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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA WYTE KELLEY,

APPELLANT

APPELLATE CASE NO. 2023-000750

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2023-GS-39-00610
COUNTY OF PICKENS	)	
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JOSHUA WYTE KELLEY,	)	
DEFENDANT.	)	
	)	

April 26 and 27, 2023
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE, and a jury.

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

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RICHARD HAROLD WARDER, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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 (DW) - Denotes Defense Witness
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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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P R O C E E D I N G S

Wednesday, April 26, 2023

(WHEREUPON, State's Exhibit Numbers 1 through 53 and Defendant's Exhibit Number 1 were premarked for identification; proceedings commenced at 10:10 AM.)

MS. FOWLER: Judge, we've premarked all the pictures. I don't plan on introducing all of these pictures, but out of an abundance of caution, I've marked most of them.

I would like to make the defense aware that I do plan on introducing just a brief statement by the defendant. After the assault occurred, law enforcement found the defendant at his father's house. They got him out of the house and started talking to him about what happened. They then mirandized the defendant, and the defendant made the statement, "Put it on me. It's my fault." He made that statement to two different officers at two different times: at one point at his father's house, and at one point either in the ambulance on the way to the hospital or at the hospital.

So that is the only statement the State intends on admitting.

MR. WARDER: Your Honor, the statement is vague. It isn't clear as to exactly what it means, "put it on me." It sounds like he's trying to take blame for something he didn't do. Put it on me, it doesn't say I'm guilty or

1 anything like that.

2 THE COURT: I guess, also, the meaning of it would be
3 up to the jury to determine. But what about any ---

4 MR. WARDER: It's just a misleading piece of evidence
5 that can be given any kind of interpretation.

6 THE COURT: And, I guess, you know, if you don't
7 consent to it, then we just have a Jackson v. Denno. I
8 mean, is that what you want?

9 MR. WARDER: Certainly.

10 THE COURT: Okay. Since we're waiting here, go ahead
11 and do the Jackson v. Denno.

12 MS. FOWLER: Sure. The State would call Detective
13 Genthner.

14 THE CLERK: If you would, please raise your right
15 hand.

16 WHEREUPON,

17 JOSHUA GENTHNER

18 After having been duly sworn, testified as follows:

19 THE CLERK: Thank you, sir. If you would, have a
20 seat and state your name for the record.

21 THE WITNESS: Detective Joshua Genthner with the
22 Pickens County Sheriff's Office.

23 DIRECT EXAMINATION

24 BY MS. FOWLER:

25 Q Detective Genthner, were you involved in the arrest

1 of the defendant, Joshua Kelley, on February 23, 2021?

2 A Yes, ma'am, I was.

3 Q And did you see the defendant on that day?

4 A I did.

5 Q And where did you locate him on scene?

6 A At the adjacent house. I believe it to be his
7 father's house.

8 Q Okay. And did you get him out of the residence?

9 A I did. I made contact with him at the residence.

10 Q And at some point did you start to ask him questions
11 about what had happened earlier that night?

12 A Yes. I told him I wanted to figure out what was
13 going on. I had little to no knowledge of the case at
14 that time.

15 Q At some point did you mirandize the defendant?

16 A Yes.

17 Q And did you use a card when you mirandized him?

18 A I did not. I did a short, abbreviated version of
19 what I remember of the Miranda rights.

20 Q And did you read him all of the Miranda rights?

21 A Yes.

22 Q And did he make any statements to you after you gave
23 him Miranda warnings?

24 A No direct statements on this case.

25 Q Okay. So he never said, "Put it on me. It's my

1 fault"?

2 A He did when I first made contact to him prior to
3 Miranda when we first ---

4 Q Prior to Miranda?

5 A Yes, ma'am.

6 Q Were you -- when did he make that statement? Was it
7 in response to one of your questions?

8 A Yes. So first made contact. Mr. Kelley came out of
9 the house. I asked him what was going on, what happened
10 today. He stated -- never directly told me exactly what
11 happened. Said, "You can put it on me. I'll take it." I
12 believe I recall that's what he said directly to me.

13 From that point on, we walked him down towards the
14 other deputy at the time. That deputy detained him, and
15 at that point I read him his Miranda rights once he was
16 detained.

17 Q Okay. So he made the "it's my fault" statement prior
18 to Miranda.

19 A Correct.

20 Q Was he in custody at that point?

21 A Not necessarily. We just made contact with him. He
22 was in the process of being detained. So, yes, he was --
23 I would say he was being detained at that time.

24 MS. FOWLER: Okay. Your Honor, I would concede I
25 don't believe after this testimony that I can ask this

1 officer about that statement, but I would like to call
2 Deputy Hayes.

3 THE COURT: Okay.

4 THE CLERK: Please raise your right hand.

5 WHEREUPON,

6 THOMAS HAYES

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you, sir. If you would, have a
9 seat and state your name for the record, please.

10 THE WITNESS: Deputy Thomas Hayes, Pickens County
11 Sheriff's Office.

12 DIRECT EXAMINATION

13 BY MS. FOWLER:

14 Q Deputy Hayes, were you involved in the arrest of
15 Joshua Kelley on February 23, 2021?

16 A No, ma'am. Not the arrest.

17 Q Okay. Were you present during the incident?

18 A Yes, I was.

19 Q Okay. Did you speak with the defendant on that
20 day?

21 A Yes, I did.

22 Q And were you present when Deputy -- or Detective
23 Genthner read him his Miranda rights?

24 A I was not.

25 Q Were you aware that he had been read Miranda

1 rights?

2 A I was, yes.

3 Q Okay. And were you in the ambulance when the
4 defendant, when he was transported to the hospital?

5 A Not while he was transported. But he was in cuffs.
6 He was placed in the back of the ambulance. They asked me
7 to move his cuffs from behind him to the sides of him. I
8 did follow them to the hospital, though.

9 Q Okay. Did he make any statements to you at the
10 hospital about what had happened that night?

11 A Not necessarily what had happened, but he did admit
12 that it was his fault, that he did it, put it all on him.
13 And he did that twice.

14 Q Okay.

15 A He done it in the back of the ambulance, and he also
16 done it at the hospital.

17 Q And at the hospital, did he appear to understand what
18 was going on?

19 A He appeared to be. He was not remorseful or
20 anything. He was just like very calmly.

21 Q You didn't force him to make any statements?

22 A I did not.

23 Q Were you having a casual conversation with him at the
24 hospital?

25 A I did not.

1 MS. FOWLER: Okay. No further questions.

2 THE COURT: Cross-examination.

3 CROSS EXAMINATION

4 BY MR. WARDER:

5 Q And the statement you remember was "put it on me"?

6 A Yes, correct.

7 Q And that would happen -- were you questioning him
8 about what happened?

9 A When I stepped into the back of the ambulance, I
10 basically asked him what exactly happened. And he said,
11 "I'm -- I'm to blame. Put it all on me," something to
12 that effect. But it was "put it all on me."

13 Q You don't know what he wanted you to put on him.

14 A No. No, sir, I did not.

15 Q He was clearly detained and in custody at that
16 time.

17 A Yes, he was.

18 Q And when you say you were aware that he had Miranda
19 rights, you had no direct knowledge or no personal
20 knowledge that he'd ever been given Miranda?

21 A I was informed that he had been.

22 Q You had some hearsay knowledge.

23 A Right.

24 MR. WARDER: Thank you.

25 THE COURT: Any redirect?

1 MS. FOWLER: Just briefly.

2 REDIRECT EXAMINATION

3 BY MS. FOWLER:

4 Q Did he make the statement at the hospital, "It's my
5 fault"?

6 A I can't recall if he said "it's my fault" or "I'm to
7 blame. Put it all on me," at that time. At one time he
8 said both, and one time I think he said, "I'm to blame.
9 Put it on me."

10 Q Okay. Would it help to see a copy of your report?

11 A Yes, please.

12 (Reviews document) So at the hospital he said, "I'll
13 take the blame," and in the back of the ambulance he said,
14 "I will take the blame for what had happened -- what had
15 happened today."

16 MS. FOWLER: Okay. No further questions.

17 THE COURT: All right. Any additional questions
18 based on the additional?

19 MR. WARDER: No.

20 THE COURT: All right. Thank you. You may step
21 down.

22 Anything further?

23 MS. FOWLER: Well, Your Honor, I just believe that
24 the statement is admissible. I think if Mr. Warder wants
25 to question the witnesses about what they believe that

1 statement to mean, he's certainly free to do so. But I
2 believe the statements were made after Miranda was given,
3 and they were freely and voluntarily given.

4 THE COURT: Mr. Warder?

5 MR. WARDER: I certainly don't concur that it's
6 crystal clear that Miranda was given before the
7 statements, by the last officer, anyway. But more
8 importantly, the statements are not specific or
9 prejudicial. Certainly, the prejudice outweighs the
10 probative value. The statement of, "I'll take the blame,"
11 that really is a statement that blame it on me, not
12 because I'm guilty, but I'm going to take it. I'm going
13 to be the generous person or I'm the one to take
14 responsibility. That's far different from I committed
15 this crime. I did it by however means. And its probative
16 value is very low. Its prejudicial effect's very high.
17 Certainly, I would ---

18 THE COURT: I don't know. That's pretty probative.
19 That's why it's so prejudicial, though, isn't it?

20 MR. WARDER: I respectfully disagree that it's
21 probative.

22 THE COURT: Let me tell you, I have a little bit of
23 issues. One, I don't believe he was clearly established
24 Miranda rights. You've got him in an ambulance. I mean,
25 it's a little bit unclear, ambulance, emergency room, or

1 something, you know. There's not really been any
2 testimony as to what condition he was in, has there been
3 any medication administered at that point because he was
4 in an ambulance.

5 I mean, I'm going to at this point not rule that it
6 is admissible. I mean, but -- I mean, if you're able to
7 establish some ground, we can revisit that at that point
8 before the statement comes in.

9 MS. FOWLER: Yes, Your Honor.

10 THE COURT: All right. It's my understanding that
11 something's coming from -- and I just think that would be
12 appropriate, you know, before we bring the jury in to even
13 draw the jury.

14 MR. WARDER: I appreciate that very much, Your Honor.
15 I think it's highly prejudicial for him to be sitting in
16 the Clemson pants here.

17 THE COURT: Yeah. Not that we're, you know, dissing
18 on your fashion or anything.

19 Let's take a short break. Tell the jury that we're
20 going through some matters and we'll have them in just a
21 few minutes. Because they're all out in the hallway,
22 aren't they?

23 Are any other witnesses, I guess, out there?

24 MS. FOWLER: No. The victim is downstairs in our
25 office, Your Honor.

1 THE COURT: All right. And I've got the witness
2 list, indictment. I'll read the indictment. Always say
3 these are allegations made by the State to which he's pled
4 not guilty, but I'll just read it exactly. And I'll do my
5 standard voir dire.

6 So we'll step back here. And y'all let me know as
7 soon as you've gone in your phone booth and changed.

8 (WHEREUPON, a recess is taken at 10:22 AM; the jury panel
9 enters the courtroom; proceedings reconvened at 10:46 AM.)

10 THE COURT: I apologize for the delay. I had
11 something come up. I appreciate y'all being here timely.
12 I'm sorry we weren't able to start right away.

13 All right. Well, good to see everybody again. This
14 will be the last time that we have the whole panel in
15 here. So we are in a process we're going to strike the
16 last jury we have.

17 So as I told you before, these are some questions
18 that relate specifically to this case and will allow the
19 attorneys to get some more information about you and also
20 to make sure you can be fair and impartial in the trial of
21 this case.

22 First of all, I'm going to read you the indictment.
23 And as I told you previously when we qualified jurors
24 yesterday, an indictment is merely the allegations, the
25 charges that the State has brought against the defendant,

1 but the defendant has pled not guilty to these charges.
2 So these are just the allegations that puts the burden on
3 the State of what they need to prove.

4 All right. And this is an indictment for
5 domestic violence of a high and aggravated nature, that
6 Joshua Wyte Kelley did in Pickens County, on February 23,
7 2021, did unlawfully cause physical harm or injury to
8 Kelli Harris, a household member, or did unlawfully offer
9 or attempt to cause physical harm or injury to Kelli
10 Harris, a household member, with apparent present ability
11 under circumstances reasonably creating fear of imminent
12 peril, and Joshua Wyte Kelley committed the offense under
13 circumstances manifesting extreme indifference to the
14 value of human life, and the offense resulted in great
15 bodily injury to Kelli Harris, or Joshua Wyte Kelley
16 committed the offense with or without an accompanying
17 battery and under circumstances manifesting extreme
18 indifference to the value of human life and would
19 reasonably cause a person to fear imminent great bodily
20 injury or death.

21 All right. So that is the indictment for domestic
22 violence of a high and aggravated nature. And, again,
23 those are the allegations brought by the State.

24 JURY VOIR DIRE

25 THE COURT: Now, at this time I'm going ask that you

1 -- I'm going to ask various questions. First of all,
2 Mr. Kelley, Joshua Kelley, if you could, stand and just
3 face the jury, please. All right. Thank you very much.

4 Is anybody related by blood or marriage or have a
5 close, personal, business or social relationship with
6 Joshua Kelley? If so, please stand.

7 (No response.)

8 THE COURT: Okay. And no response.

9 At this time I'd ask that the attorneys stand and
10 introduce themselves.

11 MS. FOWLER: Good morning. My name is Sarah Fowler.
12 I'm the assistant prosecutor with the 13th Circuit which
13 prosecutes cases in Greenville and Pickens County.

14 THE COURT: All right. Mr. Warder.

15 MR. WARDER: I'm Richard Warder. It's my pleasure to
16 be representing the defendant, Joshua Kelley. And Tina
17 Collins, my paralegal, is accompanying me at the bench --
18 the table.

19 THE COURT: All right. Is there anybody connected by
20 blood or marriage or have a close, personal, social or
21 business relationship with the attorneys or paralegal? If
22 so, please stand.

23 (No response.)

24 THE COURT: Okay. And no response.

25 Is there anybody that has been involved in a matter

1 where these attorneys have been representing you or
2 somebody in a matter that you were involved in? If so,
3 please stand.

4 (No response.)

5 THE COURT: Okay. No response.

6 Now I'm going to list you a series of possible
7 witnesses in the case. And, again, if you'd stand. And
8 the question is going to be are you connected by blood or
9 marriage, do you have a close, personal, business or
10 social relationship with any of these individuals. And
11 you'll stand and I'll ask you which of these individuals
12 you know and I'll ask a follow-up question about that.

13 All right. So we have Thomas Hayes with Pickens
14 County Sheriff's Office; Adam Tomberlin, Pickens County
15 Sheriff's Office; Joshua Genthner, Pickens County
16 Sheriff's Office; Brian Byers, Pickens County Sheriff's
17 Office; John Albrecht, Pickens County Sheriff's Office;
18 Anthony Raines, Pickens County Sheriff's Office; Shannon
19 Ellenburg, Pickens County Sheriff's Office; Marc Shen;
20 Dr. Bijahl Shah; Kelli Lynn Harris; Jasper Harris;
21 Annabelle Harris; Chelsea Harris; Edward Anthony, also
22 known as Tony, Kelley; Kristy Leopard, Pickens County
23 Sheriff's Office; Joshua Kelley; Emily Kelley; Morgan
24 Kelley; and Kristi Gillette. Again, is there anybody that
25 knows any of these individuals, has a close, personal,

1 business, social relationship or related by blood or
2 marriage? I may have said Joshua Kelley, but the name is
3 Jessica Kelley.

4 All right. If you just would stand. Okay. First,
5 we'll start with you.

6 JUROR NUMBER 93: Adam Tomberlin, my husband worked
7 with his brother Jerry Tomberlin.

8 THE COURT: First of all, your name and number?

9 JUROR NUMBER 93: Kari, 93.

10 THE COURT: All right. Again, I'm sorry to interrupt
11 you there.

12 JUROR NUMBER 93: That's okay.

13 So my husband worked with Jerry Tomberlin which is
14 Adam Tomberlin's brother. And I kind of knew him. But
15 it's been a while.

16 THE COURT: Okay. And could you still be fair and
17 impartial in the trial of the case if he was a witness?

18 JUROR NUMBER 93: Yes.

19 THE COURT: All right. Thank you.

20 Your name and number?

21 JUROR NUMBER 104: 104, Melissa Henderson.

22 Did you say Tony Kelley?

23 THE COURT: Yes. It's also his full name is Edward
24 Anthony Kelley.

25 JUROR NUMBER 104: Okay. I'm fine then.

1 THE COURT: Okay. So that's not the Tony Kelley that
2 you know?

3 JUROR NUMBER 104: No, no, no, no.

4 THE COURT: Okay. Thank you.

5 All right. Ma'am, lady back here in the back?

6 JUROR NUMBER 101: My name is Alisa Hayes. My number
7 is 101.

8 And Thomas Alan Hayes from Pickens County Sheriff's
9 Office is my soon-to-be ex.

10 THE COURT: Oh, okay. I won't even ask the follow-up
11 question. I'm sorry to laugh about that. I will excuse
12 you from this jury. Just hang tight for a second. I
13 guess you can -- we'll let you leave. All right. Thank
14 you.

15 All right. Ma'am, your name and number?

16 JUROR NUMBER 220: Courtney Stegall, 220.

17 THE COURT: Okay. And how do you respond to that?

18 JUROR NUMBER 220: I just know Officer Raines. He's
19 with the Pickens Police Department.

20 THE COURT: All right. Pickens County Sheriff's
21 Office?

22 JUROR NUMBER 220: Yes.

23 THE COURT: Okay. And could you still be fair and
24 impartial if he's a witness in the case?

25 JUROR NUMBER 220: Yeah.

1 THE COURT: All right. Thank you.

2 Anyone else?

3 (No response.)

4 THE COURT: All right. Has any member of the jury
5 panel formed or expressed an opinion about any issue in
6 this case? If so, please stand.

7 (No response.)

8 THE COURT: All right. No response.

9 Is there any member of the jury panel, a member of
10 your immediate family associated with or employed by the
11 Pickens County Sheriff's Office? If so, please stand.

12 All right. Yes. Your name and number?

13 JUROR NUMBER 52: 52, Angela Crowe.

14 My nephew is a dispatcher for the Pickens County
15 Sheriff's Department.

16 THE COURT: Okay. What's his name?

17 JUROR NUMBER 52: Colby Galloway.

18 THE COURT: All right. And could you still be fair
19 and impartial in the trial of this case?

20 JUROR NUMBER 52: Yes, sir.

21 THE COURT: Okay. Yes. Your name and number?

22 JUROR NUMBER 155: I'm Savannah Medlin, and my number
23 is 155.

24 And both of my brothers work for the Pickens County
25 Sheriff's Office.

1 THE COURT: And that would be Dalton and Daniel
2 Cochran?

3 JUROR NUMBER 155: Yes.

4 THE COURT: All right. And could you still be fair
5 and impartial in the trial of this case?

6 JUROR NUMBER 155: Yes.

7 THE COURT: All right. Thank you.

8 Anyone else?

9 (No response.)

10 THE COURT: All right. Is there any member of the
11 jury panel a member of, contributor to any group or
12 organization which promotes alleged victims' rights or law
13 enforcement or any other advocacy group which promotes the
14 interest of law enforcement or victims' rights, or are you
15 a member of any group that is against law enforcement?
16 Does anybody fall within that category?

17 (No response.)

18 THE COURT: All right. Thank you.

19 Is there any member of the jury panel -- has any
20 member of the jury panel read any newspaper articles or
21 anything on social media, any postings whatsoever about
22 this case, about this defendant or anything relating to
23 this case? If so, please stand.

24 (No response.)

25 THE COURT. All right. And no response.

1 Is there any member of the jury panel or a member of
2 your immediate family ever been employed by a law
3 enforcement agency or work for a law enforcement agency or
4 any agency which investigates domestic violence? If so,
5 please stand. So law enforcement agency or any agency
6 that investigates domestic violence, either one of those.

7 Okay. We'll start with you in the back. Name and
8 number?

9 JUROR NUMBER 99: Melissa Harrison, Number 99.
10 My son has been in law enforcement for 23 years.

11 THE COURT: Okay. Where does he ---

12 JUROR NUMBER 99: He is with Greenville County right
13 now.

14 THE COURT: All right. And could you still be fair
15 and impartial in the trial of this case?

16 JUROR NUMBER 99: Yes, sir.

17 THE COURT: All right. Thank you.

18 Your name and number?

19 JUROR NUMBER 16: Wendy Baldwin, Number 16.

20 My brother is in law enforcement in the State of
21 Louisiana.

22 THE COURT: Okay. And could you be fair and
23 impartial in the trial of this case?

24 JUROR NUMBER 16: Yes.

25 THE COURT: All right. Thank you.

1 Your name and number?

2 JUROR NUMBER 135: Denise Lawrence, 135.

3 My brother-in-law is a police officer in the State of
4 New York.

5 THE COURT: All right. And could you still be fair
6 and impartial in the trial of this case?

7 JUROR NUMBER 135: Yes.

8 THE COURT: Thank you.

9 All right. Is there any member of the jury panel or
10 member of your immediate family employed by the
11 solicitor's office for the 13th Circuit? If so, please
12 stand. And that's Greenville or Pickens.

13 (No response.)

14 THE COURT: All right. No response.

15 Is there any member of the jury panel a member of any
16 political, religious, social, industrial, fraternal law
17 enforcement or other organization whose beliefs or
18 teachings would prejudice you against either the State or
19 the defendant in this matter? If so, please stand.

20 (No response.)

21 THE COURT: Okay. And no response.

22 Is there any member of the jury panel aware of any
23 physical, mental or emotional condition which would
24 prevent them from giving the defendant and the State a
25 fair and impartial trial? If so, please stand.

1 (No response.)

2 THE COURT: Okay. And no response.

3 Is there any member of the jury panel or a member of
4 your immediate family employed by or ever been employed by
5 the South Carolina Department of Social Services in any
6 county in this state? If so, please stand. Okay.

7 Anybody work for the Department of Social Services, DSS?

8 (No response.)

9 THE COURT: All right. And no response.

10 Does any member of the jury panel currently work for
11 or volunteered for the South Carolina guardian ad litem
12 program? If so, please stand.

13 (No response.)

14 THE COURT: All right. The next two questions are
15 going to be somewhat personal, may be personal in nature
16 so I'll be glad to take your response up here
17 individually. And the first one, has any member of the
18 jury panel or member of your immediate family or close,
19 personal friend been the victim of domestic violence? If
20 so, please stand. And what I will do is I'll come over
21 here and take you one at a time.

22 Yes, your name and number?

23 JUROR NUMBER 135: Denise Lawrence, 135.

24 THE COURT: Okay. And how do you respond to that
25 question?

1 JUROR NUMBER 135: Ex-husband number two, a lot of
2 domestic violence.

3 THE COURT: Okay. And you were the victim of that?
4 Okay.

5 JUROR NUMBER 135: Yes. And my daughter.

6 THE COURT: Okay. Could you still be fair and
7 impartial in the trial of this case?

8 JUROR NUMBER 135: Probably not.

9 THE COURT: All right. And what was your number
10 again?

11 JUROR NUMBER 135: 135.

12 THE COURT: All right. I'm going to go ahead and
13 excuse you from this case. Just take a seat. We'll let
14 you go in just a minute.

15 All right. Yes. Your name?

16 JUROR NUMBER 59: Sasha Davis.

17 THE COURT: And number?

18 JUROR NUMBER 59: 59.

19 THE COURT: Okay.

20 JUROR NUMBER 59: My son's father. I was a victim.

21 THE COURT: Okay. Could you still be fair and
22 impartial in the trial of this case?

23 JUROR NUMBER 59: Yes.

24 THE COURT: You can? Okay. Thank you.

25 JUROR NUMBER 203: Jason Rosemond, 203.

1 THE COURT: Okay.

2 JUROR NUMBER 203: Both my daughters.

3 THE COURT: Okay. Were victims of domestic abuse?

4 JUROR NUMBER 203: Yes.

5 THE COURT: All right. Do you believe you could
6 still be fair and impartial in the trial of this case?

7 JUROR NUMBER 203: No.

8 THE COURT: You do not.

9 JUROR NUMBER 203: No.

10 THE COURT: Okay. I'm going to excuse you. Just
11 take a seat for now.

12 All right. Yes. Your name and number?

13 JUROR NUMBER 98: Andrea Hamilton, 98. .

14 THE COURT: Okay. Yes.

15 JUROR NUMBER 98: I had an aunt that got murdered by
16 her boyfriend a few years ago.

17 THE COURT: Okay. Could you still be fair and
18 impartial in the trial of this case?

19 JUROR NUMBER 98: I don't think so. I don't think
20 so.

21 THE COURT: Okay. I'm going to excuse you.

22 All right. Yes. Name and number?

23 JUROR NUMBER 242: Lisa Wilson, 242.

24 THE COURT: Okay.

25 JUROR NUMBER 242: Ex-husband many years ago.

1 THE COURT: Okay. And you were the victim?

2 JUROR NUMBER 242: Spousal abuse, yes.

3 THE COURT: Okay. Could you be fair and impartial in
4 the trial of this case?

5 JUROR NUMBER 242: I would think I could.

6 THE COURT: Okay. You can listen to both sides and
7 make a decision based on the facts and be fair?

8 JUROR NUMBER 242: I think I could.

9 THE COURT: All right. I'm going to have to have a
10 yes or a no.

11 JUROR NUMBER 242: Oh, yes.

12 THE COURT: Okay. All right.

13 Y'all can just stand right here.

14 Is there anyone that has ever been charged with, not
15 whether you've been convicted, if you've been charged with
16 or a member of your immediate family been charged with
17 domestic abuse other than those that have already come up
18 here?

19 (No response.)

20 THE COURT: Okay. All right. And no response.

21 And this is a little bit different. It may cover
22 most every -- is there anybody who has not responded,
23 member of the jury panel or member of your immediate
24 family ever been a complainant to law enforcement with
25 reference to allegations involving domestic violence that

1 did not come forward before?

2 (No response.)

3 THE COURT: All right. Thank you. That's all the
4 ones I've got for to stand up here.

5 All right. Is there any member of the jury panel
6 aware of any bias or prejudice they would have against the
7 State or defendant? If so, please stand.

8 (No response.)

9 THE COURT: All right. And finally, is there any
10 member of the jury panel aware of any reason whatsoever
11 that they cannot be fair to both the State and the
12 defendant in this matter? If so, please stand.

13 (No response.)

14 THE COURT: All right. Any additional questions from
15 the State?

16 MS. FOWLER: None from the State, Your Honor.

17 THE COURT: Any additional questions from the
18 defendant?

19 MR. WARDER: No, Your Honor.

20 THE COURT: All right. Anybody that had protection
21 for Thursday morning, I believe Mr. Bundrick. Okay. And
22 I believe there was somebody that needed protection for
23 Friday morning, but this case should be through tomorrow,
24 so that would not apply.

25 All right. And at this time while we're running this

1 list, if you had been excused or you're protected for
2 Thursday, you can -- you may leave at this time. So thank
3 you. Thank you for being here.

4 (Pause in proceedings.)

5 THE COURT: All right. Is the State ready?

6 MS. FOWLER: Yes, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. WARDER: Yes, Your Honor.

9 THE COURT: All right. Mr. Clerk?

10 JURY SELECTION

11 THE CLERK: As I call your name, if you would, please
12 stand so the attorneys can see you.

13 Juror Number 220, Courtney Stegall.

14 (WHEREUPON, Courtney Stegall, a white female, stood.)

