

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTER COUNTY

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRYSTAL NICOLE THOMAS,

APPELLANT

APPELLATE CASE NO. 2012-212561

RECORD ON APPEAL

BENJAMIN JOHN TRIPP
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 CRYSTAL NICOLE THOMAS,)
)
 DEFENDANT.)
 _____)

2011-GS-12-00485

TRANSCRIPT OF RECORD

APRIL 17 - 18, 2012
CHESTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JULIE HALL, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

TWANA BURRIS, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 MS. HALL: Your Honor, the State's ready to proceed to
2 trial with the State of South Carolina versus Crystal N.
3 Thomas. It's true billed indictment number 2011-GS-12-485,
4 which is an indictment for assault and battery in the second
5 degree.

6 THE COURT: Ms. Burris, you represent the Defendant?

7 MS. BURRIS: Yes, sir, I do, Your Honor.

8 THE COURT: And?

9 MS. BURRIS: Okay. Your Honor, I actually have --
10 Defense has a couple of pretrial motions.

11 The first motion that I have is a motion to sequester
12 witnesses. It's my understanding that the State actually
13 has Officer Kyle Cummings of the Chester County Sheriff's
14 Office, also Arthur Wayne Totherow from the York County
15 Detention Center, Officer Donnie Funderburk, Major Wayne
16 Alley and Jessica Kreel.

17 We would just ask, of course, that the primary
18 investigating officer be allowed, of course, to stay in the
19 court. According to the case law, that's my understanding,
20 that the primary investigating officer can stay in the
21 courtroom. We would just ask for the remainder of the
22 officers to be sequestered.

23 MS. HALL: Your Honor, I really don't have any
24 objection to it as long as it's reciprocal. I don't know
25 what the basis for the sequestration order would be. And I

1 would ask that the victim be allowed to remain in the
2 courtroom.

3 THE COURT: That who be allowed? I couldn't ---

4 MS. HALL: The victim, Wayne Totherow.

5 THE COURT: Totherow is the victim.

6 MS. HALL: Kyle Cummings was the chief investigating
7 officer.

8 THE COURT: Your jury's going to have a hard time
9 hearing you.

10 MS. HALL: Wish it were different.

11 THE COURT: Who is your investigating officer?

12 MS. HALL: Kyle Cummings.

13 THE COURT: Cummings. All right. He can stay in.
14 Totherow gets to stay in. The other three, though, if
15 you're going to have them on -- well, which room you going
16 to put them in because I want them all in the same place so
17 when we need them we don't have to go find them.

18 MS. HALL: They're going to be in that little office,
19 five steps out to the right.

20 THE COURT: Okay. We'll get a bailiff -- when you need
21 them, you just tell the bailiff would you get so and so.

22 MS. HALL: And the State just asks that the
23 sequestration order be reciprocal.

24 THE COURT: All right.

25 MS. BURRIS: We do not have a problem with that.

1 THE COURT: All right. That's done. Next motion.

2 MS. BURRIS: Okay. Next motion, Your Honor, is it's my
3 understanding that the State intends to introduce a prior
4 conviction. There were some prior convictions in 2007,
5 resisting arrest as well as another prior conviction of
6 failure to stop for a blue light. And I believe there may
7 have -- and there is an actual 2008 resisting arrest.

8 My understanding, they do actually intend to introduce
9 -- to introduce the prior convictions should Ms. Crystal
10 Thomas, Defendant in this case, actually takes the stand.
11 Your Honor, and, you know, of course, the case law requires
12 a balancing test to determine whether or not these
13 particular charges are more prejudicial -- prejudicial than
14 probative.

15 Of course, it is our position that these charges are
16 prejudicial simply because the resisting arrest, of course,
17 implies, of course, an element that there's a disobeying of
18 law enforcement for failure to stop for a blue light, also
19 has an indication that there's a disobeying of law
20 enforcement. And in this particular case the victim of
21 assault and battery, second degree, the victim so happens to
22 be a law enforcement officer.

23 I do not see where the introduction of -- specifically
24 the resisting arrest as well as a failure to stop for a blue
25 light would be more prejudice than probative.

1 Of course, the case law also indicates that given the
2 similarity of the offenses is one of the things that we must
3 look at, the similarity of resisting arrest, failure to stop
4 for a blue light and assault and battery, second offense,
5 whereas the victim is actually a law enforcement officer.
6 It is our position that these offenses are in and of
7 themselves so similar that they are highly prejudicial to
8 the Defendant.

9 **THE COURT:** Solicitor.

10 **MS. HALL:** Somehow the wireless connection knocked me
11 off.

12 The State would submit that, I mean, they are prior
13 convictions. They carry the requisite amount of time in
14 order for me to be able to use them to impeach her if she,
15 you know, whether it's -- I'm not using it under Lyle to
16 show a common scheme or plan or anything like that.

17 I'm just showing that what she says in relation or
18 whatever it is that she may or may not say on the stand in
19 relation to this crime, that these things would show that
20 she is fairly unreliable. And they're just used to impeach
21 her on her credibility. And that's what I'm showing --
22 using them to show.

23 **MS. BURRIS:** Your Honor, rule 609 simply says that if
24 it's a prior conviction and it's a witness testifying,
25 whether that witness is accused or not, they give us the

1 right to introduce prior convictions involving dishonesty or
2 false statement because they're admitted for the purpose of
3 impeachment value.

4 However, this particular charge, assault and battery,
5 being that it's the second degree assault and battery in and
6 of itself does not actually have any impeachment value. The
7 case law specifically have talked about narcotic law,
8 firearms. And they simply say that these charges generally
9 are not probative of any truthfulness for the purposes of
10 the rule.

11 Your Honor, specifically there's a second set -- a
12 second session of rule 609 that specifically says if the
13 prior conviction involve dishonesty or false statement, then
14 certainly it can be admitted. But it is our position and
15 remains our position that assault and battery certainly does
16 not have any type of element that is probative of
17 truthfulness at all.

18 And I think what's happened is the State is intending
19 to show it as character evidence, that she acted in
20 conformity therewith. And absolutely the rule does not
21 allow that for the State to be able to use that as character
22 evidence. And essentially that's what the State is trying
23 to do is use it as character evidence.

24 THE COURT: Well, what about this -- what about under
25 State versus Elmore, the court grants the State the right to

1 merely mention the fact that the defendant has three prior
2 convictions as opposed to describing the convictions?

3 MS. BURRIS: Yes, Your Honor. I do believe that the
4 court by the case law that has actually been presented under
5 State versus Elmore can limit as to what the State can ask
6 in regards to the prior convictions. So the State would
7 simply ask the witness a question as to whether or not you
8 have three prior convictions. Absolutely. That is --
9 according to the case law, that is acceptable.

10 MS. HALL: That's fine with me.

11 THE COURT: All right. Now how are you going to term
12 it?

13 MS. HALL: Basically that this isn't her, I mean, she's
14 obviously incarcerated when this incident occurs because
15 she's -- it's a detention officer she bites, which ---

16 THE COURT: You still refer to them as three prior ...

17 MS. HALL: And I basically probably would ask her, this
18 isn't your first run-in, you know, with the, you know, with
19 the law. I mean, in fact, you have three prior convictions.

20 THE COURT: For? Of?

21 MS. HALL: In fact, you have three prior convictions,
22 don't you? I can't say for what. I would just have to say
23 don't you?

24 THE COURT: Three prior ---

25 MS. HALL: And then if she says no ---

1 THE COURT: Three prior criminal convictions. And if
2 she denies, then you ---

3 MS. HALL: Then I could go into it.

4 THE COURT: Right.

5 MS. BURRIS: Your Honor, I think convictions implies
6 criminal. So if we could limit it to convictions -- because
7 convictions implies criminal. And I think adding just a --
8 the additional element of criminal is prejudicial.

9 MS. HALL: She could also have moral convictions, I
10 guess.

11 MS. BURRIS: Well, you're not charged for those.

12 THE COURT: All right. Convictions. What other -- any
13 other motions?

14 MS. BURRIS: Yes, sir, Your Honor.

15 It's my understanding that the State does intend to
16 mention -- there is an allegation that the Defendant,
17 Crystal Thomas, told the officer that she had AIDS. And
18 it's my understanding that the State intends to mention that
19 information to the jury in regards to the Defendant
20 indicating that she had AIDS.

21 There are some cases on point also in regards to this.
22 It is our position that HIV or AIDS, of course, is not
23 essential to the State's case. If the Defendant had
24 actually been charged with ABHAN where HIV or AIDS would
25 have been relevant to the elements of a deadly weapon or

1 intending to cause harm by the use of a deadly weapon, then,
2 of course, it would have been relevant.

3 But given that HIV or AIDS, of course, we know that
4 there is an irrational fear or phobia when anybody, anyone
5 in the public actually hears that word HIV or AIDS, it is
6 our position that it is certainly not an essential element
7 of the crime. She's simply charged with assault and
8 battery.

9 And specifically under the element of -- she's
10 specifically charged with the element of -- a person who
11 commits the offense of assault and battery in the second
12 degree if a person unlawfully injures another person or
13 offers or attempts to injure another person having the
14 present ability to do so and moderate bodily injury to
15 another person results or moderate bodily injury to another
16 person could have resulted.

17 But given the fact that this particular person was
18 tested for HIV and she didn't actually have HIV, I think
19 it's not a relevant issue. It's not relevant to the
20 elements of what the State intends to prove for the assault
21 and battery, second.

22 Again, I think that it's highly prejudicial. And I
23 just think that it would create an irrational fear or phobia
24 with the jury in even mentioning anything in regards to
25 Crystal Thomas having AIDS.

1 THE COURT: Ms. Hall.

2 MS. HALL: Your Honor, I think it was part and parcel
3 of the assault. The assault had ended by the time they
4 found out that she had -- if it makes Ms. Burris or Ms.
5 Thomas feel even better, I also intend to have the officer
6 talk about the fact that she was tested later and she did
7 test negative. So that would take away any fear or worry on
8 the part of the jury that the witness actually does have
9 AIDS.

10 THE COURT: Tell me again, what is ---

11 MS. HALL: What she did ---

12 THE COURT: I don't know anything about the case.

13 MS. HALL: The allegations are that she bit a detention
14 officer while he was trying to restrain her.

15 THE COURT: Okay.

16 MS. HALL: And then after she bit him she said, I have
17 AIDS or that I'm HIV positive, which is part of the, you
18 know, is all part and parcel of the assault.

19 And so -- but then as a part of what they do at the
20 jail, which is just procedure, and Major Alley is here, he's
21 the, you know, the Major at the jail. And he will testify
22 that, yeah, part of our procedure is when that kind of
23 allegation or when somebody bites somebody and blood is
24 drawn, we take them to -- the Defendant to the hospital and
25 have tests run, one being for HIV and hepatitis, and that

1 she was taken to the hospital, tested for those things and
2 she tested negative.

3 So that would take care of any fear or prejudice on the
4 part of the jury thinking that the girl has AIDS. That's
5 not part of it, but when you bite somebody and say I have
6 AIDS, that's part of the assault and the battery at the same
7 time. And that's the State's position.

8 THE COURT: Yeah, I'm inclined to agree. I'll give you
9 another shot at it, but ...

10 MS. BURRIS: Yes, sir. But I think that it would be a
11 relevant issue if -- because, of course, an assault and
12 battery is coupled with the element, having the present
13 ability to do so. Had she actually threatened to bite the
14 officer and having bit him and actually caused this deadly
15 virus, then according to the assault and battery statute it
16 simply says that you threaten someone to cause basically
17 harm to them and with the present ability to do so.

18 And she didn't have the present ability to do so if she
19 didn't actually have HIV ---

20 THE COURT: Or -- but she caused him to believe that --
21 placed him in fear of it. At any rate, that's going to be
22 the ruling of the Court on that issue.

23 MS. BURRIS: Thank you, Your Honor.

24 THE COURT: Any other motion?

25 MS. BURRIS: I do, Your Honor.

1 We do have some medical reports to be introduced. It's
2 essential to the defense of this case. We have medical
3 reports...

4 One specifically was that Crystal Thomas went to the
5 doctor as soon as she was actually released. And I say as
6 soon as, but it was a day after she was actually released
7 from the Chester County Detention Center, and she was
8 diagnosed. But she had actually been previously diagnosed.
9 We also have those medical records. She was previously
10 diagnosed in 2008.

11 Then she was diagnosed in 2011 as having anxiety
12 attacks, intermittent -- it says panic attacks, which were
13 induced by stressors. And it is our intent to actually
14 introduce those medical records into evidence.

15 We actually do have the medical records custodian
16 coming. We also have the doctor under subpoena, but not
17 sure exactly -- we'll have the doctor coming here.

18 If the medical records custodian would be able to
19 testify in order to get the medical records -- my
20 understanding according to the rules, the medical records
21 custodian can, however, that medical records custodian
22 cannot, of course, testify as to any subjective opinion,
23 understanding that.

24 But one of the reasons why we actually subpoenaed the
25 doctor in the event that the jury needs to understand our

1 defense, which it is our defense that -- because on the tape
2 -- the tape can actually be perceived many different ways.
3 You know, some people may look at the tape and say, oh, she
4 was acting out. And someone else may look at the tape and
5 say she was having an anxiety attack. So that's exactly why
6 it is very important and essential to the defense of our
7 case in regards to the anxiety and panic attacks.

8 And it's actually a four hour long tape. It's my
9 understanding we are not going to play that for the jury,
10 Your Honor. We, of course, will admit it into evidence. If
11 the jury wants to look at that on their own time, of course,
12 when they're during deliberations, that's fine.

13 But it was a situation in which she was actually
14 shaking for a period of like three hours. And so, again, it
15 is our defense that she was having an anxiety attack and she
16 had been diagnosed twice and is also on medication for that.

17 **THE COURT:** Solicitor.

18 **MS. HALL:** Okay. Two things. First of all, I just got
19 this today, these medical records. And it's the first I
20 knew, I mean, she told me about it last night. And she
21 didn't want to fax them or email them to me. But this is
22 the first I've known of this.

23 They're made or dictated by a man named Jacques Days,
24 who's the doctor. I have absolutely no idea what his
25 credentials are. I believe -- I'm waiting for Ms. Burris to

1 establish some sort of relevance because I don't -- she went
2 to the doctor apparently three days after this event
3 occurred apparently still having some sort of anxiety
4 problems.

5 The prescription's for Zoloft and Xanax. Yes, okay,
6 those are anxiety medications, but whether this doctor can
7 actually come and say these events relate back to what
8 occurred three days before, I can't -- I'm trying to tie it
9 together mentally, and I'm having a hard time doing it.

10 So I'm waiting, I guess, for Ms. Burris to do it for
11 me. But at this point in time I can't even stipulate to the
12 fact that they would be admissible because they don't seem
13 relevant to me.

14 MS. BURRIS: They are relevant to our actual defense,
15 Your Honor. Again, there is a tape in which this particular
16 Defendant was convulsing and trembling for a period of like
17 three hours.

18 Every person in here, if we were to look at that tape,
19 we would perceive what she was doing differently. It is our
20 position, it remains our position that she was having a
21 panic attack/anxiety attack based on ---

22 THE COURT: Well, is the doctor going to say that?

23 MS. BURRIS: He's actually going to -- there was a
24 previous medical diagnosis prior to 2011. And then as soon
25 as she actually got out of the Chester County Detention

1 Center she went back to the doctor. He's going to talk
2 about her previous diagnosis based on seeing her shortly
3 after getting out of Chester County Detention Center. So
4 the answer is yes.

5 He's not going to say it relates back. He's going to
6 talk about the stressors as what actually causes anxiety
7 attacks or panic disorders.

8 THE COURT: Well, who's going to say that she had a
9 panic attack?

10 MS. BURRIS: Now that would be, of course, up to the
11 judges of the facts to draw that conclusion. I would simply
12 just have the judge, I mean, I'm sorry, the doctor to
13 actually read the medical reports as to her previous
14 diagnosis because even on the 2011 medical report -- because
15 as soon as she's released from the Detention Center she
16 actually goes to the doctor. He also talks about her
17 previous diagnosis and also, of course, what he's diagnosing
18 her with that day and the medications that she was taking.

19 THE COURT: I guess we're going to have to have a
20 hearing and hear from the doctor as to whether or not we're
21 going to admit his testimony. We've got to have an in
22 camera it sounds like to me on the doctor.

23 MS. BURRIS: Yes, sir.

24 MS. HALL: I mean, I don't know. Is the doctor a
25 psychiatrist, a psychologist or just a general practitioner?

1 MS. BURRIS: General practitioner according to the
2 records.

3 MS. HALL: Okay. And just one more question. Going
4 back to the previous diagnosis, is he also the physician who
5 diagnosed her previously?

6 MS. BURRIS: There is a different -- Chester County
7 Regional Hospital, there is a McFarland who actually
8 diagnosed her with a panic disorder back in 2008.

9 MS. HALL: And I would just submit to the Court before
10 we go through an in camera hearing with the doctor, who
11 didn't even diagnose her on the panic disorder, then I think
12 in order to establish relevance that it would have to be the
13 doctor who diagnosed her with the panic disorder and not Dr.
14 Days.

15 THE COURT: How is this doctor going to testify about
16 those records being relevant to anything?

17 MS. BURRIS: Dr. Days, in fact, is going to testify as
18 to the previous diagnosis ---

19 THE COURT: How is it being relevant to -- what?

20 MS. BURRIS: Relevant to her behavior on the tape. The
21 doctor hasn't actually seen the tape. He's actually just
22 going to testify to the medical records and the anxiety and
23 the stress inducers. That's what the doctor is actually
24 going to testify.

25 Again, there's a tape, she's trembling for a period of

1 three hours. And I know that it's actually relevant to the
2 essential defense of was she actually acting out, or was her
3 behavior abnormal or was she actually having a panic attack?
4 And he would actually testify from the medical record.

5 Now we do actually have Chester Regional Medical
6 Center, the custodian actually under subpoena. However, you
7 know, I don't know if we'll actually need that -- the 2008
8 records if in 2011 Dr. Days at North Central Family Medicine
9 actually took in consideration the previous diagnosis, he
10 also diagnosed her and he also gave her medication. And I
11 think that would suffice in order to get in the medical
12 records that we need.

13 **THE COURT:** Well, we'll have to see what he says with
14 our in camera, I guess. I mean, is he going to say -- he's
15 not going to say in his professional opinion she was having
16 a panic attack that day?

17 **MS. BURRIS:** He's going to say in his professional
18 opinion a person who has anxiety attacks, this is their
19 behavior, this is how they act when they're having a panic
20 attack, this is what causes panic attacks, these are the
21 symptoms, these are the stress inducers. That's what he's
22 going to testify to.

23 **THE COURT:** But he's not going to testify in his
24 professional opinion she was having one?

25 **MS. BURRIS:** He will.

1 THE COURT: He is?

2 MS. BURRIS: You mean as far as the tape?

3 THE COURT: On the event in question, the day in
4 question.

5 MS. BURRIS: If he was to actually -- given his
6 diagnosis and his medical expertise, if he was to actually
7 see the tape, then I'm sure he could testify as to -- in his
8 medical professional opinion she was having a panic attack.

9 MS. HALL: If -- I just have -- okay. But are we going
10 to have -- but is he -- is the Court going to allow Dr. Days
11 to testify about another -- another doctor's diagnosis?

12 THE COURT: Well, not unless -- not unless he reviewed
13 those records and that's part of his professional opinion.

14 MS. HALL: Okay. And is Ms. Burris going to provide me
15 with those -- the medical records --- . . .

16 MS. BURRIS: I've given you everything I have, Julie.
17 You have them.

18 MS. HALL: All I have is from the one doctor, from the
19 one that doesn't go back to the ---

20 MS. BURRIS: She has both of them. They're just
21 actually not long at all. But I've given you a copy of what
22 I have.

23 THE COURT: All right. It sounds like to me -- let me
24 interrupt y'all just one second because it sounds like to me
25 we're going to skip over this issue for the time being

1 because it won't come up until ---

2 MS. HALL: The defense.

3 THE COURT: --- tomorrow, right?

4 MS. BURRIS: That's correct, Your Honor.

5 THE COURT: All right. So that'll give you an
6 opportunity to look at those records. Maybe I need to look
7 at the records. If the doctor needs to look at the tape, I
8 want him to look at it today, not while the jury's sitting
9 back there in the jury room.

10 MS. BURRIS: Yes, sir.

11 THE COURT: Any other motions?

12 MS. BURRIS: Your Honor, this is a motion to exclude
13 the use of the term victim. It is our position that the use
14 of the term victim are prejudicial terms when speaking to
15 the jury. Of course, as we know that our Constitution
16 provides a defendant is presumed innocent.

17 And it is our position that when a judge or prosecutor
18 refers to an accuser as a victim, this legitimizes the
19 accuser's claim and places the Defendant in a position where
20 she must rebut the term itself in order to maintain her
21 cloak of innocence given that she's presumed to be innocent.

22 THE COURT: Solicitor.

23 MS. HALL: That's fine. I won't use it. And we won't
24 use the word defendant either.

25 THE COURT: All right. Anything else? I've got a jury

1 standing in the sun.

2 MS. BURRIS: Your Honor, I think that's it.

3 THE COURT: All right.

4 MS. BURRIS: Thank you.

5 THE COURT: One alternate juror? Okay. We'll be in
6 recess for twenty minutes or twenty-five minutes until the
7 jury gets here.

8 (Whereupon court was in recess at 10:41 am)

9 (Whereupon court resumed at 11:05 am)

10 THE COURT: And, Solicitor, do you have a case to call?

11 MS. HALL: Yes, sir. The case -- the State calls South
12 Carolina -- the State of South Carolina versus Crystal N.
13 Thomas, docket number 2011-GS-12-485, which is a true billed
14 indictment for assault and battery in the second degree.
15 And the State is ready to proceed in this case.

16 THE COURT: And, Ms. Burris, are you ready to proceed?

17 MS. BURRIS: Yes, sir, we are, Your Honor.

18 THE COURT: Do we have an indictment in this case?

19 Ladies and gentlemen, as you heard, we are about to begin
20 the case of the State versus Crystal N. Thomas, who is
21 charged with assault and battery, second degree.

22 I'm going to mention to you a few things about the
23 indictment in this case. The indictment alleges that these
24 following events have occurred. It'll be up to the jury to
25 decide whether these events did, in fact, occur.

1 consider concerning the selection or composition of the
2 jury, from the State?

3 MS. HALL: Not from the State.

4 THE COURT: From the Defense?

5 MS. BURRIS: No, sir, Your Honor.

6 THE COURT: Mr. Taylor, let me ask you a quick
7 question.

8 (Pause)

9 THE COURT: Ladies and gentlemen, for today and for
10 tomorrow your services will no longer be needed, but you're
11 still on jury duty. I'm getting ready to let you go from
12 here. And the rest of the day is yours to do as you please.

13 The same thing tomorrow until 6:00 when you need to
14 call that same number to receive instructions about what to
15 do next. And the instructions could be come in the
16 following day or it could be thank you so much for your
17 service, you're no longer needed.

18 In case I don't see you again, I want to thank you for
19 coming in. Does anybody have a question about what to do?
20 Six pm tomorrow the message will be on there -- it may be on
21 it at 4:00, but we say six. But the message could be on
22 earlier. Any questions?

23 (No response)

24 THE COURT: Ladies and gentlemen, you're excused.

25 (Whereupon the remaining jurors exited the courtroom)

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1 outside the courtroom. You can't even talk about the case
2 even in the jury room, not until the case is completely
3 over, not until it's all said and done.

4 From time to time, ladies and gentlemen, you may --
5 most likely you will see the attorneys ask to see me at a
6 sidebar or I ask them to step forward, maybe even ask you to
7 step out of the room, the courtroom while we talk about
8 things. Most of the time -- the purpose is not really to be
9 keeping secrets from you where we -- while we come over here
10 and whisper. Most of the time it's because I'm required to
11 discuss with the attorneys a matter of law.

12 And in doing that it may require me to discuss with
13 them the facts of the case. And as I've already told you, I
14 am prohibited from discussing the facts of the case in your
15 presence. So having said all that, we'll begin with opening
16 statements. Solicitor.

17 MS. HALL: Ladies and gentlemen, I'm going to be brief
18 for many different reasons. And this trial is going to be
19 brief. But that in no way reflects on the importance of it
20 to the State or to the Defense.

21 As the Judge told you when he first spoke to you about
22 the trial and the evidence, you will take the law as he
23 gives it to you and apply it to the evidence that you'll
24 hear and the facts as you determine them to be. But I think
25 it always helps on the front end to just at least have a

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1 brief overview of the law.

2 And what Ms. Thomas is charged with in this case is
3 assault and battery in the second degree. And so the
4 Legislature has defined assault and battery in the second
5 degree as happening when a person injures another person, or
6 offers to injure another person or attempts to injure
7 another person with the present ability to do so.

8 And the facts will show in this case that Ms. Thomas
9 did, indeed, injure Officer Totherow while he was working at
10 the Chester County Detention Center by biting his arm. And
11 I'll submit to you that's an assault and battery. The
12 battery occurs when the biting occurs. And there's the
13 assault when she offers it with the present apparent ability
14 to carry it out, which she did carry it out.

15 You're also going to hear testimony that she made
16 statements after she -- or as -- as or after she was biting
17 him that she has HIV. And I will tell you now that later on
18 she was tested and then the evidence is going to show that
19 she was found to be negative. But the situation is as it's
20 going on and as she's biting him and saying this thing,
21 that's when the assault and battery is occurring. Whatever
22 happens after it is no longer relevant to the charges.

23 Another element of the crime is that moderate bodily
24 injury to another person, in this case, Officer Totherow,
25 occurs. So you just ask yourself, well, what is moderate

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1 bodily injury? Well, you don't have to go too far with that
2 because the Legislature defines it for you..

3 And it says that a physical injury to an organ system
4 of the body other than skin, except when the skin is broken.
5 It goes on to say when there's penetration of the skin it
6 does constitute moderate bodily injury. So you've got the
7 assault, the battery and the moderate bodily injury all
8 there. And I would submit to you that that's what the law
9 states. And so that is what the testimony is going to show,
10 that those elements existed.

11 You're going to hear in terms of facts, and testimony
12 and evidence -- you're going to hear from the witness stand
13 from several different police officers and detention
14 officers who were working on the day that this occurred.
15 You're going to hear from Officer Totherow, as I stated. He
16 was the person who was bitten.

17 You're going to hear from Major Wayne Alley, who was
18 the -- he's the -- he was the commanding officer who was on
19 the night that this occurred. And we also have other
20 information to give to you regarding procedures on the
21 things that go on at the Detention Center when this incident
22 happened.

23 You're also going to hear from him regarding the video
24 that was taken and the conditions as they existed out at the
25 Detention Center, which many of you may or may not know has

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1 been under renovation. You'll also hear from Jessica Kreel,
2 who was the keeper of the medical records at the Chester
3 Regional Medical Center where Officer Totherow went after he
4 was bitten.

5 And you'll hear from two other officers, Kyle Cummings,
6 who was the responding officer they called. He was -- he's
7 with the Sheriff's Department. He was called when this
8 happened. And he made the report to the investigation. And
9 then Donnie Funderburk, who was another detention officer
10 who was present during the course of this.

11 So I'll just ask that you pay very close attention, as
12 I know you will, to the facts because you are the sole
13 triers of the fact. So it's very important that you hear
14 all of it so you can make a determination, apply it to the
15 law at the end of the trial.

16 I would submit to you once you do all of this that you
17 will have no choice but to find Ms. Thomas guilty beyond a
18 reasonable doubt of assault and battery in the second
19 degree. Thank you.

20 **THE COURT:** Thank you, Ms. Hall. Ms. Burris.

21 **MS. BURRIS:** Thank you, Your Honor. May it please the
22 Court, members of the jury, Your Honor, Assistant Solicitor.

23 There are all times in our life when we're not
24 necessarily ourselves. Sometimes physically our body
25 declines, we have chemical imbalances. We respond in

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1 different ways depending on how our body feels or what may
2 be going on with us.

3 If you place a person in a confined area, how do you
4 respond? We certainly have, as humans, certain stressors in
5 life that will trigger us or that will cause us to sometimes
6 act out or a mental condition to trigger.

7 We're here today because on June 24th of 2011 Crystal
8 Thomas had an anxiety attack. She had a panic attack.
9 You're going to hear testimony, admittedly, Crystal Thomas
10 was stopped for a driving offense. She was taken into
11 custody, went through the Chester County Sheriff's
12 Department, ended up in the Chester County Detention Office.

13 When she was taken into custody there were stressors
14 that triggered. You're going to have the opportunity to see
15 the video tape when Crystal Thomas was actually placed in a
16 restraint chair by the Chester County Detention Office.

17 Each one of you are judges of the facts. You're going
18 to have opportunity to see Crystal Thomas walk into the
19 Chester County Detention Center. You'll have opportunity to
20 observe her behavior on the video tape. As we know, tapes
21 don't lie.

22 She walked into the Detention Center and shortly
23 thereafter she begins to convulse. She begins trembling.
24 She begins shaking uncontrollably. Officers -- Officer
25 Totherow, there were other officers there. They were in a

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1 detention center, of course, as you know, with a concrete
2 wall, the officers with their uniforms on, with their badges
3 on and they're attempting to calm her down given the
4 stressors had induced this medical condition.

5 As they're trying to strap Crystal Thomas into the
6 chair, she's still shaking uncontrollably. You'll see her
7 head, back and forth, back and forth. Ladies and gentlemen
8 of the jury, this went on for about three hours, three to
9 four hours. She was shaking uncontrollably. It was a very
10 uncomfortable position for her to be in.

11 The officer did put her in the chair. And at one point
12 he did dry stun her, tasered her. He also took it upon
13 himself to place ammonia pack under her nose. Crystal
14 Thomas still continued to tremble, to shake, hyperventilate,
15 convulse for a total of three to four hours.

16 Now today Crystal Thomas is in court sitting in this
17 chair because there was an abrasive bite that occurred.
18 You'll have the opportunity to see the tape. You'll see
19 where she was strapped around her neck area, body was
20 strapped down. And she's being charged today with assault
21 and battery of the Officer, Totherow.

22 Now, as we go through this case I respectfully ask that
23 you'll think about this, did this officer respond the
24 appropriate way given the situation? I ask that you think
25 about this, what was going on with Crystal when she was

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1 convulsing for three to four hours?

2 If in your minds it arise that Crystal Thomas was just
3 being hostile, and belligerent, and difficult for the
4 officers, would this have occurred for three to four hours
5 long? Or was she placed in a confined position that she
6 couldn't control?

7 Now, understandably, Ms. Hall explained to you the
8 elements of the case. In any criminal case there are
9 elements of a case, but I want to go back a little further.

10 In any criminal case you have two parts. The
11 foundation of any criminal case we have what we call a *mens*
12 *rea* and an *actus reus*. The *mens rea* is the criminal intent
13 in an action occurring. That's the very foundation of a
14 criminal charge. A person must have the criminal mind-set,
15 in this case, to cause injury or harm, and then you have the
16 physical act in which this person did.

17 Think about that as we go throughout this case. Was or
18 did Crystal Thomas form a criminal intent and cause harm to
19 Officer Totherow or was she in a very stressful situation
20 where she had a panic attack? Ask yourself that.

21 Members of the jury, I submit to you, as I stated
22 previously, you'll have the opportunity to look at the tape.
23 You cannot take a theory or a charge and speculate as to
24 what happened. We must know all of the facts.

25 What I say are not facts. What the Assistant Solicitor

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1 say, not facts. But what you will hear is evidence and
2 testimony as to what happened on June 24th, 2011. You will
3 see the tape as to Crystal Thomas uncontrollably shaking and
4 the breathing problems. You'll have the opportunity to see
5 that.

6 Now you are simply judges of the facts. Imagine each
7 one of you with a black robe on. You are judges of the
8 facts. We were very selective. And I say we, myself and
9 Crystal Thomas, were very selective in choosing each one of
10 you because you have taken an oath to well and truly try
11 this case. We ask that you assess the facts of this case.
12 It's your job to weigh the credibility of the witnesses in
13 this case and to assess this case.

14 The State has a burden of proof. And that burden of
15 proof is not like in a civil case where you have more likely
16 than not. They carry a very heavy burden, to prove to each
17 one of you beyond a reasonable doubt that Crystal Thomas had
18 a criminal intent to injure Officer Totherow. And they must
19 prove to you beyond a reasonable doubt that she did.

20 I'm very confident that you will take your job as
21 judges of the facts -- you will take it very seriously and
22 that you will well and truly try this case. And we are
23 confident that you will find Crystal Thomas is not guilty of
24 developing the criminal mind-set to cause harm or injury to
25 Officer Totherow. Thank you so much for your time and thank

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1 you for listening.

2 THE COURT: Thank you, Ms. Burris. Ladies and
3 gentlemen, we are now going to go to lunch. We have some
4 other matters that we are required to take up today. As
5 much as I hate it, we're not going to be able to bring you
6 back until 3:00. In other words, you're going to get a two
7 hour lunch break or thereabouts. 3:00, I'm going to ask you
8 to be back in the jury room. Hopefully we'll be ready for
9 you by then. Hopefully by then we'll begin putting
10 witnesses on the witness stand.

11 During your lunch break, don't let anybody talk to you
12 about the case. You don't talk to anybody about the case
13 even if someone may innocently be sitting next to you at a
14 table or standing next to you somewhere talking about the
15 case, and I don't, you know, of course, I don't think they
16 will be, but it's possible, distance yourself from them or
17 ask them -- tell them you're on the jury and ask them to
18 distance themselves from you. Any problems, any questions?
19 3:00 going to be okay?

20 THE JURY: (Affirmative nods).

21 THE COURT: Ladies and gentlemen, see you back at 3:00.

22 (Whereupon the jury exited the courtroom at 12:53 pm)

23 THE COURT: All right. Let's see if we can try to get
24 the doctor here, perhaps even a little bit before 2:30.
25 We've got a 2:00 hearing. We're going to come back a little

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1 bit earlier than that. Hopefully we can make it move
2 quicker.

3 I hate to have that jury sitting here til 4:00 without
4 us doing anything. Anything else we need to take up,
5 consider?

6 MS. HALL: Nothing from the State.

7 MS. BURRIS: No, sir, Your Honor.

8 THE COURT: All right. We'll be in recess.

9 (Whereupon court was in recess at 12:54 pm)

10 (Whereupon Defendant's exhibits 1 - 3 were marked for
11 identification)

12 (Whereupon court resumed at 2:33 pm)

13 THE COURT: Ms. Burris, you want to put your witness on
14 the stand?

15 MS. BURRIS: Yes, sir, Your Honor. Defense calls Dr.
16 Days to the stand.

17 THE COURT: If you'll just, please, come right over
18 here, sir. Stand, raise your right hand.

19 Jacques Days, M.D., being
20 duly sworn testified as follows:

21 THE COURT: Please be seated.

22 MS. BURRIS: Thank you, Your Honor.

23 Direct Examination by Ms. Burris:

24 Q. Dr. Days, would you, please, state your full name for
25 the record.

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1 A. Jacques R. Days.

2 Q. Okay. And can you tell us a little bit about your
3 education?

4 A. I trained at Morris Brown College as an undergraduate
5 student in biology pre-medicine. I then attended the
6 Medical College of Georgia to obtain my medical doctorate
7 degree. The residency training in family practice at In His
8 Image at Hillcrest Medical Center in Tulsa, Oklahoma.

9 Q. Okay. And as a result of your education and training
10 what type of licenses do you have?

11 A. I have a license for medicine in the State of South
12 Carolina.

13 Q. So you can actually write prescriptions?

14 A. Yes, ma'am.

15 Q. Tell us a little bit about your knowledge and
16 experience as far as like the type of diagnosis that you're
17 able to make given your profession or science.

18 A. Family medicine is a special -- a relatively new
19 specialty that deals with healthcare from the perspective of
20 the whole family. It is based on the biocycle social model
21 with the idea that health is impacted not only by the
22 natural processes in the body, but also by the psychological
23 issues that a person deals with and the social environments
24 in which one finds oneself.

25 Q. And have you actually -- do you have any teaching

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1 experience or published any articles?

2 A. I have not published any articles. I have taught
3 medicine as a resident physician, which means that there
4 were interns under my supervision as a -- when I was a
5 resident physician.

6 Also, I have done medical mission trips to Kazakhstan,
7 which is a part of the former Soviet Union to Jamaica, which
8 is in the West Indies and to Liberia. And those -- and
9 those activities I had an opportunity to teach in medical
10 schools in Kazakhstan and to teach the nurses and patients
11 in Liberia and Jamaica.

12 Q. Okay. And how long have you actually been practicing
13 medicine?

14 A. I have been practicing medicine for fifteen years now.

15 Q. And did you actually bring your medical reports with
16 you?

17 A. I did not.

18 MS. BURRIS: Your Honor, may I approach?

19 THE COURT: Sure. Try to keep in mind, Ms. Burris,
20 we've got a short ---

21 MS. BURRIS: Yes, sir.

22 THE COURT: --- window here.

23 MS. BURRIS: Yes, sir.

24 Q. And in 2011 did you have the opportunity to diagnose
25 and/or treat Ms. Crystal Thomas?

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1 A. Yes, ma'am.

2 Q. Okay. And what did you list as your -- as the problems
3 for her treatment?

4 A. Panic disorder and acute maxillary sinusitis.

5 Q. Okay. And can you, please, describe for the Court what
6 panic disorder is?

7 A. Panic disorder is a type of anxiety disorder that
8 specifically involves panic attacks that are recurrent. It
9 usually means that a person has not -- has had not only one
10 panic attack, but has had several panic attacks and thereby
11 it becomes a disorder.

12 Q. Okay. And have you had the opportunity to observe the
13 video of Crystal Thomas?

14 A. I have.

15 Q. And based on your medical expertise what can you
16 testify to in regards to that?

17 MS. HALL: Your Honor, I'm going to object because she
18 hasn't had him qualified as an expert in the field of panic
19 attacks and anxiety disorders.

20 MS. BURRIS: Your Honor, at this time I would like to
21 qualify Mr. -- Dr. Days in regards to -- I'd like to qualify
22 him as an expert in the field. My understanding is pursuant
23 to the rule that any party seeking to qualify a witness as
24 an expert bears the burden of showing that the witness
25 possess the necessary learning skill or practical experience

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1 to enable the witness to give opinion testimony as to what
2 we're eliciting. So, Your Honor, at this time we would ask
3 to qualify Dr. Days as an expert in the medicine field, also
4 as it pertains to a psychological diagnosis.

5 THE COURT: Ms. Hall, do you want to voir dire the
6 doctor on his qualifications?

7 MS. HALL: For just a second.

8 Voir Dire by Ms. Hall:

9 Q. And with all due respect.

10 A. Sure.

11 Q. I understand that you do have a degree in medicine.

12 And are you board certified in any fields?

13 A. I am not board certified. I am in the process -- I'm
14 board eligible. I'm in the process of preparing for board
15 certification. In fact, I do my test later this week.

16 Q. And in what field are you doing your test?

17 A. Family practice.

18 Q. Okay. Is -- do you have any psychological or
19 psychiatric training?

20 A. Yes, ma'am. A part of the training for family practice
21 involves psychiatric illnesses.

22 Q. Okay. And did you have any -- how much of the training
23 involves that?

24 A. It varies based on the medical school and the residency
25 to which a family practitioner goes and the emphasis that

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1 that family practitioner chooses to engage in. In medical
2 school I had rotations in psychiatry. And in residency I
3 had rotations in psychiatry as well.

4 Q. Okay. And how long are those rotations?

5 A. I do not remember. They were consistent with the
6 training preparation for medical students and for family
7 practitioners.

8 Q. Okay. Is it common in your practice when people come
9 to you as a family physician, are they coming to you
10 basically for psychiatric issues or are they coming to you
11 with medical issues that you may or may not determine
12 encompass psychiatric issues?

