

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Edgar W. Dickson, Circuit Court Judge

RODNEY C. BRYAN,

PETITIONER/RESPONDENT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPELLATE CASE NO. 2019-001887

APPENDIX

Lara Mary Caudy
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR
PETITIONER/RESPONDENT

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR
RESPONDENT/PETITIONER

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON) 2007-GS-32-3033, 3034,
 3040, 3041, 3042

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 RODNEY C. BRYAN,)
)
 DEFENDANT.)
)
 _____)

JULY 14, 2008
 LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KNOX MCMAHON, JUDGE

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

SHAWN GRAHAM, ESQUIRE
 EMILY HOWARD, ESQUIRE
 ATTORNEYS FOR THE PLAINTIFF

THEO WILLIAMS, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
 CIRCUIT COURT REPORTER

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1 THE COURT: All right. Solicitor, you may call your
2 first case for trial.

3 MR. GRAHAM: Thank you, Your Honor. The State calls
4 to trial Indictment 2007-GS-32-3033, *State vs. Rodney*
5 *Bryan*, indictment for violation of order of protection.

6 Indictment 2007-GS-32-3034, the *State vs. Rodney*
7 *Bryan*, indictment for criminal domestic violence of a high
8 and aggravated nature.

9 Indictment 2007-GS-32-3040, *State vs. Rodney Bryan*,
10 indictment for spousal sexual battery.

11 Indictment 2007-GS-32-3041, *State vs. Rodney Bryan*,
12 indictment for spousal sexual battery.

13 Indictment 2007-GS-32 -- Indictment 3042, the *State*
14 *vs. Rodney Bryan*, indictment for kidnaping.

15 THE COURT: Thank you. Ladies and gentlemen of the
16 jury panel, if you would, please, give me your complete and
17 undivided attention. I would remind you that you are still
18 under oath. We're going through a process now to determine
19 your qualifications to serve as jurors and -- in these
20 particular cases that the State has called for trial.

21 There are five separate indictments. I am going to
22 read each of these indictments. Before I begin, I would
23 advise you that the indictments are the formal charging
24 documents. They are not in any sense evidence of any of
25 the allegations that are contained in the indictments.

1 They are the formal documents that places an individual on
2 notice of the charges that have been placed against him or
3 her.

4 The first indictment is 07-GS-32-3033. It basically
5 reads that (as read): "Rodney C. Bryan," B-r-y-a-n, "did
6 in Lexington County, South Carolina, between the dates of
7 March 5th of 2007 and September 16th of 2007, knowingly and
8 willfully violate the terms and conditions of an order of
9 protection issued in this state by Judge Kellum Allen of
10 the Lexington County Family Court under the Protection from
11 Domestic Abuse Act on March 5, 2007. To wit, the
12 defendant had been residing with the petitioner, Rachael
13 Bryan, in violation of 16-25-50 of the Code of Laws of
14 South Carolina." That's a true bill indictment for a
15 violation of a court order of protection.

16 The next indictment, 07-GS-32-3034, reads that (as
17 read): "Rodney C. Bryan did in Lexington County, South
18 Carolina, on or about September 15th of 2007, knowingly and
19 willfully, (1) cause physical harm or injury to a person's
20 own household member, or offer -- or (2) attempt to cause
21 physical harm or injury to a person's own household member
22 with apparent present ability under circumstances
23 reasonably creating fear of imminent peril; and either (1)
24 committed an assault and batter, which involved the use of
25 a deadly weapon or results in serious bodily injury to the

1 victim, or (2) an assault with or without an accompanying
2 battery, which reasonably caused a person to fear imminent
3 and serious bodily injury or death. To wit, the defendant
4 did choke his wife, Rachael Bryan, and/or threatened her
5 with a knife, in violation of Section 16-25-65 of the Code
6 of Laws of South Carolina." That is a true bill indictment
7 for criminal domestic violence of a high and aggravated
8 nature.

9 The third indictment, 07-GS-32-3040, basically reads
10 that (as read): "Rodney C. Bryan did in Lexington County,
11 on or about September 15, 2007, knowingly and willfully,
12 commit a sexual battery against the will of his spouse,
13 Rachael Bryan, with whom he was living together,
14 accomplished through the use or the threat of use of a
15 weapon, or the use or threat of use of physical force or
16 physical violence of a high and aggravated nature, in
17 violation of 16-36-15(A) of the Code of Laws of South
18 Carolina." That is a true bill indictment for spousal
19 sexual battery.

20 07-GS-32-3041, that (as read): "Rodney C. Bryan did
21 in Lexington County, on or about September 14, 2007,
22 knowingly and willfully commit a sexual battery against the
23 will of his spouse, Rachael Bryan, with whom he was living
24 together, accomplished through the use or the threat of use
25 of a weapon, or the use or threat of use of physical force

1 or physical violence of a high and aggravated nature, in
2 violation of 16-36-15(A) of the Code of Laws of South
3 Carolina." That's a true bill indictment for spousal
4 sexual battery.

5 07-GS-32-3042 states that (as read): "Rodney C. Bryan
6 did in Lexington County, South Carolina, between the dates
7 of September 14th of 2007 and September 16th of 2007,
8 knowingly, willfully, and unlawfully seize, confine,
9 inveigle, decoy, kidnap, abduct, or carry away Rachael
10 Bryan by any means whatsoever, without authority of law,
11 and without her consent. To wit, the defendant refused to
12 allow the victim to leave the residence and/or confined her
13 movement within the residence, in violation of 16-3-910 of
14 the Code of Laws of South Carolina." That is a true bill
15 indictment for kidnaping.

16 Again, ladies and gentlemen, these five indictments
17 are the formal charging documents. They are no evidence of
18 the allegations that are contained therein.

19 The State in this case is represented by Assistant
20 Solicitor Shawn Graham.

21 Solicitor Graham, would you introduce yourself, and
22 have any other members of your staff that are assisting you
23 in this prosecution introduce themselves to the jury,
24 please?

25 MR. GRAHAM: My name is Shawn Graham. Assisting me is

1 another assistant solicitor, Emily Howard. Tara Grigsby is
2 a paralegal working on the case with us. Also in the
3 office, there is also an investigator not present named
4 "Matt Martin."

5 THE COURT: Thank you. Is there any member of the
6 jury panel related by blood or marriage or close personal
7 friends of Assistant Solicitor Graham or Assistant
8 Solicitor Howard or Ms. Grigsby or Detective Martin,
9 employed with the Lexington County Sheriff -- excuse me --
10 the Lexington County Solicitor's Office? If so, please
11 stand.

12 Yes, sir. Your number and name, please?

13 JUROR 109: It's Franklin Moore, 109.

14 THE COURT: And related by blood or marriage?

15 JUROR 109: No, sir.

16 THE COURT: Friends?

17 JUROR 109: Friends with Matt Martin.

18 THE COURT: With Mr. Martin?

19 JUROR 109: Yes, sir.

20 THE COURT: And how long have you been a friend of Mr.
21 Martin's?

22 JUROR 109: Probably three years.

23 THE COURT: The fact that you are a friend of Mr.
24 Martin, could you still be a fair and impartial juror to
25 both the State and the Defense in this case?

1 JUROR 109: Yes, sir.

2 THE COURT: Thank you, Mr. Moore. You may be seated.
3 Any others?

4 (No response.)

5 THE COURT: The defendant in the case, Rodney Calvin
6 Bryan, is represented by his attorney Mr. Williams.

7 Mr. Williams, would you please stand and introduce
8 yourself, and any other members of your staff, and also
9 your client?

10 MR. WILLIAMS: I'm Theo Williams. I practice law
11 across the street on the corner in the firm of Williams,
12 Hendrix, Steigner, and Frink. I'm by myself -- I'm trying
13 this by myself. And this is my client, Rodney Bryan, who's
14 standing.

15 THE COURT: Thank you. Thank you, Mr. Williams.

16 Is any member of the jury panel related by blood or
17 marriage, or close personal friends of Mr. Theo Williams or
18 any member of his law practice? If so, please stand.

19 (No response.)

20 THE COURT: Is any member of the jury panel related by
21 blood or marriage or close personal friends of the
22 defendant in this case, Rodney Calvin Bryan? If so, please
23 stand.

24 (No response.)

25 THE COURT: Is any member of the jury panel or any

1 member of your immediate family ever been represented by
2 Assistant Solicitor Graham, Assistant Solicitor Howard, any
3 member of the Solicitor -- Lexington Solicitor's Office, or
4 Mr. Williams or any member of Mr. Williams's law practice?
5 If you've been represented by any of those individuals, or
6 any member of your immediate family or a close personal
7 friend, please stand.

8 (No response.)

9 THE COURT: And as to -- as to Solicitor Graham and
10 Howard, has any member of the jury panel or member of your
11 immediate family or close personal friend ever been
12 prosecuted by Mr. Graham or Ms. Howard, or any member of
13 the Lexington County Solicitor's Office? If so, please
14 stand.

15 (No response.)

16 THE COURT: And I read you the indictments that
17 covered the allegations as far as the alleged violation of
18 a court order of protection spanning a time from March 5th
19 of '07 to September 16th of '07. The other indictments
20 cover a period of time: September 14th, 15th, or 16th of
21 '07.

22 The alleged victim was one Rachael Bryan. The reason
23 I read those indictments was to ask you, "Does any member
24 of the jury panel have any knowledge about this case?" If
25 so, please stand.

1 (No response.)

2 THE COURT: Does any member of the jury panel have any
3 bias or prejudice towards either of the parties -- that
4 being the State or the defendant -- or towards the subject
5 matter involved? If so, please stand.

6 (No response.)

7 THE COURT: Has any member of the jury panel heard or
8 know anything about the case from any source whatsoever?
9 If so, please stand.

10 (No response.)

11 THE COURT: I'm going to call a list of names that are
12 potential witnesses in the trial of this case. I would ask
13 if any of these individuals are present at this time, to
14 please stand and face the jury panel when your names are
15 called. I would advise the jury panel that the witnesses
16 or potential witnesses are not required to be present
17 during this stage. So you may hear some names called and
18 there will be no one present, no one standing.

19 Kim Blaze, B-l-a-z-e. Lavonda Brice. Michael Bryan.
20 Rachael Bryan. This is Michael Bryan?

21 MR. BRYAN: Yes, sir.

22 THE COURT: Is that correct? Stand back up for me,
23 please, just a moment. Michael Bryan, thank you.

24 Rachael Bryan. Amy B.

25 Of course, the question, ladies and gentlemen, is

1 whether any member of the jury panel is related by blood or
2 marriage, or close personal friends with any of those
3 individuals whose names I just called? If so, please
4 stand.

5 (No response.)

6 THE COURT: The next five names: Nathaniel, in
7 parentheses, [REDACTED] Brenda Cocklin, C-o --

8 (Ms. Cocklin stands.)

9 THE COURT: -- this is Ms. Cocklin here. Thank you,
10 Ms. Cocklin.

11 Mary Dooley. Julie Gies?

12 MR. GRAHAM: Yes, Your Honor.

13 THE COURT: Julie Gies. Bill Higgins.

14 The next five: Katherine Ross. Sandy Vining. Scott
15 Whittle. Marha -- is that Marha?

16 MR. GRAHAM: Martha.

17 THE COURT: Martha? I -- I didn't want to
18 mispronounce anyone's name. Martha Williams. Beth Harmon.
19 And Ms. Harmon's employed with the Lexington County
20 Sheriff's Department.

21 The next five names that I call are all employed with
22 the Lexington County Sheriff's Department: Michelle
23 Horton, Candy Kyzer, Shannon Lovell, James Moore, Michael
24 Phipps.

25 The next three individuals are also employed with the

1 Lexington County Sheriff's Department: Brian Setree, Erica
2 Sullivan, Tricia -- this is Mr. --

3 MR. GRAHAM: Setree, Your Honor.

4 THE COURT: Setree. I apologize. Thank you.

5 The one officer here and I mispronounce his name. I
6 apologize.

7 Erica Sullivan. Tricia Chandler. Rodney Bryan has
8 already stood before you. Jerry Wallace.

9 Is any member of the jury panel related by blood or
10 marriage or close personal friends of any of those
11 individuals whose names I have just called, and/or who has
12 stood before you? If so, please stand.

13 Yes, ma'am? Your number and name, please?

14 JUROR 149: Teri Smith, 149. I know Brian Setree.

15 THE COURT: All right. And how long have you known
16 him?

17 JUROR 149: A year.

18 THE COURT: Say again.

19 JUROR 149: One year.

20 THE COURT: The fact that you know Deputy Setree,
21 could you still be a fair and impartial juror to both the
22 State and the Defense in this case?

23 JUROR 149: Yes, I could.

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

25 (Sotto voce discussion between the Court and law clerk.)

1 THE COURT: Any others?

2 (No response.)

3 THE COURT: Has any member of the jury panel, or a
4 member of your immediate family, or close personal friend,
5 ever been charged with criminal domestic violence,
6 kidnaping, spousal sexual battery, or a violation of an
7 order of protection? If so, please stand.

8 All right. How about step forward for me, sir? If
9 you'd step -- step over here.

10 THE BAILIFF: Juror 145, Your Honor.

11 THE COURT: You're Mr. Small?

12 JUROR 145: Yes, Your Honor.

13 THE COURT: Tell me your situation.

14 JUROR 145: My wife and I was charged with criminal
15 domestic violence, but the charges were dropped.

16 THE COURT: Both you and your wife?

17 JUROR 145: Yes, sir.

18 THE COURT: Were you convicted?

19 JUROR 145: No.

20 THE COURT: Was she?

21 JUROR 145: No. He dropped it.

22 THE COURT: When was that?

23 JUROR 145: Couple years ago.

24 THE COURT: All right. The fact that you were charged
25 with criminal domestic violence, but not convicted, and

1 your wife was charged with criminal domestic violence and
2 not convicted, could you still be a fair and impartial
3 juror to both the State and the Defense in this case?

4 JUROR 145: Yes, sir. But could I get you to look up
5 the records before -- make sure I'm not --

6 THE COURT: In other words, you want to make sure you
7 weren't convicted?

8 JUROR 145: I wouldn't want to ---

9 THE COURT: (To the solicitor) Do y'all have a record?

10 (To the juror) You want to make sure you're giving me
11 accurate --

12 JUROR 145: Yes, sir. I don't want to lie to the
13 Court.

14 THE COURT: I appreciate that, Mr. Small.

15 MR. GRAHAM: '91 conviction.

16 THE COURT: '91?

17 MR. GRAHAM: And '93 conviction, two counts.

18 THE COURT: That's more than a couple of years.

19 That's --

20 MR. WILLIAMS: Fifteen years.

21 THE COURT: I can't even count that.

22 MR. GRAHAM: 2005.

23 THE COURT: Was that a conviction?

24 Mr. GRAHAM: Yes, sir.

25 THE COURT: Okay. So you were convicted. Same

1 question: Could you still be fair and impartial juror to
2 both the State and the Defense?

3 JUROR: Yes, sir.

4 THE COURT: All right. Thank you, Mr. Small. You may
5 be seated. Don't -- do not say anything to your fellow
6 jurors.

7 THE BAILIFF: Juror 138, Your Honor.

8 THE COURT: Good morning. How are you? This is Ms.
9 Salley?

10 JUROR 138: Yes, sir.

11 THE COURT: All right. Tell me your situation, Ms.
12 Salley.

13 JUROR 138: My husband has been charged with a CDV
14 charge. We've got a trial coming up.

15 THE COURT: All right. Are you the victim in that
16 matter?

17 JUROR 138: Yes, sir.

18 THE COURT: The fact that -- and when did this occur?

19 JUROR 138: May 31st.

20 THE COURT: Of '08?

21 JUROR 138: Yes, sir.

22 THE COURT: The fact that you are a victim of a
23 pending crime of domestic violence, could you still be a
24 fair and impartial juror to both the State and the Defense
25 in this case?

1 JUROR 138: I feel I can, yes.

2 THE COURT: There was a little bit of hesitation. I
3 know you say you feel you can, and that may be just
4 semantics.

5 JUROR 138: I probably would not be a very good
6 choice.

7 THE COURT: All right. I'm going to -- I'm going to
8 set you aside for the trial of this case. If you'd go back
9 and have a seat. Do not say anything to your fellow
10 jurors. All right. Thank you.

11 THE BAILIFF: Juror No. 76, Your Honor.

12 THE COURT: Yes, sir.

13 JUROR 76: I have a brother who's convicted in some
14 sort of abuse thing.

15 THE COURT: Let me just -- you're Mr. Holmes?

16 JUROR 76: Yes, sir.

17 THE COURT: Brian Holmes?

18 JUROR 76: Correct.

19 THE COURT: And you say you have a brother.

20 JUROR 76: Brother who was convicted of and sentenced
21 to two years for criminal domestic violence.

22 THE COURT: When did this happen?

23 JUROR 76: 2005/2006.

24 THE COURT: The fact that you have a brother that was
25 convicted and sentenced for criminal domestic violence,

1 could you still be a fair and impartial juror to both the
2 State and the Defense in this case?

3 JUROR 76: Yes, sir.

4 THE COURT: All right. Thank you. Please do not say
5 anything to your fellow jurors, and you may go back and
6 have a seat. Thank you.

7 THE BAILIFF: Juror 115, Your Honor.

8 THE COURT: Good morning.

9 JUROR 115: Good morning.

10 THE COURT: Mr. Neeley?

11 JUROR 115: Yes. Seven years ago I was convicted of
12 ABHAN, never pled guilty to that. And drug charges about
13 three years ago. I took pre-trial and it was not expunged.

14 THE COURT: The allegations on ABHAN, did that involve
15 a domestic situation?

16 JUROR 115: No, sir. It was a fellow drug user.

17 THE COURT: A fellow drug user?

18 JUROR 115: Yes.

19 THE COURT: All right. The fact that you have those
20 charges, could you still be a fair and impartial juror to
21 both the State and the Defense in this case?

22 JUROR 115: Yes, sir.

23 THE COURT: All right. Thank you, Mr. Neely. Do not
24 say anything to your fellow jurors. You may go back and
25 have a seat.

1 THE COURT: Yes, sir.

2 THE BAILIFF: Juror 180, Your Honor.

3 THE COURT: Good morning. This is Ms. Williams?

4 JUROR 180: Stephanie Williams.

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

6 JUROR 180: Prior ---

7 THE COURT: Could you speak a little bit louder,
8 please?

9 JUROR 180: Prior to me meeting my husband, he was
10 charged with CDV with the mother of his child, not his
11 wife. But it was dismissed. I just felt like I should
12 disclose that.

13 THE COURT: And the fact that your husband had been
14 charged with CDV prior to him being your husband -- and you
15 were not involved with that incident at all and it was
16 dismissed, could you still be a fair and impartial juror to
17 both the State and the Defense in this case?

18 JUROR 180: Yes, sir.

19 THE COURT: All right. Thank you, ma'am. Do not say
20 anything to your fellow jurors.

21 All right. Any others?

22 (No response.)

23 THE COURT: Any additional requested voir dire from
24 the State?

25 MR. GRAHAM: None from the State, Your Honor.

1 THE COURT: From the Defense?

2 MR. WILLIAMS: None, Your Honor.

3 THE COURT: Thank you. Ladies and gentlemen of the
4 jury panel, is there -- do you know of any reason
5 whatsoever why you feel like you could not be a fair and
6 impartial juror in the trial of this case for both the
7 State and the Defense? If so, please stand.

8 (No response.)

9 THE COURT: Thank you. I find our panel is qualified.

10 Now, Madam Clerk, there was one that was excused from
11 the panel during the break, based on prior criminal
12 history. What ---

13 CLERK OF COURT: Yes, sir.

14 THE COURT: --- what number was that? I want to make
15 sure --

16 CLERK OF COURT: It was Ms. Forren.

17 THE COURT: Whatever number it is.

18 CLERK OF COURT: She was No. 58, Your Honor.

19 THE COURT: All right. Number 58 has been excused.
20 All right. I find our panel is qualified.

21 And what are the strikes on this, Solicitor?

22 MR. GRAHAM: Five and five, I believe, Your Honor.

23 THE COURT: Mr. Williams?

24 MR. WILLIAMS: I believe that to be correct, Your
25 Honor.

1 (Sotto voce discussion between the Court the law clerk.)

2 THE COURT: All right. Our strikes are on five and
3 five. Madam Clerk, if you would advise the jury panel of
4 what steps they are to take when their names are called.

5 CLERK OF COURT: Yes, sir, Your Honor.

6 As I call your name, if you'll come forward. Deputy
7 Dan's going to show you where you need to come to and
8 stand. Do just like he is, right in front of this podium,
9 and turn around and face back out. Remain there until I
10 instruct you whether to have a seat in the jury box or to
11 return to your seat, please.

12 THE COURT: And bring all their personal items.

13 CLERK OF COURT: Yes. Please bring your purses,
14 umbrellas, whatever you have with you, in case you go this
15 way instead of back that way.

16 No. 145, Thomas Smalley. What saith the State?

17 MR. GRAHAM: Please excuse Mr. Smalley.

18 CLERK OF COURT: Return to your seat, please sir.

19 No. 65, Phillip Graham. What saith the State?

20 MR. GRAHAM: Please present Mr. Graham.

21 CLERK OF COURT: What saith for the Defense?

22 MR. WILLIAMS: Please swear the juror.

23 CLERK OF COURT: Have a seat in the jury box, sir.

24 No. 22, Stacey Brown. What saith for the State?

25 MR. GRAHAM: Please present Mrs. Brown.

1 CLERK OF COURT: What saith for the Defense?

2 MR. WILLIAMS: Please swear the juror.

3 CLERK OF COURT: Have a seat in the jury box, ma'am.

4 Thirteen, Lillie Bell. What saith for the State?

5 MR. GRAHAM: Please present Mrs. Bell.

6 CLERK OF COURT: What saith for the Defense?

7 MR. WILLIAMS: Please swear the juror.

8 CLERK OF COURT: Have a seat in the jury box, ma'am.

9 180, Stephanie Williams. What saith for the State?

10 MR. GRAHAM: Please excuse Mrs. Williams.

11 CLERK OF COURT: Return to your seat, please, ma'am.

12 57, Debra Floyd.

13 MR. GRAHAM: I'm sorry, Madam Clerk. The number?

14 CLERK OF COURT: It's No. five-seven, 57.

15 What saith for the State?

16 MR. GRAHAM: Please present Mrs. Floyd.

17 CLERK OF COURT: What saith for the Defense?

18 MR. WILLIAMS: Please excuse the juror from the trial

19 of this case.

20 CLERK OF COURT: Return to your seat, please, ma'am.

21 94, Michael Lail. What saith for the State?

22 MR. GRAHAM: Please present Mr. Lail.

23 CLERK OF COURT: What saith for the Defense?

24 MR. WILLIAMS: Please swear the juror.

25 CLERK OF COURT: Have a seat in the jury box, please,

1 sir.

2 84, Alfred Jones. What saith for the State?

3 MR. GRAHAM: Please present Mr. Jones.

4 CLERK OF COURT: What saith for the Defense?

5 MR. WILLIAMS: Please swear the juror.

6 CLERK OF COURT: Have a seat in the jury box, sir.

7 Number 2, Kathy Adkins. What saith for the State?

8 MR. GRAHAM: Please excuse Ms. Adkins.

9 CLERK OF COURT: Return to your seat, please, ma'am.

10 160, David Tholstrup. What saith the State?

11 MR. GRAHAM: Please present Reverend Tholstrup.

12 CLERK OF COURT: What saith for the Defense?

13 MR. WILLIAMS: Please excuse the juror from the trial
14 of this case.

15 CLERK OF COURT: Return to your seat, please, sir.

16 72, Brenda Hartsell. What saith for the State?

17 MR. GRAHAM: Please present Mrs. Hartsell.

18 CLERK OF COURT: What saith for the Defense?

19 MR. WILLIAMS: Please swear the juror.

20 CLERK OF COURT: Have a seat in the jury box, ma'am.

21 74, Wendell Hendrix. What saith for the State?

22 MR. GRAHAM: Please present Mr. Hendrix.

23 CLERK OF COURT: What saith for the Defense?

24 MR. WILLIAMS: Please swear the juror.

25 CLERK OF COURT: Have a seat in the jury box, sir.

1 80, Claude Jacobs. What saith for the State?

2 MR. GRAHAM: Please present Mr. Jacobs.

3 CLERK OF COURT: What saith for the Defense?

4 MR. WILLIAMS: Please excuse the juror from the trial
5 of this case.

6 CLERK OF COURT: Return to your seat, please, sir.

7 134, Jessica Rikard. What saith for the State?

8 MR. GRAHAM: Please present Ms. Rikard.

9 CLERK OF COURT: What saith for the Defense?

10 MR. WILLIAMS: Please swear the juror.

11 CLERK OF COURT: Have a seat in the jury box, ma'am.

12 131, Catherine Ratliff. What saith for the State?

13 MR. GRAHAM: Please present Mrs. Ratliff.

14 CLERK OF COURT: What saith for the Defense?

15 MR. WILLIAMS: Please swear the juror.

16 CLERK OF COURT: Have a seat in the jury box, ma'am.

17 Number 5, Jacqueline Anderson. What saith for the
18 State?

19 MR. GRAHAM: Please excuse Ms. Anderson.

20 CLERK OF COURT: Return to your seat, please, ma'am.

21 115, Carl Neeley. All the way back here, sir, to the
22 podium. There you go. What saith for the State?

23 MR. GRAHAM: Please excuse Mr. Neeley.

24 CLERK OF COURT: Return to your seat, please, sir.

25 16, Bonnie Bouknight. What saith for the State?

1 MR. GRAHAM: Please present Mrs. Bouknight.

2 CLERK OF COURT: What saith for the Defense?

3 MR. WILLIAMS: Please excuse the juror from the trial
4 of this case.

5 CLERK OF COURT: Please return to your seat, please,
6 ma'am.

7 Number 15, Phillip Bolin. What saith for the State?

8 MR. GRAHAM: Please present Mr. Bolin.

9 CLERK OF COURT: What saith for the Defense?

10 MR. WILLIAMS: Please swear the juror.

11 CLERK OF COURT: Have a seat in the jury box, sir.

12 Number 10, Bryan Barnes. What saith for the State?

13 MR. GRAHAM: Please present Mr. Barnes.

14 CLERK OF COURT: What saith for the Defense?

15 MR. WILLIAMS: Please swear the juror.

16 CLERK OF COURT: Have a seat in the jury box, sir.

17 Number 1, Charles Adams. What saith for the State?

18 MR. GRAHAM: Please present Mr. Adams.

19 CLERK OF COURT: What saith for the Defense?

20 MR. WILLIAMS: Please swear the juror.

21 CLERK OF COURT: Have a seat in the jury box, sir.

22 Alternates, Your Honor?

23 THE COURT: Yes, ma'am. One alternate, strikes are
24 one and two.

25 CLERK OF COURT: 149, Terry Smith. What saith the

1 State?

2 MR. GRAHAM: Please present Ms. Smith.

3 CLERK OF COURT: What saith the Defense?

4 MR. WILLIAMS: Please excuse the juror from the trial
5 of this case.

6 CLERK OF COURT: Return to your seat, please, ma'am.
7 176, John Wheeler. What saith for the State?

8 MR. GRAHAM: Please excuse Mr. Wheeler.

9 CLERK OF COURT: Return to your seat, please, sir.

10 20 -- excuse me. 105, Carter McDaniel. What saith
11 for the State?

12 MR. GRAHAM: Please present Mr. McDaniel.

13 CLERK OF COURT: What saith for the Defense?

14 MR. WILLIAMS: Please swear the juror.

15 CLERK OF COURT: Have a seat in the jury box, sir.
16 That's the alternate, Your Honor.

17 THE COURT: Any motions regarding the jury selection
18 process from the State?

19 MR. GRAHAM: Not from the State, Your Honor.

20 THE COURT: From the Defense?

21 MR. WILLIAMS: None from the Defense, Your Honor.

22 THE COURT: Ladies and gentlemen of the jury panel,
23 I'm going to momentarily ask you to step to your jury room
24 with the bailiff. I'm going to give you some instructions
25 first, and also give you a task -- your first task as a

1 jury.

2 The instructions are you are not to discuss the case
3 amongst yourself during this brief recess. You're not
4 authorized to discuss this case with your fellow juror,
5 with your family, with your friends, or with anyone else,
6 until you've heard all the evidence in the case, the charge
7 on the law, and it has been presented to you for your
8 deliberations. Then and only then may you discuss the case
9 with your fellow jurors, and then and only then in your
10 jury room.

11 I would ask you to remember to keep an open mind about
12 this trial, and do not -- I repeat -- do not discuss or
13 begin your deliberations until you are instructed to do so
14 by the Court.

15 As far as your first task as a jury, I would ask that
16 you select among the primary 12, your jury foreperson. It
17 can be any one of you, except Mr. McDaniel. I'm sure Mr.
18 McDaniel would be a fine jury foreperson, but right now he
19 is in the status of an alternate, so he may not be selected
20 as the foreperson of this jury. But it can be any one of
21 the -- of you original 12 that have been selected as jurors
22 in this case.

23 Again, that does not have to be a long campaign to be
24 elected to that position. Once you have determined which
25 among your number will serve as the foreperson, if you

1 would knock on your jury room door -- write that name out,
2 knock on your jury room door, and give that name to the
3 bailiff. We will receive you back into the courtroom.

4 The -- I need to keep up with two jurors primarily. I
5 need to keep up with 13 people and our foreperson. The
6 foreperson sits closest to the Court, where this young man
7 is seated in the blue-and-white-striped shirt. And I need
8 to keep up with the alternate.

9 The others on the jury, y'all may sit wherever you
10 want. I find many juries are somewhat territorial. If you
11 want to sit in the same seat every time, that's fine with
12 me, also. I try to end up knowing everyone's name before a
13 trial is through, so I like for you to sit in the same
14 place. So when I tell juries that, I think they like to
15 move around to keep me a little off balance the whole time.

16 With all that being said, ladies and gentlemen, if you
17 would please go with our fine bailiffs to your new
18 temporary home, your jury room. Thank you very much.

19 (The jury exits the courtroom at 11:42 a.m.)

20 (Sotto voce discussion between the Court
21 and Clerk of Court.)

22 THE COURT: Jurors -- members of the jury panel that
23 were not fortunate enough to be selected as a member of the
24 panel for the trial of this case, do not give up hope. The
25 week is young; there are many cases to be tried.

1 Momentarily, I'm going to release you from your
2 service for the remainder of the day, ask you to please
3 call your juror information number -- your juror
4 information hotline, or check on the internet, after 6:00
5 p.m. tonight, after 1800 hours tonight. If you would
6 please either call, or check on the internet, you are now
7 known as "the balance of the panel." It will give you
8 further instructions concerning your jury service for the
9 remainder of this week.

10 So is there anyone that does not understand those
11 instructions, any questions about that, please let me know
12 now. Yes, sir?

13 JUROR: If we're excused --

14 THE COURT: I can't quite hear you.

15 JUROR: If we're excused this evening, does that mean
16 we're excused for the rest of the week or --

17 THE COURT: No, sir. Generally, what happens -- it
18 depends on how long this trial takes. So you may call back
19 at six and they may tell you to report back tomorrow, or
20 call back the next day. It doesn't -- it does not
21 necessarily mean that. You never know how long a
22 particular trial may take.

23 As an aside, back in the old days, which I remember
24 very vividly, we did not have a call-in system. So we
25 would bring the jury back either every afternoon at two

1 o'clock. Mr. Williams also remembers this; he -- he may
2 not want to admit that he remembers this. But we would
3 bring the jury back at two o'clock every afternoon, or at
4 nine o'clock every morning.

5 Of course, technology has hopefully minimized your --
6 your inconvenience to where you could just call in now.
7 And it -- it'll prompt you and give you other instructions
8 for the process throughout the week.

9 With that being said, any other questions?

10 (No response.)

11 THE COURT: It's been my pleasure to be with you this
12 morning. Again, I salute you for your citizenship, and I
13 realize you're not volunteers. But your willingness to
14 serve -- because I know among your number, there were
15 several that could have asked for exemptions and chose not
16 to do so. I appreciate that very much.

17 With that being said, you're excused for the remainder
18 of the day -- the evening. Please call after 6:00 p.m.

19 (Balance of jury panel exits the courtroom at 11:45 a.m.)

20 THE COURT: All right. Solicitor, are there any
21 motions?

22 MR. GRAHAM: Yes, Your Honor. There is one pre-trial
23 motion that I'd like to address. I've -- I've given Mr.
24 Williams a copy; I'm not sure if I put one up on your desk
25 or not. It has to do with the defendant's ten-year-old

1 daughter and seven-year-old son in a motion to have Mr.
2 Bryan removed to the media room during their testimony.

3 THE COURT REPORTER: Excuse me. To what room?

4 MR. GRAHAM: The media room.

5 THE COURT REPORTER: The media room.

6 MR. WILLIAMS: Your Honor, I -- I may have a couple of
7 motions. If -- if I could have two seconds to go to the
8 little boys' room here a second. If you're going to let
9 the jury go ---

10 THE COURT: Well, I -- I was going to see the timing
11 of the motions. Yes, I would let you go to the restroom,
12 Mr. Williams.

13 MR. WILLIAMS: Okay. Thank you, Your Honor.

14 THE COURT: Then we'll decide what to do with your
15 motions.

16 THE COURT: All right. We're back on the record. How
17 long do you think these motions will take, Solicitor?

18 MR. GRAHAM: Your Honor, right now I do -- if we were
19 going to do it right now, I would ask that we have about a
20 15-minute break. The counselor that I was planning on
21 calling is meeting with the children one last time. I'm
22 not sure whether she will be the only witness and there
23 might be one other. So it would be probably one or two
24 witnesses.

25 THE COURT: All right. And you have motions, Mr.

1 Williams?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: And what motions do you have?

4 MR. WILLIAMS: Your Honor, there would be a motion --
5 a motion for sequestration. There would also be a motion,
6 Your Honor, which is somewhat unusual, with dismissal of
7 the CDVHAN on the basis that my client has already been
8 convicted of CDV. So in essence a double jeopardy
9 argument.

10 There may be some issues as we get into the trial,
11 Your Honor, dealing with photographs which may be --
12 attempted to be introduced. But -- but that would be
13 evidentiary in nature.

14 MR. GRAHAM: Videos?

15 MR. WILLIAMS: Yes, the videos.

16 (Sotto voce discussion between the Court
17 and the law clerk.)

18 THE COURT: All right. Well, I have -- I have two
19 matters scheduled at two o'clock: a status conference and
20 a bond-setting with Solicitor Dixon, I think, and Mr.
21 Kennedy, the -- the bond hearing. Do you want me to bring
22 this panel back then at 2:30?

23 MR. GRAHAM: I think that would probably be
24 appropriate, Your Honor.

25 THE COURT: Yes, sir, Mr. Williams?

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: All right. We'll do that.

3 (To the Bailiff) If you'd bring us our jury, please?

4 (The jury enters at 11:53 a.m.)

5 THE COURT: Perfect. Mr. Adams, I appreciate you --
6 your willingness to serve as the foreperson of this jury.

7 As in most cases, I have some matters to take up,
8 outside of your presence, with the attorneys. Rather than
9 keep you cooped up in the jury room, I'm going to release
10 you for your luncheon recess, and take care of these
11 matters. And then we will have our lunch and we'll
12 reconvene, as far as far as y'all are concerned.

13 I would ask you to please be back in your jury room at
14 2:30. At 1430 hours, if you'd please be back in your jury
15 room, we should, hopefully, be in a position to promptly
16 start the trial at that time.

17 You will be able to repeat this to -- back to me
18 before the trial is over, I'm sure. But please remember,
19 until I advise you to begin your deliberations, you must
20 not discuss this case with anyone, including your fellow
21 jurors, your friends, family, lunch-mates, or anyone else.
22 After the case is submitted to you, you must discuss it
23 only in the jury room, with your fellow jurors.

24 As I stated earlier, the attorneys and parties in this
25 case have been advised that they are not to talk to you at

1 all. So if you see anyone involved in the case and they do
2 not even say "Hello," they are not being unfriendly; they
3 are merely following my instructions.

4 During the trial, and this -- I say this in each and
5 every case. It's not specific to this case. Do not read,
6 listen to, or watch any news reports about the trial, if --
7 if any there should be. Do not do any independent
8 investigation, or any investigation on your own, or on the
9 internet. This includes anything that may be in the
10 newspapers or on the internet, radio, or television.

11 During a trial, you may not consider anything that you
12 may have read or heard about the case outside of the
13 courtroom, whether before or during the trial. The
14 evidence will come from the witnesses sworn under oath,
15 testifying from this witness stand and any and all exhibits
16 that may be introduced by the parties in this trial.

17 It is important that you keep an open mind and not
18 decide any issue in the case until you've heard all the
19 evidence, the parties have made their closing arguments,
20 and I have instructed you on the law of the case.

21 With all that being said, Mr. Foreman, ladies and
22 gentlemen, you are now excused. I would ask you to please
23 be back in your jury room promptly at 2:30 this afternoon,
24 and I hope you all have a pleasant lunch. Thank you very
25 much.

1 (The jury exits at 11:56 a.m.)

2 THE COURT: All right. Solicitor, did you -- you
3 mentioned you needed a few minutes?

4 MR. GRAHAM: I did, Your Honor. If you wanted -- we
5 can do this one now, but I would like about 15 minutes to
6 talk with my expert. She's actually met with the children
7 this morning while we were doing jury selection for the --
8 for another time. And I wanted to find out what she had to
9 say. So I would say if you wanted to proceed on that now,
10 to give me 15 or 20 minutes. Otherwise, if you want to
11 wait and come back at 1:15 or 1:30, we could do it then.
12 Whatever you ---

13 THE COURT: No. I -- I don't -- I don't want to wait.
14 I would like to get them all off the -- I'd like to get the
15 decks cleared before we break for our luncheon recess.
16 Well, then let's say about 12:15. Now, do you have
17 objections to sequestration?

18 MR. GRAHAM: Yes, Your Honor. I don't think that
19 there's -- it's necessary in this case.

20 THE COURT: Well, you can certainly keep your chief
21 investigating officer. You can certainly keep the victim -
22 - the victims authorized to be here.

23 Are there particular fact-specific witnesses, Mr.
24 Williams, you're requesting? I mean, I can't -- I can't --
25 I know some of these witnesses appear to be like "chain

1 witnesses" and such. I only know that from prior
2 experience and hearing Ms. Harmon, Ms. Horton, and Ms.
3 Kyser testify.

4 MR. WILLIAMS: They -- there are some chain witnesses,
5 as Your Honor's picked up on dealing with the introduction
6 of certain evidence, which would be some photographic
7 evidence, if you will; and the condition of the photographs
8 and how they were preserved, and things like that.

9 But what's more interesting than that, Your Honor, is
10 that this involves a period of time, as Your Honor's picked
11 up on on the indictment, where supposedly there was a
12 kidnaping, and there were at least three individuals in --
13 in the -- I guess, in the residence. And there's -- we're
14 concerned that perhaps the children may overhear what the
15 mama is saying on the stand, and the mama may hear what the
16 children are saying on the stand. And obviously, it would
17 create the problem -- they -- they obviously would be
18 influenced by ---

19 THE COURT: So -- so you're just -- you're referring
20 to Rachael Bryan, and the children of Rachael Bryan and
21 Rodney Bryan.

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: That's -- that's -- that's -- that's your
24 focus of your sequestration? Those three witnesses?

25 MR. WILLIAMS: Yes, sir. That plus, there is -- there

1 is at least one officer which I would be -- Officer Setree
2 would be able to sit in here anyway.

3 THE COURT: That's right.

4 MR. WILLIAMS: Uhh ...

5 THE COURT: If he's the chief officer ---

6 MR. WILLIAMS: He is.

7 THE COURT: --- and I -- I take it that he is. He's
8 at the counsel table.

9 MR. WILLIAMS: Other than the chain information, that
10 is the condition of the camera and what changes have been
11 made to the -- to the photographs as they were taken out.
12 That would be the only other -- only other witnesses that
13 we'd be concerned about, what they'd testify to and who
14 overheard what.

15 THE COURT: So you -- you're talking about primarily
16 the fact -- alleged fact witnesses that at the event that
17 were in the residence.

18 MR. WILLIAMS: Yes.

19 THE COURT: And -- all right. Now, Ms. Rachael Bryan
20 will be allowed to stay under the --

21 MR. WILLIAMS: She would.

22 THE COURT: -- victim rights. Solicitor, what about
23 the two children?

24 MR. GRAHAM: Your Honor, I have -- I don't think it's
25 proper and have no intention of having them in the room. I

1 have no problem with them being excluded during the trial.

2 THE COURT: All right. I -- I'm sorry. I
3 misunderstood.

4 MR. GRAHAM: I have -- I have no problem with the
5 children -- being Daniel and Amy B. -- with not being
6 present except for when they testify.

7 THE COURT: All right. And so they will be subject to
8 the sequestration order then. And that's -- what are their
9 names, Solicitor?

10 MR. GRAHAM: It's Amy B. she's ten years old; and
11 the other one's name is Nathaniel, but he goes by Nathaniel B.
12 . And he is seven.

13 THE COURT: All right. And do I -- Mr. -- Mr.
14 Williams, I've misunderstood. Do you want some of those
15 chain people sequestered?

16 MR. WILLIAMS: I -- I would like the chain people
17 sequestered. And that is because there is an issue in this
18 particular case that the evidence which is going to be
19 introduced, as to whether or not it was in the same form
20 when it was originally received as to what it was when it
21 was initially -- where it was subsequently turned over to
22 the police.

23 THE COURT: Well, get -- give me a list of those.
24 Give me a list of the witnesses and let me -- and we'll --
25 we'll discuss it. We'll -- we'll be in recess 15 minutes

DIRECT EXAMINATION BY MR. GRAHAM - DIXIE NEFF

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1 then. All right? Thank you very much.

2 All right, Solicitor, you want to take up this motion?

3 You object to his motion concerning the children, Mr.
4 Williams?

5 MR. WILLIAMS: Yes, Your Honor.

6 THE COURT: All right. You want to take up this
7 motion, Solicitor, at this time?

8 MR. GRAHAM: Yes, Your Honor. The State has one
9 witness they'd like to call in the matter.

10 THE COURT: All right.

11 MR. GRAHAM: Dixie Neff.

12 THE COURT: All right. If you'd come around and be
13 sworn, please.

14 DIXIE NEFF, having been first duly
15 sworn and seated, testifies as follows:

16 MS. NEFF: My name is Dixie Neff, N-e-f-f.

17 THE COURT: And you may pull that microphone down
18 towards you, if you don't mind, Ms. Neff. Thank you.

19 All right, Solicitor.

20 MR. GRAHAM: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. GRAHAM:

22 Q Ms. Neff, what's your educational background?

23 A I have a -- a master's and an Education Specialist
24 degree in school counseling.

25 Q What about do you have an undergraduate degree as

DIRECT EXAMINATION BY MR. GRAHAM - DIXIE NEFF

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1 well?

2 A Yes. It's in journalism.

3 Q In addition to your educational experience, do you
4 have any job experience as it relates to counseling
5 children?

6 A Yes, I do. I have been working with children
7 elementary age and middle-school age for four years.

8 Q In what capacity have you been working with them?

9 A In counseling them.

10 Q Did you have a job that you did that with?

11 A And I currently have a part-time job at the Dickerson
12 Center as well, working with abused children.

13 Q In addition to your part-time job, do you also have a
14 full-time job?

15 A Yes. I'm a school counselor in Richland 1 School
16 District.

17 Q How long have you been with the Richland 1 School
18 District?

19 A Three years.

20 Q Before the Richland 1 School District, were you also a
21 guidance counselor somewhere else?

22 A Yes. I was in Lexington 1 School District for one
23 year.

24 Q So how long have you been a guidance counselor in --
25 in total?

DIRECT EXAMINATION BY MR. GRAHAM - DIXIE NEFF

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1 A Four years.

2 Q What does a guidance counselor do?

3 A Lots of different things. We teach the children
4 proactive skills, but we also work directly individually in
5 counseling them, and in group counseling.

6 Q In addition, did you say that you're working at the
7 Dickerson Center as well?

8 A Correct.

9 Q What is the Dickerson Center?

10 A We are a nonprofit organization that works with
11 victims of sexual abuse in children; or children who have
12 been victims of domestic abuse, or witnesses of domestic
13 abuse.

14 Q How long have you been working with the Dickerson
15 Center?

16 A Just a little over a month and a half.

17 Q During your time as a guidance counselor and at the
18 Dickerson Center, approximately how many children do you
19 think that you've seen that have -- that have been victims
20 of or seen episodes of domestic violence?

21 A I've seen at least 30.

22 Q In your capacity -- in what manner have you seen those
23 children? How did they come to you?

24 A In -- in the school system, they come to me because
25 they're acting out academically or behaviorally. So we see

CROSS-EXAMINATION BY MR. WILLIAMS - DIXIE NEFF

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1 them and work with them individually, and usually through
2 discovery find out that they have been victims of domestic
3 abuse or some other type of abuse.

4 Q In addition to your practical experience, have you
5 also been to any seminars related specifically to children
6 that testify in court?

7 A Yes. I've been to a crisis and trauma counseling
8 seminar at Gardner-Webb University, and I also am currently
9 -- I have my LPCI license, Licensed Practicing Counselor
10 Intern, and I am under supervision for that as well. So we
11 discuss cases in the supervision.

12 Q And this seminar in the case that you were discussing,
13 those dealt with court issues and children?

14 A Yes. The supervisor that I have has over 20 years
15 experience working with children.

16 Q Your Honor, at this time, the State would offer Ms.
17 Neff as an expert in children counsel.

18 THE COURT: All right. Mr. Williams?

19 MR. WILLIAMS: Thank you, Your Honor.

20 **CROSS-EXAMINATION BY MR. WILLIAMS:**

21 Q Is it Ms. Neff, N-e-f-f?

22 A That's correct.

23 Q Ms. Neff, have you ever been certified by a circuit
24 court judge as an expert in any area?

25 A No.

CROSS-EXAMINATION BY MR. WILLIAMS - DIXIE NEFF

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1 Q And in terms of -- essentially what you have told us
2 today, you are essentially a guidance counselor; is that
3 correct?

4 A I'm a school counselor. The program now requires a
5 master's plus 30; so, actually, I have 30 more hours of
6 training and -- and hands-on work with students.

7 Q And in terms of your knowledge about, I guess, the
8 children that we're talking about, on how many occasions
9 have you actually talked with these children?

10 A The Bryan children?

11 Q Yes.

12 A Two times.

13 Q And that would be when?

14 A On June 16, '08, and July 7, '08.

15 Q So other than that, you've had no other contact with
16 them?

17 A That's correct, sir.

18 Q And do you have -- are you board certified in any
19 area?

20 A I'm -- I have a national board certification in
21 counseling.

22 Q In guidance counseling?

23 A You have to have that in order to qualify for the LPC
24 exam to pass it.

25 Q That's all the questions I have.

CROSS-EXAMINATION BY MR. WILLIAMS - DIXIE NEFF

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1 THE COURT: All right. Do you have objections to Ms.
2 Neff being qualified as an expert in children's counseling?

3 MR. WILLIAMS: Insofar as it relates to the courtroom
4 setting, I do, Your Honor. Not if she is going to speak in
5 regards to education. She may be very knowledgeable about
6 students and studies, but we don't feel that she is an
7 expert in regards to how a child will react when -- when
8 placed in the courtroom setting.

9 THE COURT: Well, the issue is not how a child would
10 react in the courtroom setting. The issue is how a child
11 will react -- this particular child, or these particular
12 children will react having to testify in the presence of
13 the defendant, that is their father, correct?

14 MR. WILLIAMS: Correct. So we would object, because
15 in -- in -- in that scenario, Your Honor, you are talking
16 about a courtroom setting, if you will. You're not talking
17 about an event which occurs at school.

18 THE COURT: All right. Solicitor, do you care to
19 respond?

20 MR. GRAHAM: Your Honor, I think that she -- under the
21 rules of 702, 3, and 4, I believe that she is an expert.
22 She has more training, education, and experience than --
23 than most of us in this courtroom at this time. I don't
24 know that there is anybody who is an expert, if Mr.
25 Williams wants to find an expert who's -- specifically on

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1 how a child would behave in the courtroom. I don't know
2 that even exists.

3 She has testified that she has counseled children who
4 have witnessed domestic violence before; she has gone to a
5 seminar dealing with this matter specifically -- children
6 coming to court to testify and to face the perpetrators of
7 domestic violence; she has dealt with these children
8 specifically in questioning them and discussing with them
9 their reactions if they did come to court and testify.

10 DIRECT EXAMINATION BY THE COURT:

11 Q All right. How many children would you counsel in an
12 average month?

13 A Average month? I see about 10 to 15 students per
14 month individually, and I see probably 30 or 40 in group
15 sessions.

16 Q And you would have been seeing about 10 or 15 for the
17 four years you have been a school counselor?

18 A Yes, sir.

19 Q And what percentage of those would have been either
20 victims of domestic violence or witnesses of domestic
21 violence?

22 A Many of them that I know of, probably I'd say 40 -- 30
23 or 40 percent. But the rest, they just -- we don't know
24 the background history often when they come to us. We just
25 see how they're acting out.

1 Q And then there was some testimony about the Dickerson
2 Center, where you've also been part-time for about a month
3 and a half; is that correct?

4 A Yes, sir.

5 Q And how many children have you seen there?

6 A I have seen six children there.

7 Q Were any of those children victims of domestic abuse
8 or witnesses to domestic abuse?

9 A Yes, sir. They're victims of domestic abuse
10 witnesses, and some sexual abuse, also.

11 THE COURT: All right. Well, under 702, I'm going to
12 find she's qualified as an expert in children's counseling.
13 I would note with some interest, although I don't have the
14 Court of Appeal's decision, I have the Supreme Court
15 decision in *State vs. Bray*, 342 South Carolina 23, a 2000
16 case, where the issue was whether or not the Court should
17 authorize a closed-circuit testimony of a child victim.

18 The individual that was offered as an expert in that
19 case and qualified was also in the field of counseling
20 services for victims of child sexual abuse. She had a
21 Master's degree in Social Work. As I understand it, Ms.
22 Neff has a Master's in Education and School Counseling.
23 And she -- the expert in *Bray* had worked for eight years as
24 a counselor with -- at Naval Family Services, during which
25 time she had seen a minimum of 25 cases per year of child

1 victims of sexual abuse, and she was not currently
2 specializing in child sexual abuse.

3 So I think it goes to the weight of her testimony, not
4 the admissibility. I think she is qualified based on her
5 educational level, the number of years she has been a
6 school counselor, both in Lexington District 1 and Richland
7 District 1. Further, the fact that she has attended
8 seminars on crisis management at Gardner-Webb, she is under
9 supervision of a 20-year experienced counselor, and also
10 her involvement in counseling at the Dickerson Center.

11 With that being said, I will find she is qualified as
12 an expert in children's counseling.

13 Solicitor, you may proceed.

14 MR. GRAHAM: Thank you, Your Honor.

15 RE-DIRECT EXAMINATION BY MR. GRAHAM:

16 Q Ms. Neff, were Amy and Nathaniel B. referred to the
17 Dickerson Center?

18 A Yes, they were.

19 Q Now, prior to you seeing them, did somebody else see
20 them?

21 A Yes. Shortly after the incident in September of '07,
22 they were seen three times by another counselor.

23 Q And were you able to either talk with that counselor
24 or review that counselor's notes?

25 A I was able to review the notes.

RE-DIRECT EXAMINATION BY MR. GRAHAM - DIXIE NEFF

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1 Q And what, if anything, did you find out in regards to
2 Amy and Daniel and what they had to say in the counseling
3 sessions?

4 A There -- the -- the -- basically, the notes stated
5 that the children were acting out in different ways. Amy
6 was withdrawn at school, and she was not participating.
7 She was having difficulty concentrating. And Daniel was
8 acting out in school aggressively, and he was getting in
9 trouble a lot. And he also was having nightmares, and was
10 having some wetting of himself and soiling himself.

11 Q What, if any, information does the caseworker's notes
12 reflect as to the type and length of violence that they had
13 been exposed to?

14 A The notes stated very briefly that it had been on and
15 off for pretty much the whole time that they had -- for
16 their whole life. And then it was also noted about the
17 last incident, which was worded "extremely violent."

18 Q Did the notes reflect whether the children themselves
19 experienced abuse from their father?

20 A There --

21 Q You can refer to your report if you need to.

22 A The incident that I read about was when the last --
23 the incident in September occurred -- the extremely violent
24 incident -- that they were -- Daniel was squeezed and --
25 when he ran away -- squeezed by his father and told not to

1 tell.

2 Q Did the notes indicate whether Amy and Daniel, or Amy
3 or Daniel, were afraid of their father?

4 A Yes. The notes indicated, and I have also -- when I
5 have spoken with them, also gained that information.

6 Q Is that for one or for both of them?

7 A Both of them.

8 Q Did either one of them express any opinion about his
9 absence and their not seeing him?

10 A Basically, now things are calmer at home. They're --
11 the children are happy that they don't have to be afraid
12 anymore.

13 Q Were either of the children diagnosed with any
14 disorders?

15 A Yes. They were diagnosed with adjustment disorder.

16 Q One or both of them?

17 A Both of them.

18 Q What is an "adjustment disorder"?

19 A Adjustment disorder -- do you mind if I look at my
20 notes?

21 Q No, ma'am.

22 A Okay. Children with adjustment disorder are given
23 this diagnosis because they experienced a psychological
24 response to an identify a -- identifiable stressor. This
25 results in emotional and behavioral symptoms. Adjustment

1 disorders usually resolve in six months of the termination
2 of the stressor. However, the symptoms can persist or may
3 reoccur if the stressor returns or is chronic. And kids
4 often, at the Dickerson Center that are in these
5 situations, are given this diagnosis, because when the
6 stressor's removed, they usually can begin to heal.

7 Q Did you diagnose them with adjustment disorder, or was
8 that somebody else?

9 A Somebody else diagnosed -- the original counselor that
10 saw them.

11 Q And have you had an opportunity to meet with Amy and
12 Daniel yourself?

13 A I have. Twice.

14 Q Actually three times, maybe, counting today?

15 A Three times counting today.

16 Q Can you tell me about the three times you met with
17 them and where they were; and what happened during those
18 counseling sessions?

19 A Uh-huh. The first time I see children, of course, as
20 a counselor, I try to develop rapport. So I'm just getting
21 to know them, asking them questions, and I also do client-
22 centered play therapy with kids.

23 Daniel's play was erratic; he couldn't stay focused on
24 one particular thing; he was fairly aggressive in his play,
25 which is not totally uncommon with boys, but it was a

1 little bit more scattered. The second time I saw them, his
2 play had improved greatly. He was organized in his play
3 and was able to focus for longer periods of time.

4 We did not discuss a lot about the past, but I did ask
5 them how they're doing now. And they were -- they would
6 state that they're so much happier and so much calmer and
7 that they feel safe.

8 Q When you met with them earlier this morning, was there
9 any change from what you found?

10 A Exactly the same.

11 Q Do you have an opinion about whether Amy and Daniel
12 should have to be in court with their father to testify
13 against him?

14 A It's my opinion that they should not have to face him
15 in court; that if this happens, that the adjustment
16 disorder could reoccur, because they are being -- they're
17 being faced with the stressor, which is their father. And
18 so if -- if it reoccurs, which is highly likely it could,
19 it could manifest itself into different symptoms, all of
20 which are symptoms that they've already had. And I -- they
21 could even go further.

22 Q Now, are you speaking in general terms, or are you
23 talking about Amy and Daniel?

24 A Both.

25 Q Do you have an opinion as to being -- in addition to

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1 being exposed to the stressors and what might result and
2 regression from that, do you have an opinion about what
3 might happen when they're in the courtroom and actually
4 trying to convey their story?

5 A Uh-huh. They are just now starting to feel safe, and
6 part of that is because they don't have to face the idea
7 that they would have to see their father again. So if they
8 get in court and they have to face him, they could shut
9 down.

10 MR. GRAHAM: Your Honor, I have no further questions
11 for Ms. Neff. Thank you, ma'am.

12 MS. NEFF: Thank you.

13 THE COURT: Thank you, Solicitor.

14 Mr. Williams?

15 MR. WILLIAMS: May it please the Court?

16 RE-CROSS EXAMINATION BY MR. WILLIAMS:

17 Q Ma'am, in reviewing the notes that you typed up for
18 the solicitor, you have typed in here that you saw the
19 children on or about June the 16th of 2008, at the
20 Dickerson Center, and that (as read): "Mom gave me some
21 background and stated that the children were doing fairly
22 well now and beginning to feel safe."

23 A Uh-huh.

24 Q Now, earlier in your testimony, you -- you indicated
25 to the Court that this was coming from the children --

1 A Uh-huh.

2 Q -- to you.

3 A Correct. Both. Uh-huh.

4 Q All right.

5 A It's not uncommon to have to -- we interview parents
6 always before we see the children.

7 Q Well, now, are you saying today that your testimony is
8 based on what mom said to you, or is it conversations that
9 you had with the children?

10 A Conversations I had with the children.

11 Q All right. And in that you haven't said anything at
12 all about it, did you ask the children whether or not they
13 were concerned about testifying today?

14 A The last time I met with them, I knew that court was
15 approaching the next week, and so I did ask them.

16 Q And in that you saw them this morning, why did you not
17 ask them this morning?

18 A I did ask them this morning as well.

19 Q Okay. And what did they say?

20 A It's basically a repeat of what happened on July 7th.

21 Q And what -- what did they say?

22 A They said that they were afraid.

23 Q They were afraid. Did they ---

24 A Uh-huh.

25 Q --- indicate any way that they could not testify, or

1 that it would cause them problems in regards to testifying?

2 A I didn't ask that specifically. I just asked how they
3 felt about it. I don't want to re-traumatize the children.

4 Q Now, you indicated in reference to the young boy that
5 he had problems in terms of focusing on the first time that
6 you saw him; the second time, he did better with his
7 playing?

8 A Uh-huh.

9 Q What are you ---

10 A He's improving.

11 Q --- what are you referencing in regards -- how did --
12 what play did he have to do for you?

13 A We do -- I do client-centered play therapy, and I have
14 been trained in that. And what they do is they actually
15 set up a sand tray; or the room is filled with toys that
16 they can play with, and we watch what they choose and we
17 observe how they play. And based on the training I had, I
18 can -- I can try to figure out where they are in their
19 healing.

20 Q And how would you figure that out?

21 A Basically, children that are traumatized are very
22 erratic in their playing, and they're very, very
23 aggressive. They have a hard time focusing on one
24 particular thing, and they go from one item to the next.

25 Q And what did he do on that particular -- on that

1 particular day to indicate to you that he was having a hard
2 time focusing on what he was doing, that initial time?

3 A He would go from one particular toy to the next. He
4 would throw toys; he would grab at things; he was just more
5 aggressive.

6 Q And what did he do the second time?

7 A He would be able to -- I asked him to make me a
8 picture in the sand tray, and he was able to pull out toys
9 very calmly, organize them, and then place them in the sand
10 tray to create a picture.

11 Q Did you ask him the first time to create a picture in
12 the sand tray?

13 A Uh-huh. I do that every time I see a child.

14 Q And it's your opinion this is based on the healing and
15 trauma versus learned behavior in regards to accomplishing
16 a task that he had already experienced? You're same
17 question and now he had learned to do it?

18 A Would you repeat that?

19 Q You asked him to do the same thing on the second time
20 --

21 A Right.

22 Q -- and he appeared to have done it the second time.

23 A Uh-huh.

24 Q Is it your opinion that the reason he could do it the
25 second time was based on the less trauma in his life versus

1 the learned behavior that he had learned, having gone
2 through this process before?

3 A Okay. What we know about play and how it manifests
4 itself with children is that as they begin to heal, they
5 can organize their thoughts better. It's why academic
6 performance improves when children are removed from the
7 traumatic stressors.

8 Q And -- and what did you ask the daughter to do?

9 A I don't -- I didn't ask Amy to play; I just talked to
10 her --

11 Q So --

12 A -- because of her developmental level.

13 Q So in terms of -- of the -- of the female child, there
14 was nothing you asked to do that would indicate whether or
15 not she was improving or not improving.

16 A She just -- we just talk about everything. But I'm a
17 counselor; I'm not -- I'm not going to treat her like an
18 attorney would.

19 Q And how would an attorney treat her?

20 A I don't -- I don't fire questions; I just work with
21 kids and let them play and be children.

22 Q Are you saying that -- that answering questions is the
23 problem?

24 A Can you repeat that, please?

25 Q You're indicating that the problem with children

1 testifying has to do -- that any testimony for these
2 children is a problem.

3 A No. What I'm saying is that you are questioning how I
4 observe the play, and how I interacted with the children.
5 And I'm just saying I go at it from a counseling
6 standpoint.

7 Q So it's not a problem for an attorney to question the
8 children?

9 A No. But that's not what I am, I am a counselor.

10 MR. WILLIAMS: Your Honor, I don't have any other
11 questions.

12 THE COURT: Re-direct, Solicitor?

13 MR. GRAHAM: None, Your Honor.

14 **RE-DIRECT EXAMINATION BY THE COURT:**

15 Q Ms. -- Ms. Neff, do you have an opinion of whether or
16 not Amy would be traumatized if she were required to
17 testify in front of her father?

18 A Yes, sir. It is my opinion that the children would be
19 traumatized if they had to testify, and I cannot tell you
20 for certain how that would play out or manifest itself in
21 the symptoms.

22 Q And -- and specifically, that's Amy and Daniel?

23 A Yes, sir.

24 Q And you said if they have to testify, if --
25 specifically, if they had to testify in front of their

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1 father?

2 A Yes, sir. I believe that they would possibly shut
3 down.

4 Q All right. Then, is this -- someone set this up here
5 on the bench. Is that the copy of your report?

6 A Yes, sir.

7 THE COURT: All right. Solicitor, could I mark this
8 as a Court's exhibit?

9 You have any objections, Mr. Williams?

10 MR. WILLIAMS: Your Honor, no objection to that.

11 THE COURT: All right, then.

12 Q Let me ask you this, Ms. -- Ms. Neff. Do you think
13 Amy would tell me, if asked, that she would be afraid to
14 testify in front of her father?

15 A I can't say for certain.

16 Q How about Daniel?

17 A I think there's a highly -- high probability that he
18 would tell you.

19 Q And what -- what is the difference between Amy and
20 Daniel?

21 A I think that the difference is -- is just definitely
22 developmental levels.

23 Q So you -- in other words, you can't say for sure for
24 Amy, because she is at a lower developmental level than
25 Daniel?

1 A No, sir. But mainly age and how -- and where they --
2 she has been -- it seems that she might be more conditioned
3 and has just built herself up. She is -- you can tell
4 she's trying to be very brave.

5 Q All right. Thank you.

6 THE COURT: Any -- any follow-ups, Solicitor or Mr.
7 Williams?

8 MR. GRAHAM: No, Your Honor.

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: All right. Thank you. Thank you, Ms.
11 Neff. You may step down.

12 MS. NEFF: Thank you.

13 MR. GRAHAM: Your Honor, as far as witnesses, that
14 would be the only witness the State has. The children are
15 available for Your Honor, if you would like to talk to
16 them.

17 MR. WILLIAMS: I think I'd like for Your Honor to talk
18 to them.

19 THE COURT: Well, how -- how do you -- how do we
20 conduct that procedure? I read that part of *State vs. Bray*
21 and *Murrell* -- and *Murrell*. I'm not sure how you
22 pronounce that other case.

23 Do you agree that that procedure can be conducted
24 outside of the presence of the defendant, Mr. Williams?

25 MR. WILLIAMS: I do.

1 THE COURT: All right. Do you have another attorney
2 available?

3 MR. WILLIAMS: No, sir. I was served with this motion
4 this morning. Had I known that, I would have had another.

5 (Sotto voce discussion between Mr. Graham
6 and Mr. Williams.)

7 (Sotto voce discussion between the Court and law clerk.)

8 MR. GRAHAM: Your Honor.

9 THE COURT: You know, I -- yes, sir.

10 MR. GRAHAM: We have a suggestion, after consulting
11 with each other. I don't plan on asking any questions; Mr.
12 Williams says he doesn't either. My thought would be that
13 Mr. Bryan could go back to the media room, and he could see
14 and hear what they were hearing, but there would be no
15 reason for them to communicate.

16 THE COURT: All right. Well, I think a -- a close --
17 I -- I listened very closely to Ms. Neff, the expert
18 witness. And I think a close reading of *Bray* does not
19 require me to interview the child witnesses. So I will
20 decline to do so.

21 Mr. -- do -- and you have no other testimony?

22 MR. GRAHAM: No, Your Honor. That's it.

23 THE COURT: Is there any testimony you'd like to
24 present?

25 MR. WILLIAMS: Not on that issue.

1 THE COURT: All right. Would you like to be heard on
2 this issue then, Solicitor?

3 MR. GRAHAM: Very briefly, Your Honor.

4 16-3-1550 of the Code of Laws of South Carolina,
5 Subsection E, states that (as read): "Circuit Court must
6 treat sensitively witnesses who are very young or have
7 special needs, by using closed or taped sessions where
8 appropriate."

9 Looking at the case law, Your Honor, you referred to
10 *Bray*, and there's also *State vs. Lewis*, South Carolina
11 Court of Appeals case; *Maryland vs. Craig*, a U.S. Supreme
12 Court case; *State vs. Murrell*, and *State vs. Cooper*, which
13 are both South Carolina cases.