15 THE CLERK: What says the State?

16 MS. FOWLER: Please present this juror.

17 THE CLERK: And the defense?

18 MR. WARDER: Please excuse the juror in the trial of
19 this matter.

20 THE CLERK: Please return to your seat.

21 Juror Number 184, Jennifer Patterson.

22 (WHEREUPON, Jennifer Patterson, a white female, stood.)

23 THE CLERK: What says the State?

24 MS. FOWLER: Please present this juror.

25 THE CLERK: And the defense?

1 MR. WARDER: Please excuse the juror from the trial
2 of this matter.

3 THE CLERK: Please return to your seat, ma'am.

4 Juror Number 104, Melissa Henderson.

5 (WHEREUPON, Melissa Henderson, a white female, stood.)

6 THE CLERK: What says the State?

7 MS. FOWLER: Please present this juror.

8 THE CLERK: And the defense?

9 MR. WARDER: Please swear the juror.

10 THE CLERK: Please come forward and have a seat in
11 the jury box.

12 Juror Number 111, Tony Holder.

13 (WHEREUPON, Tony Holder, a white male, stood.)

14 THE CLERK: What says the State?

15 MS. FOWLER: Please excuse this juror.

16 MR. WARDER: Please return to your seat, sir.

17 Juror Number 187, Crystal Pilgrim.

18 (WHEREUPON, Crystal Pilgrim, a white female, stood.)

19 THE CLERK: What says the State?

20 MS. FOWLER: Please present this juror.

21 THE CLERK: And the defense?

22 MR. WARDER: Please swear the juror, Your Honor.

23 THE CLERK: Please come forward and have a seat in
24 the jury box.

25 Juror Number 234, Ross Wagenseil.

1 (WHEREUPON, Ross Wagenseil, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. FOWLER: Please present this juror.

4 THE CLERK: And the defense?

5 MR. WARDER: Please swear the juror.

6 THE CLERK: Please come forward and have a seat in
7 the jury box.

8 Juror Number 181, Karen Paradis.

9 (WHEREUPON, Karen Paradis, a white female, stood.)

10 THE CLERK: What says the State?

11 MS. FOWLER: Please present this juror.

12 THE CLERK: And the defense?

13 MR. WARDER: Please excuse the juror in the trial of
14 this matter.

15 THE CLERK: Please return to your seat.

16 Juror Number 174, Karla Neisel.

17 (WHEREUPON, Karla Neisel, a white female, stood.)

18 THE CLERK: What says the State?

19 MS. FOWLER: Please present this juror.

20 THE CLERK: And the defense?

21 MR. WARDER: Please swear the juror.

22 THE CLERK: Please come forward and have a seat in
23 the jury box.

24 Juror Number 67, Timothy Dyar.

25 (WHEREUPON, Timothy Dyar, a white male, stood.)

1 THE CLERK: What says the State?

2 MS. FOWLER: Please present this juror.

3 THE CLERK: And the defense?

4 MR. WARDER: Please excuse the juror from the trial
5 in this matter.

6 THE CLERK: Please return to your seat, sir.

7 Juror Number 64, Carl Dunson.

8 (WHEREUPON, Carl Dunson, a white male, stood.)

9 MS. FOWLER: Please present this juror.

10 THE CLERK: And the defense?

11 MR. WARDER: Please excuse the juror from the trial
12 of this matter.

13 THE CLERK: Please return to your seat, sir.

14 Juror Number 228, James Tinsley.

15 (WHEREUPON, James Tinsley, a white male, stood.)

16 THE CLERK: What says the State?

17 MS. FOWLER: Please present this juror.

18 THE CLERK: And the defense?

19 MR. WARDER: Please seat the juror.

20 THE CLERK: Please come forward and have a seat in
21 the jury box.

22 Juror Number 51, Amanda Crolley.

23 (WHEREUPON, Amanda Crolley, a white female, stood.)

24 THE CLERK: What says the State?

25 MS. FOWLER: Please excuse this juror.

1 THE CLERK: Please return to your seat.

2 Juror Number 66, Amy Durrance.

3 (WHEREUPON, Amy Durrance, a white female, stood.)

4 THE CLERK: What says the State?

5 MS. FOWLER: Please present this juror.

6 THE CLERK: And the defense?

7 MR. WARDER: Please seat the juror.

8 THE CLERK: Please come forward and have a seat in
9 the jury box.

10 Juror Number 165, Helen Morgan.

11 (WHEREUPON, Helen Morgan, a white female, stood.)

12 THE CLERK: What says the State?

13 MS. FOWLER: Please present this juror.

14 THE CLERK: And the defense?

15 MR. WARDER: Please seat the juror.

16 THE CLERK: Please come forward and have a seat in
17 the jury box.

18 Juror Number 89, Carla Grant.

19 (WHEREUPON, Carla Grant, a white female, stood.)

20 THE CLERK: What says the State?

21 MS. FOWLER: Please present this juror.

22 THE CLERK: And the defense?

23 MR. WARDER: Please swear the juror.

24 THE CLERK: Please come forward and have a seat in
25 the jury box.

1 Juror Number 211, Coleton Sims.

2 (WHEREUPON, Coleton Sims, a white male, stood.)

3 THE CLERK: What says the State?

4 MS. FOWLER: Please excuse this juror.

5 THE CLERK: Please return to your seat, sir.

6 Juror Number 217, Shirley Smith.

7 (WHEREUPON, Shirley Smith, a white female, stood.)

8 THE CLERK: What says the State?

9 MS. FOWLER: Please present this juror.

10 THE CLERK: And the defense?

11 MR. WARDER: Seat the juror.

12 THE CLERK: Please come forward and have a seat in
13 the jury box.

14 Juror Number 55, Brendon Dail.

15 (WHEREUPON, Brendon Dail, a white male, stood.)

16 THE CLERK: What says the State?

17 MS. FOWLER: Please present this juror.

18 THE CLERK: And the defense?

19 MR. WARDER: Please seat the juror.

20 THE CLERK: Please come forward and have a seat in
21 the jury box.

22 Juror Number 175, Kimberly Oliver.

23 (WHEREUPON, Kimberly Oliver, a white female, stood.)

24 THE CLERK: What says the State?

25 MS. FOWLER: Please present this juror.

1 THE CLERK: And the defense?

2 MR. WARDER: Please seat the juror.

3 THE CLERK: Please come forward and have a seat in
4 the jury box.

5 Juror Number 59, Sasha Davis.

6 (WHEREUPON, Sasha Davis, a white female, stood.)

7 THE CLERK: What says the State?

8 MS. FOWLER: Please present this juror.

9 THE CLERK: And the defense?

10 MR. WARDER: Please seat the juror.

11 THE CLERK: Please come forward and have a seat in
12 the jury box.

13 THE COURT: All right. First alternate.

14 THE CLERK: First alternate, Juror Number 170, Kathy
15 Mosley.

16 (WHEREUPON, Kathy Mosley, a white female, stood.)

17 THE CLERK: What says the State?

18 MS. FOWLER: Please excuse this alternate.

19 THE CLERK: Please return to your seat.

20 Juror Number 93, Kari Grindstaff.

21 (WHEREUPON, Kari Grindstaff, a white female, stood.)

22 THE CLERK: What says the State?

23 MS. FOWLER: Please present this alternate.

24 THE CLERK: And the defense?

25 MR. WARDER: Please excuse the juror from the trial

1 of this matter.

2 THE CLERK: Please return to your seat.

3 Juror Number 242, Lisa Wilson.

4 (WHEREUPON, Lisa Wilson, a white female, stood.)

5 THE CLERK: What says the State?

6 MS. FOWLER: Please present this juror.

7 THE CLERK: And the defense?

8 MR. WARDER: Please excuse the juror from the trial
9 of this matter.

10 THE CLERK: One and one or one and two? I think
11 you're out.

12 THE COURT: All right. Accepted.

13 THE CLERK: Please come forward and have a seat in
14 the jury box.

15 THE COURT: All right. Second alternate.

16 THE CLERK: Juror Number 230, Lisa Trotter.

17 (WHEREUPON, Lisa Trotter, a white female, stood.)

18 THE CLERK: What says the State?

19 MS. FOWLER: Please present this juror.

20 THE CLERK: And the defense?

21 MR. WARDER: Please excuse the juror from the trial
22 of this matter.

23 THE CLERK: Please return to your seat, ma'am.

24 Juror Number 200, Charles Roberts.

25 (WHEREUPON, Charles Roberts, a white male, stood.)

1 THE CLERK: What says the State?

2 MS. FOWLER: Please excuse this juror.

3 THE CLERK: Please return to your seat.

4 Juror Number 163, Erik Moore.

5 (WHEREUPON, Erik Moore, a white male, stood.)

6 THE CLERK: What says the State?

7 MS. FOWLER: Please present this juror.

8 THE CLERK: And the defense?

9 MR. WARDER: Please swear the juror.

10 THE CLERK: Please come forward and have a seat in
11 the jury box.

12 THE COURT: All right. Any objections or exceptions
13 to the jury process -- selection process from the State?

14 MS. FOWLER: Nothing from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. WARDER: No, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, I'm
18 going to talk to y'all first and then I'll talk to this
19 crowd.

20 All right. We're going to start the case in just a
21 few minutes. We're going to take a short break. But go
22 back in your jury room. Don't discuss the case. I know
23 you don't have much information, but you don't need to be
24 discussing the case among yourselves. Don't do any type
25 of research about the case, and don't pay any attention to

1 media coverage. I know you're probably getting ready to
2 lose your phones anyway, but anyway, I just like to say
3 that. And like I say, if you'll go back in your jury
4 room, and we'll bring you back out in just a few minutes
5 to start the case.

6 And just to let y'all know, it's 11:30. We'll get
7 started and then we'll take a break for lunch.

8 (WHEREUPON, the jury exits the courtroom at 11:23 AM.)

9 THE COURT: I kind of want to make sure they got out
10 of the room before I let y'all know that y'all are good
11 for the week. Y'all don't have to call back, you don't
12 have to come back.

13 I appreciate your being here. I know y'all had to
14 come in for three mornings, and because of that, we've
15 gotten a lot worked out. I know we had one trial, and
16 this is the second trial. But we worked out a lot of
17 trials just because you're willing to come in here. And I
18 realize that this was a major inconvenience to y'all, but
19 we really appreciate your service. And you're good for
20 three years now so -- as far as being selected for a jury.

21 So hope everybody has a good rest of the day and good
22 rest of the week. Y'all take care.

23 (WHEREUPON, the remaining jury panel exits the courtroom
24 at 11:25 AM.)

25 THE COURT: Mr. Warder, I figured you would have made

1 a motion that Ms. Hayes not be stricken from the jury
2 panel. That's a first. Soon to be my ex.

3 All right. We'll take a short break. But anything
4 before we -- from the State?

5 MS. FOWLER: I would just ask that all the witnesses
6 be sequestered. I wasn't aware that Mr. Warder had a
7 witness list, but I ask that those people be sequestered.

8 THE COURT: Okay. All right. So all witness -- any
9 comment on that?

10 MR. WARDER: Well, you know, it certainly is a public
11 trial. Certainly, the State, with no showing, can't just
12 exclude family and members from seeing a trial.

13 THE COURT: Actually, they can. I usually have the
14 rule if somebody requests sequestration regardless of
15 which side, unless somebody can give me a good reason
16 otherwise, then I usually grant it.

17 MR. WARDER: Yes, sir. It's just it's not fair
18 because the family of the defendant doesn't see and
19 understand and put an end to it. The State's witnesses
20 usually have nothing to understand. It's just a job. To
21 family members it's a person is going out of their family
22 by a judicial process and they don't get to see the
23 judicial process. It seems to me that's inherently unfair
24 unless there's a real reason for it.

25 THE COURT: But any unfairness to your client?

1 MR. WARDER: Yes, sir. I think that ---

2 THE COURT: And how is that unfair to him?

3 MR. WARDER: He should be able to help his family
4 understand how all of this is happening.

5 MS. FOWLER: Judge, I would just have concerns if the
6 family members are going to testify that they will craft
7 their testimony after watching the State's witnesses. So
8 I would ask that they be sequestered.

9 THE COURT: All right. And I'm going to grant the
10 State's motion on that.

11 All right. Five minutes, and then I'll do my little
12 preliminary report to the jury and then we'll do opening
13 statements.

14 First witness?

15 MS. FOWLER: First witness would be law enforcement.
16 I think I'll start with law enforcement and then end with
17 the victim.

18 THE COURT: I mean, how long would that ---

19 MS. FOWLER: Oh, five minutes, ten minutes.

20 THE COURT: Oh, okay. Well, let's see how we're
21 going, see how much we can get in before lunch.

22 MS. FOWLER: Okay.

23 THE COURT: We may go to lunch about 1:00 then. That
24 would give a good start.

25 All right. Five minutes, and then be ready to tee

1 them up and hit them down the fairway.

2 (WHEREUPON, a recess is taken at 11:28 AM; proceedings
3 reconvened at 11:36 AM.)

4 THE COURT: All right. Is the State ready?

5 MS. FOWLER: Yes, Your Honor.

6 THE COURT: Defense ready?

7 MR. WARDER: Yes, Your Honor.

8 THE COURT: Where's Pat? Pat's not ready.

9 (Pause in proceedings.)

10 MS. FOWLER: Judge, I just want to make you aware,
11 the victim is in the courtroom. I believe, under the
12 victim's bill of rights, she is allowed to be here.

13 THE COURT: But no other witnesses.

14 MS. FOWLER: No other witnesses are in here.

15 THE COURT: Okay. All right.

16 (Pause in proceedings.)

17 MS. FOWLER: Judge, may we approach?

18 THE COURT: Yes.

19 (WHEREUPON, a bench conference was held off the record.)

20 THE COURT: All right. Bring them in.

21 (WHEREUPON, the jury entered the courtroom at 11:46 AM.)

22 THE COURT: Sometimes no matter how hard I try, it
23 turns into the hurry-up-and-wait mode. So I appreciate
24 your patience there. We realized something we need to
25 address just before y'all came in.

1 All right. We're getting ready to start the trial of
2 the case. But before I give you any additional
3 information, I'm going to ask the clerk to administer the
4 oath.

5 THE CLERK: Please stand. After the oath is
6 administered, answer by saying "I will." Raise your right
7 hand.

8 (WHEREUPON, the jury is duly sworn.)

9 THE CLERK: If you agree with that, please have a
10 seat.

11 JURY INSTRUCTIONS

12 THE COURT: All right. Ladies and gentlemen, I want
13 to give you some preliminary information before I turn it
14 over to the attorneys for their opening statement.

15 First of all, I always like to start off by letting
16 you know some of the people in the courtroom so you're not
17 sitting there wondering who they are. Seated right in
18 front of you is the court reporter. She takes down all
19 the testimony and keeps the record for the case. Of
20 course, the clerk of court is in charge of the courtroom
21 and the records. Seated behind me is my law clerk. He's
22 a graduate of law school and assists me with any type of
23 research, anything that's needed in the case.

24 But for your purposes, the most important people are
25 the bailiffs, that they look after you. They do an

1 excellent job here in Pickens. And if you have any
2 questions or anything, just please direct it to them. If
3 it's something the Court needs to get involved in, they
4 will let me know.

5 What are your responsibilities? Your
6 responsibilities are to determine the facts of this case.
7 And if there's anything that I say or do throughout this
8 trial that makes you think I have an opinion about the
9 facts, you're to disregard that because that's not my job.
10 My job is totally different. And it's not to determine
11 the facts. It's to preside over the trial, it's to rule
12 on evidence, and it's to charge you on the law of the
13 case.

14 Now, from time to time there may be objections, and
15 the purpose for that is not to keep anything from you.
16 It's to make sure that the rules of evidence and the rules
17 of this court are followed, and they are very strict rules
18 that we have under our judicial system.

19 At the conclusion of the case, I will charge you on
20 the law. And that's the law that applies to this case,
21 and that's what you have taken an oath to follow. Even if
22 you may think that it should be something different or it
23 is something different, you've sworn to follow that, the
24 law that I apply to you.

25 This is a relatively short case. What I mean by that

1 is we should -- we'll go into tomorrow and we should
2 finish by tomorrow. And so therefore, I'm going to ask
3 that you not take notes. That way you can devote your
4 attention to any witnesses on the stand.

5 Now, how are you going to determine the facts? When
6 I say your job is to determine the facts, what that means
7 is you're to reach a verdict. And a verdict is going to
8 be -- and I'll give you more information at the conclusion
9 of the trial. But the verdict will be -- the appropriate
10 charge will be presented, and you'll determine guilty or
11 not guilty. Okay.

12 And how will you make that decision? Well, you will
13 consider the evidence that's presented. And you're to
14 give all evidence the weight and value which you feel is
15 appropriate.

16 The evidence may be in the way of testimony from
17 witnesses, there may be stipulations that the parties have
18 reached, there'll be evidence, there may be statements
19 presented, videos. All of that will be the evidence that
20 you will need. Then you will hear the law, and you will
21 apply that law to the evidence you've heard. And that's
22 how you make your decision.

23 Now, again, another tool that you will need is what's
24 the burden? The State has the burden of proof. Now, as I
25 told you earlier, I read an indictment. An indictment,

1 it's where somebody's been arrested, it's where somebody's
2 been charged, is not evidence. That's not even to be
3 considered by you because that is the formal process to
4 bring this matter to court. The indictment that I read to
5 you, those are merely the allegations of criminal
6 domestic violence of a high and aggravated nature that
7 have been alleged by the State. The defendant has pled
8 not guilty.

9 Now, the State has the burden of proof. The
10 defendant has no burden whatsoever in this matter. The
11 burden is beyond a reasonable doubt. That's the standard
12 that the State must prove on each element of the charge.
13 And I will go through a little more detail on that at the
14 conclusion of the trial.

15 And I also want to make sure, if someone may have
16 been involved in a civil matter, a lawsuit between
17 parties, maybe sitting on a jury, maybe being a party,
18 that standard is different. That is by a greater weight
19 of the evidence or by a preponderance. That's a much
20 lesser standard. Again, the standard here is beyond a
21 reasonable doubt.

22 And a person comes into a courtroom no matter what
23 level of court, in criminal court, they come in with the
24 presumption of innocence. I mean, they are presumed
25 innocent unless the State meets its burden beyond a

1 reasonable doubt and you find the individual guilty. Up
2 to that point, that defendant has that presumption or that
3 cloak of innocence.

4 I'm going to ask you every time that you take a
5 break, it's very important that you follow a couple rules,
6 and that is not to discuss the case. When you start
7 discussing the case, then you're starting to make up your
8 mind and you're getting influences before you have all the
9 facts. So that's why it's important not to discuss it
10 among yourselves. When you start discussing with friends
11 and family that are not in the case, then you're getting
12 outside influence, and that's not appropriate. I know
13 it's very difficult to go home tonight and say what did
14 you do all day, and you say, well, I really can't talk
15 about it, I can't really tell you about it. Now, when the
16 case is through, then that is not the case.

17 Another thing is I'm going to tell you when you take
18 a break, and this is very important, not to do any type of
19 research. And that's difficult in today's climate where
20 you want to google everything that you can't remember. We
21 don't have to remember anything anymore. We just google
22 it. Do not google anything about the law, anything about
23 the parties, the attorneys, the incident, anything like
24 that. Because you're supposed to get everything that you
25 need to make your decision in this courtroom under our

1 court rules. And that's very important.

2 Finally, do not pay any attention to any media
3 coverage. I'm not aware of any media coverage. And just
4 to warn you, when you show up in the morning, you're going
5 to see all kinds of media, possibly. It has nothing to do
6 with this case. There's another matter going on that will
7 have some media attention. So when you come in and you
8 see that, don't worry. It has nothing to do with this
9 case.

10 So we'll take a break. We're going to get started on
11 the case. Try to break as close to 1:00 as possible for
12 your lunch. Give you plenty of time for lunch.

13 If anybody needs to take a break prior to any time we
14 set a break, just let the bailiff know so that we can take
15 a break. I mean, we realize it's an inconvenience. We
16 try to make it as convenient as possible for you.

17 We try to shoot for closing out the day as close to
18 5:00 as possible. I think today we may actually close out
19 a little bit early just because one of the witnesses I
20 know cannot make it until in the morning. But, you know,
21 if we go past 5:00, we may be just a little bit past 5:00.
22 And I'll make sure that you're apprised if anybody needs
23 to make any calls. But I don't expect we'll go past 5:00.
24 We'll probably the same -- you know, we try to take breaks
25 every hour, hour and a half, but sometimes that kind of

1 depends on where we are with the witnesses.

2 The trial, kind of the procedure that we will go
3 through will be we'll have opening statements by the
4 attorneys. And that's not evidence. That's just their
5 summary of what the case is going to be about. Next,
6 we'll have the evidentiary stage. That's where the
7 evidence is presented. Then we will have closing
8 arguments by the attorneys. Then I will charge you on the
9 law. And, again, that should be sometime tomorrow. And
10 then after that you'll go back in your room, your jury
11 room and you'll begin your deliberations.

12 Another thing that you will -- I meant to mention
13 when you're discussing some of the tools that you have,
14 you're to give every piece of evidence the weight and
15 value which you feel is appropriate. Part of that is
16 you're to determine, based on your own common sense, the
17 believability or credibility of witnesses. And I'll give
18 you some -- I'll go into a little more detail about that
19 at the conclusion.

20 So those are kind of my preliminary remarks. At this
21 point I'm going to turn it over to the attorneys for
22 opening statements as I indicated, then we will start with
23 -- I believe we're going to be able to start with one of
24 the witnesses.

25 So at this time, Ms. Fowler, opening statements,

1 please.

2 OPENING STATEMENTS

3 MS. FOWLER: Thank you, Your Honor. May it please
4 the Court.

5 Members of the jury, we're here today because on
6 February 23, 2021, this man, Mr. Joshua Kelley, beat his
7 girlfriend to the point that she was unrecognizable. She
8 was in the hospital for days. She didn't even recognize
9 herself in the mirror after this attack.

10 Now, this occurred at the residence they shared in
11 Liberty at [REDACTED] Roanoke Road. And you'll hear from
12 Ms. Harris today. They were in an on-and-off again
13 relationship. They lived at that residence together with
14 her two children.

15 Now, Mr. Kelley stands before you today charged with
16 domestic violence of a high and aggravated nature. And in
17 order to prove domestic violence of a high and aggravated
18 nature, the State has to prove four things to you. First,
19 the State must prove that the victim and the defendant
20 were household members. What that means is that they were
21 in a romantic relationship, or they shared children
22 together, or they lived together as part of that romantic
23 relationship. And you'll hear from Ms. Harris that they
24 were in a romantic relationship. It was off and on, but
25 they were living together.

1 The State must also prove physical harm or injury.
2 And you will see the pictures of those injuries that
3 Ms. Harris had.

4 The State must also prove that these injuries
5 occurred under circumstances manifesting extreme
6 indifference to human life. And that's what the statute
7 says, and it's very convoluted. I'm going to try to break
8 it down a little bit. What that means is that -- well, I
9 guess the statute provides for a few different ways that
10 we can reach the circumstances manifesting extreme
11 indifference to human life. The statute says that can
12 involve choking or blocking the airflow, strangulation.
13 It can also involve use of a weapon. It can also have
14 happened in front of minors. Some of this attack happened
15 in front of Mrs. Harris's children.

16 Now, those are some of the ways that the statute says
17 we can meet this extreme indifference to human life. But
18 that's not the only thing you can take into account.

19 It's kind of a common-sense thing, although I know
20 those are big words, manifesting an extreme indifference
21 to human life. I think what that means is think about the
22 amount of anger, the amount of force it took to inflict
23 these injuries on Ms. Harris. Mr. Kelley, when he was
24 inflicting those injuries, had no regard for her life.
25 She thought this attack was never going to end.

1 And the fourth thing as part of the domestic violence
2 statute that the State has to prove is that this attack
3 either resulted in great bodily injury or the victim was
4 in fear that great bodily injury could have occurred. And
5 here we don't even have to worry about the fear that the
6 victim had because she had great bodily injury. The
7 statute says a great bodily injury is serious, permanent
8 disfigurement or an extended loss of a part of your body.

9 Now, you'll hear in detail about the injuries that
10 Ms. Harris has today. You'll hear from herself. You'll
11 also hear from the doctor. And you'll see the pictures.
12 She was in the hospital for days. She is still dealing
13 with some of the effects of that attack today.

14 And so how is the State going to prove these elements
15 to you? And I'll give you a little preview of what you'll
16 hear about in this trial. You'll hear from the victim.
17 You'll hear what happened that night. And then you'll
18 also hear from her doctor who can give you in detail what
19 exactly these injuries were and how they affect her to
20 this day.

21 Now, as the judge said earlier, the State has to
22 prove each part of that statute to you beyond a reasonable
23 doubt. And reasonable doubt doesn't mean beyond all
24 doubt. That just means, at the end of this trial, you are
25 firmly convinced the defendant did what he is accused of,

1 that he attacked and he assaulted his girlfriend of three
2 years, that you must find him guilty, and at the end of
3 this trial, after hearing from all the witnesses, hearing
4 from the doctor, seeing the pictures from that night, I
5 will come back before you and ask that you hold the
6 defendant accountable for his actions on that night and
7 find him guilty of domestic violence.

8 Thank you.

9 THE COURT: Mr. Warder.

10 MR. WARDER: Thank you, Your Honor.

11 That's part of the testimony the solicitor has told
12 you what she intends to prove. But we intend to show you
13 the whole picture, what really happened. And what really
14 happened that day and what the testimony will show is that
15 my client had a truck that had a serpentine belt that goes
16 to the engine that includes the generator, and he had --
17 it came off, and he was trying to get that belt put on so
18 the truck would run. And him and his wife were out there,
19 and there became a dispute. And during that dispute, both
20 parties had been drinking, and she picked up on the porch
21 a pipe and hit him across the head with it. Then after
22 that, the parties struggled, there was a struggle on the
23 ground, that they rolled around. And certainly, my client
24 received some injury, and certainly, the victim was
25 injured in that.

1 Testimony will also show that, during that period of
2 time, she come upon a bat that the -- I take it was the
3 children's. Anyway, a bat in the yard, and she used that
4 to hit him in the bad knee. So he was struck twice with
5 weapons in this.

6 And it was not just somebody having a fight with
7 their spouse. My client had a right to disarm the person
8 that was assaulting him so that this assault could end.
9 And during the struggle for control of the pipe and the
10 bat, they rolled around. And this was only witnessed by
11 one person: my client's father. But the testimony will
12 not show that any struggle that was not initiated and
13 provoked by the victim in this case.