13 A. Generally people who come to a family physician come
14 with that understanding that the family practitioner deals
15 with a gamut of medical issues. And based on the -- what I
16 explained earlier in terms of the biocycle social model,
17 family practitioners train in varying areas of medicine.
18 And we diagnose and treat anxiety disorder. We diagnose and
19 treat panic attacks.

20 Again, each family practitioner diagnoses and treats
21 based on -- treats based on his or her training and desire
22 to treat. And as a person -- as a family practitioner feels
23 that a person needs additional care, he or she may consult a
24 psychiatrist or other specialty to assist with the treatment
25 of that patient.

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1 Q. Okay. And Ms. Burris has stated that you saw Ms.

2 Thomas on June 27th, 2011, is that correct?

3 A. That's correct. Yes, ma'am.

4 Q. And did you see her prior to that date?

5 A. I had seen her prior to that date, but not for anxiety
6 disorder.

7 Q. Okay. So did you have any experience with anxiety
8 disorder with this patient prior to this date?

9 A. Not prior to this date.

10 Q. Okay. And -- and you saw the video in this case with
11 regard to the June 24th ---

12 A. Yes, ma'am.

13 Q. You saw it today for the first time?

14 A. Yes, ma'am.

15 Q. All right. And when you saw Ms. Thomas on this June
16 27th, 2011 date you gave her medication that would be
17 consistent with treatment of a panic disorder, is that
18 correct?

19 A. Yes, ma'am.

20 Q. Was there any sort of clinical treatment or anything
21 that went along with that or was it simply medical, I mean,
22 medicine that you gave her?

23 A. At this point she was given medication with follow-up
24 expectations. And psychotherapy, I guess, which is what
25 you're referring to, would -- would occur in the event that

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1 she did not respond to medical treatment.

2 Q. Did she follow up with you?

3 A. She did not.

4 Q. Are you qualified to give psychotherapy or to do the
5 psychotherapy treatment in the event that she would need it
6 or would you have to outsource that?

7 A. I do some psychotherapy, but given the business of
8 practice, frequently it is referred out to a psychologist or
9 a psychiatrist.

10 Q. So basically on the date of June 27th when she came to
11 see you you basically took what she told you was going on
12 and you prescribed medication to treat that hoping that that
13 would solve the problem that -- not knowing that -- if she
14 even had a problem that could be solved unless she followed
15 up with you later on?

16 A. I would have had her record plus any medical records
17 from previous physicians.

18 Q. And did you have that on June 27th?

19 A. Based on looking at the report, it seems that I did.

20 Q. But she never followed up with you. So we don't know
21 if the medication or the treatment actually worked?

22 A. She did not follow up.

23 Q. And the information that you had to go on -- if you had
24 records, we don't have those today.

25 A. Right.

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1 Q. But if you -- the only thing that you had to go on on
2 the date of June 27th when you saw her was what she was
3 saying to you?

4 A. Her report plus any medical records which were
5 available to me at that time.

6 MS. HALL: Thank you, Your Honor.

7 MS. BURRIS: A couple of follow-up.

8 Direct Examination by Ms. Burris Continued:

9 Q. How many times have you had the opportunity to diagnose
10 and treat patients with panic disorder and anxiety attacks?

11 A. It's an enumerable amount of times. I couldn't -- I
12 couldn't count. Multiple times over -- over a fifteen year
13 period.

14 Q. Okay. And would you say the same for having an
15 opportunity to prescribe medications such as Xanax and
16 Zoloft?

17 A. That's correct.

18 Q. And is it your testimony that panic disorders, and
19 anxiety attacks and seizures, they're not strictly
20 psychiatric issues, is that correct?

21 A. A panic disorder, anxiety disorder is a -- those are
22 psychiatric disorders. Seizure activity is a physiologic
23 issue.

24 Q. And you testified that you have had some experience in
25 psychotherapy. Can you explain that for the Court?

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1 A. Basically psychotherapy is gathering information from
2 the patient, using that information to help the patient to
3 assess things that may have culminated in their psychiatric
4 disorder and to develop a plan on how to deal with that
5 psychiatric disorder.

6 Q. And can you please explain, given your experience, what
7 are some of the symptoms that trigger the panic disorder,
8 anxiety attacks or seizures?

9 A. Generalized anxiety disorder may not be associated with
10 particular trigger -- triggering activity or known
11 triggering activity. Panic disorder and panic attack may be
12 triggered by some life experience, for example, having been
13 in an accident. Thereby, when the person is driving on a
14 highway and other cars are near them, they may go into a
15 panic attack.

16 Having been in a house fire, therefore, when they go
17 into a house that reminds them of the house that they were
18 in when they were in the fire causing them to have a panic
19 attack. And so there can be varying triggers based on the
20 initial incident that caused them to become anxious in the
21 first place.

22 MS. BURRIS: At this time, Your Honor, we would offer
23 -- given that this doctor does actually have experience,
24 specialized knowledge, expertise given his training and his
25 prior diagnosis in treatment, pursuant to rule 702,

1 testimony by expert, it indicates that if an expert, being
2 scientific, technical or other -- has specialized knowledge
3 will assist the trier of fact to understand the evidence or
4 to determine a fact at issue, then the witness should be
5 qualified as an expert by knowledge, skill or experience.

6 He has testified to the extent of his experience. He
7 has been practicing medicine for fifteen years. He has had
8 some rotations in psychiatry as well as some experience in
9 psychotherapy. Numerous times has he had the opportunity to
10 diagnose and treat patients with panic disorder, seizures as
11 well as anxiety. We would ask that this witness be
12 qualified as an expert in the field.

13 THE COURT: Solicitor.

14 MS. HALL: I want to talk about -- in State v. Jones
15 there's a -- it's a case that talks about -- that's a four
16 pronged test to determine liability of an expert witness or
17 an expert witness' testimony and allowing testimony to come
18 in or allowing the witness to be qualified as an expert.

19 And the State would just submit that in this case, I
20 mean, Ms. Burris is asking that he be qualified as an
21 expert. He's stated that, you know, panic disorder and
22 seizures, that they're two completely separate things, that
23 he has some experience with psychiatric situations that he
24 can diagnose but that he has to go on and see. You know,
25 once you've medicated, you have to come back and you have to

1 tell whether the medication actually worked in order to be
2 able to make a diagnosis or not.

3 But, you know, with regard to his qualifications, he's
4 a family practitioner. He's got limited experience in being
5 able to diagnose psychiatric issues and some experience and
6 ability to treat patients with psychiatric issues, but not
7 -- I would just submit to the Court that he is not qualified
8 in this case to give an opinion that would be reliable
9 enough for the Court to allow that into evidence ---

10 THE COURT: All right.

11 MS. HALL: --- and allow the jury to see it too.

12 THE COURT: Okay. I'm going to qualify him as a family
13 practitioner. And I find that he has sufficient knowledge
14 and expertise to testify about panic disorders. Now, what
15 else do we need to do?

16 MS. BURRIS: Okay. Your Honor, I'm sorry, I didn't
17 hear what you just said in regards to panic disorders.

18 THE COURT: That he was qualified to testify about
19 panic disorders.

20 MS. BURRIS: Okay. And what about seizures, Your
21 Honor?

22 THE COURT: And seizures, I'm sorry. Panic and
23 seizures.

24 MS. BURRIS: Thank you, Your Honor.

25 THE COURT: Now that gets us over the first hurdle.

1 Where are we with scheduling? In other words, we're not --
2 it's my understanding that nobody intends to call the doctor
3 to testify in front of the jury this afternoon.

4 MS. BURRIS: That's correct, Your Honor.

5 THE COURT: And so tomorrow he needs to --, let me ask
6 you this, Ms. Hall. How far do you think you're going to go
7 today assuming that Ms. Burris does not eat up the afternoon
8 with cross examination of your witnesses?

9 MS. HALL: I can't imagine it's going to take me more
10 than an hour and a half.

11 THE COURT: To present your case?

12 MS. HALL: At the most, ---

13 THE COURT: Which means we ought to be ---

14 MS. HALL: At the most, two hours.

15 THE COURT: Okay. So we could finish this case by
16 five, maybe, the presentation by five. Ought to be able to
17 get him in in the morning.

18 MS. BURRIS: Yes, sir.

19 THE COURT: Sometime.

20 MS. BURRIS: Yes, sir.

21 THE COURT: Is there any other reason we need to keep
22 him here now?

23 MS. BURRIS: No, sir.

24 MS. HALL: Well, I would like the opportunity just to
25 talk with him for just a couple of minutes.

1 MS. BURRIS: As long as he desires, certainly.

2 DR. DAYS: I have no problem with that.

3 THE COURT: Okay. Y'all want to talk to him now,
4 'cause I've got two other lawyers ---

5 MS. HALL: That's perfect ---

6 THE COURT: --- who are late. And I need to hear
7 something they've got to say in another matter. So what
8 we're going to do then is you're going to talk to the
9 doctor, we're going to stand down on this case. I'm going
10 to take up briefly another civil matter. And then we're
11 going to bring the jury in and begin testimony in this case.
12 Okay. That's it.

13 (Whereupon court was in recess at 2:51 pm)

14 (Whereupon court resumed at 3:09 pm)

15 (Whereupon Defendant's exhibits 4 and 5 were marked for
16 identification)

17 (Whereupon State's exhibit 1 was marked for
18 identification)

19 THE COURT: All right. Now we're ready for the jury?
20 Apparently so, yes.

21 (Whereupon the jury entered the courtroom at 3:13 pm)

22 THE COURT: Welcome back, ladies and gentlemen. I
23 apologize for the delay. I believe we're ready to begin
24 receiving testimony in the case. Ms. Hall, you may call
25 your first witness.

ARTHUR TOTHEROW, JR. - DIRECT EXAMINATION BY MS. HALL

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1 MS. HALL: I beg the Court's indulgence. The State
2 calls Wayne Totherow.

3 MADAME CLERK: Place your left hand on the Bible and
4 state your full name.

5 MR. TOTHEROW: Arthur Wayne Totherow, Jr.

6 Arthur Totherow, Jr.,
7 being duly sworn testified as follows:

8 Direct Examination by Ms. Hall:

9 Q. Officer Totherow, if you could, please state your name
10 for the record.

11 A. Arthur Wayne Totherow, Jr.

12 Q. Okay. And where are you currently employed?

13 A. York County Sheriff's Department, detention division.

14 Q. And where were you employed on June 24th of 2011?

15 A. Chester County, detention division.

16 Q. Okay. So you just quit working at Chester and went to
17 York County to work in the same capacity, is that right?

18 A. Yes, ma'am.

19 Q. When you were working in Chester back on June 24th what
20 were your duties and what was your rank?

21 A. I was the lieutenant. I was in charge of overseeing
22 the overall maintenance and security of the jail.

23 Q. Okay. And were you on duty that night when Crystal
24 Thomas was brought in?

25 A. Yes, ma'am, I was.

ARTHUR TOTTEROW, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Q. Okay. Do you recall approximately what time she was
2 brought in?

3 A. Not at this time, I don't.

4 Q. At some point in time that evening did you have
5 occasion to come into contact with her?

6 A. Yes, ma'am.

7 Q. And did you have contact with her when she was first
8 brought in or was it later on in the night?

9 A. Both.

10 Q. Okay.

11 (Whereupon State's exhibit 2 was marked for
12 identification)

13 Q. I'm going to show you what's been marked as State's
14 exhibit 2 for identification purposes. Can you tell me what
15 that is?

16 A. This is a copy of the Sheriff's Department incident
17 report.

18 Q. Okay. And using that to refresh your memory can you
19 tell me what time approximately you came into contact with
20 Crystal Thomas on the night of June -- early morning hours
21 of June 24th?

22 A. According to this it's 1:41.

23 Q. Okay. So it's about -- about 1:41 in the morning, is
24 that ---

25 A. Yes, ma'am.

ARTHUR TOTTEROW, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Q. So that's ---

2 A. My contact was a little bit earlier. This is when
3 Deputy Cummings responded.

4 Q. Okay.

5 A. It was closer to midnight probably.

6 Q. Approximately midnight. All right. What -- can you
7 just describe for the jury what happened that night and what
8 the nature of your contact was with Ms. Thomas?

9 A. Okay. Earlier in the evening Ms. Thomas was placed in
10 a holding cell. We were doing reconstruction. So our
11 normal holding cells were out of service and we were placed
12 on what is called pretrial hallway.

13 She was slapping the floor and making a scene in the
14 cell. It's a one person cell. And a officer informed me.
15 So I went down to check on her. And as I went into the cell
16 area she was slapping her hand lightly on the floor. And as
17 I entered she began slapping the floor harder and actually
18 hitting her head lightly on the floor.

19 I called for assistance with another officer to bring a
20 restraint chair, which is used to place an inmate that's
21 being combative or possibly willing to hurt themselves in to
22 restrain them from doing so. At that time Officer
23 Funderburk came down to assist me while Officer Moore went
24 to get the restraint chair.

25 And we got her out of the cell into the hallway between

ARTHUR TOTTEROW, JR. - DIRECT EXAMINATION BY MS. HALL

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1 the cells. And she began to flap around on the floor and
2 constantly say she could not breathe and that we were
3 hurting her.

4 At that time, while we were struggling, she was face-
5 down toward the floor, she hit Officer Funderburk in the
6 face knocking his glasses loose.

7 Q. With what did she hit him?

8 A. With her hand, one of her hands.

9 Q. Okay.

10 A. At that time I removed a set of cuffs off of my back
11 and placed her hands behind her back and cuffed her for her
12 safety and our safety also. We picked her up and placed her
13 in the restraint chair once Officer Moore brought it down.
14 And as we were trying to restrain her she locked her legs
15 out to where we could not restrain her legs at the ankles
16 into the proper straps.

17 Q. Okay. Let me stop you real quick just so we can get
18 all the chronology and so that the jury can get a picture of
19 what you're talking about. When you said you got her hands
20 behind her back ---

21 A. Yes, ma'am.

22 Q. --- cuffed, and you put her in a restraint chair.

23 A. Yes, ma'am.

24 Q. And at this point in time are her hands behind her back
25 between her back and the restraint chair or are they ---

ARTHUR TOTTEROW, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. Yes, ma'am. They're between the back and the chair,
2 the back of the chair.

3 Q. Okay. All right, go ahead.

4 A. So we proceed to try to place her in the chair. And as
5 we're trying to strap her legs down she locks them out at
6 the knees. I did produce a taser without the cartridge on
7 it and dry-stunned her versus tase her.

8 Q. So what does that mean, you ---

9 A. A dry-stun is where you remove the cartridge that fires
10 the projectiles and place it against her for pain
11 compliance. And once that was done she let her legs loose
12 and we properly restrained her legs at that time and placed
13 her in the chair with her hands still behind her back
14 because she was still being combative.

15 Q. Okay.

16 A. And we strapped everything we could down except for her
17 hands because they were already secure behind her back.

18 Q. Okay. So when you say you strapped everything down
19 that you could, could you describe for the jury what
20 strapping -- how would it take ---

21 A. There is a belt strap just like a seatbelt in a car so
22 that you can't slide forward in the chair. There is a
23 Y-shaped shoulder strap that comes about here on the
24 breastplate. It goes across your shoulders and locks you
25 into the seated position. And there's two ankle straps.

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1 There's also two hand straps that go at the wrist on
2 the arm rests if you don't have them secured behind their
3 back. At that time she could not be placed in the hand
4 straps because we were not going to loosen her hands while
5 she was still trying to slap at the officers and possibly
6 hurt herself or others.

7 Q. Was she saying anything during this time?

8 A. She was complaining that she could not breathe. She
9 was rocking her head back and forth and rocking her body
10 back and forth. And then she would take a breath and stop
11 and say, I can't breathe, you're killing me, you're hurting
12 me.

13 Q. And when she was saying that -- when she was saying
14 those things did she seem in any way distressed in terms of
15 her voice or was she ---

16 A. Not at the time she would speak. And once we had her
17 secure after a period of time, approximately thirty minutes
18 or so, checked back on her. She was willing to comply to
19 get the hands removed from behind her back and placed in the
20 proper restraints on the arm rests.

21 So we called the officers back down, undid the shoulder
22 straps so that she could lean forward and the handcuffs
23 could be removed from her back. And as she leaned forward I
24 held my hand on the back of her neck so she couldn't pop
25 back and hurt herself or pop someone with her head. And we

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1 removed the cuffs.

2 As we removed the cuffs and went to place her hands
3 into the restraints and push her back into the seated
4 position, she started struggling again. And there again,
5 she started with, I can't breathe.

6 And as I had my hand on her shoulder and the officer
7 was trying to secure her back, I leaned over to make sure he
8 had it correctly, my arm got -- my forearm got close to her
9 mouth and she locked down on my arm.

10 Q. Did -- were you able to get your arm away from her
11 mouth immediately?

12 A. It was a few seconds. She had locked down pretty good.

13 Q. And once she let go what did you do?

14 A. Finished securing her in the straps. And my arm strap,
15 I was doing the right arm, once I got my arm secure and made
16 sure everyone else had everything under control, I walked to
17 the nursing station area to see how bad the bite was.

18 Q. And what did you observe about your arm at that time?

19 A. Once I got into the well lit area of the nursing area
20 and the control room area I could see that it was bleeding
21 pretty good. And I got another officer to cleanse it out
22 for me and wrapped it. And once everything was secure, I
23 notified administration.

24 Q. Okay. At any point in time during the time she was --
25 bit you or immediately before or after did she make any

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1 statements to you?

2 A. As soon as she bit me she looked at me and said that
3 she was -- she had AIDS and that she hoped I had it also.

4 Q. Did she make any other statement?

5 A. Not that I recall. Besides the I can't breathe and ...

6 Q. The things you've already stated?

7 A. Yes, ma'am.

8 Q. All right. Officer Totherow, if she had not been
9 slapping her hands or her head on the floor in the cell
10 where she was located initially would you have ever had to
11 put her in a restraining chair?

12 A. No, ma'am. The restraint chair is used for protection
13 only. It is not a punishment of any kind. She would have
14 just remained in her cell until her bond time that morning,
15 til she saw the bond judge.

16 Q. I don't have anything further. Please answer any
17 questions Ms. Burris may have for you.

18 A. Thank you.

19 THE COURT: Ms. Burris.

20 MS. BURRIS: Thank you, Your Honor.

21 Cross Examination by Ms. Burris:

22 Q. Officer Totherow, you have how many years of experience
23 in law enforcement?

24 A. At that time it was four years.

25 Q. Four years?

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1 A. Yes, ma'am.

2 Q. And as part of law enforcement experience you're
3 required to go through the Criminal Justice Academy?

4 A. Yes, ma'am.

5 Q. Okay. And you're actually required to go through a
6 type of specialized training and take tests to make sure
7 that you have the requisite experience and knowledge prior
8 to being released to go do law enforcement duties?

9 A. Yes, ma'am.

10 Q. And you went to the Criminal Justice Academy how many
11 times?

12 A. I've been twice for two different ---

13 Q. Training?

14 A. --- areas of training.

15 Q. Okay. And so you would have actually gone prior to
16 working at Chester or prior to actually being at Chester
17 County Detention?

18 A. You go within your first year for the basic jail ---

19 Q. Okay. And as part of your training at the Criminal
20 Justice Academy -- is that located in Columbia?

21 A. Yes, ma'am.

22 Q. One of the things that you're actually taught there is
23 how do you deal with like high risk -- high risk inmates,
24 right?

25 A. Yes, ma'am.

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1 Q. And you're also trained and you have knowledge and
2 experience in how do you deal with what we call special
3 needs inmates?

4 A. Yes, ma'am.

5 Q. And you also have knowledge, and experience and
6 training in regards to specifically when you're dealing with
7 inmates who may have some type of mental illness or
8 seizures, is that right?

9 A. Yes, ma'am.

10 Q. Okay. You're also trained as to how to deal with
11 inmates who may have some type of phobia or anxiety attack?

12 A. Yes, ma'am.

13 Q. And given your training and experience at the Criminal
14 Justice Academy you were taught to -- if you believe that a
15 person is acting abnormal or they're having maybe some
16 anxiety or panicking, they actually train you to contact the
17 medical unit, is that correct?

18 A. Yes, ma'am.

19 Q. Or the emergency medical services, correct?

20 A. Yes, ma'am.

21 Q. And so upon your first contact with Crystal Thomas,
22 when you walked -- was it into a cell that ---

23 A. The first was the booking area.

24 Q. Okay. The booking area?

25 A. Yes, ma'am.

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. And she was about to be booked in?

2 A. We was going to try to process her in, yes, ma'am.

3 Q. Okay. And so the first thing you saw was this inmate,
4 as you testified to during direct examination, is that she
5 was slapping her hands on the floor?

6 A. That was once she was placed into holding area.

7 Q. Okay. But you saw her slapping her hands on the floor?

8 A. Yes, ma'am.

9 Q. Then she began to slap her hands on the floor a little
10 harder, right?

11 A. (Affirmative nod).

12 Q. And also you experienced -- and in the holding cell?

13 A. Yes, ma'am.

14 Q. Can you please describe for the jury a holding cell?

15 A. A holding cell is where you go after you're processed
16 in or if you refuse to be processed in until you go to a
17 bond hearing.

18 Q. Concrete walls?

19 A. Concrete walls with bars on the front.

20 Q. About how big is it?

21 A. It's approximately five by eight or ten. Five foot by
22 eight foot.

23 Q. And the floors are made of what?

24 A. Concrete.

25 Q. Okay. The walls are made of?

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1 A. Concrete.

2 Q. Okay. No carpet on the floor or anything? .

3 A. No, ma'am.

4 Q. Okay. So she, according to your testimony, began to
5 also bump her head against the concrete wall?

6 A. And the floor.

7 Q. And the floor?

8 A. Yes, ma'am.

9 Q. Okay. And based on your training and experience isn't
10 it true that this behavior was abnormal?

11 A. Yes, ma'am.

12 Q. Okay. And isn't it true that Crystal Thomas wasn't
13 attempting to harm anyone at this time?

14 A. Yes, ma'am.

15 Q. As in yes, ma'am, she wasn't attempting to harm anyone?

16 A. That's correct. She was not attempting to harm anyone.

17 Q. And isn't it true that Crystal Thomas probably at that
18 time was more of a danger to herself than anybody?

19 A. No, ma'am. She wasn't doing it hard enough to hurt
20 herself.

21 Q. Okay. So it was just a slight bumping ---

22 A. Yes, ma'am.

23 Q. --- her head against the concrete wall?

24 A. Yes, ma'am.

25 Q. Okay. And isn't it true based on your training and

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1 experience at the Criminal Justice Academy that the first
2 thing that you should have done was contacted the medical
3 unit or emergency medical physicians?

4 A. If I felt it was a medical issue.

5 Q. Okay. And you made that determination based on?

6 A. Experience of dealing with people like her and herself
7 before.

8 Q. Okay. Tell me a little bit about that experience.

9 A. If an inmate says that they're going to do that when
10 they go into the holding cell, ---

11 Q. Um-hum (affirmative).

12 A. --- or insinuate that once you walk in, it's been my
13 experience that they're doing it on their own. She was told
14 when -- I walked into the holding cell she was wanting to go
15 into a larger block.

16 Q. She was told that she was going or she ---

17 A. No, she was wanting to go into the larger block herself
18 where you go after you've already seen the bond judge.

19 Q. But isn't it true that she never told you that she was
20 going to or insinuate that she was going to act this way?

21 A. She was acting this way the whole time. That's why she
22 went to holding instead of being processed in to begin with.

23 Q. Okay.

24 A. She acted irate from the time she come in.

25 Q. Okay. So you have used the terminology irate, you have

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1 used the terminology combative behavior. When you say
2 combative behavior, can you please explain?

3 A. Combative is more of a struggle. You're actually
4 pulling away from people or not cooperating with them.
5 Irate is just loud or not cooperating, but no physical
6 problems.

7 Q. And in your experience isn't it true that combative
8 could -- one of the things that could actually trigger
9 someone to be what you call combative is maybe they're
10 agitated?

11 A. Yes, ma'am.

12 Q. Potentially one of the things that could cause someone
13 to be what you call combative is that they're having an
14 anxiety attack?

15 A. Not most of the time, no.

16 Q. And you've experienced someone who has actually had an
17 anxiety attack while working at Chester County Detention
18 Center?

19 A. Yes, ma'am.

20 Q. And their behavior was like what?

21 A. They were on their own hitting the wall hard, hitting
22 the floor hard.

23 Q. Okay.

24 A. It doesn't accelerate or decelerate once you walk in
25 the door.

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1 Q. And it lasted for a period of how much time?

2 A. Usually ten to fifteen minutes.

3 Q. So they were doing the same type of behavior, but --
4 and when they were having an anxiety attack, but it lasted
5 maybe ten to fifteen minutes?

6 A. Yes, ma'am.

7 Q. And you agree that Crystal was doing -- was
8 experiencing the same type of or displaying the same type of
9 behavior, but it lasted for a longer period of time?

10 A. Without the willing to hurt herself. She wasn't
11 willing to hurt herself.

12 Q. Okay. And the person who was hitting the floor,
13 hitting the wall, in your experience, harder, did they
14 actually hurt themselves?

15 A. Yes, ma'am.

16 Q. To the extent that it caused?

17 A. Slight bleeding from either mouth or hands.

18 Q. So they were hitting their mouth and not their head?

19 A. Hitting their head on the wall.

20 Q. But you cannot, under oath, testify that Crystal Thomas
21 was not having a panic attack or anxiety attack, can you?

22 A. No, ---

23 MS. HALL: I'm ---

24 A. --- ma'am.

25 MS. HALL: --- going to object to this. It's going --

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1 she's asking him to render a medical opinion.

2 MS. BURRIS: Based on his experience.

3 MS. HALL: She's asking him to render a medical
4 opinion, which he's not qualified to do. She can ask how he
5 treated her or what he was doing in response to the way she
6 was acting, but I don't think she can ask him to render a
7 medical opinion, which he's not qualified to do that.

8 MS. BURRIS: I'll just ask -- I'll rephrase the
9 question.

10 THE COURT: All right.

11 Q. Given ---

12 MS. BURRIS: I'll just -- I'll retract that question,
13 Your Honor.

14 Q. So it is true that given your experience, and your
15 training and knowledge, you're not sure exactly what was
16 taking place with Crystal at that time?

17 A. That's correct.

18 Q. Okay. Now at one point isn't it true that Crystal
19 Thomas did say that she was having problems breathing?

20 A. Yes, ma'am.

21 Q. Okay. And you believed that she was having problems
22 breathing.

23 A. No, ma'am.

24 Q. Okay. And so you thought that she was making up the
25 fact that she said I'm having problems breathing?

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1 A. Yes, ma'am.

2 Q. And in your training and experience you thought it
3 being correct that you would stick ammonia under her nose?

4 A. That's correct.

5 Q. And you have been trained to do this by?

6 A. No one, ma'am.

7 Q. Okay. So this was just some old school remedy that you
8 came up with to stick ammonia under her nose?

9 A. Yes, ma'am.

10 Q. Okay. And your purpose for sticking ammonia under her
11 nose was to?

12 A. To see if she reacted to it, if she pulled away from
13 it, if she was breathing, in fact.

14 Q. Okay. And so in sticking ammonia under Crystal Thomas'
15 nose you found out?

16 A. She was able to grab my hand and push it away unlike
17 people having seizures.

18 Q. Did she grab your hand and hold on or did she just sort
19 of push your hand away?

20 A. She grabbed it, held it a second as she pushed it away.

21 Q. Okay. Is this something that you typically do is stick
22 ammonia under someone's nose in controlling that behavior?

23 A. I have done it several times to see if someone is
24 having a seizure. If they do not respond to it, then EMS is
25 called.

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1 Q. So you're able to treat this type of
2 behavior/condition, attempting to treat this type of
3 behavior/condition by placing ammonia under her nose. And
4 if she does or -- depending upon if she does or she does not
5 respond, then that's when you actually were going to call
6 medical personnel?

7 A. It's not a treatment. It's to see a response.

8 Q. Okay. So depending on how she actually responded you
9 were going to call medical?

10 A. If she didn't respond to it, yes, ma'am, I would have
11 called medical. I would have called EMS.

12 Q. You were present along with whom?

13 A. It was myself, Officer Funderburk, Officer Moore and
14 Officer Carr.

15 Q. So it was four officers?

16 A. At one point, yes, ma'am.

17 Q. And for the most part, all of you were surrounding
18 Crystal?

19 A. When we were attempting to put her in the chair the
20 first time.

21 Q. And it is your testimony today that should you have
22 placed her in a larger cell, that probably would have helped
23 to remedy the situation?

24 A. It would have give her what she wanted. That's not the
25 procedure.

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1 Q. And it is your testimony that it would not have been
2 problematic to have placed her in a larger cell, would it?

3 A. No, ma'am.

4 Q. If a person's claustrophobic, and I'm sure you've
5 experienced that before, could a person respond or display
6 certain behavior?

7 A. Yes, ma'am.

8 Q. And you've experienced that before?

9 A. No, ma'am.

10 Q. And given your training, specifically at the Criminal
11 Justice Academy, a person who may have had traumatic
12 experiences, how would they respond in the Detention Center
13 in a cell?

14 A. It would depend on the individual person. They could
15 do anything from -- most people go to sleep. And most
16 people raise Cain all night.

17 Q. Sleep ---

18 A. I mean, ---

19 Q. --- within the cell?

20 A. It's one or the other.

21 Q. Usually a person with a traumatic experience, it's true
22 that they're usually nervous and fearful, right?

23 A. Sometimes.

24 Q. Usually rapid heartbeats, right?

25 A. Yes, ma'am.

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1 Q. Could have some problems breathing, right?

2 A. Yes, ma'am.

3 Q. And it's your testimony that they -- some of them go to
4 sleep?

5 A. Yes, ma'am.

6 Q. Now isn't it true that Officer Funderburk was assisting
7 also?

8 A. Yes, ma'am.

9 Q. And as you were trying to cuff her, cuff her hands, she
10 hit Officer Funderburk?

11 A. That's correct.

12 Q. Okay.

13 A. It was before we cuffed her. That was the reason we
14 did cuff her.

15 Q. Okay.

16 A. Otherwise, she would have went in the restraint chair
17 with her hands on the arm rests instead of behind her back.

18 Q. And you didn't charge her with hitting Officer
19 Funderburk, right?

20 A. That was completely up to him. It's up to each
21 officer's discretion.

22 Q. Okay. But she wasn't charged with hitting him?

23 A. That's correct.

24 Q. Okay. And it's true that you -- was it called dry-
25 stunned?

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1 A. That's correct.

2 Q. Okay. And her response to dry-stunning was?

3 A. She complied and put her legs down and were restrained
4 properly.

5 Q. You had an opportunity to observe Crystal that night?

6 A. That's correct.

7 Q. And was she shaking?

8 A. She was yelling and screaming..

9 Q. But she was not shaking?

10 A. Not that I'm aware of.

11 Q. So based on what you know, she was yelling and
12 screaming?

13 A. That's correct.

14 Q. Based on you observing Crystal Thomas on June 24th do
15 you remember her head going back and forth or her
16 convulsing?

17 A. She rocked her whole body back and forth along with the
18 upper body, head also.

19 Q. Do you remember whether or not her legs were shaking?

20 A. No, ma'am, I do not.

21 Q. Was there any period of time that she wasn't actually
22 talking but she was convulsing and looked like she was
23 hyperventilating?

24 A. Yes, ma'am.

25 Q. And this went on for a period of how long?

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1 A. A few -- approximately ten, fifteen minutes sometimes.

2 Q. Now it's your testimony that this hyperventilating, and
3 convulsing and shaking her legs and her head -- her whole
4 body rocking back and forth only lasted ten to fifteen
5 minutes?

6 A. At periods of time she would stop.

7 Q. About how long was this going on as far as her
8 behavior?

9 A. Her behavior, the first time period in the chair before
10 we decided to take the cuffs and put her in the chair with
11 her hands down was approximately thirty to forty-five
12 minutes.

13 Q. Well, how long was she actually -- her legs shaking and
14 her body rocking back and forth, how long did that ---

15 A. As I said, I didn't see her legs shaking.

16 Q. And you were one of the main officers who dealt with
17 Crystal that night?

18 A. Off and on, yes, ma'am.

19 Q. Do you remember how long her whole body was rocking?

20 A. Her upper body would off and on as, like I said,
21 fifteen -- ten to fifteen minutes.

22 Q. Was it about an hour that it lasted though?

23 A. I really couldn't tell you exactly how long.

24 Q. Have you had the opportunity to look at the tape?

25 A. No, ma'am, I have not.

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. Now at some point Crystal Thomas did actually -- she --
2 she calmed down, is that right?

3 A. Yes, ma'am.

4 Q. Okay. Now describe for the jury how Crystal Thomas was
5 actually strapped into the restraint chair.

6 A. When we initially put her in the chair, once we got her
7 legs down, she's strapped at her ankles, sitting upright.
8 Her arms are behind her back with the cuffs behind her back.
9 There's a seatbelt type restraint to hold your waist so you
10 can't move yourself forward in the chair. And then there is
11 a upper body restraint that is Y-shaped that starts right
12 about here and goes over your shoulders.

13 Q. And that's called a strap, like a upper strap?

14 A. Yes, ma'am.

15 Q. Okay. And the strap was what you were trying to use to
16 tighten up here? Her upper body?

17 A. At which point?

18 Q. I'm not sure. Can you ---

19 A. Well, yes, ma'am, that's what holds your shoulders back
20 right against the chair.

21 Q. Okay. And you were trying to just tighten the
22 restraint strap on her upper body at one point?

23 A. When you initially put them in the chair you -- I was
24 pushing back on her shoulder so that the officer could
25 tighten it up, you know, appropriately.

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. And were you able to do that?

2 A. Yes, ma'am.

3 Q. Okay. And in doing that you testified that there were
4 some complications.

5 A. On the second go-around, yes, ma'am.

6 Q. Okay. And the complications were?

7 A. She refused to go back into the chair. Once she had
8 complied and, you know, we let her know we was taking the
9 cuffs off and leaned her forward to get the cuffs off, took
10 the cuffs off and put her hands down to put them in position
11 to strap down, that's when she began not to comply again.
12 And she tried to keep her body held down to -- so we
13 couldn't strap her back down.

14 Q. Okay. And in trying to keep her body held down you
15 basically pulled the restraint strap to sort of make her
16 upper body ---

17 A. No, ma'am.

18 Q. Okay.

19 A. I pushed back on her shoulder again. And as I was
20 pushing back on her shoulder, and she was struggling, and
21 the officer was attempting to pull and tighten -- lock the
22 strap down, the shoulder straps down, that's when -- as I
23 leaned forward my arm come close to her mouth and she leaned
24 forward and bit me.

25 Q. Okay. And at this time can you please describe

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Crystal's behavior? Other than she leaned back, what else
2 was she doing at that time?

3 A. There again, once we initially went to put her in this
4 chair with her arms down to her side on the restraints, she
5 was very compliant. She was talking to us normal. And then
6 once we removed the cuffs she refused to follow orders and
7 go back into the seated position. So we pushed her back
8 into the position.

9 Q. Was her head shaking back and forth?

10 A. No, ma'am, it was not at that time.

11 Q. Was her upper body ---

12 A. No. She locked herself down in the prone position.

13 Q. She locked herself down ---

14 A. Like this.

15 Q. Okay. And isn't it true that she didn't grab your arm,
16 but your arm slipped as you all were trying to make sure
17 that her upper body stays up?

18 A. My arm did slip, but she moved her head forward and got
19 it, bit me.

20 Q. And isn't it true that she did not stick her neck out
21 to bite, but your arm, as you just testified, went near her
22 mouth?

23 A. It did come close enough to where she could latch on.

24 Q. Isn't it true that in coming close enough she did not
25 actually latch onto your arm and just hold it and bite it?

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. Actually she did bite -- she did hold it for a few
2 seconds.

3 Q. Now it was more of an abrasive bite or was it like
4 where she latched on and her teeth went through your skin,
5 like a layer of your skin?

6 A. The teeth went through the layers of skin.

7 Q. And so you're telling this jury today under oath that
8 if we were to have the medical reports entered into evidence
9 it would say that her teeth went through your skin?

10 A. I'm not sure what the medical reports say. But in my
11 opinion, yes, ma'am, that's what it would say.

12 Q. Okay. You didn't have to have stitches or anything,
13 did you?

14 A. No, ma'am.

15 Q. Your treatment was -- did they apply like some type of
16 ointment or ---

17 A. Yes, ma'am.

18 Q. --- topical -- okay. Around what time was this when
19 she latched onto your arm?

20 A. That would probably be about 12:30. The whole initial
21 began about twelve, I would think.

22 Q. Okay. So thirty minutes later after she's sitting in
23 the restraining chair?

24 A. Yes, ma'am.

25 Q. Okay.

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. Like I said, after about thirty minutes she calmed down
2 enough to make it more comfortable for her to take the cuffs
3 off and place her arms in the restraints.

4 Q. And is your testimony that her latching onto your arm
5 with her mouth, that should actually be on video?

6 A. I would doubt it would be where it is located at in the
7 jail.

8 Q. Okay. Where were you when she did that? Where was the
9 restraint chair located?

10 A. The restraint chair was right outside Echo block in the
11 pretrial hallway.

12 Q. So it was actually moved later or ...

13 A. After she got situated and -- everything was correct on
14 her, we got her hands in the restraints, we moved it down to
15 the temporary booking area which is the Charlie block to
16 where the booking officer could observe her.

17 Q. So there are not any cameras outside Echo block?

18 A. There is, but it was during the construction phase.

19 I'm not sure if it picked up or not. Like I said, I haven't
20 seen the video.

21 Q. So you're not sure if they have any down there?

22 A. I'm not sure.

23 Q. Now you agree that you may not have followed the proper
24 procedure in this case, right?

25 A. On which part?

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. In not seeking some type of medical treatment for what
2 you was observing.

3 A. No, ma'am, I do not agree with that.

4 Q. You agree that not all the time have you actually made
5 the right decisions while working at Chester County
6 Detention Center, right?

7 A. It's been my opinion that I have.

8 Q. Now your first name is Arthur?

9 A. Yes, ma'am.

10 Q. And you're Mr. Totherow?

11 A. Yes, ma'am.

12 Q. Okay. And 3/23/2009 you received a type of violation,
13 an incident in which you signed for failure to follow
14 instructions when you were asked by one of the superiors to
15 take someone to treatment and you did not.

16 A. It wasn't to take someone to treatment.

17 Q. I'm sorry?

18 A. It was not to take someone to treatment, it was to move
19 them from one block to another block.

20 Q. And you agree that you were asked to do that by one of
21 the -- was it a major or corporal?

22 A. It was a captain.

23 Q. A captain. And you did not do that?

24 A. That's correct.

25 Q. Okay. And so you were written up and you agreed with

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 this violation on 3/23/2009?

2 A. Yes, ma'am.

3 Q. Okay. And you signed off on that for failure to follow
4 instructions?

5 A. That's correct.

6 Q. Okay. And you also agree that on April 15th of that
7 same year you were also written up for failure to follow
8 instructions under employee disciplinary report for passing
9 out razors and placing it in the log book and failing to
10 following the proper policy and procedures by not placing
11 that in the razor log book?

12 A. I don't recall that one, but ...

13 MS. BURRIS: Your Honor, may I approach?

14 THE COURT: Sure.

15 Q. Is that your signature?

16 A. Yes, ma'am.

17 Q. Okay. Do you remember this employee disciplinary
18 report?

19 A. Not right offhand, I don't.

20 Q. You remember signing that on April 15th of 2009, right?

21 A. Like I said, I don't remember it right offhand, I
22 don't.

23 Q. You know your own handwriting, correct?

24 A. Yes, ma'am.

25 Q. You know your own signature, correct?

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. Yes, ma'am.

