.

The Court crafted its jury instruction, concerning the definition of "Household Member", based upon the Doe case. This Court did not violate the doctrine of separation of powers. It simply followed the directives of the South Carolina Supreme Court.

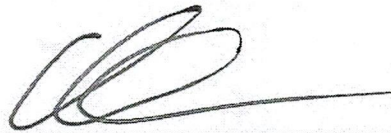
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IV. Defendant respectfully submits that a new trial should be granted based upon the Courts limitation on the Defendant's right to present a full and complete defense.

The Defense wanted to argue in closing the statutory definition of "Household Member" which excludes same-sex couples. To allow the Defense to argue at closing something that our state Supreme Court previously found to be unconstitutional would have, without question, constituted reversible error.

The Defendant's Motion for New Trial is respectfully denied.

SO ORDERED.



DONALD B. HOCKER
CIRCUIT COURT JUDGE

Laurens, South Carolina
Date: 9-14-21

#4

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

**DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE
§16-25-0065(A)**

At a Court of General Sessions, convened on the 21st day of August, 2020, the Grand Jurors of Abbeville County present upon their oath:

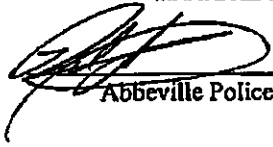
The defendant, Kristy Olympia Davis, on or about January 28, 2020 in Abbeville County, South Carolina, did cause physical harm or injury to Belicia Evans, a household member, or did offer or attempt to cause physical harm or injury to said household member with apparent present ability under circumstances reasonably creating fear of imminent peril. In addition, the offense was committed under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim resulted and/or the offense was committed, with or without an accompanying battery, under circumstances manifesting extreme indifference to the value of human life, which would reasonably cause a person to fear imminent great bodily injury or death. All in violation of 16-25-0065(A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Micah E. Black
Assistant Solicitor

WITNESSES

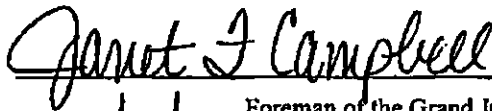


Abbeville Police Department

WARRANT NUMBER

2020A0120100046

TRUE BILL



Foreman of the Grand Jury

Date: 8/21/2020

VERDICT

Guilty DV 3



Foreman

8/13/2021

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

August Term, 2020

Indictment # 2020GS01-0439

THE STATE

vs.

KRISTY OLYMPIA DAVIS

INDICTMENT FOR

DOMESTIC VIOLENCE OF A HIGH AND

AGGRAVATED NATURE

SC Code: § 16-25-0065(A)

CDR: 3814

I hereby waive presentment to the Grand Jury.

Defendant

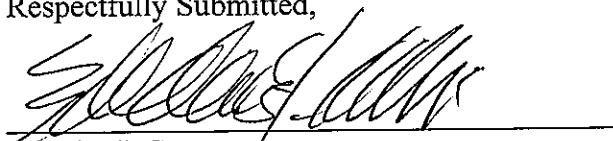
Witness:

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."

RECEIVED**Sep 14 2022****SC Court of Appeals**

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

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This 14th day of September, 2022.