14 Thank you very much.

15 THE COURT: All right. State, you can call your
16 first witness.

17 MS. FOWLER: The State calls Kelli Harris.

18 THE CLERK: If you could, stop and raise your right
19 hand.

20 WHEREUPON,

21 KELLI HARRIS

22 After having been duly sworn, testified as follows:

23 THE CLERK: If you would, have a seat and state your
24 name for the record.

25 Do you need help?

1 THE WITNESS: I've got it. Thank you.
2 Kelli Harris.

3 DIRECT EXAMINATION

4 BY MS. FOWLER:

5 Q Good morning, Ms. Harris.

6 Where were you living in February of 2021?

7 A I was living with my boyfriend, [REDACTED] Roanoke Road.

8 Q And do you know what county that's in?

9 A Pickens County, considered Liberty address.

10 Q And when you say "boyfriend," who was your boyfriend?

11 A It was Joshua Kelley.

12 Q And how long had y'all been together?

13 A On and off three years.

14 Q And y'all lived together at this [REDACTED] Roanoke Road?

15 A Yes, ma'am.

16 Q Okay. Was this his house?

17 A His father's.

18 Q His father's.

19 Did his father live nearby?

20 A Yes. Next door.

21 Q Okay. And who else lived at that house with y'all?

22 A My children.

23 Q And how old were your children in 2021?

24 A At the time, 5 and 8.

25 Q Okay. And are these your children with Mr. Kelley?

1 A No, ma'am. From a previous marriage. But he helped
2 take care of them. We were a family.

3 THE COURT: You may want to pull that mike, just make
4 sure we can hear.

5 THE WITNESS: Okay.

6 BY MS. FOWLER:

7 Q Ms. Harris, do you remember an incident that occurred
8 on February 23, 2021?

9 A Yes.

10 Q Can you explain what happened that day?

11 A My boyfriend, I just got back from the store with his
12 dad. And something was wrong with my vehicle. I owned
13 it. It was running hot. And I just asked him to leave it
14 alone, because I could tell he was impaired and was just
15 taking off parts and didn't know what he was doing. And
16 from that point he started choking me. And just it was
17 like a raggedy doll.

18 Q When you say he started choking you, did this start
19 as a verbal argument?

20 A I asked him to get out from under the hood of my
21 vehicle because he didn't know what he was doing. And
22 that made him upset. And from that point of me begging
23 him not to take off any more parts, he started choking me
24 and punching me. I mean, we was all over the yard in
25 three different places that I can remember.

1 Q And do you recall, did this occur at night? during
2 the day?

3 A This was around 6:30, 7:00.

4 Q 6:30. Okay.

5 Can you explain in detail what you mean by choking?

6 A Choking to where I couldn't breathe. With one hand
7 he was holding me, and with the other hand he was just
8 punching my face. My jaw was broke in three places. I
9 have deformities, speech impairments.

10 Q And you said you could not breathe.

11 A I could not breathe.

12 Q Okay.

13 A I could not get away from him. I could not get him
14 to let me go.

15 Q What happened after he choked you and punched you in
16 the head?

17 A He just continued. I tried to get away, and he just
18 followed me and continued to beat me.

19 Q Did you -- or you said you remember this happening at
20 three different places in the yard.

21 A Yes.

22 Q What were those three places?

23 A In front of my vehicle, on a trailer that was next
24 by, and right in front of the door where my children were
25 standing, watching in horror.

1 Q And how old did you say those children were again?

2 A 5 and 8 at the time.

3 Q Okay. You could see them in the doorframe?

4 A Yes, ma'am.

5 Q Let's go back to the trailer. Was there anything
6 specific that happened at the trailer?

7 A It was the argument was all over the vehicle. The
8 trailer, I was -- he had me on top of it, choking me and
9 punching me.

10 Q Okay. At any point, did your head hit the trailer?

11 A Yes. It actually wasn't stabilized so it was
12 teeter-tottering as he was hitting me.

13 Q When you say trailer, is this like a trailer hitch?

14 A Utility trailer.

15 Q Utility trailer. Okay.

16 A Yeah. Just a small wide trailer.

17 Q And was Mr. Kelley the one banging your head on this
18 trailer?

19 A Yes.

20 Q And how many times would you say that that happened?

21 A Too many to count. More than 20.

22 Q Okay. At any point, did you lose consciousness
23 during this attack?

24 A I don't think I did. I'm pretty sure I didn't. It
25 just seemed to never end.

1 Q How -- if you had to guess, how long did this
2 attack ---

3 A I would say 30 minutes, because I fed my kids dinner,
4 and that's usually 6:30 to get them ready, lay down at
5 8:00. And yeah. By the time I looked at the clock when
6 he finally got off of me, I would say 30 minutes passed.

7 Q 30 minutes.

8 At any point, did you try to call 9-1-1?

9 A I told my son to call his sister who is older, and
10 she called 9-1-1. Because as I said, my son was
11 watching. He didn't know how the hell I was going to call
12 9-1-1.

13 Q At any point, did -- do you remember trying to get
14 Mr. Kelley off of you?

15 A I couldn't.

16 Q Okay. How tall are you?

17 A I couldn't breathe.

18 I'm 5'2".

19 Q And how tall would you say Mr. Kelley is?

20 A At least 6'8", at least.

21 Q So he's significantly larger than you, correct?

22 A Yes, ma'am.

23 Q Do you remember telling any of the officers that you
24 struck him with a pole to get him off of you?

25 A No.

1 Q Okay. Is it fair to say you don't remember some of
2 the assault?

3 A Yes. I mean, all the hits were to my head. My skull
4 is permanently cracked right here (indicating). That's
5 very possible.

6 Q And did you have a concussion?

7 A Oh, yes.

8 Q And did you go to the hospital?

9 A Yes.

10 Q You went to the hospital that night, correct?

11 A Yes, ma'am.

12 Q In an ambulance?

13 A If I hadn't, I would have bled out.

14 Q Okay. Had you been drinking that day?

15 A Yes.

16 Q Okay. And does that in any way affect what you
17 remember about the assault today?

18 A No. No, ma'am.

19 Q Okay. Ms. Harris, I'm going to show you some
20 pictures. I'm going to show you what's been marked as
21 State's 1, 2, 3 and 4.

22 A Yes, ma'am.

23 Q Are those pictures of you on that day?

24 A Yes.

25 Q And are these pictures before the hospital staff was

25 MS. FOWLER: This is State's Exhibit 1.

1 THE COURT: All right.

2 BY MS. FOWLER:

3 Q And, Ms. Harris, this is a picture of your face,
4 correct, with that neck brace on?

5 A Yes, ma'am. Yes, ma'am.

6 Q Okay. And it appears, does it look like there's
7 leaves or some debris on that pillow?

8 A Yes.

9 Q Is that because you were on the ground during the
10 assault?

11 A Yes. During part of it. It happened within more
12 than one place.

13 Q And this is State's Exhibit 2. Ms. Harris, is this
14 the side of your face?

15 A Yes, ma'am. My jaw was broke in three places.

16 Q And this is State's Exhibit 3.

17 A One of the breaks right there, you can see it very
18 good.

19 Q One of breaks to your jaw?

20 A Yes, ma'am.

21 Q Okay. Is that with that bruise, purple bruises?

22 A Yes.

23 Q Okay. And that was State's Exhibit 3.

24 And then this is State's Exhibit 4, which is just a
25 picture of your entire face on that day, correct?

1 A Yes.

2 Q Okay. When you said your jaw was broken, what did
3 the hospital staff have to do to your jaw injury?

4 A They had to put two plates in, and they wired my
5 mouth shut. And then that didn't fix the problem, so they
6 took that out and they put an exterior piece of metal on
7 the outside of my face, which is why I have these holes.

8 Q Okay.

9 A Because it was literally four rods to try to hold my
10 jaw together.

11 Q Would you mind standing up and facing the jury so
12 that they can see the scars on the side of your face?

13 A Yes, ma'am (witness complies).

14 Q And does it start at the top and go all around?

15 A Yeah.

16 Q Okay. And your jaw was broken on both sides,
17 correct?

18 A Yes, ma'am.

19 Q Okay.

20 A And right here, here, here and here, and my forehead
21 is cracked (indicating throughout).

22 Q Do you also have a scar to your forehead?

23 A Yes, ma'am.

24 Q Okay. And we'll see pictures of that in a second.

25 Do you remember -- well, you were in the hospital for

1 several days, correct? Do you remember law enforcement
2 coming back and taking more pictures of you?

3 A Yes, I do.

4 Q Okay. I'm going to show you ---

5 A Arms and legs. And I was just bruised from head to
6 toe.

7 Q We'll start with pictures of your face a few days
8 later. I'm going to show you what's been marked as
9 State's 6 through 13.

10 MR. WARDER: Your Honor, we'd have some objection to
11 them.

12 THE COURT: All right.

13 MR. WARDER: Your Honor, I object to them on the
14 grounds that they're cumulative, that the same pictures of
15 the same injury over and over again add no new probative
16 value to it.

17 THE COURT: Are you talking about those particular
18 ones or relating to Exhibits 1 through 4?

19 MR. WARDER: These particular ones along with the
20 whole ---

21 THE COURT: I mean, are they ---

22 MS. FOWLER: Judge, they're pictures from, I believe,
23 two days after the assault. So you can see some of the
24 injuries more clearly because the blood has been taken
25 off.

1 THE COURT: I guess, but do you need to show all of
2 them? I mean, are they ---

3 MS. FOWLER: I can certainly narrow it down to the
4 different angles. So I can do that.

5 THE COURT: Okay.

6 MS. FOWLER: Okay. I'll be showing her State's 5, 7,
7 8, 10, 12 and 13.

8 THE COURT: All right. Any addition with this
9 amendment to the . . .

10 . (Pause in proceedings.)

11 MS. FOWLER: Judge, I think we need to approach.

12 THE COURT: All right. Do we want to just send the
13 jury out for a second?

14 MS. FOWLER: Yes, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, I'm
16 going to send you out just for a minute. Don't discuss
17 the case. We'll bring you back out in just a few minutes.

18 (WHEREUPON, the jury exits the courtroom at 12:21 PM.)

19 THE COURT: Yes?

20 MR. WARDER: Your Honor, the more photographs that --
21 the same thing. They clean her up, and then they take a
22 whole new series of photographs that just show the same
23 injuries over and over again. It's just piling cumulative
24 evidence without increasing the probative value.

25 THE COURT: Let me just -- let me look at the

1 photographs (reviews exhibits).

2 I believe that -- but there are two kind of incidents
3 -- I mean, not two incidents, but I believe it's
4 appropriate for the jury to see what it looked like
5 afterwards and then kind of the ongoing after condition
6 after she had been treated. So if that's your objection,
7 then I overrule your objection. And Exhibits 5, 7, 8, 10,
8 12 and 13, it sounds like she has eliminated a couple that
9 were duplicative. And, of course, she has not had them
10 identified. But subject to her laying the proper
11 foundation with these, I'll overrule your objection.

12 All right. Anything else?

13 MS. FOWLER: Your Honor, I would like to introduce
14 pictures of other parts of her body. She did have
15 bruising on her arms and legs. So I would be moving to
16 introduce those. I don't know if we need to address those
17 right now.

18 THE COURT: I mean, if we need to, if you could, just
19 show them in case -- while the jury is out.

20 (Pause in proceedings.)

21 THE COURT: What exhibits are we talking about here,
22 just for the record?

23 MR. WARDER: She handed me a group here. State's
24 Exhibit 31, 25, 21, 22, 16, 15, 14 and 35.

25 THE COURT: All right. Do you have any objection to

1 those?

2 MR. WARDER: Your Honor, they all appear to show
3 different parts of the body, and so on that basis, I think
4 probably they're admissible.

5 THE COURT: All right. Subject to her laying the
6 proper foundation.

7 MR. WARDER: Yes, sir.

8 THE COURT: All right. Anything else before we bring
9 the jury in?

10 MS. FOWLER: No, Your Honor.

11 THE COURT: Bring them in.

12 (WHEREUPON, the jury entered the courtroom at 12:28 PM.)

13 THE COURT: All right. Ladies and gentlemen, thank
14 you for your patience.

15 All right. You may proceed.

16 MS. FOWLER: Thank you, Your Honor.

17 BY MS. FOWLER:

18 Q Ms. Harris, I'm going to show you what's been marked
19 as State's Exhibit 5, 7, 8, 10, 12 and 13. And you said
20 officers took pictures of you a couple days after this
21 happened?

22 A Yes, ma'am.

23 Q And are these pictures of you?

24 A Yes.

25 MS. FOWLER: Okay. Your Honor, I would move State's

1 Exhibit 5, 7, 8, 10, 12 and 13 into evidence.

2 THE COURT: All right. Subject to defense
3 objections.

4 MR. WARDER: Yes.

5 THE COURT: All right. They're in subject to
6 defendant's objection.

7 (WHEREUPON, State's Exhibit Numbers 5, 7, 8, 10, 12 and 13
8 were admitted into evidence.)

9 BY MS. FOWLER:

10 Q I'm going to publish what has been admitted as
11 State's Exhibit 5. Can you tell us where your injuries
12 are in this picture?

13 A Right jaw right here. Right here and right here on
14 the right side was split between my teeth. My forehead,
15 if you see that big knot, that's where I got that crack in
16 my skull. He broke my nose (indicating throughout).

17 Q And are your lips swollen?

18 A Yes. That's from the repeatedly punching in my face.

19 Q Your lips don't look like that today?

20 A No. But it still feels that way.

21 Q Okay. And you have a black eye; is that right?

22 A Yes. That's from my broke nose. Yes. He broke my
23 jaw in three places, broke nose and fractured my skull.

24 Q And I'm publishing what's been admitted as State's
25 Exhibit 7. We talked about the injury on your forehead.

1 Is that what we're seeing in this picture right now?

2 A Yes. Where the stitches are, that's that scar.

3 Q And that's what this is right here (indicating)?

4 A Yes, ma'am.

5 Q And are both of your eyes black in this picture?

6 A Yes, ma'am.

7 Q And did you have bruising to your neck?

8 A I did.

9 Q And was that from him choking you?

10 A Yes, ma'am.

11 Q And can we see that bruising in this picture?

12 A You can see, yeah, where it's all red. Yeah.

13 Q Then I'm going to show you what's been introduced as
14 State's Exhibit 8.

15 A That was before they could put the plates in. They
16 had to let the swelling go down some before they could
17 even try to fix my face.

18 Q And is that what this device on your face is?

19 A Yeah. They had me on oxygen. They wouldn't let me
20 get out of the bed.

21 Q And I'll try to zoom in a little bit. But can we see
22 the injuries to your neck a little bit better in this
23 picture?

24 A Yes. I feel like you can see where ---

25 Q Right here (indicating)?

1 A --- the bottom of his hand right there is. Yes.
2 Where the cord was.

3 Q Okay. And then I'm going to show you what's been
4 introduced as State's Exhibit 10. Is this just the other
5 side of your face from what we previously saw?

6 A Yes.

7 Q Okay. The other side that didn't have the scarring
8 or the ---

9 A That I don't have the -- this is my right side on
10 this side (indicating).

11 Q But both sides of your jaw were broken, correct?

12 A Yes, ma'am. And right down the middle as well.

13 Q I'm going to show you 12.

14 A That shows more where it was -- I was checked. And
15 you can see where it was broke in the middle of my chin
16 more.

17 Q And then this is State's Exhibit 13.

18 A Yeah.

19 Q What are we looking at in this picture?

20 A You can see more of the swelling where my jaw is
21 broke, where my forehead was fractured. You can see that
22 knot right between my eyes. I think you can see more
23 where it was broke on the left in the middle.

24 Q Okay. And I want to talk a little bit more about
25 your jaw. Was it difficult it eat after this happened?

1 A I had to relearn how to eat. I was like a strict
2 patient from where it -- my main nerve was damaged during
3 surgery.

4 Q Okay. And was it difficult to talk ---

5 A Yes, ma'am.

6 Q --- when your jaw was broken?

7 A Yes.

8 Q How painful was this?

9 A The worst kind of pain you can think of. Just
10 constant.

11 Q Do you recall how long you were in the hospital?

12 A I believe a couple of weeks.

13 Q Okay. Did you also have injuries to other parts of
14 your body?

15 A I had marks on my feet from being drug around the
16 yard from the trailer to the front door as I was telling
17 you. Just hand prints on my legs, my arms. Like I said,
18 I could not get away.

19 Q So as you were moving from these three different
20 locations during the incident, were you being dragged?

21 A Yes. Every time I tried to get away, he had ahold of
22 me.

23 Q At any point, were you dragged by your hair?

24 A I believe so.

25 Q Did you lose some of your hair during this incident?

1 A I lost a big glob of hair, yes, ma'am.

2 Q And were you wearing -- you may not remember it.

3 Were you wearing a pink scrunchy during this incident?

4 A I don't remember that. I remember I had green pants
5 on. They had to cut them off of me.

6 Q Okay.

7 A They thought I had internal damage the way my face
8 looked.

9 Q I'm going to show you State's 14, 16 -- 14, 15, 16,
10 21, 22, 25, 31 and 35. Are these pictures of the injuries
11 to other parts of your body?

12 A Yes, ma'am.

13 Q And these are pictures of you, correct?

14 A Uh-huh.

15 MS. FOWLER: Okay. Your Honor, at this time, the
16 State would move those exhibits into evidence.

17 THE COURT: Was there any objection from the
18 defendant?

19 MR. WARDER: No.

20 THE COURT: All right. They're in without objection.

21 (WHEREUPON, State's Exhibit Numbers 14, 15, 16, 21, 22,
22 25, 31 and 35 were admitted into evidence.)

23 BY MS. FOWLER:

24 Q Ms. Harris, I'm going to show you and the jury what's
25 been admitted as State's 14. Is that a picture of your

1 arm?

2 A Yes, ma'am.

3 Q And is your arm bruised?

4 A Yes.

5 Q I'm going to show you State's 15. Is that your leg?

6 A Yes, ma'am.

7 Q And are there multiple bruises on your leg?

8 A Yes.

9 Q I'm going to show you State's 16. Is this the back
10 of your legs?

11 A Yes.

12 Q And there's bruising on the back of your legs,
13 correct?

14 A Yes. You can see the thumbprints. Yes, ma'am.

15 THE COURT: Make sure you speak up.

16 BY MS. FOWLER:

17 Q I'm going to show you 21. Is that a picture of your
18 other arm?

19 A Yes.

20 Q And is that arm also bruised?

21 A Yes, ma'am.

22 Q I'm going to show you State's 22. Is this the inside
23 of your arm?

24 A Yes.

25 Q And can we see bruising on both insides of your arms?

1 A Yes.

2 Q I'm going to show you 25. Is this the back of your
3 body?

4 A Yes.

5 Q Do you have bruising on the back of your body?

6 A Yes.

7 Q And do you have abrasions down near your hips?

8 A Yes, ma'am.

9 Q Is that from where you were dragged?

10 A Yes.

11 Q I'm going to show you 31. Is this a picture of your
12 stomach?

13 A Yes.

14 Q And is that a bruise?

15 A Yes.

16 Q What is that bruise from?

17 A From him kicking me.

18 Q Okay. I'm going to show you 35. These are your
19 hands. At any point, did you strike Mr. Kelley with your
20 hands?

21 A I tried to get away. I don't think I ever did.

22 Q Okay. So I want to talk a little bit more about the
23 assault. You said that he hit you.

24 A Yes, ma'am.

25 Q He choked you.

1 A He choked me is what started it.

2 Q He kicked you.

3 A Yes.

4 Q Did he use any weapons?

5 A There was tools all laying out because we were -- he
6 was working on the vehicle. I can't recall.

7 Q Okay.

8 A It sort of felt like a sledgehammer. I mean . . .

9 Q Sure.

10 And you said he hit your head against the metal
11 utility trailer, correct?

12 A Yes.

13 Q Okay.

14 A Multiple times.

15 Q After you were released from the hospital, have you
16 had to go back to the doctor?

17 A Yes.

18 Q Can you tell us a little bit about your doctor visits
19 since this assault?

20 A I had five surgeries to try to correct my jaw and
21 chin, none of them successful. I actually had a breakdown
22 in 2022 and I had to be admitted into the hospital because
23 of all the traumatize [sic]. I'm just -- I don't like
24 going in public. I'm deformed. I don't like people
25 staring at it. So many issues. I can't taste. I can't

1 smell. I can't feel my chin, which is probably a good
2 thing because it would hurt. It's still crooked and
3 broke.

4 Q And do you have difficulty talking?

5 A Yes.

6 I have spasms. I have to take 15 different
7 medications now. I was never on any medicine and I'm on
8 15 different medications, three of them antidepressants.

9 Q And you said you had a concussion.

10 A Yes.

11 Q Have you had any health consequences along with
12 having a concussion?

13 A Ringing in my ear, tunnel vision sometimes.

14 Q Okay. Did you also have to see a plastic surgeon?

15 A Yes. They attempted to fix my broke jaw, but he was
16 not successful. They call it nonunion now. But I went
17 through multiple surgeries. Maybe tomorrow I'll bring a
18 picture of the exterior plate that I wore to try to hold
19 the bone together. I lost part of my bone during one of
20 these surgeries.

21 Q What other types of doctors have you had to see since
22 this?

23 A Neurologist, psychiatrist. They're still trying to
24 figure out what's wrong with my left side down here
25 (indicating). Something is off an inch. They don't know

1 why. But it's not life-threatening.

2 Q And is that an issue you had before this assault?

3 A No. No, ma'am.

4 Q Ms. Harris, do you see the man who assaulted you in
5 the courtroom today?

6 A Yes.

7 Q Can you point him out for the jury please?

8 A (Witness complies.)

9 Q And what is his name?

10 A Joshua Kelley.

11 MS. FOWLER: Let the record reflect that Ms. Harris
12 has pointed out the defendant in the courtroom.

13 No further questions.

14 THE COURT: Cross-examination.

15 CROSS EXAMINATION

16 BY MR. WARDER:

17 Q Ms. Harris, are you telling us that you didn't hit
18 him with a pipe?

19 A Not that I recall, no.

20 Q You say not that you recall. Do you remember
21 testifying in a Family Court order of protection hearing?

22 A After I got out of the hospital? I was on a video
23 chat with the victim's advocate and Josh and his previous
24 attorney.

25 Q Do you remember telling them that you would hit him

1 with a pipe?

2 A No, sir.

3 Q Do you remember testifying about hitting him with a
4 bat?

5 A No, sir. Because I didn't.

6 Q Okay. How long has it been since you had -- start
7 over. Had you been to the doctor prior to that with a lip
8 problem, swelling of your lips? Went to the doctor ---

9 A Not swelling of the lips, no.

10 Q You didn't have an infection in your lips?

11 A It wasn't swelling.

12 Q You had a lip infection before. Is that what you're
13 saying?

14 A I have these ointment, yes.

15 Q Okay. And you've been treated for that before that
16 -- before this incident?

17 A Yes. I got viactatrin [phonetic] ointment.

18 Q And that causes a swelling of your lips?

19 A No, no. It's like Neosporin but it's better. It's
20 doctor prescribed.

21 Q Okay. Did you go to the doctor with that?

22 A I had got it from a doctor.

23 Q You what?

24 A I had got it from a doctor, Dr. Randolph, my family
25 doctor.

1 Q Okay. You didn't go to the emergency room at Greer
2 for your lips.

3 A Not that I recall.

4 MR. WARDER: Okay. Just a minute, Your Honor. I
5 need to find a place . . .

6 Your Honor, if it please, can we have a short recess,
7 have our lunch recess now maybe so I can find this?

8 THE COURT: I mean, you're in the middle of
9 cross-examination.

10 MR. WARDER: Pardon?

11 THE COURT: I mean, what do you need a break for?

12 MR. WARDER: I want to find a particular paragraph in
13 a transcript for this prior testimony.

14 THE COURT: I'll give you a minute to look for it.

15 (Pause in proceedings.)

16 MR. WARDER: That's all the questions I have, Your
17 Honor.

18 THE COURT: All right. Any redirect?

19 MS. FOWLER: No, Your Honor.

20 THE COURT: All right. You may step down.

21 All right. Ladies and gentlemen, it's now ten till
22 1:00, so we will break for lunch. Again, we'll come back
23 at 2:20, give everybody sufficient time for lunch.

24 Do not discuss the case -- again, that's very
25 important -- among yourselves or anyone. Do not do any

1 type of research. Do not pay any attention to any media
2 coverage, I'm not aware of any, but including any social
3 media or any postings like that. And also, if anybody
4 should contact you other than someone from the clerk's
5 office, then please let the bailiffs know when you get
6 back from lunch.

7 So I'll see you back at 2:20. All right. Have a
8 good lunch.

9 (WHEREUPON, the jury exits the courtroom at 12:49 PM.)

10 THE COURT: All right. Anything else from the State
11 before we break for lunch?

12 MS. FOWLER: Nothing from the State, Your Honor.

13 THE COURT: All right. Anything else from the
14 defense?

15 MR. WARDER: No.

16 THE COURT: All right. And let's just wait a few
17 minutes, let the jury have a moment to get out before
18 anybody else leaves.

19 All right. We'll see y'all back at 2:20, a few
20 minutes before in case we have anything we have to go
21 over.

22 (WHEREUPON, a recess is taken at 12:50 PM; proceedings
23 reconvened at 2:24 PM.)

24 THE COURT: All right. Is the State ready?

25 MS. FOWLER: The State's ready, Your Honor.

1 There are some people that are in the courtroom. I
2 just want to make sure that all the witnesses are
3 sequestered. I'm not sure who everyone is.

4 THE COURT: How about all these people back here?

5 MS. FOWLER: They -- you can kick them out if you
6 want to.

7 THE COURT: Is the defense ready?

8 MR. WARDER: Yes, we are, Your Honor.

9 THE COURT: Is the jury ready?

10 THE BAILIFF: Yes, sir.

11 THE COURT: All right. Bring them in.

12 (WHEREUPON, the jury entered the courtroom at 2:26 PM.)

13 THE COURT: All right. Ladies and gentlemen, I hope
14 everybody had a good lunch.

15 As you will recall, the State is still in their case.
16 Next time we take a break, I need for you all, for the
17 original 12, to select a foreperson. All right. And I
18 always say this. The foreperson really only has two
19 duties, that is kind of to lead discussions, and any
20 communications with the Court, that's kind of up to the
21 foreperson. As I always tell everybody, the pay is the
22 same.

23 Anyway. All right. The State may call your next
24 witness.

25 MS. FOWLER: Thank you, Your Honor. The State calls

1 Detective Genthner.

2 THE CLERK: If you would, raise your right hand.
3 WHEREUPON,

4 JOSHUA GENTHNER

5 After having been duly sworn, testified as follows:

6 THE CLERK: Thank you, sir. If you would, have a
7 seat and state your name for the record.

8 THE WITNESS: Detective Joshua Genthner.

9 DIRECT EXAMINATION

10 BY MS. FOWLER:

11 Q Detective Genthner, where do you work?

12 A Pickens County Sheriff's Office.

13 Q And what is your job there?

14 A I work for the Special Victims Unit.

15 Q And were you working in that capacity on February 23,
16 2021?

17 A I was not. I worked Road Patrol at the time.

18 Q And can you explain some of your duties in your role
19 in Road Patrol?

20 A We mostly answer calls, responding to calls, assisted
21 officers, so much of this situation.

22 Q Okay. On February 23, 2021, did you respond to
23 [REDACTED] Roanoke Road?

24 A I did.

25 Q And is that in Liberty city?

1 A No. I believe it's ---

2 Q Is it in Pickens County?

3 A Yes. It's in Pickens County.

4 Q Okay. Who did you observe on scene when you got to
5 that location?

6 A I first made contact with a Deputy Shen at the time.
7 He advised me that there was an incident that occurred,
8 and when he was speaking to one party and the other party
9 was possibly at an adjacent residence.

10 Q And did you go to that adjacent residence?

11 A I did.

12 Q Who did you speak with there?

13 A I believe it was the defendant's father.

14 Q And at some point, did the defendant come out of the
15 residence?

16 A He did.

17 Q And what did you initially observe about the
18 defendant?

19 A The defendant had some blood coming from the left
20 side of his head. It appeared to be a laceration on the
21 back side of his head. I called for EMS to have him
22 checked out.