14 Clearly, Your Honor, Ms. Neff has indicated to the
15 Court in case-specific terms that both Amy and Daniel will
16 be traumatized by testifying in the presence of their
17 father. I don't think that -- some of her statements were
18 general, but most of her testimony dealt specifically that
19 she, in her opinion, felt that it would be traumatic and
20 would be a harm; that they would also -- that would be one
21 issue. And that also the chance that one or both of them
22 would actually shut down in court and not be able to
23 communicate the facts as they were testified to before.
24 And I think for those reasons, Your Honor, that it is
25 proper to exclude Mr. Bryan from the courtroom and set up

1 an alternative means for their -- during the course of
2 their testimony.

3 THE COURT: Thank you, Solicitor. Mr. Williams?

4 MR. WILLIAMS: Your Honor, I'm not sure that we've
5 reached the stage in jurisprudence where a person's
6 constitutional rights can be watered down that greatly. In
7 this particular case, Your Honor, even though there was
8 testimony about traumatization, there was no designation in
9 regards to the long-term effect, or no designation as to
10 really how it would affect these children.

11 We heard a statement, and it was repeated by the
12 solicitor, that they may "shut down." But in all honesty,
13 Your Honor, in any case in which a minor is called to
14 testify, then wouldn't that be the situation? Why would we
15 have minors ever testifying in which they are potential
16 witnesses in the case, unless there has to be a little bit
17 more involved?

18 These children are not victims in this case. We're
19 not using the term "victims" in terms of the specific
20 crimes that we're trying. So if -- if we adopt this type
21 of procedure, then minors -- I'm sure we can always get a
22 counselor to say it's not in the minor's best interest to
23 ever testify. So that's what we're going to see if we --
24 if we wash it -- if we water down the constitutional rights
25 of confrontation against witness.

1 So there's been no indication that these children have
2 received any medication; there's no indication these
3 children been hospitalized; there's no indication these
4 children are of any severe nature significant enough as to
5 indicate that -- that my client shouldn't be able to be
6 present in the trial.

7 THE COURT: Thank you, Mr. Williams.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: Well, if we go from the background of 16-
10 3-1550(E), it directs the Circuit Court to treat
11 sensitively witnesses who are very young, elderly,
12 handicapped, or who have special needs, by using closed or
13 taped sessions when appropriate.

14 I understand Amy is ten years of age; Daniel's seven
15 years of age; is that correct, Solicitor?

16 MR. GRAHAM: Correct, Your Honor.

17 THE COURT: And against that backdrop and, of course,
18 these cases I'm looking also are videotaped cases where the
19 videotape's later shown to a jury. The procedure that
20 we're going -- that we would be using, if I approve it,
21 would be very much different than that.

22 They will be testifying live, in front of the jury.
23 Mr. Bryan's attorney will be present in the courtroom. Mr.
24 Bryan will be in what is known as the "media room," which
25 has a mirrored front, and unless someone opens the door

1 while Mr. Bryan's in there, to the media room, you can't
2 see into that room. And even if they opened the door, you
3 can just see some light coming in. You can't tell who is
4 or is not in there.

5 I think *Maryland vs. Craig* allows the videotaping, and
6 if it allows the videotaping, if there's a case-specific
7 finding and it clearly allows this procedure.

8 I find that Ms. Neff is an expert in the field of
9 child counseling. I have reviewed Court's Exhibit No. 1,
10 which I must give to our court reporter to make sure it
11 gets marked. It gives the history of the Bryan children at
12 the Dickerson Center, indicating that they were referred
13 there shortly after the abuse on 9/20/07; had three
14 sessions with Carolyn Yarborough.

15 The notes indicate the children had witnessed long-
16 term domestic violence over many years. They further
17 indicate the last incident was particularly violent, that
18 the mom had a black eye and possible broken jaw. Were
19 further some statements that the children had experienced
20 abuse from their father over the years. The children were
21 told not to tell anyone for many years.

22 I won't read this entire report, but it is certainly
23 consistent with the testimony given by Ms. Neff. Further,
24 it is her opinion that testifying in front of their father,
25 particularly, who she indicates is a -- the "stressor"; and

1 they now feel safe being outside of his presence, that that
2 would be traumatic, if -- and if they had to face him in
3 court, that they may shut down.

4 Mr. Williams's point's well taken, that well, if I
5 allow this, I water down his -- his confrontational rights,
6 but I'm not doing that. He'll -- Mr. Williams will have
7 the full and complete right to cross-examine these
8 witnesses. And quite frankly, the Court's required, if the
9 motion's brought, whether by the State or the Defense, to
10 give special preference to exactly these types of
11 witnesses.

12 I do not find the need to interview the children
13 particularly. It is not a per-se rule that a circuit judge
14 must do that. The witness has testified clearly that they
15 would be traumatized. I do not find that suggestion a
16 clear requirement that I must take.

17 As far as the procedures are concerned, Mr. Williams,
18 can you have another attorney present with Mr. Bryan in the
19 media room?

20 MR. WILLIAMS: When we break at lunch, Your Honor,
21 I'll try to see if someone's at my office that can come sit
22 with him.

23 THE COURT: All right. And if you cannot, I would
24 certainly appoint an attorney to be present. And further,
25 I would allow you, prior to the conclusion of any cross-

1 examination, to certainly confer with your client. I -- I
2 don't know if there's any other communication that can be
3 set up between Mr. Williams and the attorney for his client
4 in the media room or not.

5 MR. WILLIAMS: Your Honor, would the Court indulge me
6 with placing one more observation on the record?

7 THE COURT: Certainly.

8 MR. WILLIAMS: And that is that with this particular
9 procedure, where the jury is viewing the witnesses in the
10 absence of my client, that may increase the likelihood that
11 they will think that my client is so violent, so bad, and
12 by -- by his absence in the courtroom, that they could
13 determine that -- that he must be guilty of something.

14 THE COURT: Well, I will certainly give them whatever
15 curative instructions. I kind of analogize it to a
16 defendant's failure to testify. If -- if there is some
17 type of instruction that -- where they couldn't use that --
18 they can't take that factor into consideration, his
19 presence or absence, neither for him nor against him; if
20 you want such an instruction, Mr. Williams, I will
21 certainly consider that.

22 Do you have a position on that, Solicitor?

23 MR. GRAHAM: I think whatever you say or what Mr.
24 Williams wants is totally appropriate.

25 MR. WILLIAMS: I -- I think I would like that, Your

1 Honor.

2 THE COURT: All right. Well, then you can have
3 someone -- one of your fine research attorneys prepare me
4 such a suggested instruction during your lunch and recess,
5 also.

6 MR. WILLIAMS: All right, sir.

7 THE COURT: All right? Thank you and let me make sure
8 I get this marked as Court's Exhibit No. 1, Madam Court
9 Reporter.

10 (Court's Exhibit No. 1, Report
11 by Dixie Neff document, marked.)

12 THE COURT: All right. Thank you. Now, let's revisit
13 -- anything further on this issue?

14 MR. GRAHAM: Not here, Your Honor.

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: All right. Let's revisit the
17 sequestration.

18 MR. WILLIAMS: Yes, Your Honor. I think we had
19 determined that the two children would not be in here.
20 There are a number of other witnesses, Your Honor, which
21 were listed. One, you'll note, is Ms. Sandy Vining.

22 THE COURT: Yes. Yes, sir.

23 MR. WILLIAMS: She is actually the person who wrote
24 out the statement for Kirsten, who is the oldest child. So
25 if -- obviously, if Kirsten is called to testify, we would

1 prefer that the two of them not be able to hear each
2 other's testimony. Because, you see, Sandy Vining is
3 writing out this document, which supposedly is what Kirsten
4 is telling her. So obviously the -- the reason for
5 sequestration would -- would appear there, because there
6 may be discrepancies in regards to what she would say --
7 what Kirsten would say she said versus what Sandy Vining
8 would say Kirsten said.

9 THE COURT: Can -- can I ask a question?

10 MR. WILLIAMS: Sure.

11 THE COURT: Who's Kirsten? I don't --

12 MR. WILLIAMS: Kirsten is --

13 THE COURT: -- see her listed.

14 MR. WILLIAMS: Well, I would assume that Kirsten is
15 testifying.

16 MR. GRAHAM: Kirsten is not going to testify.

17 MR. WILLIAMS: Well, then -- then Sandy Vining
18 probably wouldn't have anything to testify to at all then.

19 THE COURT: Well, that -- that may be subject to a
20 different objection, Mr. Williams.

21 MR. WILLIAMS: The point is, Your Honor, if -- if --
22 that's true. That's true.

23 THE COURT: Thank you.

24 MR. WILLIAMS: Your Honor, also, there's a Catherine
25 Ross, which is listed here.

1 THE COURT: That's Dr. Ross.

2 MR. GRAHAM: Yes, Your Honor.

3 THE COURT: All right.

4 MR. WILLIAMS: Again, Your Honor, we wouldn't want Dr.
5 Ross hearing what these witnesses were saying, I guess, the
6 children testifying, in case there are discrepancies in
7 regards to what the children are saying now versus what
8 they said then, versus what the doctor is testifying to.
9 And we could go on.

10 The -- the -- Beth Harmon and -- Beth Harmon and
11 Michael Phipps. These are actually chain witnesses, Your
12 Honor. And the significance of this is that there is a
13 Motorola flip phone which was seized from the defendant.
14 Maybe I need -- maybe I need to go a little bit further.

15 Your Honor, my client, as -- I've already referenced
16 the fact that he was charged with a CDV and was convicted -
17 - pled guilty to the CDV, which is the double jeopardy
18 argument. On the date that he was arrested for the CDV,
19 Officer Setree and another deputy seized the vehicle which
20 he was in, along with a flip phone. The flip phone was
21 looked at, and when it was looked at, there were some
22 photographs which were viewed on the -- I guess, the -- the
23 flip phone.

24 My client was arrested and taken to the Lexington
25 County jail. After he was taken to the Lexington County

1 jail -- which was like on the 20th/the 21st of September,
2 2007 -- there was a hearing with DSS on September the 25th
3 of 2007. After the victim lost custody of her two
4 children, she determined or she decided in a conversation
5 with Mr. Setree that she would assist him in the
6 prosecution of these charges. And she mentioned to Officer
7 Setree that there was a phone which had photographs or
8 videos which were -- which would entail what occurred
9 during these dates of September the 15th to September the
10 16th of 2007.

11 Officer Setree secures the search warrant from Scott
12 Whittle, the magistrate, and that's why his name is on the
13 list of witnesses. They served the search warrant after
14 the victim brings the cell phone, which is the defendant's
15 cell phone, up to the jail.

16 Now, in the serving of the search warrant, they --
17 they get these photographs off the cell phone, but some of
18 the photographs that were originally in the cell phone are
19 not in the cell phone.

20 The cell phone is turned over to the Lexington County
21 Sheriff's Department, to Beth Harmon, as well as ID Tech
22 Michael Phipps. So the issue of what was on the cell
23 phone, what was the condition of the cell phone, whether or
24 not it had been tampered with is crucial to this particular
25 case. Because we know, and I think the State will -- will

1 -- will testify, that some of the photographs, after he was
2 arrested on a CDV, were taken off by the victim, because
3 she didn't want the police to see those photographs. And I
4 -- and when I say that, I -- I don't know that the -- I
5 don't think the Solicitor will -- will state I say -- I --
6 I'm saying anything incorrect.

7 So that is one reason for all of these -- these
8 witnesses need to be sequestered in terms of the chain.

9 THE COURT: Ms. Harmon and Mr. Phipps?

10 MR. WILLIAMS: Ms. Harmon and Mr. Phipps.

11 THE COURT: All right. Well, I'll sequester Mr.
12 Harmon, Ms. -- Ms. Harmon and Mr. Phipps.

13 MR. WILLIAMS: Okay.

14 THE COURT: Dr. Ross?

15 MR. WILLIAMS: Dr. Ross --

16 MR. GRAHAM: Your Honor, Dr. Ross is really the only
17 one that I care about. She's going to offer some expert
18 opinions, and I believe it's important for her to hear what
19 Rachael has to say in expressing her opinion in whatever
20 cross-examination Mr. Williams asks her.

21 THE COURT: I will exclude Dr. Ross from the
22 sequestration order then, Solicitor.

23 MR. GRAHAM: Thank you, Your Honor.

24 THE COURT: All right. So Amy is sequestered;
25 Daniel's sequestered; Deputy Harmon -- Beth Harmon is

1 sequestered; Deputy Mike Phipps is sequestered. I'll deny
2 your motion as far as Dr. Ross. You can certainly point
3 out that she will be in the courtroom during the time the
4 others testify. Any others, Mr. Williams?

5 MR. WILLIAMS: Yes, Your Honor. Julie Gies, G-e -- G-
6 i-e-s.

7 THE COURT: All right.

8 MR. WILLIAMS: She is the employee with the school in
9 which it was reported to her from the children that there
10 had been some sort of a domestic altercation. And she is
11 the one who got the ball rolling. So in regards to what
12 was reported to her at the school versus what the children
13 are testifying to today, then obviously --

14 THE COURT: We just don't have those three -- go
15 ahead, Solicitor.

16 MR. GRAHAM: Your Honor, the only thing I was going to
17 say, if -- if you will let me have Dr. Ross, everybody else
18 can be sequestered.

19 MR. WILLIAMS: We got -- that -- that's --

20 THE COURT: Well, there's no need to sequester people
21 that don't need to be either. It just slows the process
22 down.

23 But as far as that doctor -- Ms. Gies, if she's not in
24 here when Amy and/or Daniel testify. Any others
25 particularly, Mr. Williams?

1 MR. WILLIAMS: I think that's it, Your Honor.

2 THE COURT: All right. I'm going to leave it up to
3 y'all to police the sequestration order. I will probably
4 recognize Dr. Ross, I'm sure. But sometime I will be -- of
5 course, she can -- she can come in anyway.

6 But as far as advising them not to speak also with
7 each other, or however. But I'll leave that up to y'all to
8 police it.

9 All right. You have one other motion, Mr. Williams?

10 MR. WILLIAMS: Your Honor, that deals with the fact
11 that my client was convicted of a CDV, which we say
12 emanates from the facts which are -- which are -- which
13 he's being tried for today.

14 I guess we could -- we could first, I guess, stipulate
15 that he has been convicted of a CDV. I guess the State
16 would stipulate to that, and that if this was the CDV -- it
17 may be easier just to call the witnesses, Your Honor.

18 THE COURT: May be what?

19 MR. WILLIAMS: Easier just to call the witnesses on
20 those issues.

21 THE COURT: And this would be in the line of what?

22 MR. WILLIAMS: Double jeopardy, Your Honor.

23 THE COURT: *State vs. Grampus and Old Chief* or
24 something like that?

25 MR. WILLIAMS: Actually, Your Honor, we actually --

1 there's -- there's actually a Supreme Court case, the *State*
2 *vs.* -- I mean *United States vs. Ohio* --

3 THE COURT: All right.

4 MR. WILLIAMS: -- which is probably -- since it's
5 Supreme Court, which is probably more -- I don't know if
6 it's more, but it certainly defines what double jeopardy
7 is. I don't know if it's more or less.

8 And Your Honor, for the Court's information, I -- I
9 guess we -- I'd ask the Court to mark this as an exhibit.
10 There is a -- there was a warrant which was issued J-
11 830114. It is a warrant for criminal domestic violence,
12 first offense. It was signed by Judge Shockley. I have a
13 certified true copy of it, which my client pled guilty to
14 the offense on October the 15th of 2007. I know -- I know
15 you've got a copy showing the CDV conviction.

16 THE COURT: Would you mark that --

17 MR. WILLIAMS: Because I think you gave --

18 THE COURT: -- have that marked as a Court's exhibit
19 and hand it up to me?

20 MR. WILLIAMS: All right, sir.

21 (Court's Exhibit No. 2, copy of warrant, marked.)

22 (Sotto voce discussion between the Court and law clerk.)

23 MR. WILLIAMS: Your Honor, I would call Brian Setree
24 to the stand.

25 THE COURT: All right. Mr. Setree?

DIRECT EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 BRIAN SETREE, having been duly
2 sworn, testifies as follows:

3 THE COURT: Can I ask a question, Mr. Williams?

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: This warrant covers September 18th of '07.

6 MR. WILLIAMS: Yes, sir. I know it does.

7 THE COURT: And the indictment's September 15th of
8 '07.

9 MR. WILLIAMS: I know it does, Your Honor.

10 THE COURT: All right. Explain that to me. Are you
11 going to explain it through the witness?

12 MR. WILLIAMS: I'm going to explain it through him,
13 Your Honor.

14 THE COURT: All right. Thank you. You may proceed.

15 **DIRECT EXAMINATION BY MR. WILLIAMS:**

16 Q Officer Setree, you are the investigative officer on
17 this case; is that correct?

18 A That's correct, sir.

19 Q And you gave a summary, or a case-file summary on this
20 particular case; did you not?

21 A Yes, sir. I did.

22 Q I would ask that you look at your case-file summary,
23 which you prepared in that case.

24 A (Complies.)

25 Q Does that refresh your memory in any way?

DIRECT EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 A Yes, sir.

2 Q And if I could short-circuit this, could -- would you
3 in essence agree that on September the 20th of 2007, a
4 report was made to the school officials by the children
5 that there had been an altercation at home over the
6 weekend, and that there had been a -- there'd been some
7 sort of abuse of the parents; is that correct?

8 A That's correct.

9 Q Now, after this report was made, an officer with your
10 -- with your department was directed -- who was Officer
11 Lovell; is that correct?

12 A Yes, sir.

13 Q Was directed to go by the home and see the alleged
14 victim, Rachael Bryan; is that correct?

15 A That's correct.

16 Q And when he reported to the scene to see her, she in
17 essence didn't admit that anything had occurred, but had
18 evidence of some sort of assault; is that also correct?

19 A Yes, sir.

20 Q Meaning a -- a black eye or something of that nature.

21 A Yes, sir.

22 Q Prior to September the 20th of 2007, had there been
23 any allegation over that time span of September, 2007, of
24 criminal domestic violence?

25 A No, sir.

1 Q And once that was reported, Lexington County Sheriff's
2 Department checked their records and -- and confirmed
3 several things: One, to include that there was a
4 protective order ---

5 A That's right.

6 Q --- and that he wasn't -- referring to my client -- my
7 client wasn't supposed to be staying there; is that
8 correct?

9 A That's correct.

10 Q And also -- and that was the reason why you sent by
11 Officer Lovell to do a -- you call it a check or something
12 like that? What's -- what's the lingo?

13 A Welfare check.

14 Q A welfare check, because there was a protective order.

15 A That's correct.

16 Q And there was a warrant which was issued for CDV,
17 signed on the 20th, on the same day that he went out for a
18 welfare check; is that correct?

19 A Yes, sir.

20 Q Now, do you have any information that the domestic
21 violence which was evidenced by the black eye, or that was
22 showing on her on that particular day of September the
23 20th, occurred at any time different from the dates of
24 September the 14th, 15th, 16th, and 17th?

25 A Well, what happened with that is based on what we

1 learned from the children. That CD -- CDV warrant was
2 obtained for the incident that occurred in the car, from
3 when the children were picked up from daycare on Fairview
4 Highway on the way home, and then when they drove up into
5 the driveway of the residence.

6 Q Are you saying that you're -- that that incident which
7 you're talking about occurred on September the 18th? Is
8 that what you're saying?

9 A No, sir. Based on -- it was on or about, based on the
10 testimony or the information that we gathered from the
11 children at the time, that was the best date that we had to
12 -- to deal with. Because when this was reported on the
13 20th, they were unsure of the days of the week or whatever
14 when this first incident occurred. So we dated it back --
15 we knew it was on a -- I believe, a Friday, if I'm not
16 mistaken.

17 Q So ---

18 A And so that CDV warrant pertains to what happened in
19 the vehicle on the way home from daycare on that particular
20 day.

21 Q Now, you would agree, would you not, that the warrant
22 itself, CDV first, does not state those facts in that
23 warrant? Would you -- would you not agree?

24 A I'm not sure that I've seen that CDV warrant.

25 THE COURT: That's Court's 2?

1 MR. WILLIAMS: Yes, sir.

2 A That's correct. That's not what it states.

3 Q So the warrant doesn't set -- doesn't set forth that --
4 - that set of facts and, in essence, the facts which you're
5 testifying to today are facts which allegedly would have
6 occurred on September the 15th of 2007? Or 14th, 2007?

7 A I don't have a calendar in front of me to tell you
8 what day of the week that was. But all I can tell you is
9 based on what happened -- what -- from what the children
10 told us, we learned a whole lot more information from Ms. -
11 - Mrs. Bryan during the interview at the sheriff's office,
12 after all this stuff had occurred. So based on what we had
13 learned from the children, that's what -- that's why this
14 CDV warrant was obtained.

15 Q You would agree, would you not, that the date which is
16 in the facts in the -- in that warrant, of September the
17 18th, 2007, is incorrect?

18 A Yes, sir. It's incorrect. Yes, sir.

19 Q Because of the allegations that this CDV occurred on
20 September the 15th, or 14th, or 16th. Wouldn't you agree?

21 A Probably it'd be the 14th I'd agree to, but that's why
22 it says "on or about."

23 Q And there's nothing in that warrant which indicates
24 that the CDV which my client pled guilty to is not the same
25 facts for which he's been charged with on the CDVHAN, is

CROSS-EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 there?

2 A It doesn't indicate one way or the other.

3 Q So there's no distinctive facts in the warrant from
4 the CDVHAN?

5 A That's correct.

6 MR. WILLIAMS: That's all I have, Your Honor.

7 THE COURT: Thank you, Mr. Williams.

8 Solicitor?

9 CROSS-EXAMINATION BY MR. GRAHAM:

10 Q Deputy Setree, do you have -- do you still have that
11 warrant ---

12 A I do.

13 Q --- in front of you?

14 A Yes, sir.

15 Q Could you go ahead and read out what the allegations
16 are on the warrant?

17 A It says (as read): "On or about September the 18th,
18 2007, the defendant assaulted his wife, causing injury to
19 her face area, Rachael Bryan, at their residence located at
20 [REDACTED] Fairview Road, in the Fairview area of Lexington
21 County. Lexington County Sheriff's Department observed the
22 victim and saw a black eye and bruising and swelling to the
23 victim's face. The defendant and victim are married and
24 have children in common."

25 Q Before that warrant was obtained, what was your

1 understanding about if a warrant was going to be issued?

2 A I'm not understanding what you're asking.

3 Q Did you know that that warrant was going to be issued?

4 A Yes, sir.

5 Q And what was the understanding that you had for why
6 that warrant was going to be issued?

7 A Because of the situation that the children had told us
8 about on the way home from the daycare, where the assault
9 occurred in the car. All we knew that -- at that time was
10 -- was the children were picked up from the daycare by the
11 mother and father; there was -- there had been an assault
12 that occurred somewhere between that daycare and their
13 residence; and once they got home, the children tried to
14 run away and escape. The father had chased them down,
15 grabbed them up, and squeezed them. That's all we knew.
16 We didn't know anything else. We didn't know exact date,
17 time, or anything of that nature.

18 Q All right. So the warrant has to do with bruises to
19 her face and what the officers saw when he went out there
20 and saw her black eye and bruising to the face; isn't that
21 correct?

22 A Right. It was consistent with what the children had
23 told us that occurred at that time.

24 Q At that time, did the children ever describe any
25 choking of Rachael?

CROSS-EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 A Not that I remember. No, sir.

2 Q Was there anything in the warrant that had to do with
3 choking of Rachael?

4 A No, sir.

5 Q Did the warrant have anything to do with making -- the
6 defendant using a knife and making stabbing motions and
7 threatening to kill her?

8 A No, sir.

9 Q Did you have any knowledge of either the choking or
10 the stabbing at the time that this warrant was obtained?

11 A I sure did not. No, sir.

12 Q So to the best of your knowledge and what the warrant
13 actually reads, it deals solely with the incident that you
14 later determined at the time, you guess, from the best
15 information you had, that it was the 18th.

16 A Right.

17 Q But after talking with Rachael and the children later,
18 found out that that's the 14th, that Friday when you were
19 coming home from the daycare?

20 A Right. That's correct.

21 Q Your warrant for CDVHAN, let me show you a copy of a
22 warrant and ask if you recognize that?

23 A I do.

24 MR. GRAHAM: Your Honor, the State would offer this as
25 a exhibit for the purpose of this hearing.

CROSS-EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 THE COURT: All right. It'd be Court's 3?

2 (Court's Exhibit No. 3, copy of warrant document,
3 marked.)

4 Q Officer Setree, you're looking at Court's Exhibit 3,
5 that is Warrant J-845435. Do you recognize that?

6 A Yes, sir. I do. I signed it.

7 Q That's a warrant you obtained?

8 A Yes, sir.

9 Q The language up there in the body of the warrant when
10 it was issued, did you come up that -- with that language?

11 A Yes, sir. I did.

12 Q And that information came from your investigation into
13 this case?

14 A It did. Yes, sir.

15 Q Would you read out the language of that warrant?

16 A It says (as read): "On September the 15th, 2007,
17 defendant Rodney Bryan did assault the victim, his wife,
18 Rachael Bryan, by choking her and using a knife to
19 intimidate her. The defendant also refused to allow the
20 victim to leave the residence, holding her against her
21 will. The defendant also forced the victim to have sexual
22 intercourse with him by use of intimidation. This occurred
23 at [REDACTED] Fairview Highway in the Leesville area of Lexington
24 County, South Carolina. The defendant and victim are
25 legally married."

RE-DIRECT EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 Q Does the language in that indictment have anything to
2 do with the CDV that he pled to?

3 A No, sir.

4 Q Whether it happened on the 14th or the 18th?

5 A No, sir. It has nothing to do -- that was a
6 completely separate incident that we learned through the
7 investigation.

8 Q Separate date?

9 A Yes, sir.

10 Q It was on the 15th?

11 A Right.

12 Q And separate facts?

13 A Separate facts. It has nothing to do with the black
14 eye or the bruising across the face.

15 Q Thank you, Deputy Setree. Please answer any other
16 questions from --

17 RE-DIRECT EXAMINATION BY MR. WILLIAMS:

18 Q Just one question on re-direct.

19 A Yes, sir.

20 Q If you look at your CDV warrant that you were just
21 talking about -- I think you referenced something about a
22 ride home or something like that, in a car -- what does it
23 say in the body of the warrant, in regards to where this
24 event occurred?

25 A It says [REDACTED] Fairview Highway, or Fairview Road, but

1 you're referring to the warrant that you gave me --

2 Q Yes, sir.

3 A -- Mr. Williams? Again, I -- I did not get this
4 warrant. This warrant was obtained by another deputy while
5 investigation was still continuing. We knew that there had
6 been a domestic violence, and we knew that it was on or
7 about the 18th, based on what the children told us. For
8 the -- for the safety of the victim, for the safety of the
9 children, we obtained an arrest warrant so we could get Mr.
10 Bryan into custody, so we could conduct a more thorough
11 investigation.

12 Q And where does it say the CDV occurred?

13 A It says it happened on [REDACTED] Fairview Road. But again,
14 this -- this is on a -- this is on a different date, a
15 different incident. It has nothing to do with what this
16 warrant is talking about.

17 Q Doesn't say anything about a car, does it?

18 A No, sir.

19 Q And it has the same location as the CDVHAN warrant.

20 A That's correct.

21 MR. WILLIAMS: Nothing further, Your Honor.

22 THE COURT: All right. Thank you.

23 Thank you, officer. You may step down.

24 DEPUTY SETREE: Thank you, Your Honor.

25 THE COURT: You have any other witnesses, Mr.

1 Williams?

2 MR. WILLIAMS: Not on that issue, Your Honor.

3 THE COURT: All right. Is there anything you want me
4 to look at besides *Brown vs. Ohio*?

5 MR. WILLIAMS: Your Honor, that's -- that's just in
6 regards to double jeopardy. I guess that -- no. No, Your
7 Honor. No -- no other case law.

8 THE COURT: All right.

9 MR. WILLIAMS: And no other warrants.

10 THE COURT: All right. Do you care to be heard? It's
11 your motion.

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: All right.

14 MR. WILLIAMS: I think I would. Your Honor, it's
15 clear -- I'm going to use the solicitor's words. I always
16 wanted to use those words.

17 It's clear that once this was reported, that there had
18 been some sort of altercation and that there was an order
19 of protection which had been violated; that the deputy went
20 to the magistrate, had a warrant -- the deputy, referring
21 to Lovell, I guess, at this particular time -- for CDV.

22 The warrant doesn't say anything other than what it
23 says, and that is that there was a -- there -- there was an
24 altercation between the victim and the defendant that
25 incurred at the residence.

1 Now, it's admitted by this officer that it couldn't
2 have happened on the 18th, that it was the weekend before.
3 The same time span in which the CDVHAN was, the same
4 location as the CDVHAN.

5 So, Your Honor, we feel that there is evidence that
6 this would be double jeopardy to charge him also with the
7 CDV, which he's been convicted of and been jeopardized,
8 meaning he got 30 days in jail, along with CDVHAN. That's
9 it.

10 THE COURT: You care to be heard, Solicitor?

11 MR. GRAHAM: Very briefly, Your Honor. He pled to
12 something that happened on the 18th. The certified
13 indictment, that I've got a conviction, doesn't show there
14 was any amendment, so I don't know whether -- he admitted
15 something happened on the 18th. I think that's part -- you
16 could say that he said something happened on the 18th,
17 which is obviously different from the 14th, 15th, or 16th.
18 That's one ground.

19 Even if it goes back and it does relate to the
20 incident on the 14th, which I think what the warrant really
21 was intended to do, it is focusing on the injuries to her
22 face. That's the information the police had at the time.
23 That's what he pled to. Whether it happened in the car or
24 whether it happened in -- in the house is a factual
25 question I don't think is really relevant to whether it's

1 double jeopardy.

2 The CDVHAN charges before Your Honor today deals with
3 what happened on the 15th. It's a different act; it's a
4 different transaction. It may be continuing, but it's
5 different.

6 And there are different elements for a CDV and a
7 CDVHAN. There are different facts to support the CDV;
8 there are different facts to support the CDVHAN. It is not
9 double jeopardy.

10 THE COURT: All right. Thank you. I'm going to look
11 at this case over the break. I'll take it under
12 advisement. Anything further? Any other motions?

13 MR. WILLIAMS: Not at this time by the defendant, Your
14 Honor.

15 MR. GRAHAM: No, Your Honor.

16 THE COURT: All right. Just for purposes of your
17 planning, I do not intend to hold court tomorrow afternoon.
18 I figure we'd break 12:30, no later than about 12:30.

19 Also, you need to let Mr. Williams know about when
20 you're going to call Amy or Daniel, so that he can make
21 arrangements to have another attorney over here.

22 MR. GRAHAM: Yes, Your Honor.

23 THE COURT: All right. All right. As far as this
24 case, I'll expect y'all back at 2:30. Otherwise, I have a
25 status conference at two, and then a -- as soon as that

1 status conference is over, I have a bond hearing about
2 2:15.

3 All right. Court will be in recess until about 2:15.
4 Thank you.

5 THE COURT: I have reviewed *Brown vs. Ohio* and another
6 a number of other cases, and specifically *State vs.*
7 *Grampus*, which is a South Carolina case. Based on the
8 documentation, Court's Exhibit No. 2 and 3, and also
9 Indictment 2007-GS-32-3034, I would find -- I would
10 respectfully deny Mr. Williams's motion concerning double
11 jeopardy.

12 I would find that either, (a) This is a different date
13 or (b) Even if it is the same date -- in other words, even
14 if it's -- Court's Exhibit No. 2 should have been September
15 15th of '07, there is no allegations of choking or
16 threatening with a knife as appear in Indictment 3034.

17 You're certainly protected on the record in that
18 regard, Mr. Williams.

19 MR. WILLIAMS: Thank you, Your Honor.

20 THE COURT: Anything further?

21 MR. GRAHAM: No, Your Honor.

22 THE COURT: Anything further, Mr. Williams?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: All right. If you'd bring us our jury,
25 please, Mr. Bagwell.

1 MR. WILLIAMS: Your Honor, is the Court going to take
2 a break before the -- I guess it depends on the witnesses
3 and how they're being called.

4 THE COURT: That's correct.

5 MR. GRAHAM: I'll just notify the Court when I'm
6 getting ready to --

7 THE COURT: All right.

8 MR. GRAHAM: -- do that, Your Honor.

9 THE COURT: Thank you.

10 (The jury enters at 2:53 p.m.)

11 THE COURT: Madam Clerk, would you swear our jury,
12 please?

13 CLERK OF COURT: Please stand and raise your right
14 hand.

15 (The jury is sworn.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, good afternoon. I had some other matters before the
18 Court, so I don't want you to think that I was not working
19 or that the parties were not present and ready. It was in
20 a separate and distinct matter, and I did not want you to
21 hold that for nor against them in any matter.

22 I try to be very attuned to your time and to the clock
23 itself to minimize the time that you spend in the jury room
24 with -- with really nothing to do at a certain level.

25 Before we begin the trial, I want to tell you that

1 this trial will be different from what you might expect.
2 Many people do not have the chance to attend actual court
3 sessions as you are now doing, and may think from watching
4 television or movies or reading books that trials are
5 always full of high drama, intense action, and riveting
6 circumstances.

7 While all of these things may be true at times, this
8 trial is not for entertainment. It is a fundamental part
9 of our democracy, a search for the truth in an effort to
10 make sure that justice is done between the parties before
11 the Court. Searching for the truth and making sure that
12 justice is done is often slow, deliberate, and repetitive;
13 the opposite of what you may have seen on television or in
14 the movies or read in books.

15 This courtroom is a place of honor dedicated to the
16 protection and preservation of citizens' rights through
17 what many have appropriately called "the greatest justice
18 system ever created."

19 The attorneys appearing before you are advocates for
20 the parties they represent. But first and foremost, they
21 are officers of the Court, sworn to uphold the integrity
22 and fairness of our judicial system, and to help you in the
23 search for the truth. You should expect them to be
24 professional, competent, and ethical in the representation
25 of their client's interest.

1 Remember the oath that you have taken to try this case
2 and reach a fair and just verdict, and that you are also
3 expected to be professional, reasonable, and ethical.
4 Thank you in advance for accepting this important
5 responsibility of jury service, and for your contribution
6 today to our justice system.

7 Ladies and gentlemen, the case -- the cases we are
8 about to try is the case of the *State vs. Rodney C. Bryan*.
9 What I will now say is intended to serve as an introduction
10 to the trial of this case. These remarks are not a charge
11 on the law; I will instruct you on the law at the end of
12 the trial, before you retire to consider your verdict.
13 This is merely an explanation of the procedure that we will
14 follow, so that you may better understand what may be
15 happening.

16 The defendant is charged by indictments filed in this
17 court with the crimes of: criminal domestic violence of a
18 high and aggravated nature; violation of a court order of
19 protection; kidnaping; and two counts of spousal sexual
20 battery, the elements of which will be explained to you
21 later.

22 Again, these indictments are simply the charge by
23 which the cases are brought into this court, and they are
24 not in any sense evidence of any of the allegations they
25 contain.

1 The defendant has pled not guilty to these
2 indictments. The State, therefore, has the burden of
3 proving each of the elements of each and every indictment
4 beyond a reasonable doubt. And it will be your duty,
5 ladies and gentlemen, to decide whether the State has met
6 that burden.

7 Your purpose as jurors is to find and determine the
8 facts. You are the sole judge of the facts. If at any
9 time I make any comment regarding the facts, you must
10 disregard it. You are to determine the facts from the
11 evidence you hear and any other evidence introduced into
12 court. It is up to you to determine the inference which
13 you feel may properly be drawn from the evidence.

14 It is especially important that you perform your duty
15 of determining the facts diligently and conscientiously,
16 because ordinarily there is no way to correct an erroneous
17 determination of the facts by a jury.

18 On the other hand, and with equal emphasis, the same
19 law that make you the judges of the facts make me the judge
20 of the law. The law as given by the Court is the only law
21 you may consider. You must accept and follow it, even
22 though you may disagree with it. I cannot tell you what
23 the facts are, and you cannot disagree with me about what
24 the law is or should be.

25 Your job is to take the law as I give it to you and

1 apply it to the facts as you find them from the testimony
2 of the witnesses and any other evidence that is introduced.
3 After doing that, you will render your verdict, a true and
4 just verdict under the solemn oath that you have just taken
5 as jurors.

6 Again, until I advise you to begin your deliberations,
7 you must not discuss this case with anyone, including your
8 fellow jurors, friends, family members, or anyone else
9 involved in this case. After the case is submitted to you,
10 you must discuss it only in the jury room with your fellow
11 jurors.

12 It is important that you keep an open mind and not
13 decide any issue in the case until all of the evidence has
14 been presented; the parties have made their closing
15 arguments; and I have instructed you on the law in this
16 case. It is your solemn responsibility to determine the
17 guilt or innocence of the defendant, and your verdict must
18 be based solely on the evidence as it is presented during
19 the trial, and on the law as I instruct you during and at
20 the close of the trial.

21 Now, in just a moment, the solicitor will make what is
22 called an "opening statement," in which the solicitor will
23 explain to you the issues in the case, or, at least, what
24 the solicitor thinks the issues are in the case.

25 Mr. Williams, the attorney for the defendant, may also

1 make an opening statement, although he is not required to
2 do so. What the attorneys tell you during their opening
3 statements is not evidence in the case, it is only their
4 contention as to what the issues are. The evidence will be
5 presented to you by the testimony, sworn witnesses from
6 this witness stand, and/or by exhibits that may be
7 introduced into evidence.

8 From time to time during the trial, you may hear one
9 of the lawyers say something like, "Your Honor, I believe
10 we have a question of law or a matter of law to discuss
11 with you," or, "Your Honor, may we approach the bench?" Or
12 sometime I, myself, might find it necessary to excuse you
13 from the courtroom for a short while so the attorneys and I
14 can discuss a matter of law. The reason for this is
15 because you're the judges of the facts, and sometimes when
16 I am discussing matters of law with the attorneys, it may
17 be necessary for me to make some comment as to the facts in
18 connection with ruling whether or not a particular law
19 applies. I'm not supposed to tell you what I think the
20 facts are; so I must and will excuse you from the courtroom
21 while these discussions take place so that in no way will
22 you be influenced by anything that I might say or do in
23 connection with the facts.

24 In determining what the true facts are, you must
25 decide whether or not the testimony of the witnesses is

1 believable. It will be my responsibility to rule as a
2 matter of law as to whether certain testimony is admissible
3 at all or not. But once the testimony is admitted, whether
4 or not you believe it is solely for you to determine.

5 In deciding whether to believe a witness, you have a
6 right to consider the interest of any witness, the bias of
7 any witness, the prejudice of any witness, the opportunity
8 for the witness to have seen the matters and things about
9 which the witness may testify, and the way the witness acts
10 on the witness stand, using your good judgment and common
11 sense.

12 You have a right to consider anything that is in the
13 record that will help you evaluate testimony of the
14 witnesses. That means it will be your duty to pay close
15 attention to these witnesses, to observe the witnesses, to
16 listen to the witnesses; and to pay close attention to the
17 attorneys, and to the Court. Don't let your thoughts
18 wander, but give strict attention to the testimony in this
19 case, so that at the end of all the testimony, after the
20 arguments of counsel, the charge on the law, you will then
21 be in a position to determine what the true facts are, and
22 to apply the law to those facts, and thus render a true and
23 just verdict.

24 It will be your added duty, Mr. Foreman, to preside in
25 the jury room and be the jury spokesperson here in court.

1 It will also be your duty to write the verdict, but I will
2 give you further instructions about that at the conclusion
3 of the case.

4 Just by way of housekeeping, I tell jurors week to
5 week whenever I want to take a break, we take a break.
6 Now, the same holds for y'all. If you sit out here too
7 long, your thoughts will wander. You won't be focused; you
8 won't be paying attention. Please, if at any time any of
9 you need a break, raise your hand. We will allow y'all to
10 take y'all's break and we will take our break at the same
11 time. This is not some type of a judicial marathon. The
12 parties will have the opportunity and the time they need to
13 present their cases.

14 If you cannot hear, please, particularly those jurors
15 towards -- away -- further away from the witness stand,
16 please raise your hand, cup your ear, get my attention, the
17 attention of one of our fine bailiffs. We'll have the
18 witness speak up.

19 If there are any exhibits, or documents, or
20 photographs, of what-have-you, I -- I have no idea if there
21 will be -- that are introduced into evidence, sometimes
22 they may be passed among you while you are out here in the
23 courtroom, in your jury box. If I -- if I authorize them
24 to be introduced into evidence, you will have all those
25 items with you in the jury room at the time of your

1 deliberations. I tell you that not to prohibit you from
2 looking at them as long as you want to out here in the
3 courtroom, but just know that won't be the last time you
4 see any documents. You will have any and all of them with
5 you in the jury room at the time of your deliberations.

6 In order to preserve everyone's rights, I will give
7 the parties an opportunity to object to anything I have
8 said. Any objection from the State?

9 MR. GRAHAM: None, Your Honor.

10 THE COURT: From the defendant?

11 MR. WILLIAMS: None by the defendant, Your Honor.

12 THE COURT: Thank you. We will now begin the trial.
13 Solicitor, you may address the jury.

14 MR. GRAHAM: Power and control. That's why we're here
15 today. The testimony that you're going to hear will be
16 about power and control. It's the power that that man,
17 Rodney Bryan, exerted over his wife, Rachael Bryan; the
18 control that that man, Rodney Bryan, showed over his wife,
19 Rachael Bryan.

20 A woman's worst nightmare is what Rachael Bryan went
21 through the weekend in September of 2007. Criminal
22 domestic violence of a high and aggravated nature.
23 Physical actions, choking, stabbing with a knife,
24 threatening to kill her. Rodney Bryan was physical,
25 because when he tells her to do something, he wants her to

1 do something, it doesn't work. That's what a batterer
2 does, he goes to physical violence to make somebody do what
3 he wants. And he made Rachael Bryan do what he wanted.

4 Kidnaping, power and control. You stop somebody from
5 moving; you stop somebody from leaving; you hold somebody
6 down. That's kidnaping.

7 When somebody doesn't do what you want and they're
8 weaker than you, you use physical force, you use threats,
9 use your hands. That's what Rodney Bryan did to Rachael
10 Bryan that weekend in September. She wanted to leave the
11 house; he wouldn't let her. He grabbed her and he drug her
12 back in, choked her; he threatened her with a knife.

13 Even when he left the house, she didn't leave the
14 house. Even when he's not there, his control was still
15 over her. She didn't call the police for help; she didn't
16 go to the neighbors' house.

17 Spousal sexual battery. Rodney Bryan raped his wife.
18 She didn't want to have sex with him. She'd been
19 threatened; he threatened her with a knife; he choked her.
20 And he made her have sex with him twice, once on Friday
21 night and once on Saturday night. Sex in this case is not
22 about love. It's not even about sex. It's about power and
23 control.

24 Now, Rachael Bryan didn't even call the police. She
25 never went for help. The reason that we are here is

1 because their daughter, Amy B. -- who's 10 years old now
2 and who you all will hear from her -- she went to school
3 the next week; she told her teacher daddy had hurt mommy.

4 Rachael Bryan never would have gone to the police, but
5 her daughter did it for her. And now Rachel has stood up
6 for herself. She's able to stand up, and she's able to say
7 what happened. And you will hear it. And you'll hear it
8 from the children; you'll hear from her. Rodney Bryan does
9 not have any more power or control over Rachael Bryan.

10 Today, that power and control is yours. You all will
11 determine what happened. You'll hear the evidence. At the
12 end of the trial, you will tell Rodney Bryan that he is
13 guilty of criminal domestic violence of a high and
14 aggravated nature. You'll hear the evidence and the
15 testimony, and you can tell him that he is guilty of
16 kidnaping. You will hear the evidence and testimony; and
17 you will tell him that he is guilty of spousal sexual
18 battery, in violation of a court order of protection.
19 Power and control is yours.

20 THE COURT: Thank you, Solicitor.

21 Mr. Williams?

22 MR. WILLIAMS: May it please the Court?

23 Mr. Foreman, ladies and gentlemen of the jury, you've
24 learned that opening arguments are just that: They're
25 arguments. They're the times in which lawyers come up

1 here and try to get your attention; try to get the early
2 word so that you believe, I guess, what their side is. And
3 to a certain extent, that's why the State goes first,
4 because they have the burden of proof. They get up there
5 and try to plant a seed, in hopes that you'll go down that
6 road. And as you'll learn, since they have the burden of
7 proof, they have the -- the last argument normally, unless
8 for some reason that changes in the trial of the case.

9 But I would like for you to remember something, that
10 it's not "catch words" that we're talking today that are
11 important. We can come up and say, "Well, everything is
12 about power and control." Well, that's a catchy little
13 thing that you can use to just about every argument that we
14 have.

15 But, when you talk about power, you're -- and control,
16 you're talking about responsibility. And above all, that's
17 what the jury system is based on, responsibility. And your
18 power is from the constitution, your control is based on
19 your reason, and your reason is based on the facts.

20 Now, one of the things that I would ask that you -- to
21 consider, and it's the most important thing, is that of
22 common sense. You're not expected just to be swayed by
23 fancy arguments and things of that nature. You're supposed
24 to use your common sense when you make your decisions.

25 In opening argument, we're supposed to tell you about

1 what we think the case is -- is all about. Well, I will
2 tell you that there is a time line in this case which is
3 probably the most important thing that you can remember.
4 It's not a long time line; it's something that you can
5 remember in your heads.

6 And if you go back to the date of September the 14th
7 of 2007, it was a Friday. And you will learn through all
8 the testimony which is going to be presented that there was
9 an argument, a dispute, a fight, if you will, between the
10 alleged victim and the defendant. That's a Friday.

11 You'll learn that these allegations, as you've learned
12 as the indictments were read, are allegations which
13 occurred over the 14th, 15th, 16th: Friday, Saturday, and
14 Sunday. So you'll learn that that's what you're being
15 asked to consider, is whether or not there was a violation
16 of the law over those dates.

17 The reason why this is important is that the charges
18 that you're considering are kidnaping, criminal -- spousal
19 criminal sexual conduct -- two counts of battery, if you
20 will, sexual battery. And you're also concerned with a
21 criminal domestic violence of a high and aggravated nature,
22 as well as a violation of an order of protection.

23 So what you have to consider when you -- well, what
24 you should consider when you're listening to this
25 testimony, is what makes sense in regards to these charges.

1 You will learn, as it's already been, I guess, kind of
2 indicated by the solicitor, is that the alleged victim in
3 this case never complains about anything until after -- and
4 doesn't cooperate with the police until the following 25th,
5 if you will, September the 25th, when she's risking losing
6 her children from a family court action. At this point in
7 time is the time in which she comes forward and says that
8 all these terrible things happened.

9 You'll learn that my client left the home during this
10 weekend -- the 14th, 15th, and 16th. So he wasn't there
11 the entire time span. You'll learn that he wasn't in the -
12 - even in the house after the 20th. Yet she still didn't
13 come to report these terrible things which supposedly
14 happened.

15 So when you're asked to believe things, to a certain
16 extent you're supposed to use your common sense, and think
17 whether or not it makes sense to you that someone would say
18 that they were kidnaped when they were free to go out of
19 the house; if someone would -- if it would make sense to
20 accuse somebody of five different crimes, if the only time
21 you complain about it is weeks later, or a week and some
22 odd time later.

23 So you see, when you first heard this indictment, you
24 thought it was, "Oh, these are just terrible facts."

25 Well, don't confuse your -- yourself with the fact

1 that there is a -- a very bad charge that my client is
2 charged with. Think beyond that.

3 Now, you're going to hear some things that probably
4 will upset you. You'll learn that these two people are
5 fighting. The husband and wife are fighting, physically
6 fighting. And that's going to be hard for most people to
7 handle, because we don't get involved in that.

8 Sometimes when you go behind those doors, you see
9 things that you don't want to see. But it doesn't mean
10 that there's a crime that's been committed. What it
11 sometimes means is that there's social activity which you
12 don't agree with.

13 I heard a lot of things about the importance of the
14 jury system, about you being here. You know, everything
15 kind of happens on -- we talk about dates. You know,
16 today's kind of a famous date: July the 14th. It's called
17 "Bastille Day" in France. Bastille Day in France is the
18 same thing as July the 4th in the United States. And
19 that's what everybody's seeking justice to.

20 So all we ask for you to do as you begin this day,
21 even though we're not French -- I don't pretend we're
22 French -- is give my client the justice that he is entitled
23 to. Make the State prove its case. And if you should find
24 that they haven't proven the case, it's your job as jurors
25 doing justice, exercising power, exercising control --

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1 reasoned control to find him not guilty. Thank you.

2 THE COURT: Thank you, Mr. Williams.

3 Solicitor, you may call your first witness.

4 MS. HOWARD: Your Honor, the State calls Mary Dooley.

5 THE COURT: All right. Ms. Dooley.

6 MARY DOOLEY, having been first
7 duly sworn, testifies as follows:

8 MS. DOOLEY: Mary Dooley, D-o-o-l-e-y.

9 THE COURT: All right. Solicitor?

10 MS. HOWARD: Thank you, Your Honor. May it please the
11 Court?

12 DIRECT EXAMINATION BY MS. HOWARD:

13 Q Mary, would you please tell the jury where you're
14 employed?

15 A I'm employed with Lexington District 1, and I teach at
16 Pelion Elementary School.

17 Q And what is your position at Pelion?

18 A I'm a teacher, teach children with learning
19 disabilities in a self-contained setting.

20 Q How long have you been at Pelion?

21 A Last year was my first year at Pelion.

22 Q And how long have you been teaching?

23 A For over 25 years.

24 Q Do you know Amy B. ?

25 A Yes. She's a student of mine.

DIRECT EXAMINATION BY MS. HOWARD - MARY DOOLEY

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1 Q Why is Amy in your special needs class?

2 A She has difficulties in reading and spelling.

3 Q Other than that?

4 A She's fine. She goes out for social studies and
5 science in the afternoon, the regular ed classes.

6 Q On September 19th, 2007, did you have an encounter
7 with Amy Bryan that caused you concern?

8 A Yes.

9 Q Can you tell us about that?

10 A Yes. At the end of the day, when we were walking to
11 the bus loop, Amy mentioned to me a couple of things that
12 concerned me about something that was going on at home.

13 Q And this was Wednesday afternoon?

14 A (No audible response.)

15 THE COURT REPORTER: Was that a "yes"?

16 A Yes. I'm sorry.

17 Q What did you do in response to what Amy said?

18 A Went home and thought about it; it concerned me. And
19 the next day when she came to school, I asked her how
20 things were.

21 Q Did Amy answer your question?

22 A Yes.

23 Q And based on what Amy told you, what did you do?

24 A When I got a break that day, I went to the guidance
25 counselor and shared with her that I thought she might

CROSS-EXAMINATION BY MR. WILLIAMS - MARY DOOLEY

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1 would need to talk with her.

2 Q And the guidance counselor's name at Pelion?

3 A Julie Gies.

4 Q Thank you, Mary. Please answer any questions defense
5 counsel might have.

6 THE COURT: Thank you, Solicitor.

7 Mr. Williams?

8 MR. WILLIAMS: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. WILLIAMS:

10 Q Ms. Dooley? It's Dooley, Mary Dooley, like a
11 Lexington Dooley?

12 A Yes.

13 Q All right. Ms. Dooley, Amy B. -- how old is Amy?

14 A Well, they say she that was 10. I believe her
15 birthday was just before school was out in May. I believe
16 she turned 10, if my memory serves me.

17 Q Okay. Are you -- are you saying how old she is now,
18 or are you saying how old she was back last year?

19 A I think she turned 10 in May --

20 Q Of last --

21 A -- so she's --

22 Q Of this year?

23 A Just before school was out.

24 Q All right. So old would she have been when she had
25 this conversation with you?

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1 A Nine.

2 Q All right. Now, what -- you are a learning
3 disabilities teacher; is that correct?

4 A Yes, sir.

5 Q And is that -- is that just for like one age group,
6 nine year olds? Or do you have several age groups?

7 A I have -- last year, I had second, third, and fourth
8 grade in my class.

9 Q Okay.

10 A It varies from year to year.

11 Q So you essentially have three different grades in your
12 one class that you teach?

13 A Yes, sir.

14 Q And she was one of the students in your class?

15 A Yes, sir.

16 Q And how many students were there in that class?

17 A There was 13; there may have only been 12 at that
18 time, because a student moved in. So somewhere between 11
19 and 13.

20 Q And this learning disability class, does this meet
21 every day?

22 A Yes, sir.

23 Q So if she was in your class Monday, Tuesday,
24 Wednesday, Thursday, and Friday of last year; is that
25 right?

CROSS-EXAMINATION BY MR. WILLIAMS - MARY DOOLEY

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1 A Yes, sir.

2 Q Now -- now I -- I think I know. Do some of the
3 children take medications in your class, because they're
4 learning disabled?

5 A They take medication. That's not because they're
6 learning disabled necessarily, but --

7 Q Because of other problems?

8 A Yes, sir.

9 Q Do you know whether or not Amy is on any type of
10 medication?

11 A No, sir.

12 Q You don't know?

13 A No, sir.

14 Q Now, as I understand your testimony, there was a
15 conversation on Wednesday, September the 19th, of 2007; is
16 that right?

17 A Yes, sir.

18 Q How do you recall that particular date, the day of the
19 19th of September, 2007?

20 A Just from going back and remembering the facts after
21 things happened after that.

22 Q So there was nothing unusual going on, if you will, on
23 Monday and Tuesday. So I guess that'd be September the
24 17th; is that right?

25 A I don't have a calendar in front of me, sir. But I

CROSS-EXAMINATION BY MR. WILLIAMS - MARY DOOLEY

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1 would assume if the 19th was on Monday, the 18th would have
2 been -- I mean if the 19th was on Wednesday.

3 Q All right. But you don't really know what day it was.

4 A What day?

5 Q That you had this conversation with her?

6 A Yes, sir.

7 Q What date was it?

8 A The 19th.

9 Q The 19th?

10 A Yes, sir.

11 Q All right. And if that is a Wednesday -- let's assume
12 it was. There was nothing remarkable that happened on
13 Monday or Tuesday of that week; is that correct?

14 A Correct.

15 MR. WILLIAMS: That's all the questions I have, Your
16 Honor.

17 THE COURT: Thank you.

18 Anything in re-direct, Solicitor?

19 MS. HOWARD: No, Your Honor.

20 THE COURT: All right. Thank you, Solicitor.

21 Thank you, Ms. Dooley. You may step down.

22 All right. Solicitor, you may call your next witness.

23 MS. HOWARD: Your Honor, the State calls Julie Gies.

24 THE COURT: All right. Ms. Gies? You'd be sworn
25 right here for me, ma'am. Thank you.

DIRECT EXAMINATION BY MS. HOWARD - JULIE GIES

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1 JULIE GIES, having been first duly
2 sworn, testifies as follows:

3 MS. GIES: Julie Gies; J-u-l-i-e, G-i-e-s.

4 THE COURT: All right. Solicitor?

5 MS. HOWARD: Thank you, Your Honor.

6 DIRECT EXAMINATION BY MS. HOWARD:

7 Q Good afternoon, Julie. Would you please tell the jury
8 where you're employed?

9 A I am employed by Lexington School District 1 at Pelion
10 Elementary as a guidance counselor.

11 Q Okay. How long have you been a guidance counselor?

12 A Eleven years.

13 Q And have you been at Pelion the whole time?

14 A No. Nine years at Pelion.

15 Q Can you briefly tell the Court some of the duties and
16 responsibilities of a guidance counselor?

17 A We do classroom guidance with all the students at the
18 school. We do small group counseling, individual
19 counseling, we work with all the teachers, do a lot with
20 parents. Pretty much involved with everything in the
21 school.

22 Q On September 20th of 2007, did Mary Dooley, a teacher
23 at Pelion, share with you some concerns she had over a
24 student?

25 A Yes. She did.

DIRECT EXAMINATION BY MS. HOWARD - JULIE GIES

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1 Q And what was that student's name?

2 A Amy B.

3 Q Can you please tell us what happened between you and
4 Mary?

5 A Mary came to me and said that a student in her class,
6 Amy, had told her that there'd been some problems at home.
7 And she asked that I see her.

8 Q And what did you do next?

9 A I went and got Amy out of class and saw her in my
10 office.

11 Q What, if anything, was Amy's demeanor like when you
12 brought her to your office?

13 A She was very nervous when she first came in.

14 Q Did you ask her what was going on at home, or did she
15 just begin telling you?

16 A I told her that Ms. Dooley had come to me and that,
17 you know, I understand some things had been bothering her;
18 and could she tell me what was -- was going on. And she
19 started telling me about things that had been happening at
20 home the last few days.

21 Q And how did you end that meeting with Amy?

22 A I told Amy that I was going to talk with her brother
23 and that I was going to contact some friends of mine that
24 are helping friends, that can help make sure that she is
25 safe and that her mom is safe. And that -- try to get

1 things better at home.

2 Q And how did Amy react to that?

3 A She became very, very nervous, telling me over and
4 over that she wasn't supposed to tell anybody about this.
5 She was -- nobody was supposed to know, that she would get
6 in big trouble, that she'd been told not to talk about
7 anything.

8 Q And after speaking with Amy, at the close of the
9 meeting, what did you do next?

10 A I walked her back to class, and then I went and got
11 her brother, Daniel.

12 Q Okay. Was there any time between your meeting with
13 Daniel, that Daniel and Amy could run into each other?

14 A No.

15 Q And you took Daniel back to your office?

16 A I did.

17 Q Why did you -- what did you tell Daniel as to why he
18 was there?

19 A I told Daniel that I had talked with his sister a
20 little -- few minutes ago, and that I understand some
21 things had been going on at home, and would he like to tell
22 me about that. And he proceeded to tell me the same
23 things.

24 Q And how did Daniel first react when you let him know
25 why he has there?

DIRECT EXAMINATION BY MS. HOWARD - JULIE GIES

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1 A He was nervous that I knew -- that I knew what -- what
2 Amy -- that Amy had told me some things. He was nervous
3 that I was aware of -- of things.

4 Q And how did you end the meeting with Daniel?

5 A I told him that I was going to be calling some of my
6 friends that could help boys and girls and help make sure
7 that his mom was safe, and that him and his sisters are
8 safe also. The same thing I told Amy.

9 Q Okay. And at the close of that meeting, after you
10 were finished speaking with Daniel, what did you do?

11 A I sent him back to class and then I called Officer
12 Brian Setree, who was a resource officer at Pelion Middle
13 School.

14 Q What did you tell Officer Setree?

15 A I told Brian that I had had two students in my office,
16 and actually gotten a report from a teacher, and I had two
17 students in my office that both described to me that --
18 that their mother had --

19 MR. WILLIAMS: Your Honor, I object to hearsay.

20 THE COURT: Yes. I would sustain the objection.

21 MS. HOWARD: Okay, Your Honor.

22 Q Why did you call Officer Setree?

23 A Because I felt like their mother was in danger and had
24 been hurt.

25 Q Were Amy and Daniel with you when you talked to

1 Officer Setree?

2 A No.

3 Q Who is Savannah Bryan?

4 A Savannah Bryan is their four-year-old little sister.

5 Q Where was Savannah while all this was going on?

6 A She was not at school that day. She typically attends
7 the four-year-old preschool class, and she was in the
8 morning session, but she wasn't there. So I think she was
9 at the daycare.

10 Q Okay. At some point on that Thursday, did all three
11 of the children end up at Pelion school?

12 A Yes.

13 Q Were they with you?

14 A Yes.

15 Q Did you ever ask Savannah any questions?

16 A No.

17 Q Why is that?

18 A Because she wasn't at school. And at that point I had
19 enough information from Amy and Daniel that I had reported
20 to Officer Setree, I didn't feel like it was necessary.

21 Q For the rest of the day, did the three children stay
22 with you?

23 A Yes. Savannah was brought over to the school probably
24 between 2:00 and 2:30, and they stayed with me until they
25 were removed from school.

DIRECT EXAMINATION BY MS. HOWARD - JULIE GIES

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1 Q So would you have been present when anyone else might
2 have interviewed Amy or Daniel?

3 A Yes.

4 Q Julie, do you know what emergency protective custody
5 is?

6 A Yes.

7 Q Can you -- does the term "EPC" also stand for
8 emergency protective custody?

9 A Yes.

10 Q Can you explain to the Court what EPC means?

11 A It's when the children are taken into State's custody
12 from their parents.

13 Q On September 20th, 2007, that Thursday, did you know -
14 - do you know if the Bryan children were taken into
15 emergency protective custody?

16 A Yes, they were.

17 Q How did you know that they were EPC'd?

18 A I had the children with me and Officer Setree was
19 present at the school, and he informed me that the children
20 were going to be EPC'd and that's how I knew.

21 Q And were you the one who told the children what was
22 going on that Thursday afternoon?

23 A Yes.

24 Q What did you tell the children?

25 A I had all three of the kids in a small conference room

1 with me, and I told them to, you know, come here, and we
2 had our arms all around each other. And I told them how
3 brave and proud I was of them, that they had done something
4 very brave to -- to tell grownups that could help them and
5 help their mom.

6 And that I -- I said that, "I" -- you know, "remember
7 I had told you that I was going to call some of my friends
8 that could help you and help your mom, and keep you guys
9 safe. And I've done that. And right now you're not going
10 to go home this afternoon; you're going to go to somebody
11 else's house, but you're going to be together. And that's
12 the -- the most important thing, is that all three of you
13 are going to be together."

14 And no matter what, they were together. They had each
15 other that they could talk to, and we were going to get
16 this all sorted out. But they were going to be safe and
17 their mom was going to be safe. And that's what we were
18 working on and my friends were there to help them with
19 that.

20 Q All right. And when you told the children that, how
21 did they react?

22 A Initially, when I told them that they were not going
23 to be going home that afternoon, they looked a little
24 puzzled, like, "What do you mean we're not going home?"

25 But when I explained to them that we were going to

DIRECT EXAMINATION BY MS. HOWARD - JULIE GIES

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1 keep them safe and their mother safe, they were so excited.
2 They -- they were all smiling, hugging each other. They
3 were -- they were very excited.

4 Q Julie, did you write a statement about this day at any
5 point?

6 A I did.

7 Q Did anyone request that you do so?

8 A Officer Setree asked me if I would -- would -- would
9 document everything that I had called him and reported to
10 him.

11 Q Okay. Did you do this on that Thursday, or do you
12 remember when you did it?

13 A I did it that day, within probably an hour of talking
14 to him.

15 Q Of talking to whom?

16 A Officer Setree.

17 Q Okay. The first time you spoke with him?

18 A Yes.

19 Q And that was -- can you give us an estimate about what
20 time that might have been?

21 A Ten o'clock. Nine -- 9:30 or 10.

22 Q Please answer any questions defense counsel may have.

23 MR. WILLIAMS: No questions, Your Honor.

24 THE COURT: Thank you. Thank you, Mr. Williams.

25 Thank you, Ms. Gies. You may step down.

1 MR. GRAHAM: Your Honor, could we get a very short
2 break before our next witness?

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, we're going to take about a 15-
5 minute recess. I would remind you during this recess, do
6 not discuss the case amongst yourself during this recess.
7 Remember to keep an open mind. Do not begin your
8 deliberations until you are instructed to do so by the
9 Court. With that, you may go with our fine bailiffs.

10 (The jury exits at 3:35 p.m.)

11 THE COURT: All right. Anything before we take our
12 recess, Solicitor?

13 MR. GRAHAM: No, Your Honor.

14 THE COURT: Mr. Williams?

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: Court will be in recess 15 minutes.

17 All right. So the defendant is now in the media room?
18 Is that correct, Solicitor?

19 MR. GRAHAM: Yes, Your Honor.

20 THE COURT: All right. Is that correct, Mr. Williams?

21 MR. WILLIAMS: That's correct, Your Honor.

22 THE COURT: Is there an attorney with him?

23 MR. WILLIAMS: John Hendrix, my law partner, is with
24 him.

25 THE COURT: All right. Thank you. And you -- you

1 want me to advise the jury -- this is what I wrote. I
2 wrote that (as read): "I would advise the jury that they
3 may note that Mr. Bryan is not in the courtroom, nor will
4 not be in the courtroom during the testimony of the next
5 witness."

6 And who will be the next witness?

7 MR. GRAHAM: Amy Bryan, Your Honor.

8 THE COURT: (As read): "I advise you that you are not
9 to take the fact that Mr. Bryan is not in the courtroom
10 during this testimony into consideration during your
11 deliberations, or consideration of the evidence in this
12 case. The fact that he is not present should not be taken
13 into account, nor even discussed by you in your jury room
14 during your deliberations."

15 Is that sufficient, Mr. Williams?

16 MR. WILLIAMS: That sounds about as good as you could
17 do, Judge, I think.

18 THE COURT: Is there anything you want me to add to
19 that?

20 MR. WILLIAMS: No, sir.

21 THE COURT: All right. Thank you. If you'll bring
22 our jury, please.

23 (The jury enters at 3:56 p.m.)

24 THE COURT: All right. It appears our jury is back
25 present in the courtroom. Is the bailiffs lining y'all up

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 out there in the hallway? Well, y'all doing a great job.
2 I tell you, I appreciate it, too.

3 Ladies and gentlemen, I would note that Mr. Bryan is
4 not in the courtroom and will not be in the courtroom
5 during the testimony of the next witness, Amy B. I
6 would advise you that you are not to take into account the
7 fact that Mr. Bryan is not present in the courtroom during
8 the testimony of this particular witness.

9 It should not be taken into consideration by you
10 during your deliberations. The fact that he is not present
11 should not be taken into account, nor even discussed by you
12 during your deliberations.