2 Q. And that is your signature on that employee
3 disciplinary report, correct?

4 A. Yes, ma'am, it is.

5 Q. Okay. And on that employee disciplinary report you
6 agreed by signing your signature that you failed to follow
7 proper policy and procedures?

8 A. No, ma'am, I did not.

9 Q. You did not sign that report?

10 A. I signed it, but that's not an agreement.

11 Q. You signed it indicating that ---

12 A. That I was written up for it.

13 Q. Okay. And that was actually made a part of your
14 employee personnel record?

15 A. Yes, ma'am.

16 Q. And, Lieutenant Totherow, isn't it true that you were
17 also written up in 2011 for another failure to follow
18 instructions?

19 A. I've only been written up for one that I'm aware of,
20 the one with Captain Tolbert.

21 Q. And you were written up by Captain Tolbert because?

22 A. The incident I was referring to earlier. The other one
23 was the one I must not remember is they asked for an
24 individual to be moved from one cell to another.

25 Q. And would it jog your memory to say that you were asked

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 to move an individual from one block to another because of
2 his behavior?

3 A. That's the one I was referring to.

4 Q. And you did not move this individual?

5 A. That's correct.

6 Q. And isn't it true they wanted to monitor the behavior
7 of this individual and you did not move this individual?

8 A. That is correct.

9 Q. And isn't it true that you signed off saying that you
10 showed disregard for these specific instructions?

11 A. No, ma'am.

12 Q. You signed because?

13 A. It is policy that you sign or you get a suspension. I
14 signed because I was supposed to move the individual and
15 circumstances arose where I could not.

16 Q. But you didn't indicate that on the report, did you?

17 A. No, ma'am.

18 Q. And during this particular time you were actually on
19 probation as an employee, right?

20 A. No, ma'am.

21 Q. I'm going to show you again this report with your
22 signature on it. What does it indicate?

23 A. It does say probationary employee on it, but I was not
24 on probation at the time.

25 Q. Okay. Now, Officer Totherow, as part of the Chester

ARTHUR TOTTEROW, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 County Detention Center do they actually have a nurse
2 onsite?

3 A. During the day hours.

4 Q. During the day hours. Okay. So what do you typically
5 do to respond to medical situations or medical emergency
6 situations at nighttime?

7 A. If it warrants it we call EMS or we contact the nurse.

8 Q. And isn't it true that at some point Crystal requested
9 that you call her mother or call to get her some help?

10 A. Yes, ma'am.

11 Q. And ---

12 A. She did request to call her mother.

13 Q. Okay. And isn't it true that Crystal asked to call her
14 mother because she needed some help at that time?

15 A. I'm not sure why she asked to call her mother, but she
16 did ask to call her mother.

17 Q. Isn't it true that Crystal mentioned that she may have
18 needed some medicine or go to the hospital?

19 A. She did mention she needed to go to the hospital.

20 Q. And isn't it true that she was not taken serious enough
21 to render her some medical treatment by getting EMS there?

22 A. She was taken seriously, but it didn't -- I didn't deem
23 she needed medical service.

24 Q. And you cannot testify under oath that you know, given
25 your training and experience, that you made the right

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 decision that day, correct?

2 A. That's correct.

3 Q. Thank you, Officer Totherow.

4 THE COURT: Redirect?

5 MS. HALL: I do.

6 Redirect Examination by Ms. Hall:

7 Q. At some point later on that night was she -- was she
8 let out of the restraints?

9 A. Yes, ma'am.

10 Q. And what prompted you to do that?

11 A. Once she complied and she was behaving enough to where
12 she could be put in the cell by herself ---

13 Q. And did ---

14 A. --- without having to be watched.

15 Q. And did that ultimately happen where she began to
16 behave ---

17 A. Yes.

18 Q. And once she began to behave and put in a cell were
19 there any other episodes to cause any concern?

20 A. Not that I'm aware of.

21 Q. Okay. And Ms. Burris touched on the fact that she was
22 not charged with hitting Officer Funderburk, is that
23 correct?

24 A. That's correct.

25 Q. And why was she not -- you said it was left up to each

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 officer's discretion.

2 A. It's up to the officer whether they want to go through
3 the process of sitting here in court and going through the
4 procedures of filing charges and following it through.

5 Q. If Crystal Thomas had hit you in the nose with her fist
6 would you be here today?

7 A. Yes, I would if she had hit me with her fist.

8 Q. Okay. If she'd hit you the way she hit Officer
9 Funderburk would you be here today?

10 A. Most likely.

11 Q. But to some degree it's part of your job as a detention
12 officer, isn't it?

13 A. No, it's not.

14 Q. Okay. And when you went to the hospital you stated
15 that your arm had been bleeding, is that right?

16 A. What's that?

17 Q. You stated that your arm was bleeding and that was why
18 you ended up going to the hospital later on that night?

19 A. And because the skin was broke.

20 Q. Okay. And then did you get a tetanus shot?

21 A. I got a tetanus shot, yes, ma'am.

22 Q. What else happened?

23 A. Per policy a few days later up to a week, I believe it
24 was, I went and had blood drawn and tested for STDs.

25 Q. Okay. And were you tested for HIV as a part of that?

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 A. Yes, ma'am.

2 Q. And that was based on the threat?

3 A. That was based on her threat and the skin being broke
4 itself.

5 Q. Okay. Were you given antibiotics for your wound?

6 A. No, ma'am, I was given a cream to put on it.

7 Q. And was that an antibiotic cream or ---

8 A. Actually, I was given antibiotics now that you say
9 that. I couldn't remember.

10 Q. And were they pills? Did you take them orally?

11 A. Yes, ma'am.

12 Q. Okay.

13 A. Along with the initial, go to the hospital.

14 Q. And were you told anything else about HIV status a week
15 after you went to the hospital?

16 A. I'm sorry?

17 Q. When you went back to the hospital when you were tested
18 for the HIV were you told anything about the HIV status at
19 that point ---

20 A. They called me later and told me it was negative at
21 that time.

22 Q. What do you mean at that time?

23 A. Meaning I may have to be checked again because it can
24 be dormant for seven years.

25 Q. And on cross examination you said that in your opinion

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 you'd made the correct decisions while you were working at
2 the Detention Center?

3 A. That is correct.

4 Q. Okay. And it's not always true that just because you
5 believe you're making correct decisions and an officer who
6 is higher than you directs you to do something else, do you
7 always obey what they say to do or do you do what you
8 believe is right?

9 A. We try to. Like I said, sometimes circumstances arise
10 where things can't be done as they're drawn out on paper.

11 Q. And was that the case in -- when there was a
12 disciplinary issue?

13 A. The last one with Captain Tolbert, yes, ma'am.

14 Q. Okay. Could you describe that?

15 A. They was wanting one individual moved from a max cell
16 to a holding area to where they could be observed better.
17 And before the chance arose we got busy with book-ins and
18 the booking area got filled up.

19 Q. Okay. So the circumstances that arose, it wasn't an
20 absolute defiance ---

21 A. It was not in defiance of the order.

22 Q. All right. When you signed that ---

23 A. And that's why it was only a warning instead of a
24 actual write-up.

25 Q. And so during the course of your employment at the

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 Chester County Detention Center, at the York County
2 Detention Center too for that matter, have you ever been
3 subject to a disciplinary action? Have you been issued
4 warnings?

5 A. Just warnings.

6 Q. And you stated at one point in time on cross
7 examination too you said something to the effect of Ms.
8 Thomas' behavior and when you would go in things would or
9 when you would go out and come in that there were different
10 -- it would be varied, it would increase or decrease in
11 severity, her rocking and her banging based on what factors
12 as far as you can tell?

13 A. You could hear her very well out in the hallways. The
14 door to the -- where we would keep them in the holding --
15 inmates was open up to where we could hear it in the
16 hallway. You could barely hear her in the hallway, but once
17 you walked in the door you could tell she picked up the pace
18 and the severity.

19 Q. Okay. So in your opinion she was doing this for
20 effect?

21 A. She was trying to get attention.

22 Q. And is it -- in your opinion as a detention officer, do
23 some people act that way?

24 A. A large percentage do.

25 Q. Possibly because they're upset or scared?

ARTHUR TOTTEROW, JR. - REDIRECT EXAMINATION BY MS. HALL

108

1 A. Yes, ma'am.

2 Q. And not necessarily because they're having a panic
3 attack or anxiety disorder?

4 A. Most of the people that act that way frequent the jail
5 a good bit. Most people having the traumatic experience
6 tend to want to be by themselves, not have anyone's
7 attention on them. They want to be by themselves. They
8 don't want us looking at them and paying them attention.

9 Q. So there's nothing that raised a red flag that anyone
10 should be called, a nurse should be called or anything like
11 that ---

12 A. No, ma'am, not from my opinion and experience.

13 Q. And if there had been something that had caused you to
14 believe that she was in danger or that she was having some
15 sort of a seizure or something like that, would you have
16 called EMS?

17 A. Yes, ma'am.

18 Q. Why?

19 A. Because I don't want anyone to get hurt or have a
20 fatality. Never have on my shift. I don't want that on me.
21 EMS has been called out there numerous times on my shift.

22 Q. But in your opinion this ---

23 A. This one didn't warrant it.

24 Q. Thank you. I don't have anything further.

25 MS. BURRIS: Just real short, Your Honor.

ARTHUR TOTTEROW, JR. - RECROSS EXAMINATION BY MS. BURRIS

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1 Recross Examination by Ms. Burris:

2 Q. Traumatic experience -- a traumatic experience can be
3 defined as a person can be scared? Scared?

4 A. Yes, ma'am.

5 Q. They can be nervous?

6 A. Yes, ma'am.

7 Q. Traumatic experience would make someone cry?

8 A. Yes, ma'am.

9 Q. Traumatic experience would make someone shake?

10 A. Yes, ma'am.

11 Q. Traumatic experience could cause someone to have a
12 rapid heartbeat?

13 A. Yes, ma'am.

14 Q. And it is true that Crystal told you that she didn't
15 feel good and that she needed to get some water at that
16 time, right?

17 A. She did ask for water at one point.

18 Q. And is it true that you did not grant that request?

19 A. That is not true. She did receive water.

20 Q. You did give her water?

21 A. Yes, ma'am.

22 Q. Okay.

23 A. One of the officers held the cup while she drank out of
24 it.

25 Q. Okay.

ARTHUR TOTTEROW, JR. - RECROSS EXAMINATION BY MS. BURRIS

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1 A. She was not released from the chair to get water.

2 Q. And this officer was?

3 A. I don't remember which one did it. It was several --
4 every time she asked she did receive water.

5 Q. You mentioned a large percentage of them act like you
6 observed that night, Crystal?

7 A. That's correct.

8 Q. But now you cannot testify under oath that a large
9 percentage of them -- you've seen this behavior displayed in
10 a large percent of them for two hours?

11 A. Actually, I can.

12 Q. So a person having a traumatic experience, shaking,
13 rocking, nervous, crying, this could last the whole night or
14 typically how long does it last?

15 A. A lot of time it lasts the period of -- if they get
16 placed in the chair, I'd say three hours.

17 Q. It lasts three hours?

18 A. Usually. Usually within the last hour of them being in
19 the chair they become compliant. We use the chair for four
20 hours at the most.

21 Q. So it's been your experience that they typically act
22 out, you said, about three hours?

23 A. Usually if it calls for them to go into the chair.

24 Q. So they act out three hours prior to actually placing
25 them in the ---

ARTHUR TOTTEROW, JR. - RECROSS EXAMINATION BY MS. BURRIS

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1 A. No, ma'am.

2 Q. Okay.

3 A. While they're in the chair.

4 Q. But typically now isn't it true that when you place
5 someone who is displaying uncontrollably -- uncontrolled
6 behavior, isn't it true that typically the restraining chair
7 will restrain them from displaying uncontrollable behavior?

8 A. No, ma'am.

9 Q. So the restraining chair doesn't really help them?

10 A. It does help. They can't hurt themselves. That's the
11 whole purpose of it. They can't hit their head on the walls
12 and such.

13 Q. So you typically have to keep them in there for long
14 periods of time?

15 A. Usually, like I said, three to four hours.

16 Q. But you testified earlier, and correct me if I'm wrong,
17 that you remember her acting like this for ten to fifteen
18 minutes.

19 A. In periods of time, yes, ma'am.

20 Q. You mean acting like this for ten to fifteen minutes
21 and then stop and then went back to acting like this?

22 A. That's correct.

23 Q. So she would stop for what period of time?

24 A. A few minutes. She would talk to us and, you know,
25 like I said, state she couldn't breathe or that ---

DONNIE FUNDERBURK - DIRECT EXAMINATION BY MS. HALL

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1 Q. What was she talking to you about?

2 A. I really couldn't remember, ma'am.

3 Q. But you know she said she couldn't breathe?

4 A. Yes, ma'am.

5 Q. And you know she asked for water?

6 A. Yes, ma'am.

7 Q. And you know that she said that she -- please get my
8 mother?

9 A. Yes, ma'am.

10 Q. Thank you. I have no further questions.

11 THE COURT: Thank you, Officer Totherow. You may step
12 down.

13 MS. HALL: The State calls Funderburk.

14 THE COURT: Come right over here, sir. Stand and raise
15 your right hand.

16 MADAME CLERK: State your full name.

17 MR. FUNDERBURK: Donnie Funderburk.

18 Donnie Funderburk, being
19 duly sworn testified as follows:

20 MADAME CLERK: Thank you.

21 Direct Examination by Ms. Hall:

22 Q. Please state your name for the record.

23 A. Ma'am?

24 Q. Can you please state your name for the record?

25 A. Donnie Funderburk.

DONNIE FUNDERBURK - DIRECT EXAMINATION BY MS. HALL

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1 Q. And how are you employed?

2 A. Chester County Detention Center.

3 Q. How long have you been employed there?

4 A. '09, since 2009.

5 Q. Okay. And were you employed there on June or were you
6 working on the night of June 24th of -- or the early morning
7 hours of 2011?

8 A. Yes, ma'am.

9 Q. What are your duties and what were your duties at that
10 time?

11 A. Booking. Book in inmates and secure, you know, the
12 safety of the jail, make sure of the safety of the inmates
13 and the officers.

14 Q. Okay. During the early morning hours of June 24th,
15 2011 did you have occasion to come into contact with Crystal
16 Thomas?

17 A. Yes, I did.

18 Q. Okay. And can you explain the nature of that contact?

19 A. I think she come in on the -- I think the City brought
20 her in. And the whole time -- from the time she got there
21 she was being really uncontrollable. She wasn't trying to
22 comply with nothing that we asked her to do. And we just
23 kept trying to calm her down, tell her everything would be
24 all right. And she just kept on going, and going, and
25 going, just wouldn't stop.

DONNIE FUNDERBURK - DIRECT EXAMINATION BY MS. HALL

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1 So we ended up putting her in a cell. We couldn't book
2 her in because she wasn't cooperative.

3 Q. Oh, you couldn't? Okay. Well, let's stop for a second
4 and let me -- you said you couldn't book her in. What does
5 booking in require?

6 A. Well, you have to ask them questions about their
7 medical history, wanted to know if they'd been in a car
8 accident or anything of that nature. While we book them in,
9 get their contact information, how old they are and where
10 they live and stuff like that. We couldn't get none of that
11 information because she wasn't cooperative.

12 Q. So she didn't tell you about any medical history that
13 she ---

14 A. No, ma'am.

15 Q. Had she been in a car accident to your knowledge?

16 A. No, ma'am.

17 Q. And would that -- so she wouldn't give you any
18 information, is that what ---

19 A. No, ma'am, none at all.

20 Q. Okay. So you weren't able to book her in because she
21 was uncooperative. So what did you do at that point?

22 A. We took her down to a cell and put her in a cell. We
23 was going to try to get her out after she calmed down and
24 book her in later. We do that sometimes.

25 Q. So that's not uncommon for people to be upset when they

DONNIE FUNDERBURK - DIRECT EXAMINATION BY MS. HALL

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1 come in?

2 A. No, ma'am.

3 Q. So you put her in the cell to calm her -- give her some
4 chance to calm down. And then what happened?

5 A. A few minutes later I was walking down the pretrial
6 hallway and I heard her in her cell hollering. And so I
7 walked in. When I walked in she was laying in the floor
8 slapping her hands on the floor.

9 So I opened up the cell and I called for assistance.
10 And at that time I went in the cell, she was hitting her
11 head on the floor. So I took control of her head and tried
12 to keep her from hitting her head on the floor, hurting
13 herself.

14 Q. All right. And you said you called for assistance.
15 Did assistance ultimately come?

16 A. Oh, yeah. Yes, ma'am.

17 Q. Was Officer Totherow one of the people who came to
18 assist you?

19 A. Yeah, Officer Moore come and Totherow come. And we
20 talked to her and tried to keep her from hitting her head
21 and stuff. At that time we got her stopped beating her head
22 around. And Totherow made a decision to put her in a
23 restraint chair to protect us and to keep her from hurting
24 herself.

25 Q. Okay. At any point in time did she strike you?

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1 A. Yes, ma'am. She hit me and busted my nose.

2 Q. And at what point was that? Was that before you got
3 her in the restraint chair?

4 A. No, ma'am -- yes, before. Once she was in there --
5 when she was flapping her hands and stuff around I was
6 trying to hold her head to keep her head from hitting the
7 floor. She swung back and hit me in my nose.

8 Q. Tell us what happened after that?

9 A. Ma'am?

10 Q. Go ahead and tell us what happened after that.

11 A. After that, after Totherow and Officer Moore got there
12 we got her out of the max holding cell and proceeded to put
13 her in the restraint chair. And she was being
14 uncooperative.

15 So we handcuffed her behind, put her in the chair. And
16 we tried to get her to scoot back up in the chair, and she
17 wouldn't. She wouldn't comply in no kind of way. She just
18 kept acting out and not doing nothing that we asked her.

19 So while the officer was behind her -- once we got her
20 put in the restraint chair we couldn't get her legs -- she
21 wouldn't unlock her legs. So we kept doing what we had to
22 do to get that done. We got her in the chair.

23 After a few minutes she got where she was acting
24 better. So we was going to take the handcuffs from behind
25 her. The restraint chair's got some arms on it. You put

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1 their arms under it and put -- and we was going to put her
2 in it where she'd be more comfortable.

3 And at the time we took the handcuffs off behind her,
4 the officer was having a little bit of trouble. Officer
5 Totherow was on the left side of her. And he was going to
6 take the straps and put around her so we could put her hands
7 in the restraints. And when he reached around and looked
8 over to see if he could help the officer with the handcuffs,
9 that's when she bit him.

10 Q. So you saw the Defendant, her, bite him?

11 A. Yes, ma'am.

12 Q. When she bit him did you hear her make any statements
13 or did she say anything?

14 A. After she bit him, yes, ma'am.

15 Q. At any time during the course of that?

16 A. After she bit him she told him that she had AIDS and he
17 was going to die.

18 Q. Okay. So what happened after that?

19 A. Well, after that once we got her in the restraint chair
20 we got her, you know, tied down in the restraint chair like
21 she was supposed to be, Officer Totherow filled out a report
22 and he got medical attention. And later on we released her
23 on the restraints when we finally got her to where we could
24 take her out of the chair.

25 Q. About how long was it before you were able to take her

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1 out of the chair?

2 A. I'm not exactly sure how long it was before we actually
3 removed her from the chair.

4 Q. Was she calm after that?

5 A. Yes, ma'am.

6 Q. Okay. And how long did you work that night? Do you
7 remember?

8 A. How long did I work that night?

9 Q. How long?

10 A. All night.

11 Q. Okay.

12 A. Twelve hours.

13 Q. All right. And so the latter part of your -- what time
14 did you come on that night? Do you remember?

15 A. 7:00.

16 Q. Okay. So once you got her in the restraints you're
17 approximately midnight or 12:30, stated you were on for
18 another -- how long did you -- what time did you get off?

19 A. Til seven that morning.

20 Q. All right. So you were able to observe her for a good
21 bit of time after you got her out of the restraint chair, is
22 that right?

23 A. Yes, ma'am.

24 Q. All right. And she was -- she was compliant and easier
25 to deal with after that?

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1 A. Yes, ma'am.

2 Q. Were you able to book her in after that?

3 A. Yes, ma'am. They finally got her -- eventually got her
4 booked in.

5 Q. All right. And do you recognize the -- do you see in
6 the courtroom today the lady who bit Officer Totherow?

7 A. Yes, ma'am.

8 Q. Could you point her out to the Court, please?

9 (Whereupon the witness pointed to the Defendant)

10 A. The second lady right there.

11 Q. Please let the record reflect that he's pointed to
12 Crystal Thomas. Did you make a decision not to press
13 charges against her for hitting you in the nose?

14 A. Yes, ma'am, I did.

15 Q. Why?

16 A. Because at the time when she hit me in the nose she was
17 laying in the floor. Like I said, she was slapping her
18 hands and hitting her head on the floor. And when she
19 actually slapped me it could have been an accident. And I
20 didn't really know if she done it intentionally or not. I
21 didn't think she did.

22 Q. All right. Thank you. Please answer any questions Ms.
23 Burris may have.

24 THE COURT: Ms. Burris.

25 MS. BURRIS: Thank you, Your Honor.

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 Cross Examination by Ms. Burris:

2 Q. Is it Lieutenant Funderburk?

3 A. No, ma'am.

4 Q. Officer?

5 A. Yes, ma'am.

6 Q. Now you just testified that when she busted your nose
7 -- was she actually in the restraint chair and she reached
8 back or was she on the floor?

9 A. She was on the floor.

10 Q. So she was on the floor and you got down there?

11 A. Yes, ma'am.

12 Q. And you got down there to render medical attention?

13 A. No. I got down there to keep her from busting her head
14 on the floor. She was beating her head on the floor.

15 Q. So she was actually beating her head on the floor and
16 not the wall?

17 A. At this time she was beating it on the floor. She was
18 laying in the floor.

19 Q. Okay. And what did you do when you got down there?

20 A. I grabbed her by her head and secured her from -- her
21 head, keeping her from hitting it on the floor.

22 Q. Okay. And her hands went up?

23 A. She was just flopping, slapping her hands all over the
24 place.

25 Q. She was flopping her hands all over the place and she

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 mistakenly hit you in the nose?

2 A. Yes, ma'am.

3 Q. But you were sort of beside her, behind her?

4 A. I was sort of over her.

5 Q. Over her ---

6 A. Holding her head to keep her from hitting the floor.

7 Q. So it is your testimony that it probably was a mistake?

8 If she hit you when she was on the floor?

9 A. Right. Yeah, I don't think -- I don't know if she
10 intentionally done it or not. Like I said, she was slapping
11 her hands all over the place hitting her head on the floor.
12 So I don't -- I don't know if she -- I don't think she done
13 it intentionally.

14 Q. Now in regards to -- you've been at the Chester County
15 Detention Center for how long?

16 A. Well, since -- I think like June of '09.

17 Q. Okay. So you've been there almost two years?

18 A. (Affirmative nod).

19 Q. And in your training and experience you also had the
20 opportunity to go through the criminal justice academy,
21 right?

22 A. Yes, ma'am.

23 Q. And you had training and you took tests there?

24 A. Yes, ma'am.

25 Q. And they trained you on how to deal with an inmate who

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 seems maybe disoriented, or confused or uncontrollable
2 behavior?

3 A. Yes, ma'am.

4 Q. Okay. And they also taught you or trained you when an
5 inmate could be like emotionally disturbed, or seeming
6 confused or shaking uncontrollably? They also told you that
7 it's not your job to try to diagnose a medical problem,
8 right?

9 A. Yes, ma'am.

10 Q. Okay. And they also taught you that it is your job to
11 have them professionally examined by a medical physician or
12 nurse, correct?

13 A. Yes, ma'am.

14 Q. And they also taught you that the appropriate medical
15 response or attention could reduce or lessen the exposure of
16 uncontrollable behavior, or fear and anxiety? You would
17 like for me to re-ask that question.

18 A. Yes, ma'am.

19 Q. Okay. They also taught you that getting the
20 appropriate medical attention could reduce the anxieties or
21 uncontrollable behavior?

22 A. She didn't give us a chance to get her the appropriate
23 medical attention.

24 Q. Okay.

25 A. She wouldn't cooperate with us in no kind of way. And

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 in one minute she'd be acting like she was and the next
2 minute she'd be perfectly fine and talking.

3 Q. Okay. So it's your testimony that had she given you
4 the chance to get her appropriate medical attention, you
5 probably would have done that, right?

6 A. If we'd have felt she needed it we would have made sure
7 she got the medical attention she needed.

8 Q. Okay. But again, you just testified that it's not your
9 job to diagnose a problem, right?

10 A. No, ma'am, it's not my job to diagnose it, but
11 everybody that comes to the jail, you can't take them to the
12 hospital.

13 Q. Right. But now based on your observation, isn't it
14 true that Crystal Thomas was shaking, convulsing?

15 A. Yeah, at times. Then at times she'd be perfectly fine.

16 Q. And she did this shaking, and convulsing,
17 hyperventilating, would you say?

18 A. I don't know if you can hyperventilate and talk. I
19 don't know if you can breathe and talk normal at the same
20 time or not.

21 Q. She had problems breathing?

22 A. So she said, but she talked just fine. It's kind of
23 hard to talk normal when you can't breathe.

24 Q. So you're not sure whether or not she had problems
25 breathing?

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 A. I'm not sure.

2 Q. And when she was talking she was telling you that she
3 was having difficulty breathing and please get her mother,
4 correct?

5 A. Yeah, a couple of times she asked for her mother.

6 Q. And she also said that she was having problems
7 breathing?

8 A. Yeah, she stated that she was having trouble breathing.

9 Q. And she also asked for some water?

10 A. We give her water.

11 Q. Okay. Who gave her water? Do you remember?

12 A. I'm not sure.

13 Q. And you gave her water right away?

14 A. I ain't for sure if we give it to her at the time she
15 asked for it, but we tried to give her some water.

16 Q. Now you testified earlier on direct examination that
17 you placed her in her cell to give her a chance to calm
18 down, correct?

19 A. Yes, ma'am.

20 Q. Okay. And so in placing her in the cell and giving her
21 a chance to calm down you also talked with her?

22 A. Yeah, I talked to her.

23 Q. And you talked about what?

24 A. I just -- nothing in particular, that she needed to
25 calm down so she could get booked in.

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 Q. Did you ever think to ask her about any medications,
2 whether she needed any medication?

3 A. I'm not sure if I asked her that or not.

4 Q. When you have an inmate shaking uncontrollably, isn't
5 that one of the things that you want to know, whether or not
6 there's any medication you need to get for them?

7 A. Yes, that's one of the things. But like I said, one
8 minute she'd be shaking, the next minute she'd be perfectly
9 fine.

10 Q. And she was shaking for about how long? Or convulsing?

11 A. I don't -- I don't know about how long. Not
12 continuously. She wasn't shaking continuously. She'd do it
13 sometimes and then sometimes she'd look at you and stop and
14 then she'd start doing it again.

15 Q. And do you know if she did this for a total of three to
16 four hours?

17 A. No, ma'am, it wasn't that long.

18 Q. But usually in your experience if someone is actually
19 lingering or faking, they wouldn't actually be shaking
20 uncontrollably or rocking back and forth uncontrollably for
21 an extended period of time, would they?

22 A. Not for long periods of time, which she didn't.

23 Q. Have you had the opportunity to see the video from in
24 the booking area?

25 A. No, ma'am.

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 Q. And you heard her tell -- it's your testimony under
2 oath that you heard her tell Totherow that he was going to
3 die?

4 A. Yes, ma'am. She told him she had AIDS and that he was
5 going to die.

6 Q. Now you mentioned that Crystal Thomas caused injury to
7 you, right?

8 A. Yes, ma'am.

9 Q. And she -- and you're not sure if it was by mistake or
10 not, busted your nose?

11 A. (Affirmative nod).

12 Q. But this was never documented in an incident report,
13 was it?

14 A. I'm not sure if we put it in the incident report or
15 not.

16 Q. And typically in your experience, not only do you have
17 like a case file summary, but also an original incident
18 report is generated shortly after the incident, right?

19 A. Yes, ma'am.

20 Q. Okay. And so you have not one incident report, but two
21 incident reports, right?

22 A. Yes, ma'am.

23 Q. And isn't it true that the supervisor, Mr. Cummings, or
24 Officer Moore, they would have known about this incident,
25 right?

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 A. Officer Totherow would have knowed about it right after
2 I turned it in. .

3 Q. You turned in the fact that your nose was bleeding?

4 A. No, I didn't -- I'm not sure if I done the incident
5 report about my nose getting busted or not.

6 Q. What did you turn in?

7 A. I didn't turn in anything.

8 Q. You just said you turned it in.

9 A. I said if I would have they would have knowed about it.

10 Q. I thought you just testified that Officer Totherow knew
11 about it because you turned it in.

12 A. I said he would have knew about it if I'd have turned
13 it in.

14 Q. But not only Officer Totherow, you have Officer Moore,
15 Cummings, everybody would have known about it if you had a
16 busted nose, right?

17 A. Yeah, they'd have knowed about it. They knowed about
18 it.

19 Q. And when she mistakenly flapped her hands up and you
20 were over her trying to calm her down and she mistakenly
21 flapped her hands up, you did what to respond?

22 A. I just tried to restrain her, keeping her from busting
23 her head.

24 Q. And you did that by?

25 A. I was holding her head.

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 Q. And placing your knee in her back?

2 A. I didn't place my knee in her back.

3 Q. And you are Officer Funderburk, right?

4 A. Yes. And when I was in the control room, well, I mean,
5 in the room in the floor, when I had her by the head I did
6 put my knee in her back to try to restrain her to keep her
7 from hitting her head and keep her from hitting me anymore.

8 Q. Okay. So it is true that you did place your knee ---

9 A. Yes, ma'am.

10 Q. Okay. And so it's your testimony you weren't sure
11 about whether she needed any medication?

12 A. Ma'am?

13 Q. Is it your testimony that you were not sure whether she
14 needed any medication?

15 A. No, I'm not -- I wasn't sure.

16 Q. Or whether or not she'd actually been previously taking
17 it and experiencing withdrawals? You're not sure?

18 A. I'm not sure.

19 Q. Okay. You were around along with other officers when
20 Officer Totherow was trying to restrain Crystal by using the
21 strap?

22 A. Yes, ma'am.

23 Q. Okay. And you were actively involved in that also?

24 A. Yes, ma'am.

25 Q. Okay. And can you please explain to the jury exactly

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 what was taking place?

2 A. She was handcuffed behind. We was trying to take the
3 handcuffs from behind her so we could put her in the
4 restraining chair the way she was supposed to be so she'd be
5 more comfortable. The officer behind was taking the
6 handcuffs off.

7 Officer Totherow was trying to put the straps around
8 her shoulders so she could get her hands in the thing. When
9 he had the strap in this hand he reached over, looked to see
10 if the officer behind him needed any help, and that's when
11 she bit him on his arm.

12 Q. So his arm was there. He was looking to see if the
13 officer, you said, ---

14 A. Yes, ma'am.

15 Q. --- needed any help?

16 A. There was an officer behind taking the cuffs off.

17 Q. So he was resting his arm like on her chest, sort of
18 ---

19 A. He was holding the strap. There's a strap that comes
20 over both the shoulders. He had the strap in his hand where
21 he could hook it. That's when she bit him.

22 Q. Okay. And was she shaking or anything at that time?

23 A. Not that I recall.

24 Q. Now based on your experience and training in criminal
25 justice -- the Criminal Justice Association, it's true that

DONNIE FUNDERBURK - CROSS EXAMINATION BY MS. BURRIS

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1 sometimes persons who are experiencing traumatic
2 experiences, sometimes they're predisposed to, like even
3 suicide, to that extent?

4 A. What, at jail?

5 Q. In the jail, yes. Like they're high risk for suicide.

6 A. Anybody's high risk suicide the first twenty-four hours
7 they in jail.

8 Q. But this probably would have been a special case?

9 A. She was acting a little bit, I mean, that's why we put
10 her where we could watch her, keep a close eye on her.

11 Q. She was acting, I'm sorry?

12 A. She was just flopping back and -- I don't know. Acting
13 like she couldn't breathe.

14 Q. It was abnormal behavior?

15 A. Yeah.

16 Q. And you cannot testify under oath that you know that
17 you made the right decision in this case not to get some
18 medical attention?

19 A. That wasn't my decision to make.

20 Q. And she was conscious at all times?

21 A. Yes, ma'am.

22 (Pause)

23 MS. BURRIS: I beg the Court's indulgence, Your Honor.

24 THE COURT: All right.

25 (Pause)

DONNIE FUNDERBURK - REDIRECT EXAMINATION BY MS. HALL

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1 Q. Officer, you do remember that that night Crystal's --
2 had a rapid heartbeat? You remember that, right?

3 A. Yeah, I guess -- I guess she had a rapid heartbeat.
4 That's because she was breathing like she was.

5 Q. Or having problems breathing, potentially?

6 A. If that's how you want to put it.

7 Q. And the fact that she was hitting her head so hard, you
8 didn't think it was necessary to get medical attention?

9 A. She wasn't hitting it that hard.

10 Q. I have no further questions. Thank you.

11 MS. HALL: May we approach, Your Honor?

12 THE COURT: Would y'all like to stand up and stretch
13 just a minute, ladies and gentlemen?

14 (Whereupon a bench conference was held off the record
15 in the presence of the jury, but out of their hearing)

16 Redirect Examination by Ms. Hall:

17 Q. Officer Funderburk, you had stated on cross examination
18 that -- Ms. Burris kept asking you did you see her exhibit
19 uncontrollable behavior. In your opinion was her behavior
20 within her control or was it something that was just
21 involuntary, outside of anything that she was able to
22 control?

23 A. I think she could control it. She controlled it when
24 she wanted to.

25 Q. Okay. And you said it was not your decision to make

DONNIE FUNDERBURK - REDIRECT EXAMINATION BY MS. HALL

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1 regarding medical attention for her. If you had absolutely
2 felt that it was completely necessary for her to get medical
3 attention would you have gone outside your authority and
4 mandated that that be done or called them yourself?

5 A. Yes, ma'am, I would have.

6 Q. You stated also on cross examination that this was not
7 -- that this was abnormal behavior when Ms. Burris asked you
8 was this abnormal behavior. Was this -- this would be
9 abnormal behavior for you to exhibit, is that correct?

10 A. Yes, ma'am.

11 Q. This would be abnormal behavior for most of the
12 population of Chester County to accept, is that correct?

13 A. Yes, ma'am.

14 Q. In your experience is this abnormal behavior for Ms.
15 Thomas to exhibit?

16 A. Do I think it was abnormal for her?

17 Q. Um-hum (affirmative).

18 A. Yeah, I think it was abnormal.

19 Q. You think it was abnormal for her?

20 A. Well, the way she was acting.

21 Q. Do you think it was abnormal based -- if you had
22 knowledge of her, maybe you do, maybe you don't, I don't
23 know. Do you have -- had previous opportunity for her to
24 exhibit that type of behavior to you?

25 A. I don't think she should have, but I think she was -- I

DONNIE FUNDERBURK - REDIRECT EXAMINATION BY MS. HALL

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1 think she was faking.

2 Q. Have you ever seen her act this way before?

3 A. No, ma'am.

4 Q. Have you ever seen her act normally before?

5 A. No, ma'am. That's the first time I had any contact
6 with her.

7 Q. I don't have anything further.

8 THE COURT: Anything in recross?

9 MS. BURRIS: No, sir, Your Honor.

10 THE COURT: Thank you. You may step down.

11 MS. HALL: The State calls Jessica Kreel.

12 THE COURT: Let me ask the jurors, are y'all okay?

13 Does anybody need a break? Or y'all want to keep going? If
14 anybody wants a break now, y'all raise your hand, otherwise,
15 we're going to keep going. But if you need a break, let me
16 know.

17 MS. HALL: Can I -- just for scheduling purposes, how
18 late are we planning to go? How late are we planning to go
19 just for scheduling purposes or for me deciding who to call
20 and how to proceed scheduling-wise?

21 THE COURT: If you've got a choice of who to call, I
22 would call a short witness.

23 MS. HALL: If there's somebody who's going to be
24 working tonight, and so that -- I guess if it's between the
25 two of them, I'm going to need to get the person who's

KYLE CUMMINGS - DIRECT EXAMINATION BY MS. HALL

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1 working tonight so I don't have to keep -- keep them from
2 working a half day tomorrow. Okay. I don't know how short
3 it'll be. I'm going to call Kyle Cummings.

4 MADAME CLERK: Please raise your right hand. And state
5 your full name.

6 MR. CUMMINGS: My name is Kyle Brandon Cummings.

7 Kyle Cummings, being duly
8 sworn testified as follows:

9 MADAME CLERK: Thank you.

10 Direct Examination by Ms. Hall:

11 Q. Mr. Cummings, state your full name for the record,
12 please.

13 A. My name is Kyle Brandon Cummings.

14 Q. And where are you employed?

15 A. Chester County Sheriff's Office.

16 Q. How long have you been employed there?

17 A. I've been employed there since 2010.

18 Q. And did you have occasion to come into contact with
19 Crystal Thomas and Officer Totherow or participate in any
20 way in this incident that occurred on June 24th of 2011?

21 A. I did.

22 Q. Please describe to the jury the nature of your contact
23 and what your involvement was.

24 A. Yes, ma'am. I was advised by Lieutenant Totherow to
25 make contact with him in the booking area in reference to an

KYLE CUMMINGS - DIRECT EXAMINATION BY MS. HALL

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1 assault that had occurred. At the time I made contact with
2 Lieutenant Totherow, who stated that he was -- during an
3 altercation was bit on the arm by Ms. Thomas. Lieutenant
4 Totherow then showed me the injury he sustained, which was
5 bite marks to the right arm.

6 (Whereupon State's exhibit 3 was marked for
7 identification)

8 Q. Okay. I'm going to show you what's been marked as
9 State's exhibit 3. And tell me if you can identify those.

10 A. Yes, ma'am. These are the injuries that I saw that
11 Lieutenant Totherow sustained the night of the -- time of
12 the incident. These are the photographs I took at the time
13 of the incident.

14 Q. So you took these pictures?

15 A. I did.

16 Q. And do they fairly and accurately depict these injuries
17 as they were that night?

18 A. Can you -- can you repeat ---

19 Q. Sorry. Do they fairly and accurately depict the
20 injuries as they looked the night that you -- at the time
21 you took the pictures?

22 A. Yes, ma'am, for the most part. The pictures actually
23 don't do the injury justice. In person the injury looked
24 far worse than what the pictures show.

25 Q. Okay. And when did you take the pictures?

KYLE CUMMINGS - DIRECT EXAMINATION BY MS. HALL

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1 A. I took -- I took the pictures the same night, at the
2 time of the incident.

3 MS. HALL: The State would move to have exhibit 3
4 entered into evidence.

5 THE COURT: Without objection?

6 MS. BURRIS: No objection, Your Honor.

7 (Whereupon State's exhibit 3 was admitted into
8 evidence)

9 Q. All right. Did you -- did you further investigate this
10 incident that night?

11 A. I did.

12 Q. What was -- what did you do to investigate?

13 A. At the time I obtained a copy of the incident report
14 Lieutenant Totherow and the detention staff had written.
15 And I placed it with mine. And I also obtained a warrant
16 for the arrest of Crystal Thomas for assault.

17 Q. Okay. Did you have occasion to talk to -- come into
18 contact with Crystal Thomas that night?

19 A. She was in the holding cell while I was present in the
20 booking area, yes, ma'am.

21 Q. And so you could see her in there?

22 A. Yes, ma'am.

23 Q. And did you have an opportunity to observe how she was
24 acting?

25 A. I did.

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 Q. Was she in the restraint chair or was she in a cell?