23 Q And did you personally see this laceration?

24 A I did, yes.

25 Q Can you describe again where exactly it was and how

1 big it was?

2 A So it was like at your right side here (indicating)
3 approximately an inch long.

4 Q Okay. Did you read Miranda warnings to the defendant
5 on that day?

6 A I did.

7 Q And can you read the Miranda warnings similar to how
8 you read them?

9 A Yeah. You have the right to remain silent. Anything
10 you say can and will be used against you in a court of
11 law. You have the right to an attorney. If you cannot
12 afford an attorney, one will be appointed to represent you
13 at no cost to you.

14 Q And did you observe any other officers give Miranda
15 warnings to the defendant?

16 A Yes. Deputy Shen did.

17 Q Did the defendant make any statements after the
18 Miranda warnings were given?

19 A Not to me directly, no.

20 Q Did he make any statements in your presence?

21 A No.

22 Q Okay. Do you see the defendant in the courtroom
23 today?

24 A Yes.

25 Q Can you point him out?

1 A (Indicating) It's Mr. Kelley right there.

2 Q And that's who you saw on scene that day, correct?

3 A Yes, ma'am.

4 Q Did he appear to be intoxicated or anything like that
5 on that day?

6 A Not that I could tell. He had a very calm demeanor,
7 didn't appear like he realized what the situation was at
8 the time.

9 Q Did you ever meet with the victim in the case?

10 A No.

11 Q Did you ever meet with her children?

12 A No.

13 Q Did this conclude your involvement with the case?

14 A Yes, ma'am, it did.

15 MS. FOWLER: No further questions.

16 THE COURT: Cross-examination?

17 MR. WARDER: Your Honor, if it pleases the Court, I
18 have no questions of this witness.

19 THE COURT: All right. Thank you. You may step
20 down.

21 MS. FOWLER: The State calls Deputy Thomas Hayes.

22 THE CLERK: If you would, raise your right hand.

23 WHEREUPON,

24 THOMAS HAYES

25 After having been duly sworn, testified as follows:

1 THE CLERK: Thank you, sir. If you would, have a
2 seat and state your name for the record.

3 THE WITNESS: Deputy Thomas Hayes, Pickens County
4 Sheriff's Office.

5 DIRECT EXAMINATION

6 BY MS. FOWLER:

7 Q Deputy Hayes, what is your role at the sheriff's
8 office?

9 A I'm a reserve deputy.

10 Q And can you explain a little bit about what that is?

11 A It's basically a voluntary deputy spot that you have
12 to be classified for and you have to do -- go through the
13 Criminal Justice Academy training outside of Columbia.
14 And basically, you do 20 hours a month as a deputy sheriff
15 in whatever role they need you in. Mainly, my role is
16 Uniform Patrol. That's pretty much all I do every time I
17 sign on. I don't get paid to do my job. I go to work,
18 and I try to better Pickens County. And I'll even go home
19 hopefully in one piece.

20 Q Okay. So you said you were working in Road Patrol.
21 Does that mean you respond to typical calls on a daily
22 basis?

23 A Yes, ma'am. Everything and anything that comes my
24 way.

25 Q Were you working in that capacity on February 23,

1 2021?

2 A I was.

3 Q And did you respond to [REDACTED] Roanoke Road?

4 A I did.

5 Q Do you recall what you were responding to?

6 A It was a 9-1-1 hang up. I received the call as a
7 9-1-1 hang up. Dispatch informed me that a phone call
8 back -- or during the call they received -- they could
9 hear someone in the background saying, "Leave her alone."
10 They attempted to call back. On the route -- on the way
11 to the call, I also attempted to call. No answer.

12 Q Okay. When you arrived at this residence, what did
13 you initially observe?

14 A When I first arrived at the residence, I did notice
15 that there was some type of altercation. There was tools
16 scattered all over the place. There was a vehicle with
17 the hood up in the driveway. I proceeded to the back door
18 at that time, but I could definitely tell there was an
19 altercation there.

20 Q Did you observe Ms. Kelli Harris on scene?

21 A I did.

22 Q And what did you observe about her?

23 A Well, originally, I could not get anybody to the
24 door. I went to both doors. And as I was at the front
25 door, I heard the first front door that I went to open up.

1 I came around the corner. She was standing just maybe two
2 feet outside of the door almost into the driveway. She
3 had been severely beaten or was -- you know, had a lot of
4 facial damage to her face and legs and arms and was
5 bleeding very badly.

6 Q Was she bleeding from her face?

7 A Yes.

8 Q Was she able to communicate with y'all at all?

9 A Lightly, yes. But it was -- it was understandable.
10 At first not so much, but as she began to come a little
11 bit more coherent, she did explain to me what was -- what
12 had happened.

13 Q Okay. I'm going to show you what's been marked as
14 State's Exhibit 37, 39, 47, 51 and 43.

15 I'm going to show you what's been marked as State's
16 Exhibit 37. Do you recognize that?

17 A Yes.

18 Q And is that the car you referenced that had the hood
19 up?

20 A Yes.

21 Q Okay. I'm going to show you State's Exhibit 39.
22 What is that a picture of?

23 A That is the scene that I observed with blood, tools
24 laying around everywhere.

25 Q Okay. And that's the scene as you observed it on

1 that night?

2 A Yes.

3 Q Okay. I'm going to show you State's 47.

4 A Yes.

5 Q Do you recognize that?

6 A Yes. Those were some of the tools that were at that
7 location.

8 Q And does there appear to be a reddish substance on
9 one of the tools?

10 A Yes. Has the same form of blood.

11 Q Okay. I'm going to show you State's Exhibit 43. Is
12 there anything significant about that picture?

13 A Yes. There's the metal pole. There's a lot of blood
14 in the driveway.

15 Q And then I'm going to show you State's Exhibit 51.
16 What does that appear to be?

17 A It appears to be a bandanna or some type of scrunchy
18 that women wear in their hair.

19 Q Is there blond hair attached to that scrunchy?

20 A Yes, yes.

21 MS. FOWLER: Okay. Your Honor, at this time the
22 State would move 51, 43, 47, 39 and 37 into evidence.

23 THE COURT: Any objection?

24 MR. WARDER: No, Your Honor.

25 THE COURT: All right. In without objection.

1 (WHEREUPON, Exhibit Numbers 37, 39, 43, 47 and 51 were
2 admitted into evidence.)

3 BY MS. FOWLER:

4 Q And I know you just briefly told us what was in each
5 picture, but as I'm publishing these, if you could just
6 explain to the jury again what we're seeing.

7 This is State's Exhibit 37.

8 A Yes. That is the vehicle that the hood was up. And
9 if you'll notice in front of the vehicle is where a lot
10 of the blood and tools and things of that nature were
11 laying.

12 Q Okay. And is this where the blood is?

13 A Correct.

14 Q And I see these pieces of paper. Is that something
15 the sheriff's office crime scene ---

16 A I believe -- I believe so.

17 Q Okay. This is State's Exhibit 39.

18 A That's just a close-up of the scene of the blood
19 splatters and the tools that were laying on the ground.

20 Q Okay. And this is the blood, correct?

21 A Yes, ma'am.

22 Q I'll show you State's Exhibit 47.

23 A Yes. That is the -- one of the wrenches that had
24 blood residue on it.

25 Q Okay. And does there appear to be blood or a reddish

1 substance on the inside of this?

2 A Yes.

3 Q Okay. I'll show you State's Exhibit 43. Is this the
4 metal pole that you were talking about?

5 A Yes.

6 Q Okay. And then this is State's Exhibit 51.

7 A That is the scrunchy with the hair attached.

8 Q Okay. And Ms. Harris was blonde, correct?

9 A Correct.

10 Q Okay. Once you met with Ms. Harris, did you then go
11 inside the house?

12 A Shortly after when we first arrived on the scene and
13 I noticed her, I asked her if she needed medical
14 attention. And as I got closer to her, I could tell how
15 severe her wounds were. And at that point in time, we
16 called medics out to the scene. Severe facial trauma,
17 head trauma, and then she began to explain to me a little
18 bit about what happened.

19 Q Okay. Did you go inside the house at any point?

20 A Yes, I did. I went into the house after we made the
21 scene safe on the outside and waited for backup to come
22 out.

23 Q As you were walking into the house, did you notice
24 anything about the door or the doorframe?

25 A Yes. The doorframe had blood on it. And it's quite

1 obvious with the amount of blood that she had on her there
2 should have been other blood spots somewhere else in the
3 house. There's also a table as you first come into a
4 garage area where they'd converted, I think, to another
5 room. There was blood on the table as well, what appeared
6 to be blood on the table.

7 Q Did you observe anyone inside the house?

8 A I did.

9 Q And who was that?

10 A Her two small children.

11 Q And how did they seem to you? What was their
12 demeanor?

13 A Almost to a point where they were surprised but not
14 surprised. The child, the boy, young boy was a little bit
15 excited over what had taken place.

16 Q Okay. Did you at any point observe the defendant on
17 scene?

18 A I did not.

19 Q Okay. Did you at some point see him during the
20 night?

21 A I did.

22 Q And when was that?

23 A When I came out of the house after making the kids
24 safe and waiting on family to get there, I came down the
25 driveway. And Deputy Shen was mirandizing Mr. Harris --

1 or Mr. Kelley. He was mirandizing him outside. And
2 that's the first time I laid eyes on him.

3 Q Okay. So you were aware that the defendant had been
4 given his Miranda warnings.

5 A Yes. As I was approaching him, he was being
6 mirandized.

7 Q Okay. Did you go to the hospital with the
8 defendant?

9 A I did.

10 Q And did you observe any injuries to the defendant?

11 A Yes. He had a laceration behind his left ear. He
12 had blood on him, but I do not think it was his because it
13 was on the inside and the outside of his hands.

14 Q Okay. Did you observe any lacerations to his face?

15 A I did not.

16 Q Any injuries to the rest of his body?

17 A No, I didn't.

18 Q Did the defendant at any point make any statements to
19 you?

20 A He made two statements: one in the back of the
21 ambulance, and also, he also made a statement at the
22 hospital.

23 Q And what were those statements?

24 A After he had been mirandized and placed in the back
25 of the ambulance, he told me that I'm to blame for it all

1 and that it's all my fault, basically, not verbatim. And
2 then at the hospital I asked him what happened, and he
3 basically said, "It's all my fault." He said, "It
4 happened so fast, you'll have to ask my dad because he saw
5 everything."

6 Q Okay. Going back to the objects you observed on
7 scene, did you observe any bat?

8 A I did not observe a bat.

9 Q Did you observe a utility trailer?

10 A I did observe a utility trailer.

11 Q Okay. After your involvement with the defendant at
12 the hospital, did that conclude your involvement with the
13 case?

14 A Yes, it did.

15 Q Okay. Last question. Do you see the man you saw on
16 scene today in the courtroom?

17 A I do.

18 Q And can you identify him for the record?

19 A (Indicating) It's the defendant. Is it --
20 Mr. Kelley, I believe it is.

21 MS. FOWLER: Yes.

22 Let the record reflect that Officer Hayes has pointed
23 out the defendant in the courtroom.

24 No further questions.

25 THE COURT: Can you turn this off?

CROSS EXAMINATION

BY MR. WARDER:

Q You told us that you saw on the tools a red substance that appeared. Did you do any test to confirm that whether that was blood or whether it was human blood?

A No, sir. That's forensics' job. It's not mine.

Q Okay. Did you do anything to preserve it or get it to forensics?

A We always preserve a scene every time we get onto a situation like that. So nothing was touched or handled until forensics arrived on scene for that.

Q Nothing was put in a bag so it wouldn't be contaminated or anything like that.

A No, no.

Q Do you know whether any of it was tested to see if it was human blood?

A I do not know whether it was tested.

Q Do you know whether anybody tested the type to see which individual it might have come from?

A I do not. That's -- again, that's forensics that would handle that.

Q So you just observed and kind of did the action you told us about to take the victim to the hospital.

A Well, again, I was one of the original officers on scene. I witnessed the scene, secured the scene. I

1 secured the children and -- while they went next door. So
2 I had a major involvement in it. But as far as examining
3 blood or anything like that, that's not the duties of one
4 of the patrol -- Uniform Patrol officers. That is
5 something that the forensics guy would do.

6 Q Forensics should have done that, is what you're
7 talking about.

8 A Yeah. That's something forensics would do.

9 MR. WARDER: Okay.

10 THE COURT: Redirect?

11 MS. FOWLER: No, Your Honor.

12 THE COURT: All right. You may step down.

13 MS. FOWLER: Your Honor, may we approach?

14 THE COURT: Yes.

15 (WHEREUPON, a bench conference was held off the record.)

16 THE COURT: All right. Ladies and gentlemen, we are
17 moving along a lot swifter than I thought.

18 The State has indicated that their last witness --
19 correct?

20 MS. FOWLER: Yes, Your Honor.

21 THE COURT: --- was not available until in the
22 morning, so it went quicker than we thought. So you get
23 out the same time as probably your kids do today.

24 So we are going to go ahead and take a break. We'll
25 start back at 9:30 in the morning.

1 Don't discuss the case. Don't do any type of
2 research about the case or the parties or law or anything
3 like that. Don't pay any attention to media coverage.
4 And finally, if anybody talks to you or contacts you other
5 than somebody from the clerk's office, then please let the
6 bailiffs know.

7 I'm going to tell you in the morning it's going to be
8 major chaos here. We have all kinds of stuff going on in
9 the other courtroom. You may want to be here a little bit
10 early because there's going to be a lot of people here
11 that are matters unrelated to this. So just give you a
12 fair warning. So if you get stuck and are having trouble
13 finding a parking place, feel like you're running late,
14 then that's -- hey, we're not going to send a deputy out
15 to get you. But we realize it's going to be very chaotic
16 in the morning.

17 So with that being said, y'all have a good evening,
18 and we will see you back in the morning at 9:30. Does
19 9:30 work for everybody? Okay. See you in the morning.

20 (WHEREUPON, the jury exits the courtroom at 2:47 PM.)

21 THE COURT: Just to let y'all know on the record, the
22 detective said that an officer said that if the jury
23 wanted to come in a little bit before 8:30, that they
24 would let them -- they would make arrangements for them to
25 come in. And I told him to let the bailiff know that they

1 could. Because not only do they have a bunch of bond
2 cards, but there's some plea that they're doing first
3 thing in the morning that is going to be beyond crazy. It
4 will be all kinds of media here. So it's going to be
5 quite chaotic. So plan accordingly.

6 MR. WARDER: Your Honor, if I needed a vacant jury
7 room or conference room or something from about 8:30 in
8 the morning, would one of those be someplace I could ---

9 THE COURT: Yes. We'll definitely make arrangements
10 for you.

11 MR. WARDER: Okay. I will be here when the
12 courthouse is unlocked.

13 THE COURT: And if y'all can, let him in a little bit
14 earlier. If you want to be here before 8:30, we'll make
15 sure you get in.

16 MR. WARDER: Thank you.

17 THE COURT: I can get you a room.

18 All right. Anything before we break from the State?

19 MS. FOWLER: Nothing from the State, Your Honor.

20 THE COURT: Defense?

21 MR. WARDER: No, Your Honor.

22 THE COURT: All right. You have a good evening.

23 MR. WARDER: One more question just to check and make
24 sure. My client will be here at 8:30, too, won't he?
25 Okay. I need to talk to my witnesses outside, and I need

1 to talk to him in the morning and be ready to go at 9:30.

2 THE COURT: All right. We'll see y'all in the
3 morning.

4 (WHEREUPON, a recess is taken at 2:49 PM; Court's Exhibit
5 Number 1 was marked for identification.)
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1 Thursday, April 27, 2023

2 (WHEREUPON, proceedings reconvened at 9:27 AM.)

3 THE COURT: All right. Is the State ready?

4 MS. FOWLER: Yes, Your Honor.

5 My first witness would be the doctor. I planned on
6 qualifying her as an expert in emergency medicine and just
7 going through that voir dire, but if Mr. Warder is willing
8 to stipulate that she's an expert in emergency medicine,
9 that might speed things along.

10 THE COURT: We're not in a speedy mode, actually.
11 We've got plenty of time. So whatever you need to do.

12 But your witness is here?

13 MS. FOWLER: She is here, yes.

14 MR. WARDER: Your Honor, I would stipulate.

15 THE COURT: Okay. Well, we can -- you can still go
16 through the process on the record and you can stipulate.
17 Just normal fashion.

18 MS. FOWLER: Yes, Your Honor.

19 THE COURT: All right. Bring the jury in.

20 (WHEREUPON, the jury entered the courtroom at 9:29 AM.)

21 THE COURT: Good morning. Most of you look pretty
22 dry.

23 I believe y'all -- before y'all left, y'all selected
24 Brad Tinsley as the foreperson, so thank you for serving
25 in that role.

Q What kind of doctor are you?

1 A Emergency room physician.

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

4 A Yes. So I did four years of a college degree and
5 then I did four years of medical school. I took a little
6 bit of the scenic route. I did two years of family
7 medicine residency before I did three years of emergency
8 room medicine, residency at Prisma Health and then I
9 signed on to be an attending physician there.

10 Q Okay. And you currently work in an emergency room,
11 correct?

12 A I do.

13 Q Do you have to have ongoing training as part of that
14 job?

15 A Yes. We have to do continuing medical education
16 every year to maintain our license requirement.

17 Q Okay. And have you worked anywhere else besides your
18 current position?

19 A No.

20 Q So you've always been an emergency room physician.

21 A That's right.

22 MS. FOWLER: Your Honor, at this time the State would
23 have Dr. Shah qualified as an expert in emergency
24 medicine.

25 THE COURT: All right. And any voir dire? Any

1 objection?

2 MR. WARDER: No, Your Honor.

3 THE COURT: All right. Ladies and gentlemen,
4 normally, a witness cannot testify about any opinions or
5 conclusions. They can only testify about what they
6 directly observed, heard, felt, those kind of things. The
7 exception to that is an expert witness. And then they can
8 testify about conclusions or opinions in their particular
9 field in which they're qualified as an expert in this
10 field. This witness is qualified as an expert in
11 emergency medicine.

12 Now, just like every witness, though, you're to give
13 it the weight and value which you feel is appropriate.

14 All right. You may proceed.

15 MS. FOWLER: Thank you, Your Honor.

16 BY MS. FOWLER:

17 Q Dr. Shah, were you working in the emergency room on
18 February 23, 2021?

19 A Yes, I was.

20 Q And did you see the victim, Kelli Harris, as a
21 patient?

22 A I did.

23 Q Okay. I'm going to approach with what's been entered
24 as State's Exhibit 4. Is this Ms. Harris as you saw her
25 on that day?

1 A That is.

2 Q Okay. Can you explain the process when someone is
3 first admitted to the emergency room?

4 A Sure. So somebody comes in typically either by
5 ambulance or through our waiting room, and they are asked
6 several questions about why they're there. Their vitals
7 are taken, and then based on their vitals plus why they're
8 there, they're assigned an acuity level. And then once
9 they are assigned an acuity level, they present to the
10 part of the emergency department where physicians or
11 providers are there to take care of them and ask them
12 further questions about why they came in.

13 Q Okay. And what were your initial observations about
14 Ms. Harris?

15 A So as you can see, she had come in with the chief
16 complaint of being assaulted, and she had a lot of facial
17 swelling. She had a lot of lip swelling that was
18 progressively changing while we were there and taking care
19 of her, and a lot of cuts and bruises that we noticed on
20 her face. She came in with that cervical collar that was
21 placed on her before she came into the emergency
22 department. But she was able to talk to us and give us a
23 history and why she'd come in.

24 Q Okay. And you said that lip swelling was getting
25 worse as she was there?

1 A Yes. So it had started on one side, and then we had
2 started to notice it had moved to the other side. But it
3 had stabilized by the time we had seen her and evaluated
4 her.

5 Q Were you able to tell if this lip swelling was caused
6 by trauma?

7 A With the surrounding bruising, it did appear that the
8 lip swelling was related to trauma and not allergic
9 reaction, which would be the other cause.

10 Q Okay. What other injuries did you observe to the
11 victim?

12 A She had a cut to the left forehead, about
13 1 1/2 centimeter. And then she did have some cuts and
14 bruises up near the left side of the jaw as well as some
15 swelling to the right side of the jaw.

16 Q And at some point, was the blood removed from
17 Ms. Harris's face?

18 A Yes. We did wash out that wound on the left forehead
19 to clean it up to repair it.

20 Q I'm going to show you what's been admitted as State's
21 Exhibit 7. Do you see those cuts that you just
22 referenced?

23 A Yes. So the cut on her left forehead is the one that
24 we did suture in the emergency department, so we had to
25 wash off her face to be able to examine that a little bit

1 closely. And then she did have the bruising and the
2 swelling on each side of her face.

3 Q Okay. And when you say sutures, what exactly is a
4 suture?

5 A It's a stitch. So if somebody has a cut that needs
6 the skin to be pulled together, sometimes they require
7 stitches or staples. With this being on the face, we
8 usually do stitches.

9 Q Okay. And did she have more than one stitch applied?

10 A She did. She had three stitches to the left forehead
11 that we did in the emergency department.

12 Q And notice that her eyes are black in this picture,
13 correct?

14 A Yes.

15 Q What is the significance of black eyes? What kind of
16 injury is that?

17 A That's usually traumatic. But she had a lot of
18 bleeding and bruising that I didn't actually have this in
19 front of me. She was not, you know, this presentable with
20 all the blood, so I didn't actually appreciate a lot of
21 bruising that had turned to this color when I had seen her
22 since this takes a little bit of time to progress.

23 Q Okay. Is there anything significant about the colors
24 of the bruises in this picture?

25 A They are purple, and usually older bruises tend to be

1 more yellow, pink and purple or actively red. Reddish,
2 pink, purple tend to be more fresh.

3 Q Okay. So when you first saw Ms. Harris, was it your
4 opinion that the attack had just recently happened?

5 A Yes.

6 Q Or the injuries had just recently happened?

7 A With the amount of swelling that she had plus with it
8 being on both sides and her history of what she had said
9 had happened, we took that to value that this had just
10 happened.

11 Q Okay. And was there anything significant about the
12 bleeding from her face? Was it actively bleeding?

13 A No. There was no active bleeding. It had stopped
14 bleeding, which is reassuring in the sense that we didn't
15 have to actively cauterize or do anything differently. We
16 were able to just clean up a lot of the bruising and
17 bleeding and then stitch her forehead.

18 Q Okay. And were you able to tell if any of her
19 injuries were caused by a weapon?

20 A I could not tell at that particular moment.

21 Q Okay. You mentioned the extreme swelling to her
22 face. Was there anything significant about the swelling
23 to her jaws?

24 A So she had a lot of swelling to the jaw and swelling
25 to the lip, and so when she first came in, our initial

1 concern was her ability to breathe. As with any traumatic
2 injury that comes in, that is the first priority that we
3 make sure that their airway is intact. She was able to
4 speak, so that did tell us that she was able to breathe
5 and her airway was intact. But with the amount of facial
6 swelling that she had, when we saw her, we try to get her
7 to a CT immediately to evaluate the extent of the
8 injuries.

9 Q Okay. And what is the purpose of a CT scan?

10 A In trauma, the purpose of CT scans are to evaluate
11 for injuries.

12 So our exam is only as good as what we see
13 externally. I can't see what's going on internally, so
14 she did CT -- we did CTs of her head to look for any
15 bleeding in the brain, CTs of her face because of the
16 significant amount of facial swelling at the jaw with the
17 cuts on her left forehead, as well as on her jaw she had
18 some bruising and some cuts. And then we did a CT scan of
19 her neck as well to look for any injuries to the neck
20 because she came in with a collar.

21 Q Okay. So is a CT scan more of an internal ---

22 A Yes. So it takes slices. So if somebody is --
23 they're placed on this table, and it goes through this
24 tunnel and it takes several slices of their anatomy. And
25 we can see pictures to look at bones, muscle, internal

1 organs for any damage.

2 Q And was there a concern that Ms. Harris had a
3 concussion?

4 A So a concussion is not diagnosed based on a CT scan.
5 It is diagnosed clinically, which means that once you take
6 off -- so she had no bleeding in the brain on her CT scan.
7 She did have some nasal fractures that were seen on the CT
8 scan only because those were the pictures taken at the
9 time. But the concern for a concussion is clinical in the
10 sense that if there's reported trauma to the brain or the
11 head, down the road there could be concussion related
12 injuries, so headache if you're overstimulating the brain,
13 dizziness, sometimes memory loss, depending on the degree
14 of the injury.

15 Q Okay. Can you explain what exactly a concussion is?

16 A A concussion is a -- it's just a medical term for
17 bruising of the brain related to a traumatic injury to the
18 head.

19 Q And when you say "traumatic injury," what does that
20 mean?

21 A So trauma is any car accident, assault, fall,
22 essentially something that's external that's happening to
23 you.

24 Q So would that be a force applied to the body?

25 A That's right.

1 Q Okay. And you mentioned nasal fracture. Were there
2 any other fractures you observed?

3 A So on her head CT, she did have nasal fractures. And
4 I'm just going to look at my notes just so I don't speak
5 unclearly. But she did have nasal arch fractures that
6 were seen on her head CT. And then, on her face CT, we
7 did find bilateral, which means both sides, jaw bone
8 fractures, essentially.

9 Q Okay. And I'm going to show you what's been entered
10 as State's Exhibit 8. Do you recognize what that is on
11 her face?

12 A You're talking about this?

13 Q Yes.

14 A Yes. That is nasal cannula or sometimes provides
15 oxygen, but with the yellow it sometimes just monitors
16 their breathing.

17 Q Okay. Can you explain again what the purpose of
18 having this on a patient's face is?

19 A So the yellow portion on the left side of her face is
20 sometimes called end-tittle monitoring. It allows us to
21 keep an eye on how effective her breathing is. If at the
22 same time it's connected to an oxygen tank, which I can't
23 tell from this picture, then it would be offering her
24 oxygen.

25 Q Okay. And did you observe any trauma to Ms. Harris's

1 neck?

2 A She had some bruising to the neck, but she did not
3 have any injuries to the cervical spine.

4 Q Okay. Did you notice anything -- any injuries to
5 Ms. Harris's teeth or mouth?

6 A She did have some cracked teeth, and then we talked
7 about the lip swelling.

8 Q Okay. Did you refer Ms. Harris to any other doctors
9 after you saw her?

10 A So after I saw her, we did have the trauma surgery
11 team come see her because she needed to be admitted to the
12 hospital with her mandibular fractures. We also did talk
13 to the plastic surgeon on call that night to talk to him
14 about fixing her jaw.

15 Q So she had to be admitted for an extended stay or
16 surgery?

17 A She needed to be admitted for surgery because she had
18 broken both sides of her jaw. And with those injuries,
19 you would not be able to eat until that was fixed. And so
20 because of that, she was admitted to the hospital under
21 the trauma service.

22 Q Can you tell us about any other difficulties someone
23 with a jaw fracture would experience?

24 A Depending on the extent of the jaw fracture, opening
25 and closing the mouth, feeding is the big one, and then

1 speaking with opening and closing the mouth.