13 And with that being said, Solicitor, you may call your
14 next witness.

15 MR. GRAHAM: Thank you, Your Honor. The State calls
16 Amy Amy B. .

17 THE COURT: All right. Amy, if you'd come around,
18 please.

19 Madam Clerk?

20 Amy B. , having been first duly
21 sworn, testifies as follows:

22 MS. BRYAN: I'm Amy B. Amy B.

23 DIRECT EXAMINATION BY MR. GRAHAM:

24 Q Amy, how old are you?

25 A I'm 10 years old.

- 1 Q When's your birthday?
- 2 A May the 18th.
- 3 Q And you go to school at Pelion Elementary School?
- 4 A Yes.
- 5 Q And what grade are you going to be starting this year?
- 6 A Fourth.
- 7 Q And last year, what grade were you in?
- 8 A Third.
- 9 Q You have any brothers and sisters?
- 10 A I have Savannah, Daniel, Kirsten, and that's it.
- 11 Q Savannah is -- how old is Savannah?
- 12 A She's five years old.
- 13 Q Is she your baby sister?
- 14 A Yes.
- 15 Q And then how about Daniel? How old is Daniel?
- 16 A He's eight -- I mean, seven years old and he's going
- 17 turn eight.
- 18 Q And then Kirsten, how old is Kirsten?
- 19 A She's 18.
- 20 Q So you have one brother and two sisters?
- 21 A I have -- yes.
- 22 Q What's your dad's name?
- 23 A Rodney Bryan.
- 24 Q How about your mom's name?
- 25 A Rachael Bryan.

1 Q Do you see your mom in the courtroom?

2 A Yes.

3 Q Right back here in the white on the first row?

4 A Yes.

5 Q Do you know the difference between a truth and a lie,
6 Amy?

7 A Yes.

8 Q What happens if you tell a lie?

9 A You get punished.

10 Q If I told you that my jacket -- my suit jacket was
11 red, would that be a truth or would that be a lie?

12 A A lie.

13 Q And are you here today to tell the truth, or are you
14 here to lie today?

15 A I'm here to tell the truth.

16 Q Last year when you were in third grade, who was your
17 teacher?

18 A Ms. Dooley.

19 Q Mary Dooley?

20 A Uh-huh.

21 Q Do you remember telling Mary Dooley something about
22 what was going on at home, last year in September of 2007?

23 A Yes.

24 Q What did you tell Ms. Dooley?

25 A I told her Dad hurt my mom. Mom got a black eye,

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 sorry.

2 Q Your mother had gotten a black eye?

3 A (No audible answer.)

4 Q The next day, did Ms. Dooley come back and ask you
5 some more questions about your mom's black eye?

6 A No.

7 Q Do you remember talking to Julie Gies, the guidance
8 counselor at Pelion Elementary School?

9 A Yes.

10 Q And did you tell her what had happened?

11 A Yes.

12 Q Let's go back to the week before, on Friday, September
13 14th of 2007. Do you remember your mom and dad picking you
14 up at the daycare at the Panther Den, I think?

15 A Yes.

16 Q Who was in the car with you guys?

17 A Savannah, Daniel.

18 Q And who else?

19 A And me.

20 Q How bout your mom and dad?

21 A Yes.

22 Q What happened when you all started to drive down the
23 road? Well, who was -- let me ask you a question: Who was
24 driving?

25 A Mom.

1 Q Where was your dad sitting?

2 A In the passer -- I can't say -- in the front seat.

3 Q Was your dad driving?

4 A No.

5 Q And then where were you and your sister, Savannah, and
6 your brother, Daniel, sitting?

7 A By side of me.

8 Q I'm sorry?

9 A By side of me.

10 Q In the back seat?

11 A Uh-huh.

12 Q Tell me what happened after the car started to drive.

13 What was going on? What happened between your mom and dad?

14 A They got in a fight.

15 Q Tell me about the fight they got into.

16 A Dad hit Mom, and Momma hit the wheel. And then she
17 almost broke her jaw, and her -- her eye went black.

18 Q What happened after your dad hit your mom?

19 A She was crying.

20 Q What was your dad doing?

21 A He was looking around and said, "Drive."

22 Q What did your mom do after he said that?

23 A She drove -- drive.

24 Q Where did she drive to?

25 A Home.

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 Q What happened after they got home?

2 A Dad went beside the house with a cutting wire tool.

3 Q When you say "the side of the house," if you're
4 looking at your front door, does he go to the right side or
5 to the left side?

6 A I do not know how -- what's right and left.

7 Q Amy, let me show you a picture and ask if you
8 recognize that picture.

9 A I recognize it. That's my house.

10 Q Is that a fair an accurate picture of your house?

11 A Yes.

12 MR. GRAHAM: Your Honor, the State would offer this
13 evidence at this time.

14 THE COURT: Mr. Williams?

15 MR. WILLIAMS: No objection, Your Honor.

16 THE COURT: All right. State's 1, without objection
17 is in evidence.

18 (State's Exhibit No. 1, photograph, entered into evidence.)

19 Q Now, Amy, is that the front of your house or the back
20 of the house that we're looking at?

21 A The front of the house.

22 Q Amy, looking at State's Exhibit No. 1, can you tell me
23 which side of the house that your dad went to after he got
24 out of the car?

25 A That --

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 Q And you don't have to say "right" or "left." Describe
2 which side it is. There's one over here that looks like
3 it's got something coming out, and over here there's
4 windows. Which side did he go to?

5 A The one that thing is sticking out.

6 Q So over here on this side?

7 A Uh-huh.

8 Q Okay. What's on that side of the house?

9 A A phone.

10 Q Okay. How many phones do you have in your house?

11 A One.

12 Q And where was that phone at?

13 A In the window.

14 Q The phone was in the window, or the phone was inside
15 the house?

16 MR. WILLIAMS: Objection. Leading, Your Honor.

17 THE COURT: Overruled.

18 Q When you needed to use the phone, where did you go to
19 use the phone?

20 A Inside the house.

21 Q Inside the house?

22 A Uh-huh.

23 Q What -- what room was right here, this side of the
24 house right here?

25 A My mother's room.

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 Q Do you know where the wires to the phone come into the
2 house?

3 A Yes.

4 Q Where do they come in?

5 A In the window.

6 Q Into which window, Amy?

7 A Mom's window.

8 Q In the window right there?

9 A Uh-huh.

10 Q You said your dad got out of the car and he had
11 cutters in his hand. What are -- what do you mean by
12 "cutters"?

13 A Well, like wire cutters. Wire -- you know, you cut
14 wires with.

15 Q After you all came into your yard, what did you and
16 your brothers and sisters and your mom do?

17 A Can you say that again? I didn't hear you.

18 Q Sure. After your dad was going to the side of the
19 house over there, with the cutters in his hand, what did
20 the rest of the family do?

21 A Going -- Mom was going to go inside and we followed
22 Mom.

23 Q Now, was Kirsten at home?

24 A No.

25 Q After you came into the house, what's the next thing

1 that you remember happening?

2 A Can you say that again? I'm sorry.

3 Q Sure, Amy. After you and your mom and your brother
4 and your sister went into the house, what do you remember
5 happening next?

6 A Dad came back in.

7 Q What happened after your dad came back in?

8 A Mom put in a movie.

9 Q And what happened after the movie was going on?

10 A Daniel played a little bit of a game. That's when I
11 went in the -- their bathroom.

12 Q And tell me about what was going on in the bathroom.

13 A We heard Mama crying. And then Savannah came back.

14 Q After Savannah came back and you heard your mom
15 crying, what did you do?

16 A We went in the bathroom.

17 Q What did you see when you got to the bathroom, Amy?

18 A Mom -- Mom was crying, and she was on the ground.

19 Q Where was your dad at that time?

20 A He was at -- at the doorway and then he was looking
21 angry at her.

22 Q After you found your mom crying in the bathroom on the
23 floor, what did you try to do?

24 A We -- Dad went away. And then I helped Mama up.

25 Q What did you do after you helped your mom up?

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 A We went in the livingroom.

2 Q And what did you do next?

3 A And then -- and then -- and then Dad was trying to
4 hurt Mom in the livingroom, and then -- and then Dad looked
5 at me and then I tried to call the police.

6 Q You said you tried to call the police; tell me about
7 that. What did you do?

8 A I pressed "911" and hear the phone sound, and then it
9 -- it didn't -- for some reason it didn't work. And then I
10 -- I went outside and --

11 Q What did you see when you went outside, Amy?

12 A The wire was cut.

13 Q After you tried to use the phone to call "911" to get
14 the police there and you saw the wire was cut, what
15 happened next?

16 A I was shocked.

17 Q What did you do next?

18 A Went back inside.

19 Q What happened next?

20 A Can I think a little bit?

21 Q Sure.

22 A We got scared and then we went -- went in the
23 bathroom, the broken bathroom.

24 Q Why did you go into the broken bathroom?

25 A Because it's the only bathroom that has a lock.

DIRECT EXAMINATION BY MR. GRAHAM - AMY BRYAN

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- 1 Q Did you feel safe in there?
- 2 A Yes.
- 3 Q Who was in the broken bathroom with you?
- 4 A Savannah and Daniel.
- 5 Q What happened after going into the bathroom?
- 6 A We -- we came out.
- 7 Q Where did you try to go?
- 8 A To Mommy.
- 9 Q Did you ever try to go outside?
- 10 A Yes.
- 11 Q Tell me what happened.
- 12 A We tried to go to the neighbors and ask the neighbor
- 13 for the phone.
- 14 Q Who's -- who's "we"?
- 15 A Me and Savannah.
- 16 Q Where was Daniel when that happened?
- 17 A Daniel was in the tree in the woods.
- 18 Q And what happened when you all tried to go to the
- 19 neighbor's house?
- 20 A Dad went over -- were you talking about the first part
- 21 or the second part?
- 22 Q Let's do the first part first.
- 23 A Okay.
- 24 Q You and Savannah, right?
- 25 A No. Actually, it was just me in the first part.

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 Q Tell me about the first part.

2 A I tried to go and then Mom said am I coming back. And
3 then we got scared. We got even more scared, so we all
4 tried to go ask.

5 Q Tell me about when you all tried to go.

6 A Daniel was entering the woods and I was catching up
7 and Savannah was beside of the house, you know, where they
8 coming out.

9 Q And where were y'all going to go?

10 A To the neighbors.

11 Q Tell me what happened when you tried to go to the
12 neighbors.

13 A Dad rushed over there and grabbed Daniel and -- by the
14 stomach -- by the stomach and squeezed his -- you know, the
15 side of his waist.

16 Q Then what happened after your dad grabbed your
17 brother?

18 A We was crying and calling Dad names, and Dad put
19 Daniel down and said everything's going to be okay. And
20 then Daniel rushed back.

21 Q Did anything else happen that night?

22 A I don't remember what happened next.

23 Q Do you remember if you ate dinner that night?

24 A Uh-huh.

25 Q Did you eat dinner?

- 1 A Yeah.
- 2 Q Did you take a bath?
- 3 A Yeah.
- 4 Q You go to bed?
- 5 A Yeah.
- 6 Q The next day, Saturday the 15th, what were your mom
7 and dad doing that morning or that day?
- 8 A I -- I still don't remember. It been a long time.
- 9 Q Do you remember -- you remember whether your dad was
10 inside or outside?
- 11 A Inside. I think they was arguing. I think they was
12 fighting again and that he cussed at Mom.
- 13 Q I know you don't want to use cuss words, but in here
14 it's okay. Can you tell me what your dad said?
- 15 A Can I just have a moment?
- 16 Q Do you not want to say it, Amy?
- 17 A "Fuck you."
- 18 Q How was your mom acting that day on Saturday?
- 19 A She was a little angry and very sad.
- 20 Q Do you remember anything happening on Sunday?
- 21 A No.
- 22 Q Monday you went to school?
- 23 A Yes.
- 24 Q Tuesday you went to school?
- 25 A Yes.

DIRECT EXAMINATION BY MR. GRAHAM - Amy B.

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1 Q Wednesday you went to school?

2 A Yes.

3 Q How come you told Ms. Dooley about what happened at
4 home?

5 A Because I was scared and I didn't want nothing happen
6 again, because I was tired of Dad beating up Mama.

7 Q Do you remember being taken away from your mom and dad
8 that day?

9 A Yes.

10 Q Who are you living with now?

11 A You mean today?

12 Q Yes, ma'am.

13 A Mom.

14 Q And your brother and your sisters?

15 A Yes.

16 Q Amy, did anybody tell you what to say today?

17 A No.

18 Q What you said the truth?

19 A Yes.

20 Q Thank you very much, Amy.

21 A Can I go and sit back in -- you know --

22 Q I'm sorry?

23 A Can I go sit back where --

24 Q You have to wait just a second.

25 THE COURT: Thank you, Solicitor.

1 Mr. Williams?

2 This gentleman over here is going to ask you some
3 questions, too. All right, Amy?

4 MS. BRYAN: Okay.

5 THE COURT: Thank you.

6 Mr. Williams?

7 CROSS-EXAMINATION BY MR. WILLIAMS:

8 Q Amy, I'm Theo Williams. I represent your father,
9 Rodney. I have two daughters. Just like you have a
10 sister, I have two daughters. Now, I know you're nervous,
11 but you don't need to be nervous with me.

12 When you were talking earlier about what happened, you
13 were talking about Friday when, I guess, your mother and
14 your father picked you up from school; is that right?

15 A Yes.

16 Q All right. So they picked you up and they picked up
17 Savannah and they picked up Daniel; is that right?

18 A Yes.

19 Q And your mother was driving; is that right?

20 A She was -- she was in the front seat.

21 Q Well, what was she doing in the front seat?

22 A She was -- had -- had Daddy's phone in her hand.

23 Q So she had your father's phone in her hand.

24 A Uh-huh.

25 Q What was she doing with the phone?

CROSS-EXAMINATION BY MR. WILLIAMS - Amy B.

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1 A She was just messing with it.

2 Q All right.

3 A She didn't know what she was doing.

4 Q She didn't know what she was doing with it? Was she
5 driving at the time?

6 A No.

7 Q Okay. Then after that, after she was messing with the
8 phone, then what happened?

9 A Then Daddy came at her and he said, "Why you messing
10 with the phone?" Mom was, "Just messing with the phone. I
11 don't know."

12 And then Dad got a little louder and said -- he said,
13 "You getting pictures to show his ex-girlfriend?" She said,
14 "I'm sorry. I didn't know I was doing it."

15 And then Dad was yelling -- I couldn't hear him. And
16 then -- and then Mom said, "Stop." And she was crying.

17 Q All right. So he accused her of sending pictures to
18 someone, and then she was arguing with her; is that right?

19 A He was -- he -- he was arguing and then she said,
20 "Stop." She didn't want to deal with it.

21 Q So she told him to "shut up" or not -- not to say
22 anything else?

23 A She just said, "Stop."

24 Q Okay. After she said, "Stop," did he stop when he was
25 arguing with her?

- 1 A No.
- 2 Q And what did she do?
- 3 A She just popped him.
- 4 Q All right. So the first action here of -- of -- of --
- 5 of physical action would be her popping him; is that right?
- 6 A Yeah.
- 7 Q Where did she pop him?
- 8 A In the mouth.
- 9 Q So she hit him in the mouth; is that right?
- 10 A She didn't slap him. He -- she just popped him. She
- 11 didn't hit him that hard.
- 12 Q And after she popped him in the mouth, then what did
- 13 he do?
- 14 A He slapped her and then she hit the wheel and then she
- 15 almost broke her jaw and she had -- her eye got hurt and
- 16 she got a black eye, and it was swelling real bad.
- 17 Q And all this happened that Friday as y'all were
- 18 sitting in the car; is that right?
- 19 A Yes.
- 20 Q And where were you sitting at the car at?
- 21 A I was sitting in the middle --
- 22 Q Where was the --
- 23 A -- in the back seat.
- 24 Q Where was the car located at?
- 25 A I do not -- can you -- I don't know ---

1 Q Was it still at ---

2 A --- what that means.

3 Q I'm sorry. I don't want to confuse you. Was it still
4 at the school when this happened?

5 A No. It was at daycare.

6 Q It was at daycare, parked?

7 A Yeah.

8 Q So she wasn't driving down the road when this
9 happened; y'all were seated -- sitting in --

10 A Uh-huh. And then she was going to drive. She -- Dad
11 said, "Drive." And then she drive. That's when she was
12 driving.

13 Q So she's doing something with his cell phone, he gets
14 mad, he yells at her; she pops him, he pops her.

15 A No. He slapped her.

16 Q Okay. And -- but she only popped him, right?

17 A Yeah. But I think he -- I remember something about
18 his elbow.

19 Q His elbow.

20 A Daniel -- I remember Daniel said something about his
21 elbow.

22 Q You remember your brother telling you something about
23 his elbow; is that right?

24 A Uh-huh.

25 Q Okay. But you didn't see the elbow, right?

1 A I can't remember. That was a long time.

2 Q All right.

3 A I couldn't remember about that elbow thing.

4 Q Okay. All you can talk about is what you've said so
5 far; is that right?

6 A Yes.

7 Q And then he told her to drive.

8 A Yes.

9 Q Okay. And did she drive?

10 A Yes.

11 Q Now, was this the last day of the week? Would this be
12 Friday, the end of the week?

13 A Can you explain that to me?

14 Q Okay. Now, you were in the third grade back then,
15 right?

16 A Yes.

17 Q So he -- you would normally get picked up at school,
18 then you'd go pick up your sister; is that right? At
19 daycare?

20 A We was all at daycare.

21 Q Y'all were all at daycare.

22 A I was at my -- my -- me and Daniel's daycare, and then
23 --

24 Q Okay.

25 A -- we picked up Savannah and I had to use the

1 bathroom.

2 Q Okay. Well, I guess what I'm asking is you didn't go
3 to school the next day, did you?

4 A No.

5 Q No?

6 A No. We was at daycare because nobody could take care
7 of us.

8 Q Let me ask it a different way. This -- do you
9 remember when this happened, supposedly?

10 A Yes.

11 Q It happened on a Friday?

12 A Yes.

13 Q And you didn't go to school on the next day, right?

14 A No.

15 Q Because you don't go to school on Saturday, right?

16 A Or Sunday ---

17 Q Or Sunday.

18 A --- or Monday.

19 Q You don't go to school on Monday?

20 A We go to school on Monday.

21 Q Okay. But you don't go on Saturday or Sunday.

22 A No.

23 Q Okay. So this happened on a Friday, right?

24 A Yeah.

25 Q Okay. Now, your mama drives down the road and you get

1 to your house and y'all stop, correct?

2 A Yes.

3 Q Okay. And you stop and this is a picture of your
4 house. Is -- is this still where you live?

5 A Yeah.

6 Q And you said that -- that this -- and I'm just going
7 to point. You say this, where the little thing is that's
8 hanging out --

9 A That's a wire and that's a phone hanging out the
10 window? Can you see the phone?

11 Q No. Can you see it?

12 A Yes.

13 Q Okay. Can you see the wire?

14 A No. I can't see the wire; I can see the phone. It's
15 big. The wire's real skinny. It's, like, really thin.

16 Q Is the -- is the wire and the phone in this picture?

17 A Yes. This is where ---

18 Q It's in this picture?

19 A Uh-huh.

20 Q Can you step down here and show me on this right here.
21 Now, remember, I've got bifocals.

22 (The witness steps down.)

23 THE COURT: How bout make sure you keep your voice up,
24 Amy.

25 A Okay. See that right there where my finger is?

CROSS-EXAMINATION BY MR. WILLIAMS - Amy B.

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1 THE COURT: See, that's the problem, Mr. Williams.
2 Please have her come back around here and let her point.

3 Q You'll have to come around --

4 THE COURT: They can't hear her. I mean, the court
5 reporter can't hear her.

6 (Sotto voce discussion between unknown parties.)

7 Q Here we go. How's that?

8 A Okay. Do you see where my finger is? Do you see that
9 right there?

10 (Telephone rings.)

11 Q That's right on cue. How'd you do that?

12 CLERK OF COURT: This phone isn't supposed to have a
13 ringer on it.

14 Q All right. Now, what are you pointing at there?

15 (Telephone rings.)

16 A You see that right there?

17 Q Uh-huh.

18 A That's the phone.

19 Q That's the phone.

20 A Uh-huh.

21 Q And where's the wire?

22 A I can't really see the wire. It's really thin. I --
23 this is not a close picture. It's too far away.

24 Q You -- you would agree that you can't see the wire in
25 this picture, can you?

1 A No.

2 Q That's good. All right.

3 A Do I have to go back there or ---

4 Q Up there, dear.

5 THE COURT: Yes, sir. You can -- yes, please, come
6 back around.

7 Q Okay. Now, you get home. Your mama parks the car.
8 What does your dad do?

9 A He went beside the house with -- like a cutting-wire
10 tool.

11 Q So he goes inside the house?

12 A No. Dad went -- he didn't went inside the house; he
13 went beside of it.

14 Q He went beside the house. Which side did he go on?

15 A Do you see where that black thing's sticking out?

16 Q Where you were just pointing a while ago?

17 A Uh-huh.

18 Q He went there?

19 A Yeah.

20 Q And where did he get this cutting thing from?

21 A I don't really know. I know though where his tools
22 are. It was a long, long time that he got those tools.

23 Q Well, he didn't have them in the car with him, did he?

24 A I don't know. I wasn't -- I wasn't looking. I wasn't
25 looking at Dad's stuff. I wasn't looking at his seat and

1 stuff.

2 Q All right. Well, when he gets out of the car and he
3 walks over there, y'all go inside the house?

4 A Yep.

5 Q Now, how did you see him walk over and cut this wire
6 if y'all went inside the house?

7 A I didn't -- I saw him walk there because we were still
8 out. And then he was inside the house after that. But
9 when in the corner, I couldn't see him, because I was in
10 the front of the house. And then Mom went inside and we
11 went inside.

12 Q So you didn't see him cut anything.

13 A No. I was in the front of the house and I have no
14 proof.

15 Q All right. And you didn't see him with the cutters
16 either, did you?

17 A Yes, I did. But I cannot -- for some reason, I cannot
18 find those cutter tools.

19 Q Well, now, if you didn't see him cut the wire, then
20 how is it you saw him with a cutting tool?

21 A I saw him out in the car -- out the window of the car.

22 Q So you saw him get the cutting tool out of the car?

23 A No. I just saw him walk over there. I saw that, and
24 then I was looking at -- I was looking at Daniel and
25 Savannah, and then -- and then he was walking -- he -- I

1 didn't see him get out the car. I was just too busy
2 looking at Savannah and Daniel.

3 Q Well, let me ask you about what happened later on. I
4 think you said that -- what happened to your dad's cell
5 phone that your mama had?

6 A I do not know. I do not know. I don't remember what
7 happened.

8 Q Your mom had it the last time; isn't that right?

9 A He took it away when she had it once.

10 Q He took it away from her?

11 A Uh-huh. He snatched it.

12 Q Does she have a cell phone?

13 A No.

14 Q Now, when you're -- when you're in there in the house,
15 did you say that you went into -- you and your sister went
16 into the bathroom and your mom was crying in the bathroom?

17 A We all went -- me, Savannah -- and we saw her on the
18 ground crying.

19 Q All right. When you talk about "on the ground,"
20 you're talking about on the floor, aren't you?

21 A Yeah.

22 Q In the bathroom?

23 A Yeah.

24 Q All right. And was she sitting on the floor?

25 A No. She was laying down.

CROSS-EXAMINATION BY MR. WILLIAMS - Amy B.

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1 Q How was she doing that?

2 A She was on her side, laying down, and crying.

3 Q Okay. And where was your father?

4 A In the doorway, looking mean at her.

5 Q Looking mean at her?

6 A Uh-huh.

7 Q But now, you didn't see your father hit her then, did
8 you?

9 A No. But Savannah did.

10 Q Well, now, you say Savannah did, but you don't know --
11 you only know what you know, don't you?

12 A Yeah.

13 Q Okay. So, so far, you know that your mother got his
14 cell phone, they were -- he was yelling at her, your mother
15 hit your father, your father hit your mother --

16 A And then -- did I tell you -- did I tell you the part
17 when we tried to make him leave?

18 Q No. I don't think you did.

19 A Okay. We tried to tell him to leave and --

20 Q When did you do that?

21 A That's the day my daddy -- you know that -- that same
22 day that he hit her.

23 Q That same day?

24 A Uh-huh.

25 Q And was that when y'all were in the house?

1 A We was in the house. Dad shut the door on Savannah's
2 toe, and she cut her toe and it was pretty bad.

3 Q Okay. So Savannah got her toe caught in the door and
4 it cut her toe and it hurt her toe real badly. Is that
5 what you're saying?

6 A Yeah.

7 Q Did you take her to the hospital?

8 A No. It didn't hurt her that bad.

9 Q Okay. Was it bleeding?

10 A Yes.

11 Q Did you put a band-aid on it?

12 A Yes.

13 Q Okay. And when that happened, is that when you told
14 your daddy not to -- to -- to leave or something?

15 A Yeah.

16 Q And who told him that?

17 A We all did. We said, "Leave here now." We was crying
18 and he -- he -- he was going outside and then he would not
19 leave. So we -- every time we'd try to tell him to leave,
20 he would not leave. He just stayed in the same house..

21 Q Okay. Now, when did you go outside to call the
22 neighbors?

23 A That's -- that was -- that was before I -- I -- that
24 was the same day.

25 Q And when in relationship to telling your daddy to

1 leave or after Savannah hurt, you know, her toe or
2 whatever?

3 A Can you say that again?

4 Q When in this scenario -- let -- let me don't use the
5 word "scenario." When in this time period was it that you
6 went outside to try to get the neighbors?

7 A I don't really understand.

8 Q Did you go outside to try to -- to try to get the
9 neighbors?

10 A Yes.

11 Q And was it daylight or -- or nighttime?

12 A Daylight.

13 Q All right. Where did you go?

14 A We tried to go to the neighbors.

15 Q And what prevented you from going to the neighbors?

16 A What's that mean?

17 Q What stopped you from going to the neighbors?

18 A Mom -- Mom and Dad.

19 Q Mom and Dad stopped you from going to the neighbors.
20 Okay.

21 Now, I heard the solicitor ask you about -- about
22 getting your supper, and about going to bed later on.
23 Later on that night, your daddy left to go to the grocery
24 store, didn't he?

25 A What did you say?

1 Q Later on that night, your daddy went to the grocery
2 store to get some groceries. Do you remember that?

3 A No.

4 Q You don't remember that part?

5 A No.

6 Q What do you remember about the rest of the day?

7 A Eating dinner, brush -- take a bath, brushing our
8 teeth, and then go to bed.

9 Q Okay. And that was Friday. What happened the next
10 day?

11 A The next day, they was fighting.

12 Q They were fighting? Well, your dad wasn't there the
13 whole day the next day, was he?

14 A I don't remember that. I only remember the part that
15 there was cussing.

16 Q So you really don't remember if he was there that day
17 or not? You just remember he was -- there was cussing the
18 next day?

19 A Uh-huh.

20 Q And you don't remember anything about Sunday; is that
21 right?

22 A Not really. No.

23 Q Do you remember him going to see one of his friends
24 Sunday morning?

25 A No.

RE-DIRECT EXAMINATION BY MR. GRAHAM - AMY BRYAN

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1 Q So you just don't remember anything about this?

2 A There was a -- it was a long, long time -- very long.
3 Lots of places and talk about all this stuff.

4 Q You've had to go to a lot of places and talk about
5 this stuff?

6 A Uh-huh. And days, days, days; and a lot of days and
7 days and days and days and days and days. Sorry. There
8 was lots of days.

9 Q Talked to a lot of people?

10 A Uh-huh.

11 Q And sometimes it's hard to remember exactly what
12 happened?

13 A Uh-huh. There's a lots and lots of days.

14 MR. WILLIAMS: That's all the questions I have, Your
15 Honor.

16 MS. Bryan: Can I go back ---

17 THE COURT: Thank you.

18 Just a minute, Amy.

19 Thank you very much, Mr. Williams.

20 Solicitor, do you have anything in re-direct?

21 Let's see if he's got any more questions, Amy.

22 RE-DIRECT EXAMINATION BY MR. GRAHAM:

23 Q Amy, what you testified to, is that what you remember
24 happening?

25 A Yep.

1 Q Do you love your dad?

2 A I love him, but I do not like him.

3 Q Okay.

4 A Can I go back in my seat now?

5 THE COURT: Just one more minute.

6 Re-direct?

7 MR. WILLIAMS: I have absolutely no --

8 THE COURT: Re-cross? All right. Now, sit right
9 there for me a minute.

10 Mr. Foreman --

11 MR. GRAHAM: Your Honor --

12 THE COURT: -- ladies, and gentlemen of the jury --
13 -- please don't interrupt me.

14 Mr. Foreman, ladies, and gentlemen of the jury, if you
15 would, please step to your jury room momentarily. Do not
16 discuss the case during this brief recess. Thank you.

17 (The jury exits at 4:35 p.m.)

18 MS. BRYAN: Can I go back to my seat now?

19 THE COURT: Just sit there. Okay?

20 All right. Solicitor, do you have a matter?

21 MR. GRAHAM: I'm sorry, Your Honor. No. I -- you're
22 dealing with her.

23 THE COURT: All right. Would you want to check with
24 your client, Mr. Williams?

25 MR. WILLIAMS: Yes, sir.

1 THE COURT: All right. If you'd just sit there for me
2 just a few more minutes, Amy, I would appreciate it. Okay?
3 Thank you.

4 MR. WILLIAMS: We're good, Your Honor.

5 THE COURT: All right. So you have nothing further;
6 is that correct?

7 MR. WILLIAMS: No, sir.

8 THE COURT: All right. And Solicitor, do you have any
9 other matter with --

10 MR. GRAHAM: No, Your Honor.

11 THE COURT: -- with Ms. Bryan?

12 All right. Thank you very much, Amy. You may now
13 step down. Thank you.

14 All right. Who will your next witness be, Solicitor?

15 MR. GRAHAM: The next witness will be the -- her
16 younger brother, Daniel.

17 THE COURT: All right. All right. Mr. Bailiff, if
18 you'd bring our jury, please.

19 (Sotto voce discussion between Mr. Williams
20 and Mr. Graham.)

21 (The jury enters at 4:38 p.m.)

22 THE COURT: All right. It appears our jury is back
23 present in the courtroom. Again, ladies and gentlemen, the
24 -- the next witness in the case will be -- is it Daniel?

25 MR. GRAHAM: Daniel.

DIRECT EXAMINATION BY MR. GRAHAM - Nathaniel B.

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1 THE COURT: -- Nathaniel B. You will note that Mr.
2 Bryan, the defendant, is not in the courtroom during this
3 testimony. Again, I advise you, you are not to take that
4 fact into consideration during your deliberations in this
5 matter. The fact that Mr. Bryan is not present during the
6 testimony of this witness should not be taken into account,
7 nor even discussed by you during your deliberations.

8 All right. Solicitor, you may call your next witness.

9 MR. GRAHAM: Thank you, Your Honor. The State calls
10 Nathaniel B.

11 THE COURT: All right. Daniel, if you'll come up to
12 this young lady right here. Right -- right here, Daniel.

13 Nathaniel B. having been first
14 duly sworn, testifies as follows:

15 **DIRECT EXAMINATION BY MR. GRAHAM:**

16 Q Daniel, what's your full name?

17 A Nathaniel B.

18 Q But you go by "Daniel"?

19 A Yes, I do.

20 Q How old are you, Daniel?

21 A I am seven years old, about to turn eight.

22 Q And what grade are you going to be in school this
23 year?

24 A Third.

25 Q What grade were you in school last year?

- 1 A I'm in -- I was -- I failed the first grade, so I'm
2 going to second and I was in first.
- 3 Q And where do you go to school?
- 4 A I go to Pelion Elementary.
- 5 Q Is that where you went last year?
- 6 A Yes.
- 7 Q How many brothers and sisters do you have?
- 8 A I have three sisters.
- 9 Q Three sisters. Who are your sisters?
- 10 A Amy, Amy is ten; Savannah, she's five; and Kirsten,
11 she is 18.
- 12 Q How about your dad? What's your dad's name?
- 13 A Rodney.
- 14 Q How about your mom?
- 15 A Rachael.
- 16 Q Do you see your mom in court today?
- 17 A Yes, I do.
- 18 Q Is that her smiling at you?
- 19 A Yeah.
- 20 Q Daniel, do you know -- do you know the difference
21 between a truth and a lie?
- 22 A Yes, I do.
- 23 Q What happens if you tell a lie?
- 24 A Bad things will happen.
- 25 Q If I told you that my jacket was red, would that be a

1 truth or would that be a lie?

2 A That would be a lie.

3 Q What you're getting ready to tell the jury, are you
4 going to tell the jury the truth, or are you going to lie
5 to the jury?

6 A The truth.

7 Q Daniel, do you remember last year in September, 2007,
8 when you had the talk with Julie Gies, the guidance
9 counselor at Pelion Elementary School?

10 A Yes, I do.

11 Q We're going to talk about the weekend before that. Do
12 you remember Friday, September 14th of 2007, when you were
13 in the car with your mom and dad?

14 A Yes, I do.

15 Q Tell the jury about what happened. Well, who was in
16 the car?

17 A Mom, Dad, Savannah, Amy, and me.

18 Q Who was driving?

19 A Mom.

20 Q Where was your dad sitting?

21 A Right next to her.

22 Q Was he in the front or was he in the back?

23 A Front.

24 Q Were the rest of you in the back?

25 A Yes.

1 Q Tell me what happened, what happened between your mom
2 and dad in the car that day.

3 A Well, they had a argument, and Dad pretty much slapped
4 the back of Mom's head, and she hit the steering wheel.
5 And she was saying that her jaw was hurting.

6 Q Do you know what they were arguing about?

7 A Do I know about what?

8 Q DO you know what they were arguing about?

9 A No. I do not.

10 Q Do you remember if your mother hit your father in the
11 car?

12 A No. Mom did not lay a hand on Dad.

13 Q Tell me what happened after your dad hit your mom.

14 A Well, they had another argument.

15 Q Do you know what they were saying?

16 A I can't remember.

17 Q Where did you all go in the car?

18 A Home.

19 Q Tell me what happened when you got there.

20 A Well, pretty much they had another argument and pretty
21 much I -- I think I remember Dad hitting Mom with a spatula
22 or something.

23 Q What happened after that?

24 A Well, they -- I -- I think Dad went outside or in the
25 bedroom.

1 Q What did you do?

2 A Well, Mom went somewhere, and I went in the back
3 bedroom and I saw them fighting.

4 Q What, if anything, did you try to do with the
5 telephone?

6 A I tried to call the police, but the phone line was
7 cut. I -- well, we gave it to Mom. Then we noticed that
8 the phone line was cut or it was dead.

9 Q How do you know the phone line was cut?

10 A Well, we went outside and we saw the phone line cut.

11 Q After you tried to call the police and you found out
12 the phone line had been cut, what happened next?

13 A I can't really remember.

14 Q Did you stay inside that whole afternoon or that
15 evening, or did you go outside?

16 A Well, I -- oh. Now I remember. I -- I ran outside
17 and tried to go to the neighbors.

18 Q Tell me about what happened when you ran outside. Why
19 were you going to the neighbors?

20 A To see if they could call "911."

21 Q What happened when you ran outside to go to the
22 neighbors to call "911"?

23 A Amy called me out in front side, and then when I
24 looked back, Dad was running at me and tried to catch me.
25 But when I looked in front of me, when I started trying to

1 run, he caught me. .

2 Q How did he catch you?

3 A He went like this (indicates) and he squeezed me.

4 Q Can you -- can you stand up so everybody can see?

5 So he -- he grabbed you around your stomach?

6 A Stomach. Then he started squeezing me.

7 Q After he grabbed you around the stomach and squeezed
8 you, what happened next?

9 A Well -- well, he went around and pretty much dropped
10 me on the floor and --

11 Q So are you inside the house or are you outside the
12 house when he dropped you?

13 A Inside.

14 Q Inside. What happened -- what's the next thing? Do
15 you remember anything else happening Friday night?

16 A No.

17 Q Do you remember if you had dinner?

18 A Yes, we had dinner.

19 Q Do you know if you took a bath?

20 A No.

21 Q Did you go to bed?

22 A Yes.

23 Q The next day, on Saturday, do you remember anything
24 happening during the day between your mom and dad during
25 the day?

1 A That's pretty much in the middle of the night what
2 happened. I woke up and I heard them fighting. So I went
3 in there to see what happened. Mom was on the couch; Dad
4 was standing up.

5 Q Let me -- let me ask here: Are we talking about
6 Friday night or Saturday night?

7 A Saturday.

8 Q Saturday night. Okay. When you woke up on Saturday
9 night, what did you see, Daniel?

10 A I saw Mom on the couch and Dad choke her.

11 Q Choking her. How was he choking her?

12 A Pretty much like this (indicates.)

13 Q What was your Mom doing?

14 A Mom was just sitting on the couch turning red.

15 Q What did you do?

16 A I stood there and Dad looked at me, and he stopped
17 choking her.

18 Q After your dad looked at you and stopped choking your
19 mom, what happened next?

20 A Well, he -- he told me to get my "another word for
21 butt" back in bed.

22 Q Did you do that?

23 A No.

24 Q What do you remember happening next?

25 A He stopped choking her, and he -- apparently he didn't

CROSS-EXAMINATION BY MR. WILLIAMS - Nathaniel B.

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1 want to kill her in front of me.

2 Q I'm sorry, Daniel?

3 A Apparently he -- he didn't want to kill her in front
4 of me. He stopped choking her.

5 Q Do you remember talking with the guidance counselor
6 about this?

7 A Pretty much. Yes, I do.

8 Q Daniel, do you love your father?

9 A A little bit.

10 Q Daniel, is everything that you've said, is it the
11 truth or is it a lie?

12 A The truth.

13 Q Thank you, Daniel.

14 THE COURT: Thank you, Solicitor.

15 Daniel, answer any questions Mr. Williams may have,
16 okay?

17 MR. WILLIAMS: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q Daniel, I'm Theo Williams. I am your father's lawyer.
21 So I -- I'm going to be asking questions that your father
22 would want me to ask of you.

23 Now, I want to take you back. You said that this
24 occurred last year when you were in the first grade; is
25 that right?

1 A What?

2 Q Correct?

3 A What? What did you say again?

4 Q These things which you're talking about, these
5 occurred last year when you were in the first grade?

6 A I don't remember. I don't remember if it happened the
7 first year or kindergarten.

8 Q Well, what grade are you in now?

9 A I am in first; I'm going to second.

10 Q Okay. So It either happened a year ago or two years
11 ago, right?

12 A (Nods head up and down.)

13 Q Correct?

14 THE COURT: You have to answer out loud, Daniel.

15 A Okay.

16 Q Okay. Well, let's pick up with this "driving in the
17 car" story. You've got your mom driving the car; you've
18 got your dad sitting on the front seat.

19 A Yes, sir.

20 Q And you and your two sisters are on the back seat?

21 A Yes.

22 Q And from what you said earlier, your father just
23 reached over and popped your mom on the back of the head;
24 is that right?

25 A Yes, sir.

- 1 Q Did you see anything happen before that?
- 2 A I just saw them arguing.
- 3 Q All right. Did you see your mama hit your father?
- 4 A No.
- 5 Q All right. And after your father popped your mother
- 6 in the back of the head, they argued some more?
- 7 A Yes, they did.
- 8 Q And then -- then y'all drove down the road; is that
- 9 right?
- 10 A Yeah.
- 11 Q And where did you go?
- 12 A Home.
- 13 Q All right. When you got home, did y'all all get out
- 14 of the car?
- 15 A Yes.
- 16 Q Okay. And you went on in the house; is that right?
- 17 A Yeah.
- 18 Q And your father went in the house with you; is that
- 19 right?
- 20 A Yes.
- 21 Q All right. And then nothing basically happened until
- 22 the next night; is that right?
- 23 A Yeah. Pretty much. Well, they had a fight and then
- 24 we went to sleep, because Dad wasn't gone.
- 25 Q Okay. They had a fight, and then dad went to sleep?

1 A No.

2 Q Who -- who went to sleep?

3 A We thought Dad left, but I woke up in the middle of
4 the night and I saw Dad choking her.

5 Q Well, this was the next day.

6 A Pretty much.

7 Q Okay. Well, what happened -- what happened the
8 daytime of the following day, where your dad popped your
9 mom in the back of the head? Did anything happen during
10 the daytime on that Saturday?

11 A No. Nothing happened.

12 Q All right. Your father left the house for a little
13 while that morning, didn't he?

14 A Probably no.

15 Q Probably no?

16 A Probably not.

17 Q Why do you say that?

18 A I don't know. I just didn't know if he had left the
19 house or not.

20 Q Well, why didn't you say that?

21 A Well --

22 Q Okay. So you don't know?

23 A I don't know.

24 Q All right. What about the night when he popped your
25 mama on -- on the back of the head? Did he go to the

1 grocery store that night?

2 A I don't think he left. I thought he -- I think he
3 stayed.

4 Q Is this -- but you don't know?

5 A I don't know.

6 Q Okay. And now, the next night -- this is Saturday
7 night -- you woke up, you came into the -- where did you
8 come into and your -- your father was choking your mama?

9 A I was in the hallway, and Mom and Dad was in the
10 livingroom.

11 Q Okay. Was the TV on?

12 A No.

13 Q Had you been sleeping?

14 A I was sleeping, but for some reason I -- somehow I
15 woke up.

16 Q Okay. And you woke up, and you walked in there, and
17 that's when you saw your mom and your daddy?

18 A Uh-huh. Yes, sir.

19 Q And you yelled at your daddy and he stopped?

20 A No. He just saw me.

21 Q So you didn't say anything?

22 A No.

23 Q So you didn't say a word and he just stopped whatever
24 he was doing?

25 A I was just surprised to see Dad choking her.

1 Q But nobody said anything?

2 A I stopped yawning and I just saw Dad choking her, so I
3 was surprised to see that, choking her.

4 THE COURT REPORTER: You need to put your hands down.

5 Q All right. So, when you got up the next morning,
6 everything was okay?

7 A Yeah. Everything was over, I saw Mom alive, and I'm
8 happy.

9 Q And did your daddy go off somewhere?

10 A Probably. I don't know.

11 Q Probably? Well, you don't remember seeing him around
12 the house that Sunday, did you?

13 A No.

14 Q Okay. And then you went to school on Monday; is that
15 right?

16 A Yes.

17 Q Went to school on Tuesday; went to school on
18 Wednesday.

19 A Yep.

20 Q And then you had a conversation with somebody at
21 school on Thursday.

22 A Yes.

23 Q How did you fix your phone?

24 A Well, we pretty much got some tape and taped it to it,
25 but the tape came off. So, we had to pretty much just have

1 to tie the stuff together.

2 Q So you and your sister did this?

3 A No. Mom did it.

4 Q Mom fixed the cord?

5 A Yes.

6 Q She taped it up?

7 A Yes.

8 Q And it worked after she did that?

9 A Yes, it did. But it took a while for her to fix it.

10 Q When did she fix it?

11 A Oh, I don't remember what day it was, but it took a
12 couple of days for her to fix it.

13 Q Did you help her with it?

14 A No.

15 Q You watched her do it?

16 A No. I just -- I -- I just went outside and I saw the
17 phone line taped up. So I guess she taped it.

18 Q Did you see her do it?

19 A No, sir.

20 Q So you really don't know how it got fixed, do you?

21 A Uh-huh.

22 Q Then why did you say your mama fixed it?

23 A She was pretty much was the only one there.

24 Q Because your daddy wasn't there, right?

25 A Uh-huh.

1 MR. WILLIAMS: That's all the questions I have, Your
2 Honor.

3 THE COURT: Re-direct, Solicitor?

4 MR. GRAHAM: No questions, Your Honor.

5 THE COURT: All right. Daniel, if you'll just remain
6 seated for a moment.

7 Ladies and gentlemen of the jury, again, if you'd step
8 briefly to your jury room. Do not discuss the case during
9 this brief recess.

10 (The jury exits at 4:57 p.m.)

11 THE COURT: (To Mr. Williams) Yes, sir. Please, if
12 you'll talk with your client.

13 (Sotto voce discussion between the Court
14 and the Clerk of Court.)

15 MR. WILLIAMS: Your Honor, I don't think there'll be
16 any other questions. Is it okay for them to come back in
17 now or --

18 THE COURT: Not yet.

19 (Sotto voce discussion between Mr. Graham
20 and Mr. Williams.)

21 THE COURT: All right. So you don't have anything on
22 re-cross? Is that right? Re-cross?
23 You don't have any further questions --

24 MR. WILLIAMS: No.

25 THE COURT: -- you want to ask this witness, after

1 conferring with your client?

2 MR. WILLIAMS: After conferring with my client.

3 THE COURT: All right. Thank you.

4 Thank you, Daniel. You may step down.

5 All right. If you would please have Mr. Bryan brought
6 back into the courtroom, Sheriff.

7 May I -- may I ask Mr. Hendrix -- Mr. Hendrix, can I
8 ask you a couple of questions before you leave, sir?

9 MR. HENDRIX: Sure, Your Honor.

10 **DIRECT EXAMINATION BY THE COURT:**

11 Q All right. Thank you. Mr. Hendrix, did you remain
12 with Mr. Rodney C. Bryan, your and Mr. Williams's client,
13 during the testimony of Amy B. [REDACTED] ?

14 A Yes, sir.

15 Q Did you also remain with him in the media room during
16 the testimony of Nathaniel B. [REDACTED] ?

17 A Yes, sir.

18 Q Were you able to -- were y'all able to see those
19 witnesses when they testified?

20 A Well, quite frankly, Daniel was so short, I couldn't
21 see him for the court reporter's head, and I -- I didn't
22 mean that in any way, but that's true.

23 Q Certainly.

24 A We -- I could see -- we could see Amy.

25 Q All right.

1 A It was difficult to see him because he was so -- so
2 small.

3 Q Were you able to hear Amy clearly?

4 A We could hear Amy clearly. What was difficult to hear
5 was the questions that were asked, because both attorneys
6 got away from the microphone, and it was much more
7 difficult to hear the questions. And some of them I could
8 not hear, but we could hear the responses.

9 Q You ought to sit up here --

10 A I can imagine.

11 Q -- Mr. Hendrix.

12 A I can imagine.

13 Q All right. And that was both as to Amy and Daniel?

14 A Yes, sir.

15 Q All right. And then Mr. Williams had the opportunity
16 to come and confer with you, Mr. Hendrix, and Mr. Bryan --

17 A Yes, sir.

18 Q -- prior to those witnesses being released from the
19 witness stand?

20 A That's correct, Your Honor.

21 Q And did he request of either of y'all for y'all to
22 follow up on any questioning?

23 A We just -- we had some discussion amongst ourselves,
24 and he -- and he came and announced the decision to Your
25 Honor.

1 Q All right. And did you feel like he understood the
2 process, and did he need any more time to confer with
3 y'all?

4 A I'm sorry. Mr. Williams announced that. I'm sorry,
5 Your Honor.

6 Q I have my own judgment as to that. But I think he
7 understands it very well.

8 But you feel like Mr. Bryan understood the process and
9 was able to communicate --

10 A I think he did, Your Honor.

11 Q -- with y'all appropriately? All right. Thank you
12 very much, Mr. Hendrix.

13 A Thank you, Your Honor.

14 THE COURT: Anything else you would like to put on the
15 record, Solicitor, as far as the procedure that was used
16 with Amy and/or Daniel?

17 MR. GRAHAM: No, Your Honor.

18 THE COURT: Mr. Williams, anything you would like to?

19 MR. WILLIAMS: Nothing further, Your Honor.

20 THE COURT: All right. Solicitor, do we have another
21 witness that we could put up today, or --

22 MR. GRAHAM: We do, Your Honor. Actually, we have a
23 witness who is fairly short. He is a deputy and he works
24 nights, so it would be good to finish with him tonight.

25 THE COURT: All right. Well, then, we'll press on.

1 You all right, Madam Court Reporter?

2 THE COURT REPORTER: (Nods head up and down.)

3 THE COURT: If you'll bring our jury, please.

4 And for the record, indicate please, Madam Court
5 Reporter, that Mr. Bryan has returned to the courtroom
6 during my colloquy with Mr. Hendrix, and will remain.

7 (The jury enters at 5:04 p.m.)

8 THE COURT: All right. Thank you very much. It
9 appears our jury is back present in the courtroom.

10 Solicitor, you may call your next witness.

11 MS. HOWARD: Your Honor, the State calls Deputy
12 Shannon Lovell.

13 THE COURT: All right. Deputy Lovell, come around and
14 be sworn, please.

15 **SHANNON LOVELL**, having been duly
16 sworn, testifies as follows:

17 MR. WILLIAMS: Your Honor, I have a matter of law to
18 take up with the Court outside the presence of the jury.

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen, if you will please -- somebody changed places,
21 by the way. If you'll step back to your jury room. Do not
22 discuss the case during this brief recess. Thank you very
23 much.

24 (The jury exits at 5:05 p.m.)

25 THE COURT: All right. Mr. Williams?

1 MR. WILLIAMS: Your Honor, this is the deputy that
2 made the visit for which the criminal domestic violence
3 first offense was charged. Obviously, Your Honor, in that
4 Your Honor has ruled in reference to the double jeopardy
5 motion, we would -- we would move to suppress any testimony
6 from this witness, because his statements in his testimony
7 would go as to another criminal violation, which would be
8 improper for my client -- for the jury to hear about this
9 other criminal violation, obviously, unless he takes the
10 stand.

11 THE COURT: I don't know what he's testifying to.
12 Solicitor?

13 MR. GRAHAM: Your Honor, that he got a call from his
14 shift sergeant, telling him go do a welfare check on Ms.
15 Bryan. That was based on information that Deputy Setree
16 had gotten from the school. So Officer -- Deputy Lovell
17 goes over to the house; Rachael Bryan meets him on the
18 outside of the house. He said that he was there to do a
19 welfare check; he explains what that is. She tells him
20 that she doesn't need any assistance. He will testify that
21 he saw bruises and marks on her face, that he offered to
22 take a photograph of those bruises and marks, and that she
23 didn't want to let him do that. I believe that he told her
24 that if she changed her mind and wanted to talk to the
25 police, that they were more than happy to talk to her. He

1 leaves, and then he reports that information to his shift
2 sergeant.

3 Eventually, Your Honor, based on what he observed and
4 what Deputy Setree learned from the parents, the warrant
5 for CDV was obtained and it was served on him and he
6 arrested that day.

7 The officer is not going to testify -- this officer is
8 not going to testify anything about an arrest being made,
9 and any charges for CDV being brought.

10 MR. WILLIAMS: He's testifying to the facts leading up
11 to the charge of the CDV first, which is the same thing.
12 Now, if he could testify -- and -- and the Court's already
13 ruled that we talking about different items -- we're
14 talking about choking versus striking, now, this officer
15 could testify in regards to choking; and perhaps I might
16 have a different view on this. But he's testifying as to
17 the facts leading up to the CDV first, which could not be
18 used on the double jeopardy argument.

19 MR. GRAHAM: If I might, Your Honor?

20 THE COURT: Yes, sir. I'm sorry.

21 MR. GRAHAM: The -- one of the testimonies already
22 come in through the children that -- that "mom was hit in
23 the car." That's already come in. As to what -- he's just
24 continuing the investigation. So the State would argue
25 that this testimony would be part of the res gestae of the

1 entire situation to explain the whole event for that
2 weekend.

3 The State would also say that any testimony related to
4 what happens in the car -- but she's not even going to say
5 anything happened in the car. But it -- it goes to -- the
6 investigation and the subsequent arrest and all that, it --
7 it all goes to why he wanted to cover it up. She was not
8 cooperating with the police at that time. Because she was
9 still under his control, it goes to explain that -- I
10 really -- it's not double jeopardy; he's not on trial for
11 that. But the -- the investigation -- if we don't tell it,
12 there won't be a complete story.

13 He physically went over and observed the bruises and
14 the injuries on her. The State's contention is that goes
15 to Mr. Bryan's motive for why he's kidnaping her and
16 keeping her in the house, because he doesn't want her to go
17 to the police. He doesn't want her to cooperate with the
18 police; he doesn't want it reported to the police.

19 THE COURT: All right.

20 MR. WILLIAMS: Your Honor, this is -- what he's
21 talking about occurs over on the 20th of September.

22 THE COURT: I understand. Thursday.

23 MR. WILLIAMS: Thursday. And there's absolutely
24 nothing he could testify to in this particular trail in
25 reference to those charges that would be relevant. He --

1 his testimony deals with the other CDV.

2 THE COURT: Well, I -- I don't know if it does or
3 doesn't. It appears to me that both Amy B. and Nathaniel B.
4 has testified to injuries that they say occurred to
5 her mother at the hands of her father, that i.e. the event
6 in the vehicle. Now -- unobjected to. This is just
7 corroboration; this is just circumstantial evidence.

8 As far as his observations are concerned, that's all
9 this is. He doesn't know where any of this occurred, and I
10 -- I don't know and haven't heard yet his descriptions of
11 the injuries that he observed, and whether any of them
12 would be consistent with or not consistent with a choking.
13 I -- I don't know that. Because all -- I -- I take it the
14 testimony -- I hadn't heard all the testimony yet. Like
15 Judge Timmerman said, "You can't prove it all on a pencil
16 point." I'm sure you heard that many times, Mr. Williams.

17 But I don't know what Ms. Bryan, Rachael Bryan, may
18 testify to as to the injuries and how they occurred at --
19 at different points in time.

20 So even if this just goes to Court's Exhibit No. 2,
21 which was the CDV first warrant issued by Judge Shockley, I
22 believe, other testimony as to that has already been
23 offered without objections. It also would go to the res
24 gestae, in my opinion, under *U.S. vs. Masters*, to explain
25 the -- the circumstances and events surrounding the -- the

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1 entire transaction.

2 Anything further, Mr. Williams?

3 MR. WILLIAMS: No, sir.

4 THE COURT: All right. Thank you.

5 (To the bailiff) If you'll bring our jury, please?

6 (The jury enters at 5:12 p.m.)

7 THE COURT: All right. It appears our jury is back
8 present in the courtroom.

9 Solicitor, you may proceed.

10 MS. HOWARD: Thank you, Your Honor.

11 **DIRECT EXAMINATION BY MS. HOWARD:**

12 Q Would you state your name?

13 A My name's Shannon Lovell.

14 Q Please tell us where you're employed, Mr. Lovell.

15 A Lexington County Sheriff's Office.

16 Q And what is your position at the sheriff's department?

17 A Right now I'm a Master Deputy for the Sheriff's
18 Department. I'm assistant supervisor for the supervisor on
19 shift as sergeant.

20 Q Okay. And how long have you been with the sheriff's
21 department?

22 A Eight years.

23 Q Can you tell us what some of your duties are as a
24 deputy?

25 A First Line Sergeant, making sure deputies under me are

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1 doing their job; also to take calls within that parameter
2 as well.

3 Q Okay. On September 20, 2007, were you out on patrol?

4 A Yes, ma'am.

5 Q Were you alone?

6 A No, ma'am. I had a -- a training officer with me at
7 that time.

8 Q Do you remember who the shift sergeant was that day?

9 A Yes. It was Sergeant John Sowell.

10 Q Did you receive a call from Sergeant Sowell in regards
11 to a welfare check?

12 A Yes, ma'am.

13 Q Do you remember the address of this welfare check?

14 A I believe it was [REDACTED] Fairview Road, or [REDACTED] Fairview
15 Road.

16 Q Okay. Can you tell the Court what a "welfare check"
17 means?

18 A Basically, if someone calls in, we actually go to the
19 residence to make sure that the person we're checking on --
20 make sure they're safe.

21 Q Did you end up going to [REDACTED] Fairview Highway --

22 A Yes.

23 Q -- to check --

24 A We did.

25 Q And is -- is that in the Leesville area?

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1 A Yes, ma'am. It's in the Leesville area of Lexington
2 County.

3 Q Show you a map of the area. Does that look like [REDACTED]
4 Fairview Road and the surrounding neighborhoods?

5 A Yes, ma'am.

6 Q Your Honor, the State would request permission to mark
7 this as Exhibit, I think, 3?

8 THE COURT REPORTER: Two.

9 MS. HOWARD: Two?

10 THE COURT: Two?

11 THE COURT REPORTER: State's 2.

12 THE COURT: State's 2. Any objections, Mr. Williams?

13 MR. WILLIAMS: No objection, Your Honor.

14 THE COURT: All right. State's 2 is in evidence
15 without objection.

16 (State's Exhibit No. 2, map, marked and admitted into
17 evidence.)

18 Q From what you may have seen up close and from what
19 this map looks like, does this fairly and accurately
20 portray [REDACTED] Fairview Road and the surrounding
21 neighborhoods?

22 A Yes, ma'am.

23 Q And is this in fact in Lexington County?.

24 A Yes, ma'am.

25 Q Can you describe the residence that was located at

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1 this address when you got there?

2 A Basically, we pulled up into a big front yard, most of
3 it was dirt. Older model trailer; had a bunch of toys and
4 stuff scattered around the yard.

5 Q Does this photo fairly and accurately represent what
6 you saw at [REDACTED] Fairview Road?

7 A Yes, ma'am.

8 THE COURT: Is that State's 1 you're referring to,
9 Solicitor?

10 MS. HOWARD: Yes, sir, Your Honor. State's Exhibit 1.

11 THE COURT: All right. Thank you.

12 Q When you got to the residence, what did you do?

13 A Soon as we drove up to the residence, a female came
14 outside and shut the door behind her. She saw us drive up.
15 I went up to her and started asking her a few questions to
16 make sure she was safe, and told her that we were doing a
17 welfare check on her well-being.

18 Q Okay. Is the female that you spoke to at the
19 residence in the courtroom today?

20 A Yes, ma'am.

21 Q Please point her out.

22 A I believe that's Rachael Bryan right there, talking.
23 In the middle right there.

24 Q White shirt?

25 A Yes, ma'am.

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1 Q Okay. Deputy Lovell has pointed out Ms. Rachael
2 Bryan.

3 Did you tell Rachael why you were there?

4 A Yes, ma'am. When we pulled up on scene, I was the
5 primary contact. I spoke with her and told her that we
6 were doing a welfare check -- her well-being to make sure
7 she was all right.

8 Q Okay. Did Rachael ever let you or your -- your
9 partner into the house?

10 A No, ma'am. She shut the door directly behind her as
11 soon as she came out, because it was already open when we
12 arrived.

13 Q What, if anything, did you ask Rachael?

14 A I asked her a series of questions, made sure she was
15 alright. As soon as she looked up at me, I saw a injury, a
16 black-eye and a swollen right-hand -- on her right side of
17 jaw, and I asked her how she got them injuries. She stated
18 to me she didn't want to talk about it.

19 And I asked her a couple more questions. You know,
20 "Are you sure? Do you need EMS?" I asked her if she'd let
21 me take a photo of her; she refused. I asked her if she
22 would at least write me a statement of what happened. She
23 refused to do that.

24 The only information I could get out from her was her
25 name and who lived there with her, which was her husband,

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1 and his name.

2 Q Okay. You offered to take a picture?

3 A Yes, ma'am.

4 Q And she refused?

5 A Yes. She refused.

6 Q Okay. Did you offer her assistance in any other way?

7 A Yes, ma'am. Before we left, I asked her if, you know,
8 she changes her mind -- because I asked her repeated
9 questions over and over, just to make sure, to see if I
10 could get any kind of statement out of her. But I told her
11 before I left, "If you do change your mind, just call the
12 sheriff's department back out and we'll come back out."

13 Q Okay. Did you ever ask Rachael if anybody else was in
14 the home on that day while you were there?

15 A Yes. And she said nobody was inside.

16 Q Was there anything else about Rachael's physical
17 appearance besides what you've already said?

18 A Just other than, you know, when I started talking to
19 her, she sat down on the steps. Her head was down most of
20 the time, and she looked up a couple of times. That's when
21 I saw the injury and started questioning her about the
22 injuries.

23 Q How would you describe Rachael's emotional state while
24 you were speaking to her?

25 A Just sad, not talkative, just had her head held down.

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1 That's it.

2 Q Okay. And how did your meeting with Rachael Bryan end
3 that day?

4 A Basically, me telling her that -- to contact the
5 sheriff's office if you wish to, you know, talk with
6 somebody to get help.

7 Q Okay. And did you report back to Sergeant Sowell
8 after you left from the residence?

9 A Yes, I did.

10 Q Did you tell him what you'd seen there?

11 A Yes. I told him about the injuries on her face and
12 that she wasn't cooperating with taking pictures or giving
13 statements or anything.

14 MS. HOWARD: No further questions.

15 THE COURT: Thank you, Solicitor.

16 Mr. Williams?

17 MR. WILLIAMS: May it please the Court?

18 **CROSS-EXAMINATION BY MR. WILLIAMS:**

19 Q Officer -- or is it Deputy Lovell?

20 A Yes, sir.

21 Q When you arrived out there, who was with you?

22 A Ms. Sullivan. She was a training officer.

23 Q Female training officer?

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

25 Q And when you arrived out there, what vehicles did you

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1 see in the yard?

2 A I don't believe I remember seeing any vehicles in the
3 yard.

4 Q What voices did you hear inside of the trailer?

5 A No voices.

6 Q What indication did you have if anybody was inside the
7 trailer?

8 A No indications.

9 Q So there's no reason for you to suspect that anyone
10 was there but Mrs. Bryan; is that correct?

11 A That's correct.

12 Q Now, you said Mrs. Bryan didn't want to have her
13 picture taken?

14 A Yes, sir.

15 Q Could you have taken her picture if you had wanted to?

16 A I probably could have.

17 Q But you didn't for whatever reason.

18 A Because she didn't want it taken.

19 Q And did you look at the -- I guess, the -- the trailer
20 and observe as to whether or not the phone lines were cut
21 or not?

22 A No, sir. I did not observe that.

23 Q And as I understand her response to your questions:
24 She didn't want to talk to you; she said nobody was there;
25 there was no indication that anybody else was there; y'all

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1 were both outside, with two armed officers; is that
2 correct?

3 A That's correct.

4 Q And there was no indication that phone service had
5 been terminated at any point in time to her trailer, was
6 there?

7 A Not to my knowledge. No, sir.

8 Q There were no children there.

9 A No, sir. Not that I observed.

10 MR. WILLIAMS: That's all the questions I have, Your
11 Honor.

12 THE COURT: Thank you.

13 Re-direct, Solicitor?

14 MS. HOWARD: Just one brief question, Your Honor.

15 **RE-DIRECT EXAMINATION BY MS. HOWARD:**

16 Q You had another officer with you that you were
17 training?

18 A Yes, ma'am.

19 Q So you were the officer in charge of her training?

20 A Correct.

21 MS. HOWARD: Nothing further.

22 THE COURT: Re-cross?

23 **RE-CROSS EXAMINATION BY MR. WILLIAMS:**

24 Q And of course, she was a female --

25 A Yes, sir.

1 Q -- who would have been available to talk to the female
2 person who was there, if need be?

3 A Correct.

4 MR. WILLIAMS: That's all the questions I have, Your
5 Honor.

6 THE COURT: Thank you.

7 Thank you very much, Deputy Lovell. You may step
8 down.

9 THE COURT: All right. Solicitor, do you have another
10 brief witness?

11 MR. GRAHAM: No, Your Honor. I think our next witness
12 will take some time.

13 THE COURT: All right. Thank you. Well, perhaps now
14 would be a good time to take our evening recess.

15 Mr. Foreman, ladies and gentlemen of the jury, we're
16 now going to take our evening recess. As I tell jurors
17 commonly, if your home is anything like mine used to be
18 back when the chaps were still at home, when you get home
19 in the afternoon, it's always, "What did you do today,
20 Daddy?" or "What did you do today, Mama?" of course.

21 And you can certainly share with your family that
22 you've been selected as a juror in the trial of the case.
23 However, you cannot discuss the case with anyone. That
24 includes your family members, your friends, or anyone else.
25 If anyone tries to talk with you about the case, please let

1 me know.

2 Remember to keep an open mind about the case, and do
3 not begin your deliberations until you are -- you are
4 instructed to do so. Do not read or listen to or watch any
5 news reports about this case, if there should be any. Do
6 not do any independent investigation or any investigation
7 on the internet.

8 For purposes of your planning, just so you'll know, I
9 plan on not holding court tomorrow afternoon, and attending
10 services for Judge Johnson in Clinton, in Laurens County.
11 So I intend to break about 12:30, and not reconvene until
12 Wednesday morning.

13 I'm not sure how many more witnesses -- how much
14 longer the trial will take, but I am just compelled to go
15 and pay my respects to -- to Judge Johnson and his family.
16 I apologize to y'all for the -- that inconvenience of an
17 afternoon of court time lost.

18 On somewhat of a light note, as I told Andrew, as Yogi
19 Berra said, "If you don't go to their funeral, they won't
20 come to yours," if any of you are Yogi fans. But I do want
21 to go and pay my respect. I hope you -- I hope you all
22 understand that.

23 With that being said, if you would please be back in
24 your jury room promptly at 9:15. Any problem? Any
25 problem?

1 MR. GRAHAM: No, sir.

2 MR. WILLIAMS: No.

3 THE COURT: At 9:15 in the morning, we will start
4 promptly thereafter. You're now excused, and I hope y'all
5 have a pleasant evening and I'll see you in the morning.

6 (The jury exits at 5:27 p.m.)

7 (Sotto voce discussion between the Court and all counsel.)

8 THE COURT: All right. Anything further, Solicitor?

9 MR. GRAHAM: No, Your Honor.

10 MR. WILLIAMS: Nothing from the defendant, Your Honor.

11 THE COURT: All right. How many -- how many more
12 witnesses you think you'll have, Solicitor?

13 MR. GRAHAM: Right now, Your Honor, I would say there
14 are four.

15 THE COURT: Four?

16 MR. GRAHAM: Yes, sir.

17 THE COURT: Do you -- do you feel like you will finish
18 the State's case tomorrow morning or --

19 MR. GRAHAM: It's -- it's possible. It depends. Some
20 of the witnesses are short and some are probably long, and
21 it would depend on cross-examination. It's possible, Your
22 Honor.