2 A. When I saw her she was in the restraint chair.

3 Q. Okay. And how was she acting?

4 A. She appeared to me to be in an angered state. She had
5 very few words when I was in there, but she did appear to be
6 highly angered and agitated.

7 Q. Okay. And you said all this occurred at the Chester
8 County Detention Center, is that correct?

9 A. Yes, ma'am.

10 Q. And that's located within Chester County, is that
11 correct?

12 A. Yes, ma'am. 2740 Dawson Drive, yes, ma'am.

13 Q. And so that was within your jurisdiction to
14 investigate?

15 A. It is, ma'am.

16 Q. Thank you. I have no further questions. Please answer
17 anything Ms. Burris may have.

18 Cross Examination by Ms. Burris:

19 Q. Mr. Cummings, you were the principal investigating
20 officer that night?

21 A. Yes, ma'am, I was.

22 Q. Okay. And you mentioned just now or you testified that
23 she was agitated and angered. What do you mean?

24 A. To me she appeared to be angered just by language and
25 things of that nature, just little non-verbal cues to me

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 would indicate a high level of agitation.

2 Q. An high level of agitation, shaking?

3 A. When I was there she was not shaking.

4 Q. Was she ---

5 A. She ---

6 Q. --- rocking at all?

7 A. What she was doing, however, she had her -- her arms
8 were strapped in the restraint chair as such. She was
9 grabbing the chair and she was thrusting her body forward
10 like this and going, hoo, hoo, hoo.

11 Q. She was making noises too?

12 A. Yes, ma'am, she was making noises when I was in there.
13 And to me, she -- as I stated, she did appear to have an
14 angered state.

15 Q. Okay. Did you think maybe this behavior's a little
16 bizarre, so I might need to get some help for her?

17 A. No -- no, ma'am, not to me. What happened -- she has
18 -- at the detention division, she's under their
19 responsibility and their care. I'm a deputy sheriff with
20 the patrol division. If they deem necessary for medical
21 care, they would have called.

22 Q. Okay. So you mean it was up to Totherow, Funderburk,
23 the other officers?

24 A. Correct, ma'am.

25 Q. Okay. And you've been a law enforcement officer for

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 how long?

2 A. Since 2004.

3 Q. 2004?

4 A. Yes, ma'am.

5 Q. Okay. So you -- about seven years you've been in law
6 enforcement?

7 A. That is correct.

8 Q. Now you have the opportunity to sign off as the
9 principal investigating officer on the law enforcement
10 questionnaire?

11 A. That is correct.

12 Q. And you rendered your opinion in regards to this case?

13 A. Yes, ma'am.

14 Q. And what ---

15 MS. HALL: Objection.

16 Q. --- you think ---

17 MS. HALL: Objection. Can we approach?

18 THE COURT: Okay.

19 (Whereupon a bench conference was held off the record
20 in the presence of the jury, but out of their hearing)

21 MS. HALL: Okay. That's fine.

22 THE COURT: All right.

23 Q. And so, Officer Cummings, you thought it necessary to
24 render your opinion about this case, as a principal
25 investigating officer?

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 A. Yes, ma'am, it is part of policy and procedure that
2 when we go -- when we ---

3 Q. And so at that -- on that particular night they
4 designated you as the principal investigating officer,
5 right?

6 A. I responded to the Detention Center to take a report
7 for the assault. By, therefore, I was -- I took the initial
8 report and I obtained charges for an assault. So, yes,
9 ma'am, I was the principal investigator.

10 Q. Okay. So you were also a part of -- you were
11 investigating and you also had an opportunity to observe
12 some of this taking place?

13 A. I did not observe the actual assault, no, ma'am.

14 Q. Okay. But you were there and you saw Crystal in the
15 restraining chair, correct?

16 A. Correct.

17 Q. Okay. And based on what you observed you knew that the
18 behavior was abnormal, but you didn't think it was your job
19 duty to seek medical attention, but they should have made
20 that decision?

21 A. If a decision was deemed necessary for medical care, it
22 would have had to have come from the Detention Center, not
23 from -- not from me. I was there to take a report for an
24 assault, not to determine medical status of Ms. Thomas.

25 Q. But you were working within the Detention Center that

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 night, right?

2 A. No, ma'am. I do not work in the Detention Center.

3 Q. Okay. You work for the Sheriff's Department?

4 A. Yes, ma'am. I'm a deputy sheriff.

5 Q. Okay. You are a deputy sheriff, but on that particular
6 night you were in the Detention Center at some period?

7 A. I was called to the Detention Center to take a report
8 for an assault.

9 Q. Okay. And isn't it true that Chester County Sheriff's
10 Office and Chester County Detention Center, they essentially
11 operate or function one in the same?

12 A. Ma'am, they all are part of the same building.

13 Q. Um-hum (affirmative).

14 A. However, job duties of each position are different.
15 The detention officers are employed within the walls of the
16 Detention Center. However, I am a deputy sheriff. My
17 responsibility is out here on the roads.

18 Q. So you did not see any assault take place?

19 A. No, ma'am, I did not.

20 Q. Do you know how they identified you as the principal
21 investigating officer if you didn't see anything take place?

22 A. I'm not sure how I was -- how I was called in. I
23 responded to a call, ma'am. And that's how a investigator's
24 assigned.

25 Q. Is that protocol?

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 A. It's standard operating procedure, yes, ma'am. If it

2 -- yes, ma'am.

3 Q. As the principal investigating officer you did have the
4 opportunity to see the incident report, right?

5 A. Correct.

6 Q. Okay. And not once in the incident report is there any
7 indication that Funderburk had his nose busted, right?

8 A. I spoke to Officer Funderburk the night of the
9 incident. He told me that Crystal Thomas did strike him on
10 the face with an open hand that caused an injury, but
11 Officer Funderburk did not want to press charges, as he did
12 state that he did not know if the -- him being struck was an
13 intentional act or not. So he did not want to prosecute for
14 that. And so, therefore, I do not include it in the report
15 because it wasn't relevant.

16 Q. So you're the one who actually wrote the report?

17 A. I wrote the initial report for an assault, yes, ma'am.

18 Q. Okay. But you didn't find it necessary to document
19 that in the initial report?

20 A. No, ma'am. I was talking to Lieutenant Totherow who
21 was the complainant and the victim in the case, not
22 Funderburk. Funderburk was not my complainant nor my
23 victim.

24 Q. And you made the decision to document in the report
25 that Totherow actually in the bite had the skin broken?

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 A. Yes, ma'am, the skin was broken. Yes, ma'am.

2 Q. And it wouldn't surprise you if I told you that he was
3 diagnosed with an abrasive bite, would it?

4 A. Ma'am, I don't know what the medical records reflect.
5 I did not take a glance at those. I don't know what they
6 said.

7 Q. But you -- okay.

8 A. I did observe the skin -- I did observe broken skin,
9 yes, ma'am. Was it an abrasion? I'm ---

10 Q. Is it ----

11 A. --- not a medical personnel, so I couldn't determine
12 that.

13 Q. Okay. And based on what you actually observed, and I'm
14 not asking you to render a medical opinion, but based on
15 what you observed, you're saying that the skin was broken,
16 you actually saw blood?

17 A. Like I said, his skin was broken. I saw a physical
18 manifestation of injury. And I took photographs of such.
19 And ...

20 Q. Okay. So you saw a physical manifestation of injury.
21 Does that mean that you actually just saw blood or you
22 actually saw where there -- that looked like something had
23 gone through his skin?

24 A. Ma'am, I can't sit here and tell you it looked like a
25 puncture wound or not. I can't tell you that, okay? What

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 I'm saying, I did -- I saw a wound consistent to that of a
2 bite mark. I saw that the skin was broken. I photographed
3 such injuries.

4 Q. Okay. Now you have had the opportunity to see the
5 video from that night?

6 A. I cannot recall if I seen the video or not. It's been
7 some time since the incident.

8 Q. Have you had the opportunity to meet with the Assistant
9 Solicitor, Julie Hall?

10 A. Ma'am?

11 Q. Have you had the opportunity to meet with the Assistant
12 Solicitor, Julie Hall?

13 A. Ma'am, as I stated, I work on so many cases, it's hard
14 to keep track of which ones I've met with the Solicitor on
15 or not. I cannot ---

16 Q. But you know whether or not you've actually met with
17 Julie Hall, this being Julie Hall, on this case, don't you?

18 A. I don't know if I -- I can't recall if I met face to
19 face with her or not on this case. As I stated, ma'am, it's
20 been some time. There have been several cases since then.

21 Q. But you've talked to her about the case, haven't you?

22 A. I'm not sure if I have or not. I'm not going to say
23 that I have or have not. As I said, I cannot recall.

24 Q. And in order to be here today you received a subpoena
25 from the Solicitor's Office?

KYLE CUMMINGS - CROSS EXAMINATION BY MS. BURRIS

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1 A. I was informed by my Major of patrol, Major Andy Marks,
2 I needed to be in court today.

3 Q. You didn't wonder why?

4 A. He told me that it was about this case, yes, ma'am. I
5 asked him what case it referenced and he told me.

6 Q. And so as far as testimony today you did not talk to
7 Julie Hall over the phone?

8 A. Ma'am, I ---

9 Q. Or in the back?

10 A. Ma'am, I don't recall. She was in the back, yes,
11 ma'am, but I didn't meet -- we didn't talk over the specific
12 details of the case.

13 Q. Didn't talk about the details of the case?

14 MS. HALL: Your Honor, I'm going to object to this. I
15 mean, it's asked and answered. It's beyond the scope of
16 direct. It's many things.

17 MS. BURRIS: I'll move on, Your Honor.

18 THE COURT: All right. I sustain the objection.

19 Q. Totherow, you do not -- I'm sorry, Cummings. Officer
20 Cummings, you do not remember looking at the jail video?

21 A. I may have. I don't recall, ma'am. I'm not -- I'm not
22 going to say under oath that I did observe the video when I
23 cannot recall if I did or not. I'm not going to say under
24 oath that I did or did not when I don't recall.

25 Q. Do you remember that night whether or not Crystal

KYLE CUMMINGS - REDIRECT EXAMINATION BY MS. HALL

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1 Thomas was injured?

2 A. I don't know if she was injured or not. I wasn't -- I
3 was not there for Crystal Thomas. I could not tell you if
4 Crystal Thomas was injured or not. I was there for
5 Lieutenant Totherow.

6 Q. So if she was you wouldn't have known it?

7 A. No, ma'am.

8 MS. BURRIS: I beg the Court's indulgence.

9 (Pause)

10 MS. BURRIS: Your Honor, I have no further questions
11 for Officer Cummings.

12 THE COURT: Any redirect, Solicitor?

13 MS. HALL: Just real quick.

14 Redirect Examination by Ms. Hall:

15 Q. Now you said you were -- how far away from me -- from
16 Crystal Thomas when you were in the Detention Center?

17 A. Several feet.

18 Q. So if she had screamed out, I need help, I'm dying and
19 you had thought that to be the truth would you have made
20 sure that the woman got medical attention?

21 A. I sure would have.

22 Q. Thank you.

23 THE COURT: Thank you, sir. You may step down.

24 MS. HALL: Your Honor, the only other person I'd like
25 to call today is Jessica Kreel. She is here simply for the

JESSICA KREEL - DIRECT EXAMINATION BY MS. HALL

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1 -- she's the medical records custodian at the hospital.

2 It'll hopefully take only about five minutes. And so the

3 State calls Jessica Kreel.

4 MADAME CLERK: Please raise your right hand. Place

5 your left hand on the Bible. State your full name.

6 MS. KREEL: Jessica Gail Kreel.

7 Jessica Kreel, being duly

8 sworn testified as follows:

9 Direct Examination by Ms. Hall:

10 Q. Ms. Kreel, state your full name for the record, please.

11 A. Jessica Gail Kreel.

12 Q. And where are you employed?

13 A. Chester Regional Medical Center.

14 Q. And what are your duties there at the Medical Center?

15 A. I am the HIM Director and the HIIPA privacy officer.

16 Q. And in that capacity do you keep -- have control and

17 maintain all the medical records that the hospital has?

18 A. Yes, ma'am.

19 Q. Okay. I'm going to show you what's been marked as

20 State's exhibit 1 for identification. And tell me if you

21 can recognize ---

22 A. Yes, ma'am.

23 Q. --- those?

24 A. This is a complete medical record, emergency room

25 record ---

JESSICA KREEL - CROSS EXAMINATION BY MS. BURRIS

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1 Q. Okay.

2 A. --- for our hospital.

3 Q. And what is the patient's name on that record?

4 A. The patient's name is Arthur Totherow.

5 Q. What is the date of treatment?

6 A. Date of treatment is 6/24/2011.

7 Q. Okay. And is that -- is that the records that are kept
8 within your control in your office?

9 A. Yes.

10 MS. HALL: Your Honor, the State would move that this
11 be admitted as State's 1.

12 THE COURT: Any objection?

13 MS. BURRIS: No objection, Your Honor.

14 MS. HALL: Thank you.

15 (Whereupon State's exhibit 1 was admitted into
16 evidence)

17 MS. HALL: I don't have any further questions for this
18 witness.

19 THE COURT: Any cross examination?

20 (Pause)

21 THE COURT: Cross examination of the witness?

22 MS. BURRIS: Thank you, Your Honor. I apologize.

23 Cross Examination by Ms. Burris:

24 Q. Ms. Kreel?

25 A. Yes.

JESSICA KREEL - CROSS EXAMINATION BY MS. BURRIS

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1 Q. As the medical records custodian can you please read
2 for the jury in this medical report, physical examination
3 and what it says as far as musculoskeletal extremity, right
4 upper extremity?

5 A. I can, yes.

6 Q. Okay.

7 THE COURT: She doesn't have it.

8 MS. BURRIS: I apologize.

9 A. I brought a copy of it.

10 Q. Oh, you did? Okay.

11 A. Yes.

12 Q. Great.

13 A. Or would you rather me use what is ---

14 Q. Yes, please.

15 A. --- into evidence?

16 Q. I'm going to show you State's exhibit 1. Can you
17 please read as to whose medical report this is and also the
18 physical examination as to the musculoskeletal extremity,
19 right upper extremity?

20 A. Patient's name is Arthur Totherow. Date of birth is

21 The chief complaint is a human bite. Exam time
22 is 0312 in the morning. History obtained from the patient.
23 History limited by -- not applicable.

24 Onset of symptoms was immediately prior to arrival in
25 the emergency department. System, excuse me. Symptoms came

JESSICA KREEL - CROSS EXAMINATION BY MS. BURRIS

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1 on suddenly. Symptoms are present now. Injury occurred at
2 work. Patient presents with a human bite wound.

3 Symptoms located in the right forearm. Patient states
4 symptoms are mild severity. Associated signs and symptoms,
5 negative dizziness, negative excessive bleeding, negative
6 loss of consciousness, negative laceration, negative nausea.

7 Q. Okay. Negative meaning there was not excessive
8 bleeding, not a major laceration, no nausea, ---

9 A. I'm not a nurse.

10 Q. Okay.

11 A. I'm not a clinician. So I cannot state ---

12 Q. What it means?

13 A. What that means. I can just tell you -- I can read it
14 to you.

15 Q. Okay. Can you please skip over and read where it says
16 physical examination?

17 A. Physical examination, general, nursing documentation
18 reviewed, vital signs noted. Patient appeared as well
19 nourished. Patient appears mildly anxious. Patient in no
20 acute distress. Post oxymetry results noted.

21 Musculoskeletal extremity, right upper extremity, forearm,
22 bite to mid forearm. Did not penetrate past dermis. More
23 of an abrasive bite. Moderate tenderness to palpitation.
24 Neurovascular intact. Exam intact. Left upper extremity,
25 left upper extremity within normal limits. Would you like

JESSICA KREEL - CROSS EXAMINATION BY MS. BURRIS

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1 for me to continue?

2 Q. And where it says -- no. Thank you.

3 MS. HALL: I have nothing further. I ask that this
4 witness be excused.

5 THE COURT: Thank you, ma'am. You may be excused.

6 MS. KREEL: Thank you.

7 THE COURT: Anything else today?

8 MS. HALL: I have another witness, but it's going to be
9 longer than five minutes.

10 THE COURT: How long is -- how long is longer than
11 five?

12 MS. HALL: For my part it probably won't take about
13 fifteen or twenty minutes.

14 THE COURT: That's probably talking about an hour then.
15 Yeah, this is probably a good time to call it a day. Let me
16 speak with our court reporter for just one second.

17 (Pause)

18 THE COURT: Ladies and gentlemen, we're getting ready
19 to conclude it for the day until 9:30 in the morning. The
20 court reporter has to come from around Greenville to get
21 here. The other court reporter that normally would be
22 working with us is sick and can't work with us this week.

23 Ladies and gentlemen, what I'm getting ready to ask you
24 to do is really going to be hard because I'm going to ask
25 you when you leave here, go home to see your family, friends

1 Wednesday, April 18, 2012:

2 (Whereupon court resumed at 9:26 am)

3 THE COURT: Solicitor, you indicated you had a motion
4 in this case.

5 MS. HALL: I do. I have a motion to exclude Dr. Days'
6 testimony in the trial of the case. I was thinking of some
7 stuff last night. State versus Santiago is the most recent
8 case on this. It's 2006.

9 It talks about -- and I'm connecting the dots here just
10 based on what Ms. Burris has presented so far in her cross
11 examination as well as in her opening statement. But it
12 seems to me that she is attempting to formulate some kind of
13 diminished capacity defense, which is not a defense in South
14 Carolina.

15 She's -- the doctor seems like he's coming in to show
16 that she had some sort of medical condition that made Ms.
17 Thomas unable to form intent to or intent to commit assault
18 and battery, second, because of her diminished capacity.
19 And the State would just submit that that is an improper
20 defense in South Carolina and the testimony just -- is -
21 routinely excluded by a trial judge in such instances.

22 THE COURT: Ms. Burris.

23 MS. BURRIS: Yes, sir. May it please the Court. Your
24 Honor, specifically I did have the opportunity to look at
25 State versus Santiago, which basically talks about whether

1 or not a defendant has the requisite mental state to commit
2 a crime.

3 What we have is we have qualified the doctor as an
4 expert to actually testify as to what the medical records
5 actually reflect. The medical records simply reflect that,
6 you know, she had panic attacks, she has seizures. It's not
7 -- or a mental intent because I would certainly have a
8 problem with my client because diminished capacity somewhat
9 hinges upon also a mental competency as to whether or not
10 she even knew exactly what she was doing. So absolutely
11 that's certainly not our argument.

12 Basically our essential defense is that, you know, in
13 the heat of the moment, in this traumatic experience in, of
14 course, as the officer testified, the concrete walls, in a
15 jail cell, this is exactly what occurred. It's based on the
16 medical records, based on the previous diagnosis, based on
17 the diagnosis three days after the incident as to her exact
18 behavior.

19 So it's not whether or not she actually had the mental
20 or requisite mental state to commit the crime because
21 certainly I would have had to have her evaluated if that was
22 exactly what I was arguing. But certainly that is not the
23 route in which we are -- that is not our position.

24 Our position is that, you know, she has in the past had
25 a panic attack, she has in the past had seizures, she has in

1 the past, you know, based on traumatic experiences
2 experienced uncontrollable shaking. And as a result of that
3 he's simply going to testify based on his observations of
4 the video tape. And he will testify.

5 Now, of course, he's probably not going to be able to
6 testify as to certainty because, of course, we were not
7 there, she was not diagnosed at that very moment. However,
8 he will be able to testify based on his medical professional
9 opinion as to what he believes based on his review of the
10 medical records, based on his review of the intake sheet,
11 based on his review of diagnosing Crystal Thomas on that
12 particular day as to what he believes that it is based on
13 his observation.

14 THE COURT: Well, let me take it a step further.
15 Aren't you -- what you're really talking about, though,
16 aren't you, is in mitigation?

17 MS. BURRIS: More so mitigation. Well, you mean as in
18 for the doctor's testimony, Your Honor?

19 THE COURT: The reason for ---

20 MS. BURRIS: Yes.

21 THE COURT: --- this line of ---

22 MS. BURRIS: Yes, sir.

23 THE COURT: --- the relevance of the evidence you're
24 talking about is in mitigation?

25 MS. BURRIS: Absolutely. Absolutely.

1 THE COURT: But the Solicitor's saying that that's not
2 relevant during the trial of the case. Am I right?

3 MS. HALL: That's correct. And, you know, as far --
4 just what she was -- I think Ms. Burris was saying just a
5 second ago, Santiago cites Gill (phonetics) versus State of
6 South Carolina, plus that diminished capacity differs from
7 an insanity defense. And it can be raised by a defendant
8 who has conceded to be legally sane, which I would assume
9 that Ms. Thomas has conceded to be legally sane because she
10 hasn't raised that or, you know, entered it -- her sanity
11 hasn't been an issue, at least up until this point.

12 But when Ms. Burris opened she talked about *mens rea*,
13 intent and everything being a part of the defense. And the
14 State would submit that it is not a defense. It's not -- it
15 should not be brought up during the trial. And if it is, if
16 she is ultimately convicted, then it would be part of the
17 mitigation, and the State would have no objection to the
18 doctor coming to testify at that point.

19 But as far as doing it during the trial, all it's going
20 to do is confuse the jury and they're not going to get it.
21 They're not going to get a charge on diminished capacity
22 because it doesn't apply in this case.

23 MS. BURRIS: Your Honor, in Santiago specifically they
24 had a forensic psychiatrist to actually come and testify
25 versus a medical physician who actually had the opportunity

1 to diagnose her as to her condition given the traumatic
2 experience. It indicates that Dr. Morgan, the forensic
3 psychiatrist, actually testified. And he talked about
4 whether or not the person was borderline, whether or not
5 there was any decreased intellectual capacity.

6 The diminished capacity doctrine is certainly
7 different, of course, from the insanity defense. We're
8 certainly not trying to allege any type of insanity defense.
9 It allows the defendant to offer evidence of his mental
10 condition with respect to his capacity to achieve the *mens*
11 *rea* requirement for the commission of the crime charged.
12 That's certainly not what we're talking about here.

13 We're talking about the condition of the defendant at
14 the time of this particular incident. So it's not more of a
15 diminished mental capacity to the point that she could not
16 appreciate or did not know exactly what was going on because
17 certainly I would have had her evaluated because, therefore,
18 you're hinging upon whether or not she's even competent or
19 whether or not she's legally sane. And that's totally
20 different.

21 THE COURT: Well, I will read Santiago. And we'll ---

22 MS. BURRIS: I would like to have that opportunity
23 also, Your Honor.

24 THE COURT: --- talk about it later. Anything else?
25 Because you're not getting ready to offer the doctor at this

1 time?

2 MS. BURRIS: No, sir.

3 THE COURT: We're still in the State's case. How much
4 longer are you guessing on yours?

5 MS. HALL: I've got one witness left. I've only got
6 one witness left assuming nothing else comes up. And that's
7 fine. I just wanted to bring it to the Court's attention
8 early on.

9 THE COURT: Thanks. I appreciate that. Y'all ready
10 for the jury?

11 MS. HALL: The State's ready.

12 MS. BURRIS: Yes, sir, Your Honor.

13 THE COURT: All right. Let's bring the jury in.

14 MS. HALL: Wait, let me -- hold on, let me make sure my
15 witness is here. That's important.

16 THE COURT: That would be important, if it's your only
17 remaining witness.

18 (Pause)

19 MS. HALL: He had some Sheriff's Department issue, but
20 he's two minutes away.

21 MS. BURRIS: Your Honor, I think we also have a couple
22 of other issues. There is a record that I asked the officer
23 about yesterday during cross examination. We have since
24 gotten this record certified. I've also given a copy to Ms.
25 Hall.

1 And my understanding is Officer Alley, who's actually
2 going to testify, he is actually the records custodian from
3 which this record actually came, Chester County Detention
4 Center. It's my position that Ms. Hall is not opposed to
5 stipulating to this coming in, but I'm not sure 'cause she
6 -- go ahead.

7 MS. HALL: I wasn't opposed to -- I didn't care if you
8 had it certified in the event that it would come -- could
9 come in, but I am opposed to it coming in. She used it to
10 cross examine Officer Totherow yesterday about disciplinary
11 action, stuff like that. He never -- he conceded to the
12 whole thing.

13 I do object to it coming into evidence because all --
14 it's irrelevant at this point. If he had denied the
15 existence of it or said he didn't know anything about it at
16 all -- he agreed. When she read it to him, he said, yeah,
17 because -- he said, yeah, that's my signature. He's already
18 testified about it. I don't think it coming in serves any
19 purpose except to be prejudicial ---

20 THE COURT: And why does it come in?

21 MS. BURRIS: Your Honor, it is actually relevant. He
22 actually agreed to a portion of it.

23 THE COURT: But shouldn't you have used it at that time
24 to cross examine him and impeach him?

25 MS. BURRIS: Yes, sir. I did use it at that time to

1 impeach him with it.

2 THE COURT: Well, ---

3 MS. BURRIS: He agreed to a portion of it.

4 THE COURT: I know. But while he was on the stand is
5 when you should have put that into evidence to impeach him.
6 Isn't that right?

7 MS. BURRIS: That's correct, Your Honor. But even
8 still, given that he's actually testified as to his
9 knowledge that this is his signature, and given that we have
10 Officer Alley, who is the records custodian coming in, could
11 I not introduce it through him given that it is a certified
12 record and it is also qualified as a public record under the
13 Freedom of Information Act?

14 THE COURT: No, because the purpose of you trying to do
15 it is to impeach him, right?

16 MS. BURRIS: I mean, to impeach him or, I mean, just to
17 basically show we had the same issue here that happened in
18 our defense.

19 THE COURT: Well, you can't admit -- you could only
20 admit any portion of it that he had denied. You couldn't --
21 if he admitted it, you can't admit it. If he acknowledged
22 it, you can't admit it.

23 MS. BURRIS: I think his testimony was that -- I don't
24 know if he actually -- his testimony was whether or not he
25 couldn't remember or I can't remember exactly his testimony

1 in regards to this particular document. But there are two
2 other ones that he did admit to, and this particular one,
3 I'm not sure exactly as to his testimony.

4 MS. HALL: I remember his testimony. He said -- he
5 said he couldn't remember, but when she showed him his
6 signature he said, yeah, that's my signature, okay. And
7 then he read it. And so it's already been in. She's used
8 it to impeach him. And I don't see what the point is of
9 having it in evidence.

10 MS. BURRIS: He did not read it in its entirety, Your
11 Honor.

12 THE COURT: Here's the problem. The time to do it was
13 back then. I'm not going to allow it. How is that? What
14 you want to do is introduce his personnel record, I guess is
15 what it is. I don't know.

16 MS. BURRIS: It's his personnel record, which qualifies
17 as a public record.

18 THE COURT: But that doesn't mean it's admissible. And
19 I'm going to deny it.

20 MS. BURRIS: Thank you, Your Honor.

21 THE COURT: I'm sorry?

22 MS. BURRIS: The only issue we have is Jessica Kreel
23 and that record, the medical record issue.

24 MS. HALL: This is the medical records custodian from
25 the hospital who was here yesterday. And she admitted, you

1 know, she was here and she authenticated the records as
2 related to Officer Totherow. Ms. Burris also has her under
3 subpoena, the medical records as they relate to Crystal
4 Thomas.

5 And I've told Ms. Burris, which is totally like a four
6 throng thing, but if she gets to the -- well, first of all
7 we need to find out about the doctor, if his testimony is
8 going to be allowed. If his testimony is not allowed, then
9 the medical records are pointless. And they're probably --
10 I would argue that those would be inadmissible too.

11 But I told Ms. Burris if the medical -- if you allow
12 the doctor, the medical records could come in, I'm not going
13 to make Ms. Kreel come back over here and testify again just
14 to get medical records in. I would just stipulate. But
15 first, I have issues ---

16 THE COURT: You're not going to make her authenticate
17 the records.

18 MS. HALL: Right. I would have, you know, relevance
19 issues and things like that that we need to discuss, but ---

20 THE COURT: Okay.

21 MS. HALL: --- I'm not going to haul her back over here
22 for that.

23 THE COURT: All right. Is your witness here?

24 MS. HALL: Yes.

25 THE COURT: We ready for the jury?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 MS. HALL: Yes.

2 THE COURT: Let's bring the jury in.

3 (Whereupon State's exhibit 4 was marked for
4 identification)

5 (Whereupon the jury entered the courtroom at 9:41 am)

6 THE COURT: Welcome back and good morning, ladies and
7 gentlemen. I believe we are ready to resume testimony in
8 the case. We're still in the presentation of the State's
9 case. Ms. Hall, you may call your next witness.

10 MS. HALL: Your Honor, the State calls Major Alley.

11 MADAME CLERK: Please raise your right hand and state
12 your full name.

13 MR. ALLEY: Billy Wayne Alley, Jr.

14 Billy Alley, Jr., being
15 duly sworn testified as follows:

16 Direct Examination by Ms. Hall:

17 Q. Could you state your full name for the record, please.

18 A. It's Billy Wayne Alley, Jr.

19 Q. Major Alley, where do you work? Where are you
20 employed?

21 A. With the Chester County Sheriff's Office, detention
22 division.

23 Q. And how long have you worked there?

24 A. Fourteen and a half years.

25 Q. How long have you been in law enforcement?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. Fourteen and a half years.

2 Q. Okay. And what is your position at the Detention
3 Center?

4 A. Jail Administrator.

5 Q. Okay. So what does that -- could you describe that for
6 me?

7 A. Basically seeing all -- overseeing all of the
8 employees, day-to-day operations, basically the day-to-day
9 operations of the facility.

10 Q. So you're pretty much in charge of the whole jail?

11 A. Yes, ma'am.

12 Q. Okay. And all the people who work there?

13 A. Yes, ma'am.

14 Q. How long have you been working in that capacity?

15 A. Since 2006.

16 Q. So were you working in that capacity on June 24th of
17 2011 when this incident occurred?

18 A. Yes, ma'am.

19 Q. All right. And how long has -- from the moment that
20 Officer Totherow came to work at the jail were you the
21 person who hired him or were you the officer who was over
22 him at the time he was hired?

23 A. I was in part of the interview process, yes, ma'am,
24 interviewed him.

25 Q. Okay. And you were the Major then?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. Yes, ma'am, I believe so.

2 Q. Okay. So if you're the Major, who's underneath you
3 directly?

4 A. It would be a captain.

5 Q. Okay. So would that be today Captain Tolbert?

6 A. No, ma'am.

7 Q. Was it on -- June 24th of 2011 was it Captain Tolbert?

8 A. I believe so, yes, ma'am.

9 Q. Okay. And then -- and then Officer Totherow was below
10 -- it was you, then Captain Tolbert and then Officer
11 Totherow was somewhere below her, right, in rank? Is that
12 how it was?

13 A. Yes, ma'am.

14 Q. Okay. So do you work the day-shift or the night-shift?

15 A. Primarily day-shift.

16 Q. And on June 24th of 2011 were you working the day-shift
17 or the night-shift?

18 A. I believe I was working the day-shift.

19 Q. Okay. So you weren't present when any of this
20 occurred, is that right?

21 A. No, ma'am.

22 Q. Okay. But you were familiar with the jail facility at
23 that time?

24 A. Correct.

25 Q. Can you describe for the jury what the facility was

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 like on June 24th of 2011?

2 A. That was mid-construction.

3 Q. What were y'all doing in construction?

4 A. Basically remodeling the jail, the existing jail part.

5 Q. So was it a whole remodel, like a full remodel of the
6 entire jail or parts of the jail? Or how did that go?

7 A. New parts were being built, other parts, like existing
8 was being remodeled. Ceilings were tore out. We had to
9 temporarily move booking areas to actual cell areas to be
10 able to get the inmates booked in and processed through,
11 things of that nature. There was building materials in the
12 halls. We had to redirect entry into the jail, you know,
13 just modify it to make things happen, get the job done.

14 Q. Is it fair to say the place was pretty much torn up and
15 you guys were trying to do the best you could to work around
16 the construction?

17 A. Oh, yes, ma'am.

18 Q. And is the construction complete today?

19 A. Yes, ma'am.

20 Q. How long has it been complete?

21 A. I think we moved in August of -- September, I mean,
22 August/September of 2011.

23 Q. Okay. So pretty shortly after this happened?

24 A. Right.

25 Q. Okay. So can you describe -- well, let me -- we're

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 going to talk about the video in a minute. But can you
2 describe the camera issue, you know, like how the cameras
3 were set up and things like that during this construction
4 period as they relate to the June 24th date?

5 A. You mean about the way they set up, how ---

6 Q. The security cameras and how they're set up in the jail
7 and ---

8 A. During construction we had a total of sixteen cameras
9 located in the pretrial section of the jail. But as
10 construction went on, we had to eliminate certain cameras
11 and reposition them to kind of gain the best coverage we
12 could for the area of travel for the inmates and officers.
13 So they were moved to accommodate that.

14 Q. And are there -- are these cameras, are they set up to
15 -- you just touched on it a second ago, the areas of travel.
16 So are they set up to film the hallways, or are they on the
17 cells or how does that work?

18 A. They were set up to the hallways and also some of the
19 cell blocks.

20 Q. Okay. To your knowledge on June 24th, 2011 were they
21 set -- the camera that recorded the activity that occurred
22 with Crystal Thomas, was that set up to film the cells or
23 the hallways?

24 A. In which area are you specifically asking about?

25 Q. In the area where she was housed, which I believe was

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 E block.

2 A. No, ma'am, not to my knowledge. I don't believe there
3 were any in there at the time.

4 Q. Not in the cells?

5 A. No, ma'am.

6 Q. But were they in the hallways?

7 A. They were in the hallway.

8 Q. Okay. I'm going to show you what's been marked as
9 State's exhibit 4 for identification. Tell me if you know
10 what that is.

11 A. Yes, ma'am.

12 Q. Okay. What is it?

13 A. These are burned discs from DVRs; the camera system,
14 from what we had in place at the time.

15 Q. Okay. So those are the -- is that a -- have you had a
16 chance to review these before coming into court today?

17 A. Parts -- well, some of them, yes, ma'am.

18 Q. And did you actually take them from the jail camera
19 yourself and did you put them onto those discs?

20 A. Yes, ma'am.

21 Q. So they're a fair and accurate replication of what was
22 on the jail camera the night of June 24th of 2011, is that
23 correct?

24 A. Yes, ma'am.

25 Q. And is that also on your computer?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. Yes, ma'am.

2 Q. The exact thing that's on those discs is what's saved
3 onto your computer ---

4 A. Onto the hard drive, yes, ma'am.

5 MS. HALL: Your Honor, the State would move exhibit 4
6 into evidence.

7 MS. BURRIS: No objection.

8 THE COURT: Without objection.

9 (Whereupon State's exhibit 4 was admitted into
10 evidence)

11 Q. Okay. Give me one second.

12 (Pause)

13 Q. So since you're in charge of the jail and were on June
14 24th I'm going to talk a little bit about procedures and how
15 things work. Let's talk first about ammonia capsules. Are
16 those provided -- does the jail have those in stock at the
17 jail?

18 A. Yes, ma'am.

19 Q. And those are bought by the County to keep at the jail,
20 is that correct?

21 A. Yes, ma'am.

22 Q. What's the purpose of that?

23 A. We assess the situation where the individual may be
24 unconscious or not, you know, responding. I mean, that is a
25 method that we use sometimes to help them to regain

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 consciousness if they can.

2 Q. Is that the same thing as smelling salt?

3 A. Same thing, yes, ma'am.

4 Q. Okay. And have you had a chance to use them sometimes
5 when people are unconscious?

6 A. I haven't personally had the chance to use one.

7 Q. Okay. But those -- so they are issued by the jail and
8 they're available to the officers if they feel the need to
9 use them?

10 A. Yes, ma'am.

11 Q. Okay. Let's talk about inmate restraints and the
12 restraint chair for a moment. Can you talk about when that
13 would be employed and when that would be used?

14 A. Inmate restraint chair would be used in the case if the
15 individual was trying to harm himself, or staff or other
16 inmates.

17 Q. So it's used for safety?

18 A. For safety purposes, yes, ma'am.

19 Q. Okay. And how does that normally work when you put
20 somebody in a restraint chair? What do you -- what are the
21 qualifications to get them in and to get them back out?

22 A. First they have -- had presented some situation to be
23 placed in it. Then once that happens, officers actually
24 place them into a chair and they secure that. They need the
25 straps to restrain them in that chair.

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Q. Okay. Would you say this happens fairly often?

2 A. Yes, ma'am.

3 Q. And what happens when they get in the restraint chair?

4 How do they ever get out? I mean, how -- what is -- what is
5 the procedure to determine if they're ready to get out or
6 not?

7 A. If the inmate starts complying, calms down or if they
8 max out the four hours that we're allowed to keep them in
9 there.

10 Q. Okay. So you have to keep them in there for four
11 hours, is that correct?

12 A. We don't have to ---

13 Q. You don't have to, but you can?

14 A. You can.

15 Q. That's the limit?

16 A. Right. Yes, ma'am.

17 Q. Okay. And so while they're in there do you have to
18 like at any point in time let their arms out or let their
19 legs out during that four hour period of time?

20 A. Yes, ma'am.

21 Q. Okay. Explain that to the jury, please.

22 A. Once the inmate's placed into a restraint chair, every
23 hour after they've been in that chair we have to release one
24 extremity five to ten minutes every hour alternating
25 extremities.

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Q. Okay. So would that be an arm or a leg?

2 A. Arm or leg.

3 Q. Okay. So every hour after they're in there the first
4 hour, you said?

5 A. Um-hum (affirmative).

6 Q. They can stay completely strapped down for that first
7 hour, is that right?

8 A. Right.

9 Q. But then after the first hour, every ten minutes you
10 have to alternate ---

11 A. Every hour. We release ---

12 Q. Every hour? Okay.

13 A. Release it for ten minutes.

14 Q. Okay. And you do that for, you said, fifteen minutes
15 ---

16 A. Ten to fifteen minutes, yes, ma'am.

17 Q. All right. And then you can put it back in ---

18 A. Right.

19 Q. --- and keep them fully restrained for forty-five and
20 then start it again if they're still in it?

21 A. Right.

22 Q. And when you -- and then let's talk about too like
23 wounds and things that happen to officers when they're there
24 or even the inmates for that matter. Did you happen to --
25 at a point in time did you determine that it was necessary

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 to have Crystal Thomas tested for HIV?

2 A. Once I got back in that next morning, I believe I was
3 made aware of the situation. And I believe I had it set up
4 to have that take place.

5 Q. You had the HIV test performed on Ms. Thomas?

6 A. Well, I had her sent to the actual -- the Chester lab
7 to have the tests ran.

8 Q. Is that at the hospital?

9 A. Yes, ma'am.

10 Q. Okay. And what -- what caused you to make that
11 determination?

12 A. From what was told to me when I come in of the prior, I
13 mean, after the incident that she made the statement that
14 she was possibly HIV positive.

15 Q. And that's normal procedure?

16 A. Yes, ma'am.

17 Q. Is it normal procedure -- even if she hadn't said that
18 would you still have sent him or was it the threat that made
19 you send him?

20 A. Well, we would send him anyway.

21 Q. Okay. Because ---

22 A. I mean, it's a bite and the breaking of the skin.

23 Q. And were you involved in the promotion of Officer
24 Totherow? He was -- at some point he was promoted to
25 lieutenant while he was working for Chester County Detention

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Center, is that correct?

2 A. Yes, ma'am.

3 Q. All right. And somewhere lieutenant ranks under
4 captain and major?

5 A. He's next in line below the captain.

6 Q. Okay. And how -- if you're lieutenant at the Detention
7 Center approximately how many employees are you responsible
8 for supervising?