2 Q Okay. Have you treated the victim since that day?

3 A I have not.

4 Q And is your job solely to treat people who are
5 initially admitted to the hospital?

6 A Once they're in the emergency department, yes, ma'am.

7 MS. FOWLER: Okay. No further questions, Your Honor.

8 THE COURT: Cross-examination?

9 MR. WARDER: Your Honor, we have no questions of this
10 witness.

11 THE COURT: All right. Thank you. You may step
12 down.

13 MS. FOWLER: Your Honor, at this time the State would
14 rest.

15 THE COURT: All right. Ladies and gentlemen, we're
16 moving on. At this time the State has rested their case
17 in chief. At this point there's some things that I need
18 to go over with the attorneys procedurally, so I'm going
19 to send you back in your jury room. Do not discuss the
20 case. And it may be a few minutes before we bring you
21 back out.

22 All right. See you back in just a few minutes, or
23 maybe closer to 30 minutes.

24 (WHEREUPON, the jury exits the courtroom at 9:44 AM.)

25 THE COURT: All right. Anything else from the State

1 at this time?

2 MS. FOWLER: No, Your Honor.

3 THE COURT: All right. The defense?

4 MR. WARDER: Of course, Your Honor, for the record, I
5 would move for a directed verdict at this time. The
6 State's failed to present sufficient evidence that any
7 jury could find that it was a high and aggravated nature
8 beyond a reasonable doubt, and I would ask you ---

9 THE COURT: And I believe that there is. There's
10 been sufficient evidence for the matter to be submitted to
11 the jury. So I think it's a factual issue for the jury,
12 so I'm going to deny your motion.

13 At this time -- let me ask you this. Do you plan to
14 present any evidence, Mr. Warder?

15 MR. WARDER: Yes, Your Honor, I do.

16 THE COURT: All right. Does your client plan to
17 testify? And I'll go through this.

18 MR. WARDER: Yes, Your Honor, he does.

19 THE COURT: Okay. All right. Well, let me go
20 through this process and then we'll take a break.

21 What I like to do is I'll explain your rights to you,
22 Mr. Kelley, and then I'm going to take a break and I'll
23 come back and make sure you've had sufficient time.

24 First of all, before I get started with this, what is
25 his criminal record that can be used to impeach him?

1 MS. FOWLER: He has no criminal record, Your Honor.

2 THE COURT: Okay. All right. If you'll stand,
3 Mr. Kelley. If you'll raise your right hand.

4 (WHEREUPON, JOSHUA KELLEY is duly sworn.)

5 THE COURT: And these questions and anything you'll
6 be saying is just related to your right. You can put your
7 hand down. It has nothing to do with any of the testimony
8 relating to the matter.

9 All right. We're at the stage of trial where the
10 State has rested. As your attorney I'm sure has advised
11 you, it is now the opportunity for you and your attorney
12 to present any evidence or defense which you feel is
13 appropriate. But I will advise you that you have a right
14 to testify and you have a right to present a case. Let's
15 go over your testimony first.

16 You have a right to testify, and you also have a
17 right not to testify. If you decided not to testify, then
18 this jury would be instructed that they cannot consider
19 that because that's your constitutional right, Fifth
20 Amendment right not to testify. And they could not even
21 consider that, and it cannot be in any way used against
22 you.

23 You also have a right to testify. And if you
24 testify, then you'll be subject to the same
25 cross-examination as any witness. The solicitor has

1 indicated there's no criminal record that can be used
2 against you. But everything else could be used that's
3 subject to proper cross-examination.

4 Ultimately, the decision is yours to make. You can
5 consult with your attorney, family members, whoever you
6 need to consult with. But ultimately, the decision is
7 going to be yours.

8 So in that regard, let me ask you this. Are you
9 under the influence of any alcohol, drugs or medication
10 today?

11 DEFENDANT KELLEY: No, Your Honor.

12 THE COURT: Do you have any health or mental issues
13 which would keep you from understanding what's going on?

14 DEFENDANT KELLEY: No, Your Honor.

15 THE COURT: All right. So also, as your attorney has
16 probably told you, there are some strategic reasons
17 sometimes not to testify and present any evidence. If you
18 don't present any evidence including your testimony, then
19 your attorney would get final closing argument, and
20 sometimes that's a real strategic reason. That's
21 something that y'all need to discuss out.

22 So do you understand that you have a right to
23 testify?

24 DEFENDANT KELLEY: Yes, sir.

25 THE COURT: And you understand you also have a

1 constitutional right not to testify?

2 DEFENDANT KELLEY: Yes, sir.

3 THE COURT: And do you want to have additional time
4 to talk with your attorney before I ask you what your
5 decision is?

6 DEFENDANT KELLEY: No, sir.

7 THE COURT: Are you prepared at this time to tell me
8 what your decision is?

9 DEFENDANT KELLEY: Yes, sir.

10 THE COURT: Okay. Do you wish to testify?

11 DEFENDANT KELLEY: Yes, sir.

12 THE COURT: And do you wish to present additional
13 evidence?

14 DEFENDANT KELLEY: Yes, sir.

15 THE COURT: All right. And is this decision your
16 decision?

17 DEFENDANT KELLEY: Yes, sir.

18 THE COURT: And is this made freely and voluntarily?

19 DEFENDANT KELLEY: Yes, sir.

20 THE COURT: Has anybody promised you anything to make
21 this decision?

22 DEFENDANT KELLEY: No, sir.

23 THE COURT: Has anybody threatened you?

24 DEFENDANT KELLEY: No, sir.

25 THE COURT: And this is your decision and your

1 decision alone.

2 DEFENDANT KELLEY: Yes, sir.

3 THE COURT: Okay. I do find that you have been
4 properly notified of your right to testify and also your
5 constitutional right under the Fifth Amendment and that
6 you made the decision to testify. That's been freely and
7 voluntarily and intelligently made.

8 And I will take a break at this point, just a short
9 break. I mean, are you ready to proceed as soon as we
10 come back from the break, Mr. Warder?

11 MR. WARDER: Yes, sir.

12 THE COURT: All right. We'll take a short break.

13 And, Mr. Kelley, I'll just ask you again if you had
14 any additional time to discuss it with your attorney and
15 just ask if that's still your decision.

16 All right. Short break, ten minutes.

17 Just for planning purposes, Mr. Warder, your client
18 is testifying. And how many other witnesses do you think?

19 MR. WARDER: May have one other witness, Your Honor.

20 THE COURT: Okay. And again, I'm not holding you to
21 that. Just general plan.

22 MR. WARDER: Yes, sir.

23 THE COURT: All right. Ten minute break.

24 (WHEREUPON, a recess is taken at 9:50 AM; proceedings
25 reconvened at 10:11 AM.)

1 THE COURT: All right. Mr. Josh Kelley -- we're back
2 on the record here -- now that we've taken a break and
3 you've had an opportunity to discuss with your attorney,
4 do you still stick with your decision to testify and
5 present evidence?

6 DEFENDANT KELLEY: Yes, Your Honor.

7 THE COURT: All right. Do you have any questions of
8 the Court?

9 DEFENDANT KELLEY: No, sir.

10 THE COURT: All right. At this time, if everybody --
11 is the State ready?

12 MS. FOWLER: Judge, I would like to put on the record
13 just because I've had this happen before, I would like the
14 defendant to be instructed if he does testify, he cannot
15 talk about the potential sentence that this charge
16 carries, sentencing, prison time or anything like that.

17 THE COURT: Yeah. And you realize that, Mr. Kelley,
18 that you cannot discuss any consequences of any possible
19 conviction. All right. You understand that?

20 DEFENDANT KELLEY: Yes, sir.

21 THE COURT: All right. Defense ready?

22 MR. WARDER: Yes, sir.

23 THE COURT: All right. Bring the jury in.

24 (WHEREUPON, the jury entered the courtroom at 10:13 AM.)

25 THE COURT: All right. Ladies and gentlemen, I

1 appreciate your patience. Had some logistical issues to
2 deal with.

3 As you will recall, the State rested their case
4 before the break, and at this time the defendant has the
5 opportunity to present any evidence that they wish to
6 present at this time.

7 So Mr. Warder, you may call your first witness.

8 MR. WARDER: Your Honor, if it please the Court, I
9 call Mr. Kelley, Sr., the father of my client.

10 THE COURT: All right. If you will have him come
11 forward at this point.

12 THE CLERK: Raise your right hand.

13 WHEREUPON,

14 EDWARD "TONY" KELLEY

15 After having been duly sworn, testified as follows:

16 THE CLERK: Thank you, sir.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. WARDER:

20 Q Mr. Kelley, where do you live at?

21 A [REDACTED] Roanoke Road, Liberty, South Carolina.

22 Q And how long have you lived at that address?

23 A All my life.

24 Q Okay. And you say all your life. It was a place you
25 were raised as a child?

1 A Yes, sir.

2 Q And through some process, you became the owner of
3 that real estate?

4 A My son owns it, my oldest son.

5 Q Okay. Were you there on February 23rd of 2021?

6 A Yes, sir.

7 Q And that was the day there was an altercation between
8 your son ---

9 A Yes, sir.

10 Q --- and the lady that lived with him?

11 A Yes, sir.

12 Q Okay. And were you a witness to that?

13 A Yes, sir.

14 Q Okay. What time of the day did that occur?

15 A Over in the evening.

16 Q Okay. When you say "over in the evening," was it
17 still light outside?

18 A Yeah. Yes, sir.

19 Q Okay. What had you been doing that day?

20 A Where I usually -- nothing much. I went after I seen
21 them for a little while.

22 Q Okay. You're confined to a wheelchair?

23 A Yeah. I was where I could walk a little bit at that
24 -- that time, but I've deteriorated since then. I'm in a
25 wheelchair all the time.

1 Q Okay. Did you live alone there?

2 A Yes, sir.

3 Q Okay. And where did your son live?

4 A Right next door to me at [REDACTED] Roanoke Road.

5 Q Okay. And so when you're out there at your house on
6 Aurora [sic] Road, is -- the house that you live in is a
7 brick house?

8 A Yes, sir.

9 Q And your son lived in what kind of house?

10 A Block house.

11 Q Okay. And that was Josh?

12 A Yes, sir.

13 Q And did Josh live alone or did he live with someone?

14 A He lived with -- well, at that time he was living
15 with Kelli Harris.

16 Q Okay.

17 A She was living with him.

18 Q And how long had Kelli and Josh lived there?

19 A I don't really know. About a year or two, you know.

20 Q Okay. Did Kelli live there alone with Josh or did
21 she have part of her family there?

22 A She had two of her children.

23 Q Okay. So on the property next to you as residents
24 was Kelli and her two children?

25 A Yes, sir.

1 Q And your son?

2 A Yes, sir.

3 Q And they all lived together.

4 A Yes, sir.

5 Q Okay. On the 23rd, what time did you first see him
6 that day?

7 A It was a little after lunch that I went out that way.
8 I'd been out there a little while before the problem
9 happened.

10 Q Okay. And what were people doing out there? What
11 was Josh and what was Kelli doing?

12 A Well, besides -- besides drinking, they were just
13 doing normal stuff.

14 Q Okay. When you say "drinking," were they both
15 consuming alcohol?

16 A Yes, sir.

17 Q Okay. And did you have occasion to see what they
18 were drinking?

19 A It was -- it was vodka.

20 Q Okay. And how was everybody getting along?

21 A Pretty well. I mean, they wasn't -- you know, when
22 Joe -- when Joe's problems happened, they were just fine.

23 Q Okay. Were you there when they were working on a
24 car?

25 A Yeah. She had come in from the store. And where it

1 had happened, the fan belt had come off of the car. And
2 they started to -- Josh started to work on it.

3 Q Okay. Now, when the fan belt come off, I take it
4 they had to -- the car was parked in the yard?

5 A Well, it was parked in the yard when we come in and
6 found out the fan belt was off. It run hot on her before
7 he had done coming back from the store.

8 Q Okay. You could see the evidence of that?

9 A Yes.

10 Q Water was boiling out?

11 A Yeah. It was -- it was steaming and everything.

12 Q Okay. Did you stay outside while they worked on the
13 car?

14 A Yeah. I was outside.

15 Q Okay. Now, you can't get around to help with ---

16 A No, no. I was kind of supervising, you might want to
17 say. I was just out there talking to him while he was
18 trying to fix the car.

19 Q Okay. Was Kelli working on the car too?

20 A No. She -- she had been in the house, and she come
21 out there when we was working on the car. But she wasn't
22 really doing anything at that point. She was worried
23 about how she was going to get her kids to school the next
24 day because she took them to school.

25 Q Okay. This was a Sunday?

1 A Yes, sir. I believe -- I believe -- I believe it
2 was. I can't remember the exact date it was, like I said,
3 on a Monday, but I know the next day was a school day.

4 Q Okay. What happened while they were working on the
5 car? Were they getting along?

6 A Well, no. There was -- she -- she was arguing about
7 what he was doing to the car. He couldn't -- he couldn't
8 get to the fan belt. And then he changed their argument
9 from that to a cell phone that he had stolen from him a
10 couple weeks prior. And he said she knew who had the
11 phone. And evidently, the people that had got the phone
12 had sent dirty texts to his oldest daughter.

13 Q What happened when they were arguing about the phone?
14 Did that get physical?

15 A Eventually, it did, yes, sir.

16 Q Okay. What happened when it got physical?

17 A She grabbed the -- she grabbed a skateboard and went
18 past me. I couldn't see -- where I was sitting, I
19 couldn't see right. And then all of a sudden, my son went
20 like that (gesturing), and they come back in my view and
21 were wrestling over the skateboard.

22 Q Okay. What kind of skateboard was it?

23 A Just a regular skateboard. I think you stand on it
24 and skate.

25 Q Who used the skateboard in the house?

1 A The kids.

2 Q Okay. And what was Kelli doing with the skateboard?

3 A Well, her and Josh was wrestling over it. That's all
4 I know. I assumed that she was going to hit him with it,
5 but I couldn't see that part. They were behind me.

6 Q Okay. What happened when they came back into your
7 view with the skateboard?

8 A They were still wrestling over on -- and they were
9 leaning over the bands and stuff on the trailer and
10 wrestling around that way. Eventually, they hit the
11 ground.

12 Q Okay. Now, you said they were wrestling over a
13 trailer. What kind of trailer was it?

14 A It's one like you hook up behind a car and pull. It
15 was -- it was just a short -- short trailer. It wasn't a
16 big long -- nothing like that.

17 Q When you say "short," can you give the jury some idea
18 of what you're talking about?

19 A Well, about -- the normal trailer that you pull
20 behind a car, about six or seven feet long, and the
21 regular width of the car, just a little smaller, that you
22 just hook on the bumper, you know, the ball and pull stuff
23 around with.

24 Q Okay. And this trailer, how long was it?

25 A Like I say, it was -- it was about seven foot long.

1 Q Okay. And that's from the tip of the tongue to the
2 back?

3 A Yeah, yeah. I'm not including the little part right
4 there where you hook it up at. It probably was eight foot
5 or something like that when you add that into it.

6 Q Okay. When you say they were fighting over the
7 trailer, were they wrestling over something or were
8 they ---

9 A They was wrestling over it with the skateboard. And
10 they were wrestling along the trailer. The trailer had
11 sides on it, regular -- you know, regular sides, just
12 keeps stuff from falling off of it. And they were kind of
13 bent over the sides wrestling over that skateboard.

14 Q Okay. What then happened?

15 A Well, like I said, they eventually -- eventually fell
16 and hit the ground right there at the skateboard. Where
17 they dropped the skateboard, it hits the ground right in
18 front of me. And then as they got up, Kelli had a wrench,
19 and she hit Josh with the wrench. And he pushed her way,
20 and she hit the ground again.

21 Q Okay. When you say she hit him with a wrench, where
22 did she hit him at?

23 A Up around -- around the head area.

24 Q Okay. And what did he do?

25 A He just pushed her -- pushed her away.

1 Q Okay.

2 A And she fell and hit the ground right there in front
3 him.

4 Q How far were you from that?

5 A I was pretty close. They was right in front of me at
6 that point in time.

7 Q Okay. Where was the car at that they were working
8 on?

9 A Right -- like I was sitting here, the car would be
10 right -- right about here. And then the trailer was kind
11 of over here, and they were right here in front of me.

12 Q If I was to show you what's been marked State's 37,
13 would that be the area you were talking about?

14 A Yes, sir. I would be sitting back over right about
15 in here (indicating), in this area right over here. Not
16 too far past that.

17 Q Okay. And did they fall in front of the ---

18 A They fell -- the first time they fell was right here
19 (indicating) when the -- when the wrench and all went on.

20 Q Okay. You're indicating an area about in the middle
21 of the ---

22 A Well, in this asphalt area right here (indicating).

23 Q Okay. That's a hard surface ---

24 A Yeah, yeah.

25 Q --- area.

1 I'm going to show you what's been marked as State's
2 Exhibit 32. Photograph 32 has some things laying on the
3 ground.

4 A Yeah. But they were more -- the first time they were
5 more over here past this -- this right here (indicating)
6 the first time they fell. Then -- then the second time
7 was over in this area over here (indicating).

8 Q Okay. What happened -- they were arguing, you told
9 us, over pulling -- over a skateboard the first time they
10 lost their balance.

11 A Yeah, yeah. But when they fell and the wrench and
12 all just happened, the skateboard was kind of out of the
13 picture. It wasn't anymore in the picture.

14 Q Okay. And then she picked up one of the wrenches?

15 A Yeah. Yes, sir.

16 Q And she hit Josh with it.

17 A Yes, sir. Yes, sir.

18 Q Okay. What happened then?

19 A Well, after that, Josh, like I say, he pushed her
20 away and she moved forward. And he said, "I'm going in
21 the house, get my clothes and go out to dad's."

22 Q Well, what did you notice happened as events? What
23 happened next? Did Josh go in the house?

24 A Yeah. Right after that he went in the house.

25 Q Okay. And did he reemerge from the house?

1 A Well, when he went in the house, she jumped up,
2 grabbed the pipe and went in the house. They met on the
3 porch and the kids come out and told me they were
4 fighting.

5 Q Okay. You saw her grab a pipe and go into the house?

6 A Yes, sir.

7 Q I'll show you what's been marked State's Exhibit 43.
8 Do you recognize a pipe in that?

9 A This one (indicating) right there.

10 Q Is that the pipe she had grabbed and went back in the
11 house with?

12 A Yes, sir.

13 Q Okay. And had that pipe been used in the -- working
14 on the car somehow?

15 A Yeah. He was using it. It's a pry bar. Put
16 leverage on his wrenches.

17 Q Okay. So they were using that pipe when they were
18 working on the car.

19 A Yes, sir.

20 Q Now, was she down there working on the car when he
21 was using the pipe too?

22 A No, sir. She just -- she was sitting there close to
23 him at some blocks, and she was sitting on it.

24 Q Okay. You couldn't see her when she was in the house
25 with the pipe, could you?

1 A No. I couldn't see that part, no.

2 Q Okay. Did the pipe reemerge from the house?

3 A Yes, sir.

4 Q Okay. How did it come about and when is the next
5 time you saw the pipe?

6 A When he came out, he had his clothes in his hands,
7 and he come out. And she had one hand on his shoulder,
8 was hitting him in the back of the head with a pipe.

9 Q Okay. She was striking him with the pipe that's
10 shown in State's Exhibit 43?

11 A Yes, sir.

12 Q Okay. When you say that she struck him, how many
13 times did she strike him?

14 A It was about four or five.

15 Q Okay.

16 A Because she was wailing away pretty good.

17 Q Okay. What then happened?

18 A He dropped his clothes and he grabbed the pipe and
19 pulled it out of her hand and threw it in the yard. And
20 then they fell down. And when they fell, they fell real
21 close to -- or I think they hit the pipe that comes up
22 from the oil tank.

23 Q Okay. Is that shown in State's Exhibit 43 also, the
24 pipe that comes up from the oil tank?

25 A Yes, sir. It's right in this area right around in

1 here (indicating). You can't see it. The grass has kind
2 of got it covered. But it's a big, big metal thing.

3 Q What's that there?

4 A That actually might could be it, yeah. It's been so
5 long since I've been out of the house, I can't remember.
6 But it was in that area.

7 Q Okay.

8 A But she -- I know -- I know they come down right
9 where it's at ---

10 Q Okay.

11 A --- that time.

12 Q Okay. How long did this fight continue?

13 A It continued a good little bit. They was just
14 wrestling around on the ground as they -- they hit there.
15 And then -- then he got -- he got back up. And she sat
16 up, and he got back up and grabbed his clothes and took
17 them to the house and come back to get the rest of what he
18 had left.

19 And he went in the house. And when he come out of
20 the house that time for the rest of the stuff, she hit him
21 in his bad knee twice with a baseball bat.

22 Q Okay. Where did the baseball bat come from?

23 A It was laying right beside her.

24 Q Okay. What happened after she hit him with the
25 baseball bat in the knee?

1 A Well, before she could come again, he grabbed a
2 baseball bat and pulled it up. He pulled her up with it.
3 And he pulled it up and threw it in the yard, and then
4 they fell down again. That time they fell past the car.
5 I couldn't -- I couldn't see them. I could see their
6 feet. And then a little bit later, they wrestling around
7 a little bit, and then a little bit later, he got up, got
8 hisself [sic] steady and went back to the house.

9 Q Okay. Did you ever see the baseball bat again after
10 he grabbed it and threw it?

11 A No. I mean, he threw it on out in the yard. I
12 didn't see it. It wasn't nowhere around me.

13 Q Okay. Is there anything else you can remember that
14 happened out there that day?

15 A Well, I mean, after -- after he went back to the
16 house, I stayed out there a little bit with her. She was
17 talking on the phone with her mother at the time.

18 Q Okay. Now, you can't say what they said on the
19 phone, but you can tell us anything you saw them do.

20 A Well, I mean, all I know is she was begging her
21 mother not to call the police, but I think her mother had
22 already done that.

23 MR. WARDER: Okay. Excuse me just a minute, Your
24 Honor.

25 Your Honor, if it please the Court, I have no further

1 questions.

2 THE COURT: Cross-examination?

3 MS. FOWLER: Yes, Your Honor.

4 CROSS EXAMINATION

5 BY MS. FOWLER:

6 Q Good morning, Mr. Kelley.

7 You said that there was some argument about a phone,
8 correct?

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

10 Q Was your son angry during that argument, verbal
11 argument?

12 A Ma'am?

13 Q Was your son angry during that verbal argument?

14 A Yes, ma'am. He -- he was a little bit upset.

15 Q He was mad?

16 A (Non verbal answer.)

17 Q Okay. Who grabbed who first?

18 A Well, like I said, they grabbed the skateboard. And
19 I said he grabbed her first because I saw him grab down,
20 you know, on her -- on her arms.

21 Q Okay. So Joshua grabbed Kelli's body first, the
22 first -- any touching of any bodies came from your son,
23 correct?

24 A The arms, yes. Yes, ma'am.

25 Q Okay. When they were wrestling on the ground, who

1 was on top of who?

2 A It was really, like I said, wrestling around.

3 Sometimes he'd be on top of her, sometimes she'd be on top
4 of him.

5 Q Is it fair to say your son is much larger than Kelli?

6 A Yes, ma'am.

7 Q Okay. Where were the children when this was
8 happening?

9 A Sometimes in the house, sometimes out there.

10 Q Okay. So they were out there during some of this
11 altercation, correct?

12 A Yes, ma'am.

13 Q Okay. Do you remember initially talking to police
14 when they came on scene?

15 A Yes, ma'am. They come out and got Josh.

16 Q And do you remember what you told them?

17 A I told them I didn't want to -- they asked me if I
18 wanted to do a statement. I said not right at this time I
19 didn't want to do one because I was all upset over
20 everything that happened.

21 Q Sure. How long have you known Ms. Harris?

22 A Well, just the time that she was out there with Josh.

23 Q So less than a year or around a year?

24 A Maybe two. Maybe two years.

25 Q But you've known your son for all of his life,

1 correct?

2 A Yes, ma'am.

3 Q When you said you remember talking to the police, did
4 you ever mention a skateboard on that day?

5 A I told him I didn't really want to talk about
6 anything that day. I would give them a statement later
7 because I was upset.

8 Q Okay. Sure. But the first mention of the skateboard
9 is today, correct?

10 A Well, I told my lawyer about -- his lawyer about it
11 whenever I -- the police never came back to me and asked
12 any more questions.

13 Q Sure.

14 What about the wrench? Did you mention that the same
15 day you talked to the police?

16 A No, ma'am.

17 Q Okay.

18 A I said that I was upset and I didn't want to say
19 anything right then.

20 Q Why were you upset?

21 A Because I had never seen that -- that -- I'd never
22 seen her do like that before.

23 Q Did you observe any injuries to Ms. Harris at that
24 time?

25 A I really couldn't see any injuries to her. I was

1 looking for injuries, but I couldn't see any.

2 MS. FOWLER: Okay. No further questions, Your Honor.

3 THE COURT: Redirect?

4 MR. WARDER: No redirect, Your Honor.

5 THE COURT: All right. Thank you.

6 All right. Mr. Warder?

7 MR. WARDER: Your Honor, if it please the Court, we
8 would call the defendant in this particular case.

9 THE COURT: Mr. Kelley, if you'll come around to be
10 sworn.

11 THE CLERK: Please raise your right hand.
12 WHEREUPON,

13 JOSHUA KELLEY

14 After having been duly sworn, testified as follows:

15 THE CLERK: Thank you. If you would, have a seat and
16 state your name for the record.

17 THE WITNESS: Joshua Kelley.

18 DIRECT EXAMINATION

19 BY MR. WARDER:

20 Q Josh, where do you live at?

21 A At [REDACTED] Roanoke Road.

22 Q Okay. And you live there with your father?

23 A No. I lived there with Kelli Harris for ---

24 Q I understand.

25 Is that property, the house you lived in was a

1 trailer?

2 A It's a block house, and dad's house is a brick house
3 right beside it.

4 Q Okay.

5 A Just like probably 245 feet away from each other.

6 Q Okay. And you said you and Kelli lived together.

7 A Yes, sir.

8 Q And did Kelli have other people live with you?

9 A Yes. She had her son and her daughter.

10 Q Okay. So two children living there.

11 A Yes, sir.

12 Q Was Kelli employed?

13 A No, sir.

14 Q Were you employed?

15 A No, sir. I was on disability.

16 Q You draw a full disability?

17 A Yes, sir.

18 Q And why do you draw that disability?

19 A For PTSD and I've got two bad knees. I blew my left
20 knee out in the fall on a gas plant in Tennessee.

21 Q Okay. And so really, you were all living off the
22 pension?

23 A Yes, sir. And dad -- dad would help when it didn't
24 cover.

25 Q Okay. And there was a car that was being worked on

1 that day. Whose car was that?

2 A Yes. That was Kelli's car.

3 Q Okay. Was that the primary means of transportation
4 for ---

5 A Yes, sir. That was the only means of transportation
6 at that time because the other vehicle messed up.

7 Q What happened to the car?

8 A Well, we had took the kids to school, and when I come
9 back, it had overheated on the way back. So me and dad
10 had actually took the kids to school. So we stopped. Had
11 to let it cool down, had to fill it up with water. Then
12 when we got back to the house, we let it sit and cool and
13 I filled it the rest of the way up.

14 Well, after that, you know, this is just a typical
15 day, just me and her. And dad, you know, he come out here
16 I guess about lunchtime. And then after I'd say we all
17 sat around and talked for a little while. And then around
18 probably 3:45, 4:00, me and dad had left to go to the gas
19 station and liquor store. And when we got -- on our way
20 there, the battery light come on. It was making an awful
21 noise.