23 THE COURT: All right. Well, thank you very much.
24 Again, I want to break about 12:30 if at all possible.

25 DAY TWO

1 THE COURT: All right. Solicitor, anything before we
2 bring in our jury?

3 MR. GRAHAM: Yes, Your Honor. There is a matter that
4 I'd like to bring to the Court's attention.

5 THE COURT: All right.

6 MR. GRAHAM: Deputy Setree is going to be the State's
7 next witness. In his investigation, Your Honor, you heard
8 from the other witness basically, he talked with Julie
9 Gies, the guidance counselor. Ms. Gies relayed what the
10 children had said to him, both, orally. And she also wrote
11 a written statement and provided that to him.

12 And then additionally, Officer -- Deputy Lovell, who
13 was dispatched to do a welfare check, and he came back and
14 reported what his testimony was, that made its way back to
15 Deputy Setree.

16 Deputy Setree also uncovered prior -- during that
17 time, Your Honor, that there was an active order of
18 protection.

19 Based on all of those three things, Your Honor, he did
20 -- two things happened: One was that he -- he took the
21 children into -- he made a decision to take the children
22 into emergency protective custody. And secondly, it was
23 decided that Mr. Bryan be placed under arrest for criminal
24 domestic violence.

25 When Ms. Bryan testifies later today, when asked

1 either by myself or by Mr. Williams why she didn't go to
2 the police and why she waited to go so long and finally
3 tell the police, she's going to tell you that she was
4 afraid of him. That's why she didn't go to the police
5 initially, after the children were taken.

6 She will tell you that he was under arrest; he had
7 been in jail, I think, by that time about five days, by the
8 time she cooperated with the police. And she's -- she will
9 testify that at that point she felt safe, and she knew what
10 she needed to do to get her children back.

11 I think it's relative -- the fact that he was arrested
12 -- I do not want to get into the facts of what he was
13 charged with, but I think the fact that he was placed in --
14 under arrest on the 20th, is relevant to explain Ms.
15 Bryan's motives and actions for her failure to cooperate
16 with the police and her subsequent cooperation with the
17 police.

18 I think that the way the record is right now and the
19 way it will be after Officer -- or Deputy Setree testifies,
20 we could -- I'm not going to have him go into the facts of
21 what anybody told him, just that he talked to -- what the
22 children -- was relayed to him, that he had a brief
23 conversation with the children, not what anybody said.

24 The way that the jury will be able to take it is if
25 Daniel had testified yesterday, that he walked in Saturday

1 night on his father standing over his mother, who was on
2 the couch, and he was choking her; that her face was
3 turning red, and that his interference stopped that further
4 attack.

5 That is the indictment -- one of the elements for the
6 charges for the criminal domestic violence high and
7 aggravated nature. So I don't think that the jury will
8 draw any other inference than he was placed under arrest
9 for that. And I am sure that Mr. Williams will object to
10 any mention of the arrest, but I think that it's highly
11 relevant and appropriate to Ms. Bryan's reporting and
12 failure to report.

13 THE COURT: All right.

14 MR. WILLIAMS: And -- and Your Honor, obviously, the
15 defendant would object to the fact that they're bringing up
16 the fact that he was arrested on this CDV first, which we
17 argued about in reference to double jeopardy.

18 They may not call it "CDV first," but what they're
19 saying -- we know it's not the other charges, they're --
20 but they're saying that he was under arrest. So in
21 essence, you're bringing in his prior criminal history when
22 he hasn't testified. So we would object to that, Your
23 Honor. That he has no right to bring it up.

24 They -- they don't have to do that, in all honesty.
25 She can simply say that -- and it's just not true either;

1 because if the solicitor were totally honest with you, he
2 would tell you that the first time that she started
3 cooperating with the police officer was the following
4 Monday, which was the 25th. Monday -- whatever the 25th
5 was -- the date which they had the domestic abuse hearing.

6 And when she lost custody of her children after that
7 family court hearing, she talked with this officer over
8 here, and then they started talking about the cell phone,
9 which we referenced yesterday. And she said, "Well, I've
10 got some evidence on a cell phone that you can use." But
11 she had absolutely no conversations -- no conversations
12 with this police officer, in which she told him what
13 happened, until after the family court hearing, when she
14 lost temporary custody of her children.

15 So it's -- not only is it improper, but it leaves a
16 false impression on the jury, because the facts are, you
17 know, if you go by date-wise, that's exactly what happened.

18 THE COURT: I don't understand -- I apologize,
19 Solicitor -- to what you're asking me to rule on. Is the
20 officer going to testify that -- or you're intending to
21 have Officer Setree testify that Mr. Bryan was placed under
22 arrest --

23 MR. GRAHAM: Period. Yes, sir.

24 THE COURT: Well, period. All right. So he was
25 placed under arrest, period. I mean, he was taken into

1 custody on the 20th. That's -- that's all you want him to
2 testify?

3 MR. GRAHAM: That's all I want him to say.

4 THE COURT: You -- you object to that?

5 MR. WILLIAMS: I do, Your Honor.

6 THE COURT: And your objection is?

7 MR. WILLIAMS: That you're bringing forth a prior
8 criminal arrest, something -- something against his
9 character. Or you're saying he's committed some criminal
10 act and was arrested for it, when he hasn't testified.
11 Because you're saying he was arrested.

12 THE COURT: Well, you -- you ---

13 MR. WILLIAMS: And -- and -- they're lying to the
14 jury.

15 THE COURT: --- you -- you say that in every case. I
16 mean, when -- the defendant has to be arrested at some
17 point in time, anytime is a -- in a criminal charge placed
18 against him.

19 MR. WILLIAMS: But he wasn't arrested on these charges
20 then.

21 THE COURT: It wouldn't matter. Let's say -- let's
22 say -- for example, let's say an officer arrests an
23 individual for driving under suspension. And as a result
24 of that driving under suspension, the individual is booked
25 into the jail and they get his fingerprints. And those

1 fingerprints lead to an additional charge of burglary in
2 the second degree, or whatever. You can certainly explain
3 that -- that chain of events to -- to a jury without going
4 into the driving-under-suspension charge or -- or whatever
5 charge it may happen to be. That's just by way of example,
6 but -- but see, I -- I don't understand -- I don't
7 understand either side.

8 On one hand, the State puts up Amy -- and I'm -- I'm
9 not trying to tell any fine attorney -- trial attorney how
10 to try one's case. I don't mean it like that.

11 On one hand, the State puts up Amy and Daniel, and
12 they testify to a set of -- of -- of facts, part of which
13 those facts focus on the affidavit, as I understand it,
14 contained in Court's Exhibit No. 2. And I -- I think the
15 State even concedes that in camera, that the on-or-about
16 date of the 18th is not correct, that it is the 15th. This
17 is all one package deal, so to speak.

18 That's out before the jury now. Additionally, that's
19 out -- corroborated by Deputy -- Deputy Lovell, as far as
20 observations that he made corroborates the testimony of Amy
21 and **Nathaniel B.** So -- so that event is out there, the
22 event of what may be considered a criminal domestic
23 violence first. That -- that's already out there.

24 I -- I don't understand why -- if -- if -- I guess I
25 don't understand why no -- we don't trust our jurors more.

1 Of course, I -- I don't represent you client, Solicitor,
2 and I don't represent your client, either, Mr. Williams.

3 In saying that the exact chain of events is that
4 Deputy Lovell does the welfare check; Investigator Setree
5 is doing -- following up the investigation; the -- the CDV
6 first warrant's issued; and that's why he's arrested.

7 It doesn't matter why he's arrested in theory. Her
8 testimony, as I understand it, taking the Solicitor's word
9 as an officer of the Court, is that, "Once he was in jail
10 for a certain period of time, I felt safe."

11 You're going to say, "Well, it -- it's not that he was
12 in jail for a certain period of time and you started
13 cooperating, you felt safe, it's because you were going to
14 -- losing your chaps, because you were going to lose your
15 children."

16 And obviously, you can bring that out, too. That's a
17 -- that's a decision that the fact-finders going to have to
18 make: Was it because he was locked up four or five days
19 she started feeling safe and cooperating? Or was it she
20 just wanted her children back, so she was going to say
21 whatever she thought she had to say to get her children
22 back?

23 Now, I'm -- I'm not the fact finder there. But to me,
24 I think it's admissible that he was placed under arrest
25 9/20/07. If you object to it being for the CDV first, I

1 will exclude that, the CDV first. In other words, why he
2 was arrested.

3 MR. WILLIAMS: Well, we certainly would object to him
4 testifying in regards to what he was arrested for.

5 THE COURT: Then -- then I -- and the solicitor said
6 he's not going to offer that, either. I'm saying if you
7 wanted to offer that, I -- I -- I would not exclude it, is
8 all I'm saying. If the solicitor's just saying Detective
9 Setree or Officer Setree is going to testify the defendant
10 was arrested on 9/20 -- I take it, it was 9/20/07 -- and
11 leave it at that, I will allow that.

12 MR. WILLIAMS: And -- and Your Honor, that's -- that's
13 fine. If the -- the only -- you know, the biggest problem
14 here is if the warrant was more artfully drawn, then we
15 wouldn't be arguing about this for the last two days.

16 THE COURT: I -- I'm sure you would still find a
17 reason to argue about it the last few days if it was very
18 artfully drawn, Mr. Williams.

19 MR. WILLIAMS: That might be fair.

20 THE COURT: But that -- that's fine, too. I mean, I
21 have no problem with that. But -- all right.

22 Now, is there anything -- any other objections you
23 have to that proffered testimony as -- as related to the
24 Court by the Solicitor? As I understand it, he's not
25 giving any hearsay, just that he had conversations with

1 Amy, with Daniel, with Ms. Gies -- Gies. I'll be calling
2 her "Giese" before the week's out, of course. But are
3 there any other parts of that testimony you object to?

4 MR. WILLIAMS: Having not heard it, I guess I'll have
5 to wait.

6 THE COURT: Certainly. I understand. All right.
7 Anything further, Solicitor?

8 MR. GRAHAM: No, Your Honor.

9 THE COURT: Anything further, Mr. Williams?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: All right. If you'd bring us our jury,
12 please. And I'm -- I'm just going to try to shoot for
13 about noon today, Solicitor.

14 (The jury enters at 9:35 a.m.)

15 THE COURT: Good morning, ladies and gentlemen of the
16 jury panel. I hope you all had a pleasant evening. I
17 appreciate your promptness this morning. We are now
18 continuing with the trial of the case by the presentation
19 of the testimony of -- on behalf of the State.

20 Solicitor, you may call your next witness.

21 MR. GRAHAM: Thank you, Your Honor. The State calls
22 Deputy Brian Setree.

23 THE COURT: All right. Deputy Setree.

24 BRIAN SETREE, being first duly
25 sworn and seated, testifies as follows:

1 DIRECT EXAMINATION BY MR. GRAHAM:

2 Q Deputy Setree, where are you employed, sir?

3 A Lexington County Sheriff's Department.

4 Q How long have you been in law enforcement?

5 A Since 1991.

6 Q And how long have you been with the Sheriff?

7 A Since 2000.

8 Q Currently, what do you for Sheriff Metz?

9 A I'm a resident deputy in the Red Bank community in
10 Lexington County.

11 Q Briefly, what is a resident deputy?

12 A We hold community meetings, do community action-type
13 stuff, investigate crimes, run radar, answer complaints,
14 road patrol stuff as well.

15 Q September of 2007, what were you doing in the
16 sheriff's department?

17 A I was a school resource officer for Pelion Middle
18 School in the Pelion community.

19 Q On September 20th of 2007, did you receive a phone
20 call from Julie Gies, the guidance counselor at Pelion
21 Elementary School?

22 A I did. Yes, sir.

23 Q Based on what she told you, what did you do?

24 A Based on the information I received from her, I called
25 the road sergeant and told him I needed a welfare check

DIRECT EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 done at [REDACTED] -- I believe it is -- Fairview Highway, on a
2 Ms. Rachael Bryan.

3 Q And do you know whether that welfare check was done?

4 A Yes, sir.

5 Q And were you able to hear the results of the welfare
6 check?

7 A Yes, sir.

8 Q In addition to that, were you able to determine
9 whether there was an active order of protection?

10 A Yes, sir.

11 Q And what did you determine?

12 A Through the investigation, I found out that there was
13 an order of protection that Mr. Rodney Bryan was not
14 supposed to be in the residence of the children or Ms.
15 Rachael Bryan.

16 Q Let me -- let me show you a document and ask if you
17 recognize this document?

18 A I do. Yes, sir. It's the Family Court Order of
19 Protection, *Rachael Bryan vs. Rodney C. Bryan*.

20 MR. GRAHAM: Your Honor, the State would offer this
21 into evidence at this time.

22 THE COURT: Mr. Williams?

23 (Sotto voce discussion between Mr. Graham
24 and Mr. Williams.)

25 MR. WILLIAMS: Your Honor, may we approach?

DIRECT EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 THE COURT: Yes, sir.

2 (Bench conference.)

3 THE COURT: All right. If you would mark that, Madam
4 Court Reporter, as State's Exhibit No. 3; is that correct?

5 MR. GRAHAM: Yes, Your Honor

6 THE COURT: Yes, State's 3. And that will be subject
7 to redaction prior to publication to the jury. Thank you,
8 Solicitor. Thank you, Mr. Williams.

9 (State's Exhibit No. 3, Family Court Order of Protection
10 document, marked and admitted into evidence.)

11 DIRECT EXAMINATION BY MR. GRAHAM:

12 Q Deputy Setree, did you have an opportunity to talk
13 with Amy and Daniel?

14 A Yes, sir. I did the same day.

15 Q There was a term yesterday, "emergency protective
16 custody." What is that?

17 A It's -- EPC is when the State feels that the children
18 are not safe in their environment, the State will take them
19 into protective custody to await a hearing for -- in front
20 of a family court judge to decide whether the children
21 should be returned to the family or kept in State custody
22 until further --

23 Q Whose decision is that?

24 A It was mine.

25 Q So based on everything you knew, what did you decide

DIRECT EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 to do with Amy, Daniel, and Savannah Bryan?

2 A I took them into protective custody. Based on my
3 investigation, I didn't feel that their -- they were safe
4 in their environment.

5 Q In addition, is it true that on that same day, after
6 the children were placed in emergency protective custody,
7 that Rodney Bryan was placed under arrest?

8 A Yes, sir. That's correct.

9 Q On September 25th of 2007, did you come to this
10 courthouse?

11 A Yes, sir.

12 Q What was your purpose in coming here?

13 A To the emergency protective custody hearing.

14 Q And who did you meet for the first time that day?

15 A Ms. Rachael Bryan.

16 Q Did you meet her before or after the hearing?

17 A Before.

18 Q And were you able to have any conversation with her
19 before the hearing?

20 A Yes, sir.

21 Q Based on your conversation with her before the
22 hearing, what did you do after the hearing?

23 A She came back to the sheriff's department to be
24 interviewed.

25 Q In addition, based on your conversation with her, did

1 you secure a search warrant?

2 A Yes, sir. I did.

3 Q And what was that search warrant for?

4 A A telephone -- a cell phone.

5 Q After you got that search warrant, did you get the
6 cell phone?

7 A Yes, sir.

8 Q Where did you get that cell phone from?

9 A Ms. Rachael Bryan.

10 Q Let me show you a cell phone and ask if you recognize
11 that cell phone.

12 A Yes, sir. This is the cell phone that I received from
13 Ms. Rachael Bryan.

14 MR. GRAHAM: Your Honor, the star -- the State would
15 mark this cell phone for identification at this time.

16 THE COURT: All right, sir. State's 4 for ID.

17 (State's Exhibit No. 4, cell phone, marked for ID.)

18 Q Deputy Setree, after you -- after Ms. Bryan gave you
19 that cell phone, did you have an opportunity to speak with
20 her?

21 A I spoke with her before and after. Yes, sir.

22 Q And at some point, did you go out to the residence on
23 Fairview Road?

24 A Yes, sir.

25 Q When was that in relation to the time that you talked

DIRECT EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 with Ms. Bryan?

2 A I'm sure it was a few days after; it wasn't the same
3 day. Not exactly sure of the date.

4 Q Let me show you two photographs and ask you if you
5 recognize these photographs.

6 A Yes, sir. I took those pictures.

7 Q And those are pictures that you took a few days when
8 you -- after the 25th, when you went out to the Bryan
9 residence?

10 A That's correct, sir.

11 Q And do these fairly and accurately depict what you saw
12 when you took those pictures?

13 A Yes, sir.

14 MR. GRAHAM: Your Honor, the State would mark these
15 for identification at this time as well.

16 THE COURT: The State's 5 and 6, is it two
17 photographs?

18 (State's Exhibit Nos. 5 and 6, photographs, marked for ID.)

19 Q In addition, Deputy Setree, when you went out to [REDACTED]
20 Fairview Road, did you also go around the outside of the
21 house?

22 A Yes, sir.

23 Q Let me show you State's Exhibit No. 1 in evidence, and
24 ask if you recognize that photograph.

25 A Yes, sir. That's the Bryan residence.

DIRECT EXAMINATION BY MR. GRAHAM - BRIAN SETREE

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1 Q When you were walking around the residence, what, if
2 anything, did you notice?

3 A They have a phone line that goes in through the
4 bedroom. If you're facing the residence, looking at the
5 front door, it's going to be on your right-hand side at the
6 end closest to the driveway. I also noticed that the phone
7 line had been repaired. It looked like it had been cut
8 prior, and then taped back together.

9 Q Is that the side of the house that you're talking
10 about (indicates)?

11 A Yes, sir.

12 Q Thank you, Deputy Setree. Please answer any questions
13 that Mr. Williams has for you.

14 THE COURT: Thank you, Solicitor.

15 Mr. Williams?

16 CROSS-EXAMINATION BY MR. WILLIAMS:

17 Q Deputy Setree, let me -- you are the investigative
18 officer on this case; is that correct? Or case officer, as
19 you put it?

20 A Yes, sir.

21 Q Meaning that basically you're the officer in charge of
22 -- of the charges that my client has been charged with and
23 the case file and everything about his case?

24 A Yes, sir.

25 Q In that regard, let me ask you -- take you back when

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 my client -- I think you said he was arrested on the 20th;
2 is that right?

3 A Yes, sir.

4 Q When he was arrested on the 20th, were you present
5 when he was arrested?

6 A Yes, sir.

7 Q And did any of the police officers there take this
8 particular cell phone on that particular day?

9 A Take it? No, sir.

10 Q Did any of them touch the cell phone on that
11 particular day?

12 A I don't remember. I seem -- seem to remember that he
13 was talking on the cell phone and he was told to hang up,
14 and the cell phone was placed back into his vehicle where
15 it was inventoried and towed.

16 Q Did you see any of the police officers look on the
17 contents of this cell phone ---

18 A No, sir.

19 Q --- on that particular day?

20 A Absolutely not. No, sir.

21 THE COURT: Wait -- wait just a minute. Let him --
22 let him finish his question.

23 A Yes, sir.

24 THE COURT: Our court reporter, as fine as she may be,
25 can't take this -- all that. Finish your question, please,

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 Mr. Williams.

2 CROSS-EXAMINATION BY MR. WILLIAMS:

3 Q So it's your testimony you did not see anyone review
4 the contents of this cell phone on September the 20th of
5 2007?

6 A That's my testimony. Yes, sir.

7 Q And what happened to the cell phone which was seized
8 on September the 20th, 2007?

9 A We didn't seize the cell phone, sir.

10 Q You left it in the car.

11 A Yes, sir. It wasn't relevant at the time.

12 Q And who subsequently got the cell phone?

13 A I suppose Ms. Bryan did.

14 Q You -- and you're saying that based on the fact that
15 she had it the following week; is that correct?

16 A Yes, sir. From my understanding, she would have to
17 pick up the vehicle from where it was towed to and it was
18 in the vehicle.

19 Q All right. And in whose name is this cell phone?

20 A Mr. Bryan's.

21 Q And how did you determine that?

22 A Through Mrs. Bryan.

23 Q Did you determine it by checking with the telephone
24 company in any way?

25 A I don't remember doing that. No, sir.

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 Q So your basis that this is his cell phone is based on
2 what she told you?

3 A Yes, sir.

4 Q Did you secure the numbers and the identifications on
5 the cell phone?

6 A I'd have to look at the search warrant, that was
7 almost a year ago. I don't remember exactly what I put in
8 the search warrant. But I obtained the search warrants and
9 signed the search warrant and seized the cell phone at that
10 point.

11 Q And being the case officer or the officer in charge of
12 this particular case, did you secure the telephone number
13 for this phone, as well as the telephone number for the
14 phone which was located at the residence?

15 A Her home telephone ---

16 Q Correct.

17 A --- home telephone number? Yeah. I had the home
18 telephone number, and I'm pretty sure I had that number as
19 well.

20 Q And did you go to the telephone company and have a
21 printout done of all the phone calls from the cell phone as
22 well as from the home telephone?

23 A No, sir.

24 Q Well, now, since you are the officer in charge, and
25 you understand that one of the allegations is that of

1 kidnapping, in which the charge is -- of -- of the
2 allegations are that she was restrained for a weekend, and
3 that she was not able -- she was restrained for a weekend.
4 And you understood that, right?

5 A Yes, sir.

6 Q So wouldn't it be important to you to find out if
7 there were phone calls going from the house number to the
8 cell phone number, and from the cell phone number to the
9 house number during this time span?

10 A I can see where that would be important. Yes, sir.

11 Q Right. Because that would be an indication that the
12 defendant was not there the entire weekend, wouldn't it?

13 A Yes, sir.

14 Q But you didn't secure that information, did you?

15 A No, sir.

16 Q Have you subsequently come up with information that
17 confirms that my client was not at the house that Saturday
18 during that weekend time span?

19 A I've heard that. Yes, sir.

20 Q And where was he during that time period?

21 A Some kind of hearing, or some kind of -- I don't know.
22 I'm not sure.

23 Q Well, now, you are the case worker, aren't you?

24 A Yes, sir.

25 Q And you have run across that information indicates

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 where he was that Saturday, haven't you?

2 A I -- I've heard where he might have been. Yes, sir.

3 Q All right. And where was he?

4 A In some kind of counseling.

5 Q All right. So you now know that he was at a
6 counseling session that Saturday morning, right?

7 A Yes, sir. Well, I don't know that for sure, but
8 that's what I've been told.

9 Q Did you go to the counseling center to -- to check to
10 see if he was there?

11 A No, sir. I just found this out yesterday, or maybe --
12 maybe the day before.

13 Q And you saw the documentation that verifies he was
14 there that Saturday?

15 A No, sir. I haven't seen the documentation.

16 Q Did you ask to look at it?

17 A No, sir.

18 Q Did you not want to see it?

19 A Didn't -- didn't think about it.

20 Q Well, now -- so now we know that -- that you -- you
21 haven't checked the cell phone records which verifies
22 whether or not there was communication for the entire
23 weekend. We know that you haven't checked the counseling
24 records, to see what time he was there on Saturday, because
25 you just didn't think about it, right?

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 A I guess that's ---

2 Q It's not important to you on this issue?

3 A At the time it wasn't a part of the investigation.

4 Q How about now? Is it important to you now?

5 A Yes, sir.

6 Q All right. Now, after you had him arrested, I think
7 your next bit of testimony was that you met with Rachael
8 Bryan September the 25th of 2007; is that right?

9 A Yes, sir.

10 Q Now, that was five days -- five days after Mr. Bryan
11 had been arrested, correct?

12 A That's correct.

13 Q Had you met with Mrs. Bryan at any point in time
14 during that five-day period?

15 A I had talked with her on the telephone.

16 Q Had you met with Mrs. Bryan at any point in time
17 during those five-days period?

18 A No, sir.

19 Q All right. Then you went to family court; is that
20 correct?

21 A Yes, sir.

22 Q And you had a conversation with her?

23 A Before the court hearing. Yes, sir.

24 Q And she was having a hearing to determine who was
25 going to have temporary custody of her children, wasn't

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 she?

2 A Yes, sir. That's correct.

3 Q And from that time span in which you seized them with
4 the emergency protective act on the 20th, up until the
5 25th, she had not had her children, had she?

6 A That's correct.

7 Q And even after the hearing, she didn't have temporary
8 custody of the children, did she?

9 A That's correct.

10 Q Until she helped you prosecute this case.

11 A I don't know at what point she got her children back,
12 but it was no time -- it was several weeks later. I can't
13 tell you the exact date. I can tell you that I met -- I
14 met -- was introduced to Ms. Bryan that morning.

15 She told me that she wanted to speak with me; she had
16 a lot of things she wanted to say. She was asked why she
17 took so long to want to talk ---

18 Q I'm really not asking you for hearsay.

19 A Okay.

20 Q You just answer my questions.

21 A Yes, sir.

22 THE COURT: Now, that -- that wasn't hearsay. He was
23 saying what -- what he asked her. He -- he hasn't related
24 any -- any statements made by her. But -- but you may
25 continue.

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 MR. WILLIAMS: Thank you, Your Honor.

2 THE COURT: Your point's well-taken, but that was not
3 hearsay by the officer.

4 Q Now, Officer, after you met with Ms. Bryan, then she
5 brought you this cell phone; is that correct?

6 A At some point during our interview. It wasn't at the
7 beginning of the interview.

8 Q Well, where did the interview take place?

9 A At the Sheriff's department.

10 Q So she didn't bring this to you until -- it would have
11 to be in the afternoon, because the family court hearing
12 was in the morning, wasn't it?

13 A That's correct.

14 Q What time in the afternoon did she bring this to you?

15 A The cell phone, from my understanding, was out in the
16 vehicle that she rode in, and at some point during the
17 interview, we stopped. After I got a search warrant, she
18 brought me the cell phone. I took the cell phone and
19 placed it into evidence, and put in a request for the cell
20 phone to be analyzed of what was on it.

21 Q And you certainly don't know whether or not the cell
22 phone had been tampered with in any way, from the date of
23 the 20th when my client was arrested and placed in jail, up
24 until the point in time in which you received the cell
25 phone, do you?

CROSS-EXAMINATION BY MR. WILLIAMS - BRIAN SETREE

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1 A That's correct.

2 Q Now, you said when you went out to the scene -- the
3 trailer -- you found that there was a -- there was evidence
4 that the telephone line had been taped or had been
5 repaired.

6 A Yes, sir.

7 Q Well, there was no indication as to when the telephone
8 line had been repaired, was it?

9 A Other than what I've been told.

10 Q By Rachael or the children?

11 A Right; both.

12 Q Well, now, if you had secured the telephone records,
13 wouldn't the telephone records tell you when the telephone
14 was out of service?

15 A I don't believe so, but maybe so. I'm not a phone
16 technician, but I don't know that the -- that the phone
17 company records, unless they did a -- some kind of a check
18 to see if the line was working properly, would know that
19 the -- the wire cut going from the pole into the house,
20 that the service would be interrupted. I would imagine
21 they'd have to do some kind of test to find that out, sir.

22 Q Well, now, if there were telephone calls coming from
23 the phone that Friday and that Saturday, then that would be
24 an indication that the telephone line had not been cut,
25 wouldn't it?

1 A Yes, sir.

2 Q And the telephone company could provide you the phone
3 calls coming from that phone, so you really wouldn't have
4 to see that to see if it was cut, if you saw that there was
5 phone usage.

6 A I don't believe that's exactly right, sir, because if
7 -- if the -- if they received telephone calls on it, I
8 don't think that the line being cut would indicate one way
9 or the other whether -- now, if they had some duration or
10 some time. If they -- if they do a count and set it up --
11 there was -- somebody was on the phone for 10 minutes, then
12 obviously the line wouldn't be cut. But just to say there
13 was an incoming call doesn't necessarily mean that that
14 would show that.

15 Q Or a call leaving the residence, which would be ---

16 A That would be an indication. Yes, sir.

17 Q Of course, we didn't get the telephone logs. And --
18 and that would be evidence, if there was maybe a long
19 distance phone call.

20 A Yes, sir.

21 MR. WILLIAMS: That's all I have, Your Honor.

22 THE COURT: Thank you, Mr. Williams.

23 All right. Solicitor, anything in redirect?

24 MR. GRAHAM: If I could have just one moment, Your
25 Honor.

1 THE COURT: Certainly.

2 MR. GRAHAM: No further questions, Your Honor.

3 THE COURT: Thank you very much, Solicitor.

4 Thank you, Detective Setree. You may step down.

5 All right. Solicitor, you may call your next witness.

6 MR. GRAHAM: The State would call Crime Scene

7 Investigator Mike Phipps.

8 THE COURT: All right.

9 MICHAEL PHIPPS, being first duly

10 sworn, testifies as follows:

11 DIRECT EXAMINATION BY MR. GRAHAM:

12 Q Mr. Phipps, where are you employed, sir?

13 A With the Lexington County Sheriff's Department.

14 Q How long have you been in law enforcement?

15 A It'll be 11 years in just a couple of months.

16 Q How long have you worked for the Sheriff?

17 A Same amount of time.

18 Q What do you do for the sheriff's department?

19 A I'm currently assigned to our crime scene unit.

20 Q And in general, what is a -- what's a crime scene unit
21 do?

22 A A crime scene investigator responds to scenes where
23 evidence needs to be collected and documented.

24 Q And did you participate in executing a search warrant
25 in the case we're here for today?

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1 A Yes, sir. I did.

2 Q Let me show you what's been marked as State's Exhibit
3 No. 4 for identification, and ask if you recognize that.

4 A Yes, sir. I do.

5 Q And did you perform a search warrant on the phone?

6 A Yes, sir.

7 Q What was the purpose of the search warrant?

8 A The search warrant, as I recall, was to recover any
9 photos or video contained on the phone's memory.

10 Q And were you able to obtain video from that phone?

11 A Yes, sir.

12 Q Would you tell the jury how that was done?

13 A The -- at the time, we did not have that capability at
14 our department, so we took the phone to SLED. Their
15 computer crime center has specialized equipment for
16 recovery of data off various devices. I took possession of
17 the cell phone from our evidence unit, which means I go
18 over and sign it out, and carried it over to the SLED's
19 computer crime center, where I met with the technician
20 there.

21 I stand there while he plugs the phone up to a cable
22 into a standard desktop computer like you would have at
23 home, and using software that the manufacturer -- in this
24 case, Motorola -- provides, we just download whatever's on
25 that phone, just like you would if it was your own phone at

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1 home.

2 Q Were you present when this downloading occurred?

3 A Yes. I was present the entire time. Everything that
4 was done was done at my direction, and I observed all the
5 procedures.

6 Q Other than downloading the video that was on the phone
7 at that time, did you or anyone at SLED do anything else,
8 other than copy what was on there down?

9 A We simply moved the files that were on the phone to a
10 CD that he handed to me, and that I took back to our
11 department.

12 Q Did you manipulate any other data at that time?

13 A Didn't change anything.

14 Q Change any of the file names?

15 A No, sir.

16 Q Let me show you a disc and ask if you have had an
17 opportunity to view and listen to the contents of that
18 disc?

19 A Yes, sir.

20 Q And is that a fair and accurate representation of what
21 you downloaded from the phone at SLED?

22 A Yes, sir. It is.

23 Q Is it an exact copy of it?

24 A An exact copy.

25 MR. GRAHAM: Your Honor, the State would mark this for

1 identification at this time.

2 THE COURT: All right. That would be State's ID 7,
3 Madam Court Reporter?

4 THE COURT REPORTER: Yes, sir.

5 (State's Exhibit No. 7, CD, marked for identification.)

6 THE COURT: And you call that a "disc"? Is that what
7 you call it, Solicitor?

8 MR. GRAHAM: Yes, Your Honor. It's a compact disc
9 labeled "Video from Phone."

10 Q Investigator Phipps, once you got that video, do you
11 have some computer equipment that allows you to do some
12 other things?

13 A Yes, sir. Recently we received a grant in our
14 department that purchased some equipment specifically to
15 take video and audio and try to enhance that. And I was
16 asked to take the files that we had downloaded from this
17 phone and attempt to enhance the audio portion.

18 Q When you say "enhance," what does that -- what does
19 "enhance" mean?

20 A In this case, it would just mean to make more
21 intelligible. Usually with audio, there are certain things
22 you're trying to overcome, whether it's an echo, background
23 noise, machinery in the background that's running that
24 makes whatever is being said on that audio difficult to
25 hear. And in this case, there was some human speech in the

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1 background that we were trying to suppress so that the
2 conversation was more intelligible.

3 Q Now, does that actually change anything that was said
4 on the -- on the video?

5 A No, sir. It doesn't.

6 Q So other than making it clearer, did you do anything
7 to change the video or the audio?

8 A Nothing was done to the video; and nothing that I did,
9 as far as enhancement to the audio, had any effect on what
10 was said or heard, other than trying to make it a little
11 clearer to hear.

12 Q And were you able to achieve some success doing that?

13 A Marginal. The -- the problem was the noise or
14 interference, in this case, is another human voice. So it
15 -- it's quite difficult to eliminate that without eliminate
16 what's being said as well.

17 Q Let me show you another compact disc and ask if you've
18 had an opportunity to listen to the contents of this disc.

19 A Yes, sir. I have.

20 Q In fact, is that the enhanced version of the audio and
21 video?

22 A That's correct. After the enhancements that I made to
23 the video -- or the audio track on the videos, I then
24 exported them back out and burned them to a second disc.

25 Q And other than making the enhancements and copying on

CROSS-EXAMINATION BY MR. WILLIAMS - MICHAEL PHIPPS

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1 this disc, did you do anything else to change the contents
2 of this?

3 A I changed the file names, so much as to add "enhanced"
4 to the file names so I could distinguish the fact that was
5 an enhanced version of that file versus the original.

6 MR. GRAHAM: Your Honor, the State would offer this
7 for identification at this time.

8 THE COURT: State's 8 for ID.

9 (State's Exhibit No. 8, enhanced CD,
10 marked for identification.)

11 Q Investigator Phipps, looking at the file names, were
12 you able to determine the dates they were recorded?

13 A There was a date expressed as part of the file name,
14 and it's just the convention of that cell phone when it
15 records something, it uses the date as part of the file
16 name in addition to the numerical value, so it can
17 distinguish one file made on a certain date from another.

18 Q What was that date?

19 A That date was September 15th of 2007.

20 Q Thank you. Investigator, please answer any questions
21 Mr. Williams has for you.

22 THE COURT: Thank you, Solicitor.

23 Mr. Williams?

24 **CROSS-EXAMINATION BY MR. WILLIAMS:**

25 Q Investigator Phipps, as I understand, your job -- can

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1 I see the little document you had that had the date on it?

2 A I just had my report. On the back, I had written the
3 file name and convention so I could remember it.

4 (Sotto voce discussion between the Court
5 Reporter and the witness.)

6 Q When you -- I'm very computer illiterate. When you
7 take this information, you download it off of your phone --
8 off the phone.

9 A Yes, sir.

10 Q Obviously, it goes to a computer; is that correct?

11 A Yes, sir.

12 Q And when you download it to this computer, does this
13 computer print out a time as to when the photos were taken
14 on the cell phone?

15 A The -- the exam we did was -- wasn't what you would
16 consider a forensic exam. When you think of taking a
17 computer to a computer forensic lab, you think of them
18 investigating everything about that computer.

19 What we did here is basically data recovery. We just
20 took the phone -- just like you would at home -- plugged it
21 into a computer, and physically moved the files that were
22 on that phone to the computer for the purpose of copying
23 them to a disc.

24 Q If you had your computer at home, and you were -- say
25 you were on the internet, you were downloading videos that

1 you should not be looking at, you wouldn't be able to see
2 when you downloaded those videos on your computer at home,
3 wouldn't you?

4 A Yes. Windows Operating System or Apple -- when you
5 think of a home PC -- has a lot of background information
6 that's recorded, as far as activity that's conducted on it.

7 Q So are you telling me that you're unable to download
8 the date and time and have it printed out when you're doing
9 this? Because you say that -- that you know when it was
10 done. It was done at 9:15 on 2007, right?

11 A No, sir. I think the statement is that's what the
12 phone recorded as the date for its file name.

13 Q So are you saying that someone uses the phone and
14 types in the date of 9/15/2007?

15 A No. It uses the date that is stored on the phone or
16 that the phone is set up for. In other words, if you
17 program your phone to say today is September 15th, then
18 anything you would do as far as taking a photo or videoing
19 something, it would have that as part of its file name.

20 Q And can you manipulate the times on your phone, the --
21 the dates on your phone? Can you reset it?

22 A Yes, sir. Some phones you can reset.

23 Q Did you look at this phone to see if it could be
24 reset?

25 A I know that this phone, you can input a date in. Yes,

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1 sir. I didn't know --

2 Q So ---

3 A I have no way to tell whether it was done in this
4 case.

5 Q So you can actually take a video and change the dates
6 or the times on the cell phone to have the cell phone date
7 or time reflected on the video?

8 A That's possible. If you were to change the date and
9 then take a video of something, and then change the date
10 back to what it should be, in theory, I guess, you could
11 manipulate the way that the file is named. Yes, sir.

12 Q Now, in terms of what you were doing when the -- the
13 equipment you were using, you work at the Lexington County
14 Sheriff's Department and you do crime scenes, which is
15 you've got to mark evidence and things like that, right?

16 A Yes, sir.

17 Q But as an aside, because of your expertise, you have a
18 little more knowledge than some of the other guys and you
19 can mess with, like, computers and --

20 A In -- in this case, the -- the video enhancement/audio
21 enhancement equipment that we purchased on a grant, we
22 received three days of training in Virginia from the
23 manufacturer on that equipment and how to use it. Yes,
24 sir.

25 Q Okay. So after you had the cell phone and after you

1 recorded the information or downloaded it, I should say,
2 onto a disc, you took the disc to SLED. And who at SLED
3 helped you in terms of, I guess, with the imaging or what-
4 have-you on this disc?

5 A No, sir. We didn't take a disc to SLED; I physically
6 carried that phone to SLED ---

7 Q Okay.

8 A --- where it was -- the files that were on there were
9 transferred from the phone or copied from the phone to a
10 disc.

11 Q Okay.

12 A And then I walked away with a disc in hand and the
13 phone.

14 Q And who assisted you with SLED on that?

15 A It was one of their technicians. I don't recall the
16 name.

17 Q Now, when you downloaded whatever files you
18 downloaded, I think you've already established that there
19 was a date or time which was reflected on the cell phone.
20 Does it break -- I didn't say -- maybe I shouldn't have
21 said "time." It has a date; does it reflect a time?

22 A No, sir.

23 Q So there is no time reflected on here at all, correct?

24 A As far as I can tell. There is a numerical value
25 expressed after that. I have no idea if that is part of

1 the time or not.

2 Q Now, when you download a picture or a video, it would
3 show you the number of characters that have been used up in
4 your memory on your cell phone, doesn't it?

5 A Usually there's some way that you can query how much
6 capacity you have left as far as memory, if that's what
7 you're asking.

8 Q That's what I'm asking.

9 A Okay.

10 Q So, it -- does it show you what's left in memory or
11 does it show you what's used in the video? Or the photo?

12 A I'm sorry. I don't understand that question.

13 Q Does it reflect, when you take a picture, the number
14 of characters that have been stored in memory as opposed to
15 what's left in memory? Or is it the other way around?

16 A I have no idea. Usually it gives you some type of
17 capacity as far as memory capacity that the phone has. And
18 I have no idea, in this case, how the phone would tell the
19 owner how much was left in that memory.

20 Q Well, when you were at SLED with this fancy equipment,
21 could it tell you what other items had been on the cell
22 phone and had been deleted? Like a trash basket on your
23 computer.

24 A No, sir. Like I said, what was conducted on that
25 phone was not a forensic exam, it was a data recovery. The

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1 only equipment used was a simple cable, proprietary to the
2 manufacturer, in moving it to the desktop computer. The
3 only reason we took it to SLED was we physically didn't
4 have the cable at our department. Otherwise, I could have
5 done it at our department.

6 Q So you don't know what data had been deleted from the
7 cell phone?

8 A No, sir.

9 MR. WILLIAMS: That's all the questions I have, Your
10 Honor.

11 THE COURT: Thank you, Mr. Williams.

12 Anything in redirect, Solicitor?

13 MR. GRAHAM: Briefly, Your Honor.

14 THE COURT: All right.

15 REDIRECT EXAMINATION BY MR. GRAHAM:

16 Q Investigator Phipps, Mr. Williams was asking you about
17 the date on the phone and whether it could be manipulated
18 or not. What was your answer?

19 A Anything's possible.

20 Q The 9/15/2007 date that you identified for those
21 videos, if that date was manipulated on it, would that have
22 been before the video was shot or after?

23 A Someone would have to have changed the date
24 specifically to that date prior to shooting the video for
25 it to encode that date as part of its file name, and then

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1 change the date back to the proper date after the video was
2 shot.

3 Q So they would have had to change the date before the
4 video was shot, shoot the video, and then go back -- not on
5 the video, but on the phone -- and change the date on the
6 phone to the correct date?

7 A Yes, sir. That's correct.

8 Q Thank you.

9 THE COURT: Re-cross, Mr. Williams?

10 MR. WILLIAMS: Yes, Your Honor.

11 RE-CROSS EXAMINATION BY MR. WILLIAMS:

12 Q And you don't have anything from the computer lab at
13 SLED, a printout of any kind, which reflects the exact date
14 that this was downloaded, do you?

15 A I took it on November 15th of 2007, to have this done.
16 That was the date that I took it to SLED.

17 Q But you don't have anything from SLED that verifies
18 that the pictures were placed on the phone on that
19 particular date, any -- something off of a computer that
20 prints that out, showing the number of characters and all
21 that?

22 A Like I said, SLED's only involvement was to assist me,
23 because they had a cable specific to this phone that would
24 allow those files to be transferred.

25 MR. WILLIAMS: That's all the questions I have.

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1 THE COURT: Thank you. Thank you very much, Detective
2 Phipps. You may step down.

3 All right. Solicitor, you may call your next witness.

4 MR. GRAHAM: Your Honor, if I could approach?

5 THE COURT: Yes, sir.

6 (Bench conference.)

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen of the jury, they need to set up some computer
9 equipment; take about 10 minutes. So perhaps now would be
10 a good time for us to take a quick recess.

11 Remember, do not discuss the case during this brief
12 recess. Remember to keep an open mind until you are told
13 to begin your deliberations. With that being said, we'll
14 take about 10 minutes, Mr. Foreman. Thank you. You may go
15 with our bailiffs.

16 (The jury exits at 10:17 a.m.)

17 THE COURT: All right. Anything before we take our
18 break, Solicitor?

19 MR. GRAHAM: No, Your Honor.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: All right. We'll be in recess about 10
23 minutes. Thank you.

24 All right. Solicitor, anything before we bring in our
25 jury?

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1 MR. GRAHAM: No, Your Honor. I don't believe so.

2 THE COURT: Mr. Williams?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: All right. Bring in our jury, please.

5 (The jury enters at 10:28 a.m.)

6 THE COURT: All right. It appears our jury is back
7 present in the courtroom. We're continuing the trial of
8 the case by the presentation of the testimony by the State.

9 Solicitor, you may call your next witness.

10 MR. GRAHAM: Thank you, Your Honor. The State calls
11 Rachael Bryan.

12 THE COURT: All right. Ms. Bryan, will you come
13 around, please?

14 RACHAEL BRYAN, being first duly
15 sworn and seated, testifies as follows:

16 DIRECT EXAMINATION BY MR. GRAHAM:

17 Q Rachael, how old are you?

18 A Thirty-six.

19 THE COURT: Spell your last name for the court
20 reporter, please.

21 THE WITNESS: B-r-y-a-n.

22 THE COURT: Thank you.

23 Thank you, Solicitor. You may proceed.. I didn't mean
24 to interrupt you.

25 MR. GRAHAM: That's all right.

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- 1 Q Ms. Bryan, how old are you?
- 2 A Thirty-six.
- 3 Q Are you married?
- 4 A Yes.
- 5 Q Who are you married to?
- 6 A Rodney Bryan.
- 7 Q Talking about the man sitting at the defense table
- 8 with Mr. Williams?
- 9 A Yes, sir.
- 10 Q How long have you been married to Mr. Bryan?
- 11 A Ten and a half years.
- 12 Q How many children do you have, Ms. Bryan?
- 13 A Four.
- 14 Q Who is your oldest?
- 15 A Kirsten.
- 16 Q How old is she?
- 17 A Eighteen.
- 18 Q Is Mr. Bryan her father?
- 19 A No, sir.
- 20 Q How old was Kirsten when you and Mr. Bryan met?
- 21 A Three months old.
- 22 Q Do you and Mr. Bryan have some children in common
- 23 together?
- 24 A Yes, sir.
- 25 Q Who are the children in -- who are your children?

DIRECT EXAMINATION BY MR. GRAHAM - RACHEL BRYAN

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1 A [REDACTED] Amy B. [REDACTED], [REDACTED] Nathaniel B. [REDACTED], and [REDACTED] Savannah B. [REDACTED].

2 Q And we heard from Amy and Daniel. How old is
3 Savannah?

4 A She's five now.

5 Q Where do you live, Rachael?

6 A [REDACTED] Fairview Road, Leesville, South Carolina.

7 Q Rachael, looking at State's Exhibit No. 1, do you
8 recognize that?

9 A Yes, sir.

10 Q Whose house is that?

11 A Mine and the children's.

12 Q At some point in September of 2007 or before, was
13 Rodney living there with you?

14 A Yes, sir.

15 Q How much land do you have around that trailer?

16 A Eight and a quarter acres, I think.

17 Q Are you able to -- how close is your closest neighbor?

18 A Well, I have one that would be on the left side, and
19 they're about a half acre; and then another one on the
20 right side, and they have 200 and I don't know exactly
21 where they're at.

22 Q Can you see either one of their houses from -- from
23 your front porch or back porch?

24 A Not the front porch. No, sir.

25 Q They're close enough to walk to, though?

1 A Yes, sir.

2 Q March 5th of 2007, did you get an order of protection?

3 A Yes, sir.

4 Q When that order of protection was issued, was Rodney
5 living with you or was he living somewhere else?

6 A He was living somewhere else.

7 Q During -- after that order of protection was issued
8 until about the middle of July, did you have any contact
9 with Rodney?

10 A Yes, sir.

11 Q Did he come to the house?

12 A Yes, sir. He would call a lot and he pulled in the
13 yard and things like that.

14 Q And he was violating the order of protection at that
15 time. Why didn't you call the police on him?

16 A Well, if he'd come up in the yard and he would be
17 aggressive or angry, and I'd say I'd call -- I'd say I --
18 "I'm going to call the police," he would leave.

19 Sometimes, you know, he'd call and the children would
20 answer and they'd want to talk to him; or he'd pull up and
21 the children would be outside, and they would want to see
22 him. I -- I just thought he would stop, you know, he'd
23 give up.

24 Q Were you working at this time, Rachael?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. GRAHAM - RACHEL BRYAN

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1 Q At some point, did you talk with him?

2 A Yes, sir.

3 Q When did you talk to him?

4 A The end of August. Or -- or September -- sometime in
5 -- either the end of August, the beginning of September.

6 Q At some point after the middle of July, did you let
7 Rodney move back in the house?

8 A Yes, sir.

9 Q Why?

10 A Well, he said that the place he was living at, she had
11 asked him to leave. And he just needed a place to stay for
12 a little while, until he -- he kept talking about going to
13 Charleston. That if he could stay there for a little
14 while, you know, he could help pay the bills, because he
15 couldn't pay his child support. He was having trouble
16 paying his child support and paying rent.

17 Q Was this supposed to be a permanent arrangement?

18 A A what?

19 Q Was it a permanent arrangement? Was he moving back in
20 permanently?

21 A No, sir.

22 Q September 14th of 2007, what happened in the early
23 morning hours? Who woke you up?

24 A Rodney woke me up.

25 Q What did he tell you?

1 A He said that -- I was asleep on the couch, and he said
2 that I had to take him to his friend's house, his partner's
3 house to pick him up, because they had to put in a wall
4 before another trade came in, in the morning.

5 It was about two o'clock when he woke me up, and
6 saying I had to take him over there to pick his friend up,
7 and they were going to put up a wall before -- I think it
8 was the plumbers came in.

9 Q So what did you do?

10 A I got up and took him.

11 Q Who was driving the car when ---

12 A Rodney was driving the car.

13 Q Where did he go?

14 A Well, he was -- his friend lived in Gaston and he
15 drove in that direction, but he didn't want to go to his
16 friend's house. After I got in the car, he -- and he was
17 driving, he just kept driving around and yelling at me and
18 accusing me of different things.

19 Q So he's yelling at you and accusing you of different
20 things. What's he yelling about and what's he accusing you
21 of?

22 A He's saying that -- that I want to get rid of him
23 because I have someone else, that he's accusing me of
24 sleeping with a lot of different people.

25 Q Was any of that true?

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1 A No.

2 Q What else happened in the car?

3 A He opened the door. He -- he said he was going to
4 push me out of the car. He just kept yelling and yelling,
5 and -- and finally I just crawled in the back seat.

6 Q Why did you go in the back seat?

7 A Because he couldn't reach me in the back seat and
8 drive.

9 Q What happened next, Rachael? What happened next?

10 A Around 4:30 or -- or, you know, before five, he pulled
11 up in the driveway of his friend's house, and his friend
12 came outside. And then they went to a gas station, or we
13 all went to a gas station. And at that time, Rodney got
14 out of the front seat and got in the back seat with me.
15 And then we left there and they went to the job site.

16 Q After you got to the job site, what happened?

17 A I got in the car and drove home.

18 Q Where did Rodney -- where was Rodney at?

19 A At work.

20 Q When you left there, was anybody else in the car with
21 you?

22 A No.

23 Q Now, did you leave your -- your young ones at home, or
24 was there somebody else at home when you ---

25 A Kirsten was there.

DIRECT EXAMINATION BY MR. GRAHAM - RACHEL BRYAN

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1 Q Later on that day, did you go back to pick Rodney back
2 up?

3 A Yes, sir.

4 Q Tell me what happened when you went -- who was driving
5 the car then, you or him?

6 A Me.

7 Q After you were driving and when you picked Rodney up,
8 you eventually went to pick up Daniel, Amy, and Savannah.

9 A Correct.

10 Q Tell me what happened at the daycare.

11 A Well, Rodney went inside and got Savannah. And while
12 he was inside, I looked through his phone to basically see
13 who he was talking to, and he came out.

14 He got mad because I had sent -- during the process of
15 looking through his phone, I -- I'd sent like a draft of a
16 picture of someone to somebody. And he was saying that I -
17 - I did that for -- that I was trying to have an affair
18 with these people, that's why I did that. And he was
19 yelling at me and -- and screaming at me that I -- you
20 know, calling me bad names and --

21 Q Who was in the car when this was going on?

22 A The children, the little children: Amy, Daniel, and
23 Savannah.

24 Q And I hate to ask you, but I want the jury to know.
25 When you said he was calling you bad names, what was he

1 saying at this time?

2 A He was saying, you know, that I was a whore and that I
3 was a slut and things like that.

4 Q When he was saying those words and -- and yelling at
5 you with all the children in the car, what did you do?

6 A Well, I mean, I was driving. I drove for about --
7 from the daycare to my house is probably about 10 miles.
8 And I kept telling him to stop. And we were almost -- I
9 mean, we were probably about three or four miles from home,
10 and I popped him in the mouth and told him to stop. And
11 then he ---

12 Q What -- what happened next?

13 A Well, he hit me. I -- I'm blind in my right eye, so I
14 didn't see, I just felt it. I just felt it and -- and my
15 head snapped. And I saw a car -- you know, a car coming on
16 the other side of the road. And then I looked back at him,
17 and he elbowed me in the -- right here (indicates). And
18 then I -- I just -- I got woozy, you know. I was -- like
19 everything was kind of woozy.

20 And I pulled over to -- into a parking lot and -- and
21 the car -- I don't know if I stopped the car, or you know,
22 he stopped the car. He just -- when I looked down, he had
23 his hand on the parking -- you know, the thing in park?
24 And he was screaming, and the kids were crying; and then he
25 just said, "Drive home." And I did.

1 Q What happened after you got to your house?

2 A Well, when we got home, he took the keys out of the
3 car and I was getting the kids out. They were still
4 crying, and -- and they were scattering around. And he
5 walked to the trunk and then I got Nathaniel and Savannah.
6 And Amy was somewhere; she was kind of following us. And I
7 got everybody in the house -- the children.

8 Q After Rodney took the keys to the car and you went in
9 the house, do you know where he went?

10 A He was outside.

11 Q Tell me what happens next inside the house. What's
12 going on?

13 A The kids are crying, and at some point immediately
14 there, they went to the phone. I think it was Daniel that
15 went to the phone. And he was saying, "The phone doesn't
16 work, the phone doesn't work."

17 And then -- and Amy brought me the phone. And I said,
18 "Yes, " -- I listened to it; there wasn't any dial tone.
19 And I said, "Yes. The phone's broke." I -- I didn't --
20 you know --

21 Q What else happened that afternoon?

22 A Well, I got the kids kind of settled down in the
23 living room and I put in the movie and then I went into the
24 bathroom. And was, like -- I -- I still -- you know, my
25 head hurt real bad, everything hurt real bad. And I was

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1 putting water on my face; and -- and I went and sat down on
2 the -- on the toilet seat.

3 And then Rodney came in there and he was still mad.
4 He was still saying that, you know, I didn't accidentally
5 do that. I didn't -- he was still saying that I was
6 cheating on him, and that -- still screaming at me.

7 And then he came over there and he started choking me
8 and pulling my hair. And he -- and he slapped me a couple
9 more times. And then I was -- by that time, I was on the
10 floor and then I heard the kids screaming again. They came
11 screaming.

12 Q You were on the floor where?

13 A In the bathroom.

14 Q What's the next thing that you remember after that?

15 A I remember hearing the kids, like at a -- you know,
16 they weren't in the house. I knew they weren't in the
17 house. I heard them screaming and crying, but they weren't
18 in the house. So I got up to go find them. And I opened
19 the back door and Amy was in the backyard, and she was
20 saying, "Daddy hurt Daniel. Daddy hurt Daniel."

21 And they were -- Rodney was carrying Daniel back
22 towards the house.

23 Q How was he carrying Daniel?

24 A Under -- under his arm, like one arm. And -- and he
25 was yelling at them to go inside. And I told Amy to come

1 inside.

2 Q What happened next?

3 A They -- Amy and Savannah came in the backdoor, and
4 then I heard Rodney come in the front with Daniel. I -- I
5 heard Daniel -- I heard Daniel hit the floor, and then I
6 ran in there and Daniel was crying. And he was saying, you
7 know, "Daddy hurt me. Daddy hurt me. I couldn't breathe."

8 And I picked him up and I looked at him. And it -- he
9 had red -- like, red marks, but he wasn't -- he didn't look
10 very, you know, hurt.

11 Q Did Rodney say anything to the kids at that point?

12 A He told them to stay in the house.

13 Q Is that what he said? What did he say?

14 A He said -- he said, "Stay in the damn house."

15 Q What, if anything, did Rodney say to you about makeup?

16 A Well, he -- he said -- he said -- he said, "You -- you
17 stupid bitch. You go put on some makeup. You're upsetting
18 the kids."

19 Q What did you do after he said that?

20 A I went to put on makeup.

21 Q And what happened after you put on the makeup?

22 A It didn't help. I mean, it -- it -- my eye was kind
23 of already shutting and it -- it didn't help. And --

24 Q What did Rodney say about that?

25 A That I tried to make it look worse than it was.

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1 Q How many phones do you have in your house, Rachael?

2 A One.

3 Q Where is that phone at?

4 A In the window of -- of my bedroom.

5 Q Looking at State's Exhibit No. 1, over on this side or
6 on this side? Which side are we talking about?

7 A On that right side.

8 Q Over on this side (indicates)?

9 A (Nods head up and down.)

10 Q Later on that evening, what, if anything, did you
11 notice about that phone? You said it wasn't working
12 earlier. Did something else happen with that phone?

13 A Rodney took the whole phone out. He took the whole
14 phone out and -- and put it in the trunk.

15 Q How do you know he did that?

16 A Because I saw him do it.

17 Q Other than that phone, were there any other phones?

18 A Rodney had a phone.

19 Q Was that a phone in the house, or was that the cell
20 phone?

21 A He had a cell phone.

22 Q Let me show you State's Exhibit No. 4 for
23 identification and ask if you recognize that?

24 A Yes, sir. That's Rodney's phone.

25 MR. GRAHAM: Your Honor, the State would offer the

1 phone into evidence at this time.

2 THE COURT: Mr. Williams?

3 MR. WILLIAMS: No objection to the introduction of the
4 phone. There may be an issue about -- about the contents
5 when we get to the disc.

6 THE COURT: All right. State's 4 is in evidence
7 without objection.

8 (State's Exhibit No. 4, Cell Phone, marked and
9 admitted into evidence.)

10 Q Rachael, what did you do with your children that
11 night?

12 A Put them to bed. They took a bath and brushed their
13 teeth and I put them to bed.

14 Q How many sets of keys were there to the car?

15 A It was a rental car; it was just one.

16 Q Who had that key?

17 A Rodney had it.

18 Q Why didn't you try to leave the house and go to a
19 neighbor's house?

20 A I -- I didn't think that I could take all the kids and
21 make it out of the yard.

22 Q After the kids had been fed and everybody had their
23 bath, what happened next?

24 A I went to sleep on the couch.

25 Q Are the kids awake or are they asleep at this point?

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1 A They're asleep.

2 Q What happens when you go to sleep on the couch?

3 A Rodney woke me up and said that I had to go sleep in
4 the bed, because he didn't want me to leave in the middle
5 of the night.

6 Q Let me show you a diagram and ask if you recognize
7 this?

8 A Yes. That ---

9 Q Is that a fair and accurate representation of the
10 interior of your trailer as it was on September 14th, 15th,
11 16th of 2007?

12 A Yes.

13 MR. GRAHAM: Your Honor, the State would offer this
14 diagram into evidence at this time.

15 MR. WILLIAMS: Without objection, Your Honor.

16 THE COURT: State's 9's in evidence without objection.

17 (State's Exhibit No. 9, Diagram, marked and admitted
18 into evidence.)

19 Q Rachael, looking at State's Exhibit No. 9 where my
20 finger is down here, is that the front door or the back
21 door?

22 A That's the front door.

23 Q That corresponds with the steps and the door here?

24 A Yes, sir.

25 Q And now, here is a couch.

1 A Yes, sir.

2 Q When you said you were asleep on the couch, is that
3 the couch you're talking about?

4 A Yes, sir.

5 Q After Rodney woke you up, where did he take you?

6 A To -- to my bedroom, back where the little bed is.

7 Q This one here?

8 A Yes, sir.

9 Q How is that bed -- how was that bed located in the
10 room? Was it in the middle of the room? Is one side
11 against the wall? Or how was it -- how was it situated in
12 the room?

13 A Just like it shows. It's up against the wall. It's a
14 -- it's a small room, and that's a twin bed. And that --
15 that bed is up against the wall. There's probably a foot
16 or two between it -- at the end of it, to the living room.

17 Q Did you want to get in the bed with him?

18 A No.

19 Q Why did you go?

20 A Because he told me to.

21 Q Tell me what happened when he took you in the bedroom.

22 A Well, I -- I was sleeping up against the wall, or
23 trying to sleep up against the wall. And Rodney wanted to
24 have sex and I didn't want to. And he started taking my
25 clothes off and he just did it.

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1 Q What were you doing during this time?

2 A I was crying.

3 Q What did you say to him?

4 A I don't think I said anything to him.

5 Q When you say, "He did it," do you mean y'all had
6 intercourse?

7 A Yes.

8 Q Did you fight him?

9 A No.

10 Q Why not?

11 A Because he was holding my arms down, and I just --
12 there wasn't -- I just didn't.

13 Q Did you want to have sex with him?

14 A No.

15 Q What -- what happened after he was done having sex
16 with you?

17 A I don't really remember, but I think that he went to
18 sleep.

19 Q Tell me what happened Saturday the 15th, the next
20 morning.

21 A Most of the day, that I can remember, he was outside a
22 lot, on his phone a lot. Me and the kids were inside and
23 he just kept coming back inside, and yelling at me and
24 still calling me bad names. And the kids and I -- we kept
25 asking him to leave, just leave. And he didn't.

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1 Q Why didn't you go for help some time during that day?

2 A Well, the kids were there, and like, you know, I just
3 -- the kids were -- I -- I mean, I was kind of beat up, you
4 know. It was -- I was just kind of just making it through
5 the day, you know, moment to moment.

6 And every so often, you know, he would come in and --
7 and yell and scream again, and I didn't think he was going
8 to let that happen.

9 Q At some point that day, were you all sitting at the
10 kitchen table?

11 A Yes.

12 Q What was going on while y'all were at the kitchen
13 table?

14 A Rodney just -- it just -- he just kept doing the same
15 thing. He kept trying to get me to admit that I was having
16 sex with any one of these people that he thought I was
17 having sex with. He just kept going -- saying it over and
18 over and over and over. And I kept saying, "No." And you
19 know, he just kept wanting me to admit to what he thought.

20 Q Where are the kids?

21 A They're in the house. They're in the living room
22 watching TV.

23 Q Is Kirsten there Friday night, Saturday night, or
24 Sunday; or any time this weekend?

25 A No.

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1 Q Where is she at?

2 A She went to my mom's.

3 Q At some point while you were in the house, did Rodney
4 either use the cell phone or pretend to use the cell phone
5 and say some things that alarmed you?

6 A Yes. He -- he -- he -- he was talking and he was
7 saying, you know, "Y'all need to come get me." Well, you
8 know, "I'm going to hurt her. I -- I can't. She's not
9 safe. Y'all need to get here quickly. I -- I don't know
10 what I'm going to do." Things like that.

11 He acted like he was talking to the police. I thought
12 he was talking to the police to come and get him.

13 Q What happened after he -- what happened after ---

14 A He put the phone down on the table, and he walked
15 away. And I went over there and picked the phone up, you
16 know, because I just really couldn't believe he was telling
17 the police to come get him. And there was nothing. There
18 was no -- nobody was on the phone. It was just nothing.

19 Q What happened next?

20 A He -- he -- he started laughing at me. He started
21 laughing at me, saying, "I knew you would've turn me in."
22 You know, he -- he looked happy with his self.

23 Q So was he in the room when you first went over to pick
24 up the phone?

25 A No. He -- he was walking outside. I thought he was

1 outside. Like he was waiting on the police to come get
2 him.

3 Q And after you picked up the phone, where -- where was
4 he?

5 A Right back in the door.

6 Q You say he was -- you said he was laughing?

7 A He was smiling. He looked just pleased, you know,
8 that he had -- like he'd played a trick, you know? He just
9 looked happy that I believed him, or happy that I picked up
10 the phone. I don't know what -- why he was exactly happy,
11 but he just looked like "ha-ha," you know?

12 Q Did anything else happen that afternoon?

13 A After the phone incident?

14 Q What happened next?

15 A He -- he -- I thought he was going to go take a
16 shower. He went to the bathroom like he was going to go
17 take a shower. It was nighttime, you know? And --

18 Q Where -- where are the kids right now?

19 A They're in bed already.

20 Q So we're in nighttime now?

21 A Yes.

22 Q They've already been fed and bathed and put back to
23 sleep?

24 A Yes.

25 Q Okay.

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1 A And so I was -- when he went to go get in the shower,
2 I was going to go to the neighbors and call, because I
3 thought the way he had acted over the cell phone, it was
4 just -- it was insane. What he had just done, it scared
5 me. I thought that he was really, you know, planning on
6 doing something bad.

7 Q Doing what?

8 A I thought he was probably going to kill me.

9 Q When he went back, you thought he was going to the
10 bathroom to take a shower, what did you do?

11 A I was going to -- I walked to the door. I got to the
12 top of the steps at the front door, and he came back around
13 the corner and he grabbed my arm and he said, "Where the
14 fuck do you think you're going? And I didn't tell you you
15 could go anywhere."

16 Q Did you want to leave?

17 A That's why I was walking out the door. I wanted to go
18 call the neighbor.

19 Q What happened after he put your arm -- his hand on
20 your arm?

21 A He told me to go sit down on the couch and I did.

22 Q What happened after you went to sit down on the couch?

23 A He paced back and forth, yelling at me again; and then
24 he came over there and he started choking me. And he took
25 out his pocket knife and he kind of alternated between

1 choking me and going like that (indicates) with the knife.

2 And --

3 Q What was he saying?

4 A "I'm gonna fucking kill you."

5 Q And what?

6 A "I'm going to kill you." That's what he was saying.

7 He was saying, "I'm going to kill you. I -- I should kill
8 you. I could bury you in the yard. No one would know."

9 He was threatening me.

10 Q What happened to the couch?

11 A The -- it broke. It broke because he was kind of
12 bouncing up and down during this point. And the -- it was
13 a recliner, and -- and it just broke. It gave -- it gave
14 under the weight, I guess.

15 Q When it broke, what happened? What happened to the
16 wall?

17 A It put a hole in the wall.

18 Q Rachael, looking at State's Exhibit No. 6 for
19 identification, do you recognize that photo?

20 A Yes, sir.

21 Q Is that a fair and accurate portrayal of the couch?

22 A Yes, sir.

23 MR. GRAHAM: Your Honor, the State would move 6 for ID
24 into evidence at this time.

25 THE COURT: Mr. Williams?

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1 MR. WILLIAMS: I'd like to see it first, Your Honor.

2 THE COURT: All right.

3 MR. WILLIAMS: I have no objection to that, Your
4 Honor.

5 THE COURT: All right. State's 6 in evidence without
6 objection.

7 (State's Exhibit No. 6, Photograph,
8 marked and admitted into evidence.)