9 A. I believe at the time it would have been seven or six.

10 Q. Is that six or seven per shift or is that six or seven
11 total?

12 A. That's per shift.

13 Q. Okay. And so were you involved in determining whether
14 he should be promoted?

15 A. Yes, ma'am.

16 Q. All right. And at that point in time you -- yesterday
17 there was a couple of comments, Ms. Burris had asked Officer
18 Totherow about some disciplinary forms, two or three that
19 had been written.

20 A. Yes, ma'am.

21 Q. When an officer signs a disciplinary form, does that
22 indicate that they agree with what's said or is that just
23 indicating that they received a copy of it and they
24 understand?

25 A. That's just an acknowledgment that they received the

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 actual copy.

2 Q. Okay. But it's not saying that they agree with it?

3 It's not saying that -- like, for lack of a better term,
4 guilty of it or anything like that?

5 A. No, ma'am.

6 Q. And when you were considering Officer Totherow for a
7 promotion to lieutenant did you take that -- those
8 disciplinary paperwork -- disciplinary paperwork into
9 consideration?

10 A. Right. They were reviewed.

11 Q. And it was reviewed by you and who else?

12 A. Probably -- if I remember correctly, Captain Duniser.

13 Q. Captain Duniser?

14 A. Um-hum (affirmative).

15 Q. Okay. And was she -- did she -- was she the captain
16 who came after Captain Tolbert?

17 A. No. No, ma'am. She -- she's actually been a captain
18 there for, I think, the past five or six years.

19 Q. Okay. So then on this date Captain Tolbert wasn't a
20 captain at all, is that right?

21 A. No, ma'am. She was -- she's also a captain. Captain
22 Tolbert is actually captain over the shifts. Captain
23 Duniser is the administrative captain.

24 Q. Okay.

25 A. Captain Tolbert came in to the Detention Center, I

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 believe, around the first of this year.

2 Q. And so that's different if you're a captain over a
3 shift versus a captain over the whole jail?

4 A. Right.

5 Q. And so Captain Tolbert, who's the lady who wrote one of
6 these disciplinary actions, she was just a captain over a
7 shift, she wasn't a captain over the whole jail, right?

8 A. Right.

9 Q. Okay. So you took these disciplinary actions into
10 consideration when you promoted him to lieutenant, is that
11 correct?

12 A. Yes, ma'am.

13 Q. And you promoted him anyway?

14 A. Right.

15 Q. And so these disciplinary -- obviously these
16 disciplinary actions, did they have any effect on your --
17 determining if he was completely capable and able to carry
18 out the duties of lieutenant?

19 A. Yes, ma'am.

20 Q. Okay. Have you had a chance to review this video that
21 we've entered into evidence as State's exhibit 4?

22 A. I've reviewed it briefly. I didn't view the full
23 length of the whole video. What I've done in the past when
24 I'm recording video, I'll fast forward it to the end to get
25 my times. And then I go back and I'll burn the actual

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 incidents and then produce the copies to whoever needs them.

2 Q. Okay. But have you -- have you had a chance to review
3 portions of it?

4 A. Yes, ma'am.

5 Q. So you've had a chance to observe Crystal Thomas'
6 actions in this video?

7 A. Some of them, yes, ma'am.

8 Q. And you've had a chance to review the officers' actions
9 in response to the way Ms. Thomas was acting that night, is
10 that correct?

11 A. Yes, ma'am.

12 Q. In your experience as a major and as your duties as
13 the, you know, the captain or the major of a jail and being
14 over the entire jail, is it your -- do you -- did you feel
15 it necessary to take any disciplinary action against any of
16 these officers as it relates to Ms. Thomas' incident on June
17 24th?

18 A. No, ma'am.

19 Q. Did you -- when you reviewed this did you determine the
20 length of this video?

21 A. I believe I did, yes, ma'am.

22 Q. About how long is it?

23 A. I believe it's four hours and maybe a minute, if I'm
24 not mistaken.

25 Q. Okay.

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 MS. HALL: Your Honor, the State's going to ask
2 permission to publish it, but not in its entirety. And I
3 believe Ms. Burris would have the opportunity, if she
4 wanted, to publish the same or different portions of it
5 during her case if she wants to have the ability to do so.
6 But the State would just ask permission to publish portions
7 of it rather than putting everybody through a four hour
8 video.

9 MS. BURRIS: I guess, Your Honor, the question is --
10 there are, I believe, five different frames on the video.
11 So when the Assistant Solicitor states portions of it, which
12 portions are you asking to publish?

13 MS. HALL: Should we approach?

14 MS. BURRIS: Yes.

15 (Whereupon a bench conference was held off the record
16 in the presence of the jury, but out of their hearing)

17 (Whereupon the bench conference ended)

18 Q. I'm going to get you to -- while we're showing part of
19 it, I might ask you to step down and just look at the -- to
20 decipher like the parts of the jail.

21 A. Okay.

22 Q. I might get you to come down here, Major Alley. We
23 might have to dim the lights a little bit too.

24 (Pause)

25 (Whereupon the witness left the witness stand)

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 Q. If you could just describe for the jury kind of as we
2 go through this what they're seeing. Maybe not what they're
3 seeing as far as narrating it, but what part of the jail it
4 is and what you do there.

5 A. This area right here is the actual -- one of the
6 temporary booking entries that we use, coming around the
7 hall and coming down the actual main hall into the temporary
8 booking area.

9 Q. Okay. Is that Ms. Thomas that just came down the
10 hallway or do you know?

11 A. Yes, ma'am.

12 Q. So she can come in down that hallway and then where
13 would she go?

14 A. I believe the next video will pick up the other angle
15 of the hallway.

16 Q. And who are they?

17 A. That would be two officers responding to the actual
18 cell block. You can see it right here on the right corner.

19 Q. If you could just go up there and point, that's fine.
20 Just show us where the hallway, the cell block is and just
21 kind of narrate that.

22 A. This is the other end of the hallway, which is seen
23 from the first frame. This right here is actually the
24 doorway leading into it, an actual cell area.

25 Q. Is that -- does that doorway lead into a cell or does

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 it lead into a hallway?

2 A. It leads into -- two-fold. It's an actual hallway that
3 leads down, you have individual cells, four of them to the
4 right once you go down the little hallway.

5 Q. And what block is that?

6 A. That was the E block at the time.

7 Q. All right. So -- and you saw -- were they taking that
8 restraint chair down the hallway?

9 A. They were taking it back to right in front of the
10 hallway door, I mean, the cell block door.

11 Q. So what is this?

12 A. That's actually the temporary booking area that we set
13 up during the construction.

14 Q. Is that Ms. Thompson in the restraint chair?

15 A. Yes, ma'am.

16 Q. I mean Thomas, I'm sorry. And is it -- brought there
17 for observation?

18 A. Yes, ma'am.

19 Q. How did that work during that time with the jail being
20 ---

21 A. Well, at that time that was the observation place we
22 had. And we were kind of making due with what we had. And
23 then brought back to the actual temporary booking area where
24 she could be monitored by officers.

25 Q. Okay. Who is that officer who's next to her?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. That is Officer Funderburk with his back to the camera.

2 Q. And who's the other one? If you can tell. If you
3 can't tell, that's all right.

4 A. I can't really tell who that is.

5 Q. Okay. And what time is it on this portion of the
6 video?

7 A. The date -- this time down here is June the 24th, 2011
8 at 0139 hours in the morning.

9 Q. Is that the time it was printed, I don't know, blazing
10 on the camera? And that was the date and time that this
11 incident was actually occurring, is that correct?

12 A. Right. It's watermarked on the video.

13 Q. And that desk you see, is that the booking desk?

14 A. Yes, ma'am, it's one of two. There were two side by
15 side there.

16 Q. Would Ms. Thomas have been left alone there or would
17 she have been observed while she was in there?

18 A. She would have been observed the entire time.

19 Q. I'm just going to speed up a little bit just so we can
20 -- we'll still be able to see. Obviously, it's on fast
21 forward here, right?

22 A. You have multiple speed, fast forward.

23 Q. I'm just trying to get there a little bit faster.
24 Approximately how long -- is that normal speed?

25 A. Yes, ma'am. If you look right here it'll indicate what

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 speed, fast forwarding. You can go two, four, six, eight,
2 sixteen and thirty-two frames per second.

3 Q. So that would be like thirty-two. Where is the audio
4 on this? Do you have audio on the video now?

5 A. During the old -- with the old system we had no audio
6 capability at all.

7 Q. Okay. But you do now?

8 A. I do have audio capability now.

9 Q. In your experience as a Major at the jail have you seen
10 people act this way before?

11 A. Yes, ma'am.

12 Q. And this is 1:08 in the morning, is that correct?

13 A. Yes, ma'am.

14 Q. Based on the time ---

15 A. Well, you've got this one -- you've got two screens
16 playing at once. This would be the current time ---

17 Q. That's about 2:13 in the morning?

18 A. Yes, ma'am. There's two of them playing at once.

19 Q. About 2:30 in the morning. What time is it now?

20 A. 3:09.

21 Q. 3:27, is that correct?

22 A. Yes, ma'am.

23 Q. Okay. And at this point, just like you said before,
24 you were taking her arm out based on procedure and what
25 you're required to do, is that correct?

BILLY ALLEY, JR. - DIRECT EXAMINATION BY MS. HALL

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1 A. Yes, ma'am.

2 Q. Okay. And took her right arm out at this time, is that
3 right?

4 A. Yes, ma'am.

5 Q. That's about three in the morning there?

6 A. Yes, ma'am, 4:27.

7 Q. Is it correct to say that that's about 5:00 in the
8 morning?

9 A. 4:56, yes, ma'am.

10 Q. I'll fast forward it. Okay. Now it's fast forwarding.
11 So what are they doing now? Can you tell?

12 A. Looks like they're releasing the restraints on her.

13 Q. When she calms down they took her out, right?

14 A. Right.

15 Q. When you take somebody out of the restraints do you
16 take them out in the cell, or do you take them out in the
17 hallway or does it vary?

18 A. If you have the capability you can release them out of
19 the restraint chair in the cell ---

20 Q. Do you know if that's what was done in this instance?

21 A. I don't know -- if I remember correctly she was taken
22 back to E block and released at the door.

23 Q. Okay. So at this point she was fairly unrestrained,
24 but she was just wheeled back there to be released?

25 A. Yes, ma'am.

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. Thank you. You can go ahead and have a seat.

2 (Whereupon the witness returned to the witness stand)

3 Q. All right. Now just one last question. As you stated,
4 you are -- you are responsible for the care and safety of
5 the inmates while they're in custody, right?

6 A. Yes, ma'am.

7 Q. And based on what you saw on this video just a second
8 ago, had you been there would you have called for EMS or
9 taken her to the hospital?

10 A. Based on what I seen?

11 Q. What you saw on the video. It's all you can testify
12 about since you weren't there.

13 A. I didn't see anything that would warrant notification
14 of EMS.

15 Q. And if you had seen something that had warranted that
16 you would have -- there would have been a disciplinary
17 action filed or someone would have lost their job, is that
18 correct?

19 A. Could have resulted, yes, ma'am.

20 Q. Thank you. I don't have anything further. Please
21 answer anything for Ms. Burris.

22 MS. BURRIS: Thank you, Your Honor. May it please the
23 Court.

24 Cross Examination by Ms. Burris:

25 Q. Major Alley, ---

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. Yes, ma'am.

2 Q. --- you have been in law enforcement for how many
3 years?

4 A. Fourteen and a half years.

5 Q. Fourteen and a half years you've actually been with the
6 Chester County Sheriff's Department or Detention Division?

7 A. Yes, ma'am.

8 Q. Okay. And you have actually gone through the Criminal
9 Justice Academy?

10 A. Yes, ma'am.

11 Q. That's right? And there are certain policies and
12 procedures that the Criminal Justice Academy instructs you
13 as a law enforcement officer to follow, correct?

14 A. Yes, ma'am.

15 Q. Okay. And one of the things that the Criminal Justice
16 Academy actually teach you is how to deal with an inmate who
17 may have -- who may be at risk or potentially have a medical
18 issue, is that correct?

19 A. I don't know if it first says go through the actual ins
20 and outs. They make you aware that you have to treat each
21 incident the way it should be treated, in the best way you
22 can.

23 Q. Okay. So you said you're not sure if they actually
24 teach you how -- what do you mean by go through the ins and
25 outs? You mean from once the inmate comes in and then they

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1 go through the booking procedure and then they're placed in
2 a cell? They don't actually instruct you on that?

3 A. Right, they do.

4 Q. They do instruct you on that?

5 A. Right.

6 Q. Okay. So for example, say if you have an inmate coming
7 in and you as an officer given, let's say, fourteen years of
8 experience, and you believe -- what was some of the first
9 things that you do when you have an inmate coming in and the
10 inmate is shaking, or trembling, you know, you're not sure
11 if they're having difficulty breathing, it looks like
12 they're having difficulty breathing, but you're not sure,
13 what is one of the first things that you as an officer would
14 do?

15 A. Well, I think you would assess the situation and judge
16 the severity of the situation.

17 Q. Okay. And in assessing the situation as a law
18 enforcement officer, what do you do? How do you do that?

19 A. Well, how they respond, how they act, or can they talk,
20 are they moving, how they're acting.

21 Q. Um-hum (affirmative). Okay. Do you ask them whether
22 or not they're taking any type of medication?

23 A. I mean, you could, yes, ma'am.

24 Q. Okay. And that's one of the things you're probably
25 instructed to do at the Criminal Justice Academy?

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. That's part of your screening process when they're
2 coming in for the booking process.

3 Q. That's right. Do you ask them whether or not they
4 could potentially have any type of medical condition?

5 A. During the booking process.

6 Q. Okay. Now it can happen prior to the booking process
7 if you see some type of behavior that may warrant it,
8 correct?

9 A. If you can obtain that information.

10 Q. Okay. And in assessing the condition of the inmate,
11 those who may be at risk, you as a law enforcement officer
12 wouldn't try to take care of that inmate or that at-risk
13 inmate who could have a medical condition, you wouldn't try
14 to do that yourself, would you?

15 A. We're not medical professionals. We can't say whether
16 the person has a medical condition. Saying they have a
17 medical condition or is faking, I mean, we don't know.

18 Q. Right. Okay. So were you there when Crystal Thomas
19 actually came into the Detention Center that night?

20 A. No, ma'am.

21 Q. You were not there?

22 A. No, ma'am.

23 Q. You actually got there how many hours later?

24 A. Eight hours or so later.

25 Q. So you arrived at the Detention Center eight hours

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 after Crystal Thomas had actually been there?

2 A. Right.

3 Q. Okay. So you're not sure as to the condition in which
4 Crystal Thomas was in when she came into the Detention
5 Center, 'cause you didn't see her, right?

6 A. Correct.

7 Q. Okay. And you're not sure as to Crystal Thomas'
8 condition when she actually, let's say, two, three hours
9 later when she arrived at the Chester County Detention
10 Center, correct?

11 A. Correct.

12 Q. And you're not sure as to Crystal Thomas and what
13 exactly took place at the Detention Center, let's say, three
14 to four hours after Crystal Thomas arrived, correct?

15 A. Correct.

16 Q. And you arrived, you said, eight hours later on your
17 shift?

18 A. Arrived at eight am that morning, the following
19 morning.

20 Q. Okay. So this was after she had been there probably
21 about eight hours?

22 A. Yes, ma'am.

23 Q. Okay. And one of the questions that the Assistant
24 Solicitor asked you was about the ammonia packs.

25 A. Um-hum.

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. You just testified that you are not qualified as a
2 medical professional basically to render medical treatment,
3 right?

4 A. Right.

5 Q. Okay. And the ammonia pack -- or the ammonia, is it
6 like a pill or what is it, ammonia? What type of -- what
7 substance -- is it a substance, are you giving her a pill,
8 what is it?

9 A. No, it's a break snap thing.

10 Q. A break snap.

11 A. Smelling sauce.

12 Q. Smelling?

13 A. Sauce. It's ---

14 Q. Smelling sauce.

15 A. --- kind of the slang for it.

16 Q. Okay. And isn't it true that the ammonia packs or the
17 smelling sauce aren't for the officers to give to inmates,
18 isn't that correct?

19 A. It's not worded that way, no, ma'am.

20 Q. What's not worded that way?

21 A. That they can't use them.

22 Q. Okay. Now my question is exactly where are the ammonia
23 packs in the Chester County Detention Center?

24 A. They're located in the nurse's office in the first aid
25 section.

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. And also in the household department, right?

2 A. Household ---

3 Q. Yeah, household, industrial cleaning 'cause you do have
4 to have the Detention Center sanitized, right?

5 A. Yes, ma'am. But I'm not saying there's ammonia in
6 there.

7 Q. Okay. So the ammonia or the salt packets are actually
8 in the nursing center?

9 A. Right.

10 Q. Right? And you have had what type of medical training
11 to say that Officer Totherow on that day had the right to
12 place ammonia under Crystal Thomas' nose?

13 A. I don't have any medical training to say that.

14 Q. None at all? Okay. And so it is your testimony today
15 that the ammonia packets, if they're actually in the nurse's
16 section, then the nurse or whoever is the assigned medical
17 professional to the Chester County Detention Center would
18 have the right to use these ammonia packets, right?

19 A. To my knowledge I'm not aware of any special training
20 you need to pop a capsule.

21 Q. Well, where did this come from? Where did these
22 instructions come from?

23 A. Instructions?

24 Q. Yeah, as to, you know, if an inmate -- if they're
25 having difficulty breathing, you're not sure if they're

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 responding, to take an ammonia packet and stick it under
2 their nose, where did you get that? Where -- how can you
3 testify under oath that that was the right thing for him to
4 do?

5 A. I can't sit here and testify that's the right thing to
6 do.

7 Q. Okay. 'Cause you've never done it, right?

8 A. Never had the opportunity to.

9 Q. What -- and what -- give me an example of an
10 opportunity that you would have.

11 MS. HALL: Your Honor, this is just requiring
12 speculation on the part of the witness ---

13 THE COURT: I sustain the objection.

14 Q. Officer Alley, you indicate that you did not actually
15 arrive to the Detention Center til eight hours later, right?

16 A. Right.

17 Q. So you did not have the opportunity to observe the
18 actions of Officer Totherow, correct?

19 A. No, ma'am.

20 Q. So you don't know exactly all that took place, correct?

21 MS. HALL: Your Honor, I think she's established he
22 wasn't there, he doesn't -- he didn't see it ---

23 MS. BURRIS: And I'm allowed to -- you opened the door
24 ---

25 MS. HALL: It's just the third or fourth time she's

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 asked this.

2 MS. BURRIS: She's opened the door for that, Your

3 Honor.

4 THE COURT: We've heard a good bit about it, but go
5 ahead.

6 MS. BURRIS: Okay. Thank you.

7 Q. So you testified earlier that there was construction
8 going on and some of the cameras were not operating,
9 correct?

10 A. Right.

11 Q. So the cameras were not functioning, some of them?

12 A. Correct.

13 Q. You were not there?

14 A. Correct.

15 Q. So you cannot, under oath, testify as to what this
16 officer did and how he handled Crystal Thomas?

17 A. Not other than what was on the video.

18 Q. All right. And you've never actually saw on the video
19 based on your observations Crystal Thomas hitting or
20 latching onto Officer Totherow, correct?

21 A. Not from what the video shows, no, ma'am.

22 Q. Okay. Officer Totherow, you testified on direct
23 examination that you were familiar with the disciplinary
24 reports, right?

25 A. You talking to me or Officer Totherow?

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 Q. I'm sorry, Major Alley. I apologize.

2 A. Yes, ma'am. That's all right.

3 Q. You testified earlier that you're familiar with that
4 process?

5 A. Yes, ma'am.

6 Q. Yeah. And that you are one of the officers to review
7 all of the employee policy procedures?

8 A. Correct.

9 Q. And that you read all of them thoroughly with Captain
10 Tolbert?

11 A. Right.

12 Q. And you, along with Captain Tolbert, make the decision
13 whether to demote, promote or however you're going to handle
14 the situation?

15 A. Well, it's actually Captain Duniser also.

16 Q. Captain Duniser also?

17 A. Right.

18 Q. Okay. But the three of you are basically somewhat like
19 the top officials at the Chester County Detention Center?

20 A. Yes, ma'am.

21 Q. And given the disciplinary -- and so you remember
22 because you've been there for fourteen years, right?

23 A. Yes, ma'am.

24 Q. And Officer Totherow had been there for four years at
25 that time?

BILLY ALLEY, JR. - CROSS EXAMINATION BY MS. BURRIS

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1 A. I believe that's correct.

2 Q. Okay. And so given that Officer Totherow was
3 instructed to go get an inmate and render breathing
4 treatment ---

5 MS. HALL: Objection, Your Honor. This is beyond the
6 scope of direct, first of all. And, secondly, she's asking
7 him to testify about a document he doesn't have. She's
8 already used it to cross examine the witness who it actually
9 applies to. And I don't understand how it's relevant ---

10 MS. BURRIS: May we approach, ---

11 MS. HALL: --- to testify about.

12 MS. BURRIS: --- Your Honor?

13 THE COURT: All right. You may approach.

14 (Whereupon a bench conference was held off the record
15 in the presence of the jury, but out of their hearing)

16 (Whereupon the bench conference was ended)

17 Q. And so you, Major Alley, understanding that, of course,
18 in 2009 you were reviewing employee disciplinary reports?

19 A. Correct.

20 Q. And you remember an incident where Officer Totherow was
21 asked to go get an inmate, Demario, for breathing treatment
22 and Officer Totherow responded with he can wait. So
23 Corporal Cureton went and got the inmate for treatment and,
24 therefore, he was written up as a violation. You're
25 familiar with that, right?

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1 A. From what I've read in the employee file.

2 Q. And this was all taken in consideration?

3 A. Yes, ma'am.

4 Q. Officer Totherow, I'm sorry. I apologize. Major
5 Alley, ---

6 A. That's fine.

7 Q. --- you cannot testify, under oath, whether or not
8 Crystal was disoriented, or confused or anything that night?

9 A. I wasn't present at the time she come in.

10 Q. And you cannot say, under oath, whether or not, since
11 you weren't there, and let's say based on your observation
12 of the video, which you had the opportunity to observe prior
13 to today and today, you could not say whether or not medical
14 attention should have been rendered by a medical
15 professional, can you?

16 A. Not based on what I've seen.

17 Q. Okay. Based on what you have observed on the tape you
18 cannot, under oath, state to this jury that you're not sure
19 -- let me rephrase the question. You cannot say, under
20 oath, that you know the right decision was made not to get
21 medical attention, can you?

22 A. That the right decision was not made? I can't because
23 I wasn't there.

24 Q. Based on your observations of the tape, you're not
25 sure?

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1 A. Observations is a far cry from being in person. I
2 mean, I don't know, like I said earlier, demeanor, the way
3 she was acting, talking, breathing, her personal actions. I
4 mean, it's unclear to what's -- what's actually being said
5 and done on that video. I mean, you can see the movements,
6 that's it. There's a lot of factors that go into that.

7 Q. Right. So you cannot say, under oath, ---

8 A. No.

9 Q. Thank you.

10 MS. HALL: I've got a couple of questions.

11 Redirect Examination by Ms. Hall:

12 Q. Ms. Burris talked about medications and medical
13 conditions and things like that, don't you normally ask the
14 people who come into the jail about them? You stated that's
15 a part of the booking process, is that correct?

16 A. Correct, if you can get to that process.

17 Q. So had Ms. Thomas actually gone through the booking
18 process and answered the questions, everyone would have
19 known if she had -- if she had a medical condition or if she
20 was on medication, is that correct?

21 A. It could have been determined at that time.

22 Q. And the ammonia packs, you said they were kept in the
23 first aid section. It's not a bottle of ammonia that you
24 would ---

25 A. No, ma'am.

BILLY ALLEY, JR. - REDIRECT EXAMINATION BY MS. HALL

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1 Q. --- use to wash windows with, is it? It's actual
2 ammonia. It's like a smelling salt, right?

3 A. Something typically used like in sports and stuff when
4 you get knocked out when you're playing football and get
5 hit. The coach comes over there and pops one in your nose.

6 Q. Okay. So if you pop one in somebody's nose and they
7 respond, what do you do?

8 A. They respond, you get them to start back playing. You
9 talking about football or at jail?

10 Q. Either way.

11 A. At the jail, I mean, then you assess the situation from
12 that point on.

13 Q. Okay. So if they don't respond, what do you do?

14 A. Then you probably would need to call EMS.

15 Q. All right. And -- that's all.

16 MS. BURRIS: Your Honor, I have no further questions
17 for Major Alley.

18 THE COURT: All right.

19 MS. HALL: I would ask that he be allowed to be
20 excused. He's on-call.

21 THE COURT: All right. Major Alley, you may step down.

22 A. Thank you, sir.

23 THE COURT: You may call your next witness, Solicitor.

24 MS. HALL: Beg the Court's indulgence.

25 (Pause)

1 MS. HALL: The State rests.

2 THE COURT: The State rests. Ms. Burris.

3 MS. BURRIS: Your Honor, actually at this time I do, of
4 course, have a motion for a directed verdict.

5 THE COURT: All right. Ladies and gentlemen, I'm going
6 to need to hear some motions outside your presence. I'd ask
7 you to step into the jury room.

8 At this time, see if y'all could select a foreperson to
9 represent the jury. If you can't, that's fine. I can do
10 it. I don't want y'all to get into a big argument over who
11 should serve. But if you can, try to select a foreperson.
12 Hope to be back with you shortly. If you would retire to
13 the jury room.

14 (Whereupon the jury exited the courtroom at 10:27 am)

15 THE COURT: Motion for directed verdict.

16 MS. BURRIS: Okay. Your Honor, actually at first I'm
17 going to renew all previous motions as previously made. And
18 we do actually have a motion for a directed verdict.

19 Understanding that the Court would be concerned with
20 existence or non-existence of evidence, its weight, it is
21 our position that -- understanding that the elements of
22 assault and battery, second, is whether or not Crystal
23 Thomas injured or attempted to injure Officer Totherow or
24 threatened to actually cause harm to Officer Totherow, it
25 remains -- it is our position and remains our position that

1 there is not any evidence as to this.

2 Officer Totherow -- well, of course, there was
3 testimony from Officer Totherow, who indicated that Crystal
4 Thomas did actually bite him. And then Officer Funderburk
5 -- in that she was conscious of what she was doing. And
6 Officer Funderburk did actually testify that she latched on.

7 But both of these officers indicated that they were not
8 certainly sure as to, I guess, what was going on at that
9 time. Officer Totherow specifically stated that his arm
10 slipped, but then it also ended up under her mouth, and then
11 that's when she specifically bit him.

12 It is our position, of course, that there is not any
13 evidence as to Crystal Thomas actually harming, or
14 threatening to harm or injure Officer Totherow in this
15 particular case. And we would ask for a directed verdict in
16 this case.

17 **THE COURT:** All right. I understand the argument, but
18 I believe there is sufficient evidence for this matter to be
19 sent to the jury. Any other motions?

20 (No response)

21 **THE COURT:** Now, let me go back before we take our
22 break. Let's go back to the matter that the Court took
23 under consideration. And that is State versus Santiago.
24 Tell me again, Ms. Burris, why ...

25 **MS. BURRIS:** This case does not apply?

1 THE COURT: Santiago does not apply to the evidence
2 that you wish the doctor to testify about.

3 MS. BURRIS: Santiago specifically, Your Honor, talks
4 about the individual actually having a low IQ. Your Honor,
5 that's simply different from behavior. Of course, in this
6 particular case they actually had a psychiatrist to come in
7 and testify as to, I guess, the mental state of Santiago.
8 And specifically this case deals with his mental state and
9 the voluntary nature of a statement actually being made.
10 This case is certainly totally different.

11 We have had, of course, as we had initially the
12 observations of the police officers looking at the tape. We
13 have Major Alley, we have Officer Totherow watching the
14 observations of Crystal Thomas. The ultimate question which
15 goes to our central defense is what was going on with
16 Crystal Thomas on that particular day? Not necessarily
17 whether or not she actually had the *mens rea* or the mental
18 intent in order to actually -- or the mind-set to actually
19 commit the crime.

20 Santiago specifically talks about a low IQ and, I
21 think, the person, specifically, the person had Asperger's.
22 It's different from the behavior in which, of course,
23 according to the medical records specifically talks about
24 seizure activity, but that has nothing to do with the mind-
25 set.

1 THE COURT: Well, tell me again what -- the purpose of
2 this evidence would be to show what?

3 MS. BURRIS: The condition of Crystal Thomas. Not
4 necessarily the mental condition, but all inclusive, the
5 physical condition of what was going on in regards to the
6 traumatic experience, the condition of Crystal Thomas given
7 that, you know, based on the observations of the officers.
8 Certainly, we have the officers testifying that based on
9 their observations it didn't warrant them getting medical
10 attention, you know.

11 And so, of course, I think the Defense should be
12 allowed to bring a doctor in here. And as to her medical
13 records, she actually went to the doctor shortly after she
14 was released from this particular -- from the jail.

15 THE COURT: Wait a minute. Wait a minute. Let me --
16 but do you -- whether or not she should have gone -- been
17 taken to a doctor by the people at the Detention Center, why
18 is that relevant?

19 MS. BURRIS: Your Honor, that's actually not our
20 defense. I guess based on -- this doctor has had the
21 opportunity to observe this video.

22 THE COURT: I understand.

23 MS. BURRIS: Just like the officer, and even one
24 officer who wasn't even there, had the opportunity to
25 observe this video, Crystal Thomas' behavior, of course, on

1 this video. And he has actually been allowed to testify as
2 to what ---

3 THE COURT: Nobody objected to that testimony.

4 MS. BURRIS: Right. Based ---

5 THE COURT: And so ---

6 MS. BURRIS: --- on the Court's observation.

7 THE COURT: --- the Court -- the Court let it go. But
8 what's the relevance of the doctor coming in and giving his,
9 I guess, his medical opinion? I've already testified he's
10 -- that he's competent to offer a medical opinion as an
11 expert. What I haven't ruled on though is whether his
12 opinion is relevant to the issues in this case.

13 MS. BURRIS: I can tell you -- Your Honor, we would
14 also have him testify -- one of the things that, of course,
15 when we proffered testimony from the doctor preliminarily,
16 one of the things that he said in assessing Crystal was that
17 he had reviewed some previous medical records in the
18 diagnosis, in the assessment of Crystal. And based on his
19 review of the previous medical records, that's how he was
20 able to assess the situation, also based on his
21 observations, of course.

22 And as Ms. Hall had the opportunity to speak with him,
23 he's going to say he can't say with certainty, but based on
24 his observation because it's my understanding you're allowed
25 to have an expert to actually come in and testify when they

1 could further -- because, of course, we're going to have
2 Crystal Thomas testify. And she would be able to testify as
3 to what was going on that night, particularly what happened,
4 you know, during her conscious period. She would be able to
5 testify to that.

6 Now, there could be some behavior or conduct that she
7 would certainly be testifying to that I would like to have a
8 doctor to further explain so that the jury gets a better
9 understanding as to her condition that particular night, as
10 to her diagnosis shortly after actually being released from
11 the Chester County Detention Center. Not her *mens rea*
12 because we cannot testify as to her mental state that night,
13 but we can testify, as the officers have, based on her --
14 their observations of her behavior. She could testify as to
15 what was going on with herself that particular night.

16 And I think the doctor, to further help the jury
17 actually understand what could have been going on with her
18 given his diagnosis on -- shortly after she was released in
19 2011 and the previous records that he had the opportunity to
20 read as part of his diagnosis and assessment of Crystal
21 Thomas, then he should be able to further explain this to
22 the jury as to the condition rather than the jury
23 speculating as to what is going on and what is not going on.

24 THE COURT: Here's what I understand the testimony is.
25 And that is that your client bit the officer. That's the

1 charge.

2 MS. BURRIS: That's the charge.

3 THE COURT: All right. And how is this doctor going to
4 shed any light on whether she did or did not bite the
5 officer?

6 MS. BURRIS: He cannot shed any light on that, but, of
7 course, as we have a four to five hour tape, there were --
8 there were, of course, incidents and there was behavior
9 that's actually displayed on the tape that the doctor can --
10 in order to draw a clear picture for the jury the doctor can
11 testify as to his observation of her behavior and conduct
12 that's centered around, of course, the charge in which she
13 is allegedly -- the bite, of course, the charge.

14 So it's ---

15 THE COURT: Well, I mean, it's not a self-defense
16 claim.

17 MS. BURRIS: It's not.

18 THE COURT: It's not an insanity defense. So why is it
19 -- explain one more time why it's relevant.

20 MS. BURRIS: Your Honor, ---

21 THE COURT: The legal theory. No, the legal theory
22 behind why it's relevant.

23 MS. BURRIS: Sure. Santiago specifically talks about a
24 person having low IQ. We're not talking about someone with
25 the type of mental disorder, lacking mental capacity, to

1 actually have bitten or not bitten the officer. We're not
2 talking about her mental capacity on that particular night.

3 What we are testifying as to, her behavior and her
4 conduct that surrounds this particular incident that
5 actually took place shortly thereafter that's not actually
6 on the tape. So what we have, of course, are the officers
7 testifying as to what they thought was actually going on
8 with Crystal Thomas and why they actually took a
9 precautionary step that they did on that particular night.

10 And, of course, we should have a doctor who, as I
11 understand it, could render his medical professional opinion
12 as to what, based on his observations, he thought was
13 actually going on with Crystal Thomas during that particular
14 night. This is prior to the incident happening for which
15 she's charged and after the incident for which she's
16 actually charged.

17 And it's totally different from arguing she doesn't
18 have the mental state. It may be emotional state, but we're
19 not necessarily arguing that she doesn't have the mental
20 capacity because that would certainly raise an ethical issue
21 for myself because if I'd thought that she was lacking in a
22 mental capacity, then I probably should have had her
23 evaluated.

24 THE COURT: All right. I find it's not relevant. And
25 I grant the motion to suppress.

CRYSTAL THOMAS - DIRECT EXAMINATION BY MS. BURRIS

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1 I believe we are now ready for the Defense to present
2 any evidence that they wish to present. Ms. Burris.

3 MS. BURRIS: Thank you, Your Honor. May it please the
4 Court. Defense would like to call Crystal Nicole Thomas to
5 the stand.

6 MADAME CLERK: Raise this hand and place your left hand
7 on the Bible. State your full name.

8 MS. THOMAS: Crystal Nicole Thomas.

9 Crystal Thomas, being
10 duly sworn testified as follows:

11 MADAME CLERK: Thank you, ma'am.

12 Direct Examination by Ms. Burris:

13 Q. Crystal, can you please state your full name.

14 A. Crystal Nicole Thomas.

15 Q. And how old are you, Crystal?

16 A. Twenty-four.

17 Q. Okay. And do you have any children?

18 A. No, ma'am.

19 Q. Are you married?

20 A. No, ma'am. I'm single.

21 Q. And who do you live with?

22 A. I live with my parents.

23 Q. That's your mom and your dad?

24 A. Right.

25 Q. And do you have any siblings?

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1 A. Yes. I have older ones.

2 Q. And do you work?

3 A. Yes, ma'am.

4 Q. And did you graduate from high school?

5 A. Yes, ma'am.

6 Q. Where did you graduate from?

7 A. Chester Christian Academy, 2004.

8 Q. I'm sorry, I didn't hear you.

9 A. Chester Christian Academy in 2004.

10 MS. BURRIS: Your Honor, may I approach?

11 Q. And where did you grow up?

12 A. At my parents' house in Chester.

13 Q. Okay. Crystal, let me take you to June 24th of 2011.

14 Do you remember that night?

15 A. I remember, yeah. It was a bad night.

16 Q. Okay. Let's talk about that day. What day was that
17 on? Was that a Friday?

18 A. No, ma'am, it was a Thursday.

19 Q. Thursday? Okay. And tell the jury a little bit about
20 your day on June the 24th.

21 A. Well, on the 24th I -- I wasn't feeling good. I had
22 left work early that day 'cause I came to Chester. And I
23 went over -- had went over to my guy friend's house and I,
24 you know, I hadn't been driving or anything like that
25 because I don't -- I don't have any license.

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1 And about 10:00 that night -- and I had to go -- I was
2 trying to get myself prepared to go to work. So ---

3 Q. Crystal, let me stop you. Where do you work?

4 A. Well, at that time I was working in Rock Hill at this
5 place called Vertex. And I had just got a job. And they
6 gave me a good position in the job. So I was, you know, ---

7 Q. And so you're working where now?

8 A. I work in Charlotte at this place called U.S. Capital.

9 Q. And what do you do there?

10 A. We basically do collections and stuff.

11 Q. What's your position?

12 A. I'm a case manager.

13 Q. Okay. Please continue, on that night.

14 A. Okay. So I can't -- I had called home because I wanted
15 -- I wanted them -- my mom to come pick me up because I
16 didn't have a driver, but I didn't get an answer. So I had
17 to drive myself.

18 And my sister -- I call her my little sister, her
19 child, she didn't have a ride. And she asked me to take
20 her. And I was like, well, I'm fixin' to go. I'm trying --
21 I'm fixin' to go to the hospital because I don't feel well.
22 And I said, but on my way I'll take you home, you know.

23 So we got on our way. And then we go through Dotson
24 Drive, and they having a license check. So when I pulled up
25 on the license check I did tell them, said I don't have any

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1 license. I was just trying to take her home and I'm trying
2 to go to the hospital 'cause I don't feel well.

3 And so it was an officer that I had a previous, you
4 know, encounter with. And to be honest, they really don't
5 -- they don't care for me, I guess. So I asked him, I said,
6 you can give me a ticket, you can -- you can do whatever you
7 want to do, just let me get some medical attention because I
8 don't feel well.

9 And I know when I'm sick. I don't just get sick. I
10 know when I'm not feeling well, short of breath and all that
11 stuff right there.

12 So they proceeded to take me -- my parents were
13 contacted. They came and got the car. And they took me to
14 the jail house.

15 Upon my arrival to the jail house it was a lady officer
16 and Lieutenant Totherow standing there and them looking. I
17 told him, I said, Lieutenant Totherow, I don't feel well.
18 That's all I said. I am claustrophobic and I do have asthma
19 and a history with panic attacks.

20 And so he was -- he was talking about the driving ---

21 Q. Let me slow you down. So when you arrived to the
22 Detention Center, okay, or have you -- Officer Totherow, is
23 he actually on the scene?

24 A. When I first came he and a girl came in, he was the one
25 who came down -- well, pressed the button for me to come in.

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1 Him and the female officer was standing there.

2 Q. Okay. So the female officer actually escorted you into

3 ---

4 A. Right.

5 Q. --- the Detention Center?

6 A. And I -- yes, ma'am.

7 Q. Okay. Now, I'm going to show you -- I'm going to show
8 you what's been previously marked as State's exhibit 4. And
9 I'll just keep going. So ...

10 (Pause)

11 Q. Now when you walked in and this female officer escorted
12 you in, were there any complications or problems with this?

13 A. Well, when she was walking me in to take me to the
14 place of wherever I go, she was on the way to take me to --
15 I think it was another block where it's like they was
16 holding, you know, where you come in. That's where they put
17 the people that have been booked in.

18 And I told her, I was like, thank you because I don't
19 feel well, and I need to be able to move around and just get
20 with the fact that I, you know, probably going to get fired
21 from my job. And I had just got it and trying to do the
22 right thing, but it's just like everything just keep going
23 wrong. And she was, you know, she was, you know, she was
24 willing to work with me.

25 Lieutenant Totherow came in and told her that -- to put

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1 me in the max, which is the E block. And I was like, why
2 you want to put me in there and I'm telling you that I don't
3 feel well. It's not that I don't want to be here. I was
4 only -- they only had me for driving under suspension. It
5 wasn't a major -- it wasn't nothing major that I, you know.
6 I said, please, I begged him, please, don't put me back here
7 because I know -- I'm already know ---

8 Q. Okay.

9 A. --- I know what's going on.

10 Q. And let me stop you right there. Crystal, if you
11 could, please, step down.

12 (Whereupon the witness left the witness stand)

13 (Playing the video)

14 Q. Okay. Is that you?

15 A. Yes, ma'am.

16 Q. And is that when you're actually walking in?

17 A. Yes. This is -- if I'm not -- if I'm correct, I think
18 this is the H block right here.

19 Q. Um-hum (affirmative).

20 A. She was escorting me back to where they had the rest of
21 the females that they were bringing in that day. And he --
22 I don't know. If he had, I mean, I know he told her not to
23 put me -- place me back there. So they ended up putting me
24 back in the E block cell.

25 And I told him when we was out there, Officer Totherow,

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1 please, I can't handle this right now, it's just too much
2 going on. And he, you know, I don't know.

3 Q. If you could, please, take the stand.

4 (Whereupon the witness returned to the witness stand)

5 Q. And so you were trying -- my question to you is were
6 you trying to be calm?

7 A. Yes, ma'am. I -- I was calm when I came in. I told
8 him that I wasn't feeling well and that I just needed to be
9 able to, you know, I didn't -- I didn't need to be in a
10 confined area because I knew if I -- I know my -- I know
11 this, what I have. I know, you know, I have panic attacks.
12 They don't come on often and I take medicine as needed.

13 MS. HALL: Objection, Your Honor. She's -- he's --
14 she's testifying about a medical diagnosis that we don't
15 have anybody to base -- to back it up. And, quite frankly,
16 it's irrelevant to what's going on here.

17 MS. BURRIS: Your Honor, she does have the right to
18 testify as to her ---

19 THE COURT: Overruled. Go ahead.

20 MS. BURRIS: Thank you, Your Honor.

21 Q. So as you're walking in -- could you, please, describe
22 for the jury E block and the difference between, I guess, E
23 block and any other -- like, I guess, the different areas in
24 the jail.

25 A. Okay. Echo block is like for -- that's like what they

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1 were using at that time for max inmates, the people that's
2 going to the max, and they have did something wrong, and
3 they want to confine them, shut them off from everybody
4 else.

5 Generally where they put the people -- well, I had --
6 and the other area that I was explaining was like a more
7 open that already had people there I could actually talk to,
8 I could get fresh water when I needed to. I'd be able to
9 just, you know, calm myself down and try to, you know, work
10 with the situation.

11 You know, if I had more -- if I had more room to
12 actually just, you know, put a handle on the situation. It
13 could have just got better if I would have had more room to
14 actually, you know, just function. I couldn't -- I felt
15 like I couldn't even function. I was trapped off in ---

16 Q. So they placed you in maximum security for basically a
17 driving violation?

18 A. Right.

19 Q. Okay. . And what happened throughout -- what was your
20 first encounter with Officer Totherow?

21 A. Well, I had -- shortly after they placed me in E block
22 I had -- had knocked on the door. I said, officer -- and
23 the officers came. I said, I'm not feeling well. I'm, you
24 know, my breath is getting short. I'm feeling closed in.
25 Please, I said, you can either call my mom and she can like

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1 bring me a half a pill that they had prescribed. I have
2 prescriptions. And I take them as needed.

3 Q. What type of prescription do you have?

4 A. Xanax and Zoloft.

5 Q. Was that prescribed by the doctor?

6 A. Yes, ma'am.

7 Q. Okay. And tell the jury like how you were feeling as
8 to your condition that night.

9 A. I -- I was feeling like -- I was -- I was feeling like
10 my breath -- I couldn't breathe. And at some point it felt
11 like I was actually standing outside myself actually
12 watching myself like go through all this and there's nothing
13 I can do to stop this from going on. And they wasn't trying
14 to help me at all. They was just -- it was like -- at some
15 point in time I'd hear them laughing and stuff.

16 And I was just like, please help me, please. I kept
17 telling them, please call my mom, please call emergency
18 because I really don't feel well.

19 Q. Okay. And have you experienced this before?

20 A. Yes, ma'am. Actually on several occasions I've
21 experienced -- well, it's like this. Once I feel the panic
22 coming on I can easily control it by taking the medication
23 or going to the emergency room.

24 Now I have had this happen to me before back in 2008
25 with a, you know, similar procedure where they actually had

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1 to take me to the emergency room. And I had to have a shot.

2 And it was after the shot, after about twenty or thirty
3 minutes I was able to calm down and get myself in order.

4 And that was because of they had -- they took the
5 proper precautions -- they didn't -- they took the proper
6 procedure to help me. They wanted -- they didn't want to
7 see me shaking and throwing up and can't breathe.

8 And I just felt -- just felt like a dog. Like they was
9 treating me so bad. And I was like, what did I do to
10 deserve this from you? The only thing I'm here for is
11 driving.

12 Q. On this particular night did you throw up, or vomit or
13 anything?

14 A. Yes, ma'am. I threw up like two times. And I kept
15 asking them, please, let me -- let me -- they had me
16 strapped back in the chair. And every time I would try to
17 lean up just to, you know, just to get -- they would pull me
18 back. And they just kept snatching on me and pulling me
19 side to side.

20 And nobody was -- it was like nobody cared. They was
21 like they didn't care. And I just, please, please help me.
22 And that's all I can -- can remember saying, just please
23 help me, please call my mom, please help me.

24 Q. And so during your encounter -- tell the jury about
25 just throughout that night what happened.

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1 A. I really can't recall much from the night because it
2 was just so faint. It was in and out, in and out, in and
3 out. You know, like one minute, I, you know, grasping for
4 air and the next minute it's like I can't even breathe. I
5 was just -- (inhaled and exhaled out loud). I couldn't -- I
6 didn't -- I can't remember a lot from that night.

7 Q. Okay. I'm going to show you State's exhibit 4. What
8 was your encounter, I guess, with Officer Totherow, the
9 times that the two of you -- was it only Officer Totherow
10 around you or were all the officers around ---

11 A. No, it was just like about five officers around me.
12 All of them, they big, they bigger than me. I'm just little
13 oh me and I'm, you know, it's five of them pulling, pushing,
14 laughing. Like, it's -- it was really bad. It was ---

15 Q. What time was it that you actually went in there?

16 A. I went in the Detention Center about 10:45, 11:00 at
17 night.

18 Q. And do you remember -- do you remember the names of the
19 officers who was there?

20 A. Only like Officer Totherow, Funderburk, Moore, I'm
21 thinking, and a Carr, Officer Carr.

22 Q. You're going to have to step down for a second.

23 (Whereupon the witness left the witness stand)

24 Q. Were you also injured during this incident?

25 A. Yes, ma'am.

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1 (Playing video)

2 Q. Was this -- which officer was that who was actually --
3 was that ...

4 A. Looked like Officer -- yeah, Officer Funderburk.

5 Q. Crystal, what was your level, if you can recall, your
6 level of consciousness at that time? Do you remember?

7 A. I don't remember much from that night at all. I just
8 -- I don't remember much. I don't -- I don't remember a lot
9 from that night other than like when I first got there and
10 when I was released.

11 Q. Were they talking to you during that time?

12 A. I don't -- I'm not sure. They might have been asking
13 -- I don't want to speculate and say what I think they was
14 saying 'cause I'm not sure what they were saying. But I
15 know that they were not trying to help me 'cause they ---

16 MS. HALL: Objection, Your Honor. She just said she
17 didn't want to speculate, now she's doing just that.

18 THE COURT: All right. Overruled. Go ahead.

19 A. They were not -- they were not attempting to help me.
20 That's what I do know.

21 Q. Did they ever ask you if you were taking any
22 medications?

23 A. No. When I came in I told them to call, you know, just
24 -- I told them -- I was trying to tell him because I knew --
25 I didn't know -- it never gotten to this extreme before

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1 because I've always been able to -- I've always been able to
2 keep it under control because it don't happen that often and
3 the doctor -- it's as needed. And I know, like, the stress
4 levels I was going through, just so much going on. And ...

5 Q. But you said you'd never gotten to that extreme.

6 Haven't -- have you had to seek medical ---

7 A. Yes, ma'am, I ---

8 Q. --- treatment?

9 A. Yes, ma'am, I have had to seek medical treatment for
10 this in which it was -- it is similar, but it was -- it
11 didn't -- it was not like a whole like I was going through
12 all this like chest tightening and the way they had the
13 straps tightening on me, they pulled me back and my chest
14 was getting tighter, and tighter and tighter. And there was
15 -- I couldn't even breathe. It was like -- at times I just
16 -- I just can't even describe the feeling that I was going
17 through at the time that ...

18 Q. Do you remember when the officer actually took the
19 ammonia and placed it under your nose?

20 A. In the -- at the Echo block. And I was -- I think I
21 was going through a stage, you know. Like with any
22 breathing, you have any kind of breathing, you know,
23 chemicals, they trigger, you know, any kind of -- they can
24 cut off your breath. So when he ---

25 MS. HALL: Objection, Your Honor. Now she's testifying

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1 about medical stuff, which she doesn't really know anything
2 about. She's speculating about that too.

3 MS. BURRIS: She can testify ---

4 THE COURT: I'll overrule it. Go ahead.

5 A. Yes. Because I have come in contact with it, the
6 ammonia. I don't use ammonia at home, nor do my mom. We do
7 -- because it does cut my breath off. Now, when he came in
8 ---

9 Q. You mean when you're actually cleaning?

10 A. Right.

11 Q. Okay. Go ahead.

12 A. As far as like it being directly up under my -- I know
13 it cut off my -- I couldn't breathe for like -- I know I was
14 out. After that, I really don't remember much. I know it
15 just -- it stunned me more than anything because of the
16 smell, you know. Ammonia is very loud. And then it just
17 went straight to my head. And I was like -- (inhaled and
18 exhaled out loud).

19 Q. Now, this is you when you were leaning forward in the
20 restraint chair?

21 A. Yes. I was trying to -- I think I was trying to
22 breathe. I threw up. And I was just trying to -- 'cause,
23 you know, if you lean forward it makes it better. And they
24 kept pulling me back and like I had bruises all over my
25 shoulders, all over my arms. My -- my wrists was -- my

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1 wrists and ankles was swollen for like two days.

2 MS. HALL: Your Honor, I would just ask if she's going
3 to testify that she testify, but if we're going to watch the
4 video and she's going to translate that, that we do that,
5 but we not do both at the same time. So I would object to
6 all this ---

7 MS. BURRIS: I just ---

8 MS. HALL: The video's playing and she's testifying.
9 And if she's going to translate the video, translate the
10 video. If not, let's turn it off.

11 MS. BURRIS: Well, actually she's ...

12 THE COURT: I hate to admit it, I can't see what's
13 going on.

14 MS. BURRIS: Okay.

15 THE COURT: Does she need to be out in front now or
16 does she need to be back on the witness stand?

17 MS. BURRIS: I would say out right here where she is,
18 Your Honor, because she's actually testifying as to what was
19 going on here.

20 THE COURT: All right. Overruled. Go ahead.

21 MS. BURRIS: Thank you.

22 Q. So when you mentioned that you actually threw up on
23 yourself, and I apologize for that, but was it when --
24 during this time ---

25 A. Yes, ma'am. Actually, I remember coming -- they was

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1 bringing me and I was still begging for help. And I began
2 to throw up. And then they looked at me, just looking at me
3 with throw up all down the front of my clothes. And like --
4 and I was kind of spitting up like blood a little bit. And
5 I still have those clothes at home with all the vomit and
6 the blood stains and everything.

7 Q. Do you remember if you were having difficulty breathing
8 there?

9 A. The whole night I was having difficulty -- after the
10 ammonia, that really like -- I really couldn't -- after
11 that, I just -- it was sort of like short, then they would
12 get tight, like I was having -- like almost like -- I don't
13 know, I've never had a heart attack. So I can't speculate
14 how it feels. But my chest was so tight.

15 And they had the restraints on me the whole time. I
16 couldn't even -- like I couldn't breathe. I couldn't do
17 anything but -- (inhaled and exhaled out loud).

18 Q. And were you saying anything right there?

19 A. I was just telling them, please help. I can remember
20 saying help me, please help me.

21 Q. Were you, I guess, vocal or was it more ---

22 A. No, because I couldn't really talk. You can't talk and
23 have problems breathing at the same time. It was just more
24 like faint whispers like help me, help me, please, please
25 help me.

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1 And at this time right here I was just looking around
2 to see like who -- who was really trying to help. No one
3 was even trying to help or if they did want to help, they
4 couldn't -- they couldn't because -- well, they didn't have
5 the authority to help.

6 Q. And this went on for a long period of time?

7 A. Yes, ma'am, for about four hours.

8 Q. About four hours? So that went on like 1:00, 2:00,
9 3:00, 4:00? This is the wee hours of the morning?

10 A. Yes, ma'am.

11 Q. And you're still in this condition?

12 A. In that chair. I couldn't -- no water. They brought
13 me water one time throughout that whole time that I was
14 sick, one time, one time.

15 MS. HALL: Your Honor, I'm going to object again. I'm
16 sorry I keep doing it, but, I mean, this is completely --
17 the fact of water and the fact -- this is all -- she's bit
18 him at this point and he's on -- she's on trial for biting
19 him. And how this is relevant to biting, I don't
20 understand.

21 THE COURT: I understand. Overruled. Go ahead.

22 MS. BURRIS: Thank you, Your Honor.

23 A. Yeah, they only -- at this point they had only brought
24 me water at one time throughout the night. And I don't
25 remember much. Like I said, I don't remember much from that

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1 night because I couldn't even -- I couldn't even think. I
2 could not think. I could not -- all I wanted was -- all I
3 wanted was to be well. And, I mean, it's not like I came
4 into the jail to pass out, and fall out and go crazy about
5 driving under suspension.

6 Q. Do you remember at what point they actually took you
7 out of the restraint chair? Was it like four, five or 6:00
8 in the morning or ---

9 A. Yes, ma'am, and shortly after the nurse came in. And
10 she didn't check me or nothing. She just came, looked and
11 left.

12 Q. So that ---

13 A. And I was still asking for medical assistance even
14 after I had calmed down. My chest was still tight and I was
15 still having problems breathing as far as -- because I'm
16 sure I was like -- some kind of -- I know strain had been
17 put on my body and my -- on my lungs and all this trying to
18 breathe, going through this whole ordeal.

19 See, he ---

20 Q. What was the officer doing there?

21 A. He was putting -- applying pressure up under here. And
22 I couldn't breathe. And I was, please stop, stop. And they
23 had brought the taser in and was going to tase me again. I
24 was just begging him to stop applying the pressure 'cause it
25 was cutting off my breath even more. And they were laughing

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1 and -- they was cuffing it tight, even tight. When I left
2 -- I still have marks on my wrists now from the cuffs from
3 that night, how tight they were around my ankles and arms.
4 And I just was begging them to stop, please, and just please
5 get me some help, please get me some help.

6 Q. Okay. At what point did they tase you? Was it when
7 you were -- were your legs cuffed there, your ankles?

8 A. No, ma'am.

9 Q. Okay.

10 A. Oh, were they -- yeah, they was cuffed to the chair.
11 And they had the chair cuffed to the actual bar back there
12 so it wouldn't move or whatever.

13 Q. Were you trying to talk there?

14 A. Yeah, I was trying to tell -- just basically saying the
15 same thing, please help me, stop, just stop hurting me and
16 help me, stop hurting me and help me, please.

17 Q. What was he doing, tightening your legs up even more
18 there or ---

19 A. Yes, ma'am, putting the -- he was putting the cuffs on,
20 I guess, so I couldn't move my ankles and move around or
21 nothing in the position that I was in. I couldn't move. I
22 couldn't even help myself.

23 Q. And he just placed you -- pushed the chair to face the
24 wall?

25 A. Right.

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1 (Pause)

2 Q. What were you doing there with your body ---

3 A. I just -- it's like I just shut -- at some point I just
4 shut down where I couldn't do anything. I could barely
5 breathe. And I couldn't move. And then another moment it's
6 just like chest -- my chest was getting tightened back up
7 and that will make -- I was starting to ask for help again.

8 Q. This would have been 2:50 in the morning, 2:49 am?

9 A. (Affirmative nod).

10 Q. And you went in around what time did you say?

11 A. Around like 10:45.

12 (Pause)

13 Q. Now which officer is this? Was that Totherow right
14 there?

15 A. I'm thinking it's ---

16 Q. Funderburk?

17 A. Yes.

18 Q. What were you doing there? Do you remember what was --
19 not sure?

20 A. No. I was just trying to breathe.

21 (Pause)

22 Q. What was going on there? Do you remember? Were you
23 having difficulty breathing there or what was ---

24 A. Yes, ma'am. It was like -- at one point I know throw
25 up had got caught in my throat and then, you know, my throat

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1 had closed up. And I -- I needed some water at that point.

2 And I was like -- they wouldn't give me none. And it was --

3 (inhaled and exhaled out loud).

4 Q. Okay. What was going on there? What happened there?

5 Was he tying your chair or ---

6 A. Yeah, he was tying the chair to the bars. He was

7 cuffing the chair to the bars, I guess, so the chair

8 wouldn't move or whatever.

9 Q. Okay.

10 A. They placed me in front of the wall. And it was like

11 -- seemed like everything was closing in. And I just -- I

12 just wanted some -- I just wanted them to help me, again. I

13 can't stress that enough.

14 Q. Okay. Did they ever give you a paper towel to wipe

15 yourself off?

16 A. Yes. And around that time I had came to a little bit.

17 And I was -- it was just vomit all -- covered the whole

18 front of my shirt, all in the seat. It was like in the seat

19 of my pants as well. So I was just trying to just -- 'cause

20 it started to smell. And if you sit -- sit in vomit for

21 four hours, you know it stink.

22 And it was just all -- I just wanted -- that was

23 causing me breathing complications. Smelling throw up, I

24 wanted to throw up again. So I was just trying to get it

25 off of me and make sure that all areas was -- just trying to

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1 clean it up the best that I could.

2 Q. Okay. Thank you. Go ahead and take your seat.

3 (Whereupon the witness returned to the witness stand)

4 Q. Now, I'm going to show you what's been previously
5 marked as Defendant's exhibit 1. Please let the record
6 reflect I'm also showing it to the State, who has been
7 provided a copy. Please tell the jury, describe to the jury
8 exactly what Defendant's exhibit 1 consists of and ---

9 A. Right here on this portion of my elbow, it was like a
10 big like abrasion, like a bruise. It was -- it was very
11 tender, very sore right here. And then I also had a bruise
12 right here from being grabbed like this right here several
13 times in the same spot right here on this arm.

14 Q. And that was by the officers?

15 A. Yes, ma'am.

16 Q. Okay. And exactly when were these pictures taken?

17 A. As soon as I got released.

18 Q. Okay. And is that an accurate depiction of the bruises
19 on that particular day that this incident happened?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. BURRIS: The Defense would move to admit
23 Defendant's exhibit 1 into the record, Your Honor.

24 MS. HALL: No objection.

25 THE COURT: Admitted without objection.

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1 MS. BURRIS: Thank you.

2 (Whereupon Defendant's exhibit 1 was admitted into
3 evidence)

4 Q. I'm going to now show you Defendant's exhibit 2 as well
5 as 3, okay. And I'm going to first start with exhibit 2 and
6 then we'll go to 3. Based on Defendant's exhibit 2 can you,
7 please, describe to the jury what these are photographs of?

8 A. I got -- before any -- before we went and moved, he
9 actually tased me on my -- dry tased me right here. So I
10 had ---

11 Q. Right here? Can you, please, explain to the jury.

12 A. Right here on my thigh I have a big tase mark where he
13 did hold it on there. And I was begging him to stop because
14 I wasn't trying to resist, and I wasn't trying to not comply
15 with him. I just wanted some help.

16 And also I have on my other thigh a big bruise as well
17 where they kind of on the -- I guess they was trying to get
18 me out of the Echo block. They kind of slammed me up
19 against the bar. And I had a bruise there as well.

20 Q. Okay. And when was that picture actually taken?

21 A. As soon as I got released.

22 Q. Okay. And is that an accurate depiction of what your
23 injuries looked like that day on Defendant's exhibit 2?

24 A. Yes, ma'am.

25 Q. Okay. And Defendant's exhibit 3?

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1 A. There are pictures I had -- a bruise up under my --
2 right here from where he actually was applying the pressure
3 right here. It was like -- it was sore and it was tender.
4 And it was like -- it was a bruise mark right there.

5 Q. Okay. And on Defendant's exhibit 3, when were those
6 pictures actually taken?

7 A. The day I was released.

8 Q. Okay. And is that a true and accurate depiction of
9 what the bruises looked like that day?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. BURRIS: Defense would move to admit Defendant's 2
13 and 3 into evidence.

14 MS. HALL: Without objection.

15 THE COURT: Without objection.

16 (Whereupon Defendant's exhibits 2 and 3 were admitted
17 into evidence)

18 MS. BURRIS: As well as publish to the jury.

19 Q. Now, Crystal, What time were you released from the
20 Detention Center?

21 A. About approximately two or three days later after the
22 incident on the 24th.

23 Q. Okay. So you were -- it was -- it happened on Thursday
24 night ---

25 A. I got out on that Saturday morning.

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1 Q. Early morning, ---

2 A. Saturday mid-afternoon about twelve or one.

3 Q. What did you do after that?

4 A. I went directly with my mother, we went together, we
5 went directly home and took the photographs and then we
6 proceeded to go to -- had the medication at home that could
7 have been brought for me from -- and I had took, you know,
8 one of the medication that was prescribed. And then we went
9 to visit with some family members. And I had told them
10 about, you know, what had happened to me on that Thursday
11 night.

12 Q. Did you ever seek medical treatment?

13 A. Yes, ma'am, I did. I was unable to go -- I wanted to
14 go to my primary care physician. So -- because he was aware
15 of what -- and has seen these symptoms before, and know
16 what's going on. So I went to him on that Monday.

17 Q. And you were treated for?

18 A. Panic attacks, anxiety attacks and panic disorder.

19 Q. And you had also been treated prior to this date ---

20 MS. HALL: Objection, ---

21 A. Yes, ma'am.

22 MS. HALL: --- Your Honor. Objection as to the
23 relevance of this. It's a biting case. It has nothing to
24 do with this.

25 THE COURT: I'll sustain that objection.

CRYSTAL THOMAS - DIRECT EXAMINATION BY MS. BURRIS

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1 MS. HALL: Thank you.

2 MS. BURRIS: Thank you.

3 Q. And, Crystal, I will ask you since you've already
4 testified, you mentioned and you testified previous too that
5 you'd taken, when you went home, you took medication. What
6 type of medication?

7 A. It was a Xanax, a half -- they tell you you're supposed
8 to take half of it just to calm you, you know, so you can
9 remain calm and you won't have attacks. They prevent you
10 from having -- and if -- in the case that you are having
11 one, they, you know, they smooth over the symptoms. And
12 they allow you to rest.

13 Q. Okay. Now, let me -- let me back you up. Do you
14 recall the time or the encounter that you had with Officer
15 Totherow when, I guess, I assume when he was trying to
16 tighten up the strap on your neck? Do you remember that
17 time specifically?

18 A. No. I just remember that everybody was pushing and
19 pulling. And I can't remember what was what. I just
20 remember pushing, pulling, yanking and all, just ---

21 Q. Were your eyes on or, I mean, were your eyes open or
22 closed or ---

23 A. No, ma'am, I was like out. I was in and out. So I
24 don't ...

25 Q. Okay. And do you remember when a arm, and I say a arm

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1 because there was how many officers around you?

2 A. Four to five officers.

3 Q. Four to five police officers. So do you remember when
4 a arm went around your neck, I guess, and assuming trying to
5 tighten up the restraint around your neck and basically
6 biting Officer Totherow's arm?

7 A. No, ma'am, I do not remember biting him. I mean, I
8 can't recall -- I can't say, yeah, I mean, I don't remember.
9 I was going through so much. I was going through -- I don't
10 remember.

11 Q. And do you remember at any time, there's been different
12 testimony, saying anything about I hope you get AIDS, or I
13 hope you die, or potentially you had AIDS? Do you remember
14 any of that?

15 A. No, ma'am. I would never have said it because I don't
16 have AIDS. But I never -- I don't remember saying that.
17 But I know I would never say that because I don't have HIV
18 or AIDS and any other STD for that matter.

19 Q. Okay. Do you remember having a conversation with these
20 officers when they were all surrounding you?

21 A. Only to get me help. I don't remember saying anything
22 about no AIDS, I don't remember a bite. I just remember
23 telling them to help me, please.

24 Q. Do you remember at any time where an officer's hand, or
25 fingers or arm may have been near your mouth or was it

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1 around ---

2 A. More -- they were more or less around my neck area,
3 like stopping me -- like kind of almost choking me to where
4 I couldn't breathe.

5 Q. Now, Crystal, you have -- it is -- do you have previous
6 convictions?

7 A. Yes, ma'am, I do.

8 Q. Do you remember at one point telling the officer that
9 you could not breathe and you thought you were dying?

10 A. Yes, ma'am.

11 Q. When you first got there and he put you in Echo block,
12 which was maximum security, right?

13 A. Right.

14 Q. You were on the floor?

15 A. No.

16 Q. Where were you?

17 A. They placed me in the cell, and I had sat down on the
18 bench that was in there. And like a couple of minutes
19 after, you know, I knocked on the door, I said I'm getting
20 claustrophobic; my chest is getting tight, I need some kind
21 of -- I know I need some kind of medical attention or you
22 can just, you know, ---

23 Q. Were you asking for your mom also at that time?

24 A. Yes, ma'am. I'm asking for my mom from the beginning
25 of everything, just to call her because I know she could --

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1 she could help, or if not help, she would get me some -- she
2 will get me some attention that I -- that I would have
3 needed to help me and I wouldn't have to go through four
4 hours of -- of panic, a four hour long panic attack.

5 Q. Okay. And do you remember being on the floor, smacking
6 the floor and bumping your head? Do you remember any of
7 that?

8 A. I remember at one point passing out to the floor, but
9 as far as like what was going on, bumping my head, I'm not
10 aware.

11 Q. And was your breathing rapid and then you would calm
12 down, back and forth?

13 A. It was -- it was -- I would never say it was calm. It
14 was always rapid and like short spurts of breath, like short
15 bursts, not rapid and calm because I don't think you can
16 rapid -- be rapid and then calm. It was always a spurt of
17 breath or trying to breathe, trying to get air into my --
18 because my throat -- I had felt my throat closing up, like I
19 stated before, with the vomit and all that. And I just
20 wanted some help, just basically wanted help, wanted my
21 mother, just somebody who cared enough to get me some help.

22 Q. And at what point did they -- did they finally give you
23 something to drink, water?

24 A. About three hours after I had been in the restraining
25 chair.

1 Q. And it is your testimony that all of this occurred for
2 at least five hours, maybe five to seven hours that you know
3 of?

4 A. Yes, ma'am.

5 MS. BURRIS: No further questions at this time.

6 THE COURT: Cross examination.

7 MS. HALL: Thank you.

8 Cross Examination by Ms. Hall:

9 Q. Ms. Thomas, you stated you've got some prior
10 convictions on your record, right? So this isn't the first
11 brush with the law, is it?

12 A. No, ma'am, it's not the first brush with the law, and
13 it's not the first time I've had a panic attack while I was
14 in the custody of the police department.

15 Q. So this is normal behavior for you or is this abnormal
16 ---

17 A. No, abnormal.

18 Q. This is abnormal. So you don't normally behave this
19 way?

20 A. No, ma'am, I do not.

21 Q. Do you normally behave this way every time you come in
22 contact with law enforcement?

23 A. No, ma'am. I may be a little aggressive as far as
24 like, you know, because I know sometimes the cops -- they
25 have arrested me and I do have arrests -- I have this

1 complaint against them. So they have arrested me. I'm not
2 out of control. I just question -- I ask thorough questions
3 too. I ask them thorough questions and I want thorough
4 answers. I don't get out -- out of control with them for no
5 reason.

6 Q. Ms. Thomas, let me ask you this. If you have these
7 issues and you continue to have them, why do you continue to
8 put yourself in a situation where you end up in the jail?

9 A. At this particular night I was not wanting to go to
10 jail, I was trying to seek some medical attention. And like
11 I stated to -- before when I was asked, I was also trying to
12 take my young sister and her baby, they had no ride. She
13 called me and I told her that I was on the way to the
14 hospital and I would give her a ride home. So ---

15 Q. But ---

16 A. --- I don't continue to put myself in situations where
17 I have to be in brushes with the law.

18 Q. Okay: Ms. Thomas, isn't it true that in addition to
19 these prior convictions, these three prior convictions that
20 you have that Ms. Burris touched on, that over the course
21 of, prior to this, six months -- in the six month period of
22 time immediately preceding this you were arrested three
23 times for driving under suspension?

24 A. I was only arrested ---

25 MS. BURRIS: Objection, Your Honor.

1 MS. HALL: She's opened the door.

2 MS. BURRIS: May we approach.

3 THE COURT: All right.

4 (Whereupon a bench conference was held off the record
5 in the presence of the jury, but out of their hearing)

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to take a short five minute break. I'd ask you to
8 step in the jury room, and we'll be back in touch with you
9 shortly.

10 (Whereupon the jury exited the courtroom at 11:51 am)

11 THE COURT: Okay. Now then, let's see, Ms. Burris, you
12 had an objection to the last testimony.

13 MS. BURRIS: Yes, Your Honor. And ---

14 THE COURT: Question.

15 MS. BURRIS: The motion, of course, Your Honor, and, of
16 course, at this time I would ask Your Honor to declare a
17 mistrial. Previous to -- in our preliminary motion we made
18 the motion in limine to exclude the prior convictions. Your
19 Honor ruled under State v. Elmore that she could not
20 specifically talk about the substance of the offense in
21 which Crystal Thomas had actually been convicted of, but she
22 could under State v. Elmore actually limit to asking whether
23 or not she had prior convictions.

24 I, of course, elicited testimony during my direct
25 examination and asked Crystal Thomas whether or not you had

1 prior convictions. Crystal Thomas actually testified to
2 that. And then Julie on cross examination went further into
3 the substance of these convictions, which Your Honor, you,
4 had already previously ruled that she could not talk about
5 the substance of what she'd been convicted for. And at this
6 time, Your Honor, I would ask for a mistrial.

7 THE COURT: Ms. Hall.

8 MS. HALL: Yes, sir. In the pretrial I believe what we
9 were talking about were two convictions for resisting arrest
10 and one conviction for a failure to stop.

11 THE COURT: They were.

12 MS. HALL: I never talked about that. Those were the
13 three prior convictions. Those were the ones. That's
14 separate and apart. She stated that she doesn't put herself
15 in harms way where she can be picked up by law enforcement
16 because she has run-ins with them and they have it out for
17 her.

18 I never said have you been convicted of driving under
19 suspension. What she -- what I asked her, has she been
20 picked up for driving under suspension. She keeps putting
21 herself out there. She's sitting there trying to defend,
22 saying that I was ---

23 THE COURT: Well, you can't use the fact that
24 somebody's been arrested.

25 MS. HALL: I'm not trying -- I'm asking her if she

1 keeps getting picked up for driving under suspension. She
2 could have said yes or she could have said no.

3 MS. BURRIS: Your Honor, she ---

4 MS. HALL: I never said convicted.

5 MS. BURRIS: Actually, there are two things. She's
6 actually trying to get into, number one, character evidence,
7 number one. And number two, failure to stop and resisting
8 arrest were the two charges that she said she was interested
9 in talking about.

10 DUS, first, would not even necessarily qualify for her
11 to even talk about. So that's why we did not thoroughly
12 discuss the DUS convictions on her record because only two
13 of them would have been qualified pursuant to the statute
14 and pursuant to the case as to what she could even talk
15 about. And now she's actually gone into those previous
16 convictions of DUS, first, second, or third, which is highly
17 inappropriate.

18 MS. HALL: Well, Ms. Thomas keeps talking about how law
19 enforcement ---

20 MS. BURRIS: That's ---

21 MS. HALL: --- has mistreated her, how she's not
22 putting herself in harm's way, there are -- she's the victim
23 in this. And I take complete issue with that. And Ms.
24 Burris opens the door and Ms. Thomas on cross opens the door
25 to the fact that she doesn't put herself in harm's way, she

1 doesn't drive unless it's to go to the hospital. That opens
2 the door for me to be able to cross examine her.

3 She can say yes or she can say no. And she -- and that
4 -- she's perfectly willing, I mean, if she can answer the
5 question, she's perfectly able to do it. She never answered
6 ---

7 THE COURT: Let me ask you this. Under any scenario
8 can you think of can you bring up the fact that she'd been
9 arrested for three driving under suspensions?

10 MS. HALL: Only if she opens the door. Only if she
11 opens the door to the fact that she's being harassed by law
12 enforcement and that she's not putting herself in a position
13 to be picked up and taken to the jail where she has these
14 terrible panic attacks.

15 MS. BURRIS: She's asking about arrests, she doesn't
16 necessarily have the convictions ---

17 MS. HALL: All I said was have you been picked up three
18 times in the past six months? Is it true or is it not true
19 that you've been -- that you've been picked up for driving
20 under suspension, that this wasn't the first time?

21 She's making herself out to be a victim like the cops
22 have it out for her. It seems to me if you don't want to be
23 picked up by the cops, the easiest thing to do is not drive
24 without a license.

25 MS. BURRIS: And you've attempted to show that her --

1 that this is character evidence. She's intending to
2 introduce this evidence into the record to show that Crystal
3 is a bad person and ---

4 MS. HALL: No, ---

5 MS. BURRIS: --- that she violates the law. You're
6 intending to show character evidence ---

7 MS. HALL: I absolutely am not intending to do that.

8 MS. BURRIS: That's what it is for. That's exactly
9 what she's ---

10 MS. HALL: What I'm trying to do is to impeach her and
11 to show that she is not the victim that she's presenting
12 herself to be, that if she doesn't want to go to jail, don't
13 drive without a license. And she can answer that or not
14 answer it. She didn't answer.

15 MS. BURRIS: That's not the conclusion as assistant
16 solicitor. We have an obligation to elicit testimony from
17 our witnesses as evidence. We allow the jury to draw the
18 conclusion. They are simply judges of the facts. That's
19 not our conclusion. We are to elicit testimony from the
20 witnesses. And that's what actually presents the evidence
21 for the jurors who are serving as umpires or serving as
22 judges of the facts.

23 And so, again, I believe that she's intending to
24 introduce this evidence as character evidence to show that
25 Crystal is a bad person and that, pursuant to the rules,

1 that is not allowed.

2 MS. HALL: I have a hard time understanding why driving
3 under suspension makes you a bad person. The point of the
4 -- the point I'm making, if she doesn't want to go to jail
5 and she doesn't want to put herself in these situations
6 where she has these terrible attacks and becomes the victim
7 of terrible people at the Detention Center, don't go out
8 there and put yourself in a situation where you're going to
9 be put there.

10 And if she knows that that's going to happen to her,
11 why does she keep doing it? And then she brings it up like
12 they're doing terrible things to her out there and that the
13 whole City of Chester has it out for her.

14 THE COURT: All right. I find that the question was
15 inappropriate. And -- now the question with me is this,
16 should the Court grant the motion for a mistrial or should
17 the Court merely issue a precautionary instruction to the
18 jury, a curative?

19 MS. BURRIS: Your Honor, I believe that a curative
20 instruction to the jury may have already -- of course, I
21 know that -- I understand that a curative instruction, the
22 purpose of it is to remedy what has already been elicited
23 out of -- from the testimony from the witness, but, however,
24 this Solicitor has attempted to elicit information that's
25 highly prejudicial, which had been previously ruled upon,

1 which, of course, now the jury has been privy to this
2 additional information, basically elicited from the
3 Solicitor in regards to; this is not the first time you've
4 been arrested, you've had all these encounters. That's
5 highly prejudicial.

6 And I believe that Your Honor should grant a mistrial
7 in this situation because I do not believe that a curative
8 instruction at this time will remedy the situation given to
9 the extent ---

10 THE COURT: Well, ---

11 MS. BURRIS: --- that she's elicited testimony.

12 THE COURT: Well, except for the -- except for this
13 fact, you asked her on direct ---

14 MS. BURRIS: Um-hum (affirmative).

15 THE COURT: --- whether or not she had prior
16 convictions.

17 MS. BURRIS: And that was the extent that you ruled
18 that the Solicitor could ask. So I went ahead and asked her
19 ---

20 THE COURT: I know.

21 MS. BURRIS: --- to go ahead and give the information.

22 THE COURT: I know. Yeah, but for all the jury knows,
23 these are the ones just brought up by the Solicitor or the
24 only ones that she's been arrested on as opposed to the
25 resisting arrest. And I'd forgotten the failure to stop

1 charges.

2 MS. HALL: Two resistings and a failure. And Ms.
3 Burris also elicited on direct that Ms. Thomas had ---

4 THE COURT: I'm sorry?

5 MS. HALL: Ms. Burris also elicited on direct that Ms.
6 Thomas in 2008 had the same issue happen. She said a
7 similar situation where I was being taken to jail.

8 MS. BURRIS: But specifically the DUS, second. There
9 are two things, specifically the DUS -- these were arrests
10 and not necessarily convictions. From my understanding she
11 asked about DUS, first, second and third ...

12 MS. HALL: I just asked if she'd ever been picked up
13 for DU -- is it true she'd been picked up for DUS, and she
14 puts herself in the situation, and she never answered.

15 MS. BURRIS: And the DUS, of course, in order to get a
16 DUS, of course, you had to have committed another crime, but
17 specifically that night she'd already testified to that,
18 that it was a traffic violation, she didn't have a license.
19 So you went to another degree to ask further this is not the
20 first time, implying, oh, yeah, that this was the second
21 time.

22 MS. HALL: I don't know that that has anything to do
23 with ---

24 THE COURT: All right. Here's what I'm going to do. I
25 am going to sustain the objection to the question, all

1 right. I'm going to deny the motion for a mistrial. I'm
2 going to ask defense counsel whether or not defense counsel
3 wishes for the Court to issue any instruction on the
4 curative instruction as it relates to this question, the
5 driving under suspension question.

6 Sometimes you draw more attention to it by ---

7 MS. BURRIS: That's correct. Can you tell me, Your
8 Honor, do you mind just briefly giving me the curative
9 instruction, the language of the curative instruction?

10 THE COURT: I don't know.

11 MS. BURRIS: You're right, sometimes ---

12 THE COURT: What would you want?

13 MS. BURRIS: Just the substance of it, Your Honor.

14 Just ---

15 THE COURT: Well, you could do it different ways. You
16 could just say, jurors, disregard the last question of the
17 Solicitor or it's stricken and go forward, next question.

18 MS. BURRIS: Yes, sir.

19 THE COURT: Okay.

20 MS. BURRIS: We can do that. In their minds, of
21 course, they still heard it. Now they're trying to figure
22 out what did they hear that needs to be stricken, however, I
23 think that will serve the purpose.

24 THE COURT: All right. Let's bring the jury back.

25 MS. HALL: I want to ask you something quick because

1 now I'm ---

2 THE COURT: Real quick.

3 MS. HALL: I want to talk about the actual underlying
4 DUS that happened that night, the behavior that occurred on
5 the side of the road with the officer who arrested her. I
6 think they've opened the door to that too, but I want to
7 make sure ---

8 MS. BURRIS: Well, that's not -- let me say this.

9 THE COURT: Well, she's the one who's admitted that she
10 was stopped for driving under suspension.

11 MS. HALL: I want to talk about how she acted though
12 while she was out there.

13 MS. BURRIS: Now, now, now, I guess the question
14 becomes are you about to try to get into the DUS, second,
15 prior conviction ---

16 MS. HALL: No, no, no.

17 MS. BURRIS: I need to know to the extent. Maybe you
18 might want to ---

19 MS. HALL: All I want to talk about is her -- how she
20 acted on the side of the road.

21 MS. BURRIS: So ---

22 MS. HALL: This has nothing to do with DUS, second,
23 third, fifth, nothing.

24 MS. BURRIS: I mean, I think she could ---

25 MS. HALL: I'm not even going to talk about the DUS.

1 THE COURT: Charge. You're not going to talk about the
2 charge.

3 MS. HALL: I'm not going to talk about the charge, just
4 going to the behavior.

5 THE COURT: The behavior ---

6 MS. HALL: Got to get her to the jail.

7 THE COURT: And the reason -- I agree with that. The
8 reason is because the Defendant has put that, her
9 personality, if you will, in question that night.

10 MS. BURRIS: Yes, sir.

11 (Whereupon the jury entered the courtroom at 12:02 pm)

12 THE COURT: Welcome back, ladies and gentlemen. Before
13 we resume cross examination of the witness by the Solicitor
14 let me instruct you that you are to disregard the last
15 question of the Solicitor of the witness. And I'm going to
16 order that question stricken from the record. You may
17 proceed, Ms. Hall.

18 MS. HALL: Thank you, Your Honor.

19 Cross Examination by Ms. Hall Continued:

20 Q. So, Ms. Thomas, you stated earlier in the night when
21 you went through that safety check-point, that you were
22 picked up for -- and later ended up in the Detention Center
23 on this incident. Isn't it true that you got into an
24 altercation with the officer at the scene of the check-
25 point?

1 A. No, ma'am, that is incorrect.

2 Q. You didn't argue with him at all?

3 A. No, ma'am. I told him that I was sick. I asked him
4 could they please not take me to jail. I never got into a
5 verbal argument with anyone. I just asked them to simply,
6 please, let me get some medical attention because at that
7 time going through the check-point had heightened the
8 attack. I never got irrate, I just wanted some medical
9 attention.

10 Q. Okay. So is that the way that you normally behave with
11 law enforcement or is that the way that you behave in the
12 Detention Center ---

13 A. I don't -- the way that I behaved in the Detention
14 Center was -- it was because I had a panic attack. When I
15 have encounters with the law, I just ask a lot of questions.

16 Q. But you don't get into altercations with them?

17 A. No.

18 Q. Okay. And the hand slapping, and the wall slapping and
19 the head slapping, that's not normal behavior ---

20 A. I do not remember doing that. And, no, that is not
21 normal behavior for me to go out to the Detention Center and
22 slap my hands and head against the wall. No, ma'am, I have
23 never done that.

24 Q. You've never done that before?

25 A. I have never did that behavior without having a panic

1 attack. I have had a panic attack before at the Detention
2 Center in which this did occur. They did call the emergency
3 -- the ambulance. They did take me to the emergency room.
4 And I was given treatment for the panic attack.

5 MS. HALL: Can we approach?

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 MS. BURRIS: May we approach?

10 THE COURT: Surely we can't approach again.

11 (Laughter)

12 (Whereupon a bench conference was held off the record
13 in the presence of the jury, but out of their hearing)

14 (Whereupon the bench conference was ended)

15 MS. HALL: Nothing further.

16 THE COURT: You may proceed.

17 MS. HALL: I'm finished. I don't have anything
18 further.

19 THE COURT: No more questions?

20 MS. HALL: (Negative nod).

21 THE COURT: Okay. Any redirect?

22 MS. BURRIS: No redirect, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down. You
24 may call your next witness.

25 MS. BURRIS: Your Honor, the Defense rests.

1 THE COURT: Defense rests, Solicitor.

2 MS. HALL: I do have one witness in rebuttal. It's
3 going to take me a few minutes to get him here.

4 THE COURT: All right. You've got a reply ---

5 MS. HALL: It's just going to take me ---

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

7 MS. HALL: I do have one witness in rebuttal. It's
8 just going to take me a minute to get him here.

9 THE COURT: Okay. All right. We'll be at ease for
10 just a moment.

11 (Pause)

12 MS. HALL: Your Honor, he worked last night. So I'm
13 not going to -- it'll take him twenty or thirty minutes to
14 get here. He worked last night. So I'm not going to -- I'm
15 just going to -- not going to call him.

16 THE COURT: Okay. State rests?

17 MS. HALL: Yes, sir.

18 THE COURT: Ladies and gentlemen, you have now heard
19 all of the evidence and received all of the evidence that's
20 going to be presented in this case. What remains is for the
21 attorneys to make to you their closing arguments and then
22 for me to give you or tell you about the law that applies in
23 the case. Once all that's done, then you retire to the jury
24 room and begin your deliberations.

25 I'm guessing that the process of the attorneys making

1 closing arguments and me telling you about the law that
2 applies in the case is going to probably take an hour and a
3 half or so. So I think we need to take a lunch break til
4 1:30, have y'all come back at 1:30 in the jury room, hope we
5 are ready to go on the money.

6 Remind you, don't let anybody talk to you about the
7 case. You don't talk about the case. See you back at 1:30,
8 ladies and gentlemen.

9 (Whereupon the jury exited the courtroom at 12:11 pm)

10 THE COURT: All right. Let me ask the attorneys a
11 question now. Anybody have any specific charges they would
12 like?

13 MS. HALL: The State has none.

14 MS. BURRIS: Your Honor, no, but I would like to hear
15 your charge on reasonable doubt, just the breadth of your
16 charge on reasonable doubt. And I don't have any specific
17 charges.

18 THE COURT: Okay. Any other motions?

19 MS. BURRIS: I would just like to renew all of my
20 previous ---

21 THE COURT: Right.

22 MS. BURRIS: --- motions as stated on the record.
23 Thank you, Your Honor.

24 THE COURT: The Court's familiar with them, understands
25 the rationale, but still believes there's sufficient

1 evidence for the issues to go to the jury.

2 The next question, maybe the last question, verdict
3 form?

4 MS. HALL: What about ...

5 THE COURT: Any suggestion -- any lesser included is
6 what my question is.

7 MS. BURRIS: No, sir, Your Honor.

8 THE COURT: Guilty or not guilty, simple straight-
9 forward, all right?

10 MS. BURRIS: Yes, sir.

11 THE COURT: We'll do it. See y'all back then -- let's
12 come back at 1:15 just in case we got any wrinkles or any
13 problems.

14 MS. BURRIS: Yes, sir. Thank you.

15 (Whereupon court was in recess at 12:12 pm)

16 (Whereupon court resumed at 1:23 pm)

17 MS. BURRIS: In regards to what she's actually charged,
18 assault and battery, second degree, which, of course, was
19 under that law that changed in June, 2010, I'm reading from
20 16 3 600 (D)(1), and tell me if you have the same
21 information in your charge.

22 It says a person commits the offense of assault and
23 battery in the second degree if the person unlawfully
24 injures another person or offers or attempts to injure
25 another person with the present ability to do so and

1 moderate bodily injury to another person results or moderate
2 bodily injury to another person could have resulted.

3 THE COURT: Do I have that? Is that what you said?

4 MS. BURRIS: Yes, sir.

5 THE COURT: Yes.

6 MS. BURRIS: Okay. That is -- okay. I just wanted to
7 make sure we're on the right page in regards to the elements
8 of the statute of what the Judge is going to instruct the
9 jury.

10 MS. HALL: Okay.

11 MS. BURRIS: Okay. Because I know there was a second
12 section that talks about nonconsensual, touching the private
13 parts, not necessary.

14 THE COURT: No.

15 MS. BURRIS: But (D)(1)(a) is because that is your
16 charge because that's the law which she's charged under.

17 THE COURT: Right.

18 MS. BURRIS: Is that right? We're on the same page? I
19 just ---

20 MS. HALL: I'm with you. I'm just trying -- that's
21 right.

22 MS. BURRIS: Judge, how does your charge actually
23 further define moderate bodily injury?

24 THE COURT: Doesn't the statute define it?

25 MS. BURRIS: Yes, sir, it does. It says moderate

1 bodily injury means physical injury requiring treatment to
2 an organ system of the body other than the skin, muscles and
3 connective tissues of the body, except when there's
4 penetration of the skin, muscles and connective tissues that
5 require surgical repair of a complex nature or when
6 treatment of the injuries requires the use of regional or
7 general anesthesia. And I read strictly from the statute.

8 THE COURT: Right.

9 MS. BURRIS: Okay. I just wanted to make sure that
10 that's the law in which we're actually applying this
11 situation.

12 MS. HALL: (Affirmative nod).

13 THE COURT: I mean, that's what I think, and that's
14 what the Solicitor thinks.

15 MS. HALL: (Affirmative nod).

16 MS. BURRIS: Okay.

17 THE COURT: Well, I'm informed that all the jurors are
18 present. State ready for the jury?

19 MS. HALL: Yes, sir.

20 THE COURT: And Defense ready for the jury?

21 MS. BURRIS: Yes, sir, we are, Your Honor.

22 THE COURT: Bring the jury in.

23 (Whereupon the jury entered the courtroom at 1:29 pm)

24 THE COURT: Welcome back, ladies and gentlemen. We
25 really are ready to wrap this case up. And the attorneys

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1 are getting ready to make to you their closing arguments.

2 The State has the opportunity to go first. Ms. Hall.

3 MS. HALL: The State waives opening.

4 THE COURT: The State waives opening.

5 MS. BURRIS: Thank you, Your Honor. May it please the
6 Court, opposing counsel, members of the jury.

7 As I was treading through this case all week, here on
8 Wednesday, I had a very vivid flashback when I was younger,
9 when I was a young girl. I attended First Calvary Baptist
10 Church, and I was a girl scout. I was very involved,
11 involved in many youth activities. But in the midst of
12 being in the middle of -- I was on the Junior Usher Board,
13 did many youth activities.

14 And sometimes in the midst of extending my helping
15 hands as a young girl, I would faint. I had every test run.
16 I had EMGs. My parents took me and had EKGs done. They
17 couldn't find anything wrong with me.

18 So the doctor told my parents, one day she'll probably
19 grow out of it. I'd be in the middle, just standing there,
20 all of a sudden I would get dizzy, I would get very hot, and
21 I would just faint. I do believe I was conscious, not
22 really sure, I just remember somebody at one point talking
23 about sticking a fan under my tongue. I'm not exactly sure,
24 but I know that I would faint.

25 I remember one day I was at home baking cookies. I was

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1 a growing young girl at the time. And when I opened the
2 stove, I passed out on the kitchen floor. This is what I
3 experienced. I was a normal, functioning young girl
4 involved in girl scouts.

5 And the last time that I passed out, when I was in
6 college, I was in Greenville, worked for Carolina First Bank
7 in Columbia, went to Carolina. And in the Summertime they
8 sent me to Greenville for training because I was a bank
9 teller.

10 And as I was in the midst of the training, they were
11 teaching me how to -- to count, operate a fast pace, passed
12 out. And I remember my mother having to come to Greenville
13 to get me to take me back to Rock Hill.

14 Yesterday when I was in the courtroom unbeknownst to me
15 I received a text from my husband who works at Carolina.
16 And he told me -- I have a twenty year old sister. And he
17 said she was involved in a three-car accident.

18 MS. HALL: Objection, Your Honor. She's testifying.

19 THE COURT: Overruled. Go ahead.

20 MS. BURRIS: Thank you. That she was involved in a
21 three-car accident. First question I asked, was she hurt?
22 Was anybody hurt? He says, no, she's fine. She was shaken.
23 She was nervous. She was crying. She would not get out of
24 the car for a period of time. One of the cars was a total
25 loss. Thankfully, she didn't get hurt. She did go receive

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1 medical treatment.

2 But this situation in which she was in -- I say that
3 not to you for your sympathy, but to humanize the situation
4 at hand. On June 24th, 2011 Crystal Thomas was placed in a
5 maximum security cell, eight by eleven, concrete walls.

6 The Solicitor asked was there any encounters on the
7 side of the road when they stopped you. It was a traffic
8 there -- she had a road block set up where they were
9 checking everybody for licenses. Her car actually went to
10 the license check-point.

11 She admittedly told you she didn't have a license.
12 They took her into custody. Officers never testified there
13 were any problems on the side of the road or she had an
14 altercation with an officer. She was never charged with
15 having an altercation with the officer on side of the road
16 or anything. She was taken into custody.

17 And what Crystal Thomas told the Officer, I need some
18 help, please get my mom, I need some medicine, get me help.
19 That's what she told the officers.

20 You saw the tape. The very first time the Defense
21 actually showed you the video, which, of course, we know
22 doesn't have any audio on it. On the video, Crystal, along
23 with a female officer, was walking into the Detention
24 Center. She was calm. She wasn't causing any problems.

25 You had the opportunity to observe that video. And as

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1 I told you yesterday, tapes don't lie. She went in, she had
2 an encounter or a conversation, Officer Totherow, please get
3 me some help, give me some medical attention. She had this
4 conversation with Officer Totherow. Then other officers
5 started coming by, Officer Funderburk, other officers,
6 Officer Moore, give me some help, I need my medication.

7 Officers told you, all of them admitted that they'd had
8 some training at the Criminal Justice Academy. And there
9 are certain policies, and procedures and protocol that you
10 must follow in your training and in your experience. All of
11 them admitted that to you, but they're not sure that they
12 followed proper protocol and procedure in this case.

13 Well, I asked Officer Funderburk and I asked Officer
14 Totherow, did you ask her about medication, did you ask her
15 about, you know, whether or not -- did you look to observe
16 her medical condition? Crystal willingly, voluntarily told
17 them, I need some medication, I just feel like -- and
18 Officer Totherow told you, oh, she just wanted her way, she
19 just wanted to be placed in another cell. But he had placed
20 her in maximum security for a driving violation.

21 Not only was he not going to place her -- she told you,
22 I just needed some more space, I needed to relax, I needed
23 to calm down, I needed my mother to bring my medicine. But
24 he said, she just wanted her way. And so he didn't ask her
25 about anything. He didn't ask her about her medical

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1 condition at all.

2 Officer Funderburk testified and Officer Funderburk
3 told you at one point -- this is when Crystal Nicole Thomas
4 initially went into the jail cell, they placed her in
5 maximum security jail cell. Initially he said, she's
6 bumping her head real hard.

7 And I said, if a person's in a jail cell and they're
8 bumping their head real hard and slapping their hands, not
9 fighting you, but they're doing all this real hard, don't
10 you think it's necessary to get some medical attention? Oh,
11 not that hard was what Officer Funderburk told me. Then
12 Officer Totherow told me she was bumping it, but it wasn't
13 that hard. This is when she initially goes into the jail
14 cell.

15 Officer Totherow told you -- Major Alley told you about
16 the ammonia packs. And I asked him, I said, -- first,
17 Officer Totherow told us he didn't learn that from anywhere,
18 he wasn't trained to take ammonia packs out of the Detention
19 Center and stick it under anybody's nose.

20 I asked him, I said, was that some old school remedy
21 that you -- yes. He wasn't trained that way. Major Alley
22 told you, no, none of us had medical professional training,
23 but yet they took it upon themselves to take ammonia out of
24 the nurse's station and stick it under Crystal's nose to
25 handle the situation. Now, not only did they do that, but

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1 also they found it necessary to what he called dry-stun,
2 which is simply tase her, Crystal.

3 We do not know the extent of exactly what happened with
4 his arm slipping down, ending up near her mouth because it's
5 not on tape. Not on video. But what we do know is that
6 Crystal Thomas on June 24th in the wee hours of the morning,
7 starting eleven or 12:00 midnight was shaking
8 uncontrollably. She was trembling. Her head was going back
9 and forth. Looked like she had difficulty breathing. And
10 also, as she told you, she was vomiting.

11 Officer Totherow told you he was trying -- and we did
12 actually see on the tape, on the video where he was trying
13 to tighten up the restraint around her neck. We didn't see
14 anything else.

15 Well, Officer Totherow, who said that Crystal Thomas
16 said to him, I have AIDS and you're going to get it too.
17 But we had Officer Funderburk saying Crystal said it, I have
18 AIDS, I hope you die. As we know, Crystal Thomas does not
19 have AIDS.

20 And then we have Deputy Cummings who was assigned as
21 the principal investigating officer. At one point he tells
22 you about all of this law enforcement experience, he's been
23 there seven years. He went to go investigate the situation.

24 Plus, he also told you he wasn't there. He doesn't
25 really know what happened. He only knows what they told

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1 him, what the officers told him. And he told you he's not
2 sure as to whether or not they should have gotten medical
3 attention 'cause he just doesn't know. But he was the
4 principal investigating officer.

5 But he didn't know and he did not document anything
6 about Officer Funderburk -- first time I've heard,
7 yesterday, during testimony, Officer Funderburk, oh, his
8 nose was busted, her hand went flying up. Well, because he
9 decided not to prosecute. Was it intentional? I don't
10 know, I was -- I was -- I was standing over her trying to
11 help her and her arms flapped up. So I'm not sure if it was
12 intentional.

13 Officer Funderburk testifies that he was just trying to
14 help Crystal Thomas. And he said he's not sure that they
15 made the right decision. He said and testified that she
16 latched on to Officer Totherow's arm. Officer Totherow
17 said, well, she -- and she bit me. But yet he still wasn't
18 sure about whether it was intentional.

19 Deputy Cummings in his report said -- he documented in
20 his report, Deputy, the principal investigating officer,
21 Crystal Thomas was breathing rapidly, and at one point to
22 the extent that she said she thought she was going to die.
23 That, we do know if we accept the testimony of Deputy
24 Cummings.

25 Crystal Thomas is convulsing back and forth, shaking

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1 and trembling. That, we do know, according to the video and
2 according to Deputy Cummings' testimony as to what he was
3 told and the other officers have told us. That, we do know.

4 Now ask yourself, Deputy Cummings, initially he talked
5 about, you know, how the Sheriff's Department is a part of
6 the Detention Center, then he began to back-paddle. I even
7 asked him the question, so did you discuss this case with
8 the Assistant Solicitor? Did you -- he couldn't remember
9 because he has so many cases, I wasn't there. So one point,
10 he's the one who documented the main report according to
11 what they told him, but then yet, he doesn't know anything
12 about the situation.

13 Ask yourself, if as the officer said, well, we're not
14 sure, we think maybe -- Officer Totherow told you he had not
15 had any previous encounters with Crystal to say, oh, she's
16 faking, she's acting out. He said, no. Assistant Solicitor
17 asked him the question, have you dealt with her before? No.
18 To imply that she was faking.

19 Now, how many of us have had small children or
20 teenagers who did act out every now and then? But I submit
21 to you, how long can this behavior go on? Oh, they act out
22 for ten minutes, they act for twenty minutes. Some of them,
23 they'll get you back the next day or say something smart.

24 But Crystal Thomas and this behavior, this condition,
25 the shaking uncontrollably, head back and forth of how many

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1 -- that lasted from eleven to twelve to about four or 5:00
2 in the morning. Can you really fake that long? Don't you
3 think at some point you're going to grow tired?

4 As I stated, all of the officers told you that we
5 didn't have any medical training, we're not a medical
6 professional. Major Alley told you in fourteen years he'd
7 never thought about putting ammonia under somebody's nose,
8 in fourteen years been employed with Chester County
9 Detention Center. But that night they thought or took it
10 upon themselves to make a medical decision to place ammonia
11 under her nose, which could have worsened her condition,
12 taking it out of the nurse's station.

13 Do you think that maybe they should have thought about,
14 just to err on the side of caution to get her some medical
15 treatment, ask her about medication, listened to the fact
16 that she's saying I need my medication? Do you think that
17 they should have done that?

18 You heard Crystal's testimony. She testified that she
19 takes Xanax, as soon as she was released from the Chester
20 County Detention Center, her Xanax and Zoloft was what she
21 needed. And she takes it off and on because this is a
22 condition that comes and this is a condition that goes, back
23 and forth. As she stated, the medication is on an as needed
24 basis. So she takes it on an as needed basis.

25 She also testified that there were certain stressors,

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1 things that will trip her to shake uncontrollably, or
2 hyperventilate, or her muscles to contract, or a rapid
3 heartbeat. She testified to that.

4 Crystal Thomas, that particular night, she was placed
5 in a very -- she had a very traumatic experience that night.
6 Not only that night. She testified and told you, this is
7 not the first time that she'd experienced this. She'd been
8 placed in, as she told you, in confinement and the same
9 thing, in fact, she had to go to the emergency room and be
10 treated at the emergency room. And she also had to be
11 treated by a medical doctor prior to this who prescribed her
12 medications and also where she went afterwards.

13 Now, the State has an obligation to prove to each one
14 of you beyond a reasonable doubt. In a civil case a lot of
15 times you're dealing with money. So it's more likely than
16 not. That's what we call the burden of proof.

17 But in a criminal case it's called beyond a reasonable
18 doubt. Any doubt that will cause any one of you to hesitate
19 to act is beyond a reasonable doubt. The State carries the
20 burden of proof.

21 You cannot convict Crystal Thomas based on what you do
22 not know. We cannot convict Crystal Thomas based on the
23 language potentially, we're not sure, yeah, we cannot
24 convict Crystal Thomas on that. But you do know what you do
25 know. And the State will have to prove to each one of you.

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1 The Judge will actually charge you on the law of what
2 Crystal Thomas is actually charged with. She's charged with
3 simply assault and battery, okay? Assault and battery, they
4 call it second degree. It doesn't mean second offense, just
5 assault and battery.

6 And when I think about criminal law I always think
7 about the elements of crime. The State must prove to each
8 one of you beyond a reasonable doubt that the person
9 unlawfully injured another person or offered or attempt to
10 injure another person having the present ability to do so
11 and -- and causing moderate bodily injury to another person
12 or moderate bodily injury to another person could have
13 resulted.

14 The Judge will also instruct you -- you may ask
15 yourself, what is moderate bodily injury? Moderate bodily
16 injury means physical injury requiring treatment to an organ
17 system of the body other than the skin, muscles and
18 connective tissues of the body, except when there is
19 penetration of the skin, muscles and connective tissues that
20 require surgical repair of a complex nature or when
21 treatment of the injuries requires the use of regional or
22 general anesthesia. That's moderate bodily injury.

23 Now, I asked Officer Totherow, I said, so as you're
24 alleging that Crystal Thomas actually bit you, did she
25 penetrate the skin? She did. But Jessica Kreel of the

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1 Chester Regional Medical Center, the medical records
2 custodian, had that it said, the medical records said an
3 abrasive bite. And you will have that medical record back
4 in the jury room with you. It said an abrasive bite.
5 That's what they must prove to you, the moderate bodily
6 injury.

7 Now, yesterday ---

8 THE COURT: Ms. Burris, your time's -- your time's
9 about up.

10 MS. BURRIS: Wrapping it up, Judge.

11 THE COURT: All right.

12 MS. BURRIS: Yesterday you raised your hand to well and
13 truly try this case. You took an oath that you would well
14 and truly try this case. I ask that you apply the evidence
15 as it has been submitted in the courtroom. And I state to
16 you, what I say, what the Assistant Solicitor says is not
17 evidence, but what you've heard and what you've seen is
18 evidence.

19 And I submit to you after you go back to this jury room
20 and you take all this evidence, take the time to watch the
21 video, to look at the pictures of Crystal's injuries, and
22 the officer's injuries and the medical report from the
23 officer's injuries that you find that Crystal Thomas is not
24 guilty of assault and battery of Officer Tótherow. Thank
25 you so much for your time. Thank you for being here today.

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1 THE COURT: Thank you, Ms. Burris. Ms. Hall.

2 MS. HALL: Thank you. Ladies and gentlemen, I'm going
3 to get part of this out of the way real quick like. Ms.
4 Burris touched on this. It's actually one of the first
5 things I wrote down.

6 Talking about children having a temper tantrum, and I
7 submit to you that's exactly what happened here. Ms. Thomas
8 just likes to get her way. I submit to you that's exactly
9 what she likes. And when she found out she wasn't going to
10 get it, she started acting out.

11 Now I don't want anybody in this room to think that in
12 any way I am minimizing panic attacks. My sister has panic
13 attacks. And I am in no way doing that. But I would submit
14 to you that it is offensive for someone to come into a
15 courtroom to state that they're having panic -- a panic
16 attack when they are not, when they have behavior that they
17 can control. And I submit to you she could have controlled
18 this behavior. This was not a panic attack, it was a temper
19 tantrum.

20 And I would also submit to you, if any of you have
21 children, that children, and Ms. Burris would like to
22 believe that the panic attack does it, and I would submit to
23 you that it does. It depends on the kid, you know, how long
24 it lasts. In Ms. Thomas' case it lasted off and on for four
25 hours. And I'm going to come back to the off/on part in

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1 just a minute.

2 Jail is not a pretty place at all. It's not a fun
3 place to work, it's not a fun place to go, but what you --
4 the problem with this situation is when you create a
5 situation where you end up in jail, it's not about you
6 anymore. You're no longer in control of the situation. And
7 Ms. Thomas found herself not in control of the situation
8 anymore she did not like.

9 It's all about her. There's bruises on me, just little
10 old me, they chained me in the chair to the cell. Well, if
11 you look at the video -- you're going to have the video. If
12 you want to watch all four hours, you can watch all four
13 hours of it. If you want to fast forward it and go back and
14 forth, you can do that. It's in evidence. It's yours.

15 I submit -- when you watch the video you can see, well,
16 the reason that they chained the chair to the cell is
17 because immediately she starts pushing away with her feet,
18 which is exactly what they wanted not to have happen.

19 I can't breathe. You have three police officers say if
20 the woman couldn't breathe, if she wasn't able to breathe,
21 if she was in any kind of distress we would have taken her,
22 we would have called EMS, we would have done something to
23 help her.

24 This happens all the time at the jail. They all
25 testified to this. People act out. They don't want to be

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1 there. They no longer control their situation. And this is
2 the type of behavior that they see quite often.

3 They're not there to put people in restraint chairs for
4 their entertainment. The only reason they put people in
5 restraint chairs is to protect themselves or in this case it
6 started out to protect her. She's banging her head on the
7 floor. They put her in the restraint chair to protect her.

8 Well, at some point when she bites Officer Totherow,
9 she gets left in the restraint chair to protect them. But
10 that's not the point, it's the red herrings. I learned
11 about this, I remember in about the fourth grade, some kind
12 of history class about red herrings where you put them in --
13 it's just little things to keep you off track and to keep
14 your eye off of the actual core issue in this case, which is
15 her biting him and then saying I have AIDS. That's --
16 That's really all we're dealing with here.

17 And then there's all this extraneous stuff that's been
18 brought in about, you know, restraint chairs, and panic
19 attacks and all kinds of stuff. And I would submit to you
20 that it is to keep your eyes out here instead of on the core
21 issue of what happened, which was the biting and the
22 exclamation about the HIV.

23 It's not my fault. They were laughing at me. Look at
24 the video. I submit to you you're not ever going to see
25 them laughing at her.

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1 I will also submit to you that you will never see her
2 vomit. You may see her spit on herself, but you will never
3 see projectile vomit coming from the girl's mouth like she
4 would have you believe.

5 They didn't ask me if I had a medical condition. They
6 did ask her. Funderburk said we tried to book the -- book
7 Ms. Thomas, but she wouldn't cooperate. So we put her in a
8 cell.

9 Ms. Burris would have you believe that that is a
10 maximum security cell. If you'll go back -- if you want to
11 rehear the testimony, you can do that too. The court
12 reporter can play it all back for you.

13 If you did play the testimony I would submit that you
14 would hear Major Alley say, yeah, normally it's maximum
15 security. It's maximum security now -- it was before we
16 started construction, but it was like, you know, a turnover
17 out there. And at that point in time it was not being used
18 as maximum security, it was used as a holding cell. Once we
19 book people we move them somewhere else, but we've got to
20 book them first.

21 And I would submit to you the reason that they do have
22 to get that information out of them is to make sure they're
23 putting them in the right place. And again, she's not
24 getting what she wants. She don't want to be in this cell,
25 she wants to be in that cell.

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1 They dry tased me. Well, I would submit to you if Ms.
2 Thomas had put her legs down like they'd asked her to, that
3 never would have happened.

4 They didn't try to help me. I would submit to you
5 that's exactly what they were doing when they put her in
6 that restraint chair.

7 And then she's blaming someone else for everything.
8 When she doesn't get what she wants, this is the way she
9 acts.

10 Officers testified about procedures that they use in
11 the jail. Said people act this way all the time. Yes, we
12 have ammonia packs. Yes, they're in the first aid station,
13 the nurse's station. We have full access to this.

14 If somebody's falling out, the best way to find out if
15 they're really falling out is smelling sauce. I mean, I'm
16 sure many of you are familiar with smelling sauce. Pop a
17 pack, put it under their nose, if they wake back up, okay,
18 we're good to go. If they don't, well, we need to do
19 something about that 'cause something's bad wrong.

20 And I would submit to you Ms. Thomas would have you
21 believe that something was bad wrong. But I would also ask
22 you to look -- fast forward it a little bit, after she
23 finally calmed down and got herself out of the restraint
24 chair, there was nothing bad wrong. She was fine. And she
25 was fine for two or three more days while she sat in the

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1 Detention Center waiting to get bonded out.

2 I would submit to you, they don't want to put her in
3 the restraint chair. It just creates more work for them.
4 They've got to move their arms and unstrap them and re-strap
5 them and do all kinds of things as opposed to just letting
6 them sit calmly, which is what they wanted her to do. She
7 just couldn't do it.

8 And like I stated, this is a bunch of red herrings. I
9 feel like it has to be addressed. But what we're looking at
10 is the core issue. And you did swear at the beginning of
11 this or the oath that you took at the beginning of this
12 trial is that you are going to listen to the facts and
13 you're going to apply them to the law as the Judge gives it
14 to you.

15 And we talked about the law a little bit at the
16 beginning of the thing, of the trial. And the Judge will
17 instruct you about it at the end after I get finished
18 talking.

19 The things you have to consider, assault and battery,
20 the present apparent ability to hurt someone, threatening
21 harm, I've got AIDS, biting someone, that's it, while the
22 biting injury did occur or could have occurred. And I
23 submit to you that the moderate bodily injury in this case
24 -- simply because it's a bite mark, a wound, you've seen --
25 you're going to have the pictures of it back there.

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1 And Officer Cummings will tell you, he's the one that
2 took these pictures, it doesn't do it justice. He said that
3 on the stand. But he was bleeding. And then he's got --
4 you can see the full teeth marks on his arm when you look at
5 it. And when you look at the video, you can see the bandage
6 that's on his arm too.

7 But moderate bodily injury, we'll go through that for
8 just a second. It did occur or it could have occurred. The
9 statute does define it as you have to have stitches or you
10 have to -- you have anesthesia or something. I submit to
11 you in this case it could have occurred. She bit him, she
12 takes what she -- what comes after that.

13 And I would submit to you that she said, I have AIDS.
14 And they have no reason not to believe her at this point.
15 This is a threat. This is an exacerbation, making it worse.
16 And she had -- that's all the information they had at that
17 point. And at that point was when you determine what charge
18 to make.

19 If she had had AIDS, it would have gotten a lot worse.
20 Thankfully, for her she didn't. And I would submit that
21 that threat is real. You've got to judge the credibility of
22 the witnesses too. And we'll talk about that more in just a
23 second.

24 But I would submit to you that this threat, she -- Ms.
25 Thomas says, oh, no, I didn't say that. Then why on Earth

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1 would Alley have sent her down to the hospital to be tested?
2 Why on Earth would Totherow have submitted -- he's got to
3 have a blood test to find out if he has AIDS.

4 And then, I mean, he stated that he still doesn't know.
5 This could lie dormant for seven years. He's got to wonder
6 about it except for the fact she was tested and she did test
7 negative. But they went to the expense and trouble of
8 taking her down to the hospital based on her threat. He
9 went to the trouble and pain, I would submit, of having his
10 blood drawn to be tested himself based on a threat.

11 You heard -- the credibility of the witnesses -- when
12 you judge credibility of witnesses you've got to think about
13 who's got motivation to alter or exaggerate the facts?
14 Who's got motivation to make things seem not exactly as they
15 are?

16 These guys are people just trying to do their job.
17 You've got Totherow, he's just trying to do his job when he
18 gets involved in this and ends up being bitten. Funderburk,
19 just trying to do his job. They all testified about the
20 procedures in the jail, things that they follow, things that
21 they do. They're not trying to create work for themselves.

22 And I would submit to you, watch that video. Never
23 once do you see them laugh at her. Never once do you see
24 them mistreat her in any way. They're just doing their
25 jobs.

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1 And Major Alley testifies, yeah, they were doing their
2 jobs and they did it right. I didn't have any reason to be
3 upset with them, or to discipline them, or to do anything,
4 write them up for anything. They did what they were
5 supposed to do.

6 So you get to Officer Cummings. And, you know, Ms.
7 Burris would have you completely discount his testimony
8 altogether simply because he's a responding officer. Well,
9 they have to call the police. The Detention Center is an
10 entity. The Sheriff's Department is an entity. When
11 something happens at the Detention Center that requires --
12 that would amount to a criminal charge, they have to call
13 the Sheriff's Department. And that's what Cummings came
14 for.

15 He comes in, he writes his report. And we asked him on
16 direct how did she appear to you? Did she appear to be
17 under stress? She appeared to be angry. And that was his
18 testimony. That was what he perceived at the moment when
19 all this was going on.

20 The video, Ms. Thomas would have you believe that she's
21 shaking, convulsed for three to five hours. We'll come to
22 that in just a second. And that they mistreated her. And
23 they want to talk about what's not on the tape.

24 And then you want to talk -- and then you'll have the
25 medical records back there. You can review them. And he

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1 went to the hospital with bite marks, ended up with a
2 tetanus shot. He ended up with antibiotics, ended up with
3 an AIDS test.

4 And what I want to talk about with -- as regards to --
5 in regard to the shaking and convulsing for three to five
6 hours, I would submit that Ms. Thomas is a great actress.
7 She's -- she just needs an audience. And if you'll watch
8 that tape, you'll see her. She'll shake and she'll move
9 around, she'll flop and she'll do whatever it is she's
10 doing.

11 And then once she figures out that nobody's there to
12 watch her, she calms down. And you'll see her. She's
13 looking around to see if anybody's there. And if she sees
14 somebody or thinks somebody's coming, she starts it again.

15 She turned on the tears when Ms. Burris was questioning
16 her. And she can -- I would submit that she can turn on
17 this uncontrollable behavior too and she can turn it off
18 whenever she wants to.

19 She stated, when I cross examined her, she said, yeah,
20 I can be a little aggressive. I'll submit to you that's
21 exactly what she was doing, she's flopping around in the
22 bottom of the jail cell not getting what she wants.

23 And regardless of whether Funderburk decided to charge
24 her or not is immaterial. There again, another one of those
25 red herrings because he said, I didn't necessarily -- I

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1 don't know -- she was flopping around, I don't know if she
2 meant to hit me. So I'm not going to go through all that.

3 But we know that she intended to bite Totherow. His
4 arm was there. And, I mean, even if you're convulsing, to
5 go, homp, (biting motion), is a totally different matter.
6 And then on top of that to say, oh, I have HIV, you're going
7 to get it too, or I hope you die or whatever the term was
8 that came after it, the threat is the saying you have AIDS.

9 And Ms. Thomas would also have you believe that she --
10 she stated at the beginning, oh, I don't remember anything.
11 I remember walking in, that's really all I remember after
12 that. But then she starts remembering, oh, I couldn't
13 breathe, oh, I was asking for help, oh, they were doing all
14 these terrible things to me.

15 And then Mr. Burris brings her up here and she starts
16 saying, oh, what were they doing there? Oh, they were --
17 they were strapping my legs down harder. She remembered
18 everything even though she stated she couldn't. And I would
19 submit to you that she remembers what she wants to. Don't
20 be fooled by these theatrics. And I will submit that's
21 exactly what they are, they're theatrics. All we seek is
22 the truth.

23 Ms. Thomas stated, they don't like me, law enforcement
24 doesn't like me. I would submit to you it's not -- this is
25 not personal to them. It is a job. They don't take it --

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1 they don't take this personally. It's just that this is a
2 crime. You can't bite somebody, say you have AIDS and just
3 get away with it. It's not personal. It's not whether they
4 like her or not. They're just doing their job.

5 And it's like I stated before, we're just here to seek
6 the truth. You are the triers of the fact. You judge what
7 the witnesses said. You judge their motivation to say what
8 they say. And then you determine what the truth is.

9 And then you listen to Judge Goldsmith who gives you
10 the law, and you apply it, and then you render a verdict.
11 And that's what -- *veredicto* is a Latin word. It means to
12 speak the truth. And that's what you do, you speak the
13 truth.

14 And Ms. Burris touched on reasonable doubt. And I'm
15 going to touch on it for just a second. A reasonable doubt
16 is defined; doubt that would cause a reasonable person to
17 hesitate to act. And that's why you are here is because you
18 are reasonable people.

19 And it's not any hesitation. You're supposed to go
20 back -- that's why Judge Goldsmith has said don't discuss
21 the case, don't talk about anything. Talk about it amongst
22 yourselves and then you come to a conclusion. It's not any
23 doubt -- not doubt beyond any doubt whatsoever, it's a
24 reasonable doubt, beyond a reasonable doubt.

25 So what's reasonable here? I would submit to you the

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1 only thing that's reasonable is that Ms. Thomas bit
2 Totherow, said I have AIDS and it's assault and battery,
3 second.

4 Now it's about holding people responsible for their
5 actions. And I would submit to you once you go back there
6 and if you want to re-watch the video, or hear the
7 testimony, look at the medical records, look at the
8 photographs, these are in evidence. I don't object to them
9 being in evidence. I don't know what they are.

10 And I submit to you if they are what Ms. Thomas says
11 they are and they're bruising, the only reason she got
12 bruised is because of her -- the way she was acting. And
13 that really, again, another red herring that has nothing to
14 do with this. This is what we're here about. This is what
15 we're here about.

16 So go back there, listen to all this stuff, look at all
17 these things. And I would submit that once you do those
18 things, there's not going to be any reasonable doubt. Ms.
19 Burris, I mean, Ms. Thomas is guilty of assault and battery,
20 second degree, beyond a reasonable doubt. Thank you.

21 **THE COURT:** Thank you, Ms. Hall. Ladies and gentlemen,
22 I'll remind you that the fact that the Defendant in this
23 case was arrested, charged and indicted was not evidence in
24 this case and cannot be considered by you as evidence.

25 Once again, this document is simply the formal

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1 instrument that brings the case into the courtroom. The
2 Defendant has pled not guilty to the indictment. And that
3 plea puts the burden on the State to prove the Defendant
4 guilty.

5 I tell you that a person charged with committing a
6 criminal offense in South Carolina is never required to
7 prove themselves innocent. It is an important rule of law
8 that the Defendant in a criminal trial, no matter what the
9 seriousness of the charges may be, will always be presumed
10 to be innocent of the charge -- of the crime for which the
11 charges were issued unless guilt has been proven by evidence
12 that satisfies you of that guilt beyond a reasonable doubt.

13 The presumption of innocence does not end when you
14 begin your deliberations, but it accompanies the Defendant
15 throughout the trial until you reach a verdict of guilt
16 based on evidence that satisfies you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence has been stated to be like
19 a robe of righteousness placed about the shoulders of the
20 Defendant, which remains with the Defendant until it has
21 been stripped from the Defendant by evidence that satisfies
22 you of that guilt beyond a reasonable doubt.

23 This presumption of innocence is not mere legal theory.
24 It is not just a legal phrase. It is a substantial right to
25 which every Defendant is entitled unless you, the jury, are

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1 satisfied from the evidence of the Defendant's guilt beyond
2 a reasonable doubt.