22 Q What light came on?

23 A The battery light.

24 Q Okay.

25 A Which usually means the belt -- we thought the belt

1 had broke.

2 So when I got back, I opened the hood up and checked.
3 Well, the belt hadn't broke but it come off, it had come
4 loose.

5 Q Okay. The belt come off of the series of pulleys?

6 A Yeah. The serpentine belt, the one that runs all the
7 -- ran all the main pulleys and everything, it had come
8 off. So I pulled it off. Well, we was going to let it
9 cool down because it was still hot from when we just got
10 back from town. And ---

11 Q You wanted to work on it when it was cooler.

12 A Yeah. After it cooled down because I didn't want to
13 burn myself, because you're like all up on the engine and
14 everything right there.

15 So basically, what we did is we went inside and we
16 was talking again. The kids were playing in the living
17 room. Me and dad and Kelli were sitting around the table.
18 And we both were drinking. So it had cooled down enough
19 that ---

20 Q What were you drinking?

21 A Vodka.

22 Q Did you drink vodka?

23 A I actually had two -- three of the minis.

24 Q Okay. When you say "minis," is that a mini bottle?

25 A Yes. A mini bottle.

1 Q Okay. What did Kelli drink?

2 A She was drinking the two fists of vodka that I had
3 got her.

4 Q Okay. How long did you sit around and ---

5 A It was probably about an hour and a half, maybe an
6 hour and 20 minutes to let it get cool. Because
7 naturally, you've got to touch the engine and everything
8 to put the belt back on.

9 Q Okay. Did you go out and start to ---

10 A Yes. It was -- like I said, it was probably about
11 5:45.

12 So we went out there. And I was trying to put it on
13 because usually you slide them on pretty quick, but with
14 everything on the bottom, I couldn't see it that great and
15 it didn't have a -- normally, it's got a little picture of
16 the belt to where you can tell how it goes back on.

17 Q A little schematic drawing.

18 A Yeah. A little schematic drawing.

19 Well, it didn't have one. So I was actually trying
20 to figure it out myself how to get it snaked back around
21 in there.

22 Q Okay. It runs on the -- those serpentine belts, they
23 run on the bottom of some pulleys and on the top.

24 A Yeah. They run around some ---

25 Q Top of some and not the bottom.

1 A So you've got a tension pulley on it. And I found
2 the wrench that fit the tension pulley and used the pipe
3 to let the tension off so I could put the belt back on.
4 Well, it got so dark I couldn't see to get the belt on, so
5 I just -- I was like, well, we'll just fix it tomorrow.
6 We'll have to put the kids on the bus or whatever.

7 And we're trying to figure out about getting the car
8 fixed, so we're arguing back and forth about that. And me
9 and dad standing there at the car. Well, I'm talking to
10 him and we're arguing. The argument went from that to the
11 phone. And she wouldn't tell me who it was. She told me
12 she knew who it was, but she wouldn't tell me who it was.

13 So I was talking to dad about it, and I don't know
14 why she was standing at the porch door, which is about ten
15 feet away from me. And for some reason she walks by us
16 and I hear something over on the trailer, like metal on
17 metal on the trailer. And I turn around to figure out why
18 I'm -- for one why she walked by me. I mean, I ain't know
19 why she walked by me. And I turned around. She's got the
20 skateboard up over her head in her hand coming down on me.
21 Well, that's when I wheeled around and grabbed the
22 skateboard which was right there in her hands.

23 Well, I grabbed the skateboard. While we were
24 wrestling over this skateboard, and we fall over onto that
25 trailer. It's got big steel sides on it. So we landed on

1 that steel trailer. We're wrestling over this the whole
2 time we've got this skateboard in our hands.

3 So we're wrestling over the skateboard. And
4 literally, we slide because there's nothing on the front
5 to anchor this thing down so it's teeter-tottering. So
6 when it kicks up, we slide off -- well, kind of rolled off
7 and landed on the concrete -- well, asphalt right down at
8 the bottom of it. But when we hit, I was able to actually
9 get the skateboard away from her.

10 Well, when I hopped up, back up, you know, up off of
11 her, because where we had landed, and I pushed back and
12 fell back off of her to get away from her, she jumps up
13 and just like Superman dives on top of me, I mean, just
14 like that. I mean, she just pops up and just dives on me.

15 Well, when she dives on me, I'm trying to keep her
16 from biting me and hitting me and all that that she's
17 trying to do. Well, she bites down on the thumb.

18 When she bit down on the thumb, I was trying to, you
19 know, get my thumb out of her mouth because she's trying
20 to bite it off. And so when I pushed and was trying
21 everything I could to get away from her without having to
22 hit her.

23 Well, I pulled my thumb out of her mouth. When that
24 happened, I fell down. She was already -- you know,
25 because she had fell down. Well, she hops up, runs over

1 there to where the wrenches are. She picks two wrenches
2 up in her hands.

3 Well, I grab her hands to keep her from hitting me
4 with the wrenches. So we're fighting over the wrenches.
5 And as we're fighting over the wrenches and wrestling over
6 them, we fall over where that big old -- there's a big
7 cast-iron pipe, just like brown, and it's got a big old
8 pipe that comes up the middle to fill the hole up. Well,
9 we land on it. Pretty much we both almost pretty much hit
10 our faces on it. And then ---

11 Q Is that fuel filter shown in what I show you to be
12 State's Exhibit 43?

13 A Yeah. It's that big steel -- see that big old steel
14 pipe, everything right there? That's a big old cast-iron
15 -- see how it sticks up is where that big old -- that's
16 where her head hit, my head hit.

17 Q Okay. What happened after you landed on the fill-up
18 tube to the gas tank?

19 A We both got away from -- well away from each other.
20 Because, I mean, that was a hard hit. And that's the time
21 that I saw the kids come running out.

22 Well, when the kids come running out, she just sat
23 up, which I got back away from her. And when I got back
24 away from her, I had enough time, that's when I went into
25 the house to get the -- to get my charger and my --

1 because all I had was a bag of clothes in there because I
2 was sleeping on the couch anyway.

3 So I got a bag of clothes, I grabbed my charger and
4 my tablet. And I was coming out the door because I had a
5 briefcase on the porch with my prescriptions in it, but I
6 didn't have enough room to grab it in my hands because
7 they was all full.

8 So when I went out the door -- well, actually, when I
9 was coming out of the house door, that's when she come in
10 with the pipe and was trying to hit me with the pipe. So
11 I got my arm up trying to block the pipe.

12 Well, when I get to the door, she got behind me, and
13 that's when she was -- had her arm on my shoulder hitting
14 me with the pipe. Well, I dropped the -- what I had and
15 reached back and grabbed the pipe and threwed [sic] the
16 pipe away from her.

17 Well, when I pulled down that and was coming out the
18 door, we both fell and hit the ground there on the
19 concrete and asphalt. And there's a bunch of concrete
20 block right there that makes a flower bed. So we fell out
21 the door on top of all of it.

22 Well, I get up and I take all that out to the house.
23 Well, I come back because when she -- when I -- when she
24 hit me, I dropped my charger, and that's why I wanted to
25 get my briefcase. It had my prescriptions in it.

1 So I grabbed them two things. When I come back
2 through, she was still sitting there where she was. And I
3 grabbed the -- grabbed those two things up, and I went to
4 walk out the door. And when I did, that's when she caught
5 me in the knee with the baseball bat twice, and I dropped
6 everything and took the baseball bat from her and threwed
7 [sic] it across the yard.

8 Q Now, why do you have a baseball bat?

9 A When the kids come running out, her son had the
10 baseball bat in his hand because they heard us arguing
11 outside. So he come running out with the baseball bat.
12 Well, she had took the baseball bat from him.

13 Q Okay. And then that's when she hit you with it?

14 A Yeah.

15 Well, when that -- when that happened, I just -- I
16 literally dropped everything on the ground and I finally
17 just said screw it. I told dad if he can pick it up, pick
18 it up. If not, I was going to the house. Because I knew
19 at least if I got out of there, it would end it. There
20 would be no altercation. And then I told him to stay
21 there until the cops got there so somebody would be with
22 her.

23 Q Okay. And you left the house then.

24 A Yes, sir. I went out to dad's. Because that's the
25 only way I knew to stop it. I mean ---

1 Q Okay. And when you left, you went to the house
2 that ---

3 A Yeah. The one next door. The brick house. I left
4 the block house and went to the brick house.

5 Q How far is that from where ---

6 A It's about 245 feet.

7 Q And you waited there.

8 A Yeah. I waited there till the police officers
9 arrived.

10 Q Okay. Does State's Exhibit 37, does it show the area
11 that you and her wrestled or fell down in and fought?

12 A Yeah.

13 Q Show the jury where that area would be on that.

14 A Right -- right in here where these wrenches and
15 everything are, we had fell down right there. That's
16 where she had -- pretty much where the blood -- and
17 there's a big old, like I said, that cast-iron thing
18 sticks right up out of the ground right there. It's hard
19 to see it in this picture, but the other one you can see
20 it. But the first time we fell was right around here.
21 Yeah. We fell down right -- right in here.

22 This right here is actually where she -- where I was
23 lying on my back when she dove on me and bit onto my thumb
24 because we had jumped up -- there was a trailer laying
25 over here, and we -- she jumped when I -- because I fell

1 back, and then when I fell back away from her trying to
2 get away from her, she dove on top of me. So that's where
3 we originally landed. That's when she got up and went and
4 picked these two wrenches up and come back. And that's
5 when we were fighting and fell over this direction which
6 (indicating throughout) ---

7 Q Is State's Exhibit 38, hand you 38, is that the area
8 there?

9 A Yeah, yeah. Yes, sir. That's the area. Or one of
10 the areas.

11 Q Okay.

12 A Because, see, that big pipe's over here (indicating).
13 So when we fell fighting over the wrenches, we fell this
14 (indicating) way.

15 Q Okay.

16 A And there's a lot of concrete block up in here. But
17 mostly it was on -- on the asphalt.

18 Q Okay. The question is, of course, how did Kelli get
19 injured?

20 A The only thing I can think is when we both hit that
21 big metal -- that big metal thing. Because I -- I mean,
22 never once did I punch her. I never choked her. I mean,
23 literally, I was trying to get away from her. I mean, the
24 whole time she was coming at me, she had something in her
25 hand to hit me with. And I didn't know what else to do.

1 I mean, literally, I was -- besides doing what I needed to
2 do to get away from her to protect myself, I never did any
3 of that. I mean, literally, it was -- it was from Point A
4 to Point B, and then every time I would get a weapon away
5 from her, she would literally attack me again with
6 something else. She'd stop and pick something up or she'd
7 grab -- I mean, it was relentless. That's the reason why
8 I actually went to dad's house because that's the only way
9 to end the whole thing was to get away from the situation.

10 Q You wrestled? fought? pushed?

11 A Yeah. It was -- it was literally like envisioning a
12 wrestling match like if you saw on TV where they drop --
13 trying to drop an elbow and everything on you, diving and
14 all this kind of crap. I mean, that's what she was doing.
15 We was rolling around, because she would literally grab a
16 pipe or she'd grab a baseball bat or she grabbed the
17 wrench or like the skateboard. And, I mean, literally,
18 she just kept coming at me. I was just trying to leave.
19 I mean, literally, that's all I wanted to do was leave.

20 Q You never did any blows to her to hit or stop her.

21 A No, no. The only thing I can think that happened to
22 her face is when -- like I said, when we hit that --
23 that's a big old round pipe, and it's got a big old cast
24 iron round -- looks almost like an old rotor from a car
25 around it. And the only thing I can figure out is because

1 both our heads hit that thing.

2 Q Okay. I guess you're saying it's the only thing you
3 can figure out ---

4 A That's the only thing I can figure out. Because, I
5 mean, I literally never punched her. Never once did I
6 punch her. I mean, if that would have happened, that
7 fight wouldn't have lasted no 30 minutes. I mean,
8 literally, the only thing I was trying to do was just
9 enough to keep her away from me so I could leave.

10 Q Okay. So you weren't trying to stop her. You're
11 just trying to get away.

12 A No. I mean, I loved this woman. I mean, I literally
13 loved this woman. Loved her kids. Still do. I mean, I
14 wouldn't try to -- try to hurt her. I mean, literally, I
15 was trying my best just to get away. That's all I wanted
16 to do.

17 Q How long did the kids live with you?

18 A Three years. The whole time.

19 I'm the reason she got her kids, because she had DSS
20 on her when ---

21 MS. FOWLER: Your Honor, objection.

22 THE COURT: Sustained.

23 BY MR. WARDER:

24 Q The children, you were close to.

25 A Yeah.

1 MR. WARDER: Thank you. Answer any questions the
2 solicitor has.

3 THE COURT: All right. Cross-examination.

4 MS. FOWLER: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MS. FOWLER:

7 Q Good morning, Mr. Kelley.

8 A Good morning.

9 Q You did speak to police the day this happened,
10 correct?

11 A Yes, ma'am.

12 Q And do you remember what you told them on that day?

13 A I told them that because I didn't want -- I figured
14 with a fight -- I mean, I'm already busted up. We was
15 fighting. And then normally when they come, the man is
16 going to get arrested. I mean, that's just the way it is.
17 And so like I said, I did not know that -- I didn't do
18 anything to injure her that bad, so I figured -- honestly,
19 I figured I'd be -- I'd go to jail that night and I'd get
20 to bond out in the morning.

21 And there was no point in her losing her kids because
22 her kids was there. If they'd have took her to jail, they
23 could have took her kids. So I just told them to put it
24 on me. That's exactly what I said. I mean, if you watch
25 the body cams, it states every time. I never said, "I did

1 it. It's my fault." I said, "Put it on me," because her
2 kids, she don't -- they don't need this.

3 Q Do you also remember telling police that day that you
4 didn't remember what happened?

5 A I -- I told them I didn't remember everything that
6 happened, to talk to dad because he was -- he was the only
7 sober person there. Me and her'd been drinking. So I
8 knew he had seen -- he had seen -- he had been there -- he
9 had been there hours beforehand all the way through it and
10 even till after I had left. So that's why I told them to
11 talk to him because he'd seen the whole thing go down.

12 Q But you did tell police that day that you didn't
13 remember what happened, correct?

14 A Well, yeah. It happened so quick. I mean,
15 literally, it was -- it was like that (gesturing).

16 Q Okay. But today you remember the skateboard, the
17 wrench, the pipe, correct?

18 A Yes, ma'am.

19 Q Okay.

20 A Which I told my attorney the following -- when they
21 actually gave me an attorney, I told him about all that
22 then.

23 Q Sure. But you didn't tell police that day about
24 those things, correct?

25 A Correct. Because I was drunk.

1 Q Okay.

2 A I -- I wasn't going to give a statement when I'm
3 impaired.

4 Q Okay.

5 A And they never come back to question me again after
6 that. The whole 26 months I have been sitting in the
7 county, there has never been a police officer once come to
8 question me back again about this whole situation.

9 Q Okay. You had injuries that day, correct?

10 A Yes, ma'am.

11 Q What was your injury?

12 A I had a big -- besides the bumps and bruises and
13 nicks and stuff, I had a big laceration across the back of
14 my head. It took six stitches to sew up.

15 Q Okay. And you said you had injuries to your face?

16 A Yeah. I mean, just bumps and bruises. I mean . . .

17 Q Did you have injuries anywhere else?

18 A I had bruises and everything on my arms. Like I had
19 a little wound on my side.

20 Q But you don't have pictures of those today?

21 A There was nobody there to take pictures of me.

22 Q Okay.

23 A I mean, literally, the only pictures they took of me
24 was with me handcuffed to the bed of my head. That's it.
25 They didn't take my shirt off. They didn't -- they didn't

1 -- they didn't take any other pictures.

2 Q But you went to the hospital that day, right?

3 A Yes, ma'am.

4 Q Did you tell the doctor about any of these
5 lacerations to your face?

6 A Well, I mean, they were just nicks and cuts. I mean,
7 it wasn't no ---

8 Q They didn't need medical attention, right?

9 A No.

10 Q Okay. And you've been in this trial. You've seen
11 the pictures of Ms. Harris.

12 A Yeah.

13 Q It's your testimony today that she got all those
14 injuries from falling on a pipe?

15 A Well, we've got to think. We -- it wasn't just the
16 pipe. We fell over on the steel trailer. I mean, it
17 wasn't like we just laid over on that steel trailer. I
18 mean, we -- we hit that steel trailer hard falling over
19 it. I mean, we're -- we're fighting for our life here. I
20 mean, she's trying to attack me with every weapon she can
21 get her hands on. Even though, yes, she might be smaller
22 than me, I mean, you're coming at me to hit me in the back
23 of the head. I mean, the head's a very -- anything can
24 hurt somebody over the head. And, I mean, you're coming
25 at me. You're just straight coming at me with everything

1 you can get your hands on. I tried to -- I'd get away
2 from you, I tried to back off and you still keep coming at
3 me.

4 Q Is it fair to say her injuries are worse than yours?

5 A I mean, yeah. But, I mean, when you hit your -- when
6 you fall face first on that -- on that piece of metal that
7 we fell on, that's going to do -- I mean, that's going to
8 -- that whole thing, if you look at the metal and you look
9 at her injuries, that's the only place it could have come
10 from.

11 MS. FOWLER: Okay. No further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. WARDER: No redirect, Your Honor.

14 THE COURT: All right. You can step down.

15 Anything else?

16 MR. WARDER: No, sir. The defense rests, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, we're
18 going to take a short break. So don't discuss the case,
19 and we'll bring you back out, let you know what's going on
20 after that.

21 So don't discuss the case, but head back to your jury
22 room.

23 (WHEREUPON, the jury exits the courtroom at 11:03 AM.)

24 THE COURT: All right. Anything from the State at
25 this time, motions or anything?

1 MS. FOWLER: Nothing from the State, Your Honor.

2 THE COURT: All right. Anything from the defense?

3 MR. WARDER: No, Your Honor.

4 THE COURT: Are you going to have any reply
5 testimony?

6 MS. FOWLER: No, Your Honor.

7 THE COURT: Okay. Do you have any jury charges you
8 want to present, either side?

9 MR. WARDER: I don't. No, Your Honor. I think your
10 standard charges.

11 THE COURT: There's no such thing as standard
12 charges. But, I mean, every case is different.

13 All right. Let's take a short break and then we'll
14 figure out -- I'm trying to think. I think we're going to
15 have to go through this jury charge pretty carefully.

16 MS. FOWLER: I think so, Your Honor.

17 THE COURT: And I'm trying to figure out if we need
18 to just like have a break for lunch and have the jury come
19 back. Because otherwise, they're just going to be
20 sitting.

21 What's the weather like out there? Is it still
22 raining?

23 Let's take a five-minute break and I'll chat with
24 y'all. We'll figure out what we can do.

25 MS. FOWLER: Okay.

1 (WHEREUPON, a recess is taken at 11:05 AM; proceedings
2 reconvened at 11:14 AM.)

3 THE COURT: All right. In discussion with counsel, I
4 believe that we need to -- there's all kinds of issues I
5 think that have arisen as to the jury charge. I want to
6 make sure that everybody's on the same page and we've
7 properly crafted our charge.

8 So I'm going to bring the jury out now and tell them
9 I'm going to let them go to lunch, then we can sit down --
10 usually where I like to do my charge is back in conference
11 in chambers. We can go through the charge, kind of decide
12 what the charge will be, then if anybody needs to put
13 anything on the record, I'll let y'all do that. And then
14 we'll have the jury come back and be ready to argue and
15 charge at 1:00.

16 Is that good with the State?

17 MS. FOWLER: Yes, Your Honor.

18 THE COURT: Mr. Warder, good for the defense?

19 MR. WARDER: Yes.

20 THE COURT: All right. Bring the jury back.

21 (WHEREUPON, the jury entered the courtroom at 11:17 AM.)

22 THE COURT: All right. Ladies and gentlemen, here's
23 kind of where we are. Both sides have rested, so all the
24 evidence that you will have to consider has been provided.

25 At this stage of the trial, what I've got to do now

1 is develop the jury charge. And we always have kind of a
2 draft ready at this point, but it's something that I want
3 to make sure that the attorneys, everybody's on the same
4 page. And the jury charge is the law that I will be
5 giving you. So that's going to take a good bit of time,
6 and I realize it's only 11:20. This has been really odd.
7 The timing of everything has been very different than
8 normal, so I apologize for that.

9 I think that the best use of everybody's time will be
10 instead of letting y'all wait back there for a long time
11 like some of y'all had to do the other day, we'll go ahead
12 and break for lunch. This is what I call my kindergarten
13 lunch at 11:20. And then come back at 1:00. Okay. And
14 at 1:00 we will have the final stage of the trial, and
15 that will be closing arguments from the attorneys, then I
16 will charge you on the law, and then at that point you
17 will go back to your jury room and deliberate.

18 So at this time I'm going to let y'all go. And I
19 apologize. I can't do anything about the weather.

20 But think of my four rules. Do not discuss the case
21 among yourselves or anyone. I know that's difficult.
22 After hearing the evidence, you're -- when you begin your
23 deliberations, you can do all the discussion that you want
24 to do, but you need to wait until then. Do not do any
25 type of research about the case. Again, anything related

1 to law, parties, incident, anything. Again, I'm not aware
2 of any media coverage, but do not pay any attention to
3 that. And also, if anybody contacts you other than
4 somebody from the solicitor's office -- solicitor's
5 office, excuse me -- clerk's office, then please let the
6 bailiffs know.

7 I think -- and when y'all come back at 1:00, the
8 parking should have eased up by then. But we're aware
9 there's a lot going on apparently downstairs. It's been
10 so quiet up here on the third floor, but I don't think it
11 has been on the second floor.

12 So with that being said, we will see you back at
13 1:00. And like I said, we should -- and that process,
14 again, just an estimate, the closing arguments and jury
15 charge depends -- that should -- you know, if we start
16 back at 1:00, we should have that to you to begin your
17 deliberations somewhere around 2:15 or so. So that's not
18 a huge long process. Give or take on that. So you'll
19 have that fairly soon this afternoon to begin your
20 deliberations.

21 All right. We'll see you back at 1:00. Y'all have a
22 good lunch. Try to stay dry.

23 (WHEREUPON, the jury exits the courtroom at 11:20 AM.)

24 THE COURT: All right. Anything from the State?

25 MS. FOWLER: No, Your Honor.

1 THE COURT: Anything from the defense?

2 MR. WARDER: No. Not at this time.

3 THE COURT: All right. Like I said, we'll want to
4 step back in chambers, kind of go through the jury charge,
5 and then we can put it on record just before we come back
6 at 1:00 if anything needs to be added.

7 MS. FOWLER: Yes, Your Honor.

8 THE COURT: Do y'all need a few minutes or ---

9 MS. FOWLER: I'm ready now.

10 THE COURT: Okay. All right.

11 (WHEREUPON, a recess is taken at 11:22 AM; proceedings
12 reconvened at 1:03 PM.)

13 JURY CHARGE CONFERENCE

14 THE COURT: Now let's go back on the record here.

15 I discussed the verdict form, that the State has
16 looked at the verdict form. And you're fine with no
17 objections?

18 MS. FOWLER: No objection, Your Honor.

19 THE COURT: Any objection from the defense?

20 MR. WARDER: No objections, Your Honor.

21 THE COURT: All right. In chambers we discussed the
22 charge, and in addition to the normal standard charge, we
23 will be charging domestic violence of a high and
24 aggravated nature, first-degree domestic violence,
25 second-degree domestic violence and self-defense.

1 All right. And any objections to any of the charges
2 from the State or additions?

3 MS. FOWLER: None from the State, Your Honor.

4 THE COURT: Any objections or additions from the
5 defense?

6 MR. WARDER: No, Your Honor.

7 THE COURT: All right. So is the State ready?

8 MS. FOWLER: Yes, Your Honor.

9 THE COURT: Defense ready?

10 MR. WARDER: Yes, sir.

11 THE COURT: Is the jury ready? Bring them in.

12 (WHEREUPON, the jury entered the courtroom at 1:07 PM.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 will recall, all of the evidence has been presented. Both
15 the State and defense have closed their case. And at this
16 time we will go through the final stage, and that's
17 closing arguments by the attorneys. And that's not
18 evidence. That's their summary and their argument about
19 what -- the evidence that has been presented, what their
20 take on it is.

21 And under our rules the State has the burden of
22 proof. They will present their closing statement first,
23 and then the defense will present their closing statement,
24 and then the State has an opportunity for reply and then I
25 will charge you on the law.

1 So at this time I would ask that you give your full
2 attention to the attorneys.

3 Ms. Fowler?

4 CLOSING ARGUMENTS

5 MS. FOWLER: Thank you, Your Honor. May it please
6 the Court.

7 Members of the jury, at the beginning of this trial,
8 I told you that we were here today because on February 23,
9 2021, this defendant, Mr. Joshua Kelley, beat his
10 girlfriend. He beat his girlfriend so badly she was
11 unrecognizable. She didn't even recognize herself in the
12 mirror.

13 Now Mr. Kelley stands before you today charged with
14 domestic violence of a high and aggravated nature. And
15 the State bears the burden of proving that offense to you
16 beyond a reasonable doubt. And the State has to prove
17 four things to meet those elements: the first, household
18 members; second, that the defendant acted with extreme
19 disregard for the victim, extreme disregard for her life;
20 two -- or three, we have to prove physical injury; and
21 four, that injury either has to be great bodily injury or
22 could have resulted in great bodily injury. So we have
23 household member, physical harm, extreme disregard for the
24 victim's life, and great bodily injury.

25 Now, extreme indifference to human life, the statute

1 gives us a couple different ways that we can reach that,
2 and that's because in South Carolina, beating up your
3 spouse, beating up your boyfriend, beating up your
4 girlfriend is bad. But it's even worse when you choke the
5 victim. It's even worse when you use a weapon. And it's
6 even worse when there's kids involved.

7 Now, the statute gives those various things that the
8 State can use to prove extreme disregard for the victim's
9 life, but those aren't the only things you can consider.
10 And the State only has to prove one of those things. But
11 here we have multiple things that prove extreme disregard
12 for the victim's health and safety.

13 The victim got up here earlier yesterday and told you
14 that the defendant choked her. She could not breathe.
15 She lost consciousness for a period of time. And how do
16 we know that? Well, first, she got up here and told you.
17 Second of all, she has trauma to her neck, she has
18 bruises, she has fingerprint marks.

19 And the victim also told you that the defendant hit
20 her in the head with a wrench, and she told police that
21 night that he hit her with a wrench. And you also heard
22 from the victim that her 5 and 7-year-old were in the
23 doorframe of the house watching this assault happened. In
24 fact, the 7-year-old is the one that called police.

25 And then we have great bodily injury. And great

1 bodily injury is defined in the statute, as the judge will
2 tell you, as serious, permanent disfigurement or the
3 extended loss of a part of your body. And we have both in
4 this case.

5 Serious permanent disfigurement, you can see the
6 victim here in the courtroom today. She has scars on her
7 forehead. She has scars from her forehead all the way
8 down to her jaw. And why does she have those scars?
9 Because her jaw was broken on both sides. Her jaw was
10 broken on both sides and it was wired shut so that she
11 could hopefully heal from this injury and move on with her
12 life. But during that time that it was healing, she had
13 trouble talking, she had trouble eating. Her life was
14 changed.