9 Q Rachael, looking at State's Exhibit No. 6, what is
10 that?

11 A I'm sorry. What?

12 Q What is that? What's that picture show?

13 A It shows the broken couch. It shows --

14 Q Which part is broken? Is this part broken or is this
15 part broken (indicates)?

16 A That part is broken. Point -- the part you're
17 pointing at is broken.

18 Q Let me show you another photograph, State's Exhibit
19 No. 5 for identification. Do you recognize that?

20 A Yes, sir. That's the hole that the couch breaking
21 created.

22 MR. GRAHAM: Your Honor, the State would move State's
23 5 for ID into evidence at this time.

24 MR. WILLIAMS: Without objection, Your Honor.

25 THE COURT: All right. State's 5's in evidence

1 without objection.

2 (State's Exhibit No. 5, Photograph,
3 marked and admitted into evidence.)

4 Q Rachael, I know you already said it, but what are we
5 looking at when we look at the State's No. 5 that's on the
6 screen before you?

7 A The hole in the wall where the couch -- when the couch
8 broke and hit the wall; the head -- you know, the top part.

9 Q After the chair broke, what happened? What was going
10 on? Did it stop then or what happened?

11 A That's -- that's about that time is when Daniel came
12 up and I was trying to breathe. I couldn't -- I couldn't
13 breathe before. I'm was trying to breathe. I rolled off
14 the couch.

15 Q Why couldn't you breathe?

16 A Because he was strangling me. He -- he -- he -- he
17 was choking me. I couldn't breathe.

18 Q What happened after Daniel came up?

19 A He stood up. He stood up and was looking at him. I
20 didn't even see Daniel from that point; I just heard him.
21 And I rolled off the couch and I was on -- on my hands and
22 knees, trying to -- trying to get my breath back. I mean,
23 you -- you can't breathe immediately, regularly, after
24 you've been choked.

25 Q Do you remember what, if anything, Rodney said to

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1 Daniel?

2 A I -- I really -- you know, I know what Daniel said,
3 but I was trying to breathe.

4 Q What happens next, Rachael?

5 A Rodney pulled me up by my hair and told me to go to
6 bed.

7 Q Did you want to go?

8 A No.

9 Q Rachael, looking back at State's Exhibit No. 9, where
10 are the children sleeping?

11 A In the back bedroom. And -- but ---

12 Q How many bedrooms are in the trailer?

13 A Two.

14 Q So when you say the "back bedroom," you're talking
15 about back here (indicates)?

16 A Yes, sir.

17 Q What -- what kind of beds do we have back there?

18 A Well, at the time, I had a queen bed that you see --
19 you know, looks like it has two pillows. Yes. And there
20 on the other one, across from it, both of those are bunk
21 beds.

22 Q Who normally slept in the bunk beds?

23 A The children. It's a very large room.

24 Q So there was Kirsten, Savannah, Amy, and Daniel?

25 A Correct.

1 Q So when he grabbed you by the hair, he told you or
2 takes you where?

3 A He told me to go to bed, and so I went and sat down on
4 the single bed.

5 Q Back in the bedroom on the right side?

6 A Correct.

7 Q What happened on the way to the bedroom? What did he
8 say to you?

9 A He -- he had -- he went and got some of my lingerie,
10 and he told me to put it on. But I didn't. I didn't put
11 it on. And --

12 Q What else did he say to you then?

13 A He said that he owned me; that he had paid for me;
14 that he could do what he wanted; that he'd always own me.

15 Q What did he say about the lingerie?

16 A When I didn't ---

17 Q What did he say about the lingerie?

18 A I -- I -- I don't remember.

19 Q Did you wear the lingerie?

20 A No.

21 Q Where did you go?

22 A I was sitting on the bed; I was just sitting there. I
23 told him, "No, I'm not going to put it on. No."

24 Q What does he do?

25 A He's -- he's got his pants pulled down and he's

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1 putting his penis in my face and he was telling me what I'm
2 going to do.

3 Q What's he telling you to do?

4 A He's telling me that I'm -- got to have oral sex with
5 him. But I didn't.

6 Q What happened next, Rachael?

7 A He just pushed -- pushed me down and took it -- took -
8 - took my pants off and had sex with me again.

9 Q He had intercourse with you again?

10 A Yes.

11 Q Did you want to have sex with him?

12 A No, sir.

13 Q Did you fight him?

14 A It was like I wasn't really even there at that point.
15 I just --

16 Q What do you mean?

17 A It was like it was happening to somebody else; it
18 wasn't really me that it was happening to. It was -- it
19 was somebody else.

20 Q What happens after he was done raping you, Rachael?

21 A He apologized. He apologized that it wasn't good for
22 me. He said, "I'm sorry that wasn't good for you."

23 And I just thought what a strange thing to apologize
24 for, and -- after everything that had happened. I just
25 thought it was odd.

1 Q What happens next?

2 A I started -- I rolled over and started praying, and
3 then I went to sleep.

4 Q Were you on the inside of the bed or the outside?

5 A The inside.

6 Q Why were you on the inside of the bed?

7 A Because he said he could feel me get up if I got up.

8 Q When you say the "inside," you're talking about up
9 against the wall?

10 A Yes.

11 Q Where was he?

12 A On the other side.

13 Q On the outside of the bed?

14 A Yes.

15 Q You said you were praying; what were you praying for?

16 A God would -- that God would help me.

17 Q Did you go to sleep, Rachael?

18 A Yes.

19 Q How come you didn't wake up in the middle of the night
20 and try to sneak out?

21 A I don't know. I just -- I don't know.

22 Q Sunday morning, the 16th, what happened that day?

23 A I -- I don't really remember. I -- I remember sitting
24 on the couch that day, and that's -- that's all I remember
25 about that day. The next few days were -- was like a

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1 dream.

2 Q Do you remember really anything happening on Sunday?

3 A No.

4 Q Do you remember any time that weekend that Rodney
5 wasn't at home?

6 A Not that I know -- knew of. And he -- I knew he would
7 go outside, you know, but I didn't follow him outside. I
8 didn't go looking for him. He'd just come in and out.

9 Q Do you remember the car ever being gone?

10 A Not that I remember. No.

11 Q In all honesty, if he would have been gone at that
12 time, would you ---

13 A I wouldn't have went anywhere.

14 Q Why not?

15 A I guess conditioning. I -- I just felt -- I gave up.
16 I was -- I believed that a lot of things that Rodney said,
17 you know. That's -- you know, I thought -- I just -- I
18 don't know.

19 Q What were you going to say?

20 A I thought, you know, it'll just make him madder.
21 It'll just -- if -- if -- if the police came, it'll just
22 make him madder. He'll just be madder.

23 Q Monday morning, where does everybody go?

24 A The kids went to school. I -- I got up and got them
25 ready for school.

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- 1 Q Where did Rodney go?
- 2 A I guess he went to work.
- 3 Q Was there another car at the house at that time?
- 4 A No.
- 5 Q How about the phone? Was there a phone in the house?
- 6 A He didn't give the phone back for a couple days. I --
- 7 I don't really know exactly what day. I just remember
- 8 telling him I needed the phone in case something happened
- 9 with the kids at school, and I had to have the phone.
- 10 Q So Monday, is it fair to say you were home alone by
- 11 yourself all day?
- 12 A Yes.
- 13 Q You don't go to the neighbors; you don't go for help?
- 14 A No.
- 15 Q Why?
- 16 A I was humiliated. I was embarrassed and humiliated
- 17 and I didn't see where it was going to help anything. And
- 18 I -- I thought it was pointless.
- 19 Q What did you ---
- 20 A He ---
- 21 Q --- sorry.
- 22 A Go ahead.
- 23 Q What did you do at home that day?
- 24 A Cleaned the house.
- 25 Q Why were you cleaning the house?

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1 A (No audible response.)

2 Q Why were you cleaning the house?

3 A So I -- I just -- well, I clean the house anyway.
4 That's what you do, you know. You clean your house, but I
5 mean, I was just trying to make everything better, you
6 know. I made dinner. I -- I -- I made him lunch, you
7 know, those few days. I was trying to make everything
8 better.

9 Q Anything else happen on Monday?

10 A Not that I remember.

11 Q The children came home?

12 A Yes.

13 Q Rodney came home?

14 A I think so.

15 Q Tuesday and Wednesday, anything different happen those
16 days?

17 A No.

18 Q Again you're at home alone by yourself, Rodney's at
19 work, and the kids are at school?

20 A Yes. And he was saying that he was going to go ahead
21 and go to Charleston that following weekend, you know. He
22 was saying that he was -- he was talking about moving down
23 there.

24 Q Thursday, do you remember two deputies from the
25 sheriff's department coming to your house?

1 A Yes.

2 Q When they came to check on you, Rachael, and asked you
3 what happened, why didn't you tell them?

4 A I thought there was no point to it. I thought even if
5 he's arrested, he'd be out in a very short time; and he'd
6 be madder that I -- that I turned him in, that I told on
7 him.

8 Q Later that day, you found out that your children --
9 Savannah, Amy, and Daniel -- were taken into protective
10 custody, didn't you?

11 A Correct.

12 Q Did you also find out that Rodney has been placed
13 under arrest?

14 A Correct.

15 Q On the 21st, the following day, did you have a
16 conversation with Rodney on the phone?

17 A That Friday?

18 Q Yes, ma'am.

19 A Yes.

20 Q What did Rodney say to you?

21 A Well, I went to -- actually went and got the car out
22 of impound. And I was just kind of freaking out, you know.
23 The kids were gone; I didn't know where they were at, you
24 know. I -- I mean, I knew that they had been taken, but I
25 didn't -- I couldn't talk to them on the phone. I couldn't

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1 know where their -- where they were being kept. And I was
2 just -- I went to his mom's house, because I was -- I knew
3 that somebody had to go to court with me.

4 And I went to his mom's house to ask her -- well, I
5 was thinking of asking her to let the kids stay with her.
6 And at that time, Rodney called on the phone at his mom's.

7 Q Did you have a chance to speak to him then?

8 A What now?

9 Q Did you have a chance to talk with Rodney on the phone
10 at his mom's house?

11 A Yes.

12 Q What did Rodney tell you?

13 A He said that --

14 Q What were you supposed to say?

15 A I was supposed to go and tell the police that Amy was
16 retarded; that Amy was retarded and didn't know what she
17 was talking about; that he had told his -- Jonathan not to
18 give me any money to help the situation until ---

19 Q Who's Jonathan?

20 A His business partner at the time.

21 Until I -- you know, I had to go fix this. I had to
22 go and -- and say that this was all a lie.

23 Q When you got the car out of the impound, is that where
24 you found the cell phone?

25 A Yes.

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1 Q State's Exhibit No. 4?

2 A Correct.

3 Q Did you have a chance to look on that cell phone?

4 A That Saturday. Yes, I did.

5 Q What did you find when you looked on that cell phone?

6 A Well, originally, I was just -- I was missing the
7 children, and he -- we had taken a lot of pictures of them.
8 And I was looking for those pictures. It's sad.

9 And then I found the video that Rodney had -- had made
10 when -- that weekend.

11 Q The next week, Rachael, on the 25th, there was a
12 family court hearing regarding your children being taken
13 into emergency protective custody, wasn't there?

14 A Correct.

15 Q Prior -- prior to going to that hearing, what had you
16 decided to do?

17 A I decided I don't want to live like that any more.

18 Q What did you decide about talking to the police?

19 A That I was going to tell them.

20 Q Why?

21 A Because I don't want to live like that any more.

22 Q When you went to the hearing -- before you -- before
23 the hearing, who'd you meet for the first time?

24 A Bryan Setree.

25 Q And what did you tell Brian Setree before the hearing?

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1 A That I had found something on Rodney's cell phone that
2 he might want to see. And he said that he couldn't look at
3 it or see -- look, you know, until he had obtained a search
4 warrant.

5 Q Had you said anything to him before the hearing about
6 whether you wanted to talk him and cooperate with the
7 police?

8 A Yes, I did.

9 Q What did you tell him?

10 A That I wanted to.

11 Q What was the result of the hearing? Did you get your
12 kids back right then?

13 A They were placed with my mother.

14 Q After the hearing on the 25th, where did you go?

15 A To the police station.

16 Q Did you talk with Deputy Setree?

17 A Yes, sir.

18 Q And after he got the search warrant, what did you do
19 with the phone?

20 A I gave it to him.

21 Q During this time, between the time that Rodney was
22 arrested and -- and this family court hearing on the 25th,
23 when you decided to talk with Deputy Setree, had Rodney
24 bothered you any more?

25 A No. Not -- I -- the -- that was the last conversation

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1 that I had with Rodney, when I talked to him at his mom's.
2 He -- he did call a couple of months later, but not during
3 that time. I mean, he sent letters, but I don't think it
4 was that quick.

5 Q Rachael, let me show you what's been marked as State's
6 Exhibit No. 8 for identification, and ask if you recognize
7 this compact disc?

8 A No. I don't think so.

9 Q Have you had an opportunity to listen to the -- have
10 you had an opportunity to listen and view the video that
11 was taken from the phone?

12 A I watched it when I found it.

13 Q Since you watched it when you found it, that was
14 before you gave it to -- to ---

15 A Brian Setree.

16 Q --- Deputy Setree?

17 A Yes, sir.

18 Q In preparing for this trial, after the audio was
19 enhanced, when you and I were preparing for the trial, did
20 you have an opportunity to look at the video and listen to
21 the audio ---

22 A Oh. Yes, sir.

23 Q --- from the phone? And is what you saw and is what
24 you heard a verbatim repetition ---

25 A Yes, sir.

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1 Q --- of the conversations between you and Rodney Bryan
2 on September 15th of 2007?

3 A Yes, sir.

4 Q Looking back at it now, since you've seen it, when was
5 he -- when did he record that?

6 A He -- he -- he had to been doing it right before he
7 did the thing with pretending like he was calling the
8 police, because he was standing in front of the kitchen
9 sink, and I was sitting at the kitchen table. And he -- I
10 thought he was looking through his cell phone.

11 So it had to have been during that period; that's the
12 only time I remember him having his cell phone, you know,
13 out, visible.

14 MR. GRAHAM: Your Honor, the State would move State's
15 No. 8 for identification into evidence at this time.

16 MR. WILLIAMS: Your Honor, we would object, that he
17 has failed to establish a proper foundation on introduction
18 of that item.

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, will you step to your jury room
21 momentarily? Do not discuss the case during this brief
22 recess.

23 (The jury exits at 11:19 a.m.)

24 THE COURT: All right. Solicitor, I -- I haven't
25 heard Ms. Bryan say that State's 8 is what she has seen

1 prior to her testimony today.

2 MR. GRAHAM: And I agree that she didn't say that,
3 Your Honor.

4 THE COURT: Is that the foundation ---

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: --- of your objection?

7 MR. WILLIAMS: Yes, sir.

8 MR. GRAHAM: I would say, Your Honor, though, that the
9 testimony -- the prior testimony shows that Investigator
10 Phipps downloaded what she originally saw; that he did the
11 enhancements -- the only enhancements that have been done -
12 - and he put that on that disc. That's what Investigator
13 Phipps said. And she said she has seen those enhancements.
14 There are no other enhancements.

15 I realize that she is saying she hadn't -- she doesn't
16 remember seeing that disc, but she has seen what's on that
17 disc. And I think testimony shows that.

18 THE COURT: She doesn't know if there's other
19 enhancements or not. I mean, she doesn't know if what
20 you're offering is what she saw. If -- if you want to show
21 it to her now in camera, I have ---

22 MR. GRAHAM: Okay.

23 THE COURT: --- I think you can do that.

24 MR. GRAHAM: I think that would be ---

25 MR. WILLIAMS: Your Honor, we would object to that.

1 THE COURT: All right, sir. But I think under *State*
2 *vs. Nicholson*, they -- they would be allowed. I mean, they
3 -- he's not presenting it to the jury now. And -- and her
4 testimony is going to be whatever her testimony is going to
5 be. Either she's going to say, "That's what I've seen," or
6 "That's not what I've seen."

7 MR. WILLIAMS: And Your Honor, we would object because
8 at this point in the trial, stopping the trial and enabling
9 the solicitor to correct his wagon so he can get the
10 evidence in. So we think that that, obviously, Your Honor,
11 would not be proper in this particular case.

12 THE COURT: There are 46 Circuit Court trial judges.
13 Actually, there's 45 Circuit Court trial judges active in
14 South Carolina, and three active retired, one of which is
15 the Honorable Alex McCauley, who has a great deal more
16 experience and abilities than I do.

17 In the *State vs. Nicholson*, a 2005 Court of Appeals
18 Case 623 S.E. 2d, 100 it states that (as read): "Nicholson
19 was deprived of a fair trial because the presiding judge
20 instructed the solicitor on how to introduce a piece of
21 evidence against him, Mr. Nicholson.

22 "During the trial, the solicitor sought to introduce
23 into evidence a composite audio tape recording of a
24 conversation between Nicholson and his accuser, that took
25 place on December 20 and 27th of '01. While the solicitor

1 was attempting to lay a foundation for admission of the
2 recording, the trial judge, apparently dissatisfied with
3 the solicitor's line of questioning, undertook to advise
4 her outside the presence of the jury about the particulars
5 that he viewed as the necessary steps in this procedure.

6 "Nicholson objected to the depth and detail of the
7 assistance to the State. After a recess, the solicitor
8 followed the trial judge's advice, made a successful
9 proffer of the tape. We find no error in the trial judge's
10 intervention."

11 They gone on to say that (as read): "While conducting
12 a trial, there is a grave responsibility rest upon the
13 trial judge. It is his duty to see to it that justice has
14 been done in every case, if it can be done according to the
15 law; and if he thinks that the attorney for either party,
16 either from inadvertent or any other cause, has failed to
17 ask the witnesses the questions necessary and proper to
18 bring out all the testimony which tends to ascertain the
19 truth of the matter under investigations.

20 "We can see no legal objection to his propounding such
21 questions. But of course, he should do so in a fair and
22 impartial manner, and should not, by the form or manner of
23 his questions, express or indicate to the jury his opinion
24 as to the facts of the case or as to the weight or
25 sufficiency of the evidence.

1 "In this case, the trial judge," in their view, "did
2 not exceed the limits recognized. The jury was absent from
3 the courtroom when the exchange at issue took place, and
4 thus could not have been -- could not have affected -- the
5 jury could not have been affected by the trial judge's
6 remarks.

7 "Moreover, the trial judge, when explaining to counsel
8 what he required to lay a foundation, did not show any
9 favoritism or otherwise indicate he had an opinion about
10 the case."

11 All I'm saying is State's Exhibit No. 8 has not -- the
12 proper foundation has not yet been laid. And I'm trying to
13 find the -- follow the wise counsel of our Court of Appeals
14 and the Honorable Alex McCauley in that regard.

15 The jury is not present in the courtroom. If -- if
16 you can lay a proper foundation, obviously, I'll revisit
17 it. If you cannot, State's Exhibit No. 8 would not be
18 admissible.

19 MR. GRAHAM: Then, Your Honor, I would ask for a
20 recess, that I could play it for her to see if she
21 recognizes what's on there.

22 THE COURT: Well, I will not allow you a recess,
23 because -- because she's -- she's subject to continuing
24 direct and cross-examination. And so you can't have
25 conversations with your witness at this stage, because

1 she's already been called to the stand.

2 MR. GRAHAM: Can I play the -- can I play it and make
3 no comments and ask her no questions?

4 MR. WILLIAMS: Your Honor, we would object to any
5 instruction -- to questions from the State, in that that
6 would be assisting the State in this particular matter,
7 which is different from the other case.

8 THE COURT: And -- and of course, I'm trying to
9 strictly follow the guidelines of -- of *State vs.*
10 *Nicholson*.

11 I mean, I will certainly give you a brief recess, if
12 you want to discuss it with your co-counsel, but I will not
13 allow you to discuss it with Ms. -- Ms. Bryan. I -- I just
14 -- I have seen attorneys agree to that, but that's the only
15 time I have allowed attorneys to speak with a witness on
16 the stand when there has been some formal agreement. And I
17 would -- would not allow that.

18 MR. GRAHAM: Would you -- Your Honor, would you allow
19 me to ask her no questions, but to play that so that she
20 could watch it?

21 MR. WILLIAMS: Same objection, Your Honor.

22 THE COURT: I'll give you -- I'm going to give you
23 about a 10 minute recess. You can discuss it with your co-
24 counsel. All right?

25 MR. GRAHAM: Thank you, Your Honor.

1 THE COURT: Now, during this recess, Ms. Bryan, you
2 may certainly step down. You may certainly refresh
3 yourself; however, you may not discuss your testimony with
4 anyone. That -- that includes the -- the attorneys for the
5 State. Do you -- you understand that?

6 THE WITNESS: (No audible response.)

7 THE COURT: And I will question about that under oath
8 upon our return.

9 How much longer you think you'll be, Solicitor, with -
10 - on direct?

11 MR. GRAHAM: This is the last thing, Your Honor.

12 THE COURT: All right. And how long do you think
13 you'll be on cross?

14 MR. WILLIAMS: Twenty minutes, Your Honor.

15 THE COURT: All right. Well, I -- I do want to shoot
16 for 12 o'clock. And I'm -- I'm going to give you all the
17 time you need, Mr. Williams. In other words, if you're not
18 through at 12, we'll -- we'll certainly reconvene tomorrow
19 for additional cross-examination. You understand?

20 MR. WILLIAMS: I understand.

21 THE COURT: All right. Thank you. Court will be in
22 recess 10 minutes. As I said, you may step down.

23 All right. Solicitor, anything further before we
24 bring in our jury?

25 MR. GRAHAM: Very briefly, Your Honor. I just want to

1 make sure that I stated the proper facts for Your Honor as
2 -- as I understand them at this point.

3 When Mike Phipps testified, he stated that he took the
4 phone, he saw everything being copied. That was his
5 original --

6 THE COURT: That's State's 7.

7 MR. GRAHAM: Seven, yes, Your Honor.

8 THE COURT: That's right.

9 MR. GRAHAM: He then took State's 7 and he prepared
10 State's 8 by doing enhancements.

11 THE COURT: By his grant equipment and his other
12 software, he did State's 8. Enhanced the audio only, as I
13 understood it.

14 MR. GRAHAM: Correct.

15 THE COURT: Not the video.

16 MR. GRAHAM: And that was all he did with the tape.

17 THE COURT: That's -- that's my understanding, to the
18 CD.

19 MR. GRAHAM: I'm sorry, Your Honor.

20 THE COURT: All right.

21 MR. GRAHAM: Ms. Bryan stated that she has heard the
22 enhanced version, and it is fair and accurate. That's --
23 she stated that she has heard the enhanced version of the
24 audio and video, and that it is what happened.

25 I realize that she can't identify that disc, but she

1 has stated that she has watched the enhanced version, and
2 Mike Phipps has said that is the enhanced version.

3 THE COURT: She said -- she said first off -- she
4 said, "I watched it when I found it."

5 And then you followed up and said, "Well, what about
6 in preparation for trial?"

7 She said, "Yes. I looked at the video and audio."

8 And it appears there were conversations on 9/15
9 between Rodney and Rachael, right before, in her opinion,
10 when he was pretending to call the police.

11 But she -- she has not testified -- well, let me hear
12 from you, Mr. Williams.

13 MR. WILLIAMS: Your Honor, we have nothing further to
14 argue on this point. We would ask the Court to rule on
15 this particular point as to whether or not it comes in or
16 not.

17 THE COURT: She hasn't testified what's on State's 8
18 for identification is a fair and adequate representation of
19 what occurred on 9/15/07 between her and Rodney, in
20 whatever period of time. In other words, what you're
21 fixing -- attempting to publish, she has not testified.
22 She hasn't made that link.

23 THE COURT REPORTER: Made that "link," Your Honor?

24 THE COURT: Link. I'm sorry. I apologize.

25 MR. GRAHAM: It's not -- it is not enough of a

1 connection for her to say that she saw what was on the
2 phone; and for him to say he took what was on the phone;
3 and for him to say that's what he did.

4 THE COURT: She doesn't know what's on that disc.
5 That -- that's all I'm saying. She doesn't know -- she
6 hasn't seen what you're fixing to publish.

7 MR. GRAHAM: I -- I do understand that, Your Honor,
8 but she does know -- she did look at the video on the phone
9 before she gave it to the police.

10 THE COURT: I understand that. I understand that and
11 I understand she was -- according to her testimony, she was
12 present in the -- in the residence on -- on 9/15/07.

13 MR. GRAHAM: I understand, Your Honor.

14 THE COURT: So what -- what are you asking me to do,
15 Solicitor?

16 MR. GRAHAM: Nothing, Your Honor. I mean, I don't
17 know what else -- I don't know what else to say to you.

18 THE COURT: All right.

19 MR. GRAHAM: You -- you made your ruling. I don't
20 know what else to say to convince you.

21 THE COURT: Well, right now, State's Exhibit No. 8 is
22 still for ID purposes only, unless you have any other
23 evidence to present as far as laying proper foundation.

24 Do you have other witnesses of -- excuse me -- other
25 questions of Ms. Bryan?

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1 MR. GRAHAM: Yes, Your Honor.

2 THE COURT: All right.

3 Mr. GRAHAM: I'm going to ask her one more question.

4 THE COURT: All right. If you'd bring our jury
5 please, Mr. Bailiff?

6 Anything further before we bring in our jury ---

7 MR. WILLIAMS: Not on behalf of defendant, Your Honor.

8 MR. GRAHAM: No, Your Honor.

9 THE COURT: All right. Thank you.

10 (Sotto voce discussion between the Court and the bailiff.)

11 (The jury enters at 11:45 a.m.)

12 THE COURT: All right. It appears our jury is back
13 present in the courtroom. Solicitor, you may proceed.

14 MR. GRAHAM: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. GRAHAM CONTINUES:

16 Q Rachael, looking at State's Exhibit No. 7 for
17 identification labeled "Video from Phone," do you recognize
18 this disc?

19 A When we watched the video and you were -- yes, sir.
20 That's the disc that you put in and that played what Rodney
21 had recorded.

22 Q And is that exactly what's on your -- is that exactly
23 what's on what you saw on the cell phone when you first
24 viewed it before you gave it to the police?

25 A Yes, sir.

1 Q And is it a fair and accurate representation of the
2 conversation that you had with Rodney Bryan on September
3 15th of 2007, in your house?

4 A Yes, sir.

5 MR. GRAHAM: Your Honor, at this time, the State would
6 offer State's Exhibit No.7 for identification into
7 evidence.

8 MR. WILLIAMS: Your Honor, I would object to that on
9 the basis of foundation. And I have a further objection
10 which I would like to place on the record outside the
11 presence of the jury.

12 THE COURT: All right. Again, Mr. Foreman, if y'all
13 would please step to your jury room. Do not discuss the
14 case during this brief recess. Thank you. Thank you very
15 much for your patience.

16 (The jury exits at 11:47 a.m.)

17 THE COURT: All right. Mr. Williams?

18 MR. WILLIAMS: Your Honor, as I recall the Court's
19 instructions at the -- at the earlier break when Your Honor
20 gave the solicitor an opportunity to regroup on this
21 particular issue, you said that you would examine the
22 witness when she came back on the stand as to whether or
23 not she had had any conversations with anyone, and the
24 Court has not done that.

25 And now she's testifying about something, which she --

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1 she's -- obviously, she's now saying that she's seen the
2 disc and now wants to introduce it.

3 So we would request the Court go through with what the
4 Court indicated it was going to do prior to her testimony.

5 THE COURT: All right.

6 DIRECT EXAMINATION BY THE COURT:

7 Q Ms. -- Ms. Bryan, during the brief recess we had from
8 about 11:30 til about 11:40, did you discuss your testimony
9 with anyone during that brief recess?

10 A No, sir.

11 Q Did anyone say anything to you about your testimony
12 during that brief recess?

13 A No, sir.

14 THE COURT: All right.

15 MR. WILLIAMS: And -- and could I have an in-camera
16 hearing in reference to this particular item, as to whether
17 or not it comes into evidence or not, with her?

18 THE COURT: You can -- no, sir. You can state your
19 objection. Now, as I understand her testimony on State's
20 Exhibit No. 7, she's -- she's identified that as the disc
21 that she looked at in trial preparation, and that is a fair
22 and adequate representation of the video that she saw on
23 the cell phone when she -- when she looked through the cell
24 phone after his arrest -- whenever that was -- after 9/20
25 of '07.

1 MR. WILLIAMS: Okay.

2 THE COURT: Do -- do you have any objections you want
3 to make on the record?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE COURT: All right.

6 MR. WILLIAMS: It's my understanding that the disc is
7 not the same as what was on the cell phone, because she
8 deleted some of the pictures off the cell phone that were
9 on there.

10 THE COURT: Well, that may be subject to cross-
11 examination.

12 MR. WILLIAMS: And the second objection ---

13 THE COURT: And that -- that doesn't -- that doesn't
14 change, necessarily, the admissibility, either. I mean, if
15 she -- if she later on said, "Well, that's only part of
16 it."

17 But if -- if that were part of it, that doesn't make
18 that evidence inadmissible, in -- in my opinion.

19 MR. WILLIAMS: And the second part, Your Honor, is she
20 hasn't indicated what is specific about the disc which was
21 handed to her, which is a disc which says, "Video from
22 Phone," which is written on here.

23 So in essence, the State is leading to introduce the
24 document, because the only way that she can testify that
25 this is the disc is by him handing up a document which has

1 on it leading instructions to the witness, so that he can
2 introduce the document, because it says, "Video from
3 Phone."

4 THE COURT: I'm not exactly tracking you, but the
5 witness has testified that she saw him put the disc in and
6 they watched the disc prior to or in trial preparation.

7 It's marked now "State's Exhibit No. 7," and she can
8 certainly be cross-examined as how she identified that
9 particular disc.

10 MR. WILLIAMS: But to do that, the document would
11 already be in evidence and would be subject to publication
12 to the jury. The damage would be done.

13 THE COURT: I'm not looking at it from the issue of
14 damage done or not done. I -- I don't -- I don't -- I
15 don't know what's on the tape. I'm just looking at it from
16 whether or not the proper foundation has been laid for
17 State's 7, just like I did with whether or not the proper
18 foundation had been laid for State's 8, both of which for
19 identification purposes.

20 Her responses were different on State's 7 than they
21 were on State's 8. If her responses had been the same on
22 State's 8 as they were on State's 7, my ruling may have
23 been different.

24 MR. WILLIAMS: And my objection would simply be, Your
25 Honor, if you hold up the two discs, there's no way which

1 she could identify this as being the disc she looked at,
2 other -- other than from the fact that the solicitor has
3 written on the disc, "live from phone." He could have five
4 discs and it wouldn't mean that she could identify it.

5 THE COURT: Detective Phipps may have written that on
6 the disc.

7 MR. WILLIAMS: Well, who -- whomever.

8 THE COURT: Whoever. And that may be -- it's just
9 like if I got a disc at home and it says it's my disc of
10 "Christmas Vacation," that's -- that's how I identify it.

11 So in trial preparation, there's a disc there and it's
12 got "video from home," that -- that may be how she
13 identifies it. Now, if we put it in and it's the chase
14 scene from the movie, "Bullet," it's a different story.

15 MR. WILLIAMS: Yes, sir. But you see, she ---

16 THE COURT: I still hadn't seen the disc.

17 MR. WILLIAMS: Her testimony -- she didn't identify it
18 when she identified as saying, "Oh, yes, I've seen the
19 disc. And the reason I recognize the disc is because it
20 had on the disc this is 'from the phone.'" That was not
21 how she identified the disc.

22 MR. GRAHAM: And Your Honor ---

23 THE COURT: And that may be how -- going back to a
24 previous cross -- your cross-examination of the previous
25 witness in camera, Mr. Williams, that may be how a lawyer

1 would identify a disc, but not necessarily how a layperson
2 would identify a disc.

3 MR. GRAHAM: If I may?

4 THE COURT: Yes, sir.

5 MR. GRAHAM: What if we finish her testimony, do
6 cross-examination, and I recall Mr. Phipps? Then he can
7 identify both of those and the enhancements. She has
8 testified that she has seen enhancements; she has testified
9 that she has seen the original. I am sure that I can get
10 one of those two in by recalling him.

11 MR. WILLIAMS: We would object to the Court's
12 instruction on that, because again, the solicitor is
13 seeking the wise wisdom of the Court in how to try this
14 case.

15 THE COURT: I don't think that's what the solicitor is
16 seeking. I think the solicitor is seeking to get evidence
17 admitted, and I'm going to allow State's 7 into evidence.

18 MR. WILLIAMS: All right, sir.

19 THE COURT: State's 7 is no longer for ID; State's 7
20 is in evidence. I think the foundation has been laid. I
21 took the testimony differently from the witness as to
22 State's 7 versus State's 8. I heard it differently.

23 State's 7 for identification is now State's 7 in
24 evidence, subject to Mr. Williams's objections.

25 (State's Exhibit No. 7, CD, marked

1 and admitted into evidence.)

2 THE COURT: All right. If you'd bring us our jury,
3 Mr. Bailiff.

4 MR. GRAHAM: Your Honor?

5 THE COURT: Yes, sir.

6 (Bench conference.)

7 (The jury enters at 11:55 a.m.)

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, none of y'all, I'm sure, will remember this. Back --
10 back when I was a chap, there was the first TV ever on
11 Dogwood Street off of Rosewood Drive in Columbia. There
12 was like three channels and no -- no remote. And I'm sure
13 none of y'all remember that. There's like 300 channels now
14 and even with a remote, there's nothing much decent to
15 watch, quite frankly.

16 It used to say -- two out of three of them every now
17 and then would say, "Due to technical difficulties," you
18 know, and there'd be this emblem on there. And the
19 channels would be off for days at a time. It's kind of --
20 kind of fun to get around a TV back in those days,
21 actually.

22 But due to technical difficulties and other matters,
23 we're going to break for the day. I -- I -- I -- I
24 appreciate y'all's patience today. And I realize it's a
25 half a day's court time minimum that -- that we'll lose

1 here in Lexington, but I promise y'all I'll make it up
2 before the end of the week. Y'all may not necessarily be
3 in -- in the jury box helping me do that, but I do
4 appreciate y'all's patience this week.

5 I -- I have that commitment out of town, as really,
6 all the judges have been asked to be there. So we're going
7 to take our break for the afternoon and evening. I will
8 remind you again, during the recess, you are not to discuss
9 this case with anyone. That includes your family members,
10 your friends, or anyone else. If any one tries to talk
11 with you about the case, please let me know.

12 Remember to keep an open mind about the case. Do not
13 begin your deliberations until you are instructed to do so
14 by the Court.

15 Let's see what time we can get started in the morning.
16 I have two matters already set at 9:00 a.m., so if y'all
17 would please be back at 9:30 in the morning. If you'd
18 please be back promptly at 9:30, and we will start as soon
19 thereafter as we can.

20 Thank you very much for your understanding. Hope you
21 have a pleasant afternoon and evening. See you in the
22 morning.

23 (The jury exits at 11:58 a.m.)

24 (Sotto voce discussion between the Court
25 and the Clerk of Court.)

1 THE COURT: All right. Ms. Bryan, you may certainly
2 step down. You'd be excused over the recess. Now, please
3 remember you are subject to continuing direct and cross-
4 examination, and potentially redirect and re-cross
5 examination. But once a witness is called to the stand and
6 placed under oath, that witness may not discuss their
7 testimony with -- with anyone. That includes the
8 attorneys, the parties, the officers, or anyone else. If -
9 - so you -- you are not authorized to do that, nor can
10 anyone discuss your testimony with you.

11 So please -- please, keep that in mind. And again,
12 when we reconvene tomorrow morning, you'll be back on the
13 stand and I will question you in that regard. All right.
14 Do you have any questions about that?

15 MS. BRYAN: No, sir. I just can't discuss it with
16 anyone.

17 THE COURT: Nope. Cannot discuss your testimony with
18 anyone. You can talk about the weather; talk about sports;
19 you can talk about whatever. You cannot discuss your
20 testimony with anyone.

21 MS BRYAN: Yes, sir.

22 THE COURT: All right? You may step down. Thank you.
23 Anything further, Solicitor?

24 MR. GRAHAM: No, Your Honor.

25 THE COURT: Mr. Williams?

1 MR. WILLIAMS: Nothing from the defendant, Your Honor.

2 THE COURT: All right. Thank y'all very much for your
3 understanding this afternoon. I hate to break a trial up
4 like this, but we'll start back promptly at 9:30.

5 DAY THREE

6 THE COURT: Thank you. Please be seated.

7 Solicitor, will you and Mr. Williams approach the
8 bench a moment?

9 (Bench conference.)

10 THE COURT: All right. Solicitor, Mr. Williams, I
11 didn't bring this up -- I apologize I didn't bring it up
12 earlier, because I know you're both well aware of it. As
13 you know, my daughter is employed with the Lexington County
14 Solicitor's Office. I want to disclose that relationship
15 to the parties on both sides of the solicitor's office, and
16 Ms. Bryan and Mr. Williams and Mr. Bryan.

17 Solicitor, do you have any objections for me to
18 continue presiding over this trial?

19 MR. GRAHAM: No objections, Your Honor.

20 THE COURT: Thank you. Mr. Williams, do you or does
21 your client have any objections to me continuing to preside
22 over this trial?

23 MR. WILLIAMS: No, Your Honor, I don't. And we spent
24 at least 15 minutes discussing that issue alone in the back
25 where he was located. And he has decided he wishes the

1 trial to go forward, and -- and is satisfied with you
2 trying the case, Your Honor.

3 THE COURT: All right. Thank you very much,
4 Solicitor, Mr. Williams.

5 All right. Solicitor, are you ready to proceed?

6 MR. GRAHAM: Yes, Your Honor. Before the jury comes
7 in, I did want -- I advised the Court and Mr. Williams,
8 back in the Judge's chambers that the State will withdraw
9 it's motion for State's 7 for ID to be moved into evidence.

10 The reason being, Your Honor, is that after Ms. Bryan
11 identified that and before the jury was brought back in, I
12 realized that I didn't think that Ms. Bryan had had the
13 opportunity to actually see the outside of that disc as
14 well. And after we broke, I called the person in our
15 office who made that disc; I realized that that disc was
16 just copied that morning, and so there was no way that Ms.
17 Bryan could have previously seen the outside of that disc.

18 THE COURT: All right. So State's 7 is still for ID
19 purposes only?

20 MR. GRAHAM: Correct, Your Honor.

21 THE COURT: All right. Thank you. Do you have
22 anything further before we bring in the jury?

23 MR. GRAHAM: Yes, Your Honor. I would like to have
24 Ms. Bryan back up on the stand and have an in-camera
25 hearing to play State's Exhibit No. 8 for identification,

1 not ask her any questions. It's similar to showing her a
2 picture she'd never seen and see whether she was able to
3 recognize it and whether it was a fair and accurate
4 picture.

5 THE COURT: All right. Ms. Bryan?

6 MR. WILLIAMS: Your Honor, if I could speak to that?

7 THE COURT: All right.

8 MR. WILLIAMS: We would object to the in-camera
9 hearing.

10 THE COURT: Just a second. Just -- you can have just
11 a seat on the bench right there for a moment, Ms. Bryan.

12 All right. Mr. -- Mr. Williams.

13 MR. WILLIAMS: Your Honor, we would object to the in-
14 camera hearing. Basis of the objection would be that she
15 testified yesterday; she was sworn yesterday. The Court
16 carefully instructed the witness that she was not to have
17 any conversations with the solicitor or any part of the
18 solicitor's office, in essence, to ensure that there would
19 be nothing which would, I guess, change her ability to
20 recall or influence her testimony, in that she's already
21 sworn.

22 The in-camera hearing, if it amounts to the showing of
23 a disc which she has -- to assist her in identifying the
24 items on the disc, would amount to a violation of that --
25 of the spirit of that, because actually what would be

1 happening would be someone would be presenting help to her,
2 to help her to identify something which she would not be
3 able to testify to before. She's actually being shown
4 information which she would have not seen prior to her
5 testimony. So she is being influenced, if you will, Your
6 Honor.

7 THE COURT: All right. Solicitor, do you care to
8 respond?

9 MR. GRAHAM: Only briefly, Your Honor. I would ask,
10 when you put her back on the stand, to question her,
11 because you did advise her not to talk to anybody. And I
12 know that -- for myself -- that I have not, and I do not
13 believe that any member of my staff or law enforcement had
14 any contact with her about that issue.

15 Basically, Your Honor, I'm -- I'm explaining today, I
16 guess, what I didn't explain well enough yesterday when I
17 was trying to request an in-camera hearing. She has seen
18 the contents of that video -- that compact disc in
19 preparation. She will have seen it before; it's nothing
20 new that she has not seen. And I don't think that it's any
21 different than showing her a photograph that she has seen.
22 She'll either tell me "yes," that she recognizes it and
23 it's fair and accurate, or "no," that it's not.

24 THE COURT: All right. Thank you, Solicitor.

25 Ms. Bryan, would you please come around and take the

1 stand? And you are still under oath.

2 MS. BRYAN: Yes, sir.

3 **DIRECT EXAMINATION BY THE COURT:**

4 Q All right. Ms. Bryan, we broke yesterday about twelve
5 noon; it's now about 10:20 in the morning. During that
6 recess, did you discuss your testimony with anyone?

7 A No, sir.

8 Q Did you discuss the evidence in this case with anyone
9 during that recess?

10 A No, sir.

11 Q Did anyone attempt to talk with you about your
12 testimony during this recess?

13 A No, sir. My cousin called me and asked me how it
14 went, and I told her I couldn't talk about it until today.

15 Q All right. Did anyone send you any written
16 communications about your testimony during this brief
17 recess?

18 A No, sir.

19 Q And you've had no conversations whatsoever with any
20 members of the solicitor's office or solicitor's staff?

21 A Not about this.

22 Q About this case -- not about this case?

23 A No, sir.

24 Q Or with any members of law enforcement?

25 A No, sir.

1 Q All right.

2 THE COURT: Do you care to ask any follow-up
3 questions, just as to any conversations she may or may not
4 have had during the recess, Solicitor?

5 MR. GRAHAM: No, Your Honor. I believe you covered
6 it.

7 THE COURT: Mr. Williams, do you care to ask any
8 questions concerning that?

9 MR. WILLIAMS: Just one question.

10 THE COURT: All right.

11 **CROSS-EXAMINATION BY MR. WILLIAMS:**

12 Q Ma'am, did the solicitor's office indicate to you they
13 were going to show you a video this morning and ask you to
14 identify the video?

15 A I gathered that yesterday.

16 Q Did the solicitor's office have any communication with
17 you yesterday to tell you that they were going to show you
18 a video -- you -- I know you said you got that yesterday?

19 A I mean, y'all were talking about it. I assumed that
20 that's what was going to happen.

21 THE COURT: I think her word was she "gathered" that
22 yesterday.

23 A Yes, sir.

24 MR. WILLIAMS: Okay.

25 THE COURT: I -- I believe, Mr. Williams.

1 Q Did you have any conversations with anyone in the
2 solicitor's office about your looking at the video this
3 morning and identifying it?

4 A I -- I'm not -- after -- after we recessed? Is that
5 what you're asking?

6 Q Yes.

7 A I have had no conversations with the solicitor's
8 office about anything.

9 Q Okay. That's all I have.

10 THE COURT: All right. Thank you.

11 All right, Solicitor, you may -- I find that Ms.
12 Bryan's testimony in this regard is credible. It appears
13 that she has not had any conversation with the solicitor's
14 office, any members of the solicitor's office staff, or law
15 enforcement during the recess from twelve noon on the 15th
16 until 10:20 a.m. -- until now, on the 16th of July of '08.

17 With that being said, Solicitor, you may proceed.

18 MR. GRAHAM: Your Honor, this is State's 8 for
19 identification that I'm going to play at this time.

20 (Video plays.)

21 MR. GRAHAM: Your Honor, that's all the video. Do you
22 want me to go ahead and ask her questions in-camera?

23 THE COURT: I want you to conduct your in-camera
24 hearing in whatever manner you deem appropriate, Solicitor.

25 DIRECT EXAMINATION BY MR. GRAHAM:

1 Q Ms. Bryan, you've had an opportunity to view the video
2 that's played before you?

3 A Yes, sir.

4 Q And have you seen that video before in the course of
5 trial preparation?

6 A Yes, sir.

7 Q When was that video shot?

8 A Saturday night before Rodney choked me and all that
9 other stuff.

10 Q That was Saturday, September 15th of 2007?

11 A Yes.

12 Q Did you know that he was taking a video at the time
13 that these were taken?

14 A No, sir.

15 Q Are they a fair and accurate depiction of the
16 conversations that you had with Rodney Bryan?

17 A They're exactly the conversations that we had at that
18 time, and the rest of the evening. Yes.

19 MR. GRAHAM: Your Honor, I believe that, for
20 foundation, that's all the questions that I would need.

21 THE COURT: All right. Mr. Williams?

22 MR. WILLIAMS: No questions on -- to her on that.

23 THE COURT: All right. Solicitor, could I ask a
24 technical question? Are those four separate videos?

25 MR. GRAHAM: Yes, Your Honor. It's my understanding

1 that the way that the phone works is there's only so much
2 memory that's allotted toward video clips. So it only runs
3 so long and it stops. So there are four separate clips.

4 THE COURT: All right.

5 MR. WILLIAMS: Could I have about two minutes with my
6 client, Your Honor?

7 THE COURT: Yes, sir. Certainly.

8 MS. BRYAN: Can I ask a question?

9 THE COURT: No, ma'am.

10 (Briefly off the record.)

11 MR. GRAHAM: Your Honor, my technical assistant's
12 here; wanted to check out something on the sound. Do you
13 mind if we play a clip again while we're doing that?

14 THE COURT: You have to wait on Mr. Williams.

15 (Sotto voce discussion between Mr. Graham
16 and technical assistant.)

17 MR. GRAHAM: He's not going to play anything on the
18 screen.

19 (Sotto voce discussion between the Court and law clerk.)

20 MR. WILLIAMS: Your Honor?

21 THE COURT: Yes, sir.

22 MR. WILLIAMS: You probably noted that my client
23 became somewhat agitated during the in-camera hearing.
24 Maybe -- maybe you didn't know he was becoming agitated.
25 He became excited and -- something he wanted to tell me,

1 and that's why we took the break.

2 I took him back in the back area, and he now tells me
3 that he does not want to proceed with this trial; that he
4 does not waive his conflict.

5 THE COURT REPORTER: I'm sorry. Does he -- he does
6 not what, Mr. Williams? You said what? He does not what?

7 MR. WILLIAMS: He does not waive the potential for
8 there being a conflict. I don't know that there is a
9 conflict, I'm just saying he does not.

10 As further example of that, Your Honor -- and you
11 know, in kind of a different area -- he wrote down on a
12 piece of paper, while sitting here, "I don't know if I made
13 the right decision."

14 And you know, this has been going on for, like, two
15 minutes. I don't know if he, you know, jumped too quick,
16 or if he wasn't firmly convinced in his mind. I can only
17 tell the Court that he actually wrote down -- if the Court
18 needs to see this document, I can show it to them.

19 THE COURT: I would ask that you mark it as a Court's
20 Exhibit, and thereafter I would like to see it.

21 (Marked Court's Exhibit No. 4, note from defendant.)

22 MR. WILLIAMS: There are actually two lines on there.
23 One references the decision he made in reference to waiving
24 the conflict or not waiving the conflict. The other
25 sentence is just a denial in regards to an occurrence.

1 THE COURT: All right. All right. Well, thank you.
2 Thank you, Mr. Williams.

3 All right. Well, I'm going to take it somewhat as a
4 attempt to withdraw a -- a plea or any type of waiver. I
5 informed the parties; I gave the parties adequate time to
6 talk with their respective clients. I gave you, I believe,
7 adequate time to talk with Mr. Bryan. The Court cannot be
8 held to a continuing -- or a moving target, so to speak.
9 The Court will not allow itself to have its neck put under
10 the guillotine to allow a party to pull the plug at any
11 particular time.

12 I'm familiar with the Ethics Opinion. The Ethics
13 Opinion states that if -- I disclose the matter, and that I
14 would disqualify myself if any party objects. He did not
15 object at that time, it's not a continuing objection. So I
16 would deny his motion to withdraw from me as sitting as the
17 trial judge, respectfully, Mr. -- Mr. Williams.

18 As far as the second line on Court's Exhibit No. 4,
19 where it indicates, "That never occurred," I assume that
20 would be subject to your fine cross-examination --

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: -- of both the --

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: -- witness and any technicians that deal
25 with the telephone.

1 MR. WILLIAMS: Yes, sir. He was just jotting on that.
2 That was his one piece of paper that he had to write on.

3 THE COURT: All right. Thank you very much. Do you
4 need any more time to talk with Mr. Bryan before we bring
5 in our jury?

6 MR. WILLIAMS: No, sir.

7 THE COURT: Do you have any motions, Mr. Williams?

8 MR. WILLIAMS: No, sir.

9 THE COURT: Anything further?

10 MR. GRAHAM: No, Your Honor.

11 THE COURT: All right. If you will bring our jury,
12 please, Mr. Bailiff.

13 (Sotto voce discussion between the

14 Clerk of Court and the Court.)

15 (The jury enters at 10:37 a.m.)

16 THE COURT: All right. It appears our jury is back
17 present in the courtroom. Good morning. I guess you
18 thought, perhaps, as you sat back there, that my watch -- I
19 went on a different savings time this morning, 10:30
20 instead of 9:30. I apologize for getting you out in the
21 courtroom later this morning. I had a couple of matters to
22 attend to. We are now ready, continuing to proceed with
23 the trial of this case. I hope y'all had a pleasant
24 evening, a pleasant morning.

25 The case is still continuing to present testimony. As

1 you recall, we had not yet -- the State had not yet
2 completed the direct examination of Rachael Bryant --
3 Bryan, so we will continue with that procedure.

4 Solicitor, you may proceed.

5 MR. GRAHAM: Thank you, Your Honor. For the record,
6 Your Honor, the State would withdraw its motion to
7 introduce State's No. 7 for identification.

8 THE COURT: All right. State's 7 is still for
9 identification only. Thank you.

10 **DIRECT EXAMINATION BY MR. GRAHAM (CONTINUED):**

11 Q Good morning, Ms. Bryan.

12 A Good morning.

13 Q Ms. Bryan, let me ask you to look at State's No. 8 for
14 identification, again, and ask if you now recognize this
15 disc, and have you had an opportunity to watch and listen
16 to the contents of this disc?

17 A Yes, sir.

18 Q Is this disc a fair and accurate representation of
19 conversations between you and your husband as recorded on
20 September 15th, 2007?

21 A Yes, sir.

22 Q Who shot this video?

23 A Rodney.

24 Q Did you know it was being shot at the time?

25 A No, sir.

1 Q But is it -- is it a fair and accurate recording of
2 what happened during that conversation?

3 A It's exactly the conversation.

4 MR. GRAHAM: Your Honor, at this time, the State would
5 move State's No. 8 for identification into evidence.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: If I could see it for a minute. Your
8 Honor, that would be subject to the other objections that
9 we had.

10 THE COURT: All right. State's 8's in evidence,
11 subject to previous objections by the Defense.

12 MR. GRAHAM: Your Honor, at this time, the State would
13 like to publish this to the jury.

14 THE COURT: All right. You may publish.

15 (Video plays.)

16 MR. GRAHAM: Thank you, Ms. Bryan. Please answer any
17 questions Mr. Williams has for you.

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

20 MR. WILLIAMS: Thank you, Your Honor.

21 **CROSS-EXAMINATION BY MR. WILLIAMS:**

22 Q Ms. Bryan, in your testimony yesterday, you were
23 talking about you and Rodney had been married how many
24 years?

25 A Ten.

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1 Q Ten years?

2 A Yes, sir.

3 THE COURT: And you may have to keep your voice up for
4 us just a little bit.

5 MS. BRYAN: Okay.

6 THE COURT: You can pull that mike down if you -- a
7 little bit for us, please, Ms. Bryan. Thank you.

8 Q You'd been married 10 years; is that correct?

9 A I lost count, but that's roughly right, yeah.

10 Q Okay. And I believe you were talking about the fact
11 that you actually have -- you and Rodney have three
12 children together, but you actually have four children stay
13 at the residence; is that correct?

14 A Yes.

15 Q And when you were going through about -- I guess it
16 would be the beginning of this -- what you called this "bad
17 weekend," you were talking about the fact that he had moved
18 out of the place that he was staying and had moved into the
19 trailer; because, in essence, he had begged you to come
20 back to -- to the trailer; is that right?

21 A No. That's not what I said. He was asked to leave
22 where he was staying --

23 Q Okay.

24 A -- when he asked to come stay with me.

25 Q So -- so he didn't beg you to come back and stay with

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1 you. He just asked to stay with you; is that right?

2 A I can -- take that how you want to. That's
3 perception.

4 Q Okay. Well -- well, how did you perceive it?

5 A I perceived it as "begging."

6 Q Well, you say that. Had you been having a lot of --
7 well, you had been talking to him off and on, hadn't you,
8 during that time span?

9 A Yes.

10 Q You'd spent time with him, hadn't you?

11 A Yes.

12 Q And when he moved in, did you know that there was an
13 order of protection which said that the two of y'all were
14 not supposed to live together?

15 A Yes.

16 Q Well, if you knew that, then why did you let him move
17 back in with you?

18 A I don't really -- I mean, I don't really understand
19 what you're -- are you asking me -- I don't understand your
20 question.

21 Q Well, you know, one of the charges here is that -- is
22 that my client has violated this order of protection. That
23 there is a court order somewhere and that -- and that he
24 violated it by moving back in with you.

25 A Yes. Rodney knew that there was a court order of

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1 protection.

2 Q Well, you knew there was an order of protection,
3 didn't you?

4 A Yes. We both knew.

5 Q Well, then, why did you let him move back in? Why
6 didn't you go to court and change it, or something like
7 that?

8 A Well, I -- I felt like if Rodney knew that there was
9 that possibility of him going to jail, that he wouldn't hit
10 me.

11 Q So you thought maybe you could use ---

12 A It would protect me.

13 Q --- you could use that as power to control what
14 happens --

15 A No.

16 Q -- in your relationship?

17 A I thought it would protect me. I thought it would
18 protect me.

19 Q So if he got out of line, then all you had to do would
20 be to call the police, and that would take care of it. Is
21 that in essence what you're trying to tell us?

22 A No. That's not at all what I'm saying. That's what
23 you say.

24 Q Well, you said it would protect you.

25 A Yes, sir.

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1 Q How would it protect you if he's moved in with you?

2 A If there's no reason to call the police -- if I'm not
3 hurt or hit, then it -- it really didn't hurt him at all,
4 correct? I think.

5 Q I -- I guess you would have to be the one to complain
6 though, wouldn't you? You would be the one to call.

7 A No, obviously not.

8 Q Well, let's talk about it. You said that during this
9 time span -- now, when did he move in with you?

10 A Before school started.

11 Q Was that July or August?

12 A Somewhere in there.

13 Q July or August?

14 A Somewhere in there.

15 Q Well, these events occurred in September; is that
16 right?

17 A Yes, sir.

18 Q Now, during this time span, you had a van which you
19 drove, did you not?

20 A Yes, I did.

21 Q And your husband, where was he working?

22 A Rodney was working for his self on Rosewood Drive.

23 Q And what type of work does your husband do?

24 A Rodney does sub-contracting.

25 Q Meaning he builds things?

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1 A Correct.

2 Q And how did he go back and forth to work during July
3 and August of that year?

4 A Well, at some point, he used my van. At a different
5 point, I think he was trying to buy a truck from someone,
6 but then he got fired, and had to turn the truck back in.
7 And then I believe he rented a car.

8 Q Well, now, you said "he rented a car." The car that
9 you're talking about he rented, is that the car which you
10 drove ---

11 A We both ---

12 Q --- on that ---

13 A --- drove the car.

14 Q Okay. So Rodney rented a car and you both drove it.
15 Well, whatever happened to the van?

16 A I got it when Rodney went to jail. I could not pay
17 for the repairs, and it was sold.

18 Q Well, was the van at the house during the weekend of
19 September the 14th, 15th, and 16th of 2007?

20 A No.

21 Q And how long had the van not been at the house?

22 A I don't know.

23 Q Weeks?

24 A Most likely.

25 Q Because it wouldn't run.

1 A That's why it was in the shop.

2 Q Okay. So during these weeks before September the
3 14th, 15th, and 16th, you only had one vehicle which you
4 drove, which was a rented car that your husband had rented.
5 And you drove it sometimes, and he drove it sometimes; is
6 that accurate?

7 A Yes.

8 Q All right. And you would drive him to work most of
9 the time, so that you would have the car to take care of
10 the children, right?

11 A No.

12 Q Well, let me ask you just a "for instance." How about
13 the Tuesday after all this occurred? You say this happened
14 on September 14th, 15th, and 16th, so the Tuesday,
15 September the 18th of 2007, didn't you drive him to work
16 that morning?

17 A I don't remember.

18 Q Well, do you recall having an incident at the "Tater
19 Shed" that Tuesday night?

20 A No. I don't remember.

21 Q You don't remember picking him up at the "Tater Shed"
22 Tuesday night, after this occurred?

23 A I don't remember that. No. Those days were very
24 blurry for me.

25 Q Are you denying that you did have an incident?

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1 A I'm not denying it; I'm saying I don't remember.

2 Q Okay. So during the week leading up to September the
3 14th of 2007, did he drive the car every day to work?

4 A I don't remember.

5 Q Do you remember anything other than what you have
6 testified to earlier under direct examination?

7 A Well, I remember lots of things. I mean, what exactly
8 are you referring to? I don't -- this was almost a year
9 ago.

10 Q All right.

11 A It has been a long, hard road for me and the kids. I
12 don't remember every detail about our relationship. It was
13 always very up and down, and very dramatic.

14 Q And one of the issues that we're talking about is your
15 availability or your ability to leave the house that
16 weekend, aren't we?

17 A I was just afraid of Rodney. And -- and that's -- it
18 -- it, you know ---

19 Q Your not saying ---

20 A --- but it's just common sense to know that yes, at
21 some point when Rodney left, I could have gone to the
22 neighbors.

23 Q Sure.

24 A That's common sense.

25 Q That's common sense. We don't even need to worry

1 about that.

2 A I don't know what you need to worry about. I'm just
3 saying, "That's common sense."

4 Q Okay.

5 A But I was afraid of him, very much so.

6 Q Well, if you were afraid of him, then why didn't you
7 call the police that Friday night or that Saturday or that
8 Sunday or that Monday or that Tuesday or that Wednesday?

9 A I think I already answered that question when I said I
10 felt like he would be out in a very short time and be
11 madder.

12 Q All right. Well, let's go back to what you testified
13 to yesterday on your direct examination. You said that all
14 this started because of some sort of fight that occurred
15 when --

16 A No. That's not what I said.

17 Q You didn't?

18 A No, sir.

19 Q Didn't you start with some kind of fight over a cell
20 phone and some kind of ---

21 A It started at two o'clock that morning.

22 Q Well, let me ask you about the cell phone.

23 A Okay. But that's when it started.

24 Q Okay. When you were talking yesterday about the cell
25 phone.

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1 A Yes, sir.

2 Q Do you remember that?

3 A Yes, sir.

4 Q And with the cell phone, you said that you -- did he
5 drive up -- is that -- to the daycare, or did you drive up
6 to the daycare?

7 A I was in the driver's seat, so I'm assuming that I
8 drove.

9 Q That makes a lot of sense, doesn't it? And you said
10 during this time span, you weren't working; is that right?

11 A I don't think we ever said that, but that is true.

12 Q Well, didn't you say that -- didn't you say that you
13 hadn't been working for a couple of months?

14 A No, I didn't ever say that.

15 Q You didn't ever say that?

16 A But that is true, though. Not that -- I did not say
17 that.

18 Q You didn't say that you stopped working the end of
19 August or September?

20 A If I did, I don't remember it. I was very upset
21 yesterday.

22 Q Do you have times when you don't remember things a
23 lot?

24 A When I'm hit in the head a lot, yeah.

25 Q Well, let's talk about that. You said that yesterday

1 -- you came out and said that you were blind in the right
2 eye.

3 A Right.

4 Q Well, now, that doesn't have anything to do with being
5 popped in the head, does it?

6 A Yeah, it does. I did not see the exact hit. It had a
7 lot to do with it.

8 Q Haven't ---

9 A I could not see whether he was punching me; I just
10 felt it.

11 Q Haven't you been ---

12 A I didn't see, but I felt it.

13 Q -- haven't you been blind in the right eye since you
14 were born? Isn't it --

15 A Well, yes, but that -- I'm -- been blind in my right
16 eye since I was born. But if you're hit on that side of
17 your face, you -- you're not going to be able to see
18 exactly how you're hit, and that seemed to be part of the
19 issue: Did he punch me? Did he slap me? Did he pop me in
20 the back of the head? All I can tell you is that he hit
21 me.

22 Q But he certainly didn't cause your blindness in your
23 right eye.

24 A I never said that he did.

25 Q Okay. Well, let's talk about that job that you said

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1 where you quit working in August or September. Where was
2 your last job that you had before this occurred?

3 A Department of Corrections.

4 Q Department of Corrections? What did you do at the
5 Department of Corrections?

6 A I was a correctional officer.

7 Q All right. And what does a correctional officer do?

8 A They keep the rules of the correction facility. They
9 make sure that the inmates follow the rules. But for about
10 six months, I -- no, maybe it wasn't that long -- five
11 months, I had worked at the front gate and was no longer
12 supervising inmates.

13 Q Okay. How long did you work at the Department of
14 Corrections?

15 A About a year.

16 Q All right. And did you have a classification at the
17 Department of Corrections? Did you have like a -- I don't
18 know if there is a Class 1 or a Class 2 or a Class 3 or
19 what-have-you.

20 A I worked in a maximum security male prison.

21 Q You worked in a maximum security male prison.

22 A Correct.

23 Q Dealing with all sort of violent male offenders.

24 A Correct.

25 Q Did you receive any type of training to assist you in

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1 the event that someone assaulted you in this maximum
2 correctional facility?

3 A Yes, sir. We have two -- two days a year of self-
4 defense and a week of range.

5 Q All right.

6 THE COURT REPORTER: A week of range?

7 MS. BRYAN: Yes, ma'am.

8 Q So they trained you in the use of weapons, as well as
9 trained you in the use of self-defense; is that right?

10 A Yes, sir.

11 Q Now, if we go back again to the situation where you're
12 sitting in the driver's seat at the daycare, you say that
13 your husband went inside to get your youngest child; is
14 that right?

15 A Right.

16 Q And when you -- when he comes out, you have his cell
17 phone; is that correct?

18 A Correct.

19 Q And you're looking through it to see who he's been
20 calling?

21 A Correct.

22 Q Why are you looking through it to see who he's been
23 calling?

24 A For me, I still loved Rodney at that time. I was
25 confused and wondering, I guess. I'd loved Rodney for

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1 many, many years.

2 Q Well -- but on that particular occasion, I believe you
3 said yesterday that you sent a picture to somebody.

4 A Yes. Yes, sir.

5 Q What picture did you send and to whom?

6 A Well, I went to "drafts," and Rodney had pictures in
7 his drafts. One I can think of was of -- there were
8 several different ones. I can't remember exactly all.

9 But the specific picture that I sent to -- what I did
10 is I went to "drafts" and then I went to Dora Drake's
11 number and saw the last time that he contacted her.

12 And she was a prostitute that Rodney had actually
13 wanted me to have a threesome with. And we actually did
14 meet, but it never happened. We -- we did not have this
15 threesome. It just didn't happen.

16 And when he came out, I turned it off. Or I actually
17 tried to turn it off and I turned it on, and I think it
18 sent it.

19 Q Okay. Are you saying that you went to a picture of
20 the prostitute on the phone?

21 A No. I said, "I went to "drafts," and looked through
22 "drafts." I was just checking -- I didn't know a lot about
23 phones. I was just checking to see -- I thought a draft is
24 something like when you write a paper, how you have to have
25 a -- first write a draft and then follow the paper up with

1 that. I was assuming that's what it was. So I went and
2 looked through that.

3 Q And what was that? Let me -- what is a "draft"? What
4 did you see on here that was -- said it was a draft?

5 A It said "draft."

6 Q What was it?

7 A It was pictures.

8 Q Okay. So you were actually looking at a picture of
9 this person known as "Dora"; is that right?

10 A No. I -- was a picture of Jonathan, his friend.

11 Q Okay.

12 A There were several pictures, but that was the last
13 picture that I had observed. It was the last in a row, I
14 guess.

15 Q Okay. So you were looking at a picture of his friend,
16 and you were sending it to the prostitute?

17 A Yes. That's what happened.

18 Q Now, why would you send a picture of his friend to the
19 prostitute?

20 A I didn't do it on purpose.

21 Q Well, what other drafts were in the phone when you
22 were looking at it?

23 A I don't know; there was a few of them. They were just
24 in a row. You know, you skip: "do, di, do, do, do." I
25 don't know. I mean, I can't remember any that stood out.

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1 Q What did the picture of the prostitute look like?

2 A There wasn't one. I never said there was. You keep
3 saying --

4 Q All right. There was not one?

5 A No. There was only her phone number and her name next
6 to it.

7 Q Okay. So aside from the video which we've seen here
8 today --

9 A Uh-huh.

10 Q -- what other photographs and videos were on this
11 phone?

12 A You're asking me what -- I mean, there's lots of
13 pictures on there. What exactly are you asking me?

14 Q I want you to tell me, since you looked through the
15 phone, what the -- what the photos and videos that were on
16 that phone.