3 A reasonable doubt is the kind of doubt that would
4 cause a reasonable person to hesitate to act. Some of you
5 may have served as jurors in civil cases where you were told
6 that it was only necessary to prove that a fact is more
7 likely true than not true, such as by the greater weight or
8 the preponderance of the evidence. But in criminal cases
9 the State's proof must be more powerful than that. It must
10 be beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the Defendant's guilt. Of course,
13 there are very few things in this world that we know of with
14 absolute certainty.

15 And in criminal cases the law does not require proof
16 that overcomes every possible doubt. If, based on your
17 consideration of the evidence, you are firmly convinced that
18 the Defendant is guilty of the crime charged, you must find
19 the Defendant guilty. If, on the other hand, you think
20 there's a real possibility that the Defendant is not guilty,
21 you must give the Defendant the benefit of the doubt and
22 find her not guilty.

23 I remind you during the trial that you and I have had
24 certain duties and responsibilities to perform. As the
25 trial judge, it's been my responsibility to preside over the

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1 trial and to rule on the admissibility of evidence.

2 You're to consider only the competent evidence before
3 you. And if there was any testimony ordered stricken from
4 the record during the trial, you must disregard that.

5 You're to consider only the testimony which has been
6 presented from this witness stand and any exhibits which
7 have been introduced into the record.

8 I also had the additional duty to tell you about the
9 law that applies in the case. As the presiding judge I am
10 the sole judge of the law of the case. It is your duty,
11 ladies and gentlemen, to accept the law and apply the law as
12 I now state it to you. If you already have any idea what
13 the law is or what the law ought to be and it does not agree
14 with what I tell you, you must abandon that and accept the
15 law as I give it to you.

16 As I've told you before, in every case tried in this
17 court before a jury, the jury becomes the sole and exclusive
18 judge of the facts of the case. A trial judge such as
19 myself cannot intimate, state, comment on or make any
20 statement to a trial jury about the facts of a case.

21 Since you're the jury, also the judges of the facts of
22 the case, you're not to infer from anything I've said during
23 the progress of this trial or anything I've ruled on during
24 the progress of this trial that I have an opinion about the
25 facts of the case. As I've told you several times, the law

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1 does not permit me to have an opinion about the facts of the
2 case. It is a matter solely for you. It is your duty,
3 ladies and gentlemen, to determine the effect, the value,
4 the weight and the truth of the evidence presented during
5 this trial.

6 Generally speaking, there are two types of evidence
7 presented during a trial, direct evidence and circumstantial
8 evidence. Direct evidence, of course, is the testimony of a
9 person who claims to have actual knowledge of a fact such as
10 an eyewitness. It is evidence which immediately establishes
11 the main fact to be proved.

12 Circumstantial evidence is proof of a chain of facts
13 and circumstances indicating the existence of a fact. It is
14 evidence which immediately establishes collateral facts from
15 which the main fact may be inferred. Circumstantial
16 evidence is based on inference and not on personal knowledge
17 or observation.

18 The law, though, makes no distinction between the
19 weight or the value to be given to either direct or
20 circumstantial evidence. Nor is a greater degree of
21 certainty required of circumstantial evidence than of direct
22 evidence.

23 You should weigh all of the evidence in this case.
24 After weighing all of the evidence if you're not convinced
25 of the guilt of the Defendant beyond a reasonable doubt, you

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1 must find the Defendant not guilty.

2 Necessarily, ladies and gentlemen, you must determine
3 the credibility of the witnesses who have testified. And
4 this simply means the believability. It becomes your duty
5 as jurors to analyze and to evaluate the evidence and
6 determine which evidence convinces you of its truth.

7 In determining the believability of the witnesses you
8 may believe one witness over several witnesses or several
9 witnesses over one witness. You may believe part of the
10 testimony of a witness and reject the remaining part of the
11 testimony of the very same witness.

12 You may believe the testimony of a witness in its
13 entirety or reject the testimony of a witness in its
14 entirety. And you may consider whether any witness has
15 exhibited to you any interest, any bias, prejudice or other
16 motive in this case.

17 The Defendant is charged with assault and battery in
18 the second degree. The State must prove beyond a reasonable
19 doubt that the person -- that a person unlawfully injured
20 another person or offered or attempt to injure another
21 person with the present ability to do so and moderate bodily
22 injury to such person resulted or moderate bodily injury to
23 such person could have resulted.

24 And I tell you that moderate bodily injury means
25 physical injury requiring treatment to an organ system of

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1 the body other than the skin, muscles and connective tissues
2 of the body, except when there is a penetration of the skin,
3 muscles and connective tissues that require surgical repair
4 of a complex nature or when treatment of the injuries
5 requires the use of regional or general anesthesia.

6 Ladies and gentlemen, in just a moment you'll retire to
7 the jury room and you'll begin your deliberations. For
8 there to be a verdict in this case all of you must agree,
9 meaning all twelve of you must agree. And, of course, in
10 this case you'll be asked to decide whether the verdict of
11 the jury is guilty or not guilty as it relates to the charge
12 of assault and battery, second degree.

13 When you reach such a verdict, I'm going to ask the
14 foreperson if he would sign the verdict form that I'll hand
15 in shortly and date it, presumably today's date, and then
16 circle on the form the verdict of the jury, being either
17 guilty or not guilty.

18 At this time I'm going to ask all of you, including our
19 alternate juror, to step in the jury room, but don't begin
20 deliberations yet until I send word to the jury room. And
21 when I do that I'll send the verdict form along with the
22 exhibits to the jury room. When that happens, I'm going to
23 ask our alternate juror if she would step back into the
24 courtroom and then the jury begins deliberations.

25 Once you've reached the verdict, after completing the

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1 verdict form, if you would knock on the door to the jury
2 room to let the bailiffs know that you've reached a verdict.
3 Ladies and gentlemen, if you'll please retire to the jury
4 room.

5 (Whereupon the jury exited the courtroom at 2:19 pm)

6 THE COURT: Any exceptions from the State?

7 MS. HALL: No, sir.

8 THE COURT: From the Defendant?

9 MS. BURRIS: No, sir, Your Honor.

10 THE COURT: Have y'all looked to see if we have all of
11 the exhibits ready to go back?

12 MS. HALL: They're going to have to -- if they want to
13 see the video, they'll, I mean, obviously, they'll have to
14 come back in here because ...

15 (Whereupon the attorneys were talking off the record)

16 (Whereupon the exhibits were agreed upon and sent back
17 to the jury room to begin deliberations at 2:22 pm)

18 THE COURT: Ms. Hall, did you check with the court
19 reporter to ...

20 MS. BURRIS: Did you actually request a TV or anything
21 back there to make sure they -- we need ---

22 MS. HALL: Is that what ---

23 THE COURT: No, I couldn't hear what she said.

24 MS. HALL: She's asking about a TV. What were you
25 asking me about?

1 THE COURT: I was asking you if you had checked with
2 the court reporter to make sure that you were correct when
3 you told the jury that if they wanted to re-hear the
4 testimony the court reporter would be glad to play that back
5 for them.

6 MS. HALL: I don't know if she would be glad to, but
7 ---

8 (Laughter)

9 MS. HALL: I may have stretched on that part. She will
10 be able.

11 THE COURT: Now what were y'all ---

12 MS. HALL: In regard to Ms. Burris' question on the
13 television, ---

14 THE COURT: What about the television?

15 MS. HALL: There is no way to play that DVD on a
16 regular DVD player. It's my understanding, if you know
17 differently, then please let me know, ---

18 MS. BURRIS: No, we've been playing it on our computer.
19 So -- but they need something.

20 MS. HALL: Well, and I think if they needed to see it,
21 they would have to come back in ---

22 THE COURT: Yeah, they'd have to come back here.

23 MS. HALL: --- because the computer is the only way I
24 have to play it. And that's far more than what ---

1 MS. BURRIS: That's no problem.

2 MS. HALL: --- they need to have back there.

3 THE COURT: Okay. If they want to hear it, watch it,
4 see it, we'll bring it up.

5 MS. BURRIS: Okay.

6 (Whereupon the alternate entered the courtroom at 2:22
7 pm)

8 THE COURT: I want to thank you -- I want to thank you.
9 I didn't tell you this earlier, but I knew you were anyhow
10 paying attention to what was going on. This actually ends
11 your jury duty obligation ---

12 MS. EVANS: All right.

13 THE COURT: --- for the week. You are welcome, though,
14 if you wish, to stay with us. You can't sit there, but if
15 you want to you can sit in the back of the courtroom.

16 A lot of alternate jurors like to stay and see what the
17 rest of them do. You don't have to. And you can probably
18 call the Clerk's Office tomorrow and find out. But it's
19 totally up to you, whatever you want to do. It doesn't make
20 any difference.

21 Anything you need to tell ---

22 MADAME CLERK: If you need a certificate to take to
23 your employer, ---

24 MS. EVANS: I do.

25 MADAME CLERK: --- go down the stairs to the Clerk's

1 Office.

2 MS. EVANS: Okay.

3 MADAME CLERK: And then your check will be in the mail
4 in the next couple of days.

5 MS. EVANS: Okay. All right.

6 MADAME CLERK: Thank you, ma'am.

7 MS. EVANS: Okay. Thank you.

8 THE COURT: But if you need to go down there now,
9 that's fine. You can still come back ---

10 MS. EVANS: Okay.

11 THE COURT: --- if you want to.

12 MS. EVANS: Just come through that door?

13 THE COURT: (Affirmative nod).

14 MS. EVANS: Okay. All right. Thank you.

15 THE COURT: Okay. Thank you once again.

16 MS. EVANS: All right.

17 THE COURT: We'll be at ease.

18 (Whereupon court was in recess at 2:23 pm)

19 (Whereupon court resumed at 2:39 pm).

20 THE COURT: The bailiff indicates jury's reached a
21 verdict. And our alternate juror hasn't gotten back in the
22 courtroom yet. The State's ready for the jury?

23 MS. HALL: Yes, sir.

24 MS. BURRIS: Yes, sir, ---

25 THE COURT: Ready for the jury?

VERDICT OF THE JURY

1 MS. BURRIS: --- Your Honor.

2 THE COURT: Let's bring the jury in.

3 (Whereupon the jury entered the courtroom at 2:40 pm)

4 THE COURT: Welcome back, ladies and gentlemen. Mr.

5 Howell, let me ask you as foreperson of the jury, has the

6 jury reached a verdict in this case?

7 MR. HOWELL: We have, Your Honor.

8 THE COURT: A couple of questions.

9 MR. HOWELL: Yes, sir.

10 THE COURT: Was it unanimous, meaning all twelve of you
11 agree?

12 MR. HOWELL: Yes, sir.

13 THE COURT: And did you circle the appropriate verdict
14 on the verdict form?

15 MR. HOWELL: Yes, sir.

16 THE COURT: Did you sign your name as foreperson?

17 MR. HOWELL: Yes, sir.

18 THE COURT: Would you, please, pass the verdict form
19 forward. Madame Clerk, would you, please, publish the
20 verdict.

21 MADAME CLERK: Your Honor, this is case number 2011-GS-
22 12-485, the State of South Carolina versus Crystal N.
23 Thomas. We, the jury, as to indictment number 2011-GS-12-
24 485, assault and battery, second degree, unanimously find
25 the Defendant, Crystal N. Thomas, guilty. Signed Gary L.

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1 Howell on April the 18th, 2012. If this is your verdict,
2 please say so by the raising of your right hand.

3 (Whereupon all jurors raised their right hand)

4 MADAME CLERK: Thank you.

5 THE COURT: Anything further before the jury is
6 discharged, from the State?

7 MS. HALL: Nothing from the State.

8 THE COURT: From the Defense?

9 MS. BURRIS: Your Honor, I would like to poll the jury,
10 please.

11 THE COURT: Okay. Madame Clerk.

12 MADAME CLERK: Foreman Howell, if this is your verdict
13 -- is this your verdict and do you still assent?

14 MR. HOWELL: Yes.

15 MADAME CLERK: Amanda Oliver, is this your verdict and
16 do you still assent?

17 MS. OLIVER: Yes.

18 MADAME CLERK: Alice M. Evans, is this your verdict and
19 do you still assent?

20 MS. EVANS: Yes.

21 MADAME CLERK: Jason Thomas, is this your verdict and
22 do you still assent?

23 MR. THOMAS: Yes.

24 MADAME CLERK: Lisa Hatcher, is this your verdict and
25 do you still assent?

VERDICT OF THE JURY

1 MS. HATCHER: Yes.

2 MADAME CLERK: Stacey Stringfellow, if this is your
3 verdict, do you still assent?

4 MS. STRINGFELLOW: Yes.

5 MADAME CLERK: Judith Ledoux, is this your verdict and
6 do you still assent?

7 MS. LEDOUX: Yes.

8 MADAME CLERK: Bradly D. Buss, is this your verdict and
9 do you still assent?

10 MR. BUSS: Yes.

11 MADAME CLERK: Tina Roof, is this your verdict and do
12 you still assent?

13 MS. ROOF: Yes.

14 MADAME CLERK: Jacqueline L. Horton, is this your
15 verdict and do you still assent?

16 MS. HORTON: Yes, ma'am.

17 MADAME CLERK: Rita B. Dixon, is this your verdict and
18 do you still assent?

19 MS. DIXON: Yes, ma'am.

20 MADAME CLERK: William J. Grasty, is this your verdict
21 and do you still assent?

22 MR. GRASTY: Yes, ma'am.

23 MADAME CLERK: Thank you.

24 THE COURT: Thank you, Ms. Carpenter. Anything further
25 before the jury is discharged?

1 MS. BURRIS: No, sir, Your Honor.

2 THE COURT: Ladies and gentlemen, I want to thank you
3 for your service. Here before I've told you you couldn't
4 talk to anybody about the case. You are now free to talk to
5 anybody about the case you want to, including what happened
6 in the jury room, if you want to.

7 Likewise, you're also free not to talk to anybody. If
8 anybody asks you about the case and you don't want to talk
9 about the case, tell them you don't want to. If they
10 persist, tell them, if you would, that I told you you didn't
11 have to talk about the case, if that's the way you feel.

12 And if they further persist, would you please report
13 them to the Clerk of Court. I don't have any reason to
14 think that's going to happen. I just want you to know that
15 you have that right. I tell every jury the same thing, that
16 you have the right to talk about it or not talk about it.

17 I'm going to tell you one other thing. There's nobody
18 in a position to criticize your verdict, ladies and
19 gentlemen. Only the twelve of you sat there, heard all of
20 the witnesses testify here, saw all of the evidence
21 presented, listened to the attorneys make their closing
22 arguments to you, listened to me give you the law and then
23 went in the jury room and discussed it with your fellow
24 jurors.

25 I'm getting ready to excuse you, ladies and gentlemen,

1 excuse you for the week. You're through with your jury duty
2 obligation. You don't have to leave if you don't want to.
3 You can stay. More likely than not the Court's getting
4 ready to impose sentence in the case. But I'm going to give
5 you the opportunity to leave.

6 What I'd like for you to do is step out of the jury
7 box, I want to shake your hand. If you want to stay, you
8 can either go back this way or you can go back -- come
9 around the other side. I'm not going to put you in the
10 awkward position of having to decide whether to sit there or
11 not sit there.

12 So I'm going to let you all get up, everybody can move
13 around. And you can come back in the courtroom or not come
14 back into the courtroom. Thank you for your service.

15 (Whereupon the Judge was shaking the jurors' hands as
16 they were exiting the courtroom)

17 **MADAME CLERK:** Judge, I'd like to tell the jurors if
18 they ---

19 **THE COURT:** Oh, I'm sorry. I forgot. The Clerk wants
20 to tell you something. I forgot, Madame Clerk. Tell your
21 jury something.

22 **MADAME CLERK:** If you need a certificate to take to
23 your employer, if you will go downstairs to the Clerk's
24 Office they'll be glad to make you one. And is this it for
25 the rest of the week, Judge?

SENTENCE OF THE COURT

300

1 THE COURT: This will be it for the rest of the week.

2 MADAME CLERK: You should be receiving a check at least
3 by the end of the week or Monday.

4 THE COURT: A large check.

5 (Laughter)

6 MADAME CLERK: Absolutely, Judge. We pay our jurors.

7 (Whereupon the Judge continued shaking the jurors'
8 hands as they exited the courtroom at 2:45 pm)

9 (Whereupon a few of the jurors stayed in the courtroom
10 for sentencing)

11 THE COURT: And, Ms. Burris, is there any reason the
12 Court should not impose sentence at this time?

13 MS. BURRIS: No reason, Your Honor, but we do actually
14 have some mitigation.

15 THE COURT: Certainly.

16 MS. BURRIS: Okay.

17 THE COURT: I'll be glad to hear from you.

18 MS. BURRIS: Thank you, Your Honor. Your Honor, as
19 previously stated, Crystal Thomas is actually twenty-four
20 years of age. She actually graduated in 2004 from Chester
21 High School. She currently lives with her parents, who are
22 actually present in the courtroom. She is a case manager at
23 U.S. Capital Management, which is actually located in
24 Charlotte.

25 Her mother was actually employed here at Chester County

SENTENCE OF THE COURT

301

1 Department of Social Services for a period of thirty-five
2 years, currently works in education at Lewisville Middle
3 School. Her father actually is an entrepreneur, owns his
4 own business. They have been very diligent in trying to
5 keep Crystal on the right track.

6 We are, of course, in year 2012. I know for sure that
7 Crystal has been diligent in going back and forth to work
8 trying to do the right thing. Crystal really does actually
9 have some medical condition. Of course, as you know, we do
10 actually have proof of the medical records where she was
11 diagnosed in 2008 as well as 2011.

12 Specifically, the medical records states that she has
13 epilepsy, seizures. This was back in 2008. And in 2011
14 also the medical records reflect the same. And also I've
15 had the opportunity to interview the doctor who diagnosed
16 her. And she actually does have this medical condition.

17 Respectfully, Your Honor, we would ask for a
18 probationary sentence. Your Honor, we are asking for this
19 simply because we're asking if you will please put the ball
20 in Crystal's court.

21 Crystal, at this age, at twenty-four years of age, she
22 has and she is trying to do the right thing. Her father has
23 been very diligent in transporting her back and forth to
24 North Carolina to make sure that she keeps her job so that
25 she can also assist in the house and learn how to transition

SENTENCE OF THE COURT

302

1 from being a teenager to a young adult and take
2 responsibility.

3 Your Honor, I know that if we were to actually send her
4 to the South Carolina Department of Corrections, this would
5 create a major, major problem not only with her medical
6 condition with the medicines that she's having to take, but
7 also just in the household. Crystal is the youngest of two
8 siblings. Her brother actually is currently in Raleigh,
9 North Carolina. He's currently married.

10 And Crystal, of course, as all teenagers, of course, as
11 I stated, I have a twenty year old sister. Sometimes you're
12 just trying to find yourself in the process. And so,
13 respectfully, Your Honor, we ask that you give her that
14 opportunity. We ask that you give her the opportunity to
15 prove herself, to do the right thing, to keep a job, to
16 remain gainfully employed, to do some community service and
17 ensure that she complies with those conditions.

18 And if she does not, understanding that she will have
19 consequences. As she stated previously, she is pretty
20 assertive. She is pretty aggressive, Your Honor. But I
21 have no doubt that she would actually do the right thing and
22 comply with all of the conditions that's required by the
23 Probation Department.

24 I understand that the State may be asking for active
25 time. They have already shared that with me. But, Your

SENTENCE OF THE COURT

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1 Honor, respectfully, we'd ask that -- of course, this is a
2 misdemeanor. It does actually carry three years. My
3 understanding is they did not desire to send her to the
4 local Detention Center because of the problems there. So I
5 understand the other option they'd be asking for is SCDC.

6 Respectfully, Your Honor, we'd just ask that you would
7 sentence her to probation, understanding the conditions that
8 she's going to be required to meet and put the ball in her
9 court to do what's right. Thank you.

10 THE COURT: Thank you, Ms. Burris.

11 MS. BURRIS: And her mother would like to address the
12 Court.

13 THE COURT: Certainly. Yes, ma'am.

14 MRS. THOMAS: Your Honor, ---

15 THE COURT: Yes, ma'am.

16 MRS. THOMAS: --- and the Court, I plead for leniency
17 for Crystal because she has had some errors and problems
18 that she's now gainfully employed.

19 THE COURT: How long has she had this job?

20 MRS. THOMAS: She just got the job recently in
21 February. It's a good job, sir, a way for her to start
22 learning how to be responsible, how to pay for her bills or
23 whatever. Now she's living with us. And I'd just ask for
24 leniency.

25 I do work with children. And I have worked with Social

SENTENCE OF THE COURT

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1 Services all my life. I do believe in second chances. And
2 I'm just asking you to please show leniency because she is
3 trying to do the right thing in life. And I feel like that
4 she will do the right thing.

5 THE COURT: All right. Thank you, ma'am. And, Crystal
6 Thomas, did you want to say anything?

7 (Whereupon the Defendant was crying)

8 MS. THOMAS: I know that I have not been the best
9 person, but I can honestly say that I am trying. I am on
10 the right trail. I'm doing the right thing.

11 And in this case right here, I did not mean to bite
12 him, I did not -- it didn't have -- I was not trying to be
13 aggressive. I just wanted some help. I just wanted a
14 chance to prove that I could do the right thing without
15 everybody just on my back, stereotyping me to be a bad
16 person, and I'm not.

17 And I just want a chance to prove that I can do what
18 y'all want me to do. I just cannot deal with it. I cannot
19 deal -- I cannot deal with it anymore. I'm tired. I'm just
20 so tired. Please, please have leniency. Please, please. I
21 will do whatever -- ask me to do whatever I need to do, I
22 will do it. Just give me a chance.

23 THE COURT: All right. Thank you, Ms. Thomas. And,
24 Ms. Hall, what's the State's position?

25 MS. HALL: Before I say anything Officer Totherow

SENTENCE OF THE COURT

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1 wanted to address the Court. I'm going to give him the
2 opportunity first and then I'll say ---

3 THE COURT: Yes, sir. Yes, sir.

4 OFFICER TOTTEROW: I just wanted to say this is not
5 been an easy process for myself either. I go to work, I
6 don't expect to get assaulted while I'm at work. It is not
7 part of our job. It's not part of our job to get cursed at.
8 It's not part of our job to get hit. It's definitely not
9 part of our job to get bit.

10 I have this hanging over my head for seven years. I
11 have to go get tested because of what she said. And whether
12 she said it or not and whether her tests come back negative
13 or not, I still have to do it for my own preference. It's
14 over my head.

15 All my fellow officers that I used to work with had to
16 come up here and testify. One of them had to work last
17 night after testifying yesterday. This is not an easy
18 process. It's up to each officer if they want to press the
19 charges and go through this. I hate that my other officers
20 had to come up here and do it also. I took it upon myself.

21 THE COURT: All right. Thank you, Officer Totterow.

22 MS. HALL: Your Honor, I appreciate what she's saying.
23 Obviously the jury has spoken. And, I mean, she's still up
24 here saying, well, I didn't mean to bite him.

25 I mean, the fact of the matter is that this woman who's

SENTENCE OF THE COURT

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1 for years failed to take responsibility for her actions.

2 She's been sentenced in 2005 for, you know, that was a

3 magistrate level ---

4 THE COURT: I'm sorry, say -- in five, what?

5 MS. HALL: It was a magistrate level offense.

6 THE COURT: Okay.

7 MS. HALL: But in 2007 she was convicted of failure to
8 stop for a blue light and resisting arrest. That was out of
9 York County. She received three years and five hundred
10 dollars, suspended on two years probation.

11 Then before her probationary period had ended she --
12 actually less than a year later she again got -- she again
13 got convicted -- well, she violated apparently because she
14 ended up going down to the Department of Corrections. And
15 she got a one year revocation -- actually two year
16 revocation. So she served two years on that.

17 And then she came back and she got -- I believe she got
18 convicted of resisting -- she has two resisting arrest
19 convictions and a failure to stop conviction.

20 And the fact that she's noncompliant. She doesn't
21 comply with authority. She doesn't -- and, you know, I
22 don't want -- I don't ask for -- normally for somebody to
23 receive a full sentence, but if you can't learn your lesson
24 after two years, it seems to me the maximum sentence in this
25 case is three years, maybe that'll help her figure it out.

SENTENCE OF THE COURT

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1 I don't know.

2 But these officers in this town continue, and continue
3 and continue to have -- she exhibits this type of behavior
4 with them over, and over, and over again. She's exhibited
5 it in the back before when she was taken away to the
6 Department of Corrections.

7 And I don't know what it takes to help her learn her
8 lesson, but I can't imagine that putting her on probation
9 when she's already violated once is going to do it. And I
10 would ask that whatever she gets that she not remain here.

11 THE COURT: Do you have a sentence sheet?

12 MS. HALL: Yes, sir, I do.

13 MS. BURRIS: I would just add this, one of the things I
14 had talked to Crystal because I didn't have her previous
15 record, one of the things that Judge Alford sentenced her
16 to, to have some kind of counseling done. He felt it
17 necessary for her to have some type of -- just to help her
18 deal with her emotions.

19 And so I asked her about that with her not knowing that
20 that was ordered as part of her probation. And she told me,
21 no, ma'am, I never actually went to any type of counseling.
22 So I think that that is certainly necessary in these type of
23 cases dealing with her emotional state because, you know,
24 she is twenty-three and she does have -- I do believe that
25 she needs some type of counseling.

SENTENCE OF THE COURT

1 THE COURT: Thank you.

2 MS. BURRIS: And I know as part of relocating, I know
3 her mother and father are here in Chester. I don't know if
4 they have family members anywhere else where she could go.

5 THE COURT: Ms. Crystal Thomas, I sentence you to the
6 Department of Corrections for a period of three years,
7 suspended upon the service of one year followed by two years
8 probation. You'll get credit for any time served against
9 that.

10 MS. THOMAS: Oh, Lord.

11 (Whereupon the Defendant began crying out loud)

12 THE COURT: Mental health counseling will be a term and
13 condition -- a term and condition of your probation. Thank
14 you.

15 (Whereupon the Defendant was taken out of the
16 courtroom)

17 (Hearing Ended at 2:57 pm)

18 (End of Requested Transcript of Record)

REPRINT

Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

REPRINT

Patient: TOTTEROW, ARTHUR DOB: Patient #: MRN: Date In: 6/24/2011

CHIEF COMPLAINT/HISTORY OF PRESENT ILLNESS: MFM 06/24/2011 03:15

TOTTEROW, ARTHUR is a 39 year old M that presented to the Emergency Department at 03:00 by POV - AMB. The patient was triaged at 03:01 with the following vital signs: T: 98.6 PO, P: 89 Regular, R: 18 Unlabored, BP: 123/091, SPO2: 96 Amt:RA, . The patient's primary care physician is NON, STAFF.

Chief Complaint -- HUMAN BITE

Exam Time: 03:12.

History obtained from: patient.

History limited by: N/A.

Onset of symptoms was immediately prior to arrival in the Emergency Department. Symptoms came on suddenly.

Symptoms are present now.

Injury occurred at work.

Patient presents with a human bite wound.

Symptoms located in the right forearm.

Patient states symptoms are of mild severity.

Associated signs and symptoms: negative dizziness, negative excessive bleeding, negative loss of consciousness, negative laceration, negative nausea.

REVIEW OF SYSTEMS: MFM 06/24/2011 03:18

Neurological: negative dizziness.

Gastrointestinal: negative nausea.

Integument: positive swelling.

Musculoskeletal: positive extremity pain.

All (other) systems have been reviewed and are negative.

PAST MEDICAL AND SURGICAL HISTORY: MFM 06/24/2011 03:18

Past Medical History: positive UTI, positive FLU, positive Hematuria, positive Left Renal Colic.

Tetanus Status: over 5 yr.

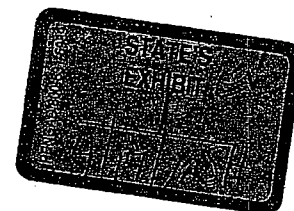
Past Medical and Surgical histories reviewed.

FAMILY AND SOCIAL HISTORIES, ALLERGIES AND MEDS: MFM 06/24/2011 03:18

Allergies: PENICILLIN, Allergies reviewed.

Medications: CRESTOR UNKNOWN BY MOUTH DAILY, SYNTHROID 40MCG BY MOUTH DAILY, A*MEDS NOT VERIFIED 6/24/11 KMO, RN, Medications reviewed.

Family History has been reviewed and is not pertinent. Social history is negative for alcohol and tobacco use.



REPRINT

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Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

Patient: TOTTEROW, ARTHUR DOB:

Patient #:

ARN: 00001

Date In: 6/24/2011

PHYSICAL EXAMINATION: MFM 06/24/2011 03:18

General: Nursing documentation reviewed. Vital signs noted. Patient appears well nourished. Patient appears mildly anxious. Patient in no acute distress. Pulse Oximetry results noted.

Musculoskeletal/Extremity: Right Upper Extremity: Forearm -- bite to mid forearm did not penetrate past dermis, more of an abrasive bite.

Moderate tenderness to palpation. Neurovascular: N/V exam intact. **Left Upper Extremity:** Left upper extremity within normal limits.

Skin: Abnormality: bite marks. Location of abnormality: r mid forearm. Noted to be approximately 3 cms. in size.

Neurologic: Alert and oriented X 3. Grossly non-focal.

Genitourinary: Deferred.

ED COURSE AND TREATMENT: MFM 06/24/2011 03:21

Treatment & Reevaluation: Medications: See Physician's Orders.

CONSULTATION & CRITICAL THINKING: MFM 06/24/2011 03:21

The following diagnoses were considered based on the patient's clinical presentation: Human Bite.

CLINICAL IMPRESSION: MFM 06/24/2011 03:21

1. Human Bite

DISPOSITION: MFM 06/24/2011 03:22

Disposition: Patient discharged to home.

Condition: satisfactory.

Certified Med Emerg: Patient's condition represents a certified medical emergency. Disposition date/time: 06/24/2011 03:22.

Discussed care with patient. Explained findings, diagnosis, and need for follow-up care.

INSTRUCTIONS: MFM 06/24/2011 03:22

Patient agrees to follow up with NON, STAFF. Instructed to obtain follow up care in 3 days.

Patient has received printed discharge instructions. Discharge plans discussed with patient who verbalizes understanding and willingness to comply. Prescription(s) written for: Doxycycline 100 mg: one pill by mouth twice a day for 7 (seven) days for infection ; Quantity: 14 (fourteen) ; Refills: 0(zero). Patient advised to use ibuprofen in accordance with instructions provided. Patient advised to use acetaminophen in accordance with instructions provided.

Patient agrees to return to Emergency Department immediately if symptoms worsen or fail to improve.

PHYSICIAN ORDERS

(1) IM Dip/Tet Adult [MFM] ordered at 6/24/2011 3:16

(1) PO Vibramycin 100 mg [MFM] ordered at 6/24/2011 3:17

~~(1) Top-Silvadene Apply to... bite [MFM] ordered at 6/24/2011 3:17~~

REPRINT

Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

REPRINT

Patient: TOTTEROW, ARTHUR DOB:

Patient #:

: 0000

Date In: 6/24/2011

(1) Moderate dressing [MFM] ordered at 6/24/2011 3:17

MARION MCFARLAND, 0059 MD All text in this document clearly marked by MFM has been
authored and legally signed by use of electronic device. 06/24/2011 03:25

REPRINT

REPRINT

Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

Patient: TOTTEROW, ARTHUR DOB: Patient #: 1111 N: 0000 Date In: 6/24/2011

Adult Assessment 06/24/2011 03:13 KO1

Room Assignment: Patient assigned to room FRACTURE. Patient arrived in room ambulatory. Patient moved to room at 03:08. Time of primary assessment: 03:08.

Psychosocial: Patient's behavior appears anxious. Patient currently lives with family. Support systems include family. Patient ambulates independently. Performs ADL's independently. Nutritional status is normal by appearance. Appears to be normally interacting with care giver(s) or others that are present.

Safety: Bedrails are up to protect patient from fall. Bed height is at the lowest position. Call light is within reach and patient or family was instructed on use.

Pain: Patient rates pain as 7 on a one-to-ten scale with ten as the worst pain ever. Pain is located in the PT STATES PAIN IS TO RIGHT FOREARM.. Onset of pain was sudden, within the last hour. Patient describes the pain as constant, throbbing. Pain is exacerbated by nothing. Pain is improved or comfort is provided by nothing.

Brief Assessment: Patient is alert and oriented x 3. Respirations are unlabored. Skin is warm and dry, vascular status intact.

Integumentary: Skin temperature is warm and dry. Skin color is normal for race. Mucous membranes are pink and moist. The skin turgor is normal. Pain or injury is located in the right forearm. Patient presents with a human bite/sting. SWELLING NOTED AROUND SITE

Nursing Diagnosis 06/24/2011 03:19 KO1

Integumentary: Anxiety identified 06/24/2011 03:19. Goal to resolve is: PT WILL VERBALIZE DECREASE IN ANXIETY RELATED TO INCIDENT AND TREATMENT IN EMERGENCY DEPARTMENT. Achieved 06/24/2011 03:49.

Treatments 06/24/2011 03:39 KO1

PO Vibramycin 100 mg initiated at 06/24/2011 03:36 by KO1. [Written][MFM]:

IM Dip/Tet Adult LOT:U3696CA/EXP:18NOV13 initiated at 06/24/2011 03:30 by KO1. [Written][MFM]:

Reassessed at 06/24/2011 03:49 [KO1] - No adverse drug reaction noted. - KO1

Top Silvadene Apply to... bite initiated at 06/24/2011 03:32 by KO1. [Written][MFM]:

Reassessed at 06/24/2011 03:49 [KO1] - Patient teaching was performed related to medications given. DR. INSTRUCTED PT TO APPLY CREAM TO AFFECTED AREA TWICE DAILY FOR THREE DAYS. - KO1

Moderate dressing applied to the wound (s), K.ORGANSKI, RN, in less than 15 minutes, RIGHT FOREARM, patient tolerated well initiated at 06/24/2011 03:33 by KO1. [Written][MFM]:

REPRINT

Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

REPRINT

Patient: TOTTEROW, ARTHUR DOB: Patient #: 11 RN: 000 Date In: 6/24/2011

Disposition 06/24/2011 03:50 KO1

Discharge: Patient left the department at 06/24/2011 03:50. Discharge instructions were given to the patient. Patient's disposition is: DC - WORK. Extending teaching was moderate, focused on KEEPING AREA CLEAN AND APPLYING NEW DRESSING TWICE DAILY.. The patient verbalizes understanding of the discharge instructions. Return demonstration not needed. The condition at discharge is improved. Vital signs taken at 03:48 were: T: 98.1 PO, P: 85 and is Regular, R: 18 and Unlabored, BP: 123/079, O2 Sat: 97 on RA, pain level is 5 on a 1-10 scale - lower arm. Pain has improved. Patient had no belongings on arrival. Medication reconciliation documentation was completed and given to patient.

KATY ORGANSKI RN All text in this document clearly marked by KO1 has been authored and legally signed by use of electronic device. 06/24/2011 03:54

REPRINT

Chester Regional Medical Center
One Medical Park Drive, Chester, SC. 29706
803-581-3151

REPRINT

Patient: TOTTEROW, ARTHUR DOB: Patient #: 111 J: 0001 Date In: 6/24/2011

DIAGNOSTICS

User	Snd	Src	Host Time	Qty	Description	Phys
	Y		06/24/2011 03:54	1	ED LEVEL 4	MCFARLAND,III, MARION F
Comment:						

TREATMENTS

User	Src	Order Time	Description	Ack	Initiated	Host Time	Phys
MFM	W	06/24/2011 03:17	Moderate dressing	06/24/2011 03:21 KO1	06/24/2011 03:33 KO1		MCFARLAND,III, MARION F
Comment: APPLIED TO: applied to the wound (s) PERFORMED BY: K.ORGANSKI, RN COMPLETED IN: in less than 15 minutes LOCATION OF: RIGHT FOREARM PATIENT TOLERATED: patient tolerated well							
MFM	W	06/24/2011 03:17	PO Vibramycin 100 mg	06/24/2011 03:21 KO1	06/24/2011 03:36 KO1		MCFARLAND,III, MARION F
Comment: Top Silvadene Apply to... bite							
MFM	W	06/24/2011 03:17	Top Silvadene Apply to... bite	06/24/2011 03:21 KO1	06/24/2011 03:32 KO1		MCFARLAND,III, MARION F
Comment: IM Dip/Tet Adult							
MFM	W	06/24/2011 03:16	IM Dip/Tet Adult	06/24/2011 03:21 KO1	06/24/2011 03:30 KO1	06/24/2011 03:54	MCFARLAND,III, MARION F
Comment: Lot and Expiration: LOT:U3696CA/EXP:18NOV13							

286

Report: PAB120
04/03/2012 15:39:44
Requested By: AULJE

Lab Results
CHESTER REGIONAL MEDICAL CENTER
1 MEDICAL PARK DRIVE
CHESTER SC 29706

Coid: 813
Page: 1

LAB RESULTS

Chester Regional Medical Center
1 Medical Park Drive Chester, SC 29706 803-581-3151

PATIENT: TOTTEROW ARTHUR MRN: 0000111109 LOC: LAB,,
BILL# : 3101142 SEX: M DOB: (, , , , ,)
ORDERED BY: HART ORDERED : 06/27/2011 14:58
COLLECTED: 06/27/2011 14:50
ORDER : 90270100 RECEIVED : 06/27/2011 14:58
Sent to Lab Corp for Testing. 16:57 06/27/2011 WD

TEST NAME	RESULT	UNITS	RANGES	ABN FLAG
HIV Ab Type 1&2	SEE BELOW			
HIV 1/0/2 Abs-Index Value	<1.00	<1.00		BN
Index Value: Specimen reactivity relative to the negative cutoff.				
HIV 1/0/2 Abs, Qual	Non Reactive	Non Reactive		BN

Performed at: BN, LabCorp Burlington
1447 York Court, Burlington, NC, 272153361
William F Hancock, MD, Phone: 8007624344

WITNESSES

K. Cummings (CSD)

K. Cummings

DOCKET NO. 2011-GS-12-485

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

ARREST WARRANT NUMBER/DOA

M240075 (DOA-6-24-11)

ACTION OF GRAND JURY

TRUEBILLForeperson of Grand Jury
Date: 8-30-11

VERDICT

Crystal N. Thomas

THE STATE
VS.ASSAULT AND BATTERY SECOND
DEGREESC Code: §16-3-600(D)(1), 16-3-600(D)(2)
CDR Code: 3413
Class: Misdemeanor AForeperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on August 30, 2011, the Grand Jurors of Chester County present upon their oath:

ASSAULT AND BATTERY SECOND DEGREE

That Crystal N. Thomas did in Chester County on or about June 24, 2011, unlawfully injure Lt. Wayne A. Totherow, or offer or attempt to injure the victim with the present ability to do so and moderate bodily injury resulted or could have resulted to the victim or the act involved the nonconsensual touching of the private parts of the victim under or above clothing by biting him on arm, in violation of Section 16-3-600(D)(1) of the *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

07-2007 04:47 AM

10012010

P. 1 289

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Chester

VS.

Crystal N Thomas

AKA:

Race: BLACK Sex: F Age: 25

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery 2nd degree

INDICTMENT/CASE#: 2011-GS-12-485

A/W#: M240075

Date of Offense: 6/24/2011

S.C. Code §: 16-03-0600(D)(1)

CDR Code #: 3413

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Julie Gamburg 10568 SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 1 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2months and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Monitor Health Care☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

July 22, 2013


Benjamin John Tripp
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

JUL 22 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

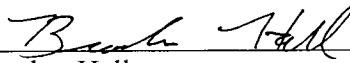
CRYSTAL NICOLE THOMAS,

APPELLANT

APPELLATE CASE NO. 2012-212561.

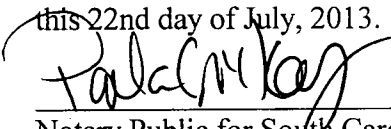
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of July, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of July, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.