15 Let's talk about the other injuries that she had. I
16 would submit to you that this picture alone shows great
17 bodily injury. But the victim and the doctor went into
18 detail about each one of her injuries.

19 She had a broken nose. She had bruises all over her
20 face. She had a swollen lip, a swollen lip that the
21 defense wants you to believe was a lip infection. But the
22 doctor got up here and told you that was the result of
23 trauma, a force inflicted onto the body.

24 She also had a concussion. She has problems with her
25 memory now. She has problems with her speech now. She

1 had lacerations to her forehead. She had to get stitches
2 to her forehead. She still has the scar to this day.
3 Over two years later and she is still disfigured from this
4 incident. In fact, you heard her say this has changed her
5 life so much. She doesn't even like going out in public.
6 People can see her scars, see that her jaw is crooked.

7 Her hair was also ripped out. As the defendant was
8 dragging her from place to place to place in that yard,
9 attacking her, assaulting her, he pulled out her hair, and
10 it was laying in the yard still in a ponytail and still
11 with the scrunchy around it.

12 You also heard from the doctor that she had missing
13 and broken teeth. Her teeth were knocked out during this
14 assault.

15 And you also saw pictures of Ms. Harris's entire
16 body, the bruises, bruises to her arms, bruises to her
17 legs, bruises to her back, and also this bruise to her
18 stomach where the defendant kicked her while she was down
19 on the ground. She was assaulted all over her body. She
20 had drag marks on the back of her body where she was
21 dragged across the asphalt as he assaulted her place to
22 place in the yard.

23 So members of the jury, that was the evidence you
24 heard and how the State has met each one of those
25 elements. You heard from the victim herself what happened

1 that night, how she was attacked, who attacked her, and
2 then you heard the doctor corroborate those injuries, and
3 that they were inflicted by trauma, a great force to the
4 body.

5 And I want to address some issues that the defense
6 brought up, because I think it's important. You heard
7 from the father, the defendant's father today. And you
8 heard that there was a verbal altercation that night. You
9 heard that the defendant was mad. He was mad over some
10 phone. But you didn't hear him say that the victim was
11 mad. The defendant was mad, yet the victim is the one
12 that went and grabbed a skateboard, a wrench, a metal pipe
13 and she attacked him?

14 Even if she did attack him, even if you want to
15 believe that, his story hasn't changed from the first time
16 he talked to the police. Even if you want to believe that
17 she attacked him, what are his injuries? He had one
18 laceration to the back of his ear, and the victim admitted
19 she hit him with the metal pipe to get him off of her
20 because he was attacking her.

21 And you also heard from the officer that night who
22 went to the hospital with the defendant. And he said,
23 yeah, once they cleaned him up, there were no lacerations
24 to the front of his face, no cuts, no bruises, nothing.
25 And, yeah, there was a small injury behind his ear. We

1 know that. The victim admitted that.

2 You also heard the dad say that the victim hit the
3 defendant in the back of the head four to five times with
4 a metal pipe, but that's not consistent with his injury.
5 And, in fact, you didn't hear that story until today. And
6 that story was made for you the jury, because this is the
7 defendant's dad and he doesn't want him to get in trouble.
8 He has every reason to cover for his son.

9 He told police that day that he didn't want to talk
10 anymore. And he said on the stand that he was upset.

11 Members of the jury, I also want to go over what the
12 defendant said today. And he gave a very detailed story
13 about what happened on that day. Well, it was detailed up
14 until the point that it got to the assault. He was very
15 detailed about working on the car, all the parts that
16 required, everything he did to the car, everything his dad
17 did to the car, all the conversations they had about the
18 car. But then when you get to the assault, it's a little
19 more vague.

20 He had a lot of details today about a wrench, a pipe,
21 a baseball bat, a skateboard, but that's not what he told
22 police that night. He told them that night he didn't
23 remember. He did not remember what happened. But today
24 he suddenly remembers. And he said, "Put the blame on
25 me." The blame for what?

1 that we -- we had to take a break there because one of the
2 jurors was coughing and it looked like more than just a
3 cough. My understanding now is that she has asthma and
4 she looks like she may be having an asthma attack.

5 So does the State have any problem with releasing her
6 from the jury?

7 MS. FOWLER: No, Your Honor.

8 THE COURT: And the defendant?

9 MR. WARDER: No, Your Honor.

10 THE COURT: All right. And we have two alternates.
11 And we will put -- as required by statute, we will put
12 both jurors' names in a cup, and we will draw -- we'll
13 have the clerk draw the names out for the next one there.

14 So I'm going to step back there. We'll go ahead and
15 -- you can go ahead and draw it.

16 THE CLERK: Me?

17 THE COURT: Yeah.

18 THE CLERK: Moore.

19 THE COURT: Moore, which is Erik Moore. Erik Moore
20 has now been promoted.

21 What's this lady's name?

22 THE CLERK: Henderson.

23 THE COURT: Henderson. All right.

24 (Pause in proceedings.)

25 THE COURT: All right. We're ready to go back.

1 Any exceptions to the process from the State?

2 MS. FOWLER: No, Your Honor?

3 THE COURT: From the defense?

4 MR. WARDER: No, Your Honor.

5 THE COURT: All right. In talking with her, she was
6 ready to go home.

7 All right. And tell Mr. Moore that he has been
8 selected as a regular juror.

9 (WHEREUPON, the jury entered the courtroom at 1:34 PM.)

10 THE COURT: All right. Ladies and gentlemen, it
11 sounds like Ms. Henderson is okay, but you've always got
12 to be prepared for everything.

13 Mr. Moore, you have been promoted now to a regular
14 juror. So as you can see that's why we have alternates,
15 to keep them there for those purposes.

16 So at this point then, Ms. Fowler, you can continue
17 in your closing argument.

18 MS. FOWLER: Thank you, Your Honor.

19 Members of the jury, when I was last speaking, I was
20 talking about some of the issues that the defense had
21 brought up. And I ended with the defendant saying that
22 this victim got all of her injuries from falling on a
23 pipe. She got a fractured nose, two black eyes, a jaw
24 fractured on both sides, bruises on her arms, legs, drag
25 marks on her back, all from falling on a pipe.

1 And the defense has also raised self-defense, and the
2 judge will charge you on that law. But once the defense
3 raises self-defense, the burden is then on the State to
4 disprove self-defense beyond a reasonable doubt. And
5 there's four things that I have to disprove for
6 self-defense.

7 In order for you to believe that the defendant acted
8 in self-defense, the defendant has to have no fault in
9 bringing on the difficulty; he must have believed that he
10 was in fear for his life; three, that anyone else in this
11 similar situation would have acted the same way; and four,
12 that he had no other way of avoiding the danger.

13 Let's talk about the fault, the bringing on the
14 faults in the altercation. You heard from the victim.
15 Yeah. She struck the defendant after he attacked her
16 first. She was defending herself and striking him with
17 that pole.

18 And you also heard from the dad who said, yeah, there
19 was something with a skateboard, and she came after him
20 with a skateboard. But then I pointed out, well, when you
21 originally talked to the police, you said he grabbed her
22 first and there is no mention of the skateboard. The
23 father also said the defendant was mad. The defendant was
24 not without fault for bringing on this altercation.

25 Number two, the defendant had to believe that he was

1 in fear for his life. And you heard for the first time
2 today that he was attacked with a skateboard, a wrench, a
3 metal pole, all those things. Of course, he has no
4 injuries to back up any of that.

5 So at what point was he in fear for his life? Was he
6 in fear for his life when her left eye was blacked out?
7 When her right eye was blacked out? When he punched her
8 in the jaw on both sides? When he heard her jaw crack?
9 Was he in fear for his life when he heard her nose crack?
10 Was he in fear for his life when he banged her head
11 against the metal utility trailer? And was he in fear for
12 his life when he kicked her in the stomach and dragged her
13 around the yard by her hair?

14 And three, would anyone else have acted the same way
15 in this position. And I don't think that Mr. Kelley's
16 actions -- or Mr. Kelley's actions on that day were
17 reasonable. He had every means to leave that argument.
18 He's bigger than the victim. He's stronger than the
19 victim. In fact, if you want to believe what he said, he
20 said he tried to leave this fight several times.

21 Now, the judge will also charge you on lesser
22 included statutes from the law. And that's because
23 there's varying degrees of domestic violence. And the
24 State is going forward on the highest level of domestic
25 violence, and that's domestic violence of a high and

1 aggravated nature.

2 I told you about those four things that the State has
3 to meet. And the State believes it had met each one of
4 those elements, and that's the household members, the
5 physical harm, the reckless disregard for the victim's
6 safety and health, and great bodily injury. We have met
7 each one of those elements.

8 If you believe that the State has met each one of
9 those elements, what the evidence showed, what the
10 pictures showed, the victim's testimony, the doctor's
11 testimony, then you must find the defendant guilty of
12 domestic violence of a high and aggravated nature. If you
13 believe that we have met all four of those elements,
14 there's no further discussion.

15 And the judge is going to give you the option to
16 consider domestic violence in the first degree. And the
17 only difference between domestic violence of a high and
18 aggravated nature and domestic violence in the first
19 degree is this reckless disregard for the victim's safety.
20 And I told you about some of the things in the statute and
21 how we have met the reckless disregard for the victim's
22 safety. There's the use of the wrench, the children
23 involved, and the choking. The victim lost consciousness.
24 She could not breathe.

25 Now, the judge is also going to charge you on

1 domestic violence in the second degree. And we believe
2 this is so far above domestic violence in the second
3 degree that I'm just going to leave the judge to tell you
4 what that statute is.

5 So having said that the State has met all four of
6 those elements of domestic violence of a high and
7 aggravated nature, the State also bears the burden of
8 proving this to you beyond a reasonable doubt. And that
9 doesn't mean beyond all doubt. That just means that after
10 having looked at the pictures, heard from the victim,
11 heard from the defendant, heard from his father, heard
12 from the doctor, that you are firmly convinced that the
13 defendant did what he is accused of, and if you are firmly
14 convinced that he is guilty of domestic violence of a high
15 aggravated nature, you must find him guilty of that.

16 I ask that you hold the defendant accountable for the
17 actions, for the attack that he left on this victim on
18 February 23, 2021, and find him guilty.

19 Thank you.

20 THE COURT: Mr. Warder.

21 MR. WARDER: Thank you.

22 Ladies and gentlemen, the State seems to ignore the
23 fact that my client was attacked by a smaller individual.
24 Now, just how exactly does a larger individual logically
25 prevent an attack by a smaller individual? And he

1 protects by pushing away, by trying to grab objects from
2 her arms, by trying to hold on, calm her down. And these
3 are the things that happened.

4 Now, the fact that she can get loose, fall down, hit
5 a solid object, hit a fixed object, that they rolled
6 around the ground where they're holding down, clearly the
7 testimony is everybody on one occasion they fell upon a
8 trailer that tilted back and forth with -- and slid down
9 the side. You don't -- one aggressor can get injured in
10 the resistance to the aggression as much as somebody that
11 is not the aggressor at all but a victim.

12 You know, the injuries are exactly the same. It's
13 the cause that's different. In this case, my client was
14 caused by a persistent aggressor, and it took some time,
15 some different locations that it continued outside.
16 Remember the falling down in the area with the pipes and
17 stuff in the front of the truck?

18 This is a case that the injuries are most
19 unfortunate. But it does not -- the injuries do not prove
20 who was the aggressor, who was carrying on the fight. If
21 my client had desires to hurt, to injure or to do great
22 damage to this victim, certainly the damage would have
23 been much greater or more intense or different than it
24 was. This was a fight by people that had consumed alcohol
25 and were now fighting over nearly nothing except proving a

1 point.

2 You know, some 50 years ago I took my first divorce
3 case. And I quit taking them because the theme of
4 couples, alcohol, problems and embarrassment always led to
5 fights that were meaningless and meritless. But sometimes
6 the fight gets more intense, and it's not because somebody
7 is assaulting the other. It's because the more
8 determination of the victim, the more determination she
9 will not quit, she will not stop means it goes on longer
10 until more injuries occur.

11 This particular case, my client did everything he
12 could to stop the attack. He pushed. He shoved her away.
13 This is a case that was not an assault. It was a defense.

14 And the bruises from the defense are not inconsistent
15 with the objects that were out there. There's no question
16 she hit him with a pipe. Everybody admits that. Hit him
17 in the head with a pipe. Picture of the pipe, laying
18 right there where it was thrown. The wrenches, the fight
19 took place nearly on the wrenches, scattered about the
20 driveway.

21 This is a case that most certainly is not an assault
22 and battery or a domestic violence of a high and
23 aggravated nature. In this particular case, listen, my
24 client's testimony could not -- corroborated by his father
25 who was there, the only witness.

1 The injuries are exactly what would happen if
2 somebody continuing pushing, shoving, falling into a
3 trailer, going along the edge of the trailer. That's
4 where she grabbed the pipe, I think the testimony was, the
5 first time. That's where she hit him in the side of the
6 head.

7 The statute doesn't make it a crime to resist an
8 attack, and that resistance to that attack was
9 proportional, it was reasonable, and certainly wasn't
10 intent to inflict those injuries. It was intent to stop
11 the attack. My client would have been happy at any point
12 had the attacks stopped, and it didn't. And that's why it
13 lasted long enough that she could ultimately fall, fall
14 with my client, stumble without my client, and fall on her
15 own to get the sufficient injuries that are shown in the
16 photographs.

17 The State hasn't proved this case beyond a reasonable
18 doubt. A reasonable doubt is the kind of doubt that would
19 make you hesitate to act. Reasonable doubt is what
20 logically, reasonably would occur under the circumstances
21 that was happening. My client was being attacked,
22 attacked in front of his father.

23 The truth of this is is that this is not uncommon
24 when people, couples drink a lot of alcohol. And
25 certainly, there was alcohol being consumed here. Both

1 parties were drinking vodka, and it had lasted until
2 midday.

3 This is a case where the right, the proper and the
4 just verdict is a verdict of not guilty because the case
5 has not been proven because the witnesses, because the
6 majority of the father's testimony was that it was
7 justified and they were trying to stop it.

8 So when I ask you to do the right, the sensible, the
9 fair thing in this case and return the verdict of not
10 guilty, not guilty because it was not an assault, it was
11 not an assault on the victim. It was a defensive holding,
12 pushing, trying to get somebody to stop doing something
13 that they wanted to do very badly, which was to injure my
14 client.

15 Thank you very much.

16 THE COURT: Ms. Fowler.

17 MS. FOWLER: Just briefly, Your Honor.

18 Members of the jury, Mr. Warder wants you to believe
19 that this was an attack by a smaller person, and that her
20 injuries were caused by a fall. That is ludicrous. There
21 are way too many injuries over way too many parts of her
22 body to be caused by a fall.

23 And their injuries are not the same. You heard that
24 the defendant had one injury behind his ear that the
25 victim admitted to inflicting to get him off of her. She

1 has dozens of injuries. And these are unfortunate
2 injuries. Mr. Warder's right. These are unfortunate
3 injuries, and it's unfortunate that these injuries were
4 caused by the defendant, Mr. Kelley.

5 I ask that you find him guilty. Thank you.

6 CHARGE ON THE LAW

7 THE COURT: All right. Ladies and gentlemen, now you
8 get to hear from me. Is everybody good to go forward at
9 this point?

10 All right. Ladies and gentlemen, now I'm going to
11 charge you on the law. And I will first tell you that if
12 you had -- maybe you had a perception or what you thought
13 the law was before you came in here, or maybe you thought
14 you have an opinion as what you think the law should be.
15 If it contradicts what I'm telling you, then you're to
16 disregard that because you took an oath that said I will
17 apply the law as charged by the judge, because that's one
18 of my jobs. My duty is to give you the law of the case.

19 Now, as I told you in the very beginning, there was
20 -- I read you an indictment. The indictment of the charge
21 in this matter is for domestic violence of a high and
22 aggravated nature. The fact that someone is charged,
23 arrested, indicted, that's not anything to be considered
24 by you because that not evidence. The indictment is
25 merely the formal document that brings this matter to

1 court. It's the charges brought by the state. It's the
2 allegations to which the defendant has pled not guilty.

3 So the State has the burden of proof, and I'm going
4 to discuss the burden of proof, to prove these
5 allegations. But, again, that is not to be considered by
6 you as evidence.

7 And you'll hear in just a few minutes here, you'll
8 hear several different versions of domestic violence.
9 It's domestic violence of a high and aggravated nature.
10 And I'll discuss this in more detail in a few minutes is
11 there's also lesser degrees where you may determine when
12 you get back there that, well, they didn't quite meet the
13 burden of proof of all of the elements for domestic
14 violence of a high and aggravated nature, so therefore,
15 you may consider, well, did they prove the elements of
16 domestic violence first degree? All right. Well, and if
17 you find that they didn't meet the requirements for
18 domestic violence first degree, then you would go to the
19 next level which is domestic violence second degree. This
20 is what we call lesser included offenses. So you'll be --
21 and again, you would only get to those lesser included if
22 you find that the State did not meet its burden on the
23 previous one. And it'll make a little more sense when I
24 give you the verdict form, but that's what we're talking
25 about here today.

1 Also, I said in addition to my duties, your duty is
2 to determine what the facts are, and that is from the
3 evidence that was presented. And you are to give it the
4 weight and the value which you feel is appropriate using
5 your own common sense of the 12 of you. And you take
6 testimony from the witness stand, any stipulations, any
7 documentary evidence, any evidence, photographs, all of
8 that is to be taken into account by you. I don't believe
9 there's anything stricken, but if anything was stricken
10 from the record, then that is not something for you to
11 consider.

12 Now, if there's anything that I did or said that
13 makes you think I have an opinion of the facts, you're to
14 disregard that, because that's not my role. That's your
15 role. And your role, your sole role is to determine what
16 the facts are.

17 And as I told you in the beginning, how you determine
18 the facts, ultimately what you're going to be doing is
19 reaching a verdict. And your verdict is going to be
20 either guilty if you find the State has met its burden on
21 any of the charges, or not guilty if you find that the
22 State has not met its burden. And as I will tell you,
23 too, the burden of proof that the State has on every
24 elements on each charge is beyond a reasonable doubt. And
25 I'll go a little bit more into the definition of

1 reasonable doubt in just a few minutes.

2 Now, very important, kind of one of the cornerstones,
3 foundations of our entire criminal system is what we call
4 a presumption of innocence. And that's more than just a
5 legal theory. That is one of the cornerstones of our
6 justice system. And what that says is a person, no matter
7 what level of criminal court they are in, has the
8 presumption of innocence. That means they are presumed
9 innocent regardless if they're indicted, charged,
10 arrested, and that presumption stays with them all the way
11 until the point that a jury has determined that the State
12 has met its burden on these charges. And if you find the
13 State has not met its burden, then that presumption of
14 innocence does not leave the individual. Sometimes you
15 hear it referred to as kind of the cloak of innocence, and
16 that cloak is on the defendant when he's arrested, when
17 he's indicted, when he comes into this courtroom, when the
18 case is presented to you. That cloak of innocence is
19 still on him until the point that you decide that the
20 State has met its burden and it's to be taken off. But
21 before that point, that cloak is there.

22 And part of that whole thing of the presumption of
23 innocence and the burden of proof is the defendant has no
24 burden whatsoever in this case. They don't have to
25 disprove any of the elements. And even under our system

1 of law, they've asserted the defense of self-defense or
2 asked that that be considered. They're not -- they don't
3 -- their burden does not provide that they have to prove
4 self-defense. The State has to prove the self-defense is
5 not appropriate. So the burden of proof is still on the
6 defendant even -- I mean the burden of proof is still on
7 the State even as to the defense of self-defense.

8 All right. What is reasonable doubt? Okay. And
9 again, that's the burden that the State has on each
10 element of each charge.

11 The reasonable doubt is a very high standard. As I
12 also told you, it's different than you may hear in a civil
13 lawsuit which is by a preponderance of the evidence. Here
14 you're talking about criminal charge, so much higher. It
15 is the kind of doubt that would make a reasonable person
16 hesitate to act. It is proof beyond a reasonable doubt.
17 It's proof that leaves you firmly convinced of the
18 defendant's guilt.

19 You know, there's very few things in this world that
20 we know with absolute certainty, and our law does not
21 require the State meet that burden of absolute certainty.
22 But if, based on your consideration of the evidence,
23 you're firmly convinced the defendant is guilty, then your
24 verdict should be guilty. But on the other hand, you
25 think there's a real possibility that the defendant is not

1 guilty, then you must give the defendant the benefit of
2 that doubt and find him not guilty. Facts and
3 circumstances that merely place a suspicion on the
4 defendant is not sufficient.

5 There's two types of evidence that the State can rely
6 on in their burden of proof, and that's direct evidence
7 and circumstantial evidence.

8 Direct evidence is when a piece of evidence directly
9 proves a particular point. A person says, "I heard this.
10 I saw this. I felt this."

11 Circumstantial evidence may be a series of facts that
12 you have to put together, and because of those series of
13 facts, there's an inference of the fact that's being
14 attempting -- that they're attempting to prove.

15 So the State can use both circumstantial and direct
16 evidence, and the burden of proof is the same. But --
17 however, to the extent that the State relies on
18 circumstantial evidence, all of the circumstances must be
19 consistent with each other, and when taken together, point
20 conclusively to the guilt of the accused beyond a
21 reasonable doubt. If the circumstances merely portray the
22 defendant's behavior as suspicious, the proof has failed.

23 And, again, whether they use direct evidence,
24 circumstantial evidence or a combination of both, still
25 the burden is the same: beyond a reasonable doubt.

1 Now, one of the things that you can use, kind of one
2 of the tools that you have as a jury in making your
3 decision is to determine the credibility of witnesses.
4 Credibility just means believability. And that's
5 something that you use your own common sense, the 12 of
6 you, to determine whether what portion -- you know, which
7 witnesses to believe. You may be able to accept one
8 witness over several witnesses. You may decide that you
9 accept several witnesses over one witness. You may decide
10 that you can accept a witness's testimony in its entirety
11 or reject it in its entirety. You may accept a portion of
12 it and reject the remaining portion. You can consider
13 does the witness have a particular interest in the
14 outcome, a particular bias, prejudice, how did that
15 witness act on the stand. All of that is what you should
16 consider. And you're to give those witnesses the weight
17 and value which you feel is appropriate. And ultimately,
18 it's up to you to determine that credibility of the
19 witnesses and determine which one of the witnesses you
20 should base your decision on.

21 Also, one of the things that -- and I told you at the
22 time, normally, a person can only testify about what they
23 observed or heard or something, you know, direct evidence
24 like that. That's what we call a lay witness. The
25 exception to that is an expert witness. In that case, an

1 expert can testify about their conclusions or opinions
2 about certain matters based on their experience, their
3 education, based on their training, all within their
4 field, and therefore, they can go beyond just what a
5 layperson can testify. But, like any other witness,
6 you're to give the weight and value of that expert witness
7 the weight and value which you feel is appropriate. And
8 you can accept or reject that testimony even though it may
9 not have been contradicted by any other witnesses.

10 Now, one of the general requirements in any crime is
11 what we call -- and in this particular crime or most is
12 intent. Criminal intent is required to be proved. For
13 example, the mental state of a person cannot be shown with
14 a particular -- you know, let me back up. Mental state
15 required to be proven in a particular crime may be intent,
16 purpose, knowledge, recklessness or criminal negligence.
17 And criminal intent, again, must be proven beyond a
18 reasonable doubt.

19 Criminal intent is always a matter that must be
20 determined by the jury from the circumstances surrounding
21 the situation. You know, there's no way to prove by any
22 scientific method what the intent of a person is; so
23 therefore, you have to look at all the circumstances
24 surrounding the situation to make that decision. And it
25 is not necessary to establish intent by direct and

1 positive evidence, but intent may be established by an
2 inference, the same way as other facts, by taking into
3 consideration the acts of the parties and all the facts
4 and circumstances of the case.

5 Criminal intent is a mental state. It's a conscious
6 wrongdoing. It's up to you to decide whether the
7 defendant intended to do -- what the defendant intended to
8 do based on the circumstances shown to have existed at the
9 time. Criminal intent can arise from action or failure to
10 act, it may arise from negligence, recklessness or
11 indifference to duty or to consequences that is considered
12 by the law to be the equivalent of criminal intent.

13 All right. Those are the general rules that apply to
14 the charge, the general rules that you will have with you.
15 Now I'm going to give you the specific elements of the
16 charges which we've been discussing. And there a whole
17 host of charges under the kind of heading "domestic
18 violence." And I think I first will define for you what
19 domestic violence is, and then each of the charges, like
20 domestic violence of high and aggravated nature, first
21 degree, and second degree have different elements to that.

22 But your basic definition of domestic violence is the
23 defendant caused harm or injury to his own household
24 member or offer or attempt to cause physical harm or
25 injury to a household member with the apparent ability

1 under the circumstances reasonably creating fear of
2 eminent peril. In other words, domestic violence is
3 causing physical harm to a household member or threatening
4 with the ability to cause harm. Okay. That's your basic
5 definition of domestic violence.

6 Now, what is a household member? I think that's
7 important to define that because a household member is
8 defined a little differently under this statute than what
9 you normally would think of for household member. Under
10 domestic violence, household member is a spouse, a former
11 spouse, a person with whom the defendant has a child in
12 common, or a person of the opposite sex with whom the
13 defendant is living or has lived with in the past. So
14 that's your definition of household member. That's your
15 general definition of domestic violence.

16 Now what I'm going to do is tell you the specific
17 elements that you have to add to that that the State has
18 to prove for each of these particular charges. Okay. So
19 the first one would be domestic violence of a high and
20 aggravated nature. That is where the defendant has
21 committed domestic violence, either harm or attempted harm
22 on a household member. And again, beyond a reasonable
23 doubt. And the defendant commits the offense under
24 circumstances manifesting extreme indifference to the
25 value of human life and great bodily injury to the victim

1 results, or commits the offense with or without an
2 accompanying battery and under circumstances manifesting
3 extreme indifference to the value of human life and would
4 reasonably cause a person to fear imminent great bodily
5 injury or death. So that's the added elements that they
6 have to prove with high and aggravated.

7 Here's a couple of definitions. Circumstances -- the
8 statute uses the phrase "circumstances manifesting extreme
9 indifference to the value of human life." And that
10 includes the following: using a deadly weapon; knowingly
11 and intentionally impeding the normal breathing or
12 circulation of the blood of a household member by applying
13 pressure to the throat or neck; or by obstructing the nose
14 or mouth of a household member and thereby causing stupor
15 or loss of conscious for any period of time; or committing
16 the offense in the presence of a minor. Okay. Again,
17 we're still talking about high and aggravated.

18 These are what constitute circumstances manifesting
19 extreme indifference to the value of human life: again,
20 using a deadly weapon, impeding the breathing or
21 circulation of blood or committing this in the presence of
22 a minor.

23 Now, what does "deadly weapon" mean? It could mean
24 any pistol, dirk, slingshot, metal knuckles, razor or any
25 other instrument which can be used to inflict deadly

1 force.

2 What is "great bodily injury"? Again, this is a
3 specific definition which may look different than what you
4 think of great bodily injury. But great bodily injury for
5 this statute means bodily injury which causes a
6 substantial risk of death or which causes serious
7 permanent disfigurement or protracted loss or impairment
8 of the function of a bodily member or organ.