17 A I still don't understand what you're asking.

18 Q That's an easy question.

19 A Well, I don't understand it.

20 Q Okay. What other videos -- what other photographs
21 were on this phone besides the videos that we just saw?

22 A There's lots of pictures.

23 Q And tell me what they were.

24 A Well, I think there's over a hundred. I couldn't tell
25 you what each picture is. I -- I don't know.

1 Q Tell me who there were pictures of.

2 A Family.

3 Q Okay.

4 A Me.

5 Q Okay.

6 A Different pictures that Rodney had taken.

7 Q Of?

8 A Different -- I think there were some job site
9 pictures. I think there was pictures of -- I know -- I
10 remember one that stood out in my head. There was a
11 picture of a big dog, a woman and a big dog. Things like
12 that. Why?

13 Q Just wanted to know about your recall, what was on the
14 videos. Were there any videos in there?

15 A Yes.

16 Q Besides --

17 A There were videos that I erased before I gave it to
18 the police. They were videos that were -- naked pictures
19 of me: Some that I agreed to take, and then some I found
20 that he had taken while I was in the shower in the bathroom
21 and didn't know. And before I gave it to the police, I
22 erased those. I didn't want people seeing naked pictures
23 of me.

24 Q So you took this cell phone that you had in your
25 custody on September the 25th, right?

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1 A Correct.

2 Q And you actually got it the week before, and you said
3 that you were looking through ---

4 A No, I didn't get it -- I don't think I got it the week
5 before. Was it the week before?

6 Q I don't know. You're testifying.

7 A I don't know if it was a whole week, but go ahead.

8 Q Well, when did you get the cell phone?

9 A When I got the car out of impound, and I found it a
10 day later or so.

11 Q What day would that be?

12 A I don't remember. I had to clean the car out before I
13 took it back, and when I cleaned the car out, I found it.

14 Q And after you found it, you were looking through it on
15 Saturday, because you wanted to look at pictures of your
16 children on your phone, right?

17 A Yes.

18 Q And is that when you deleted those other videos which
19 you say were on here?

20 A I don't remember.

21 Q Well, when did you delete them?

22 A Before I give it to the police.

23 Q All right. And there were videos of -- well, since
24 we've danced around it, you said there was no picture of
25 the prostitute. Were there videos of the prostitute on

1 here?

2 A No.

3 Q Just of you.

4 A Correct.

5 Q Did you tamper with it in any other way?

6 A No.

7 Q Now, did you tell the police officer that you had
8 deleted some of the items on the cell phone?

9 A I told the victim's advocate there; I don't remember
10 her name exactly. She is a detective. But I asked her
11 very specifically, I said, "There were naked pictures of me
12 that I deleted, and I do not want that being passed around
13 Lexington County; and is that okay?" And she said, "Yes."

14 Q Are you sure that's all you deleted?

15 A Yes.

16 Q Well, now, in those pictures of the children, were
17 there pictures of the children and your husband smiling and
18 holding hands and things like that?

19 A I'm sure.

20 Q So Rodney, in essence, had pictures of their -- of his
21 family and -- and also had pictures of you, is what you're
22 saying?

23 A Yeah. And his job and different things.

24 Q Now, after this fight happened, where, I guess, you
25 sent a picture of -- of his friend to the prostitute --

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1 well, why would you do that?

2 A I already told you. You sound like him. I already
3 told you --

4 THE COURT: No, ma'am. No, ma'am. Don't -- don't
5 make comments like that.

6 MS. BRYAN: I'm sorry.

7 THE COURT: Mr. Williams is a --

8 MS. BRYAN: I'm sorry. But I've already said --

9 THE COURT: -- advocate, an -- don't -- please don't
10 interrupt me.

11 Mr. Williams is an officer of the Court. He asks the
12 questions; you answer them. Don't -- don't make comments
13 such as that. All right?

14 MS. BRYAN: Yes, sir.

15 THE COURT: All right. Do you remember the question?

16 MS. BRYAN: Yes, sir.

17 THE COURT: All right. You may answer.

18 A I've already told you I did not mean to. And any --
19 any way that you ask it, that's the answer. I did not mean
20 to.

21 Q All right. And did you think he wanted you looking
22 through his phone?

23 A I don't know.

24 Q Well, after y'all were riding down the road and y'all
25 were arguing -- and you would agree the two of y'all were

1 arguing, wouldn't you?

2 A Yes.

3 Q Why did you hit him?

4 A Because he was calling me horrible names in front of
5 my children, and he did it for about seven miles. And I
6 just wanted him to stop.

7 Q And you thought that physical violence was the way to
8 stop something happening like that?

9 A I don't know. I didn't have a plan in my head. I
10 just wanted him to stop.

11 Q Well, how did you think he was going to react if you
12 hit him?

13 A Well, I didn't expect him to hit me while I was
14 driving. I normally -- but no, I didn't expect him to hit
15 me while I was driving.

16 Q So you thought you could control that aspect of it
17 since you were driving, didn't you? That he wouldn't be
18 able to hit you because you were driving, but you could hit
19 him.

20 A No, sir. I just wanted him to stop yelling at me in
21 front of the kids.

22 Q All right.

23 A I -- I had no control or -- or anything like that in
24 my head.

25 Q Well, let's go on to when you get home. You get home

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1 and you get the children out of the car, or he gets the
2 children out of the car, and y'all go in the house; is that
3 right?

4 A What now? I'm sorry. Go ahead.

5 Q When you get home, you get the children out of the
6 car, or do -- does he get the children out of the car? Do
7 y'all go inside the house at that point in time?

8 A No. I got the children. I got out and the children -
9 - the little children came to me, and Rodney walked off. I
10 took the children in the house.

11 Q Okay. And is that when you began to do supper?

12 A No.

13 Q What time was that?

14 A I don't remember. It was daylight.

15 Q Seven o'clock, maybe?

16 A I don't remember. I don't remember. It was daylight.
17 I think it was probably afternoon, but I don't remember the
18 specific time.

19 Q Well, did you ask Rodney to go to the grocery store to
20 get you some groceries later on that night?

21 A No. I don't remember asking Rodney to go to the
22 grocery store.

23 Q Did he go to the grocery store later on that night?

24 A I don't know.

25 Q Did you not call him on his cell phone that Friday, as

1 he was going to the grocery store?

2 A It wouldn't have been possible for me to call him.
3 The phone was already disabled.

4 Q All right. Let me ask you about that, because you
5 said on direct examination that he took the phone -- took
6 the phone out of the bedroom and put it in the trunk of his
7 car -- or the trunk of the car. It's not really his car,
8 is it?

9 A It's a rental car.

10 Q Okay.

11 A It's a rental car. Yes, sir.

12 At some point during that weekend, he walked through
13 the living room, out the door, with the phone in his hand,
14 the whole phone set.

15 Q And put it in the trunk of the car.

16 A Correct.

17 Q Well, now, he didn't do it that Friday? Is that what
18 you're telling me?

19 A I'm telling you at some point. I don't remember.

20 Q Well, if your telephone wire was cut, why would he
21 take the telephone and put it in the trunk of the car?

22 A Maybe he thought I could repair the wire. I don't
23 know. Maybe -- I don't know.

24 Q Did you repair the wire?

25 A A few days later, yes, I did.

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1 Q You repaired the wire?

2 A Yes. A few days later. Yes, I did.

3 Q And how did you repair the wire?

4 A I matched all the same colors and then I taped it.

5 Q All right. And when did he take the cell -- when did
6 he take the phone out of the house?

7 A I don't remember. Sometime that weekend.

8 Q Could it have been Sunday?

9 A I don't remember.

10 Q Now, you're not denying he went to the grocery store
11 that Friday night, are you?

12 A No. I'm not denying that. I don't know.

13 Q Do you have two sets of keys for the car?

14 A That car? No.

15 Q Just the one?

16 A It's a rental car; they only give you one set of keys.

17 Q All right. One. Sometimes rental places give you
18 more than one set of keys.

19 A I don't know. This particular one gave him one.

20 Q All right. So when he went to counseling that
21 Saturday, did you take him or did he drive himself?

22 A I don't remember Rodney going to counseling. I don't
23 remember Rodney going anywhere. I remember taking care of
24 the kids and all the other things.

25 Q Are you saying he didn't go?

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1 A No, I'm not saying that. I'm saying I don't remember.

2 Q Well, ma'am, you have alleged -- I say "you." You're
3 the -- you're the alleged victim. You have said by these
4 allegations of kidnaping -- and in the warrants and in the
5 indictments -- that you were prevented from leaving. And
6 in all the statements, you said you were prevented from
7 leaving the house on the 14th, the 15th, and the 16th. And
8 he was there, preventing you from leaving.

9 MR. GRAHAM: Objection, Your Honor.

10 THE COURT: All right. If you'd approach the bench.

11 (Bench conference.)

12 Q Did you tell the police officer or to anyone that you
13 were prevented from leaving the home the 14th, the 15th,
14 and the 16th of September, 2007?

15 A I wrote what happened; they put the charges to that.

16 Q Did you tell the police officer or anyone that you
17 were prevented from leaving the trailer, and that he was
18 there all the time?

19 A I just wrote what happened. They put the charges on
20 that. I don't -- I'm sure we had conversations about this.

21 Q All right. So is that a "yes" or a "no"?

22 A It's a -- it's a -- another "I don't know" what to say
23 about that. I don't know. And I wrote -- I told what
24 happened. I wrote what happened.

25 Q All right. Well, what happened?

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1 A I didn't --

2 Q What happened?

3 A Rodney beat me very severely ---

4 Q Well ---

5 A --- raped me ---

6 Q --- in reference to leaving or not leaving.

7 A Oh. When I tried to leave that Saturday evening, he
8 jerked me back in the house and proceeded with that. He
9 took the keys. He told me not to leave the house.

10 Q So you were -- are you telling us now that you were
11 prevented from leaving Friday and Saturday and Sunday?

12 A Prevented -- he didn't tie me up. If that's what
13 you're asking. I mean, prevented --

14 Q That's what I'm asking.

15 A No, he didn't tie me up.

16 Q How did he prevent you?

17 A Intimidation.

18 Q Well, when he left in the car Saturday morning, what
19 prevented you from just taking the kids and trundling down
20 the road?

21 A I did not know that he left.

22 Q You knew he wasn't there, didn't you?

23 A No.

24 Q Did you look for him?

25 A No.

1 Q How about Monday? Why didn't you leave Monday?

2 A I think I -- I've already answered that, correct? I
3 mean, I keep telling you that if I went to the police --

4 (Sotto voce discussion between
5 the Court and the law clerk.)

6 Rodney would be gone for a little while, he'd be out, he'd
7 be madder than he already was. He said he was leaving ---

8 Q All I asked about was leaving.

9 A I told you that's why.

10 Q I didn't say about putting him in jail. I said, "Why
11 didn't you just leave?"

12 A I didn't have anywhere to go.

13 Q Well, you had already gotten an order of protection,
14 right?

15 A Yes.

16 Q And you said that that was your power.

17 A I didn't say that; you said that.

18 Q Okay. You -- you figured that was enough to keep him
19 from doing anything to you, right?

20 A I thought if he knew, that he would not hit me.

21 Q So you know the way to the courthouse, don't you?

22 A Oh, yes.

23 Q You're a correctional guard, aren't you?

24 A I was. es.

25 Q So you could have left, couldn't you? You could have

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1 reported anything, couldn't you?

2 A I already told you why I didn't. I don't --

3 Q But you could have.

4 A Well, yeah. Anything's possible.

5 Q Let me ask you this.

6 A And ---

7 Q We heard on this video --

8 A Uh-huh.

9 Q -- that you -- you said you wanted something -- that
10 you wanted a divorce.

11 A He asked me and I said "yes."

12 Q All right. Have you gotten a divorce?

13 A I've filed for divorce. Yes, I have.

14 Q When did you file for divorce?

15 A You'd have to ask my lawyer specifically what date he
16 received that. I don't know all those dates.

17 Q Was it this year?

18 A I know Rodney received something, and after that, I
19 don't know. My main concern is I have been getting the
20 children into my custody.

21 Q You don't know when you served him with divorce
22 papers?

23 A I didn't serve him. I told you you'd have to ask my
24 lawyer.

25 Q You don't know if that -- if anything's happened on --

1 on a domestic case this year?

2 A A domestic case?

3 Q That's what a divorce is, it's a domestic case.

4 A I know that he was served with -- I guess -- I guess
5 it's called a "petition." And we were supposed to have
6 some sort of meeting, and that has yet to happen.

7 Q Well -- so this would be something that may have done
8 -- that -- that your lawyer, I guess, may have done
9 recently, maybe?

10 A No. We filed for divorce, or whatever the -- the
11 thing's called when you're -- you initially start it, I
12 think in November, back in November or -- yeah.

13 Q Are you just trying to guess for -- for dates now, or
14 do you know?

15 A I'm guessing.

16 Q Yeah. Let's go back then to the September the 14th,
17 15th, and the 16th; that Friday. You said you got the
18 children in the house, and after you got the children in
19 the house, he was outside somewhere.

20 A Correct.

21 Q And he came in and y'all were still fussing, right?

22 A The next time I remember seeing Rodney was in the
23 bathroom.

24 Q You don't remember anything about what happened
25 between the time in which you -- you went in the house and

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1 the time you went into the bathroom?

2 A I remember taking care of the children. Yeah. But
3 then the next time I remember seeing Rodney was in the
4 bathroom.

5 Q All right. And you were in the bathroom going to the
6 bathroom? taking a shower? or what?

7 A I was hiding, I think. I was just trying to regroup;
8 not be so upset in front of the kids.

9 Q And where were the children?

10 A In the living room at that time, I think.

11 Q Had they already been -- had they already eaten?

12 A No. They were just watching TV. And I went in the
13 bathroom and calmed down, or tried to calm down.

14 Q All right. And how long after you had gotten home was
15 this?

16 A Not very long.

17 Q An hour?

18 A I don't know. It wasn't very long. No. I wouldn't
19 even say it was that long. I would say it was a short
20 period of time, 20 minutes, maybe? 15? 10? Somewhere in
21 there.

22 Q And it's your testimony that he just comes in and then
23 slaps you; is that right?

24 A No. I believe he choked me first. He started choking
25 me and then he started slapping me, and he was pulling my

1 hair at different points.

2 Q And -- and then after that, what happened?

3 A I heard the children outside, and went to go see what
4 was going on.

5 Q Okay. And then what happened?

6 A I went out the back door and Amy was crying, and
7 Rodney had Nathaniel underneath his arm.

8 Q Well, slow down there. Now, you said --

9 A And ---

10 Q -- Amy was out the back door?

11 A I went out the back door.

12 Q And where was Amy?

13 A Over at the edge of the trailer, like, going towards
14 the neighbors. Like towards ---

15 Q All right. Where was your husband when this happened?

16 A He had Nathaniel underneath his arms.

17 Q So he was bringing Nathaniel back in; is that right?

18 A That's correct.

19 Q And what about the other child?

20 A Amy and Savannah?

21 Q Where was Savannah?

22 A Outside, too.

23 Q So she was outside, too, where you were?

24 A They were all outside. And when I opened the back
25 door, I remember seeing Amy first. Amy was crying,

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1 Nathaniel was crying, all the children were crying. And I
2 told the -- the other two to "Come here to me."

3 Q And then what did you do?

4 A Then I heard Rodney came up -- come in the front door.
5 And Nathaniel -- I heard Nathaniel crying, and I went in
6 there and I picked up Nathaniel. And I looked at him and I
7 rubbed him and I tried to get them to calm down.

8 Q And is that when you started fixing supper?

9 A I -- I was somewhere in -- yeah, I would say after
10 that.

11 Q Okay. And then what did you fix them for supper that
12 night? Do you know?

13 A No. I don't know.

14 Q All right. You gave them supper, then you gave them a
15 shower; is that right?

16 A Yes.

17 Q Then you put them to bed?

18 A Yes.

19 Q And then you went ahead and took a shower, maybe, and
20 got ready for bed yourself?

21 A Probably.

22 Q You don't remember?

23 A No, I don't.

24 Q Why is it that you just remember some things and not
25 some other things?

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1 A I don't know; I'm not a doctor. I just know the parts
2 I remember.

3 Q So after you got ready for bed, you went to go to
4 sleep on the couch; is that right?

5 A Yes.

6 Q And did you have your bedclothes on?

7 A I don't remember.

8 Q You don't remember what you had on?

9 A I know I had clothes on, but I don't -- no, I don't
10 remember.

11 Q Had Rodney already gone to bed?

12 A I woke up on the couch; Rodney woke me up. I don't --
13 I don't know.

14 Q Was there some reason why you -- were you -- with your
15 meal, did you have some wine or something?

16 A No. I'd been choked and hit, and I think that that's
17 probably had a lot to do with it. It was very traumatic.

18 Q And you just went to sleep on the sofa?

19 A Yes.

20 Q But that was after the children went to bed?

21 A I remember putting the children to bed, and -- yeah.

22 Q And then after putting the children to bed, where was
23 Rodney?

24 A I don't know.

25 Q Okay. So the next think you remember is waking up --

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1 Rodney waking you up, telling you to come to bed; is that
2 right?

3 A Right.

4 Q And what do you do? You get up and come to bed,
5 right?

6 A I told him I didn't want to. I didn't want to sleep
7 with him.

8 Q Okay. And what did you do?

9 A He said, "Yeah, you are, because you -- you might
10 leave in the middle of the night."

11 Q And so what did you do?

12 A I got up and went to bed.

13 Q Okay. And is this when, supposedly, Rodney had some
14 pocket knife and he's trying to stab a pillow or something?

15 A No.

16 Q Okay. So there was no weapon or anything involved
17 this night, when y'all go to bed that night, right?

18 A No.

19 Q And you don't tell Rodney anything as the two of y'all
20 are having sex, right? You don't say anything like,
21 "Stop," or "I want you to stop," right?

22 A I told him before that.

23 Q But on direct, you said that you didn't say anything
24 about it, right?

25 A I don't remember. I don't know.

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1 Q You don't remember what you said yesterday on direct
2 examination?

3 A I was very upset yesterday.

4 Q Well, if you said that you didn't say anything to him
5 when he had sex, do you deny that's what you said
6 yesterday?

7 A I'm not denying that. No.

8 Q Okay. So you get up. What time did you wake up
9 Saturday morning?

10 A I don't remember.

11 Q Was it before nine o'clock or after nine o'clock?

12 A I don't remember. The kids woke me up. It was still
13 morning.

14 Q Did you look outside to see if the car was there?

15 A No, I didn't.

16 Q Did you look to see where Rodney was?

17 A No, I didn't.

18 Q When was the first time that you saw Rodney the next
19 day?

20 A Saturday morning?

21 Q What time?

22 A I don't know. He walked -- he walked to the kitchen
23 table.

24 Q Almost midday, maybe?

25 A I don't know.

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1 Q Well, now, if he was at another location at nine
2 o'clock Saturday morning until like 10:15, then you would
3 have had to have seen him maybe at 11:30, maybe? Eleven
4 o'clock?

5 A If he was -- if that -- yeah. That makes sense.

6 Q Makes sense. That -- does that sound about right?

7 A I don't remember.

8 Q What happened when you saw him walking through the
9 house that day?

10 A He was just very mean.

11 Q Okay. So what happens in the afternoon?

12 A He walked in and out of the house all day, and he
13 yelled a lot.

14 Q Okay. And then, other than walking in and out of the
15 house all day and yelled a lot, what happened at, say,
16 suppertime?

17 A I don't know. That video happened sometime that
18 evening.

19 Q You don't remember when that video happened?

20 A Sometime in the evening, before he choked me and did -
21 - stabbed at me with a knife on the couch.

22 Q Well, let's -- let's go to that episode. What time
23 was that, that that happened?

24 A I don't know the time. It was -- it was nighttime.

25 Q It was nighttime?

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- 1 A Yes.
- 2 Q Were the children in bed?
- 3 A When Rodney did that?
- 4 Q Yes.
- 5 A Yes, they were.
- 6 Q The children asleep?
- 7 A Well, normally their bedtime is around 8:30, but then
- 8 they still want to get up and, you know, go back and forth.
- 9 I don't know. They should have been asleep if it was
- 10 nighttime.
- 11 Q Had you gone to bed?
- 12 A No.
- 13 Q Were you -- well, had you gone to sleep again on -- on
- 14 the couch?
- 15 A No.
- 16 Q Okay. Were you in your nightclothes?
- 17 A No.
- 18 Q Okay. And he walks into the couch, and he just starts
- 19 choking you; is that right?
- 20 A No.
- 21 Q Okay. What happens?
- 22 A He pretended like he was calling the police on his
- 23 self. He was saying that I wasn't safe, that he was going
- 24 to kill me; that they needed to come get him. And then he
- 25 acted like he was walking outside. And he put the phone

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1 down, open, on the table. And I walked over there and I
2 picked it up, and there was no sound. And then he
3 immediately walked back into the house, and looked pleased
4 with himself. He laughed and -- but at the same time he
5 was saying, "I knew you would turn me in. I knew you were
6 going to do this," and started to yell at me again.

7 Q Are -- are you talking about that he said that you
8 would turn him in because he had violated that order of
9 protection?

10 A No. Because he hit me and my -- my face was all
11 messed up.

12 Q And then what happened next?

13 A Then he said he was going to go take a shower.

14 Q Okay.

15 A I think he was going to the bathroom.

16 Q Okay.

17 A And I -- when I thought he was going to take a shower,
18 I went to leave the house and he stopped me.

19 Q Well, now, were you leaving the children there?

20 A I thought I had enough time, if he was taking a shower
21 -- Rodney takes a long time. I thought I'd have enough
22 time to run over there and run back.

23 Q And then where did he catch you?

24 A The front steps.

25 Q And so he came out of his shower with no clothes on

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1 and grabbed you off the front stair?

2 A No.

3 Q What happened?

4 A He didn't actually ever get in the shower.

5 Q Okay. So he grabbed you off the front step?

6 A Grabbed my arm, yeah.

7 Q And how far -- how far is the bathroom from the front
8 door?

9 A Five feet?

10 Q And then he -- what did he do when he grabbed you off
11 the front door?

12 A He told me, "I" -- he didn't say I could go anywhere.

13 Q Okay. Then what did he do?

14 A Told me to go sit down.

15 Q Uh-huh. Then what -- then what did he do?

16 A Then I went and sat down on the couch, and he paced
17 back and forth in front of me, yelling. And then he
18 started choking me again. And he was bouncing up and down
19 on -- on the -- shaking, you know, the -- the chair or the
20 couch was shaking. And then he would hold me with one hand
21 and he would take his knife and go like that (indicates)
22 and then put the knife down. Then he would start choking
23 me again. And he alternated that for a while.

24 Q Okay. Did he stab holes in the couch?

25 A He just did like this at my face (indicates.) Like

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1 that.

2 Q And then what happened?

3 A The chair broke.

4 Q Now --

5 A And then he stood up and they were talking --
6 Nathaniel and him.

7 Q Let me ask -- Nathaniel was talking to him?

8 A Yes.

9 Q And what did Nathaniel say to him?

10 A I don't know; I just heard their voices. I don't know
11 specifically what they said, other than what Nathaniel
12 said.

13 Q And let me ask you this: Was there an episode --
14 we've seen a picture of this wall here -- where maybe the
15 vacuum cleaner might have knocked a hole in the wall?

16 A The hole that we talked about yesterday?

17 Q Uh-huh.

18 A No. That's when the chair broke and hit the wall.
19 When Rodney was on top of me, the chair broke and hit the
20 wall.

21 Q And this wasn't at all caused by a vacuum cleaner
22 problem?

23 A Not at all.

24 Q All right. Then what happened after this happened?

25 A Then I was on the ground trying to recover my breath,

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1 and Rodney pulled me up by my hair and told me to go to
2 bed. And I went and sat down on the bed.

3 Q Did he pull any hair out of your head?

4 A No. I don't remember him pulling hair out, he just
5 pulled me up by my hair.

6 Q And you had to go where?

7 A He told me to go to bed. And I went ---

8 Q Did you go to bed?

9 A --- and sat down on the bed. Yes, I did.

10 Q Okay. And then what happened when you sat down on the
11 bed?

12 A He told me to put lingerie on he had in his hand, and
13 I refused. And then he unzipped his pants. He pulled his
14 pants down and he kept putting his penis in my face, and
15 told me that I was going to have to have oral sex with him.
16 And I said no, I wasn't.

17 Q Did you have sex with him?

18 A Rodney forced me to have sex with him. Yes.

19 Q All right. Did he pull the knife back out again?

20 A No. But he did put his hand on my throat, but he
21 wasn't choking me. He just had his hand on my throat.

22 Q So when he had sex, that -- was that Saturday or
23 Sunday that he had sex?

24 A That was Saturday.

25 Q That -- that Saturday night?

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1 A Yes.

2 Q Before twelve o'clock?

3 A I don't know.

4 Q Well, if it's after twelve o'clock, it wouldn't be
5 Saturday, would it?

6 A If it was after twelve o'clock, it would not be
7 Saturday.

8 Q Do you know if it was Saturday night or Sunday
9 morning?

10 A I know it was in the evening time. I don't know. I
11 know it was nighttime. I don't know specifically what time
12 it was.

13 Q Didn't you say at some point in time that he used the
14 knife to make you have sex with him?

15 A No, I never said that.

16 Q So this was just by choking you he -- he made you have
17 sex with him; is that right?

18 A Yes.

19 Q And then what happened Sunday?

20 A I don't remember Sunday. I remember getting up and
21 sitting on the couch, but I don't remember Sunday.

22 Q Where was Rodney?

23 A I don't know.

24 Q Well, if Rodney was there, you would have seen him,
25 wouldn't you?

- 1 A I would think so.
- 2 Q So -- but he wasn't there Sunday, was he?
- 3 A I don't know.
- 4 Q Didn't he go to a friend's house Sunday morning?
- 5 A I don't know.
- 6 Q You just don't know.
- 7 A I just don't know.
- 8 Q And Monday, who got the children ready for school?
- 9 A I believe it was me.
- 10 Q Do you remember?
- 11 A Not clearly. I remember them being up. I remember
- 12 them going to go to the bus, or go with their dad. I
- 13 remember that.
- 14 Q Okay. Did he go to work?
- 15 A I think so.
- 16 Q Okay. Well, when he went to work, what did you do for
- 17 the rest of the day?
- 18 A Cleaned up the house, wash clothes, fold clothes.
- 19 Q But you didn't call the police?
- 20 A No.
- 21 Q Didn't go to the police?
- 22 A No.
- 23 Q Tuesday, you don't know what you did Tuesday?
- 24 A I think it was about the same thing.
- 25 Q And you -- you don't deny, though, that you went to

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1 that bar Tuesday night to pick up your husband, do you?

2 A I just said I didn't remember.

3 Q But you don't deny it, do you?

4 A No.

5 Q do you recall going inside the bar and getting upset
6 with him because he was talking to a bartender?

7 A No.

8 Q You don't deny it, though, do you?

9 A No.

10 Q And Wednesday, what happened Wednesday? Nothing
11 happened Wednesday, right?

12 A Wednesday? I don't know. I don't think so.

13 Q And the bottom line on all this is that you never did
14 anything about these allegations that you now are
15 prosecuting until after they took your children away.

16 A No. No. When Rodney had been gone for a few days and
17 the children were gone, I thought about it. No. I didn't
18 report anything until after that.

19 MR. WILLIAMS: That's all the questions I have.

20 THE COURT: Thank you, Mr. Williams.

21 Solicitor, you have anything in re-direct?

22 MR. GRAHAM: Very briefly, Your Honor.

23 RE-DIRECT EXAMINATION BY MR. GRAHAM:

24 Q Rachael, why did you decide to tell the police? Why
25 did you decide to tell them what happened?

1 A I felt safe enough to do it. I thought he might be
2 gone for a while, and he wouldn't just come back, you know.
3 I thought he might stay in jail for a little while. I
4 didn't want -- I just didn't want to be hit any more.

5 Q Thank you, Rachael.

6 THE COURT: Re-cross, Mr. Williams?

7 MR. WILLIAMS: Yes, Your Honor.

8 **RE-CROSS EXAMINATION BY MR. WILLIAMS:**

9 Q But there's no doubt that if you look at this
10 objectively, in terms of dates and times, that you did
11 nothing until after your children were taken away.

12 A I don't believe that I -- I talked to anybody, you
13 know, about it until that happened.

14 MR. WILLIAMS: I don't have any more questions.

15 THE COURT: All right. Thank you.

16 Thank you very much, Ms. Bryan. You may step down.

17 All right. Solicitor, you may call your next witness.

18 MR. GRAHAM: The State calls Dr. Catherine Ross.

19 THE COURT: All right. Dr. Ross, if you'd come
20 around, please.

21 **CATHERINE ROSS**, having been first
22 duly sworn, testifies as follows:

23 CLERK OF COURT: Have a seat, please, ma'am. Once you
24 have a seat, Doctor, please state your full name, spelling
25 your last name.

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1 DR. ROSS: It's Catherine Ross, C-a-t-h-e-r-i-n-e, R-
2 o-s-s.

3 DIRECT EXAMINATION BY MR. GRAHAM:

4 Q Dr. Ross, could you tell the jury about your
5 educational background, please?

6 A Yes, I can. My undergraduate degree is from Limestone
7 College. I have both a Master's and a Doctorate in Social
8 Work from Tulane University in New Orleans, Louisiana. I
9 am certified by the Academy of Social Workers, and that's a
10 national certification. I'm licensed to practice
11 independently in the State of South Carolina.

12 Q How about could you tell the jury what your training
13 or work experience you have in the field of criminal
14 domestic violence.

15 A Exactly. I received additional specialized training;
16 I'm a social work practitioner, educator, and consultant
17 for close to 33 years now. But I've received additional
18 training in family violence, probably by the -- the best-
19 known people in this country: That's Donald Dutton, Lenore
20 Walker, Lindy VanCroit. I -- in -- in addition to that, I
21 am Director of Community Clinical and Educational Services
22 at Sistercare here, located in Columbia, South Carolina,
23 which serves the Midlands region.

24 Q Let me -- let me ask -- I was going to ask you ---

25 A Okay.

REDIRECT EXAMINATION BY MR. GRAHAM - DR. CATHERINE ROSS 344

1 Q --- what is Sistercare?

2 A Sistercare is an organization that works with battered
3 women and children in the surrounding five-county area.

4 Q How long have you been involved with Sistercare?

5 A I've been involved with Sistercare -- I -- I -- well,
6 let me say this. I've worked tangentially with Sistercare
7 for 20 years, but employed directly by Sistercare for 10
8 years now.

9 Q What do you do for Sistercare?

10 A I do the individual counseling out in the community.
11 We have a very large community program. I -- I work with
12 women in teams; I also design curriculum in training
13 professional people in the community. I've trained, for
14 example: judges and attorneys, healthcare professionals,
15 doctors, human resource managers; and so on and so forth.

16 Q In addition to your job at Sistercare, do you have any
17 other jobs that relate to the field of criminal domestic
18 violence?

19 A Only in teaching and consulting with professionals in
20 the community. I'm an adjunct professor at Webster
21 University. I'm invited very frequently, also, by USC, and
22 I also teach a course at USC Medical School on identifying
23 patients of domestic violence.

24 Q Doctor, how many women that have been victims of
25 domestic violence have you had an opportunity to interview

REDIRECT EXAMINATION BY MR. GRAHAM - DR. CATHERINE ROSS 345

1 or counsel?

2 A In the past 20 years, probably close to over 2,000. I
3 -- I see approximately 40 women individually and in group
4 per week.

5 Q Doctor, have you ever testified in court before as an
6 expert in criminal domestic violence?

7 A Yes, sir, I have.

8 Q What states have you testified in as an expert?

9 A In North Carolina and South Carolina.

10 Q Approximately how many times have you been qualified
11 as an expert in the field of criminal domestic violence?

12 A Seven times.

13 MR. GRAHAM: Your Honor, at this time, the State would
14 offer Dr. Catherine Ross as an expert in the field of
15 criminal domestic violence.

16 THE COURT: Mr. Williams?

17 MR. WILLIAMS: One follow-up.

18 THE COURT: All right.

19 **CROSS-EXAMINATION BY MR. WILLIAMS:**

20 Q The expert qualification in South Carolina, how many
21 times?

22 A How many times? Six times.

23 MR. WILLIAMS: No objection, Your Honor.

24 THE COURT: All right. If you'll give me just a
25 moment, Solicitor.

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1 Mr. Foreman, ladies and gentlemen of the jury,
2 normally, when a -- a person cannot give opinion testimony.
3 Normally, when a person testifies, they must testify as to
4 what they either saw, heard, or sensed by smell, or
5 something of that nature.

6 However, there is an exception when someone is
7 qualified because of education or experience in a
8 particular field, art, or science, they are permitted to
9 give their opinion in certain areas, if the Court qualifies
10 them that way.

11 This witness, Dr. Catherine Ross, will be qualified in
12 the area of criminal domestic violence -- is that correct,
13 Solicitor?

14 MR. GRAHAM: Yes, Your Honor.

15 THE COURT: -- to give opinion testimony in that area.
16 That does not mean that you must accept the opinion, but it
17 is evidence for you to use in any way you, the jury, sees
18 fit.

19 Thank you, Solicitor. You may continue.

20 MR. GRAHAM: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MR. GRAHAM:

22 Q Dr. Ross, what is domestic violence?

23 A Domestic violence is a system of many abusive
24 behaviors, which includes physical, psychological, sexual,
25 and economic abuse. It's very critical to understand that

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1 domestic violence is about power and control exerted over
2 an individual; and it includes inducing physical harm,
3 fear, and dependency, and making a person and/or forcing or
4 preventing them from doing something that they do not wish
5 to do.

6 Q So the different types of domestic violence are what,
7 Doctor?

8 A As I said before, domestic violence is about power and
9 control, but it can be played out in many, many ways:
10 psychologically ---

11 Q That's not -- what do you mean by psychologically?

12 A Well, domestic violence -- if you picture, kind of,
13 like a seed, and then, you know, it can be -- can branched
14 out in many, many different ways. Like, domestic violence
15 always starts out psychologically. In -- in other words,
16 manipulating a -- the victim's thoughts, her perceptions,
17 playing mind games with her, berating her, demeaning her,
18 or calling her names, humiliating her, embarrassing her in
19 front of other people. In short, making her believe and --
20 making her believe not in herself. It's blazen destruction
21 of personhood.

22 Q When you talked about power and control, how does that
23 relate to physical violence?

24 A Physical violence -- very obviously, the physical
25 harm, the -- the stabbing, the hitting, punching holes near

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1 a wall where the victim is. For example, the -- the thing
2 I'm particularly concerned about over the years is choking
3 of victims, because the choking, not only down the road --
4 I know from teaching at the medical school -- that we see
5 that that's related to traumatic brain injury down the
6 road. But also, according to the FBI, choking is a number
7 one sign that a woman is going to be killed down the road.

8 Q How does the power and control relate to sexual abuse?

9 A Again, that's forcing a person to do something against
10 her will, forcing her to engage in sexual acts that -- that
11 make her feel uncomfortable, calling her sexual names,
12 making her dress in sexually provocative ways, taking
13 pictures of her in various sexual ways that she does not
14 feel comfortable with.

15 Q And I think the fourth area of domestic violence you
16 mentioned, Doctor, was economic.

17 A That is -- that's withholding money. If she is
18 allowed to work outside the home, that may mean taking her
19 paycheck. A lot of times, in many, many cases, the woman
20 is not allowed to work outside the home, and, thereby, it
21 makes it more difficult for her to leave a situation,
22 especially in -- if she has children, because there's no
23 money available. It's withholding money, or giving her an
24 allowance. In other words, putting her in kind of a
25 childlike dependent role.

REDIRECT EXAMINATION BY MR. GRAHAM - DR. CATHERINE ROSS 349

1 Q Doctor, in your experience in working with the public,
2 is the general population very well informed about domestic
3 violence?

4 A Sadly to say, Mr. Graham, they are very misinformed.
5 And that goes for professional people with Ph.D.'s, also.
6 We still have so many myths in the year 2008. And -- and I
7 would just run through a -- a couple of them.

8 Domestic violence is not caused by genetics. It's not
9 caused by physical or mental illness. It's not caused by
10 stress. It's not caused by anger. It's not caused by
11 alcohol and drug abuse. It's not caused by the victim's
12 behavior, and it's not caused by problems in the
13 relationship.

14 The abuse is done towards a victim. It is done
15 intentionally. It's done deliberately. It's a choice.
16 The abuser knows exactly what he's doing. And go -- ergo,
17 go back to my definition that I shared with all of you
18 beforehand, and that is it's about power and control.

19 Q Why would a -- what are some reasons that a victim
20 would stay in an abusive relationship? Why -- why wouldn't
21 a woman just leave?

22 A That is a question that we don't entertain at
23 Sistercare. It is very, very, very difficult to leave. I
24 -- I cannot underscore that enough. If you'll go back to
25 the psychological abuse, that is the glue that keeps the

REDIRECT EXAMINATION BY MR. GRAHAM - DR. CATHERINE ROSS 350

1 woman in the relationship. She is traumatized to the point
2 where she feels that leaving is not an option to her. And
3 -- and consciously -- in that she bonds with the abuser,
4 because she knows at some point, the abuser will decide if
5 she lives or she dies.

6 And so in -- in that psychological bonding, she has
7 periods where she knows that something very, very dreadful
8 is going to happen to her. She may have periods where she
9 says, "I -- I know I should leave, but I'm too frightened."
10 In other words, she's literally frozen in fear. And if
11 anyone in this courtroom today has ever had an experience
12 where they've been so scared that they couldn't move or go
13 front or backwards, right or left, maybe you begin to
14 identify a little bit with that.

15 But she is frozen solidly in fear, which affects her
16 decision-making abilities. So that -- there's a lot of
17 cognitive disturbances, or she just cannot think about what
18 is the right thing for her to do at the time.

19 Q Is leaving or attempting to leave -- is that dangerous
20 or not dangerous?

21 A It's extremely dangerous. According to the National
22 Institute of Justice, there is a 75 percent chance that a
23 woman is going to be killed when she's attempting to leave.

24 So at Sistercare, when a woman first comes in, we
25 don't suggest she leave. That's just not an appropriate

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1 question. We have to work with her on a safety plan.

2 Q Why wouldn't -- why wouldn't a victim call the police?

3 A Again, I go back to the fear level. When she calls
4 the police, that is a declaration of war to the abuser.
5 She has declared war, and so she knows that the abuse may
6 become more severe. And in -- in most cases, it will. And
7 so the second reason she may not call the police -- and
8 these -- this statistics comes from the South Carolina
9 Coalition Against Domestic Violence and Sexual Assault.

10 Only one out of every ten women will call the police,
11 thinking that the police cannot help her, the situation
12 will get worse, or at some times they come out and can't
13 figure out what's going on, because sometimes women will
14 defend themselves. Then the woman will get arrested
15 herself. So it's not a good situation for her.

16 Q What about if they -- if the police come and approach
17 her and offer to help her? Does that make a difference?

18 A It may, but in most cases, no, because she's so
19 traumatized. Again, we go back to the theory of traumatic
20 bonding. A lot of people probably know it by the name of
21 the "Stockholm Syndrome," where the victim identifies and
22 bonds with the aggressor -- in this case, the abuser --
23 because -- again, I'm going to repeat myself just a little
24 bit -- she knows that at some point, the abuser will decide
25 if she lives or she dies. And so she becomes very, very

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1 protective. She's also very dependent on him, because he's
2 isolated her from any kind of positive feedback in her
3 life. All she's hearing is negative messages from him all
4 of the time.

5 So she may get very, very angry, for example, if a
6 police officer asks for help, or if someone, like myself, a
7 social worker, would say, you know, "I would like for you
8 to come talk to me. I think that this situation is not a
9 good one for you."

10 She may become very angry and protective of him. In
11 short, we call that "traumatic bonding."

12 Q What if there's children in the equation? What
13 difference does it make?

14 A It makes a tremendous difference. First of all, it's
15 very, very difficult to leave when there are children
16 involved. Just think of the -- the ability to carry them
17 out of the house and get them into safety.

18 Most women, to maintain some sense of safety and
19 control in their lives will stay with the abuser, and will
20 protect their children as much as they possibly can. In
21 other words, they will take beatings; they will accept a
22 rape, for example, just so the children will be protected
23 and the abuser will not go after the children.

24 Q And you mentioned rape. Why wouldn't a woman who's
25 been a victim of domestic violence physically resist a

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1 rape?

2 A Because she knows that the consequences of it may be
3 very, very severe, and it may possibly cost her life, or
4 the abuser might go after the children.

5 Again, I'm looking at statistics. This one is one of
6 the things I do for Sistercare. I keep all the research; I
7 try to keep up with the latest research.

8 In a home where a woman is being battered, there is up
9 to an 80 percent chance that the children will either be
10 physically or sexually abused. So that's a primary reason:
11 the safety of the children, and often the safety of
12 herself.

13 Q Doctor, what, if anything can you tell me from your
14 experience in dealing with women who have been victims of
15 domestic violence, as to their memories?

16 A Let me use this analogy. If you're a prisoner of war,
17 which she is, in her own home, after a while, hearing how
18 horrible you are, being yelled at, demeaned, berated, being
19 cut off from any kind of positive feedback, being isolated,
20 when you're bombarded with so many negative messages, after
21 a while, you start believing that; and you strongly believe
22 that you, indeed, are not worth anything. And in that
23 hostage situation, any type of what we would normally think
24 of as being a common-sense decision to make, that's not a
25 possibility to her.

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1 So leaving is not a possibility. She's stuck there;
2 she knows it. And her decision -- she's on -- let me say
3 it this way. I think it's probably better said this way.
4 She's on survival mode. She's just going through the day-
5 to-day motions. She doesn't even remember. She knows
6 enough to look out for her children, but it's -- it's like
7 a dream.

8 Q Doctor, before yesterday and today, had you met
9 Rachael Bryan?

10 A I met her one time; that was on November 11th, 2007.
11 That's when she came in for me to conduct a initial intake
12 on her at Sistercare.

13 Q Did you do that?

14 A Yes, I did.

15 Q And in addition, were you present in court yesterday
16 and today when she testified?

17 A Yes, I was.

18 Q Was there anything about Rachael's ability to remember
19 or not remember that was -- was that consistent or
20 inconsistent with a woman who's been a victim of domestic
21 violence?

22 A It's very, very consistent; very consistent. And --
23 and I was watching in the courtroom. She -- she's been re-
24 traumatized again by having to relive all of these
25 experiences.

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1 Q In listening to the testimony, Doctor, was there
2 anything about her actions in trying to leave that weekend?
3 Are those actions consistent or inconsistent with a person
4 who's been a victim of domestic violence?

5 A They're very consistent with a person who's been a
6 victim of domestic violence.

7 Q Was there anything inconsistent about what she did?

8 A None whatsoever.

9 Q Was her failure to call the police, or go for help, or
10 even talk to the police after the event, is there anything
11 -- is that consistent or inconsistent, and why?

12 A That's very consistent. It's consistent because part
13 of the trauma is -- especially after being choked, being
14 raped, she's in shock. So she is not really attuned to any
15 of her surroundings. She doesn't know what to do; she's
16 frozen. Her -- her decision-making abilities at that point
17 have been shut down.

18 Q When the police officers came to her house and offered
19 her help --

20 A Uh-huh.

21 Q Was that consistent or inconsistent with a person or a
22 woman who's been a victim of domestic violence?

23 A That's very consistent. And I explained that before
24 in that very traumatic bonding or the Stockholm Syndrome.

25 Q Doctor, after Rachael's children were taken into

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1 Emergency Protective Custody and Rodney Bryan had been
2 arrested, she felt safe. Her decision at that point to
3 cooperate and tell the authorities what happened, was that
4 consistent or inconsistent, and why?

5 A That's very consistent. That's part of post-traumatic
6 stress response. After the external threat is removed,
7 then what happens, the autonomic neuro-system -- it starts
8 slowing down, and it kind of opens the brain up to start
9 thinking about options. She knows she's safe. She starts
10 remembering, and she starts remembering to the point where
11 she can make some healthy decisions about herself and her
12 children.

13 Q Doctor, in Rachael's testimony, is there anything that
14 was inconsistent with a woman who's been a victim of
15 domestic violence, who's been kidnaped by her spouse, or
16 has been raped by her spouse?

17 A No, sir. There's nothing that was inconsistent.

18 Q Thank you, Dr. Ross. Please answer any questions Mr.
19 Williams has for you.

20 A Thank you.

21 RE-CROSS EXAMINATION BY MR. WILLIAMS:

22 Q Dr. Ross, in your testimony, you have on every
23 occasion used the phrase, "her/she," referring to a woman
24 as being the person abused. Now, obviously, a man can be
25 abused also, can't he?

1 A Yes -- yes, they can. May I report some national
2 statistics? Though nationally -- this is coming from the
3 National Institute of Justice and all the central think
4 tanks, and -- in Washington, D.C. Ninety-five percent of
5 the victims are women. Two-thirds of the women who are
6 killed have been battered before they were killed. That's
7 not to say that men are not, but it is a very, very small
8 number.

9 Q Are you married, Dr. Ross?

10 A I was not aware that I was here for -- on personal
11 trial. I -- I'm here as an educator --

12 Q That's fine.

13 A -- and to be of some help to -- not only to the jury,
14 but also to the courtroom.

15 Q All right. Are you married?

16 A I don't -- asking personal questions -- I don't
17 respond to any personal questions. I'm here as an
18 educator.

19 Q Let me tell you why I'm asking.

20 THE COURT: And I will -- I -- I will -- there's been
21 no objection, but I would not require to -- the doctor to
22 answer that question at this time. Unless you want to be
23 heard outside the presence of the jury, Mr. Williams.

24 MR. WILLIAMS: I do, Your Honor.

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen of the jury, if you would momentarily step to
2 your jury room. Do not discuss the case amongst yourselves
3 during this brief recess.

4 (The jury exits at 12:02 p.m.)

5 THE COURT: All right. Mr. Williams?

6 MR. WILLIAMS: Your Honor, the purpose of the question
7 was not to get into her personal life in any way
8 whatsoever. She has testified in regards to how men and
9 women react, how husbands and wives react. Now, there is a
10 difference between reading statistics from a magazine
11 versus what you learn in life's experiences. And if she
12 has not been married, then there's probably a lot of things
13 -- I know this, having been married on more than one
14 occasion, that there is a world of difference between the
15 wives that you are married, and there's different
16 relationships that could form in between the two people.

17 THE COURT: Well, you can ask her about different
18 relationships, but it has nothing to do with whether or not
19 Dr. Ross was married.

20 I was counseled prior to my marriage by a Catholic
21 priest who had never been married, and took his counseling
22 very much to heart.

23 MR. WILLIAMS: And the only reason I would think that
24 the jury should need to hear it, because the jury should
25 need to hear where this expertise is coming from, whether

1 or not I is simply coming from books or if it's coming from
2 life experiences.

3 THE COURT: Well, you can ask her. Is this coming
4 from her education and -- and her background, her training,
5 her abilities, or is it coming from personal experiences.
6 You can ask her that. But it -- it still doesn't go into --
7 -- I -- I'm sure Dr. Ross, whether she is or is not married
8 and what -- not even commenting on what would be the
9 quality or lack of quality of -- of her marriage, if she
10 was married, would still be an expert in the field of
11 criminal domestic violence. So it's not relevant.

12 All right? You can ask her where her data comes from,
13 where she gets that data and such.

14 Do -- do you have anything you care to respond,
15 Solicitor? I know you didn't object to it, but I didn't
16 feel like Dr. Ross and Mr. -- Mr. Williams, both being
17 very, very professional within their particular area of
18 expertise, should debate that particular question and
19 answer.

20 MR. GRAHAM: No, Your Honor. I don't have anything to
21 add.

22 THE COURT: All right. Anything further before we
23 bring back in our jury, Mr. Williams?

24 MR. WILLIAMS: Could my client use the bathroom -- two
25 seconds?

1 THE COURT: All right.

2 You all right, Madam Court Reporter?

3 THE COURT REPORTER: I could take a break, too, Your
4 Honor.

5 THE COURT: Ma'am?

6 THE COURT REPORTER: I could -- I could run to the
7 little ---

8 THE COURT: All right. Well, then, let's -- let's
9 take about a ten-minute recess.

10 Dr. Ross, you may certainly step down during this
11 brief recess. Do not discuss your testimony with anyone.
12 Thank you very much.

13 (Briefly off the record.)

14 THE COURT: Thank you. Please be seated. Thank you.
15 All right. Anything before we bring in our jury,
16 Solicitor?

17 MR. GRAHAM: Not from the State, Your Honor.

18 THE COURT: Mr. Williams?

19 MR. WILLIAMS: Not from the Defense, Your Honor.

20 THE COURT: All right. We have everyone back present
21 in the courtroom. Mr. Bailiff?

22 (Sotto voce discussion between the Court
23 and the Clerk of Court.)

24 (The jury enters at 12:16 p.m.)

25 THE COURT: When I retire again, if they don't give me

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1 a travel show on the travel channel -- and I'm sure they
2 won't; I won't be able to travel probably by that age --
3 I'm going to do a study on where jurors sit. Y'all --
4 y'all are perfect. I mean, it's -- it's amazing. Y'all --
5 y'all just come right back in here perfectly.

6 All right. Mr. Williams, you may proceed.

7 MR. WILLIAMS: Thank you, Your Honor.

8 RE-CROSS EXAMINATION BY MR. WILLIAMS (CONTINUED):

9 Q Dr. Ross, as I understand your testimony, you met Mrs.
10 Bryan on November the 11th of 2007, for an initial intake
11 at Sistercare; is that correct?

12 A Yes, sir, it is.

13 Q And you had testified earlier that you spend some time
14 counseling groups and things of that nature?

15 A I see approximately 40 women a week, both individually
16 and in group. Exactly.

17 Q Have you done any counseling for Ms. Bryan?

18 A Only the initial intake.

19 Q So since September of last year -- almost a year --
20 the only time you have ever seen her was on the intake at
21 Sistercare, and done no counseling whatsoever with her.

22 A That is correct.

23 MR. WILLIAMS: I don't have any other questions, Your
24 Honor.

25 THE COURT: Thank you. Thank you, Mr. Williams.

1 Anything in re-direct, Solicitor?

2 MR. GRAHAM: No other questions, Your Honor.

3 THE COURT: All right. Thank you.

4 Thank you very much, Dr. Ross. You may step down.

5 May the doctor be excused?

6 MR. GRAHAM: Yes, Your Honor.

7 THE COURT: Any objections?

8 MR. WILLIAMS: No objections.

9 THE COURT: Thank you very much. Doctor, you may be
10 excused.

11 MR. GRAHAM: Your Honor, Dr. Ross was the State's last
12 witness, and with her the State rests.

13 THE COURT: All right. Thank you. Thank you very
14 much, Solicitor.

15 Perhaps -- perhaps would be a good time to let the
16 jury take their luncheon recess. I have matters at this
17 stage of the trial I must take up with the attorneys
18 anyway, outside of your presence. So I'm going to have
19 y'all break for your luncheon recess.

20 I'll remind you, do not discuss this case with anyone,
21 including your family, your friends, your lunch-mates or
22 anyone else. If anyone tries to talk with you about the
23 case, please let me know immediately. Remember to keep an
24 open mind until you've heard all the testimony that's going
25 to be presented in the case, and the closing arguments of

1 the attorneys, and the charge on the law by the Court; and
2 are then directed to begin your deliberations with your
3 fellow jurors.

4 I would ask you if you'd please be back in your jury
5 room at -- let's say a quarter til -- quarter to two. That
6 would be 1345 hours. If you'd be back at a quarter til
7 two, that'll give you about an hour and 25 minutes. And
8 you're now excused, and I hope y'all have a pleasant lunch.
9 Thank you very much.

10 (The jury exits at 12:20 p.m.)

11 (Sotto voce discussion between the Court
12 and the law clerk.)

13 THE COURT: All right. Mr. Williams, do you have any
14 motions?

15 MR. WILLIAMS: I do, Your Honor.

16 THE COURT: All right.

17 MR. WILLIAMS: Your Honor, in reference to the
18 indictment for violation of the order of protection --

19 THE COURT: Yes, sir?

20 MR. WILLIAMS: -- we would move for a directed verdict
21 of not guilty on the basis that the order was never served
22 on the defendant, as is evidenced by the order itself. The
23 last page of the order provides for an indication as to
24 notification of the two parties whether or not the order
25 applies or not. There is a little blank on the order.

1 THE COURT: (Coughs.) Excuse me.

2 MR. WILLIAMS: You'll note, Your Honor, that on that
3 order it is not checked indicating that the defendant was
4 ever served with the order of protection. So we would move
5 for a directed verdict of not guilty on that basis, on that
6 particular indictment.

7 THE COURT: All right. Solicitor?

8 MR. GRAHAM: Two things, Your Honor. First of all,
9 testimony from Mrs. Bryan was that he was aware of the
10 order of protection. So he knew that the order existed.

11 Secondly, Your Honor, as this is not a jury question,
12 but a legal question, I have a certified true copy of the
13 proof of service ---

14 THE COURT: Yes, sir. But I -- listen, listen. The
15 State's rested. I -- I don't want to -- I -- I don't want
16 my mind infected with something that's not already in the
17 record. Now, if you want to move to reopen, I -- I can
18 take that issue up, but I can't take additional testimony
19 before I rule on these motions, Solicitor. All right?

20 I'm -- I'm certainly not questioning you or -- or your
21 integrity or that you have what you say you have. I -- I
22 just -- I don't want to try to un-ring a bell. That's --
23 that's -- that's the only point I'm making.

24 MR. GRAHAM: I understand, Your Honor.

25 THE COURT: All right. Thank you.

1 And what -- what is your position as to State's -- as
2 to the violation of the order of -- court order of
3 protection?

4 MR. GRAHAM: He was aware of the order of protection
5 from the testimony that you listened to from Ms. Bryan,
6 Your Honor. And additionally, if I understood -- if I did
7 this wrong, and I apologize, Your Honor. I would -- I
8 would reopen and ask that you accept the certified proof as
9 a Court's Exhibit.

10 THE COURT: All right. Do you care to respond, Mr. --
11 Mr. Williams

12 MR. WILLIAMS: Yes, Your Honor. If -- if there is the
13 granting of the motion to reopen, we would object to that
14 on several bases. Number 1: He's already completed his
15 case; No. 2, there was no service that was provided -- of
16 this document provided to Defense counsel by way of
17 discovery. So if this had been an intention of an exhibit
18 to prove completion of the case -- you see, Your Honor, we
19 take the position that that is an element that he would
20 have to prove -- then he should have provided that document
21 to -- to us in discovery.

22 THE COURT: All right. I'm going to deny your motion
23 for directed verdict. I think there's direct and
24 circumstantial evidence as to whether or not he had
25 knowledge. The State hasn't -- perhaps they did make a

1 motion to reopen, but I am going to deny that, also. I
2 know there are parts of State's Exhibit No. 2, as I recall,
3 that there still is a requirement to be redacted. Is it --
4 is that correct? Excuse me, State's Exhibit No. 3? Didn't
5 this come in subject to redaction?

6 MR. WILLIAMS: It did.

7 THE COURT: All right. You just make sure it's
8 redacted. You -- you may certainly argue that in your
9 closing, Mr. Williams, that he did not have proper notice.

10 MR. WILLIAMS: Your Honor, we would move for a
11 directed verdict of not guilty on the indictment for
12 kidnaping. And the basis of that being that the kidnaping
13 indictment alleges that she was prevented from leaving the
14 dates of Friday, Saturday, and Sunday of that weekend in
15 September of 2008, I believe. I don't have a copy of it in
16 front of me. It -- it references the date this ---

17 THE COURT: It's 14, 15 -- it's between the dates of
18 September 14th of '07 and September 16th of '07.

19 MR. WILLIAMS: Your Honor, September the 16th of '07,
20 I'd ask the Court to take judicial notice that that was
21 Sunday of the year 2007. And that from her own testimony,
22 she has absolutely no indication in regards to what
23 occurred on Sunday of that date. And her testimony would
24 be speculative, I guess, Your Honor, in reference to the
25 other two dates, in regards to her inability to leave or

1 not leave and whether or not she was prevented from
2 leaving. So we would move for a directed verdict of not
3 guilty on the indictment for kidnaping.

4 THE COURT: All right. Thank you, Mr. Williams.
5 Solicitor?

6 MR. GRAHAM: Thank you, Your Honor. The indictment
7 alleges that between the dates of September 14th and
8 September 16th, Your Honor. I would offer a couple of
9 arguments.

10 One, she stated why she felt she couldn't leave, just
11 in general, for that entire period of time. And
12 additionally, there are at least three or more separate
13 instances during the date and time, during the 14th through
14 the 16th -- the 14th, 15th, 16th. The 15th, where -- well,
15 the 14th, where he held her down when he raped her. That
16 was kidnaping. That happened on the night of the 14th. On
17 the afternoon/early evening of the 15th, when she tried to
18 walk out the door, and he brought her back in, and then
19 threw her down on the couch. It's a -- a different event
20 of kidnaping. And then finally, you have the possible
21 rape, the third event, Saturday night.

22 So there are three individual kidnapings, but I would
23 still argue that the -- that occurred between the 14th and
24 the 16th is what the indictment alleges. But I would also
25 argue that her testimony as a whole shows that she felt

1 like she didn't have the ability to leave, either
2 physically, or psychologically, or emotionally; that she
3 was kidnaped.

4 THE COURT: All right. Mr. Williams, do you care to
5 respond?

6 MR. WILLIAMS: Not on the kidnaping issue.

7 THE COURT: All right. I -- I would agree there's a -
8 - I was trying to stir up my memory on the third case I
9 wanted to cite. I know "*State vs. Dildine*" and "*State vs.*
10 *Hall*," but there is a third case on kidnaping, that even
11 for a brief period of time is sufficient. There is a
12 kidnaping conviction out of Richland County that was
13 probably less than 15 seconds.

14 So I would agree that there is both direct and --
15 and/or circumstantial evidence that would cover each of
16 those dates if -- if you look at it to the specific events
17 which Ms. -- Ms. Bryan testified to on the -- the 14th,
18 15th, and the 16th. I would respectfully deny your motion
19 at this time. If I get that other cite, I will certainly -
20 - certainly put it in the record. All right.

21 MR. WILLIAMS: Your Honor, we would move for a
22 directed verdict of not guilty in reference to the sexual
23 battery which is alleged in the indictment to have occurred
24 on Saturday night, on the basis that the alleged victim
25 could not testify as to whether or not it occurred before

1 12 o'clock or after 12 o'clock, which would amount to any
2 alleged sexual battery occurring actually on Sunday versus
3 Saturday of that night.

4 THE COURT: Let's see. So that would be the -- well,
5 you have one -- you have one for the -- you have an
6 indictment for September 14th of '07. You -- you --

7 MR. WILLIAMS: That would be the Friday night, Your
8 Honor.

9 THE COURT: Right. The Friday night.

10 MR. WILLIAMS: The one I'm referencing is the 15th.

11 THE COURT: Then you have one, which is 07-3040, on
12 September 15th of '07. And -- and your position is because
13 the victim couldn't testify whether or not it happened --

14 MR. WILLIAMS: Saturday night ---

15 THE COURT: -- Saturday night. the 15th, or Sunday,
16 the 16th?

17 MR. WILLIAMS: That's correct, Your Honor.

18 THE COURT: Well, wouldn't that just make it a jury
19 issue? In other words, if they thought it happened on the
20 16th, then they would -- they could find him not guilty
21 because it didn't happen on the 15th?

22 MR. WILLIAMS: We would take the position they
23 shouldn't have to speculate on the dates of this.

24 THE COURT: Well, is that -- is that speculation or is
25 that just -- just circumstantial evidence when she said,

1 "It happened at night and I don't know whether it happened
2 the night of the -- the 15th, or the early morning hours of
3 the 16th"?

4 MR. WILLIAMS: If the indictment had read, "either the
5 15th or the 16th," then I would agree with Your Honor.

6 THE COURT: All right. Solicitor, do you have a
7 position?

8 MR. GRAHAM: Yes, Your Honor, I think it would be --
9 the purpose of an indictment is to put them on notice of
10 what they're facing. And the "on or about" language -- it
11 says "on or about September 15th" -- I think that's why
12 that language is used. I think he is sufficiently on
13 notice on the warrant and from the indictment that he was
14 going to be charged with the spousal sexual battery on that
15 date. And I think that's sufficient for it to go to the
16 jury.

17 THE COURT: All right. Thank you. I'll take that
18 under advisement. There's a case I wanted to look at on
19 that specific language.

20 All right. Mr. Williams? I think the only one left
21 is the criminal domestic violence of a high and aggravated
22 nature.

23 MR. WILLIAMS: Well, if I recall, that indictment also
24 references the Saturday, which is the 15th.

25 THE COURT: It -- it does, on or about September 15th

1 of '07.

2 MR. WILLIAMS: I think she did testify that there was
3 choking which alleged -- but again, she didn't testify --
4 maybe in my mind -- whether this was -- or maybe I couldn't
5 tell if it occurred Saturday night or if it occurred later
6 on in Sunday morning, from the testimony presented. But
7 again, the -- the failure to have testimony sufficient to
8 indicate the CDVHAN actually occurred on Saturday night.

9 THE COURT: All right. Thank you, Mr. Williams.

10 Anything, Solicitor?

11 MR. GRAHAM: It would be the same argument as the
12 other indictment, Your Honor. Plus, I do actually believe
13 that her testimony, if -- if looked at, it would say it
14 happened on Saturday.

15 THE COURT: Yes, sir. I -- I -- I believe there was
16 testimony concerning some activity that would meet the
17 elements of criminal domestic violence of a high and
18 aggravated nature on September 15th of '07, so I would
19 respectfully deny your motion.

20 MR. WILLIAMS: And lastly, Your Honor, we would move
21 for directed verdict of not guilty on the basis that on all
22 indictments that are charged against my client, there's
23 been -- taken in the light most favorable to the State,
24 would be insufficient as a matter of law for this jury to
25 return a verdict of guilty.

1 THE COURT: All right. I would respectfully deny your
2 motion. I think there is -- of course, the -- the standard
3 I must look at at this time, I think there is direct and
4 substantial or circumstantial evidence for which a jury
5 could return a verdict of guilty. As -- as I say again,
6 though, however, on the spousal sexual battery indictment
7 on the 15th, I'll reserve judgment on that, because I do
8 want to look up one issue on that.

9 MR. WILLIAMS: Your Honor, I don't believe I'm under
10 any obligation to renew any motion in reference to the
11 double -- double jeopardy argument that we made prior to
12 trial. I think that should -- should be preserved
13 throughout the trial without any objection this time.

14 THE COURT: You know, I never -- I never know anymore
15 what the requirements that have been or may be placed on a
16 defense attorney to renew their objections, but --

17 MR. WILLIAMS: I renew any objections I made before
18 now.

19 THE COURT: And I will renew all my previous trial
20 rulings.

21 MR. WILLIAMS: Thank you, Your Honor.

22 THE COURT: And -- and I would further add one thing
23 as to the issue concerning my recusal that we visited: I
24 did not interview Mr. Bryan about that issue, and I did not
25 interview him intentionally. And the reason I didn't is

1 because of the serious natures -- nature of the charges,
2 and further because he had had adequate time to discuss
3 that issue with his attorney, that I did not feel it would
4 have been appropriate for the Court to personally interview
5 him concerning that information.

6 I felt comfortable based on what Mr. Williams told me,
7 that it had been adequately explained to him: The
8 relationship that I had with one of my children being
9 employed with the Lexington County Solicitor's Office; that
10 she is not involved in this case; that I have had no
11 conversations with her about this case, or quite frankly,
12 any case. I -- I make it very apparent that I have no
13 conversations with her about this case, or with any case
14 that's pending in the solicitor's office.

15 But I did want to put on the record why I didn't
16 personally interview him in court under oath. I do not
17 know that I am required to; I have not seen any indication
18 that would lead me to believe that I am required to.

19 But I felt like and I'm sure that Mr. Williams had
20 adequately and fully explained to him the -- my position as
21 the trial judge of this case. And that he understood it
22 and waived it freely and voluntarily.

23 All right. Solicitor, anything further?

24 MR. GRAHAM: No, Your Honor.

25 THE COURT: All right. Mr. Williams, do -- do I need

1 to interview Mr. Bryan with regard to his right to testify
2 or not to testify?

3 (Sotto voce discussion between
4 Mr. Williams and the defendant.)

5 MR. WILLIAMS: Your Honor, you do not need to
6 interview Mr. Bryan. I have talked to Mr. Bryan about him
7 testifying and not testifying, and he is not testifying.

8 THE COURT: All right. With that being said then, and
9 your advising the Court I do not need to interview him, I -
10 - I will not do so. Again, I am sure you've explained it
11 to him fully and completely, and if you need any more time
12 to discuss that with him, you certainly may have that, Mr.
13 Williams.

14 MR. WILLIAMS: Your Honor, I think we're okay on this.

15 THE COURT: All right.

16 MR. WILLIAMS: And I would inform the Court that we're
17 prepared, whenever we come back, to argue to the jury.

18 THE COURT: All right. So you are not offering any --
19 any -- any evidence in this case?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: All right. Thank you. Thank you very
22 much. Do y'all have any specific requests to charge?

23 MR. WILLIAMS: Your Honor, we request the Court to
24 charge the lesser included offense of criminal domestic
25 violence in the CDVHAN.

1 THE COURT: All right. Mr. -- Solicitor, do you have
2 a position on that?

3 MR. GRAHAM: I would think the only facts in the
4 records support the CDV greater offense of criminal
5 domestic violence of a high and aggravated nature, and I'll
6 leave it to Your Honor's discretion.

7 THE COURT: All right. Well, I -- I will do that. I
8 guess they could disbelieve parts of her testimony in
9 regards to various events that may or may not have
10 occurred. I will -- I will charge also criminal domestic
11 violence.

12 Any other particular requests, Mr. Williams?

13 MR. WILLIAMS: Your Honor, we would request the charge
14 of mutual combat.

15 THE COURT: Solicitor?

16 MR. GRAHAM: I don't think that mutual combat is a --
17 is valid in South Carolina any more, and I have to go check
18 on that. But I don't see that it's relevant either. He's
19 not -- the only time that there was any testimony in that
20 she struck him was in the car, and he is -- there -- that
21 charge is -- as Mr. Williams pointed out in the beginning -
22 - has already been handled.

23 MR. WILLIAMS: Well, it's -- there's a -- there's a
24 case, *State vs. Taylor*, Your Honor. It's the 2003 case.
25 So if -- if it is no longer available in the State of South

1 Carolina, I can't imagine Justice Anderson missing that.
2 Of course, I don't know the date of this book, Your Honor,
3 but I would think it still is a defense. And this is a
4 2007 copyright. I guess it could be this year somebody
5 decided it wasn't available.

6 THE COURT: I -- I thought it still existed. The last
7 mutual combat case I recall was a poolroom in Florence
8 County, or a barbershop, I believe. Since you bring up
9 Judge Anderson. But I don't -- I don't see how it applies.

10 MR. WILLIAMS: Well ---

11 THE COURT: Explain to me how it applies in this case.

12 MR. WILLIAMS: The jury could get the opinion based on
13 the fact that all of this started -- as the solicitor has
14 kind of led us down the path -- with her hitting him, him
15 hitting her. They say she -- the testimony is that they
16 argued all throughout the entire day Saturday. So the jury
17 could glean that there was some sort of physical -- either
18 it was a continuation, if you will, Your Honor, from Friday
19 night -- or from Friday during the day, and -- or they
20 could determine that there were separate events that
21 occurred on Saturday.

22 Or they could indeed determine that the fight was
23 never over with, that it began then -- because if you
24 believe what she's saying, this was -- this began on
25 Friday. It just went all the way through Saturday or

1 Sunday.

2 THE COURT: I'll look at the charge before I decide
3 whether it applies or not, but I've not previously
4 considered it. Do you have a copy of the charge in front
5 of you, Mr. Williams?

6 MR. WILLIAMS: I was simply gandering at Judge
7 Anderson's book. He's got -- Justice Anderson, I should
8 say.

9 Your Honor, when you say your charge, there is a
10 paragraph which clearly designates what mutual combat is.

11 THE COURT: I -- I -- I think ---

12 MR. WILLIAMS: That is (as read): "Mutual combat
13 exists when there is a mutual intent and willingness to
14 fight ---"

15 THE COURT REPORTER: Excuse me. Could you read a ---

16 MR. WILLIAMS: I'm sorry.

17 THE COURT REPORTER: -- little bit slower?

18 MR. WILLIAMS: (As read) "Mutual combat exists when
19 there is a mutual intent and willingness to fight. Mutual
20 intent is manifested by the acts and conduct of the parties
21 and the circumstances attending and leading up to the
22 combat."

23 THE COURT: I would deny the request to charge mutual
24 combat in these circumstances. Anything further, Mr.
25 Williams?

1 MR. WILLIAMS: On your charge, Your Honor, on
2 circumstantial -- on beyond a reasonable doubt, and I -- I
3 forget which judge is doing which one. Do you do the
4 "points in one direction," or --

5 THE COURT: On reasonable doubt?

6 MR. WILLIAMS: Yes.

7 THE COURT: I do "firmly convinced."

8 MR. WILLIAMS: Firmly convinced. I think ---

9 THE COURT: *Victor vs. Nebraska.*

10 MR. WILLIAMS: Okay.

11 THE COURT: Yes, sir.

12 MR. WILLIAMS: I don't think there's anything else.
13 Is -- I assume Your Honor is going to charge the statutes?

14 THE COURT: Yes, sir. Any -- any -- any further, Mr.
15 Williams?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: All right. Solicitor, do you have any
18 specific requests to charge?

19 MR. GRAHAM: No specific requests, Your Honor.

20 THE COURT: All right. Then we'll be in recess until
21 1:45. Thank you very much.

22 (Off the record for luncheon recess.)

23 THE COURT: Thank you very much. All right. As to
24 the indictment alleging the spousal sexual battery on -- on
25 or about September 15th of 2007, I am going to respectfully

1 deny your motion for a directed verdict on that, Mr. -- Mr.
2 Williams. I believe that the language is sufficient, as
3 far as that's concerned. I do not think the -- the date is
4 an essential element of the offense. The indictment is a
5 notice document.

6 There is also evidence in the record that it occurred
7 on the 15th -- on or about the 15th, and I would cite *State*
8 *vs. Thompson* and other -- other cases in that regard.

9 Are there any other matters before we bring in the
10 jury from the State?

11 MR. GRAHAM: None from the State.

12 THE COURT: From the Defense?

13 MR. WILLIAMS: None, Your Honor.

14 THE COURT: All right. The order in which I intend to
15 charge the statutory offenses are -- if -- if y'all care to
16 know, are violation of the court order of protection; then
17 criminal domestic violence of a high and aggravated nature,
18 and the lesser included offense of criminal domestic
19 violence; and then spousal sexual battery; then kidnaping.

20 All right. I would advise all the spectators I do not
21 allow any movement about the courtroom when the attorneys
22 are presenting their closing arguments to the jury. You
23 may certainly leave between the solicitor's closing
24 argument, after he concludes, and prior to Mr. Williams's.

25 You did not present any evidence, did you, Mr.

1 Williams?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: You may certainly leave after Mr.
4 Williams's closing arguments and prior to the charge by the
5 Court to the jury. I also do not allow any movement about
6 the courtroom during the Court's charge to the jury. If
7 you feel like, also, you cannot remain seated in the
8 courtroom during the closing arguments, I would ask you to
9 leave now.

10 All right. Mr. Williams, when the jury comes out, I
11 would ask you if you need -- if you intend to present any
12 evidence, and you will formally rest at that time?

13 MR. WILLIAMS: Yes, sir. And in that I would not be
14 presenting any evidence, normally I would move at the
15 conclusion of my case for renewal of motions. I will do it
16 at this time ---

17 THE COURT: All right.

18 MR. WILLIAMS: --- as the Court's noted.

19 THE COURT: All right. Your motions are noted, and I
20 would -- unless there are any new issues you would want me
21 to look at, I would reaffirm my -- my rulings.

22 All right. If you'd bring us our jury, please, Mr.
23 Bailiff.

24 (The jury enters at 2:05 p.m.)

25 (Sotto voce discussion between the

1 Court and the Clerk of Court.)

2 THE COURT: All right. It appears our jury is back
3 present in the courtroom. I hope y'all had a pleasant
4 lunch.

5 As you recall, the State rested prior to your luncheon
6 recess. The Defense now may present evidence, if the
7 Defense chooses to do so. They do not have to present
8 evidence. The State has the burden of proof of the case
9 that each and every element of the offense is beyond a
10 reasonable doubt. But the Defense may produce evidence if
11 they choose to do so.

12 With that being said, Mr. Williams?

13 MR. WILLIAMS: Your Honor, we're ready to argue to the
14 jury.

15 THE COURT: All right. Ladies and gentlemen, the
16 state we are at now or the position in the trial, the
17 Defense has also rested. So you have heard all the
18 evidence and testimony. All the exhibits that have -- that
19 are going to be presented, have been presented to you in
20 the trial of this case.

21 The procedure we will now follow is that the solicitor
22 will present the closing argument on behalf of the State to
23 you first. After the solicitor concludes his closing
24 argument, the defense, Mr. Williams, will present closing
25 argument on behalf of the defendant, Mr. Bryan.

1 Closing arguments are different from opening
2 statements; the attorneys may comment on the facts.
3 Reasonable inference is to be drawn from the facts and --
4 and the law.

5 I would ask you during this process if you would
6 please give your complete and undivided attention to the
7 attorneys as you have done to all the parties throughout
8 the trial of the case. I do not know how long the
9 attorneys may argue to you. If after the State's closing
10 argument, if I see we have been here for a period of time,
11 we may take a short recess before Mr. Williams. We -- we
12 may not. It just depends on how much time has past.

13 Again, ladies and gentlemen, I would ask that you
14 please give the attorneys your complete and undivided
15 attention.

16 With that being said, Solicitor, you may address the
17 jury.

18 MR. GRAHAM: Thank you, Your Honor.

19 Power; control. They're not buzz words. They're not
20 buzz words. It's Rachael Bryan's life. The power that
21 Rodney Bryan exerted over her, the control that he exerted
22 over her, manifesting itself in criminal domestic violence;
23 manifesting itself in kidnaping; and manifesting itself in
24 rape.

25 You heard Dr. Ross testify. She was telling you about

1 the different types: physical, psychological, sexual, and
2 economic. Rodney Bryan had all four of them. You remember
3 when Rachael testified. She even said that Rodney told
4 Jonathan not to give her any money until this was all
5 straightened out. Still exerting his control over her,
6 even when he's not in the house.

7 But you know what else this case is about? It's about
8 heroes. And you know who I'm talking about, Amy and
9 Daniel.

10 Friday, September 14th, they were both present in what
11 happened in the car. And they go home, and the first thing
12 that both of them tried to do was use the phone. They try
13 to call 911; the phone doesn't work. And why doesn't it
14 work? Amy told you that she saw her dad going around the
15 side of the house with cutters. Both of them tell you that
16 they went -- after the phone didn't work, they went and saw
17 that it had been cut, it was disconnected.

18 The only testimony of anybody going to the side of the
19 house is Rodney Bryan, with wire cutters in his hand. AND
20 why would he do that? He gets home, he pulls the keys out
21 of the ignition, and the first thing he does is go cut the
22 phone, exerting his power, his control; and stopping
23 Rachael from calling for help if she wanted to.

24 But you know, Amy and Daniel do more than that. They
25 try to go to the neighbor's house. They're going to call -

1 - go to the neighbors and use their phone to dial 911.
2 That doesn't work either. Because he physically goes and
3 gets them. He brings them back to the house and he throws
4 Daniel on the floor. But you know, they did more than
5 that.

6 We're here today for one reason. Because Amy B.
7 went to school on Thursday and told her teacher what
8 happened. That's the only reason we're here. If that
9 hadn't happened, Rachael Bryan would have never talked to
10 the police; and he wouldn't be sitting over here, and you
11 all wouldn't be here to decide what happened that day.

12 And Daniel's a hero, too. Not just -- not just for
13 trying to call 911, not just for trying to go for help. He
14 helped his mom. Saturday, after Rachael tried to leave the
15 house, he grabbed her and brought her back in and he held
16 her on the couch. And he was choking her, and he was
17 making stabbing motions with a knife. That's what Rachael
18 said.

19 But Daniel told you that he woke up, and he went in
20 and his dad was standing over his mom and choking his mom.
21 His mom's face was turning red. "Dad saw me and he
22 stopped." And Daniel said, "I guess he didn't want to kill
23 her in front of me."

24 That's their testimony. That's what Amy says; that's
25 what Daniel says. They talked about him sitting in the

1 bathroom; they talked about choking. Ask yourselves why
2 they would lie. Why would Amy lie? Why would Daniel lie?

3 "Amy, do you love your dad?"

4 "I love him. I love him, but I don't like him."

5 "Daniel, do you love your dad?"

6 "A little bit."

7 And now you know why they answered that way. He is
8 their father. They're not lying. They're telling you the
9 life they had to live that weekend when he was in the
10 house, when he was beating on their mother, when he was
11 raping their mother, and when he was holding her against
12 her will.

13 So who else is the only person that really could lie
14 about this? Rachael Bryan. You saw her on Tuesday; you
15 saw her this morning. And her credibility is for you all
16 to decide, and ask yourselves why is she lying, or is she
17 at all?

18 For Mr. Williams's question, I think you're going to
19 hear Rachael Bryan made this whole story up so that she
20 could get her children back. The story didn't come out
21 until they took the kids away, and the first time she
22 cooperated was on the 25th, September of 2007, at the
23 Family Court hearing.

24 I agree with him, that part's true. That is the first
25 time she cooperated. I think the testimony is that she

1 went there, had already made up her mind to cooperate
2 before the hearing, before she knew whether she was going
3 to get her kids back that day or not. She went to talk to
4 Deputy Setree. She told him, "I need to talk to you. I
5 need to show you some stuff."

6 She had that phone, the videos ready to show him. And
7 that's what she did.

8 So did she do it to get her kids back? Sure. That is
9 part of the reason. The mama loves her kids. She wants
10 her children back. That doesn't mean that Mama's going to
11 lie. That's an entirely different issue.

12 But in addition to wanting her children back, she told
13 you she felt safe. She felt safe enough to tell the police
14 what happened. Rodney hadn't bothered her during that
15 time. Dr. Ross told you that's why women talk. That's
16 consistent with somebody who's been physically abused,
17 kidnapped and held against their will by their spouse,
18 raped by their husband.

19 I want you to look at the video, and you'll remember
20 seeing it on the screen. And Dr. Ross' words were so
21 appropriate, "She is a prisoner of war in her own home."

22 When you look at that video, that's what you'll see.
23 He's controlling her. She doesn't even know she's being
24 video-taped. He's controlling her; taunting her and
25 playing with her, asking her if she wants a divorce. Yeah,

1 she wants a divorce, but he won't let her go.

2 Physical abuse, sexual abuse, psychological abuse,
3 economic abuse. Rodney Bryan. She tried to stand up. The
4 whole thing started in the car. He was accusing her of
5 cheating on him, cussing in front of the children. She
6 said it went on for seven miles and he wouldn't stop. She
7 told him to be quiet. She asked him to stop; he wouldn't
8 do it. So to protect her children from hearing those
9 accusations, she popped him, she smacked him -- whatever
10 the word is that the people used -- in the mouth.

11 And did he just pop her back? No. He unleashed this
12 weekend from hell on her. In the car, he hit her. He
13 yelled at her; he got her home. He took her keys away; he
14 disconnected the phone; he took the phone off the wall.
15 She was stuck in the house; she can't get away. He's
16 isolated her, just like Dr. Ross said.

17 He abuses her that night in the bathroom: slaps her,
18 chokes her, pulls her hair. Amy goes in and sees her on
19 the bathroom floor and tells you that, "Mama's crying on
20 the floor. Daddy's standing in the doorway over her --
21 over her."

22 Friday night, she tries to go to sleep on the couch.
23 She doesn't want to be in bed with him. She doesn't want
24 to have sex with him. He wakes her up, takes her into the
25 bedroom and he rapes her. And she's crying. Did she

1 fight? She said, "No."

2 What had he done to her? Punched her, elbowed her,
3 choked her, pulled her hair, slapped her. That's why she
4 didn't fight him.

5 Saturday morning, he's in and out of the house,
6 yelling at her. Did she run for help? Did she try to
7 sneak away in the middle of the night? No. And now you
8 all know why. I think her answer at some point when Mr.
9 Williams asked her, "Well, wouldn't it be common sense?"
10 And she agreed it would be common sense. But that's the
11 whole point in domestic violence. Common sense has nothing
12 to do with domestic violence.

13 It's easy to sit back and say, "I wouldn't put myself
14 in that position; I'd walk off. I wouldn't be there." But
15 that's not life, and that's not reality. It's not as easy
16 as it sounds.

17 He's in and out of the house; he's yelling at her;
18 he's cussing at her. He video-tapes her on that phone.
19 And you can see what he -- what he shot of her. The kids
20 go to bed. Daniel wakes up in the middle of the episode
21 where he's choking her, where he's making stabbing motions
22 and he's threatening to kill her -- criminal domestic
23 violence, high and aggravated nature. And the judge will
24 read those elements to you, and you'll say that's exactly
25 what that is.

1 But you know, back on Friday, it wasn't just rape. It
2 wasn't just spousal rape, it was also kidnaping. When you
3 close your eyes and you think about kidnaping, you going to
4 think of movies where you see somebody tied down to a
5 chair, blindfolded, and can't get away.

6 The judge is going to read the law to you and there's
7 more to kidnaping than that. Being held against your will,
8 whether it's for seconds, whether you're tied down, whether
9 you're physically restrained, like when he raped her on
10 Friday night or on Saturday night. Or when she tried to
11 run out the door on Saturday, when he was playing with his
12 phone and said, "I think y'all need to come get me. I'm
13 going to hurt her; I'm going to kill her. You better send
14 somebody out here. She's not safe."

15 And he walks off, and she comes over and looks at the
16 phone, and he darts right back in and says, "I knew I
17 couldn't trust you; I knew you were going to turn me in."
18 Psychological control. And he had that crazy look in his
19 eye and his laughter. That's when she knew she had to try
20 to leave, and she did.

21 And did she get away? No. He grabbed her at the
22 door; he brought her back in. He kidnapped her; he held
23 her against her will, he choked her, brought out his pocket
24 knife. And but for Daniel, who knows why we would be here.

25 The kids go to bed Saturday night. Again, she doesn't

1 want to have sex with him. She wants a divorce. She's got
2 a black eye. She's got bruising on her jaw. She's a
3 prisoner. And what's he do to her? Right after that
4 choking incident, right after he used that knife, he takes
5 her down the hall, tells her she's going to perform oral
6 sex. She says, "No." And he rapes her. And she cries,
7 and she prays.

8 Sunday morning, Monday, Tuesday, Wednesday, why didn't
9 she go to the police? Why didn't she ask for help? Why
10 didn't she walk away when nobody else was home? Dr. Ross
11 told you that was consistent with a woman who's been a
12 victim of domestic violence, who's been kidnapped, who's
13 been raped by their husband. That's consistent with
14 somebody who has walked in those shoes. She tried to stand
15 up to him, but what happens when you stand up to an abuser?
16 This is what happens.

17 Kidnaping can be many things. You can find -- the
18 judge will read the law to you and it will be up to you to
19 decide. During the course of that weekend, he kidnapped
20 her for the whole weekend. He kidnapped her pieces and
21 parts of the weekend. He did do all that. Sure, the easy
22 ones: When she tried to leave the house, he grabbed her
23 and he brings her back and throws her on the couch.
24 Everybody can see that that's kidnaping.

25 But when he's holding her down when she -- when he's

1 raping her, when she doesn't want to have sex with him,
2 sure, that's easy. That's kidnaping.

3 But maybe a little tougher one -- what really explains
4 power and control and why we're here -- the whole weekend,
5 could she have left during that weekend? Yes. Why didn't
6 she? Her kids were there. Even though at one point, she
7 felt so scared that she did try to leave and leave her kids
8 there. She didn't want to leave her kids. She was a
9 mother who didn't want him to accuse her of having an
10 affair in front of them. She didn't want him to cuss in
11 front of them.

12 She told you that she was scared of him, that all that
13 would happen would be he'd go to jail for a short time and
14 come right back out, and be madder than ever. And can't
15 you imagine that that's the truth?

16 What's his motive to kidnap her and hold her in that
17 house at all? Sure, we've got those specific things we
18 were told when she tried to walk out. He tells you what it
19 is as soon as he comes in the door. He's already cut the
20 phone line. He's isolating her and he keeps her. And the
21 reason is power and control, sure. Look at her face. He
22 doesn't want her going to the police. He tells her to put
23 on makeup. He doesn't want her to leave. He'll get in
24 trouble if she does go.

25 All the -- all the abuse over the whole weekend keeps

1 her there. Her children keep her there. Her fear of what
2 might happen in the future keeps her there. Even though
3 she's not tied down physically, she is tied down
4 emotionally, psychologically. He's got that control over
5 her.

6 Rodney Bryan's power and control is over. With Amy
7 and Daniel's help, Rachael stood up, and he doesn't have
8 control of her anymore.

9 The judge is going to charge you on a lesser included
10 offense of criminal domestic violence, high and aggravated
11 nature. That's criminal domestic violence. Mr. Williams
12 will probably talk to you about that. And I'll tell you
13 this, ladies and gentlemen, if you think that's the only
14 thing this case is about, find him not guilty.

15 But the testimony and the evidence you've heard will
16 tell you what to do with the power and control you now
17 have, the ones in your hands. You've heard all the
18 evidence, and the evidence tells you that Rodney Bryan is
19 guilty of kidnapping; Rodney Bryan is guilty of criminal
20 domestic violence of a high and aggravated nature; and
21 Rodney Bryan is guilty of spousal rape. Thank you.

22 THE COURT: Thank you. Thank you, Solicitor.

23 Mr. Williams?

24 MR. WILLIAMS: May it please the Court?

25 THE COURT: Yes, sir.

1 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
2 the jury, I certainly want to thank you for your attendance
3 for the last three days. It's been a hard case to sit
4 through. Many of you may not have ever been on a jury
5 before, but you got your dollar's worth here. You didn't
6 walk into some small case. You walked into a hotly
7 contested case.

8 But there are certain things which are true throughout
9 any type of trial that you will try, and that is that your
10 job is search for the truth. It involves evaluation of
11 witnesses; it involves looking at evidence that's
12 presented; it involves considering what wasn't presented;
13 it involves determining if there are questions in your
14 mind. Because if there are, then obviously you don't find
15 anybody guilty of -- of anything if there are questions in
16 your mind which would cause a reasonable person to doubt
17 things. It would cause you to evaluate the charges that
18 you're getting ready to hear.

19 Now, all I've heard for three days is "power and
20 control." Those are catch phrases, catch phrases from the
21 lady with Sistercare. Well, you know, power and control
22 goes with anything.

23 The solicitor has the power and control to arrest my
24 client. He can control him; he can keep him in jail. He
25 can control the evidence that you hear from his side by

1 bringing just that evidence that he wants you to hear. And
2 then with that, he can expect you to exert power and
3 control and to convict my client. Everything's about power
4 and control. It's catch phrases. People think catch
5 phrases are cute.

6 Another thing you can do when you try a case is you
7 can focus on the case, and you can emphasize the parts that
8 you think a jury will appreciate more than the other. So
9 when you do your closing argument, you don't focus on the
10 victim, who is the person who supposedly was assaulted, was
11 kidnapped, and which everything happened.

12 You focus on two little children, for which there's
13 been no crime charged. And you focus on them so that a
14 jury will become sympathetic, so that they won't think
15 about the victim. That they'll think about those two
16 little children who took the stand.

17 Now, we're talking about spousal battery; we're
18 talking about the kidnapping involving the wife; we're
19 talking about criminal domestic violence involved with the
20 wife. But if you start the argument with the two darling
21 children and end it with the two darling children, then
22 maybe you 12 jurors will focus on the two darling children.

23 See, it's all about power and control. Well, you
24 know, we're all subject to influence of many types of
25 things. This has really been a case about influence. You

1 talk about power and control, you're talking about
2 influence.

3 Our beings are made up from influence. Our memories
4 are made up from influence. We talk about these children.
5 He says, "Why would these children lie? Why would these
6 children make this up? Those two darling children."

7 I will tell you I remember riding on the back of a
8 tobacco drag when I was two years old. My daddy was a
9 tobacco farmer in Latta, South Carolina. But if I were
10 honest with you, I would tell you that my mother told me
11 about this many, many times.

12 I would tell you about as a little boy -- I was three
13 years old, and I got my pants caught up in a crepe myrtle
14 tree at my aunt's house and I couldn't get down. And all
15 my mother could hear was, "uh-uh." What a lovely story, a
16 small boy caught in a tree. But if I were honest with you,
17 I would tell you this is a story which my mother has told.
18 I don't know how it's changed. Maybe it wasn't a crepe
19 myrtle.

20 The reason I'm telling you this is because when you
21 have children, then they are easily influenced. And if you
22 go through things a lot of times with children, they tend
23 to remember what they've been asked, or what they've been
24 told.

25 Do you remember the small, young girl who was on the

1 stand, and the last thing that she was talking about, "I've
2 gone over this years and years and years." It would have
3 been cute. It would have been cute, and you kind of wanted
4 to smile about it. But you know, if you think about what
5 she's saying, it's not cute.

6 But what they're telling you today is what they're
7 expecting you to evaluate. When you evaluate witnesses,
8 you determine credibility and believability. You say, "Who
9 is consistent in their testimony? Who is inconsistent?"
10 What do you believe? What do you not believe?

11 Why it is this one witness only knows these things,
12 but she doesn't know anything else, anything else? Do you
13 remember what you want to remember? Do you forget what you
14 want to forget? Do you not tell what you don't want to
15 tell?

16 Do you remember the police officer on the stand, the
17 officer in charge of the case? And I kept asking him about
18 whether or not he checked in -- in his investigation about
19 the fact that my client wasn't even there Saturday morning.

20 Begrudgingly, "Well, I think I heard something about
21 that. Yeah." Begrudgingly. When I tried to ask him
22 about, "Why didn't you do cell records to verify
23 communication?" Why didn't he just say, "Didn't think
24 about it. Wasn't important. I don't know."

25 When people take this stand, to a certain extent, they

1 are programmed, programmed to tell you a story. It's up to
2 me to cross-examine them, and to pull out that information
3 sometimes that is not brought forward when the State tries
4 its case. And you probably noticed that.

5 And some people take offense at the questions you ask
6 them on the stand. You have the expert witness, Dr. Ross.
7 And I asked the simple question, "Are you married?" Now,
8 everybody on this jury knows how to read somebody.
9 Clearly, she was agitated with that question. So you can
10 evaluate certain things -- why was the question asked --
11 because we all have our different feelings about things.

12 We come from our experiences. Maybe I think I could
13 have been a farmer. I don't know. But we come from our
14 experiences, and she is testifying in regards to things of
15 domestic abuse. She's an expert by education: She went to
16 school; she read some books. She's an expert. And she's
17 going to tell you what most people who exhibit symptoms of
18 criminal domestic violence will do.

19 Well, the percentages -- she had percentages for
20 everything. I'll bet -- I'll bet in one week I could
21 memorize those percentages and tell you what those
22 percentages are, and give you the same story; and you might
23 think I'm an expert.

24 So you have to evaluate those witnesses and determine
25 what you believe to be true. It just happened that

1 everything she referenced dealt with a woman, as opposed to
2 a man. I don't know. And she said, "Well, it's because
3 more women --" that made sense. Maybe men don't complain.
4 I don't know.

5 The point is that everybody comes with their own
6 hidden agenda. They come with their own stories; their own
7 prejudices. But when I asked her what she knew about the
8 person who was supposed to be the victim, she had not ever
9 counseled with her. The only -- the only time she had met
10 this victim -- alleged victim, is November of 2007, on an
11 intake.

12 Did anyone ever introduce any evidence where she had
13 ever been counseled for this supposed domestic abuse? No.
14 That's important for many reasons, because it has to do
15 with how -- what -- what her testimony means if she hasn't
16 even counseled with the person.

17 Now, let's go through the facts. I've kind of given
18 you a general, I guess, purview of witnesses and things
19 like that. Let's go through the facts. And you remember
20 that this thing all started, as has already been put
21 forward, with Mrs. Gies -- G-i-e-s, I think is how you
22 spell it -- with her testimony that the -- Amy had said
23 that there had been "a fight with Mama and Daddy, and
24 Mama's eye was black."

25 Okay. Let's assume that's correct. Now, what's

1 important is that she talked to Amy; she talked to Daniel;
2 and no one -- did you hear her say when she was referring
3 to what they were referring to, said anything about the
4 choking at this point in time. Nothing.

5 And what's more important is that she talked about on
6 Monday, on Tuesday, and the next day, there was nothing to
7 indicate that the child was traumatized. But then on
8 Thursday, then one of the children was -- Amy, I think --
9 was acting like something was wrong.

10 Now, that's important for two reasons. Because it's
11 important to show that, I guess, maybe the children were
12 used to Mama and Daddy fighting. That's not a good thing.
13 But maybe everything that was testified to was not true.
14 You know, just because you throw out a lot of stuff,
15 doesn't mean that some of it can't be true, and some of it
16 not be true.

17 When it comes to the testimony from, I guess, the
18 police officer, when he gets involved, or Lovell -- when he
19 gets involved, he -- he finds out about it. He goes out
20 there and does a welfare check. And he comes out there and
21 she says that there's a black eye and there's something
22 along her jaw that's reddened, right here on the jawbone
23 (indicates.) When he asks her if anybody -- if she wants
24 to talk about it or do anything, she says "No." She
25 doesn't report it. And then the State sits down.

1 Well, I asked him, "Was there any indication that
2 anybody was in there?"

3 "No."

4 "Was there any indication that -- that the telephone
5 cord had been cut?"

6 "No."

7 Because he's not the one that testified about that.
8 In any event, he goes out and they lock up my client on
9 that Thursday. Friday goes by, Saturday goes by, Sunday
10 goes by. Monday, the children are out of the household
11 now. Then she wants to talk about all these things that
12 have occurred in her life.

13 I guess you're just going to have to make a
14 determination as to whether or not you -- what you think
15 her motive was. I would suggest to you that her motive was
16 to get her children back. It doesn't mean that he didn't
17 hit her, I'll tell you that. Doesn't mean that.

18 But it does mean that's what her motive was. Because
19 I think it's fairly evident that he did hit her. But when
20 you're dealing with these charges, these criminal charges,
21 because when you hit someone, it doesn't make you guilty of
22 two counts of sexual battery. It doesn't make you guilty
23 of kidnapping. It doesn't make you guilty of violation of
24 an order of protection. It doesn't make you guilty of a
25 CDVHAN. It may make you guilty of an order of protection,

1 and it may make you guilty of a criminal domestic violence,
2 or a simple CDV.

3 In any event, they go ahead and talk to them. And
4 now, the children, as they testified -- and see, one thing
5 you're going to have to evaluate, when it comes to who you
6 believe and who you don't believe, is how they testified
7 and whether or not there is consistencies in the
8 testimonies.

9 You remember Amy testified that, "Mama hit Daddy, and
10 then Daddy hit Mama."

11 The son said, "No, no. "Mama didn't hit Daddy.
12 Daddy hit Mama."

13 It doesn't matter. It doesn't matter who hit who
14 first. I'm not suggesting that. I'm just telling you
15 this, that sometimes some witnesses don't see the same
16 thing, or remember the same thing as the other witnesses.

17 But what is consistent also is that the reason why
18 this occurred was because she was looking in here, trying
19 to find out who he was talking to. And she sends some
20 photograph of one of his friends to some prostitute that
21 she and he had met. And he didn't want it done. So maybe
22 she was exerting power and control.

23 Well, she's riding down the road, driving. Do you
24 remember what she said? She popped him to shut him up, but
25 she didn't think he would hit her when she was going down

1 the road. Why? Two reasons.

2 Because she's driving the car, she surely didn't think
3 he would hit her when they were going down the road.

4 And number two, remember, she had the order of
5 protection. She said that, "I wasn't worried about
6 anything, because I've got this order of protection, and I
7 know that he will do the right thing."

8 All she's got to do is pick up the phone. And you
9 see, that's where this case falls apart. This entire idea
10 that she was so frightened she didn't know what to do, that
11 there wasn't something she could do. She was a battered
12 wife; there was nothing she could do. Well, she knew what
13 she could do: She'd been to court; she'd been separated
14 from him; she had gotten a court order. She knew exactly
15 what to do.

16 Well, then, we learn a little more about it. She
17 testifies -- and see, what gets me is that nobody can
18 remember what happened Friday and Saturday and Sunday.
19 Nothing happened Sunday, I guess.

20 Nobody -- the -- the one thing that they can't tell
21 you -- none of the State's witnesses can tell you that my
22 client was in that trailer for three days: Friday,
23 Saturday, and Sunday. They don't dispute the fact that he
24 left to go to the grocery store Friday night. They don't
25 dispute the fact that he went to counseling Saturday

1 morning. They don't dispute the fact that he went to see
2 one of his buddies on Sunday.

3 So since they don't dispute that, then what we're
4 going to have to do is say that you're going to have to
5 convict him of kidnapping, because he restrained her for
6 any period of time. She couldn't move. Kidnapping. You
7 think -- you think that's kidnapping?

8 Now, some of the other things that come out --
9 obviously, you have this phone, and what you see is life in
10 photos. I'm sorry. You have this. You have this. It's
11 not pretty. You show -- you show a woman in there who's
12 obviously got something around her right eye, and she's
13 answering a question.

14 He says, "What do you want me to do?"

15 She says, "I don't want you to hit me anymore."

16 He says, "Do you want a divorce?"

17 "Yes."

18 Now, what's interesting here is the fact that she knew
19 -- she -- and she looks dead at the camera. She looks dead
20 at the camera, and she says that. She could have said, "I
21 don't want you to have sex with me when I say I don't want
22 you to have sex with me. I don't want you to keep me here
23 when I don't want to be here." She could have said those
24 things.

25 I would suggest to you that in these people's lives,

1 this cell phone is how they communicate. It's how they
2 keep their memories, sick as it may be. You know, there
3 are a lot of people in this world, and everybody doesn't
4 act the same. And everybody doesn't do everything the same
5 way.

6 I hope my wife wouldn't hit me; don't think she would.
7 And I wouldn't hit my wife. But it doesn't mean that some
8 people don't do that, and that's the way that they live.

9 We all know that there are times when someone can push
10 someone to the brink of losing their temper. You know that
11 from your common experience. But don't lose track of what
12 you're here to do today, and that is to evaluate this case
13 and determine guilt or innocence based on the charges.
14 You're not evaluating my client saying that he shouldn't
15 hit his wife, and his wife shouldn't hit him. You're
16 making a determination whether or not he committed sexual
17 battery, and whether or not he committed kidnapping.

18 One of the ways you evaluate that is the fact that she
19 never complained about anything, and she could have and she
20 should have. Was there any physical evidence? If you
21 can't believe what people are testifying to, you go to
22 something else that can't be changed, right?

23 Is there any medical reports of any injuries from
24 anyone? Is there -- the telephone? Remember? The
25 importance of not being able to use the phone, and then I

1 asked a question about whether or not the telephone was in
2 the trunk or not. And why would you put the telephone in
3 the trunk if you had cut the wires?

4 Well, you know, an easy way to prove the point is to
5 take a picture of the telephone wire, showing that it has
6 been sliced, bring it here, and show it to me. They'll
7 show you a picture of the trailer, but you can't see
8 anything. An easy way to show that no one could use the
9 phone would be to bring in the telephone logs to show you
10 that no one used the phone. You can't change that.

11 That's not based on whether or not you believe someone
12 or don't believe someone. That's based on what you see
13 with your own two eyes.

14 The other thing which I hope you're thinking about is
15 the fact that the victim was a correctional guard at the
16 Department of Corrections, where she guarded violent male
17 inmates. To me -- I hope, to everyone here who's making
18 decisions, that that's a little different from the young
19 lady that works at the library. I hope you think that.
20 But maybe the young lady at the library won't hit you as
21 you're going down the road, too.

22 If you remember what Daniel said -- one of the most
23 important things that Daniel said was that he woke up from
24 a deep sleep and walked out there, and saw his mama and his
25 daddy. There was some discussion with whether or not

1 Daniel said anything or not, because if you believe what
2 Rachael said, Rachael said he said something. Daniel
3 didn't say he said anything. I would suggest to you that
4 sometimes people don't adequately remember everything that
5 they should.

6 But you know, all this really doesn't matter, because
7 when it gets down to the final determination, everything --
8 all the evidence has to point in the direction of guilt.
9 There can't be a question or a reasonable doubt in your
10 mind that my client is guilty.

11 Now, I will tell you right now -- I'm going to save
12 you some trouble. You're not even going to have to make a
13 decision on this. He's guilty of violation of the order of
14 protection. Why is he guilty? Because there is an order
15 of protection. Now, he may say that he didn't get a copy
16 of it, because as you'll see there are no initials that
17 shows he got a copy of it. Well, he should have known.
18 You know, he should have known. He was paying support, and
19 he should have known.

20 I'll tell you what else he's guilty of. He's guilty
21 of CDV. He hit his wife. Now, if you think back about
22 what those children said before all the police got
23 involved, all the DSS workers, all of these other people
24 involved in this case, all they ever talked about was a
25 black eye and a fight. Remember what Ms. Gies said.

1 So find him guilty of the CDV. But there is
2 absolutely no evidence, obviously, that any of the children
3 saw any of this sexual battery or not. Matter of fact, if
4 you believe what she said, she said that she never said
5 anything. I'm not getting into that, whether or not you
6 have to say something if you don't want to do it, you know.
7 Who cares about all that? That's not important.

8 I will tell you now, that if you're looking for
9 evidence in this case, there's evidence of violation of
10 CDV; and there's evidence of violation of an order of
11 protection. Don't make your decision based on whether or
12 not you think my client is a nice guy, a crazy guy, a bad
13 guy. Make your decision based on the evidence. That's all
14 we have in this system. That's the power you have. That's
15 the control you have.

16 Now, I'm going to sit down. I have no power; I have
17 no control. But I do have a lot of thanks for you watching
18 something that we normally don't see. Because you've gone
19 behind curtains in somebody else's lives and seen stuff
20 that maybe you wish you hadn't seen. Thank you.

21 THE COURT: Thank you. Thank you very much, Mr.
22 Williams.

23 Mr. Foreman, ladies and gentlemen of the jury, I would
24 ask you to please give me your complete and undivided
25 attention, as you have done to all of the parties

1 throughout the course of this trial.

2 My charge will take 25 to 30 minutes, I would say. It
3 is pretty well scripted. The way I do it, there is the
4 general law that applies to all criminal cases, regardless
5 of the charge. Then I will cover the specific offenses
6 involved in this particular case.

7 As I go through my charge, I will generally give the
8 caption of the paragraph I'm fixing to cover, and when I
9 change a subject, I will give you the caption of that next
10 paragraph.

11 Charge, arrest, and indictment not evidence: The
12 indictments charge the defendant with violation of a court
13 order of protection, criminal domestic violence of a high
14 and aggravated nature, spousal sexual battery, and
15 kidnapping.

16 Each indictment charges a separate and distinct
17 offense. You must decide each indictment separately on the
18 evidence and the law applicable to it, uninfluenced by your
19 decision as to any other indictment.

20 The defendant may be convicted or acquitted on any or
21 all of the offenses charged. You will be asked to write a
22 separate verdict of guilty or not guilty on each
23 indictment.

24 I remind you that the fact the defendant was arrested,
25 charged, and indicted in this case is not evidence and

1 cannot be considered by you as evidence, nor does it create
2 any presumption or inference of guilt. These documents are
3 simply the formal written instruments which contain the
4 charges made against the defendant. They are the formal
5 documents by which the case is brought into court.

6 Presumption of innocence: The defendant has pled not
7 guilty to these indictments, and that plea puts the burden
8 on the State to prove the defendant guilty. A person
9 charged with committing a criminal offense in South
10 Carolina is never required to prove himself innocent.

11 I charge you that it is an important rule of the law
12 that the defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed
14 to be innocent of the crimes for which the indictments were
15 issued, unless guilt has been proven by evidence satisfying
16 you of that guilt beyond a reasonable doubt.

17 This presumption of innocence does not end when you
18 begin your deliberations, but it accompanies the defendant
19 throughout the trial until you reach a verdict of guilt
20 based on evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the defendant,
24 which remains with the defendant until it has been stripped
25 from the defendant by evidence satisfying you of the

1 defendant's guilt beyond a reasonable doubt.

2 The presumption of innocence is not a mere legal
3 theory; it is not just a legal phrase. It is a substantial
4 right to which every defendant is entitled, unless you, the
5 jury, are satisfied from the evidence of the defendant's
6 guilt beyond a reasonable doubt.

7 Reasonable doubt: The State has the burden of proving
8 the defendant guilty beyond a reasonable doubt. Some of
9 you may have served as jurors in civil cases where you were
10 told that it is only necessary to prove that a fact is more
11 likely true than not true, such as by the greater weight or
12 preponderance of the evidence.

13 In criminal cases, the State's proof must be more
14 powerful than that, it must be proof beyond a reasonable
15 doubt. Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.
17 There are very few things in this world that we know with
18 absolute certainty, and in criminal cases, the law does not
19 require proof that overcomes every possible doubt.

20 If based on your consideration of the evidence, you
21 are firmly convinced that the defendant is guilty of the
22 crimes charged, you must find the defendant guilty. If, on
23 the other hand, you think there is a real possibility that
24 the defendant is not guilty, you must give the defendant
25 the benefit of the doubt, and find him not guilty.

1 Duties of Jury and Trial Judge: I remind you that
2 during this trial, you and I have certain duties to
3 perform. As the trial judge, it is my responsibility to
4 preside over the trial, and I also have the duty to rule on
5 the admissibility of evidence offered during the trial.

6 You are to consider only the competent evidence before
7 you. You are to consider only the testimony which has been
8 presented from this witness stand, and any exhibits which
9 have been made part of the record.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law of this case, and it is your duty as
13 jurors to accept and apply the law as I now state it to
14 you. If you already have any idea as to what the law is or
15 what the law ought to be and it does not agree with what I
16 now tell you the law is, you must abandon this idea,
17 because you are sworn to accept and apply the law exactly
18 as I state it to you.

19 In every case tried in this courtroom before a jury,
20 the jury becomes the sole and exclusive judge of the facts
21 in the case. A trial judge cannot intimate, state, comment
22 on, or make any statement to a trial jury about the facts
23 in a case. Since you, the jury, are the sole judge of the
24 facts, you are not to infer from what I have said during
25 the progress of the trial in ruling upon the admissibility

1 of the evidence or otherwise, or anything that I now say to
2 you during the course of this instruction that I have any
3 opinion about the facts in this case.

4 The law does not allow me to have an opinion about the
5 facts in this case. This is a matter solely for you, the
6 jury, to determine.

7 As jurors, it is your duty to determine the effect,
8 the value, the weight, and the truth of the evidence
9 presented during the trial.

10 Direct and circumstantial evidence: There are two
11 types of evidence which are generally presented during a
12 trial, direct evidence and circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 claims to have actual knowledge of a fact, such as an eye-
15 witness. It is evidence which immediately establishes the
16 main fact to be proved.

17 Circumstantial evidence is proof of a chain of facts
18 and circumstances indicating the existence of the -- of a
19 fact. It is evidence which immediately establishes
20 collateral facts from which the main facts may be inferred.
21 Circumstantial evidence is based on inference and not on
22 personal knowledge or observation.

23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence. Nor is there a greater degree of

1 certainty required of circumstantial evidence than of
2 direct evidence. You should weigh all of the evidence in
3 the case. After weighing all of the evidence, if you are
4 not convinced of the guilt of the defendant beyond a
5 reasonable doubt, you must find the defendant not guilty.

6 Credibility of witnesses: Necessarily, you must
7 determine the credibility of the witnesses who have
8 testified in this case. Credibility simply means
9 believability. It becomes your duty as jurors to analyze
10 and to evaluate the evidence, and determine which evidence
11 convinces you of its truth.

12 In determining the believability of witnesses and
13 using your good judgment and common sense, you may believe
14 one witness over several, or several over one. You may
15 believe a part of the testimony of a witness, and reject
16 the remaining part of the testimony of that same witness.
17 You may believe the testimony of a witness in its entirety,
18 and reject -- or reject the testimony of a witness in its
19 entirety.

20 You may consider whether any witness has exhibited to
21 you any interest, bias, prejudice, or other motive in this
22 case. You may also consider the appearance and manner of
23 the witness while on the stand.

24 Expert witness: The rules of evidence ordinarily do
25 not permit witnesses to testify to opinions or conclusions.

1 An exception to this rule exists for witnesses which we
2 call "expert witnesses." A witness who by education or
3 experience has become expert in some art, science,
4 profession, or calling may state an opinion as to relevant
5 and material matter in which the witness claims to be an
6 expert, and may also state the reasons for the opinion.

7 You should consider any expert opinion received in
8 evidence in this case, and like any other evidence, give it
9 the weight you think it deserves. If you decide that the
10 opinion of an expert is not based on sufficient education
11 or experience; or if you conclude that the reasons given in
12 support of the opinion are not sound, or that the opinion
13 is outweighed by other evidence, you may disregard the
14 opinion entirely.

15 An expert witness's testimony is to be given no
16 greater weight than that of other witnesses simply because
17 a witness is an expert. Further, you are not required to
18 accept an expert's opinion even though it is not
19 contradictory.

20 I instruct you and emphasize that the fact the
21 defendant did not testify is not a factor to be considered
22 by you in any way in your deliberation and in your
23 consideration on the question of the guilt or innocence of
24 the defendant. It must not be considered by you in any
25 manner whatsoever. A defendant has the constitutional

1 right to remain silent, and the assertion of that right
2 must not be considered by you in your deliberations.

3 I repeat: Under your oath, you are to draw no
4 conclusion whatsoever from the fact that the defendant in
5 this case did not testify. The fact that this defendant
6 did not testify should not even be discussed in the jury
7 room.

8 The burden of proof, as I have stated to you, is on
9 the State. The defendant is not required to prove his
10 innocence. The burden of proof remains on the State to
11 prove guilt beyond a reasonable doubt.

12 Intent: In order to establish criminal liability,
13 criminal intent is required. For example, the mental state
14 required to -- to be proven by the State for a particular
15 crime might be purpose or intent, knowledge, recklessness,
16 or criminal negligence.

17 Criminal intent must be proven by the State beyond a
18 reasonable doubt. Criminal intent is always a matter that
19 must be determined by the jury from the circumstances
20 surrounding the situation. There is no way to prove intent
21 to a mathematical certainty. There is no way medical
22 science can dissect a person's brain and determine what the
23 person had in mind, so the law says criminal intent may be
24 inferred from the circumstances shown to have existed.
25 This is how you make your determination of whether or not

1 the element requiring intent was present.

2 It is not necessary to establish intent by direct and
3 positive evidence. But intent may be established by
4 inference, in the same way as any other fact by taking into
5 consideration the acts of the parties and all the facts and
6 circumstances of the case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 defendant intended to do based on the circumstances shown
10 to have existed.

11 Ladies and gentlemen, I am now going to cover the
12 specific charges in the following order: violation of a
13 court order of protection; criminal domestic violence of a
14 high and aggravated nature, and a lesser included offense
15 of criminal domestic violence; spousal sexual battery; and
16 then kidnapping.

17 There is a statute in South Carolina, 16-23-20, under
18 our code. You obviously do not have to remember that --
19 that number, Mr. Foreman, ladies and gentlemen of the jury,
20 although it will be on your formal verdict. And it
21 basically states a person who unlawfully, knowingly, and
22 intentionally violates the terms and conditions of an order
23 of protection issued in this state under Chapter 4, Title
24 20, the Protection from Domestic Abuse Act, is guilty of a
25 misdemeanor.

1 The State must prove that the defendant unlawfully,
2 knowingly, and intentionally violated an order of
3 protection that was issued in this state under Chapter 4,
4 Title 20 of the Protection from Domestic Abuse Act. That
5 is the charge on a violation of a court order of
6 protection.

7 The next charge, criminal domestic violence of a high
8 and aggravated nature. And under -- under that charge,
9 there will -- I will charge you a lesser included offense
10 of criminal domestic violence. So I will have to define
11 some terms. They -- they will sound somewhat circular in a
12 way, but I -- I will try to define them as the law requires
13 me to do as -- as best I can.

14 16-25-65 is entitled "Criminal Domestic Violence of a
15 High and Aggravated Nature." A person is guilty of the
16 offense of criminal domestic violence of a high and
17 aggravated nature when one of the following occurs: The
18 person commits an assault and battery which involves the
19 use of a deadly weapon, or results in serious bodily injury
20 to the victim; or an assault with or without accompanying
21 battery, which would reasonably cause a person to fear
22 imminent, serious bodily injury or death.

23 Now, in the -- in the caption or the title of that
24 charge itself, "Criminal Domestic Violence of a High and
25 Aggravated Nature," I think I would have to charge you:

1 "What is assault and battery of a high and aggravated
2 nature?"

3 Assault and battery of a high and aggravated nature is
4 an unlawful act of violent injury to the person of another,
5 accompanied by circumstances of aggravation. An assault
6 occurs when a person unlawfully attempts or offers to
7 commit a violent injury upon another person, and has the
8 present ability to complete the attempted injury.

9 An assault is the intentional creation of a reasonable
10 fear of immediate bodily harm. It is not necessary that
11 the attempted injury or harm actually take place. For
12 example, if I walk up to you and when we are in -- within
13 arm's length I draw back to hit you, that is an assault.

14 A battery is the unlawful touching of another person
15 by a person who has committed the assault. An unlawful
16 touching can be caused by a part of the accused body, or by
17 any object the accused puts in motion. A battery is the
18 completion of the assault by using or applying force to
19 another person, however slight, in a rude, angry, or
20 resentful manner, without legal justification for doing so.
21 Using my earlier example, if I carry through the assault by
22 hitting you, that is the battery.

23 So you have assault and battery of a high and
24 aggravated nature would also require the proof of a
25 circumstance of aggravation. Circumstances of aggravation

1 include the use of a deadly weapon, the intent to commit a
2 felony, the infliction of serious bodily injury, a great
3 disparity between the ages or physical conditions of the
4 parties, the difference in the genders of the parties.
5 These are just examples of circumstances of aggravation.

6 So criminal domestic violence of a high and aggravated
7 nature would require assault and battery of a high and
8 aggravated nature also accompanied with an assault and
9 battery which involved the use of a deadly weapon, or
10 resulted in serious bodily injury to the victim; or an
11 assault with or without the accompanying battery, which
12 would reasonably cause a person to fear imminent, serious
13 bodily injury or death.

14 Now, that's assault and battery -- excuse me. That's
15 criminal domestic violence of a high and aggravated nature.
16 Under that, you have a lesser included offense of criminal
17 domestic violence. If you find the State has failed to
18 prove criminal domestic violence of a high and aggravated
19 nature, you may then consider the lesser included offense
20 of criminal domestic violence.

21 As to criminal domestic violence, the State must prove
22 beyond a reasonable doubt that the defendant caused
23 physical harm or injury to a member of the defendant's own
24 household; or that the defendant offered or attempted to
25 cause physical harm or injury to a member of the

1 defendant's own household, with the apparent present
2 ability to cause harm or injury under circumstances,
3 reasonably creating a fear of imminent danger.

4 And -- and -- and you -- that may sound somewhat
5 similar language, but if you revisit criminal domestic
6 violence of a high and aggravated nature, it's an assault
7 with or without accompanying battery, which would
8 reasonably cause a person to fear imminent, serious bodily
9 injury or death; as opposed to on CDV, reasonably creating
10 a fear of imminent danger.

11 A household member, both for CDVHAN and CDV, is a
12 spouse, a former spouse, a parent, child, grandparent,
13 brother or sister, grandchild, a person with whom the
14 defendant has a child in common, and a person of the
15 opposite sex with whom the defendant is living, or has
16 lived with in the past.

17 That is the charge of criminal domestic violence of a
18 high and aggravated nature, and the lesser included offense
19 of criminal domestic violence.

20 Next, I will cover spousal sexual battery, which is a
21 statute in South Carolina, 16-3-615. The State must prove
22 that the defendant committed a sexual battery upon the
23 victim. Sexual battery is defined by 16-3-651(H) -- which
24 I will define that term momentarily -- and that sexual
25 battery was accomplished through the use of aggravated

1 force.

2 Aggravated force: defined as the use or threat of use
3 of a weapon, or the use or threat of use of physical force
4 or physical violence of a high aggravated nature by one
5 spouse against the other spouse, if they are living
6 together.

7 Sexual battery is a term defined in our code under 16-
8 3-651(H). Sexual battery means sexual intercourse,
9 cunnilingus, felacio, anal intercourse; or any intrusion,
10 however slight, of any part of a person's body, or any
11 object into the genital or anal opening of another person's
12 body, except when such intrusion is accomplished for
13 medically recognized treatment or diagnostic purposes.
14 That is the charge on spousal sexual battery.

15 And finally, kidnapping. Section 16-3-910, the
16 defendant is charged with kidnapping. The State must prove
17 beyond a reasonable doubt that the defendant knowingly and
18 unlawfully seized, confined, inveigled, decoyed, kidnapped,
19 abduct -- abducted, or carried away another person without
20 authority of law.

21 To do a thing unlawfully is to do it willfully,
22 against the law. "Knowingly" means with knowledge;
23 consciously, not accidentally. "Seized" means to take hold
24 or suddenly -- to take hold of suddenly or forcefully.
25 "Confined" means to limit, restrict, or enclose within

1 bounds, imprison, or shut or keep in. "Inveigle" means to
2 lure, entice, or lead astray by false representations,
3 promises, or other deceitful means. "Kidnap" is to remove
4 a person against his or her will by unlawful force or by
5 fraud. "Abduct" means to carry off secretly or by force
6 for a -- for an illegal purposes. "Carry away" means to
7 remove.

8 The State does not have to prove that the defendant
9 did all of these things. Instead, if you find beyond a
10 reasonable doubt that the defendant did any of these
11 things, you may find the defendant guilty of kidnapping.

12 Something done without authority of law is something
13 which the law does not sanction, permit, allow, condone, or
14 provide justification for. A kidnapping does not have to
15 be for any personal or monetary gain, for any illegal
16 purpose; but may be for any reason whatsoever. That is the
17 charge on kidnapping.

18 Now, ladies and gentlemen, you will have in your jury
19 room --

20 (Sotto voce discussion between the law
21 clerk and the Court.)

22 THE COURT: -- you will have in your jury room five
23 documents entitled -- they have the caption of the case,
24 the numbers of the indictments, and the charge. And
25 they're captioned "Verdict Form."

1 As to these verdict forms, as to four out of five of
2 the charges, there are two possible forms of verdict:
3 guilty or not guilty.

4 As to the criminal domestic violence of a high and
5 aggravated nature, there are three possible forms of
6 verdict: either guilty of criminal domestic violence of a
7 high and aggravated nature; or guilty of criminal domestic
8 violence; or not guilty. So there are three possible forms
9 of verdict that you will have.

10 There's absolutely no significance whatsoever in the
11 manner in which I have listed on those forms as possible
12 forms of verdict, Mr. Foreman, ladies and gentlemen of the
13 jury. It's just simply that one must be stated first.

14 Your verdicts must be unanimous. All 12 of you must
15 agree on the verdict. And -- and you will -- you will
16 consider again these charges separately and distinctly, one
17 independent from the other.

18 So as I have gone through -- this first one is
19 violation of the court order of protection. If after your
20 consideration of the evidence, your determination of the
21 facts, applying the facts to the law as I have stated the
22 law to you, you believe the State has proved beyond a
23 reasonable doubt the defendant is guilty of violation of
24 the court order of protection, it has here, No. 1: "We,
25 the jury, find the defendant guilty." And has a line for

1 your signature, Mr. Foreman.

2 If, on the other hand, you find the State has failed
3 to prove its case beyond a reasonable doubt, No. 2 is:
4 "We, the jury, find the defendant not guilty." And a
5 signature line for you.

6 I would ask, whatever your verdict be, if you would
7 sign on the appropriate line under the -- the verdict that
8 the jury agrees on unanimously; and circle whichever number
9 that is, and date it.

10 The -- the second verdict form I have is the verdict
11 form on criminal domestic violence of a high and aggravated
12 nature. It has the statute number, again. After your
13 consideration of the evidence, your determination of the
14 facts, applying the facts as you find them to be, to the
15 law as I have charged you the law, you determine the State
16 has proven the defendant guilty beyond a reasonable doubt
17 of criminal domestic violence of a high and aggravated
18 nature, No. 1 is: "We, the -- we the jury, find the
19 defendant guilty of criminal domestic violence of a high
20 and aggravated nature." And a line for your signature, Mr.
21 Foreman.

22 If, again based on your evaluation, your determination
23 of the facts, applying them to the law, you find the State
24 has failed to prove the defendant guilty -- prove beyond a
25 reasonable doubt that the defendant is guilty of criminal

1 domestic violence of a high and aggravated nature, but has
2 proved the defendant is guilty beyond a reasonable doubt of
3 criminal domestic violence: "We, the jury, find the
4 defendant guilty of criminal domestic violence." That's
5 No. 2. Circle it, and there's a signature line for that.

6 And if you find the State has failed to prove its case
7 beyond a reasonable doubt as to either criminal Domestic
8 violence of a high and aggravated nature or criminal
9 domestic violence, you find the defendant not guilty; as
10 you can only -- you can't find both criminal domestic
11 violence of a high and aggravated nature and criminal
12 domestic violence. It's one of the three.

13 Next form of verdict, again, "Spousal Sexual Battery."
14 I -- I believe you -- you understand. I don't think I have
15 to go through. Again, if you'll sign, circle, date. There
16 are two -- you have five forms of verdict, Mr. Foreman,
17 because there are two separate indictments for the spousal
18 sexual battery.

19 Again, you will -- you will consider those -- all of
20 these charges separately and distinctly. He could be found
21 guilty on all, not guilty on all; guilty on some; not
22 guilty on some. It's based on your determination, your
23 evaluation of the facts. You also have the formal verdict
24 for the kidnapping.

25 If -- you will have in your jury room -- these forms

1 have already -- all -- all the items of evidence that have
2 been introduced into the evidence.

3 When the jury agrees on the verdicts as to all counts
4 -- as to all the indictments, you have properly signed your
5 name, dated, circled, if you would please then knock on the
6 jury room door, inform the bailiff that you have reached a
7 verdict -- your verdicts, we will receive you back into the
8 courtroom at that time.

9 I'm going to ask you momentarily to go with your
10 bailiffs to your jury room. Do not begin your
11 deliberations until you are instructed to do so, either by
12 the bailiff or by the clerk. You will receive the verdict
13 forms; you will receive the exhibits.

14 Our alternate -- every -- everybody else looks --
15 looks well, so our alternate will be removed from the jury
16 room, and you will then be instructed to begin your
17 deliberations.

18 If you have any questions during the course of your
19 deliberations, if you'd just please write out a note, knock
20 on the door. The bailiff will be posted right outside of
21 your door. They will give it to me for my attention. If
22 you need anything, just please let the bailiffs know, and
23 we'll certainly respond to that in a timely manner.

24 All right. With that being said, if you'd please go
25 with the bailiffs to your jury room.

1 (Sotto voce discussion between the Court
2 and law clerk.)

3 (The jury exits at 3:27 p.m.)

4 THE COURT: All right. Solicitor?

5 MR. GRAHAM: No objections, Your Honor.

6 THE COURT: Thank you, Solicitor.

7 Mr. Williams?

8 MR. WILLIAMS: No exceptions to charge, Your Honor.

9 THE COURT: All right. Thank you very much. If --
10 now, State's 3 needs to be redacted.

11 MR. WILLIAMS: It has been.

12 THE COURT: It has been? All right.

13 MR. GRAHAM: Yes. We -- there should be one there
14 that we agreed upon just awhile ago.

15 THE COURT: All right. I just wanted to make sure.
16 And 7's not in evidence?

17 MR. GRAHAM: Correct.

18 THE COURT: Is there anything else that was not
19 ultimately offered into evidence?

20 MR. GRAHAM: I don't believe so.

21 MR. WILLIAMS: I don't think so.

22 THE COURT: All right. So we would have 1 through 9,
23 with the exception of 7; is that correct?

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: Is that correct, Madam Court Reporter?

1 THE COURT REPORTER: Yes, sir.

2 THE COURT: All right. If y'all would check that.

3 (Sotto voce discussion between the Court
4 and counsel. Counsel, the court reporter, and
5 Clerk of Court confirm exhibits.)

6 THE COURT: All right. Mr. Williams, you've had the
7 opportunity to review the exhibits and the verdict forms?

8 MR. WILLIAMS: Yes, Your Honor.

9 THE COURT: All right. And any objections?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: All right. Any objections, Solicitor?

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: All right. If you will take those in,
14 please, Mr. Bailiff, and pull our alternate out.

15 THE BAILIFF: Yes, Your Honor.

16 (The bailiff takes the exhibits and verdict forms
17 to the jury room at 3:30 p.m.)

18 THE COURT: What does our alternate need to do, Madam
19 Clerk?

20 CLERK OF COURT: I was told they definitely have a
21 case for trial for tomorrow. I was told that earlier.

22 THE COURT: I think --

23 CLERK OF COURT: I think it's David Stumbo.

24 THE COURT: -- I'm going to excuse him.

25 CLERK OF COURT: Just excuse --

1 THE COURT: We got enough people?

2 CLERK OF COURT: That's what I was fixing to say. Let
3 me do a count.

4 THE COURT: Okay.

5 CLERK OF COURT: Let me do a count.

6 (Sotto voce discussion between the Court
7 and the solicitor.)

8 THE COURT: I'm going to take a quick break. We'll
9 take a few minutes break.

10 THE COURT: The jury sent a note out (as read): "May
11 we see the CD that was presented as evidence?"

12 How do y'all want to handle that?

13 MR. GRAHAM: Your Honor, I don't know. That's our
14 office laptop, and I don't know what else it contains. It
15 is a CD; it has to be played on a computer. I don't think
16 it's proper to send that back to them. They probably need
17 to be brought out and have it done in court.

18 THE COURT: Mr. Williams?

19 MR. WILLIAMS: I don't really care. But if he's
20 concerned about something else being on the laptop, then I
21 am, too.

22 THE COURT: All right. Would you bring us our jury,
23 please, Mr. Bailiff?

24 (Sotto voce discussion between the Clerk of Court
25 and the Court.)

1 (Juror's note marked as Court's Exhibit No. 5.)

2 Mr. GRAHAM: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 (Bench conference.)

5 (The jury enters at 3:38 p.m.)

6 THE COURT: We released our alternate. That's right.
7 I got your note about the CD. Yes, sir, you may certainly
8 see it. Right this moment, the only laptop that is in the
9 courtroom that can play it has some other items on it, so
10 we can't send it to the jury room. They have gone to see
11 if they have a laptop available with -- with nothing on it,
12 so you could watch it on -- on the screen on the laptop.
13 Correct, Solicitor? Correct, Mr. Williams?

14 MR. GRAHAM: Yes, sir, Your Honor.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: If you want to see it right this moment,
17 we can play it right now in the -- here in the courtroom,
18 or I can wait and see if we get a laptop. If I can, is
19 there somebody -- or I can send somebody in there to -- to
20 key it up, Mr. Solicitor? Mr. Williams? Y'all have an
21 objection to that, if someone do that?

22 MR. FOREMAN: We can wait.

23 THE COURT: You can wait? You can wait on a laptop?
24 All right. And do you need someone to instruct you in the
25 use of the laptop is the next question?

1 MR. FOREMAN: I think we're familiar ---

2 THE COURT: I think you can, too. All right. All
3 right. Well, you may return to the jury room then.

4 And just let me know, Solicitor, if we get a laptop,
5 that we can send in.

6 MR. GRAHAM: Yes, Your Honor.

7 THE COURT: All right. Thank you.

8 (The jury exits at 3:40 p.m.)

9 THE COURT: Thank you, Solicitor. Just let me know
10 when -- I assume there's somebody on there that's savvy
11 enough to run it.

12 MR. GRAHAM: He sounds like it.

13 THE COURT: Sounds like it. And I assume y'all have a
14 copy of State's 8 somewhere?

15 MR. GRAHAM: A copy of --

16 THE COURT: A copy of it, so that something happens to
17 it in the jury room when they're running it, there's a copy
18 somewhere.

19 MR. GRAHAM: Yes, Your Honor.

20 THE COURT: All right. All right. Just let me know
21 then. All right.

22 (Off the record at 3:40 p.m.)

23 (Back on the record at 5:00 p.m.)

24 THE COURT: All right. Please bring in our jury.

25 (The jury enters at 5:02 p.m.)

1 THE FOREMAN: We have a question, Your Honor.

2 THE COURT: All right. And I have -- I have your
3 note. Is that -- that's the question?

4 THE FOREMAN: Yes, sir.

5 THE COURT: All right. The question is (as read):
6 "There are two spousal sexual batteries. Do we have to" --
7 it appears to be -- "define the date that this took place?"

8 And what I -- what I have done is I have put the
9 indictment numbers at the bottom of your note, and then a
10 line. And the indictment 2007-GS-32-3040 basically alleges
11 that this incident occurred on or about September 15th of
12 '07 -- one of the spousal sexual battery indictments.

13 The other indictment for spousal sexual battery, 2007-
14 GS-32-3041, alleges that the spousal sexual battery
15 occurred on or about 14 September of '07.

16 So I have -- I have wrote the indictment numbers down,
17 and then "on or about" -- "on or about" and the date that
18 applies. You can link that up with the -- the verdict
19 forms, if that answers your question.

20 MR. FOREMAN: It does.

21 THE COURT: If it doesn't answer your question, if
22 you'll just please write -- write me another note. Also,
23 if you'd keep this (indicates.) I'll have to mark this for
24 the -- for the record, whenever you reach your verdict. So
25 if you'll make sure that gets to the bailiff, also. All

1 right? Thank you. You may return to your jury room.

2 (The jury exits 5:04 p.m.)

3 THE COURT: Any exceptions, Solicitor?

4 MR. GRAHAM: No exceptions, Your Honor.

5 THE COURT: Mr. Williams?

6 MR. WILLIAMS: None.

7 THE COURT: All right. Thank you. We'll be at ease.

8 (Off the record at 5:04 p.m.)

9 (On the record at 5:32 p.m.)

10 THE COURT: All right. Anything before we bring in
11 our jury, Solicitor?

12 MR. GRAHAM: Not from the State, Your Honor.

13 MR. WILLIAMS: Nothing from the defendant.

14 THE COURT: All right.

15 (The jury enters at 5:33 p.m.)

16 THE COURT: All right. It appears our jury is back
17 present in the courtroom. Madam Clerk?

18 CLERK OF COURT: Mr. Foreman, have you reached a
19 verdict?

20 THE FOREMAN: Yes, we have.

21 CLERK OF COURT: If you would pass it to the bailiff.

22 THE FOREMAN: (Complies.)

23 THE COURT: Thank you. All right. Madam Clerk, it
24 appears the verdicts are in the proper form. If you would
25 publish the verdict, please.

1 CLERK OF COURT: On Indictment 2007-GS-32-3033, *State*
2 *vs. Rodney C. Bryan*, as to the charge of violation of a
3 court order of protection, we the jury, find the defendant
4 guilty. It is so signed.

5 Indictment 2007-GS-32-3034, *State vs. Rodney C. Bryan*,
6 as to the charge of criminal domestic violence of a high
7 and aggravated nature, we the jury, find the defendant
8 guilty of criminal domestic violence of a high and
9 aggravated nature. It is so signed.

10 Indictment 2007-GS-32-3042, *State vs. Rodney C. Bryan*,
11 as to the charge of kidnaping, we the jury, find the
12 defendant guilty.

13 Indictment 2007-GS-32-3040, *State vs. Rodney C. Bryan*,
14 as to the charge of spousal sexual battery, we the jury,
15 find the defendant guilty.

16 On Indictment 2007-GS-32-3041, *State vs Rodney C.*
17 *Bryan*, as to the charge of spousal sexual battery, we the
18 jury, find the defendant not guilty. It is so signed.

19 Madam -- Mr. Foreman, ladies and gentlemen of the
20 jury, if this was your verdict, please indicate by raising
21 your right hands.

22 All hands raised, Your Honor.

23 THE COURT: All right. Thank you. Anything further
24 from the State for the jury?

25 MR. GRAHAM: No, Your Honor.

1 THE COURT: From the Defense?

2 MR. WILLIAMS: Yes, Your Honor. We request polling.

3 THE COURT: All right. Madam Clerk, would you please
4 explain that procedure to our jury and poll the jury?

5 CLERK OF COURT: When I call your name, if you'll just
6 raise your right hands and then put them down.

7 Juror No. 65, Phillip Graham, if this was your verdict
8 -- I'm sorry. Was this and is this still your verdict?

9 JUROR NO. 65: Yes, ma'am.

10 CLERK OF COURT: Stacy Brown, Juror No. 22, was this
11 and is this still your verdict?

12 JUROR NO. 22: Yes, ma'am.

13 CLERK OF COURT: Thank you. Juror No. 13, Lillie
14 Bell, was this and is this still your verdict?

15 JUROR NO. 13: Yes, ma'am.

16 CLERK OF COURT: Thank you. Juror No. 94, Michael
17 Lail, was this and is this still your verdict?

18 JUROR NO. 94: Yes, ma'am.

19 CLERK OF COURT: Juror No. 84, Alfred Jones, was this
20 and is this still your verdict?

21 JUROR NO. 84: Yes, ma'am.

22 CLERK OF COURT: Thank you. Juror No. 72, Brenda
23 Hartsell, was this and is this still your verdict?

24 JUROR NO. 72: Yes, ma'am.

25 CLERK OF COURT: Juror No. 74, Wendell Hendrix, Jr.,

1 was this and is this still your verdict?

2 JUROR NO. 74: Yes, ma'am.

3 CLERK OF COURT: Juror No. 134, Jessica Rikard, was
4 this and is this still your verdict?

5 JUROR NO. 134: Yes, ma'am.

6 CLERK OF COURT: Juror No. 131, Catherine Ratcliff,
7 was this and is this still your verdict?

8 JUROR NO. 134: Yes, ma'am.

9 CLERK OF COURT: Thank you. Juror No. 15, Phillip
10 Bolin, was this and is this still your verdict?

11 JUROR NO. 15: Yes, ma'am.

12 CLERK OF COURT: Juror No. 10, Brian Barnes, was this
13 and is this still your verdict?

14 JUROR NO. 10: Yes, ma'am.

15 CLERK OF COURT: Juror No. 1, Charles Adams, was this
16 and is this still your verdict?

17 JUROR NO. 1: Yes, ma'am.

18 CLERK OF COURT: All jurors polled, Your Honor.

19 THE COURT: Thank you, Madam Clerk.

20 Anything further, Mr. Williams, for the jury?

21 MR. WILLIAMS: Nothing for the jury, Your Honor.

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen of the jury, I never criticize nor commend a jury
24 for its verdict; however, I will say that if you ever find
25 yourself a part of the system in the future -- I hope you

1 never do -- by way of witness or something of that nature,
2 I hope the jury selected for the trial of that case is as
3 attentive and hardworking, as focused as you have been.

4 Throughout the trial of this case, the attention that
5 you have given to all of the parties -- the witnesses, the
6 attorneys, and to the Court -- I thank you for it. We
7 could not be about the very important business of
8 administering your criminal justice system without your
9 participation.

10 We have other matters for trial this week. However, I
11 understand we have a sufficient number of jurors that we
12 can complete those tasks without y'all's participation any
13 further this week. So momentarily, I'm going to excuse you
14 from your jury service for the remainder of this week.

15 I would remind you, you have a protection from Circuit
16 Court -- State Circuit Court of record from jury service
17 for -- a disqualification, actually, for the remainder of
18 this year, for the year 2008. And the exemption, if you
19 should choose to use it -- if you're lucky enough to be
20 chosen for jury duty in 2009 or '10 -- right now, you have
21 an exemption for those two years, also.

22 I would imagine, if I asked the Clerk about your
23 payment, she would tell me, "The check is almost in the
24 mail."

25 I tell jurors commonly, please don't get home and go

1 on the internet and start booking a cruise or anything. We
2 can't afford to pay you what you're worth. And I further
3 say, "Don't even book a cruise to Shull Island. With gas
4 prices as they are, you won't make it out there.

5 With all that being said, you're now excused from your
6 jury service for the remainder of the week. The bailiffs
7 will --

8 THE BAILIFF: Judge?

9 THE COURT: Yes.

10 MR. BAILIFF: They need to sign this --

11 THE COURT: Yes. Mr. Foreman, if you would meet --
12 just give it to the Clerk, and if you would, meet him out
13 back. I'll have you sign the original indictments, but the
14 clerk will meet you outside of the courtroom.

15 Thank you, Mr. Bailiff, for bringing that to my
16 attention.

17 Thank you, Madam Clerk.

18 (The jury exits at 5:40 p.m.)

19 (Bench conference.)

20 THE COURT: All right. Mr. Williams, do you have
21 motions?

22 MR. WILLIAMS: I do, Your Honor.

23 THE COURT: All right.

24 MR. WILLIAMS: Your Honor, I'd renew any prior motions
25 that were made before this time. And also, I would move

1 for an arrest in judgment and to grant my client a new
2 trial, in that the evidence taken as a whole should not
3 have rendered a verdict of guilty by this jury.

4 THE COURT: All right. Well, I would reaffirm all my
5 pervious trial and evidentiary rulings, and I would further
6 deny your motion for a new trial. I think there is
7 sufficient direct and substantial circumstantial evidence
8 for which the jury could have reached the verdicts which
9 they have reached in this matter. Any other matters?

10 MR. WILLIAMS: No, sir.

11 THE COURT: All right. Is there any reason sentence
12 should not be imposed at this time?

13 MR. WILLIAMS: No, sir.

14 THE COURT: All right. Solicitor -- you -- and you
15 may -- you may be seated, Mr. -- Mr. Bryan.

16 Any -- any other matters from the State?

17 MR. GRAHAM: None other than some information
18 regarding sentencing, Your Honor.

19 THE COURT: All right.

20 MR. GRAHAM: Mr. Bryan has a prior criminal record,
21 Your Honor. He has a 1991 conviction for disorderly
22 conduct; in 1993, a conviction for criminal domestic
23 violence. Rachael Bryan was the victim. In 19 -- excuse
24 me -- in 2007, criminal domestic violence with Rachael
25 Bryan as the victim; also a conviction for cruelty to

1 children at the same time, where I believe the victim was
2 Kirsten Lewis, Rachael's oldest daughter. In 2007, a
3 conviction for disorderly conduct. Then he has a simple
4 possession of marijuana and a criminal domestic violence on
5 Rachael that was as a result of the September 20, 2000
6 arrest.

7 Going back into the 1990s, Your Honor, after the first
8 CDV, he left and went to Texas. He has a credit card abuse
9 conviction. He spent two years in prison and four years
10 probation on that. And he also has a 1996 theft of
11 property greater than 1500, but less than \$20,000, Your
12 Honor.

13 I am informed that Ms. Bryan does not wish to address
14 the Court.

15 We would like to make the Court aware of a few things,
16 Your Honor. I had Dr. Ross go through a homicide risk
17 assessment score with Ms. Bryan, and her score total, Your
18 Honor, was a 26, which is -- it's a weighted score and it
19 depended on, I think, some of the questions. And I'm told
20 that is the highest level that she can get on that.

21 The doctor informed me that most women who are killed
22 by domestic abuse by a male in their lives, that their
23 score is an eight. I talked with law enforcement; law
24 enforcement has also informed me that they believe that he
25 is a risk to her life if he does get out of jail.

1 Their -- in preparing for the case and discussing
2 their history with Ms. Bryan, obviously, Your Honor, you
3 are well aware of the domestic violence. Obviously, there
4 are numerous times where violence and other things
5 happened, where law enforcement was never called. I
6 believe with all three of their children -- Daniel, Amy,
7 and Savannah -- that it's my understanding that during each
8 of her pregnancies with them, he assaulted her at least one
9 time physically.

10 You have heard the testimony, Your Honor. I would ask
11 for an appropriate sentence for the severity of the abuse
12 that he's caused her for years. This is played out in the
13 -- over the course of that weekend. I would ask that he be
14 incarcerated at least until all of the children are --
15 reach adulthood.

16 THE COURT: All right. Is there any written victim
17 impact statement?

18 MR. GRAHAM: No, Your Honor. Thank you for asking.

19 THE COURT: All right. Thank you. Anything further?

20 MR. GRAHAM: No, sir.

21 THE COURT: All right. Thank you.

22 Mr. Williams?

23 MR. WILLIAMS: Your Honor, obviously, I would disagree
24 with what Solicitor Graham indicates about this score and
25 all that in reference to -- he disagrees with any

1 allegations that he ever harmed his wife when she was
2 pregnant.

3 The -- the CDV and the abuse to the child allegation
4 that he referenced in his deal was an altercation in which
5 all three -- the wife, the child -- the 17 year old child,
6 who is the young lady, I think, sitting next -- with the
7 purple outfit. There was a dispute; they were pushing and
8 shoving, and she jumped on his back and he pushed her off.

9 I don't mean to say that by way of excuse. What I
10 mean to say is that the pattern of violence, or the pattern
11 of assault has been an ill-advised practice in their family
12 unit. There's no excuse for it. There's -- there's --
13 there's some incident reports indicates that the victim has
14 assaulted his mother on occasion.

15 Now, it doesn't excuse what happened in this case.
16 But I wanted the Court to know that it appears that this is
17 a learned behavior or an unlearned behavior, if you will.
18 It's -- it's a way, I guess, in which some people just
19 react with each other.

20 I've been a lawyer a long time, and -- and I don't
21 disagree with the interpretation of kidnapping and stuff
22 like that. But when you look at all these charges and Your
23 Honor has to decide what sentence to give, I would ask the
24 Court to look at the charges in terms of -- it was almost
25 like one event, one bad event that occurred.

1 He's 37. Aside from his disorderly conduct and his
2 criminal domestic violences, the only violence -- or the
3 only violation of law he had was a -- a check deal --

4 THE DEFENDANT: Credit card.

5 MR. WILLIAMS: A credit card deal. It's kind of hard
6 to explain why someone does something like this. In my
7 dealings with him, he's been -- he has always been very
8 calm, very quiet. He has a loving mother, his brother.

9 I don't know why you do stuff like this. His violence
10 has not been directed at anybody but his family unit, and
11 maybe that's just how he thinks he's supposed to
12 interrelate. But he's not -- he's not -- if he's not in
13 the family unit, Your Honor, I don't know that he is -- he
14 -- that he is a threat to anyone else. Maybe he just needs
15 counseling.

16 But if Your Honor looks at that, I'd ask Your Honor to
17 look at that in terms of one event, and not to, I guess --
18 and -- and you could easily -- Your Honor, you could easily
19 sentence him under one of these charges, and that would be
20 sufficient for what, I guess, the Solicitor is saying.

21 But it's a lot of time facing him, Your Honor. He --
22 he would like to address the Court.

23 THE COURT: All right. Yes, sir. I'd be glad to hear
24 from you, Mr. Bryan. If you'd come around to the
25 microphone for me, please. Yes, sir?

1 DEFENDANT: Yes, sir. First, I'd like to apologize to
2 everybody, the inconvenience it is for this Court, the
3 system to be wrapped up into this drama between a
4 dysfunctional family. Me being the head of that family, I
5 should have made a lot of wiser decisions, and things
6 wouldn't -- they wouldn't be where they are now.

7 I would like to say, yes, I was aware -- I was aware
8 of that order of protection. I did pay my child support.
9 I paid \$300 a week. I only made 550, but I continued to do
10 that. I could not afford to get visitation rights to my
11 children; I just wanted things to work out for my family.

12 I had made wrong decisions; I admitted to striking my
13 wife. I've been found guilty of some -- some more severe
14 charges. I can admit to the wrong things I've done, and I
15 can ask for leniency on them.

16 MR. WILLIAMS: I think what he's saying, Your Honor,
17 that it would be his version that he didn't really use
18 forceable battery. And his version of how he looks at the
19 kidnapping, he did not keep them there by themselves the
20 whole weekend. In all candor, he was -- and I -- the
21 solicitor would have to ---

22 THE DEFENDANT: Sir, when we got to that -- when we
23 got back to the house, I didn't disconnect the phone; but I
24 did get the phone. She had the keys.

25 THE COURT: That was my -- going to be my next

1 question: What about the telephone?

2 THE DEFENDANT: I did -- I did have the phone. I
3 didn't want her to call the police. Yes, she did have a
4 order of protection. Yes, I didn't want to go back to
5 jail. Just -- she used that for whatever reason that she
6 wanted to. I wanted the key to the car to leave; there was
7 only one vehicle. I did get the phone, so she gave me the
8 car key. She gave me the car key.

9 After I started subcontracting -- just recently moved
10 back in -- I started making quite a bit more money. So I
11 went to the grocery store; I bought her all the groceries.
12 I bought medicines for the kids they would need, knowing
13 she did not have a vehicle. And her van was not going to
14 be fixed for a week, which I was paying \$1,000 to get that
15 fixed. I wanted to make sure her and those kids had
16 everything they needed to.

17 She manipulated the system, and I -- I don't want to
18 get into all the details. I know the case has been tried;
19 I'm not trying to retry it. But I'm just trying to say
20 it's not everything that appears to be.

21 MR. WILLIAMS: Just tell you, Your Honor, he doesn't
22 hate his wife; he doesn't hate his children. He actually
23 loves his wife and his children. His ability to
24 communicate that is not always done correctly.

25 THE DEFENDANT: I wrote a organization called

1 "S.A.F.E." a few times, men with domestic violent victims
2 and why they -- you know, 95 percent is what she said. You
3 know how many men don't report it and why?

4 THE COURT: No, sir.

5 THE DEFENDANT: They don't report it because of the
6 embarrassment. They're supposed to -- you're supposed to
7 be the man. You know, here I am, you know, emotional right
8 now. And these are -- and these are stereotypes that men
9 have. You're not supposed to be -- you know, that's not a
10 man.

11 And there was -- there was -- my children,
12 unfortunately, are the victims of all this, regardless of
13 what happens to me. They witnessed her violence. And for
14 some reason, it has still gone unnoticed through all those
15 -- Sistercare and DSS --

16 THE COURT: Direct -- direct your comments to me.

17 THE DEFENDANT: Oh, I'm sorry. And all the police,
18 all the people that are on this side have missed a very
19 important fact, that she has extreme tunnel vision state of
20 anger.

21 Many, many occasions, I would take -- I've taken abuse
22 from her and have not fought back. My kids have even --
23 and they've even jumped in and beaten on me while she was
24 beating me. Even though I wasn't hitting her back, because
25 that is their mother and they connected with her.

1 But this last time I came back, I told her there'd be
2 no more hitting me. And yes, I did. I did hit her, Your
3 Honor, and I did do that. And I apologize. And that black
4 eye that's on her eye, I backhanded her in the jaw after
5 she punched me in the mouth. I asked her to pull over. I
6 said, "Pull over and let me out at Shumpert's." She
7 wouldn't pull over. I believe she even staged all that.

8 She -- I don't even understand why she even did that
9 thing with the phone. She knew I was leaving. She called
10 the three girls that I was talking to. I have -- I had a
11 place rented in South Congaree. There was a girl I was
12 talking to in Charleston. My money was doing good. I was
13 getting ready to buy a Harley-Davidson. She said, "You
14 think you're going to go on poker runs and leave me stuck
15 here with all these kids?"

16 We were not getting along. The trust factor was dead.
17 I was trying to leave. She did not want me to have a life.
18 In her last statement -- and her police statement even
19 says, "I just want him in jail." This has been -- this has
20 --

21 MR. WILLIAMS: But by saying that, Your Honor, he
22 still doesn't excuse what he has done.

23 THE DEFENDANT: No, I have not. And I ---

24 MR. WILLIAMS: I want to make sure he -- that he tells
25 -- that he lets the Court know he doesn't excuse what he's

1 done.

2 THE DEFENDANT: And I told -- I told Mr. Williams
3 that. And I've offered -- I've -- in that discovery,
4 there's a statement -- that man -- I never spoke to -- I'm
5 sorry. I'm not supposed to -- I -- I gave the police
6 department a statement to give me a -- a polygraph test, to
7 get -- take a statement from me. They never administered
8 one.

9 The fact is, the -- the true facts of this thing have
10 been distorted. And I -- I -- I'd like to just ask for you
11 to have some leniency, Your Honor.

12 THE COURT: All right. I don't have any sentencing
13 sheets. Now I do. Thank you.

14 Anything further, Mr. Williams? Mr. Bryan?

15 THE DEFENDANT: No, sir.

16 MR. WILLIAMS: No, sir.

17 THE COURT: All right. You may go back and have a
18 seat.

19 (Sotto voce discussion between the Court
20 and the law clerk.)

21 THE COURT: 2007-GS-32-3040, spousal sexual battery,
22 the defendant is committed to the State Department of
23 Corrections a determinate term of 10 years.

24 2007-GS-32-3034, criminal domestic violence of a high
25 and aggravated nature, the defendant is committed to the

1 State Department of Corrections a determinate term of 10
2 years.

3 2007-GS-32-3033, violation of court order of
4 protection, the defendant is committed to the State
5 Department of Corrections a determinate term of 30 days.

6 2007-GS-32-3042, kidnapping, the defendant is
7 committed to the State Department of Corrections a
8 determinate term of 25 years.

9 Sentences are concurrent; he's given credit for time
10 served. Good luck to you, Mr. Bryan.

11 MR. WILLIAMS: Thank you, Your Honor.

12 Anything further, Solicitor or Mr. Williams?

13 MR. GRAHAM: No, Your Honor.

14 MR. WILLIAMS: No.

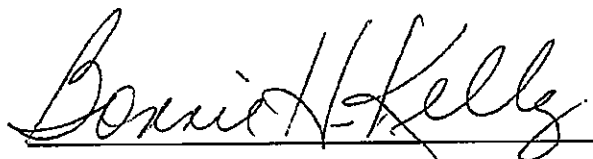
15 THE COURT: Thank you.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 14TH THROUGH THE 16TH DAY OF JULY, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY

OFFICIAL COURT REPORTER

COLUMBIA, SOUTH CAROLINA

DECEMBER 20TH, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY C. BRYAN,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>State v. Bray</u> , 342 S.C. 23, 535 S.E.2d 636 (2000).....	5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in ruling that two minor children of the victim could testify against appellant without him being physically present in the courtroom?

STATEMENT OF THE CASE

Appellant was convicted of kidnapping, spousal sexual battery, criminal domestic violence of a high and aggravated nature, and violation of a protection order after a jury trial held before the Honorable Knox McMahon on July 14, 2008, in Lexington County. Respective sentences of twenty-five (25) years, ten (10) years, ten (10) years, and thirty (30) days were imposed.

This appeal follows.

ARGUMENT

The trial court erred in ruling that two minor children of the victim could testify against appellant without him physically being present in the courtroom.

The victim's two minor children were ages 7 and 10 at the time of the trial. The trial court held a hearing on the solicitor's motion on the children not having to testify in front of the appellant, their father. Defense counsel objected to the motion. Dixie Neff, with a master's in school counseling, testified that the children should not have to face their father in court. It would be too stressful to the children and they could shut down. (ROA p. 40, lines 2-24; tr. p. 52, line 11 – p. 53, line 9)

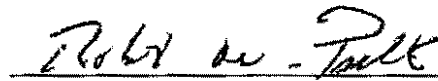
The trial judge ruled that the children would testify in the courtroom in front of the jury and appellant would be placed in a "media room" with a mirrored front where he could hear their testimony. (ROA p. 64, line 17 – p. 66, line 16)

The trial court erred and abused its discretion in allowing the children to testify outside appellant's presence. The Sixth Amendment to the United States Constitution guarantees to every defendant the right to confront witnesses against him. In State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000) the South Carolina Supreme Court also ruled that trial judges must make a case specific determination of the need for protected testimony and they should consider not only the testimony of an expert witness but also the parents and the children themselves. In this case the trial judge did not take into consideration what the children would say or their mother.

CONCLUSION

Because the trial judge did not make a sufficient case specific determination of the need to protect the children, appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Lexington County

 R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY C. BRYAN,

APPELLANT

 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rodney C. Bryan states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on July 14-16, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the one arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Rodney C. Bryan.

Respectfully submitted,



 Robert M. Pachak
 Appellate Defender

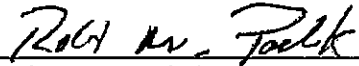
ATTORNEY FOR APPELLANT

This 19th day of May, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 19th, 2009



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

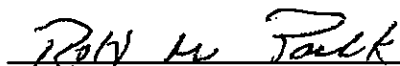
V.

RODNEY C. BRYAN,

APPELLANT

CERTIFICATE OF SERVICE

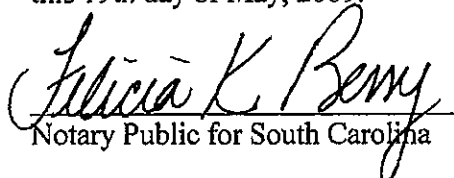
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Rodney C. Bryan, #329517 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010; this 19th day of May, 2009.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of May, 2009.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010.

RECEIVED

JUL 28 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
R.Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY C. BRYAN,

APPELLANT,

PRO SE BRIEF OF APPELLANT

RODNEY C. BRYAN
#329517 R-118-C
LEE C I
990 WISACKY HWY.
BISHOPVILLE, SC 29010

STATEMENT OF ISSUES ON APPEAL

ISSUE #1.....2

Did the trial judge abuse his discretion in finding the necessity to conduct an alternative procedure for the testimony of the appellants ten-year-old daughter and seven-year-old son, by invoking S.C. Code Ann § 16-3-1550 (e) ?

ISSUE #2.....5

Did the trial judge err by failing to implement the correct procedure to invoke S.C. Code Ann § 16-3-1550 (e) and violate the appellants Constitutional Rights by removing him from the Court Room prior to and during the testimony of the appellant's ten-year-old daughter and seven-year-old son ?

ISSUE #3.....9

Did the trial judge err in allowing the states Expert Witness to be physically present in the Court Room during the victims testimony, for the purpose of the Expert Witness to bolster the victims testimony ?

ISSUE #4.....10

Did the trial judge err in allowing State's Exhibit No. 8 to be entered as evidence ?

ISSUE #5.....12

Did the trial judge abuse his discretion by failing to recuse himself ?

STATEMENT OF THE CASE

Appellant was convicted of kidnapping, spousal sexual battery, criminal domestic violence of a high and aggravated nature, and violation of a protection order after a jury trial held before the Honorable Knox McMahon on July 14, 2008, in Lexington County. Respective sentences of twenty-five (25) years, ten (10) years, ten (10) years, and thirty (30) days were imposed.

This appeal follows.

STATEMENT OF ISSUE #1 ON APPEAL

Did the trial judge abuse his discretion in finding the necessity to conduct an alternative procedure for the testimony of the appellants ten-year-old daughter and seven-year-old son, by invoking S.C. Code Ann § 16-3-1550 (e) ?

ARGUMENT ON ISSUE #1

The Solicitor submitted a motion to **remove the defendant from the Court Room** during the testimony of the defendants two minor children (ROA P.31, lines 22 - P.32, line 2). The court erred in finding necessity to invoke S.C. Code Ann § 16-3-1550 (e) on a case specific determination, to include; First, these **children are not victims and this is not a child abuse case**, in which the Defense Attorney, Mr. Williams properly stated in his objection (ROA P.63, lines 4 - P.64, line 6 and ROA P.67, lines 5 - 13). Second, the court refused to interview the children or observe their impressions on the court;

MR. WILLIAMS: " I think I'd like for Your Honor to talk to them."
(ROA P.60, lines 17,18)

THE COURT: " I do not find the need to interview the children
particular. It is not a per-se rule that a Circuit
Court Judge must do that. The witness has testified
clearly that they would be traumatized. I do not find
that suggestion a clear requirement that I must take."
(ROA P.66, lines 12 - 16)

Third, during the testimony of the states Expert Witness, Dixie Neff, Ms. Neff failed to designate a **specific emotional trauma or any specific reason** why the children should not be allowed to testify in the physical presence of their father, other than some reluctance or nervousness that may cause them to 'shut down' (ROA P.52, lines 25 - P.53, line 9 and ROA P.58, lines 15 - P.59, line 3). Fourth, Ms. Neff stated under examination by the court;

RE-DIRECT EXAMINATION BY THE COURT

THE COURT: " Ms. -- Ms.Neff, do you have an opinion of whether or not Amy would be traumatized if she were required to testify in front of her father?"

MS.NEFF: " Yes, sir. It is my opinion that the children would be traumatized if they had to testify, and I cannot tell you for certain how that would play out or manifest itself in the symptoms."

THE COURT: " And -- and specifically, that's Amy and Daniel."

MS.NEFF: " Yes, sir."

THE COURT: " And you said if they have to testify, if -- specifically, if they had to testify in front of their father?"

MS.NEFF: " Yes, sir. I believe they would shut down."

(ROA P.58, lines 15 - P.59, line 3)

continued

THE COURT: " Let me ask you this, Ms. -- Ms.Neff. Do you think Amy would tell me if asked, that she would be afraid to testify in front of her father?"

MS.NEFF: " I can't say for certain."

THE COURT: " How about Daniel?"

MS.NEFF: " I think there's a highly -- high probability that he would tell you."

THE COURT: " And what--what is the difference between Amy and Daniel?"

MS.NEFF: " I think that the difference is just definitely developmental levels."

THE COURT: " So you--in other words, you can't say for sure for Amy, because she is at a lower developmental level than Daniel?"

MS.NEFF: " No, sir. But mainly age and how -- and where they -- she has been -- it seems that she might be more conditioned and just built herself up. She is -- you can tell she's trying to be brave."

The Expert Witness failed to designate any specific symptoms of distress that the children may experience, if they were required to testify in front of their father. Ms.Neff could not be certain on what either child would say, if the court interviewed them. Ms.Neff stated that " Amy was trying to be brave ", which was a clear indication that she was willing to testify in front of her father. Fifth, the court erred in findings of facts from Ms.Neff's report, because the report was based on and constructed of hearsay testimony (ROA P.48, lines 16 - P.51, line 10 and ROA P.65, lines 8 - P.66, line 3). Finally, the court erred to make a case specific finding of necessity by merely reciting the statute; Coy v. Iowa,

THE COURT: " Well, if we go from the background of 16-3-1550 (e), it directs the Circuit Court to treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs, by using closed or taped sessions when appropriate. I understand Amy is ten years of age; Daniel's seven years of age; is that correct, Solicitor?" (ROA P.64, lines 9 - 15)

STATEMENT OF ISSUE #2 ON APPEAL

Did the trial judge err by failing to implement the correct procedure to invoke S.C. Code Ann § 16-3-1550 (e) and violate the appellants Constitutional Rights by removing him from the Court Room prior to and during the testimony of the appellant's ten-year-old daughter and seven-year-old son ?

ARGUMENT ON ISSUE #2

The Prosecutor submitted a motion to ' remove the defendant from the Court Room', by invoking S.C. Code Ann § 16-3-1550 (e) (SUPP. 1998) (ROA P.31, lines 22 - P.32, line 2). The defense objected to the states motion (ROA P.40, lines 3 - 5). Mr.Williams, the defense attorney stated the following in his objection;

MR.WILLIAMS: " Your Honor, I'm not sure that we've reached the stage in jurisprudence where a person's Constitutional Rights can be watered down that greatly..."
(ROA P.63, lines 4 - 6)

MR.WILLIAMS: " And that is that with this particular procedure, where the jury is viewing the witnesses in the absence of my client, that may increase the likelihood that they will think that my client is so violent, so bad, and by -- by his absence in the Court Room, that they could determine that -- that he must be guilty of something." (ROA P.67, lines 8 - 13)

Our Supreme Court described the procedure to be followed by Trial Courts invoking S.C. CODE Ann § 16-3-1550 (e) to protect child witnesses, by the use of videotaped testimony, State v. Murrell, 302 SC 77, 393 S.E.2d 919 (1990). The United States Supreme Court faced a nearly identical situation in Maryland v. Craig, 497 US 836 (1990), the court ruled that the Confrontation Clause of the Sixth Amendment does not categorically prohibit a child witness, in a child abuse case from testifying against a defendant at trial, outside the defendants

physical presence by ~~one-way~~ closed circuit television, moreover a states interest in the physical and psychological well-being of a child abuse victim may be sufficiently important to outweigh, at least in some cases, a defendants right to face his or hers accusers in court, Id @ 853. The Statutory Procedure is reasonably clear for the courts to follow by invoking S.C. Code Ann § 16-3-1550 (e), in doing the act of videotaped testimony as it was construed, and the procedure for the statute standing alone is not vague on requiring; videotaped testimony, State v. Murrell, supra.

THE COURT: " And against that backdrop and of course, these cases I'm looking also are videotaped cases where the video-tapes later shown to a jury. The procedure that we're going -- that we would be using, if I approve it, would be very much different than that. They will be testifying live, in front of the jury Mr.Bryan's attorney will be present in the Court Room Mr.Bryan will be in what is known as the 'media room', which has a mirrored front and unless someone opens the door while Mr.Bryan's in there, to the media room, you can't see into that room. And even if they opened the door, you can just see some light coming in you can't tell who is or is not in there. I think Maryland v. Craig, allows the videotaping, if there's a case-specific finding and it clearly allows this procedure." (ROA P.64, lines 17 - P.65, line 7)

The Trial Judge abused his discretion and his inherent authority to apply novel construction of a statute, with conduct that neither the statute, nor any prior judicial decision has fairly disclosed to be within it's scope.

The courts in both the Craig and Murrell cases clearly described using videotaped testimony to satisfy the requirements, in protecting the needs

of sensitive witnesses and the defendants rights under the Confrontation Clause of the Sixth Amendment, this is not comparative to violating the appellants Sixth Amendment Constitutional Right to be physically present in the Court Room during the proceedings of his Jury Trial and a Fourteenth Amendment violation for Due Process of Law U.S.C.A. Const. Amend. 6 and 14.

MR.WILLIAMS: "...I was served with this motion this morning."

(ROA P.61, lines 3,4)

THE COURT: "...I would allow you, prior to the conclusion of any cross-examination, to certainly confer with your client. I -- I don't know if there's any other communication that can be set up between Mr.Williams and the attorney for his client in the media room or not."(ROA P.66, lines 23 - P.67, line 4)

THE COURT: " Court will be in recess 15 minutes. All right. So, the defendant is now in the media room? Is that correct, Solicitor?"

MR.GRAHAM: " Yes, Your Honor."

THE COURT: " All right. Is that correct, Mr.Williams?"

MR.WILLIAMS: " That's correct, Your Honor."

THE COURT: " Is there an attorney with him?"

MR.WILLIAMS: " John Hendrix, my law partner is with him."

(ROA P.120, lines 16 - 24)

DIRECT EXAMINATION BY THE COURT

THE COURT: Q." All right. Thank you. Mr.Hendrix, did you remain with Mr.Rodney C. Bryan, your and Mr.William's client, during the testimony of Amy Bryan?"

MR.HENDRIX: A." Yes, sir."

THE COURT: Q. "Did you also remain with him in the media room during the testimony of Daniel Bryan?"

MR.HENDRIX: A. " yes, sir."

THE COURT: Q. " Were you able to -- were y'all able to see those witnesses when they testified?"

MR.HENDRIX: A. " Well, quite frankly, Daniel was so short, I **couldn't see him** for the court reporter's head, and I -- I didn't mean that in any way, but that's true."(ROA P.169, lines 11 - 22)

CONTINUED

MR.HENDRIX: A. " It was difficult to see him because he was so -- so small."

THE COURT: Q. " Were you able to hear Amy clearly?"

MR.HENDRIX: A. " We could hear Amy clearly. **What was difficult to hear was the questions that were asked**, because both attorneys got away from the microphone, and it was much more difficult to hear the questions. **And some of them I could not hear**, but we could hear the responses." (ROA P.170, lines 1 - 8)

THE COURT: Q. " All right. And did you feel like he understood the process, and did he need any more time to confer with y'all?"

MR.HENDRIX: A. " I'm sorry, Mr.Williams announced that. I'm sorry, Your Honor."

THE COURT: Q. " I have my own judgement as to that. But I think he understands it very well." (ROA P.171, lines 1 - 7)

The court failed to implement the required procedure for CCTV under the Murrell guidelines, by placing the defendant in the 'media room', without providing the defense with **two-way communication devices**, and the fact that one of the witnesses **could not be seen and the questions could not be heard** during cross-examination, prohibited the appellant's Sixth Amendment Constitutional Right to effective cross-examination, which can only be had by the direct and personal putting of questions and obtaining immediate answers State v. Murrell, supra State v. Cooper, 291 SC 351, 353 S.E.2d 451 (1987), and Maryland v. Craig, supra.

STATEMENT OF ISSUE #3 ON APPEAL

Did the trial judge err in allowing the states expert witness to be physically present in the court room during the victims testimony, for the purpose of the expert witness to bolster the victims testimony?

ARGUMENT ON ISSUE #3

The court requested all motions for sequestration (ROA P.68, lines 16,17). Mr. Williams, the defense attorney requested that Dr.Ross, the states expert witness be sequestered during the testimony (ROA P.70, lines 4 - 9). Mr. Graham, the Solicitor opposed the defendants motion stating;

MR. GRAHAM: "Your Honor, Dr.Ross is really the only one that I care about. She's going to offer some expert opinions, and I believe it's important for her to hear what Racheal has to say in expressing her opinion in whatever cross-examination Mr.Williams asks her."

THE COURT: " I will exclude Dr.Ross from the sequestration order then, Solicitor." (ROA P. 72, lines 16 - 22)

MR. GRAHAM: " Your Honor, the only thing I was going to say, If -
- If you will let me have Dr.Ross, everybody else can be sequestered." (ROA P.73, lines 16 - 18)

THE COURT: " All right, I'm going to leave it up to y'all to police the sequestration order. I will probably recognize Dr.Ross, I'm sure. But sometime I will be -- of course, she can -- she can come in anyway."
(ROA P.74, lines 1 - 5)

The solicitor clearly stated that he intended for his expert witness to hear the victims (Rachael) statements "**under cross-examination**," for the sole purpose of "**offering her opinion**" as to whether the complaining witness was telling the truth, and because that is the ultimate issue of fact and the inference to be drawn is **not** beyond the ken of the average juror. State v. Douglas, 367 SC 498. Therefore, the trial judge abused his discretion by allowing the expert witness to be present in the court room, knowing all the circumstances. The defense was not required to harass the court with objections after the court already made it's ruling. This issue was extremely prejudicial to the appellant considering the states case consisted of, and was primarily based on testimonial evidence.

STATEMENT OF ISSUE #4 ON APPEAL

Did the trial judge err in allowing State's Exhibit No. 8 to be entered as evidence?

ARGUMENT ON ISSUE #4

DIRECT EXAMINATION BY MR.GRAHAM - RACHEL BRYAN

QUESTION: " Rachel, let me show you what's been marked as State's Exhibit No. 8 for identification, and ask if you recognize this compact disc?"

ANSWER: " No, I don't think so."

(ROA P.264, lines 5 - 8)

MR.GRAHAM: " Your Honor, the state would move State's No. 8 for identification into evidence at this time."

MR.WILLIAMS: "Your Honor, we object, that he has failed to establish a proper foundation on introduction of that item."

(ROA P.265, lines 14 - 18)

The victim testified that she could not identify State's Exhibit No. 8, for identification purposes. The defense properly objected to State's No. 8 coming in as evidence. The court allowed the witness to be present during the entire discussion of the basis of the objection, giving the state the benefit to improperly influence the witness on what to say (ROA P.266, lines 4 - P.271, line 22). The defense objects to the Court stopping the trial to benefit the Solicitor, so he may correct the mistake (ROA P.267, lines 7 - 11). The defense requested the Court to use it's discretion by making a ruling on whether or not State's Exhibit No. 8, comes in as evidence (ROA P.273, lines 13 - 16). The Court abused it's discretion by failing to rule on States No. 8 (ROA P.273, lines 16 - P.275, line 14). The witness misidentifies State's Exhibit No. 7, as being the disc she saw, prior to trial (ROA P. 275, lines 16 - P.276, line 7). The defense objects to the Court failing to interview the witness prior to her testimony and for the state failing to lay a proper foundation (ROA P.276, lines 8 - P.281, line 25). Although the witness had never seen State's No.7 or it's contents, the Court allowed it into evidence (ROA P. 281, lines 23,24). The state corrects it's error and withdraws State's Exhibit

No.7 (ROA P.286, lines 6 - 20). On the states second attempt to reintroduce State's Exhibit No. 8, the defense objects to the in-camera hearing, on the grounds that it would improperly influence the witness (ROA P.286, line 23 - P.293, line 21).The witness is present during the entire discussion of the states second attempt to introduce State's Exhibit No. 8 (ROA P.287, lines 10 - 12). The witness acknowledged that she had been influenced on what to say and the requirements to have the exhibit entered as evidence (ROA P.290, lines 12 - 20)"I mean, y'all were talking about it. I assumed that that's what was going to happen"(lines 19,20). The state attempts a **third** presentation of State's Exhibit No. 8 (ROA P.297, lines 11 - P.298, line 14), after the Solicitor, for a second time corrects State's Exhibit No. 7 (ROA P.297). The trial judge abused his discretion by,failing to exercise his discretion in ruling on the defendants objection and erred to allow the state numerous attempts on getting his evidence in, after the witness clearly stated that she could not identify the exhibit.

STATEMENT OF ISSUE #5 ON APPEAL

Did the Trial Judge abuse his discretion by failing to recuse himself ?

ARGUMENT ON ISSUE #5

DAY THREE OF TRIAL

THE COURT: " All right. Solicitor, Mr.Williams, I didn't bring this up -- I apologize I didn't bring it up earlier, because I know you're both well aware of it. As you know, my daughter is employed with the Lexington County Solicitor's Office. I want to disclose that relationship to the parties on both sides of the Solicitor's Office and Ms.Bryan and Mr.Williams and Mr.Bryan. Solicitor, do you have any objections for me to continue presiding over this trial?"

MR.GRAHAM: " No objections, Your Honor."

THE COURT: " Thank you. Mr.Williams, do you or does your client have any objections to me continuing to preside over this trial?"

MR.WILLIAMS: " No, Your Honor, I don't. And we spent at least 15 minutes discussing that issue alone in the back where he was located. And he has decided he wishes the trial to go foward, and -- and is satisfied with you trying the case, Your Honor."

THE COURT: " All right. Thank you very much, Solicitor, Mr.Williams. All right. Solicitor, are you ready to proceed?"

(ROA P.285, lines 10 - P.286, line 5)

Both attorneys continued to stand before the court discussing the defendants objection on the states attempt to re-introduce States Exhibit No. 8. The Solicitor was asking the court to; allow the victim to change her testimony on misidentifying States No. 8 (ref; ROA P.264, lines 5 - 8), in that the court eventually ruled in favor of the state (ROA P.286, line 6 - P.288, line 23).

MR.WILLIAMS: " You probably noted that my client became somewhat **agitated** during the in-camera hearing. Maybe -- maybe you didn't know he was becoming agitated. He became excited and — something he wanted to tell me, and that's why we took the break. I took him back in the back area, and he now tells me he does not waive his conflict." (ROA P.293, lines 22 - P.294, line 4)

The Trial Judge abused his discretion in failing to disclose his relationship to the Solicitor's Office at the beginning of the trial. And further erred by failing to take a recess after he **concluded** that his impartiality may be reasonably questionable US v. Anderson, 160 F3d 231, so the defendant may consider the **basis** for disqualification outside of the judges presence. Although, Mr.Williams stated that a 'discussion' took place in the back area, that is quite different than the Trial Judge disclosing, on the record, that his daughter worked for the Solicitor's Office and the defendant left to consider whether or not Emily Howard, the female sitting at the Solicitor's table, was or was not the Trial Judge's daughter.

THE COURT REPORTER: " I'm sorry. Does he -- he does not what, Mr.Williams?

You said what? He does not what?"

MR.WILLIAMS: " He does not waive the potential for there being a conflict.

I don't know that there is a conflict, I'm saying he does not.

As further example of that, Your Honor -- and you know, in kind of a different area -- he wrote down on a piece of paper, while sitting here, " I don't know if I made the right decision."

And you know, this has been going on for, like two minutes. I don't know if he, you know, jumped too quick, or if he wasn't firmly convinced in his mind. I can only tell the Court that he actually wrote down -- if the Court needs to see this document, I can show it to them.

THE COURT: " I would ask that you mark it as a Court's Exhibit, and thereafter

THE COURT: (continued) "... I would like to see it."

MARKED COURT'S EXHIBIT NO. 4 NOTE FROM DEFENDANT

MR.WILLIAMS: " There are actually two lines on there. One references the decision he made in reference to waiving the conflict or not waiving the conflict. The other sentence is just a denial in regards to an occurrence."

THE COURT: " All right. All right. Well, Thank you. Thank you, Mr.Williams. All right. Well, I'm going to take it as a attempt to withdraw a -- a plea or any type of waiver. I informed the parties; I gave the parties adequate time to talk with their respective clients. I gave you, I believe, adequate time to talk with Mr.Bryan. The Court cannot be held to a continuing -- or a moving target, so to speak. The Court will not allow itself to have it's neck put under the guillotine to allow a party to pull the plug at any particular time. I'm familiar with the Ethics Opinion. The Ethics Opinion states that if -- **I disclose the matter, and that I would disqualify myself if any party objects.** He did not object at that time, it's not a continuing objection. So I would deny his motion to withdraw from me sitting as the trial judge, respectfully, Mr.Williams, As far as the second line on Court's Exhibit No. 4, where it indicates, "That never occurred", I **assume** that would be subject to your fine cross-examination." (ROA P.294, lines 5 - P.295, line 20)

Court's Exhibit No. 4, actually reads "I don't know if **we** made the right decision", which refers to 'the statements made by the defense attorney to the court, waiving the conflict'. The second line that stated "That never occurred", refers to the defense attorneys statements to the court;

"...and we spent at least 15 minutes discussing that issue alone... and is satisfied with you trying the case, Your Honor" (ROA P.285, - P.286). The record is silent on a remittal procedure **outside** of the trial judges presence, after he opined to disclose nepotism as the basis for his disqualification, on the third day of trial. The court erred to consider the defendants motion as 'untimely', considering the defendant became "agitated" and "excited" trying to get his attorneys attention, immediately after learning the **basis** for a mistrial. A reasonable person knowing all the circumstances, could conclude or would harbor doubts about the trial judges impartiality, to include but not limited to; i) the trial judge removed the defendant from the Court Room, without precedent, ii) the trial judge argued the states position, for the state, on the defenses objections (see ROA), on one incident, the trial judge interrupted the defense attorney on cross-examination, arguing the states position, when in fact the state **had no position** on the trial judges objection (ROA P.357, lines 20 - P.359), iii) the trial judge allowed the Solicitor numerous opportunities to **re-introduce** the same exhibit after the witness failed to identify the same, eventually allowing the witness to **change her testimony**, after being improperly influenced by the Solicitor on; what to say (see ROA and Issue #4 On Appeal), iv) the trial judge allowed the Solicitor to prepare an Expert Witness to bolster the victims testimony (see ROA and Issue #3 On Appeal), vii) the trial judge made unprofessional comments to the defense that had an appearance of bias, to include the tone in the trial judges voice;

In reference to the defenses' objection (ROA P.193, line 5)

THE COURT: " -- you you say that in every case..."

In reference to the defendants understanding of the experimental procedure; to remove defendant from the court room (ROA P.171)

THE COURT: " I have my own judgement as to that. But I think

he understands it very well."

In reference to the trial judges duty to notify the defendant on his rights

THE COURT: " All right. Mr.williams, do - do I need to interview Mr.Bryan with regard to his right to testify or not to testify?" (ROA P.373, line 25 - P.374, line 2)

THE COURT: " All right., with that being said then, and your advising the Court I do not need to interview him, I -- I will not do so..." (ROA P.374, lines 8 - 13)

In reference to Why the trial judge failed to interview the defendant on waiving disqualification;

THE COURT: "... And I would further add one thing as to the issue of my recusal that we visited. I did not interview Mr.Bryan about that issue, and I did not interview him intentionally. And the reason I didn't is because the serious natures -- nature of the charges..." (ROA P.372, lines 22 - P.373)

CONCLUSION

The Appellant request that his conviction be reversed based on the merits listed within the Appellant's Pro Se Brief, to include, but not limited to; the Appellants Sixth and Fourteenth Amendment Constitutional Rights that were violated by; the Court removing Appellant from the Court Room, without precedent and by the trial judges error; in allowing the States Expert Witness to be improperly influenced by the victims testimony, and by the Trial Judges error; in allowing State's Exhibit No. 8 to be entered as evidence, after the witness failed to identify the item, and because the Trial Judge failed to recuse himself after he conclude his impartiality may be reasonably questionable, due to nepotism and by the Trial Judge waiting until the third day of trial to disclose the matter to the Appellant, and by the Trial Judge failing to allow the Appellant a Remittal Procedure, outside of the Trial Judges presence, after he concluded the basis for his disqualification, and the Trial Judge failed to recuse himself after the defendant made a timely motion for his disqualification after the Trial Judge disclosed the basis for disqualification. And a reasonable person knowing all the circumstances would harbor doubts about the Trial Judges impartiality.

THE STATE,

Respondent

V.

RODNEY C. BRYAN,

Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

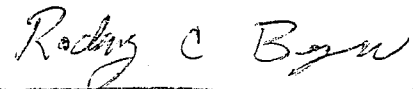
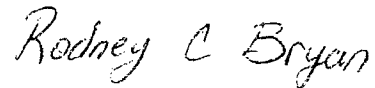
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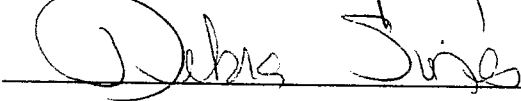
JUL 28 2009

SC Court of Appeals

Personally Prepared Before Me, the undersigned deponent, who being duly sworn says that (s)he served the Pro Se Brief of the Appellant in this action on The State of South Carolina Court of Appeals, by placing the Pro Se Brief of Appellant in the custody of a SCDC employee at the Lee County Correctional Institute Mail Room, to be promptly delivered to The Honorable Clerk of The Court of Appeals at P.O. Box 11629, Columbia SC 29211 that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me

this 24 day of July, 2009


Notary Public for South Carolina

My Commission expires 11-4-2015

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Rodney C. Bryan,

Appellant.

Appeal From Lexington County
Judge R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2010-UP-136
Submitted January 4, 2010 – Filed February 22, 2010

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Office of the Attorney General, all of Columbia;
Solicitor Donald V. Myers, of Lexington, for
Respondent.

PER CURIAM: Rodney C. Bryan appeals his convictions for violation of a court order of protection, criminal domestic violence of a high and aggravated nature, kidnapping, and two counts of spousal sexual battery. After a thorough review of the record, counsel's brief, and Bryan's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss Bryan's appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

Vs.

RODNEY C. BRYAN,

Appellant.

Petition for Rehearing

Now Comes the petitioner/appellant Rodney C. Bryan with the provisions and entitlements under Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E. 2d 357 (1991), to respectfully request this court to reconsider the above-captioned case on a Rehearing under Rule 221(e), SCACR. Appellant would respectfully show unto this Court:

1. The Record on Appeal is inaccurate. The Appellant sent written Notice to this Court and other parties that the transcript omits Constitutional Violations, Challenging the Settlement of the Record.

(1)

true copy

See Date stamped letter January 16, 2009 sent to this Court and Appellants Objection to Hearing submitted to this Court on March 3, 2010 for specific background and errors.

2. The trial Judge threw the appellant out of the Court room without precedent. (See Record on Appeal and Pro se Brief).

3. The trial Judge showed actual bias throughout the trial, (see Record on Appeal and Pro se Brief) and failed to recuse himself after a timely motion was made.

Petitioner request this Court to remand this case to the lower Court for further settlement of the Record.



Rodney C. Bryan, Appellant
 SCDC # 329577 M-141
 Broad River Road Correctional Institute
 4460 Broad River Road
 Columbia SC. 29210

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

RODNEY C. BRYAN,

Appellant.

RETURN TO PRO SE PETITION FOR REHEARING

Respondent, by and through undersigned counsel and making Return to the Petition for Rehearing, would respectfully show unto this Court:

I.

Appellant was convicted of kidnapping, spousal sexual abuse, criminal domestic violence of a high and aggravated nature and violation of a protection order after a jury trial held before the Honorable Knox McMahon on July 14, 2008, in Lexington County. Respective sentences of twenty-five (25) years, ten (10) years, ten (10) years, and thirty (30) days were imposed. Appellant filed and served a notice of appeal and was represented on appeal by Assistant Appellate Defender Robert M. Pachak of the South Carolina Office of Appellate Defense.

On February 11, 2009, Appellate Defender Robert M. Pachak submitted an Initial Anders Brief of Appellant presenting the issue whether the trial court erred in ruling that two minor children of the victim could testify against Appellant without Appellant physically being present in the courtroom. It appears Appellant submitted a *pro se* brief on March 27, 2009. Appellate Defender Robert M. Pachak submitted the Record on Appeal on April 29, 2009, and the Final Brief of Appellant on May 19, 2009. On August 11, 2009, this Court provided Respondent with a copy of Appellant's *pro se* brief dated July 28, 2009.

On May 8, 2009, Appellant moved to have appellate counsel relieved and new counsel appointed because he disagreed with the issue presented in the Anders Brief submitted on his behalf. Respondent opposed the request and Appellant submitted Objections to Return to Motion on June 1, 2009. An exhibit (Exhibit # 2) Appellant attached to the Objections to Return a letter from Appellant to his appellate attorney in which Appellant expressed appreciation for appellate counsel's action in moving to preserve the "tape " from his trial. Another exhibit (Exhibit 4) is a copy of a letter from appellate counsel to Appellant respecting the court reporter's response to the request to preserve the audio files of the trial. The court reporter's response was not attached.

Appellant thereafter served Respondent with a *pro se* motion filed in the Lexington County Court of General Sessions and directed to the Honorable R. Knox McMahon declaring that Appellant was contesting the accuracy of the written transcript and requesting that Judge McMahon release the "primary back-up audio tapes." Appellant attached previous written communications to the court reporter. By Return dated January 19, 2010, Respondent opposed the request on the ground the motion must be submitted by Appellant's attorney and,

alternatively, that if the audio tapes are released, the tapes should only be released to the appellate for review by this Court and appellate counsel for accuracy.

This Court dismissed Appellant's appeal in an unpublished opinion filed February 22, 2010 and after a full review pursuant to Anders v. California, 386 U.S. 738 (1967). This Court also granted the request of Appellant's counsel to be relieved. State v. Bryan, Up. Op. No. 2010-UP-136 (Filed Feb. 22, 2010). Appellant thereafter filed *pro se* documents on March 8, 2010. This Court requested a response from Respondent to Appellant's *pro se* Petition for Rehearing.

II.

Respondent received two *pro se* documents from Appellant on March 8, 2010. One document is entitled "Petition for Rehearing" and the second is entitled "Objection to Hearing." In the Petition for Rehearing, Appellant moves this Court to reconsider the dismissal of his appeal arguing the record before this Court is inaccurate. He states he sent written notice to this Court and "other parties that the transcript omits constitutional violation, challenging the settlement of the record." He refers this Court to the "date stamped letter January 16, 2009 sent to this Court and Appellant's Objection to Hearing submitted to this Court on March 3, 2010 for specific background and errors." Respondent was not provided with a copy of the January 16, 2009 letter when it was initially forwarded to this Court. Appellant also asks this Court to review two trial court errors. The alleged trial court errors are discussed in Sections A and B below. The alleged errors in the written transcript are discussed in Section III herein.

A.

First, Appellant asserts the trial judge improperly removed him from the courtroom. The

record reflects that the two minor children of the victim were witnesses at Appellant's trial. The children were age 7 and 10 at the time of trial. A pretrial hearing on the State's motion to allow the children to testify out of the physical presence of Appellant was heard by the trial court. Dixie Neff was qualified as an expert and testified at the motion hearing that she had been treating the children, that both children were recovering from adjustment disorder, that both children were afraid of Appellant, and that facing Appellant in the courtroom during trial would traumatize the children and cause the adjustment disorder to reoccur. She also testified that facing Appellant in the courtroom could traumatize such that the children would "shut down." (ROA p. 32 - 60; 64). Over Appellant's objection, the trial court granted the State's motion and ruled Appellant would participate during the testimony of the children by being located in the media room where he would be able to personally observe and hear the children but the children would not be able to see him. (ROA pp. 60 - 61). In addition to trial counsel in the courtroom, Appellant would also have other counsel present in the media room at his disposal. (ROA pp. 62 - 67; 120 - 122; 154). This procedure was followed at trial. Appellant and his attorney in the courtroom conferred after each child testified and before each child was left the witness stand. (ROA pp. 152 - 53; 168 - 69). The trial court also questioned the attorney present with Appellant in the media room to ensure that the attorney was present with Appellant during the testimony of the children, that the attorney discussed the testimony with Appellant, and that Appellant understood the procedure employed. (ROA pp. 169 - 170).

The State submits that the trial court's ruling did not constitute an abuse of trial court discretion. State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000). Here, Dixie Neff was offered and qualified as an expert in children's counseling. Neff possessed a Masters and an Education

Specialist degree in school counseling, was nationally board certified in counseling, had been counseling elementary and middle school children for four years, and had attended additional education programs related specifically to children who testify in court. Neff also worked part-time at the Dickerson Center where she counseled abused children. Neff had treated at least 30 child victims of domestic violence. Neff was also treating the two children in question and had reviewed all notes and records of the prior counselor. Neff testified that both children in this case were diagnosed with adjustment disorder. Neff opined that the children should not testify in the presence of Appellant. She explained that Appellant is the stressor that brought about the adjustment disorder and both children would be re-traumatized if they had to testify in Appellant's presence. She stated the children could regress if faced with Appellant in the courtroom. Neff further opined that facing Appellant in the courtroom could cause both children to "shut down" and not be able to testify. (ROA pp. 32 - 60).

The children in question testified in the open courtroom before the judge, jury, attorneys, and other attendees. Appellant was located in the media room of the courtroom where he could see and hear the children as they actually testified. Appellant had counsel present in the courtroom to cross-examine the children and also had counsel present with him in the media room to answer questions and raise concerns. Counsel in the courtroom also conferred with Appellant in the media room after each child testified and before each child was released. The process employed allowed Appellant to see and hear the witness as each witness testified and enabled Appellant to communicate with counsel respecting the testimony.

The trial considered the testimony of an expert and determined the children would be traumatized if required to face Appellant in the courtroom and that a special courtroom procedure

was necessary to protect the welfare of the children. Moreover, the process employed allowed Appellant to see and hear the witness as each witness testified and enabled Appellant to communicate with counsel respecting the testimony. Because there is evidence to support the trial court's ruling and because the courtroom procedure employed allowed Appellant to see and hear the children and communicate with counsel, the ruling must be affirmed. Id. ; State v. Murrell, 302, S.C. 77, 393 S.e.2d 919 (1990).

B.

Second, Appellant asserts the trial Judge showed actual bias throughout the trial and failed to recuse himself after a timely motion was made. The State submits that the issue is not preserved for appellate review.

The records reflects that on the third morning of the trial, the trial judge noted for the record that counsel for the parties were aware that the judge's daughter was employed by the prosecutor's office. The trial judge asked if there were objections with the judge continuing to preside. Appellant's counsel specifically stated that neither he nor appellant had an objection. Appellant's counsel stated he specifically discussed the issue with Appellant and Appellant was satisfied with the trial judge and wanted to go forward with the trial. (ROA pp. 285 - 86).

Because Appellant failed to object, he cannot now present this issue fro appellate review. Parker v. Shecut, 340 S.C. 460, 531 S.E.2d 546 (Ct App 2000) (reversed on other grounds). Nevertheless, a party seeking disqualification of a judge must do more than allege judicial bias as Appellant appears to do. Rather, he must present evidence of bias or prejudice. Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008). Here, Appellant failed to establish how the relationship between the judge's daughter and the prosecutor resulted in the trial judge's bias

and prejudice respecting the rulings or treatment of the parties during trial. "Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." State v. Howard, 384 S.C. 212, 212, 682 S.E. 2d 42, 45 (Ct. App. 2009). Appellant merely engages in retrospective speculation.

III.

In the document entitled "Objection to Hearing," Appellant states that this Court did not have an accurate record of the trial proceedings before it for review and that he put his attorney and this Court on notice that the transcript was inaccurate. He attaches a copy of a letter dated January 2009 from Appellant to the court reporter about alleged errors in the written transcript and indicating that he would ask his attorney to move for preservation of the tapes of the trial. This Court and South Carolina Court Administration were copied with the Appellant's letter but not Respondent. He also attaches a copy of a letter dated January 23, 2009, from his appellate attorney to the court reporter asking the court reporter to retain the tapes of his trial because the Appellant believed there were inaccuracies in the written transcript. Neither this Court nor Respondent were copied with the letter. Respondent received Appellant's claim that the transcript contained inaccuracies when it was served with Appellant's General Sessions' motion to release back-up audio tapes dated December 21, 2009.

Appellant also attached an affidavit to the "Objection to Hearing" in which he identifies alleged errors or omissions in the written transcript and also states the transcript contains other unidentified "subtle alterations" as well. The State responds below.

A.

In the first alleged error, Appellant states the transcript inaccurately indicates he was present during voir dire. He complains that had he been present, he would have asked his attorney to strike a juror.

The trial transcript reflects Appellant's trial attorney affirmatively introduced Appellant to the jury panel and indicated that Appellant was standing. The trial court acknowledged on the record that Appellant stood for the jury panel in a subsequent portion of the transcript. There were no motions made respecting jury selection (Tr. p. 10, 14, 27). The State submits that the transcript is likely correct concerning Appellant's presence and that Appellant is really attempting to challenge his attorney's failure to object to a juror; however, counsel's failure to object is not a matter for direct appeal.

B.

The second transcript error urged is an omission, Appellant claims that the judge introduced his wife "to the court" and speculates that this might be a conflict of interest. Appellant states he was not in the courtroom at the time. However, Appellant fails to state when this occurred and under what circumstances. It is likely to have occurred during a recess if at all and was not a matter for Appellant's transcript.

C.

In the third alleged error, Appellant contends that page 40 of the transcript is incorrect because it does not show the jury was present during the testimony of Dixie Neff. Respondent asserts Appellant's complaint merely reflects Appellant's lack of understanding of the trial procedure rather than inaccuracies in the transcript. Ms. Neff was testifying out of the jury's

presence in a pre-trial hearing for the purpose of a pre-trial ruling from the court respecting the State's motion. The fact that the testimony was presented *in camera* is verified by the index to the transcript. (Tr. p. 2). The jury was not improperly influenced by Neff's testimony because the jury was not present. (Tr. pp. 40; 63 - 67). Again, this issue concerns Appellant's attempt to complain about trial error and not about omissions or errors in the written transcript.

D.

In the fourth error, Appellant complains that "voce discussion" was improperly inserted into the transcript and complains that the trial court failed to question him. He contends "voce discussion" indicates that he had a "say" about whether he would testify. The transcript reflects the trial court asked whether it needed to interview Appellant with regard to his right to testify or not testify. (Tr. p. 374). Thereafter the transcript reflects "(Sotto voce discussion between Mr. Williams and the defendant)" followed by counsel's response that he and Appellant had discussed the matter, Appellant would not testify, and the court need not interview Appellant. (Tr. p. 374). The parenthetical "(Sotto voce discussion between Mr. Williams and the defendant)" reflects only that Appellant and his attorney were conversing privately about the matter outside the hearing of others in the courtroom. The private conversation between Appellant and counsel was not intended for the record. Appellant's complaint about waiving his right to testify pertains to a matter not properly before the court on direct appeal and does not establish an omission or error in the transcript. Rather, it highlights Appellant retrospective dissatisfaction with choices made during trial.

E.

In the fifth error to the transcript offered by Appellant is an alleged omission of the trial court's interruption of Appellant's cross-examination and improper opinion by the court of the witness's testimony. The State submits Appellant is not really complaining about an omission in the written transcript but is attempting to present matters of trial court error clearly set forth in the transcript. The record before this Court reflects the trial court intervened on Appellant's behalf when the victim made an inappropriate characterization of Appellant's attorney during cross-examination by the attorney. The trial court explained that Appellant's attorney was an officer of the court, was an advocate, and had an obligation to ask questions which the victim must answer. The colloquy was in Appellant's favor and provides no basis for complaint.

F.

In the sixth omission offered by Appellant, Appellant asserts the transcript fails to contain a contemporaneous objection to the courtroom procedure requiring him to move to the media room during the testimony of the two children. This matter and the objection are discussed in Section II (A) above.

G.

Appellant also asserts the sentencing portion of his transcript misquotes his statement to the court. He complains about his attorney's actions during sentencing. Respondent has no information respecting the accuracy of this portion of the transcript but submits any inaccuracies are not matters for this Court on direct appeal. No sentencing objections or motions appear in the sentencing portion of the record and Appellant does not state that objections or motions were omitted from the sentencing transcript. Therefore, there is nothing for appellate review. The

accuracy of Appellant's statements to the sentencing court are matters for another forum.

I.

Lastly, Appellant complains there "are many other subtle alterations in the transcript . . . that hide the farce of the trial" The vague nature of Appellant's complaint makes it impossible for the State to respond or this Court to rule and should be disregarded as an being unsubstantiated.

IV.

Appellant also moves this Court to remand the matter of the accuracy of the transcript to the lower court to "settle the record." Respondent submits Appellant is not really complaining about the accuracy of the transcript. Nevertheless, Respondent leaves the matter of the delving into the accuracy of the transcript to this Court's discretion. If this Court is inclined to review the transcript, the State asks this Court to reappoint appellate counsel and order the tapes transported to this Court for review by counsel and the Court as to the specific instances of error or omission alleged by Appellant.

WHEREFORE, having made Return, Respondent respectfully requests that this Court deny Appellant's *pro se* Petition for Rehearing.

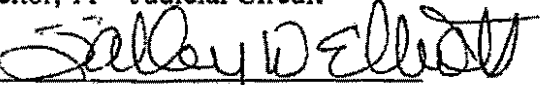
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DONALD V. MYERS
Solicitor, 11th Judicial Circuit

BY: 

Salley W. Elliott
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 5, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

RODNEY C. BRYAN,

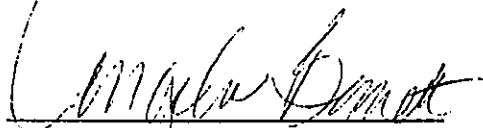
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Petition for Rehearing on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Robert M. Pachak, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589 and Rodney C. Bryan, 329517, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010.

I further certify that all parties required by Rule to be served have been served.

This 5th day of April, 2010.



ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State,

Respondent,

v.

Rodney C. Bryan,

Appellant.

Judge R. Knox McMahon
Lexington County
Trial Court Case No.
2007-GS-32-03033
2007-GS-32-03034
2007-GS-32-03040
2007-GS-32-03042

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

H. B. Williams J. Williams

Daniel G. Pieper J. Pieper

James G. Lockemy J. Lockemy

Columbia, South Carolina
April 23, 2010

cc: Appellate Defender Robert M. Pachak
Rodney C. Bryan #329517
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Donald V. Myers, Esquire

Rodney C Bryan
 SCD # 329517
 D.R.C.I. M-141
 4460 Broad River Rd.
 Columbia, SC 29210

May 21, 2010

RECEIVED

MAY 24 2010

S.C. SUPREME COURT

SC Supreme Court
 P.O. Box 11330
 Columbia, SC 29211

Re: The State v. Bryan
 U.P. OP. NO. 2010-UP-136
 Filed Feb. 22, 2010

Dear Clerk,

Please file my Petition for Writ of Certiorari of the
 above Captioned matter and please request the Record on
 Appeal and all Briefs be sent up to the Court.

Also, please find a copy of a letter to the Court of Appeals
 and the Respondent as proof of service and the Court's
 decision to dismiss Appeal and Rehearing

Thank you,

Rodney Bryan

Also, there is a petition for Mandamus
 in a Civil action to be filed ~~attached~~
 to that is mailed with the above, see attached
 letter

Rochey Bryan
SCDC #324577
B.R.C.F. M-117
4460 Broad River Rd.
Columbia, SC 29210

May 21, 2010

Re: The State v. Bryan

Sally Elliott
Deputy Asst. Atty. General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

MAY 24 2010

S.C. SUPREME COURT

Dear Ms. Elliott,

Please find a copy of my Petition for Writ of Certiorari
to the Supreme Court.

Thank you,

Rochey B. _____