9 So that's the elements of high and aggravated,
10 domestic violence of a high and aggravated nature.

11 Now, when you get back to your jury room, if you find
12 that the State has met its burden on that charge, you
13 would select "guilty" on the verdict form. If you find
14 that the State has not met its burden, you would select
15 "not guilty." And I'll give you this sheet in just a
16 minute. I'll tell you what. I'll give it to you now just
17 so you'll have it.

18 And then you have to say, okay, I've selected not
19 guilty because I didn't find the State has met its burden
20 on the high and aggravated, so then you go to the lesser
21 included offense. And let's say all right, this is --
22 these are -- it's under the domestic violence umbrella,
23 but the elements are a little bit less, so therefore,
24 you're saying, well, they didn't quite meet everything on
25 the high and aggravated, but let's consider if they met

1 the burden on first degree domestic violence.

2 Again, you have domestic violence which is physical
3 harm or attempted physical harm to a household member, and
4 this is the requirement for first degree, and that's great
5 bodily injury to the person's own household member results
6 or the act is accomplished by means likely to result in
7 great bodily injury to the person's household member --
8 and again, the definition of great bodily injury would
9 apply -- or they committed the offense of second-degree
10 domestic violence, which I'll discuss with you in a
11 minute, and the offense is committed in the presence of a
12 minor or the offense is committed by impeding the victim's
13 breathing or airflow.

14 And again, second degree is where domestic violence
15 occurs with moderate bodily injury to a household member,
16 or there is an attempt, an act which is accomplished
17 likely to result in moderate bodily injury. So that's
18 another -- so you're looking at high and aggravated, then
19 you're looking at first degree which can be with great
20 bodily injury, occurring in front of a minor, or impeding
21 the airflow or if there's moderate bodily injury -- I'm
22 sorry. It's great bodily injury, but then also if it's
23 moderate bodily injury and it occurred in front of a minor
24 or impeded the victim's breathing or airflow, then that's
25 still first degree domestic violence.

1 All right. So you've gone through, and if you find
2 the State has not met its burden on high and aggravated
3 and you find that the State has not met its burden on
4 first degree, then you can consider second degree. And
5 here are the elements of second degree. Again, you have a
6 domestic violence of physical harm to a member of the
7 household, or attempt to cause physical harm with the
8 ability to do so and moderate bodily injury occurred.
9 Okay. That's the difference is you're talking about
10 moderate bodily injury.

11 And moderate bodily injury is defined as physical
12 injury that involves prolonged loss of consciousness or
13 that causes temporary or moderate disfigurement or
14 temporary loss of the function of a bodily member or
15 organ, or injury that requires medical treatment when the
16 treatment requires the use of regional or general
17 anesthesia, or injury that results in a fracture or
18 dislocation. Moderate bodily injury does not include
19 one-time treatment and subsequent observation of
20 scratches, cuts, abrasions, bruise, burns, splinters or
21 any other minor injury that do not ordinarily cause
22 extensive medical care. And you can -- also, second
23 degree is when there is domestic violence, physical harm
24 to an individual, household member and it's committed in
25 the presence of a minor or there was impeding of the

1 victim's airflow.

2 All right. So there's your three charges that you
3 can consider.

4 All right. Now let's talk about -- and again, you
5 would only consider first degree if you find him not
6 guilty of high and aggravated, and you only consider
7 second degree if you find him not guilty of either of the
8 two previous ones.

9 Now let's talk about self-defense. Self-defense, as
10 I indicated, has been raised, but the burden is on the
11 State to disprove self-defense beyond a reasonable doubt.
12 And self-defense is a complete defense if it's -- and if
13 you find self-defense has not been disproved beyond a
14 reasonable doubt, then you must find the defendant not
15 guilty.

16 If you have reasonable doubt of the defendant's guilt
17 after considering all the evidence, including the elements
18 of self-defense, then you would find the defendant not
19 guilty. On the other hand, if you have reasonable doubt
20 of the defendant's guilt after considering all of the
21 evidence including self-defense, you must find the
22 defendant -- on the other hand, if you have no -- if you
23 -- I'm sorry. If you have no reasonable doubt of the
24 defendant's guilt after considering all of the evidence
25 including self-defense, then you would find the defendant

1 guilty.

2 Here are the elements of self-defense. The defendant
3 must be without fault in bringing on the difficulty. If
4 the defendant's conduct was the type which was reasonably
5 calculated to and did provoke a deadly assault, the
6 defendant -- or attempted deadly assault, the defendant
7 would be at fault in bringing on the difficulty and would
8 not be entitled to an acquittal based on self-defense.

9 The second element is that the defendant was actually
10 in imminent danger of death or serious bodily injury, or
11 the defendant actually believed he was in imminent danger
12 of death or serious bodily injury. If the defendant was
13 actually in imminent danger, it must be shown that the
14 circumstances would have warranted a person of ordinary
15 firmness and courage to strike a blow to prevent death or
16 serious bodily injury. If the defendant believed he was
17 in imminent danger of death or serious bodily injury, it
18 must be shown that a reasonably prudent person of ordinary
19 firmness and courage would have had the same belief.

20 In deciding whether the defendant actually was or
21 believed he was in imminent danger of death or serious
22 bodily injury, you should consider all the facts and
23 circumstances of the crime including the physical
24 condition and characteristics of the defendant and the
25 victim.

1 The defendant does not have to show that he was
2 actually in danger. It is enough if the defendant
3 believed he was in imminent danger and a reasonably
4 prudent person of ordinary firmness and courage would have
5 had the same belief.

6 The defendant has a right to act on appearances even
7 though the defendant's belief may have been mistaken. It
8 is for you to decide whether the defendant's fear of
9 immediate danger of death or serious bodily injury was
10 reasonable and would have been felt by an ordinary person
11 in the same situation.

12 The relative size, age and weight of the defendant
13 and the victim may be considered by you in deciding the
14 apparent or actual need for force in self-defense and the
15 amount of force needed. The intoxication of the victim
16 and defendant may be considered in deciding whether the
17 defendant's fear of death or bodily harm was reasonable.

18 The final element is that the defendant had no other
19 probable way to avoid the danger of death or serious
20 bodily injury other than to act as the defendant did in
21 this particular instance.

22 A person cannot be required to make an exact
23 calculation as to the degree or amount of force which may
24 be needed to avoid death or serious bodily harm;
25 therefore, in self-defense the defendant has the right to

1 use the force needed to avoid death or serious bodily
2 harm. The force used in self-defense does not have to be
3 limited to the degree or amount of force used by the
4 victim. The defendant has a right to use so much force as
5 appeared to be necessary for complete self-protection in
6 which a person of ordinary reason and firmness would have
7 believed to be needed to prevent death or serious bodily
8 harm.

9 So that's the elements. Those are the elements of
10 self-defense which the State has to disprove. Again, the
11 burden is not on the defendant on any elements here to
12 disprove anything or prove the elements of self-defense.

13 So now we get down to the verdict form. This is the
14 verdict form which you will have back in there. And it's
15 as I discussed.

16 The first paragraph is as to the charge of domestic
17 violence of a high and aggravated nature, we the jury
18 unanimously find the defendant, Joshua Wyte Kelley, and
19 you're going to check one. If you find the State has met
20 its burden on the elements of this, you would check
21 "guilty." If you find the State has not met its burden,
22 you would check "not guilty."

23 If you check "guilty," then you would just go to the
24 bottom, you would sign and date. You don't have to
25 consider the other two.

1 If you check "not guilty," then you would go to the
2 next one. And that would be if you find the defendant,
3 Joshua Wyte Kelley, not guilty of domestic violence of a
4 high and aggravated nature, answer the following: we the
5 jury unanimously find the defendant, Joshua Wyte Kelley,
6 and you would check one.

7 And, again, if you find that the State has met his
8 burden on this charge, which is domestic violence in the
9 first degree, you would check "guilty," and then you would
10 -- at that point you would not have to consider the next
11 one. Go the bottom and sign and date.

12 If you find they didn't meet the burden on that, then
13 you would check "not guilty," and you would go to the next
14 one, and that is the second degree. And that is if you
15 find -- and just to read it to you, if the jury finds the
16 defendant was not guilty of domestic violence of a high
17 and aggravated nature and first degree, then you must
18 answer the following question. Again, the same analysis.
19 If they've met their burden, you would check "guilty." If
20 you find they have not met their burden, you would check
21 "not guilty."

22 Once you have reached your decision, then you would
23 sign, date and let the bailiffs know.

24 Now, your decision must be unanimous. On each of the
25 questions that you have to answer, your decision has to be

1 unanimous. All 12 of you must agree on what that verdict
2 is.

3 And your verdict should be based on the evidence
4 presented in the case. It should not be based on any
5 prejudice, any bias, any passion, any emotion, anything
6 outside the -- any other considerations other than the
7 evidence presented and the law which I have given to you.

8 Now, if you get back to your jury room and you decide
9 you have questions, well, that's where you come in,
10 Mr. Foreman, and you would write those questions on a
11 piece of paper, you date and you sign it and you give it
12 to the bailiff.

13 Now, there's two ways I can respond to those
14 questions. I can either write a response on the same
15 sheet of paper and send it back to you, or sometimes it
16 may require me to bring you back in here and give you some
17 additional instructions. Okay.

18 I will tell you that we can't answer factual
19 questions. If you have a factual question, that's what
20 you're to determine. And sometimes there will be -- you
21 know, questions will say, well, there was a reference to
22 such-and-such report, or there's a reference to
23 such-and-such a witness that did not testify. What did
24 that person see? What did that report say? That's not
25 something that you can consider and nor can we respond.

1 You can only make your decision based on the evidence that
2 has been presented here.

3 Now let me talk to my alternate. You're just as
4 important as the other 12, but as you can see, sometimes
5 stuff happens and we're required to move an alternate into
6 a regular juror position. Under our state law, though,
7 you cannot participate in the deliberation. But just
8 because you can't finish out with them doesn't mean your
9 role was not just as important. Because if another one
10 had not been able to go forward, then we could not have
11 completed the trial. So I want to thank you for your
12 participation even though you cannot participate in the
13 deliberation.

14 All right. At this point -- you can put that on the
15 bar right there. Okay. I'm going to send you back to
16 your jury room, but I can't let you discuss the case yet
17 because I need to make sure that I haven't messed
18 something up or stated something incorrectly. If that's
19 the case, I'll bring you back out here and give you
20 further instructions and clear up any misunderstanding or
21 anything like that.

22 But your signal that you can begin deliberations or
23 you can begin discussing the case is the bailiff will
24 bring you the verdict form and the evidence and ask that
25 the alternate step out. At that point you can begin your

1 deliberations. But do not do so until you've gotten that
2 signal.

3 So at this point if you go back to your jury room and
4 wait for further instructions.

5 (WHEREUPON, the jury exits the courtroom at 2:23 PM.)

6 THE COURT: All right. Any exceptions from the
7 State?

8 MS. FOWLER: Nothing from the State, Your Honor.

9 THE COURT: Any exceptions from the defendant?

10 MR. WARDER: No, Your Honor.

11 THE COURT: All right. Make sure we've got all the
12 exhibits.

13 (WHEREUPON, a recess is taken at 2:26 PM; the jury starts
14 deliberations; Court's Exhibit Number 2 was marked for
15 identification; proceedings reconvened at 3:15 PM.)

16 JURY QUESTION

17 THE COURT: We've got a question. It says can you
18 provide an itemized list of each offense written. It has
19 high and aggravated, first degree, second degree. Brad
20 Tinsley.

21 This may be the neatest writing I've ever had of a
22 juror. One of them we couldn't even read.

23 Respond, said after consulting with counsel, as I
24 said, the -- I think it's best to send a written form
25 back, but under our Supreme Court orders, we cannot send

1 just that portion back so I've printed the whole charge.
2 Both counsel has had a chance to review it. My response
3 is I put -- since written elements request, the Court is
4 required to submit the entire charge. Elements of
5 charges begin on the bottom of page 8 and go through
6 page 12.

7 All right. Any objection to that from the State?

8 MS. FOWLER: Nothing from the State, Your Honor.

9 THE COURT: Any objection to that from the defense?

10 MR. WARDER: No, Your Honor.

11 THE COURT: All right. Then I will send it back.

12 We'll be at ease until further notice.

13 (WHEREUPON, a recess is taken at 3:16 PM; proceedings
14 reconvened at 3:27 PM.)

15 THE COURT: I understand we have a verdict.

16 Anything from the State before we bring the jury in?

17 MS. FOWLER: Nothing from the State, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. WARDER: No.

20 THE COURT: All right. Bring the jury in.

21 (WHEREUPON, the jury entered the courtroom at 3:27 PM.)

22 THE COURT: All right. Mr. Foreman, I understand
23 you've reached a verdict?

24 JURY FOREMAN: Yes, sir.

25 THE COURT: You can hand the verdict to the clerk.

1 Thank you.

2 All right. Looks In proper form. If you could
3 publish the verdict, Mr. Clerk.

4 VERDICT

5 THE CLERK: Yes, sir.

6 This is Indictment Number 2023-GS-39-610, the State
7 of South Carolina vs. Joshua Kelley. As to the charge of
8 domestic violence of a high and aggravated nature, we the
9 jury unanimously find the defendant, Joshua Kelley,
10 guilty.

11 Is this your verdict and still your verdict, so say
12 you all by raising your right hand.

13 Thank you very much.

14 THE COURT: All right. Anything from the State for
15 the jury before I release the jury?

16 MS. FOWLER: Nothing from the State, Your Honor.

17 THE COURT: All right. Anything from the defense?

18 MR. WARDER: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, thank
20 you for your service this week. And you're good to go.
21 As of this time you're released. There's no other
22 additional trials. So thank you for your work. I'll step
23 back there in just a minute if anybody has any questions.
24 So thank you.

25 (WHEREUPON, the jury exits the courtroom at 3:29 PM.)

1 THE COURT: All right. Anything else from the State?

2 MS. FOWLER: No, Your Honor. We are printing off the
3 sentencing sheet.

4 THE COURT: Right. I mean as far as -- anything from
5 the defendant as far as motions?

6 MR. WARDER: No, sir.

7 THE COURT: Okay. I'll give y'all a few minutes to
8 collect your thoughts and then I'm going to step back here
9 and just chat with the jury. And I'll be back in just a
10 few minutes.

11 (WHEREUPON, a recess is taken at 3:30 PM; proceedings
12 reconvened at 3:44 PM.)

13 THE COURT: All right. You want to come forward,
14 Mr. Warder and Mr. Kelley?

15 All right. I have been presented with a sentencing
16 sheet, permanent restraining order and a civil judgment.
17 What I'll do is hear from the State and anything they want
18 to tell me, and then I'll hear anything from your side.

19 So yes.

20 MS. FOWLER: Your Honor, would you prefer me to stand
21 up there or ---

22 THE COURT: Wherever you want to. That's fine.

23 MS. FOWLER: Your Honor, I won't belabor the point.
24 You watched this trial. You saw the pictures of the
25 injuries and heard from the victim. She does not wish to

1 speak, but she did wish me to share with the Court that
2 her life has been forever changed by what happened that
3 night, the injuries that she has as well as her children's
4 lives have been forever changed.

5 I understand that Mr. Kelley does not have a prior
6 record, but the victim has shared with me that this was
7 not the first time that domestic violence had occurred in
8 that house.

9 The defendant was initially given an offer of ten
10 years. And while I don't think that any defendant should
11 be penalized for taking a case to trial, that was
12 certainly within his right, this victim had to be
13 retraumatized by testifying and reliving that night over.
14 So the State would be asking for a range of 12 to 15 years
15 at this time.

16 THE COURT: All right. Now, what's the nature of the
17 civil judgment? I've got a permanent restraining order,
18 talk to me about that, and also the civil judgment.

19 MS. FOWLER: Right. Your Honor, the State is asking
20 for a civil judgment in the amount of \$1,200. I
21 understand that Mr. Kelley is facing some prison time;
22 however, these are outstanding medical bills that
23 Ms. Harris still has that were not covered by SOVA. And
24 just out of principle, I don't believe that she should
25 have to pay for injuries and medical bills that were

1 caused by the defendant.

2 THE COURT: All right. Anything else from the State?

3 MS. FOWLER: Nothing else from the State, Your Honor.

4 THE COURT: All right. Mr. Warder, talk to me.

5 Before we get into sentencing, what's your position on the
6 civil judgment?

7 MR. WARDER: Well, I mean, I've never had it
8 presented in just this fashion. You know, my client
9 understands that the bills are there. If you give him a
10 judgment, I don't know what he can do to pay it. His
11 situation is that he has a father that ---

12 THE COURT: Let me stop you. This is my feeling on
13 civil judgment. Since nothing has been presented, either
14 we can -- it can be with consent or if they want to go
15 forward with it, then we can have, I guess, a restitution
16 hearing if needed. I mean, because otherwise, I haven't
17 been presented with any bills or any -- to make any
18 findings without more. I think as a practical matter, it
19 probably doesn't make a difference.

20 MR. WARDER: Your Honor, we don't really object to
21 the civil judgment. We won't be able to address that
22 until we get out.

23 THE COURT: Right. I mean, that's -- yeah. That's
24 -- it will just be -- it's not a restitution order. It's
25 a judgment. So it will just be a judgment against his --

1 any personal -- I mean any real property.

2 You want to talk to him about -- well, do you want to
3 talk to him about that for just a few minutes?

4 MR. WARDER: Your Honor, he'd just as soon -- the
5 civil judgment, you know, it is important.

6 THE COURT: All right. So y'all don't object to the
7 civil judgment.

8 MR. WARDER: No.

9 THE COURT: All right. How about the permanent
10 restraining order? Anything you want ---

11 MR. WARDER: No. I think if the victim wants that,
12 she should get it.

13 THE COURT: All right. Talk to me about sentencing.

14 MR. WARDER: Your Honor, outside of my client doesn't
15 have any prior record, and his ex-wife is here and has
16 come to support. She says that nothing like this ever
17 happened. Her idea, an image of him is completely
18 different.

19 She wanted to know if she can speak.

20 THE COURT: I'll be glad to hear from her.

21 MR. WARDER: Come on up here.

22 THE COURT: State your name for the record.

23 MS. KELLEY: Jessica Kelley.

24 Like he was saying, I've been married to Josh. I was
25 with him for 20 years and we were married for 16. He is

1 still, you know, my ex-husband, but we have three children
2 together. We did everything together. And I'm telling
3 you, in 20 years that I've been with this man, there has
4 never been one single instance of him being any kind of
5 violence toward me, or any women for that matter. We have
6 two girls that we raise. He's like, you know, always been
7 a provider, always been an amazing like father. My kids
8 need him. We've been through so much.

9 So this not only affects him, it affects our whole
10 family. I take care of his father. They have no other
11 family. So since he was primarily caring for his dad, who
12 you can see who at the time when he was locked up could
13 still walk some, but now he's permanently paralyzed. And
14 that burden has fell on me and my children. And he's not
15 able to take care of him. And we desperately need that.

16 Both of our daughters were just in a serious car
17 accident like a month ago. My 18-year-old daughter is
18 going to have to pretty much learn how to walk again
19 because -- from her injuries. So he's been very much
20 needed at home and missed.

21 And like him going to prison is going to make the
22 difference in his father probably ending up in a nursing
23 home. And, you know, he doesn't deserve that.

24 But like he's -- he's never been violent. He is the
25 epitome of a gentle giant, you know. And I'm his ex-wife,

1 you know. He's like -- you know, this is the man that
2 would worry. He did industrial construction the whole
3 time we were married. He would travel all over the
4 country, would drive all through the night after working
5 all day because he wasn't going to miss Donuts for Dads
6 with our kids.

7 I mean, Sarah's his kids. He was a father to them
8 for the three years they were together. Him and his dad
9 would take her kids to basketball practice and do all of
10 this that she couldn't do, you know.

11 And he is not a violent person. He's not a threat to
12 her, to me, to anyone else. He loves his family. His
13 family needs him desperately. I mean, just please
14 consider that.

15 He's never been in trouble. And my children really
16 need him. His father desperately needs him, you know.
17 And like I said, and I'm personally -- I'm a nurse. I'm
18 out of work for the last two years because I contracted a
19 bacteria on my job when I was working at Ocone Hospital,
20 and it has metastasized. It's on my right kidney. And
21 now I'm on a donor transplant list. I need a kidney. So
22 my health is very, you know, frail as well.

23 And we have these children. And now because, you
24 know, my loyalty for him and our kids, you know, I've
25 stepped up and taken care of his father. But I don't --

1 anything can happen at the drop of a hat, and I can't keep
2 doing that, you know.

3 So, I mean, this is devastating for our family, for
4 their family. And I just ask you on behalf of my
5 children, please have mercy on him, because he's not this
6 demon that they are painting him to be.

7 THE COURT: Thank you for being here. Sorry for all
8 what you're going through. It sounds like a lot.

9 MS. KELLEY: Thank you. It is. It's a lot. I
10 appreciate it. Thank you so much.

11 THE COURT: Mr. Kelley, I'll be glad to hear anything
12 you want to tell me.

13 DEFENDANT KELLEY: I just apologize for anything
14 that's come from this. I mean, they found me guilty, but
15 I did not beat this woman. I mean, all I did was try to
16 -- I sat there for 26 months screaming. All I did was try
17 to get away. What the hell. Nobody would listen to me.

18 So, I mean, I just apologize. I mean, I really do.
19 I hate this. I mean, I love all of them.

20 THE COURT: What's his jail credit?

21 MS. FOWLER: He's been in since this occurred.

22 MR. WARDER: 26 months, I think, sir.

23 THE COURT: 2/23/21, I guess.

24 MS. FOWLER: Yes, Your Honor.

25 THE COURT: 794 is how much he has credit for based

1 On our calculation.

2 All right. Anything else, Mr. Warder?

3 MR. WARDER: No, sir.

4 SENTENCING

5 THE COURT: All right. The sentence of the Court is
6 15 years in the State Department of Corrections, credit
7 for 794 days, a permanent restraining order through
8 April 27, 2073. And that's a separate -- and any
9 violation of that would be a separate charge. And I've
10 signed the civil judgment.

11 So good luck to you, Mr. Kelley.

12 MS. FOWLER: Thank you, Your Honor.

13 (WHEREUPON, proceedings concluded at 3:55 PM.)
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24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF PICKENS)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 General Sessions for Pickens County, South Carolina, on
14 the 26th and 27th day of April, 2023.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 August 10, 2023

19
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

2012 STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Indictment # 2023 653900 610

vs.

JOSHUA WYTE KELLEY, 2023 APR 28 PM 3:06

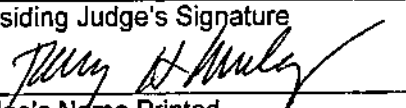
CIVIL JUDGMENT

2023-CP-39-485

Defendant
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter came before me on the above-mentioned date, pursuant to a motion to require the defendant to enter into a civil judgment and a judgment lien attached. Upon consent and agreement of the State and the Defendant, I find that no cause was shown why judgment should not be entered. I find the restitution due and the payee to be as stated below.

It is therefore ordered, adjudged and decreed that the payee shall have judgment against the defendant in the sum stated below. It is further ordered that the clerk of court enter this judgment in the civil judgment records of the court. All of which is ordered pursuant to S.C. Code Ann. §17-25-323.

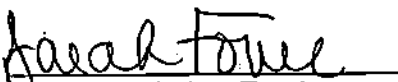
Payee's Name: KELLI HARRIS	The Defendant is ordered to pay to the Payee the sum of \$ 1200
Payee's Address: Marietta, Sc 29661 City State Zip	
Presiding Judge's Signature 	Date: 4/27/23
Judge's Name Printed Perry Gravel	Pickens, SC

W/o objection -

I so move:

Consent:

Consent:


Sarah Christine Fowler
Assistant Solicitor

Joshua Wyte Kelley
Defendant

Richard Warder
Attorney for the Defendant

WITNESSES

Marc S Shen

Pickens County Sheriff's Office

2/24/2021

DIRECT PRESENTMENT

DOB: [REDACTED] /1982

SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

Date: 21 MAR 2023

James Brad Tinsley
Foreperson of Grand Jury

VERDICT

Guilty

James Brad Tinsley
Foreperson of Petit Jury
Date: 4-26-23

DOCKET NO. 2023-GS-39-SCF

0610

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 21 2023

TERM 2023

THE STATE

vs.

JOSHUA WYTE KELLEY

Indictment for

3814

DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § 16-25-0065(A)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR
 DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
 NATURE

At a Court of General Sessions, convened on

MAR 21 2023

the Grand Jurors of Pickens

County present upon their oath:

That JOSHUA WYTE KELLEY did in Pickens County on or about the 23rd day of February, 2021, did unlawfully cause physical harm or injury to KELLI HARRIS, a household member or did unlawfully offer or attempt to cause physical harm or injury to KELLI HARRIS, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril and JOSHUA WYTE KELLEY committed the offense under circumstances manifesting extreme indifference to the value of human life and the offense resulted in great bodily injury to KELLI HARRIS or JOSHUA WYTE KELLEY committed the offense with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death. This is in violation of § 16-25-0065 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jaqueline Fowler
 SOLICITOR

BAR # 102711

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

STATE

VS.

Joshua Wyte Kelley

AKA:

Race: WHITE Sex: M Age: 41DOB: 82 SS#: Address: Roanoke RdCity, State, Zip: Liberty, SC 29657-9348DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2023 - GS - 39 - 00610A/W#: 2023GS3900610Date of Offense: 2/23/2021S.C. Code § 16-25-0065CDR Code #: 3814

SENTENCE SHEET

0-20 yrs*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Domestic / Domestic Violence of a high and aggravated naturein violation of § 16-25-0065 of the S.C. Code of Laws, bearing CDR Code # 3814
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sarah Fowler 102711
 Fowler, Sarah Christine SC Bar #

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,
 for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by
 SCDOC. 794 days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.
 Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or
 § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Joshua Wyte Kelley INDICTMENT/CASE#: 2023 - GS - 39 - 00610**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☒ Other: - Permanent Restraining Order
- Civil Judgment - \$1200

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

	\$	Beginning	\$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of			
§14-1-206 (Assessments 107.5 %)			\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100		\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114(BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.15
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$

TOTAL \$ 128.75

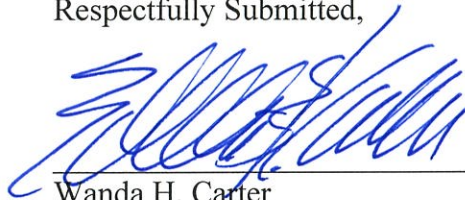
Clerk of Court/ Deputy Clerk: Joshua P. W. Smith
 Court Reporter: Cheryl Smith

Presiding Judge: Perry D. Smith
 Judge Code: 775
 Sentence Date: 4/27/2023

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Nov 13 2023

SC Court of Appeals

This 13th day of November, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Nov 13 2023
SC Court of Appeals

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

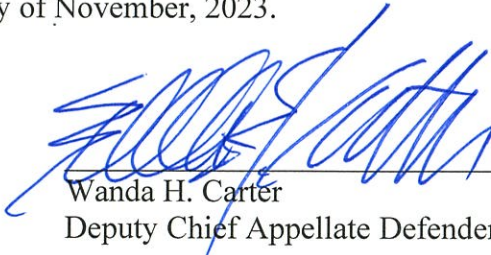
V.

JOSHUA WYTE KELLEY,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Joshua Wyte Kelley, 390854, Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC, 29067, this 13th day of November, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender