

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY
In the General Sessions Court
Hon. J. Mark Hayes, II

JAN 18 2024
SC Court of Appeals

Appellant Case No. 2022-000358
Lower Case No. 2020GS4203001

State of South Carolina, ... Respondent:

vs.

Wesley Ray Kyzer, ... Appellant:

RECORD ON APPEAL

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RECORD ON APPEAL
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 WESLEY RAY KYZER,)
8 DEFENDANT.) 2020-GS-42-3000
2020-GS-42-3001

9
10 March 7th - 9th, 2022
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 HONORABLE J. MARK HAYES, II, JUDGE; and a jury.

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

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17 ASSISTANT SOLICITORS
18 Attorneys for the State

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22
23 PAMELA E. GREEN
24 Circuit Court Reporter
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P R O C E E D I N G S

1
2
3 THE COURT: All right, ladies and gentlemen. We're now
4 going to begin with the selection of the first jury for the
5 week. I need to remind you that you have taken an oath to
6 provide me with truthful and honest information. So, I need
7 to remind you of that, that you're obligated to tell me the
8 truth.

9 But, ladies and gentlemen, we're now going to start the
10 case of the State of South Carolina versus Wesley Ray Kyzer.
11 I'm sorry.

12 After I announce the case, I'm now suppose to have you
13 to stand and raise your hand and the Clerk of Court is gonna
14 swear you in again.

15 So, please stand and raise your right-hand.

16 (WHEREUPON, the jury panel was placed under oath at
17 this time.)

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

19 Sorry, Madam Clerk

20 Ladies and gentlemen, a lot, a lot of what we do is, is
21 formal and it's formal because things that we do here, this
22 is considered a trial level, can be reviewed later by other
23 courts and other judges. So, I just threw the Clerk of
24 Court a, a high pitched ball cause I didn't have her --
25 warned her that I needed her to swear you in.

1 So, thank you, Madam Clerk.

2 Ladies and gentlemen, again, we're now gonna start the
3 trial of the State of South Carolina versus Wesley Ray
4 Kyzer.

5 Ladies and gentlemen, I'm gonna ask if Mr. Wesley Kyzer
6 would please stand and face the ladies and gentlemen of the
7 jury.

8 (WHEREUPON, the defendant complies.)

9 THE COURT: Ladies and gentlemen, this is Wesley Kyzer.
10 He is brought to Court by way of two indictments that charge
11 him with harassment in the first degree and threatening a
12 public official, teacher, or principal.

13 Now, the indictment that involves harassment first
14 degree provides that the defendant did, in Spartanburg
15 County, on or about April the 1st, 2018, through September
16 the 25th, 2019, did engage in a pattern of intentional,
17 substantial, and unreasonable intrusion into the private
18 life of the victim, Robert Wesley Brown, that caused him and
19 would cause a reasonable person in his position to suffer
20 mental or emotional distress. To wit, by repeatedly making
21 efforts to have the victim terminated from his employment
22 and/or attending Spartanburg High School baseball games in
23 an effort to intimidate the victim and/or threatening the
24 victim's life all in violation of the Code of Laws of South
25 Carolina.

1 The indictment that, that involves threatening a public
2 official, teacher, or principal provides that the defendant,
3 Wesley Kyzer, did, in Spartanburg County, on or about
4 September the 24th, 2019, knowingly and willfully threaten
5 the life of or to inflict bodily harm upon a public official
6 or to a teacher or principal of an elementary or secondary
7 school, that being Robert Wesley Brown, and the threat was
8 directly related to his professional responsibilities in
9 violation of the statutory laws of South Carolina.

10 Now, ladies and gentlemen of the jury, Mr. Wesley Kyzer
11 has pled not guilty to both of these indictments, and that
12 is the reason that we're conducting this, this trial is to
13 determine whether or not the State can meet their burden of
14 proof of establishing the elements of the criminal offense
15 contained in the indictments.

16 Now, ladies and gentlemen, I need for you to please
17 stand if you are related by blood or marriage to Mr. Kyzer,
18 if you have a close personal or social relationship with
19 Mr. Kyzer, or if you've ever been employed with or employed
20 Mr. Kyzer in any type of professional or commercial
21 capacity?

22 If so, ladies and gentlemen, I need for you to please
23 stand at this time.

24 (WHEREUPON, there was no response.)

25 THE COURT: Thank you, Mr. Kyzer. You may have a seat.

1 (WHEREUPON, the defendant complies.)

2 THE COURT: Ladies and gentlemen, as contained in the
3 indictments, the, the victim in this case, Mr. Robert Wesley
4 Brown, I would ask that Mr. Brown please stand and face the
5 ladies and gentlemen of the jury.

6 (WHEREUPON, Mr. Brown complies.)

7 THE COURT: This is Robert Wesley Brown. He is, as
8 alleged in the indictment, is the victim in these cases.

9 Ladies and gentlemen, I would like for you to please
10 stand at this time if you are related by blood or marriage
11 to Mr. Brown or if you have a close personal or social
12 relationship with Mr. Brown or if you've ever been employed
13 in any type of employment relationship with Mr. Brown.

14 If you would, please stand at this time.

15 (WHEREUPON, there was no response.)

16 THE COURT: Thank you, Mr. Brown.

17 (WHEREUPON, Mr. Brown sits down.)

18 THE COURT: Ladies and gentlemen, I'm now going to read
19 to you a list of witnesses who may be called as part of this
20 case. Please listen to the names that I am about to call
21 because, after all of the names have been published, have
22 been announced to you, I'm gonna ask that you please stand
23 if you're related by blood or marriage to any of these
24 individuals, if you have a close personal or social
25 relationship with any of these individuals, or if you've

1 ever been -- shared any type of employment relationship, any
2 type of professional relationship or -- with any of these
3 individuals. So please listen to them and please stand
4 after I announce their names.

5 Andrew Morrow Caldwell.

6 Ryan Joseph Thomas.

7 Christopher Miller.

8 Jeffrey Thomas Stevens.

9 Russell William Booker.

10 Michael Todd Staley.

11 Robert Benjamin Johnson of Spartanburg County Sheriff's
12 Office.

13 David Trammell, Spartanburg City Police Office.

14 Aliena Kyzer.

15 Ladies and gentlemen, again, if you're related by blood
16 or marriage to any of those individuals, if you have a close
17 personal or social relationship with any of those
18 individuals, or if you've ever shared any type of employment
19 or work relationship or professional relationship with any
20 of those individuals, I would ask that you please stand at
21 this time.

22 (WHEREUPON, jurors stand at this time.)

23 THE COURT: All right. Let's start here, ma'am.

24 Tell me your juror number.

25 THE JUROR: 26.

1 THE COURT: You want to meet me over here at the court
2 reporter.

3 (WHEREUPON, the following takes place outside the
4 hearing of the remaining jurors.)

5 THE COURT: Give me one moment.

6 You're Ms. Burnett?

7 THE JUROR: I am.

8 THE COURT: Yes, ma'am.

9 Who is it that you know?

10 THE JUROR: I work for District 7. So I'm --.

11 THE COURT: Okay.

12 THE JUROR: I technically work for Mr. Stevens now --

13 THE COURT: Okay.

14 THE JUROR: -- or Mr. Booker.

15 THE COURT: And the fact that that has -- is, is
16 occurring, would that in any way affect your ability to give
17 both the State and the defense a fair and impartial trial in
18 the event you're selected as a member of the jury?

19 THE JUROR: I don't think so.

20 THE COURT: Thank you, ma'am. You may be seated, yeah.

21 THE BAILIFF: Number 80.

22 THE COURT: Give me one moment.

23 You are Mr. Jones?

24 THE JUROR: Yes, sir.

25 THE COURT: Yes, sir. Tell me about it.

1 THE JUROR: I work with Andrew Caldwell or work with
2 him. I'm, I'm in the same organization with him in strength
3 and conditioning. I know Coach Brown and also am an
4 assistant with him. So, I know a couple -- him in
5 particular.

6 THE COURT: Caldwell you mean?

7 THE JUROR: Caldwell.

8 THE COURT: And tell me again who it is you know,
9 Caldwell?

10 THE JUROR: I'm a strength and conditioning coach and
11 he is the head strength coach at Spartan High.

12 THE COURT: So are you at Spartan High?

13 THE JUROR: I'm not. But I work part of the
14 organizations, state organizations.

15 THE COURT: Gotcha.

16 Okay. Thank you.

17 THE JUROR: So we do a lot of events together.

18 THE COURT: Thank you for sharing that with us.

19 And the fact that has, that has happened or occurred,
20 would that in any way affect your ability to give both the,
21 both the plaintiff and the defendant -- the state and the
22 defense a fair and impartial trial in the event you're
23 selected as a member of the jury?

24 THE JUROR: Hu huh. (Negative).

25 THE COURT: Thank you, sir.

1 THE JUROR: Okay. Thank you.

2 (WHEREUPON, the following takes place within the
3 hearing of all of the jurors.)

4 THE COURT: Ladies and gentlemen, I'm now going to ask
5 the lawyers who will be participating in the trial of the
6 case to introduce themselves to you. So please listen to
7 this.

8 Yes, ma'am. I'll start with the State.

9 SOLICITOR CUENCA: Good morning. My name is Maressa
10 Cuenca. I am an assistant solicitor at the Seventh Circuit
11 and assisting is co-counsel.

12 SOLICITOR COLEMAN-HICKS: Hope Coleman-Hicks. I'm also
13 an assistant solicitor in the Seventh Circuit.

14 THE COURT: All right. Ladies and gentlemen, could
15 y'all hear her?

16 (WHEREUPON, the juror respond in the negative.)

17 THE COURT: Okay. You want to give her a microphone?
18 Yeah.

19 SOLICITOR CUENCA: Good morning, everyone. My name is
20 Maressa Cuenca and I am an assistant solicitor at the
21 Seventh Circuit.

22 SOLICITOR COLEMAN-HICKS: And I'm Hope -- I'm Hope
23 Coleman-Hicks. I'm also an assistant solicitor here in the
24 Seventh Circuit.

25 THE COURT: Thank you very much.

1 Tell you what, let, let me address them and then we'll
2 get the other side.

3 Ladies and gentlemen, if you are related by blood or
4 marriage to any of these attorneys or if you have a close
5 personal or social relationship with any of these attorneys
6 that are representing, representing the State, I need for
7 you to please stand at this time.

8 (WHEREUPON, there was no response.)

9 THE COURT: Ladies and gentlemen, if you or a member of
10 your immediate family has, has ever been a defendant in a
11 criminal case that's been prosecuted by the Seventh Circuit
12 solicitor's office, I need for you to please stand at this
13 time.

14 (WHEREUPON, there was no response.)

15 THE COURT: Ladies and gentlemen, if you or a member of
16 your immediate family has ever been a victim -- classified
17 as a victim of a criminal matter that has been handled by
18 the Seventh Circuit Solicitor's Office, I need for you to
19 please stand at this time.

20 (WHEREUPON, there was no response.)

21 THE COURT: Thank you very much.

22 Now -- I'm now gonna ask the lawyer representing the
23 defendant to please stand and introduce himself to you.

24 MR. BENDER: Good morning. My name is Michael Bender.
25 I work at the King Law Firm in Columbus, North Carolina.

1 THE COURT: Thank you, sir.

2 Ladies and gentlemen, if any of you are related by
3 blood or marriage to Mr. Bender or if you have a close
4 personal or social relationship with Mr. Bender, I need for
5 you to please stand at this time.

6 (WHEREUPON, there was no response.)

7 THE COURT: Ladies and gentlemen, also if you have
8 been -- you or a member of your immediate family has ever
9 been represented by Mr. Bender or with the King Law Firm, I
10 need for you to please stand, and I also need for you to
11 please stand if you or a member of your immediate family has
12 ever been on the opposite side of a legal matter that had
13 Mr. Bender or the King Law Firm on the other side, please
14 stand.

15 (WHEREUPON, one juror responds at this time.)

16 THE COURT: Yes, ma'am, your juror number?

17 THE JUROR: 160.

18 THE COURT: We'll meet over here.

19 (WHEREUPON, the following takes place outside the
20 hearing of the remaining jurors.)

21 THE COURT: Give me one second.

22 THE JUROR: Yes, sir.

23 THE COURT: You're Ms. Vaughn?

24 THE JUROR: Yes, sir.

25 THE COURT: And tell me about it.

1 THE JUROR: Child custody. It was I think 2018.

2 THE COURT: Uh-huh. (Affirmative).

3 THE JUROR: And my son's father, we were not married,
4 used King Law Firm as his attorney.

5 THE COURT: Okay. Thank you for sharing that with us.

6 THE JUROR: Yes, sir.

7 THE COURT: Would that in any way affect your ability
8 to give both the State and the defense a fair and impartial
9 trial in the event you're selected as a member of the jury?

10 THE JUROR: No, sir.

11 THE COURT: Thank you very much.

12 (WHEREUPON, the following takes place within the
13 hearing of the jury venire.)

14 THE COURT: Okay. Is any member of the jury panel or
15 your immediate family ever been a victim of or witness to a
16 crime involving stalking, harassment, or threats, or similar
17 types of crimes, if so, please stand at this time.

18 (WHEREUPON, jurors respond at this time.)

19 THE COURT: Yes, ma'am, your juror number?

20 THE JUROR: 133.

21 THE COURT: Let me go over here.

22 (WHEREUPON, the following takes place outside the
23 hearing of the jury panel.)

24 THE JUROR: Yes, sir.

25 THE COURT: Give me one second.

1 THE JUROR: Okay.

2 THE COURT: I got to turn the page.

3 Ms. Scoggins?

4 THE JUROR: Yes, sir.

5 THE COURT: Tell me about it.

6 THE JUROR: It was a Landrum police officer. He was
7 charged with harassment and misconduct in office. I was the
8 victim.

9 THE COURT: Okay. I'm sorry. You talked a little bit
10 too fast for me to hear.

11 THE JUROR: Oh, I'm sorry.

12 THE COURT: Yeah. So---

13 THE JUROR: It was a---

14 THE COURT: ---you were the victim---

15 THE JUROR: Uh-huh. (Affirmative).

16 THE COURT: ---in a case that in or the victim in a --
17 with charges involving against a Landrum police officer?

18 THE JUROR: Yes, sir.

19 THE COURT: Okay. All right. Thank you for sharing
20 that with us.

21 THE JUROR: You welcome.

22 THE COURT: The fact that that has occurred, would that
23 in any way affect your ability to give both the State and
24 the defense a fair and impartial trial in the event you're
25 selected as a member of this jury?

1 THE JUROR: No, sir.

2 THE COURT: Thank you very much.

3 THE JUROR: Yep.

4 THE BAILIFF: 163.

5 THE COURT: Give me one second.

6 You're Ms. Wall.

7 (WHEREUPON, the juror nods affirmatively.)

8 THE COURT: Yes, ma'am, tell me about it.

9 THE JUROR: Sister-in-law was harassing, showing up
10 places. I got a restraining order against her.

11 THE COURT: Okay. The fact that that has occurred,
12 would that in any way affect your ability to give both the
13 State and the defense a fair and impartial trial in the
14 event you're selected as a member of this jury?

15 THE JUROR: No. No.

16 THE COURT: Thank you very much.

17 THE BAILIFF: 16.

18 THE COURT: Let me get your name.

19 You're Mr. Bowen?

20 THE JUROR: Yes, sir.

21 THE COURT: Yes, sir, tell me about that.

22 THE JUROR: It was about 33 years old. It was my wife
23 right before we got married.

24 THE COURT: Okay.

25 THE JUROR: She was stalked and had to get a

1 restraining order. Broke into the house --

2 THE COURT: Okay.

3 THE JUROR: -- and did some damage to her property and
4 broke into her place of business and --.

5 THE COURT: Okay. Thank you for sharing that with us.

6 The fact that that has occurred, would that in any way
7 affect your ability to give both the State and the defense a
8 fair and impartial trial in the event you're selected as a
9 member of the jury?

10 THE JUROR: No.

11 THE COURT: Thank you very much.

12 THE JUROR: You're welcome.

13 THE BAILIFF: Number 60.

14 THE COURT: Give me one second.

15 You're Ms.---

16 THE JUROR: Joye Frost.

17 THE COURT: ---Frost. Come on up.

18 Tell me about it, yes, ma'am.

19 THE JUROR: Well, my daughter was a victim of stalking
20 and I -- my ex-husband was abusive and I had to go to court
21 about that.

22 THE COURT: Okay. And thank you for sharing that with
23 us.

24 The fact that that has occurred, would that in any way
25 affect your ability to give both the State and the defense a

1 fair and impartial trial in the event you're selected as a
2 member of this jury?

3 THE JUROR: I don't think so.

4 THE COURT: Okay. You say you don't think so.

5 That means that you think it would?

6 THE JUROR: I would -- I don't know. This is a
7 difficult question because --.

8 THE COURT: Yeah. Okay.

9 THE JUROR: That was, that was a very traumatic
10 experience in my life.

11 THE COURT: Okay.

12 THE JUROR: I -- so I guess it, I guess it might. It
13 might affect it.

14 THE COURT: Thank you for sharing that with us.

15 THE JUROR: Okay.

16 THE COURT: You can have a seat.

17 THE JUROR: Thank you.

18 THE BAILIFF: 171. 171.

19 THE COURT: Give me just a moment.

20 You're Mr. Whitlock?

21 THE JUROR: I am.

22 THE COURT: Tell me about it.

23 THE JUROR: Okay. Approximately 2008 this gentleman
24 that -- this guy that did some work for me---

25 THE COURT: Uh-huh. (Affirmative).

1 THE JUROR: ---at my home, when I kept calling him back
2 to make his work good, he threatened me to the point that I
3 went over to the Sheriff's Department and filled out papers
4 against him.

5 THE COURT: Uh-huh. (Affirmative).

6 THE JUROR: And had those served.

7 THE COURT: Thank you for sharing that with us.

8 THE JUROR: All right.

9 THE COURT: Let me ask you this.

10 THE JUROR: Okay.

11 THE COURT: The fact that that has occurred to you,
12 would that in any way affect your ability to give both the
13 State and the defense a fair and impartial trial in the
14 event you're selected as a part of this jury?

15 THE JUROR: No.

16 THE COURT: Thank you very much.

17 THE JUROR: Yes, sir.

18 THE BAILIFF: 113.

19 THE COURT: 113?

20 THE JUROR: Yes, 113.

21 THE COURT: Tell me about it, Mr. Oglesby.

22 THE JUROR: My mom's first husband, who is her
23 ex-husband now---

24 THE COURT: Uh-huh. (Affirmative).

25 THE JUROR: ---harassed her for over 10 years.

1 THE COURT: Uh-huh. (Affirmative).

2 THE JUROR: We had people break into our first home
3 that we moved into here out in Duncan.

4 THE COURT: Uh-huh. (Affirmative).

5 Okay. Thank you for telling us about that.

6 Would that in any way affect your ability to give both
7 the State and the defense a fair and impartial trial in the
8 event you're selected as part of this jury?

9 THE JUROR: No.

10 THE COURT: Thank you very much.

11 THE JUROR: Yes.

12 THE BAILIFF: 23.

13 THE COURT: You're Ms. Bryant?

14 THE JUROR: Uh-huh. (Affirmative).

15 THE COURT: Yes, ma'am, tell me about it.

16 THE JUROR: I'm not sure but I believe I had some --
17 I'm not the -- a victim in, in a situation but I have spoken
18 to your court in reference to my son who was, who was
19 arrested for threats, domestic violence, stuff like that.
20 But I've never -- I was never a part of the case. He was
21 there for something else and I do believe I spoke to someone
22 in your court. I'm not sure. It might of been somebody
23 named Gail or Hope.

24 THE COURT: Uh-huh. (Affirmative).

25 THE JUROR: So, I didn't know if I needed to just make

1 that statement known.

2 THE COURT: Well, thank you for sharing that with us.
3 You've made it known. Let me ask you this.

4 The fact that that has occurred, would that in any way
5 affect your ability to give both the State and the defense a
6 fair and impartial trial in the event you're selected as a
7 member of this jury?

8 THE JUROR: No.

9 THE COURT: Thank you very much.

10 THE BAILIFF: 42.

11 THE COURT: Give me just a moment.

12 You're Mr. Crossley?

13 THE JUROR: Yes, sir.

14 THE COURT: Yes, sir. Tell me about it.

15 THE JUROR: So I heard you say that if you had
16 witnessed anything as far as stalking or harassment, right?

17 That, that was how you -- your question was, right?

18 THE COURT: Well, you tell me what you heard and
19 then -- I get to ask the questions.

20 THE JUROR: I thought you had said that if I'd been
21 involved or somebody in my family has been a victim---

22 THE COURT: Right.

23 THE JUROR: ---of harassment or---

24 THE COURT: You or a member of your immediate family.

25 THE JUROR: Okay. Well, I was -- just want to know if,

1 if -- like if your prior job history, if you had to see
2 people that ever involved -- I was once in law enforcement.

3 THE COURT: Uh-huh. (Affirmative).

4 THE JUROR: I'm not now.

5 THE COURT: Right.

6 THE JUROR: I just didn't know if that qualified for
7 what you were asking me.

8 THE COURT: why don't you let me know what you want us
9 to know?

10 Just go ahead and tell me.

11 THE JUROR: I was once a police officer.

12 THE COURT: Okay. Thank you for sharing that with me.
13 Who were you a police officer for?

14 THE JUROR: Cherokee County.

15 THE COURT: Okay. The fact that that has occurred,
16 would that in any way affect your ability to give the State
17 or the defense a fair and impartial trial?

18 THE JUROR: No.

19 THE COURT: Thank you very much.

20 THE JUROR: Okay. Thank you.

21 THE BAILIFF: Number 10.

22 THE COURT: Give me one second.

23 You're Mr. Barriage?

24 THE JUROR: Barriage.

25 THE COURT: Yes, sir. Tell me about it.

1 THE JUROR: So my father was a sexual abuser. He was
2 heavily engaged in harassment and stalking us.

3 THE COURT: Okay.

4 THE JUROR: It was -- it went into a civil case for a
5 while and the criminal circuit judge wanted us to pursue a
6 criminal case against him. But he gave up full rights and
7 we escaped to South Carolina after that.

8 THE COURT: Okay. So thank you for sharing that with
9 us.

10 The fact that that has occurred, would that in any way
11 affect your ability to give both the state and the defense a
12 fair and impartial trial in the event you're selected as
13 part of this jury?

14 THE JUROR: I think so.

15 THE COURT: You think it---

16 THE JUROR: Obviously, yeah.

17 THE COURT: Well thank you for telling us. You may
18 have a seat.

19 THE JUROR: Thank you, sir.

20 THE BAILIFF: 80.

21 THE COURT: Come on up.

22 You're Mr. Jones?

23 THE JUROR: Again. Yes, sir. Going back to the
24 previous --

25 THE COURT: Uh-huh. (Affirmative).

1 THE JUROR: -- with me being an educator and knowing
2 some of his colleagues, I don't think I can remain unbiased
3 during this process.

4 THE COURT: Okay.

5 THE JUROR: I would be afraid that my decision would be
6 affected by knowing him.

7 THE COURT: Okay. Well, thank you for sharing that
8 with us.

9 THE JUROR: Yes, sir. Thank you.

10 Do I need to turn in my tag?

11 THE COURT: No, sir, you get to have a seat.

12 THE JUROR: Have a seat?

13 THE COURT: Yeah.

14 THE JUROR: Okay.

15 (WHEREUPON, the following takes place within the
16 hearing of the jury panel.)

17 THE COURT: All right. Is there any member of the jury
18 panel who has a child who's presently enrolled in playing
19 sports in Spartanburg High School, if so, please stand at
20 this time.

21 (WHEREUPON, there was no response.)

22 THE COURT: Is there any member of the jury panel who
23 is a member of an organization that does not recognize the
24 government of the United States or the State of South
25 Carolina, if so, please stand at this time.

1 (WHEREUPON, there was no response.)

2 THE COURT: Has any member of the jury panel formed or
3 expressed an opinion about any issue or matter that is
4 involved in this case, if so, please stand at this time.

5 (WHEREUPON, there was no response.)

6 THE COURT: Has any member of the jury panel or a
7 member of your immediate family been involved in a formal
8 complaint process with a school or a school district, if so,
9 please stand at this time.

10 (WHEREUPON, there was no response.)

11 THE COURT: Is there any member of the jury panel aware
12 of any bias or prejudice towards either the State or the
13 defendant in this case, if so, please stand at this time.

14 (WHEREUPON, there was no response.)

15 THE COURT: Is there any member of the jury panel that
16 was a member of the, the Grand Jury which issued the
17 indictments in this case, if so, please stand at this time.

18 (WHEREUPON, there was no response.)

19 THE COURT: Is there any member of the jury panel who
20 is a member of or contributor to any group which has as its
21 primary concern the promotion of law enforcement or victim's
22 rights?

23 Now these groups would include but certainly not be
24 limited to MADD, SADD, or CAVE, Citizens Against Violent
25 Crimes, if so, please stand at this time.

1 (WHEREUPON, there was no response.)

2 THE COURT: Does any member of the jury panel know of
3 any reason whatsoever why he or she should not serve as a
4 juror in this case with particular emphasis being placed on
5 your ability to be fair and impartial to both the State and
6 the defense, if so, please stand at this time.

7 (WHEREUPON, there was no response.)

8 THE COURT: Does the State have any additional
9 questions?

10 SOLICITOR CUENCA: Nothing from the State, Your Honor.

11 THE COURT: Does the defense have additional questions?

12 MR. BENDER: No, Your Honor.

13 THE COURT: Lawyers approach one moment.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: All right, ladies and gentlemen. Thank you
17 very much while we went through the jury voir dire process.

18 what's happening now, ladies and gentlemen, is -- the
19 Clerk of Court is on the far side of the room. She's now
20 putting -- randomly selecting a list of jurors. In just a
21 few moments we're going to start with the striking process.

22 when your name is called, and your number is called,
23 I'm gonna ask that -- the Clerk of Court will probably
24 repeat this to you. Any personal items you have with you,
25 bring them with you. Come right here. Probably stand in

1 the middle of that square. They'll be a bailiff there with
2 you.

3 Then we'll do the striking process. If you are
4 selected you will go and have a seat on the far side of the,
5 of the, the curtain or room over, over there. If you are,
6 if you are excused or they say that you're not gonna
7 participate in the trial of the case, just return to your
8 seat and have, have a -- sit.

9 Now, ladies and gentlemen, I mention they to you
10 because, not many years ago when I was a young lawyer before
11 we had computers and those types of things, we actually --
12 this jury selection process would be a lot longer than what
13 it is now and we'd actually put each one of your names in a
14 capsule and we'd bring out a wooden barrel at the
15 courthouse.

16 we are in Spartanburg County. The School for the Deaf
17 and Blind's in Spartanburg County. So, we'd actually bring
18 a visually challenged individual from the School for the
19 Deaf and Blind and that person would reach into the barrel
20 one at a time and pull your names out.

21 we still have that barrel and -- at the courthouse. If
22 you want to see it, if you get selected, I'll show it to you
23 but we had, not a couple years ago, we had internet problems
24 and we couldn't get the computers to work. So we actually
25 brought out the barrel and everybody freaked out and a lot

1 of panic on everybody's faces.

2 well, the, the -- all of a sudden the internet came
3 back on. So we were able to do the selection process.

4 So this goes a lot faster now. So I just mention that
5 to you because we know that we've imposed on your time and
6 we appreciate your willingness to serve as jurors and just
7 be a little bit more patient with us. We should have this
8 list and we should be able to do this striking process.

9 But if all else fails, we'll go over to the courthouse
10 and bring out the barrel and we'll do it that way.

11 So, just give us a moment.

12 (Pause.)

13 THE COURT: All right. Ladies and gentlemen, again, if
14 your name and number is called, please bring all of your
15 personal belongings with you and just stand right here in
16 the middle of the table with this gentleman here.

17 And it's five and five. We have an agreement on that.

18 Yes, ma'am.

19 THE CLERK: Number 129, Torian Richardson.

20 What says the State?

21 SOLICITOR CUENCA: Please present the juror.

22 THE CLERK: What says defense?

23 MR. BENDER: Please present the juror.

24 THE CLERK: Number 140, Toby Solesbee.

25 What says the State?

1 SOLICITOR CUENCA: Please present the juror.
2 THE CLERK: What says defense?
3 MR. BENDER: Please present the juror.
4 THE CLERK: Number 30, Ronnie Carpenter.
5 What says the State?
6 SOLICITOR CUENCA: Please excuse the juror.
7 THE CLERK: Number 86 -- no, I'm sorry.
8 Number 105, Maria Mlala.
9 What says the State?
10 SOLICITOR CUENCA: Please present the juror.
11 THE CLERK: What says defense?
12 MR. BENDER: Please present the juror.
13 THE CLERK: Number 86, Don Lewis.
14 What says the State?
15 SOLICITOR CUENCA: Please present the juror.
16 THE CLERK: What says defense?
17 MR. BENDER: Please present the juror.
18 THE CLERK: Number 2, Jom, Jomkwan Allen.
19 What says the State?
20 SOLICITOR CUENCA: Please present the juror.
21 THE CLERK: What says defense?
22 MR. BENDER: Please excuse the juror.
23 THE CLERK: Number 171, Rickie Whitlock.
24 What says the State?
25 SOLICITOR CUENCA: Please present the juror.

1 THE CLERK: What says defense?
2 MR. BENDER: Please excuse the juror.
3 THE CLERK: Number 126, Lakeiosha Porter-Rice.
4 What says the State?
5 SOLICITOR CUENCA: Please excuse the juror.
6 THE CLERK: Number 128, Gladis Ramirez-Trejo.
7 What says the State?
8 SOLICITOR CUENCA: Please present the juror.
9 THE CLERK: What says defense?
10 MR. BENDER: Please present the juror.
11 THE CLERK: Number 52, Jonathan Engroos.
12 What says the State?
13 SOLICITOR CUENCA: Please present the juror.
14 THE CLERK: What says defense?
15 MR. BENDER: Please present the juror.
16 THE CLERK: Number 50, Christopher Dugan.
17 What says the State?
18 SOLICITOR CUENCA: Please present the juror.
19 THE CLERK: What says defense?
20 MR. BENDER: Please present the juror.
21 THE CLERK: Number 173, Matthew Williams.
22 What says the State?
23 SOLICITOR CUENCA: Please present the juror.
24 THE CLERK: What says defense?
25 MR. BENDER: Please present the juror.

1 THE CLERK: Number 11, Mark Barron.
2 what says the State?
3 SOLICITOR CUENCA: Please excuse this juror.
4 THE CLERK: Number 147, Sydney Sullivan.
5 what says the State?
6 SOLICITOR CUENCA: Please present this juror.
7 THE CLERK: what says defense?
8 MR. BENDER: Please present this juror.
9 THE CLERK: Number 155, Christine Tolliver.
10 what says the State?
11 SOLICITOR CUENCA: Please excuse this juror.
12 THE CLERK: Number 23, Gloria Bryant.
13 what says the State?
14 SOLICITOR CUENCA: Please present the juror.
15 THE CLERK: what says defense?
16 MR. BENDER: Please excuse this juror.
17 THE CLERK: Number 33, Victoria Chiles.
18 what says the State?
19 SOLICITOR CUENCA: Please present the juror.
20 THE CLERK: what says defense?
21 MR. BENDER: Please present the juror.
22 THE CLERK: Number 74, Deshea Hickman.
23 what says the State?
24 SOLICITOR CUENCA: Please excuse this juror.
25 THE CLERK: Number 112, Eston O'Sullivan.

1 What says the State?

2 SOLICITOR CUENCA: Please present the juror.

3 THE CLERK: What says defense?

4 MR. BENDER: Please present the juror.

5 THE CLERK: Number 26, Michele Burnett.

6 What says the State?

7 SOLICITOR CUENCA: Please present the juror.

8 THE CLERK: What says defense?

9 MR. BENDER: Please excuse the juror.

10 THE CLERK: Number 20, Shane Brooks.

11 What says the State?

12 SOLICITOR CUENCA: Please present the juror.

13 THE CLERK: What says defense?

14 MR. BENDER: Please present the juror.

15 THE COURT: We'll go with one alternate.

16 THE CLERK: Number 93, Michael Mattimore.

17 What says the State?

18 SOLICITOR CUENCA: Please present the juror.

19 THE CLERK: What says defense?

20 MR. BENDER: Please present the juror.

21 THE COURT: Anything concerning the manner and method
22 of selection of the jury from the State?

23 SOLICITOR CUENCA: No, Your Honor.

24 THE COURT: Any from the defense?

25 MR. BENDER: No, Your Honor.

1 THE COURT: Thank you, ladies and gentlemen.

2 Ladies, ladies and gentlemen who were selected to be
3 our first jury, give me one moment. I need to speak to
4 these unfortunate individuals that did not get selected to
5 be part of this jury.

6 (Pause.)

7 THE COURT: Can I see the lawyers one moment?

8 (WHEREUPON, a bench conference was held out of the
9 hearing of the jury at this time.)

10 THE COURT: All right. Ladies and gentlemen, thank you
11 very much and congratulations on being selected our first
12 jury for the week.

13 A couple of preliminary instructions. You have been
14 selected to be the jury in a criminal trial. And what
15 you're gonna be asked to do is to engage in deliberations
16 once all the evidence has been presented to you, and the law
17 has been given to you, to engage in deliberations where
18 you're gonna have discussions among yourselves about this
19 case. I'm instructing you now, until you begin your
20 deliberations, which will occur at the end of the trial, you
21 can not discuss this case with anyone.

22 You're fixing to take a lunch break. Go home or see
23 somebody you know, oh, you got selected on a jury, what kind
24 of case is it. You very politely tell them the judge has
25 instructed you I can not discuss this case with you at all.

1 Do not even tell them the type of case it is. Don't tell
2 them about the parties. Don't tell them about the lawyers.
3 Don't tell them who I am please. Don't tell them any
4 information about the case.

5 Do not discuss it with anyone outside of the Court. Do
6 not discuss it with anybody in the court. That also
7 includes among yourselves.

8 Until we get you to the end of the trial where you
9 begin your deliberations, you are not to discuss this case
10 among yourselves at all. That's your first instruction.

11 Your second instruction that goes all the way through
12 the -- this entire trial. You are to do your deliberations
13 and base the decisions that you're gonna make in this case
14 based upon the evidence that is presented during the trial
15 of this case and the law that I'm gonna give you as part of
16 this case. You can not do any type of independent research
17 or investigation into anything outside or anything that
18 involves this case.

19 So, at the lunch break, don't pull out your phone and
20 say I'm gonna Google who the lawyers are. I'm going Google
21 who the judge is. I'm gonna see if this made the newspaper.
22 You can not do anything like that.

23 You can not even go to the shelf and pull Webster's
24 Dictionary off the shelf to look up a word that maybe I or
25 one of the lawyers has used because your decision that

1 you -- you're gonna make in this case has to be based solely
2 on the evidence that is presented during the trial of this
3 case and the law that I give you to apply at the end. So,
4 do not do any type of independent research.

5 So, first instruction, don't have any discussions with
6 anyone about anything involving the case including
7 yourselves until the end of the case -- trial and don't do
8 any type of independent research or investigation into
9 anything involving the case.

10 With those two preliminary instructions, I'm gonna let
11 you take a lunch break. I'm gonna ask if you would -- and
12 the Clerk of Court's office and the bailiffs will assist you
13 on finding the courthouse. I'm gonna ask that you return to
14 the courthouse by three o'clock this afternoon. We've got
15 some other matters we've got to deal with, you know, before
16 we actually bring you in.

17 So, if you will, be back at the courthouse at
18 three o'clock, and hopefully we will be in a position that
19 we can move forward with the trial of this case. But,
20 again, thank you very much for your patience while we went
21 through the jury roll call, qualifications, selection
22 process, and voir dire.

23 Thank you very much. You may go with the Clerk of
24 Court.

25 Thank you very much. See you at three o'clock.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. We'll step down.

4 Mr. Bender, maybe one solicitor approach.

5 (WHEREUPON, a bench conference was held at this time.)

6 (WHEREUPON, this case was in recess for the lunch
7 break.)

8 THE COURT: All right. Are we ready to do the motions?

9 MR. BENDER: Yes, Your Honor. We are.

10 SOLICITOR CUENCA: Yes, Your Honor. The State is
11 ready.

12 Permission to approach the court reporter, Your Honor?

13 (Pause.)

14 THE COURT: All right. We'll go on the record on the
15 matter of the State versus Wesley Kyzer.

16 I have got -- I'd received motions from -- written
17 motions from the State as well as a written motion from the
18 defense. Sort of overlap.

19 I'll be more than happy to hear from the defense first.

20 MR. BENDER: Thank you, Your Honor.

21 My motion deals with the fact of the definition of
22 teacher. I think I put in the, the motion that South
23 Carolina Statute clearly defines who can be hired as a
24 teacher and how they are defined as a teacher. In South
25 Carolina that is that a public school that has a board of

1 trustees has to hire a certified teacher.

2 At no point leading up to this incident was the victim
3 in this matter a certified teacher, and that can be
4 crosschecked on the South Carolina Department of Education
5 website which lists any and all people who have ever been
6 certified as teachers.

7 So, what I would be asking, at least for that one, is
8 that proceeding forward on that matter would just be against
9 the public employee which he would fall under. But the
10 statute clearly makes a delineation between teacher,
11 principal, and all -- teacher, principal, elected official
12 is in one category. Public employee is in another.

13 So, on that matter, that's what I would be asking, Your
14 Honor, is that we would be going forward in the public
15 employee range because he is not a teacher.

16 Secondly, Your Honor, on other matter, the first degree
17 harassment, first degree harassment is a continued pattern
18 of instances and what I got from discovery was essentially
19 that there was this one incident in September at Los
20 Mexicanos Restaurant. And, previous to that, I don't think
21 there had been any communications between the victim and
22 Mr. Kyzer for 16 months.

23 So, on that matter, I'd be asking that one just to be
24 dismissed altogether because there's been nothing put
25 forward in discovery that shows that there was any contact,

1 much less a pattern of contact or behavior, leading up to
2 that date.

3 There is only one instance, this incident at Los
4 Mexicanos, and, beyond that, there's no contact besides --
5 the only contact leading up to that was a solitary meeting
6 held at the district office of Spartanburg School District 7
7 or it might not of been the district office, it might of
8 been high school, where Jeff Stevens, who's now the
9 superintendent of District 7, Todd Staley, who is the
10 athletic director at the time, Mr. Kyzer, his wife, and
11 Aiden, were all present.

12 That was the communication -- that was the meeting
13 before that. Then proceeded 16 months.

14 So, on the harassment charge, I fail to see how there
15 can be any type of pattern of behavior or pattern of contact
16 or communication when that was the communication.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 SOLICITOR CUENCA: Your Honor, may it please the Court.

20 Maressa on behalf of this -- Maressa Cuenca on behalf
21 of the State.

22 Your Honor, regarding the argument about the teacher,
23 it is clear from the criminal statute versus from the civil
24 statute that Mr. Bended -- Mr. Bender referred to is that it
25 says teacher, Your Honor, and it doesn't -- the legislation

1 was very clear about not putting certified teacher in front
2 of that. If we follow the logic of Mr. Bender, essentially
3 every teacher that's taught at a private school would not
4 fall under this statute because they're not certified, Your
5 Honor.

6 Further to that argument, we will -- the State will be
7 presenting evidence, testimony by then the principal,
8 Mr. Jeff Stevens, that he was considered a teacher. There
9 will also be testimony, Your Honor, from the victim, Coach
10 Brown himself, that the way that he was a teacher, he was an
11 assistant strength coach. He had every day operations, Your
12 Honor.

13 He taught approximately 30 classes a week. He handled
14 all the grades. He handled all the attendance. He had
15 classes that -- he had about 350 students within his
16 classes, Your Honor, and, and the weight room and tier was a
17 true classroom itself.

18 Your Honor, from what I also understand that, even
19 within the school district, there are teachers that have not
20 yet certified or passed their practice test and yet are
21 considered teachers, Your Honor, until they have fulfilled
22 all of their obligations to be certified.

23 And so, again, because Mr. Bender is citing to a
24 civil -- the education, I think it was from his motion,
25 statute 59-25-20, but it's clearly different from the

1 criminal statute, Your Honor, that says teacher. That's the
2 reason that Coach Brown is -- was both a coach as well as a
3 teacher and would fall under that statute, Your Honor.

4 In regards to the second argument about harassment,
5 Your Honor, there is notice given to the defendant from the
6 indictment itself that harassment itself happened several
7 instances before even September 24th, 2018. And, Your
8 Honor, there are -- it is true that there are no reports
9 from law enforcement about these harassments. However, the
10 statute does not require report.

11 When it defines pattern, it says two or more acts
12 occurring over a period of time, however short, evidencing a
13 continuity, a purpose. And, Your Honor, the State will
14 present evidence -- again, no written evidence, but verbal
15 testimony from Mr. -- from Mr. Brown, Coach Brown, stating
16 that, from April, 2018, there was an instance, Your Honor,
17 where they're both in the same room for some reason, Your
18 Honor, and, and the defendant was wanting to get him fired.
19 That was the first -- the beginning of that.

20 There were two other instances within April where the
21 defendant appeared to the baseball games. His son was no
22 longer playing, Your Honor, and Coach Brown felt that he was
23 there intentionally to harass and to intimidate him.

24 In those two instances---

25 THE COURT: Let me, let me interrupt you just for one

1 second.

2 SOLICITOR CUENCA: Yes, Your Honor.

3 THE COURT: This is a pretrial motion. I appreciate
4 very much the opportunity to get a, in advance, play-by-play
5 of what the trial's gonna be about. But this is a pretrial
6 motion.

7 I think it's sufficient if the State simply contends
8 that, that -- the position is that they intend to meet the
9 elements of what's in the indictment --

10 SOLICITOR CUENCA: Absolutely, Your Honor.

11 THE COURT: -- you know. Otherwise we're gonna try the
12 whole case. I know it gives the defense a, a preview of the
13 State's case but this is a pretrial motion.

14 They say they're gonna meet those elements. I know you
15 say that they don't exist. That's a factual question for
16 the jury in my humble opinion, and I really can't make a
17 ruling right now on that. But I've been alerted. My
18 antennas are up. I assume that the appropriate motions
19 during the course of the trial will be made and I'll then be
20 able to evaluate the evidence on the harassment issue.

21 I just -- you know, it's a factual issue and that's for
22 them. I've, I've got to hear the evidence. I could not
23 grant that motion at this time.

24 Any reply on the issue that deals with the public
25 employee, public teacher, that, that thing, than what she

1 argued?

2 MR. BENDER: Essentially what I got was that she said
3 that he, he did teach. I, I mean there's a, there's a very
4 specific delineation between teacher, principal, public
5 official in that statute --

6 THE COURT: Uh-huh. (Affirmative).

7 MR. BENDER: -- and there is no definition of teacher
8 in a criminal statute.

9 Okay. So then you look to the statute to see where is
10 there a definition of teacher. Well, there is a definition
11 of teacher in the civil statute and then specifically it
12 goes further and says, not only is there a definition of a
13 teacher, but there's a definition of who can be employed as
14 a teacher.

15 Okay. And she is correct there are some people that
16 are not certified that are teaching. Those are people that
17 are in what's called the PACE program where they have
18 already gotten their degree, but are enrolled into a
19 specialized program that allows them to get experience and
20 then become teachers. But that's a specialized program that
21 you are enrolled into. It's not something where people just
22 come aboard and then they just happen to be working.

23 He was not employed in the PACE program trying to get
24 his certification. He wasn't certified. He's still not
25 certified.

1 You have to be certified in a public school and that's
2 what we're talking about. I understand that she's saying
3 that private schools wouldn't have that protection. But --
4 and, first of all, plenty of private school teachers are
5 certified but there's a delineation. There's a reason why
6 teachers are mandated reporters and teacher's aids are not.

7 In a school system with abuse and neglect, teachers are
8 tasked with reporting abuse to DSS. Teacher's aids,
9 janitors, bus drivers, anyone else is tasked with that.

10 But there -- because they're certified, because they've
11 had training, because they've done these specialized things,
12 they are tasked with that. The administrators are tasked
13 with that.

14 So, there's a distinct delineation between teachers and
15 non teachers and I've got a sneaking suspicion that, when
16 anybody gets up there to testify who happens to be in the
17 school system, they will know exactly whether they're
18 certified or not, and, not only that, how long their
19 certification is good for, when it runs out.

20 So, with this question of whether it's a teacher or
21 public employee, he's not certified. The statute says that
22 a public high school, public secondary school, public
23 elementary school can not employ a teacher that is not
24 certified. You just simply can not.

25 THE COURT: All right. Let me ask a couple questions.

1 She made -- I'm sorry.

2 Do you have anything in response?

3 (WHEREUPON, Solicitor Cuenca nods affirmatively.)

4 THE COURT: Oh, yes, ma'am.

5 SOLICITOR CUENCA: Yes, Your Honor.

6 If we follow the logic of Mr. Bender when it comes to
7 mandating reporters, essentially every teacher that is not
8 certified within private schools that are lawfully allowed
9 to be in teaching as a -- in a private school setting would
10 not be mandated reporters either then. And if we follow
11 again that logic, if there is a teacher that is not
12 certified within a private school, then they, themselves, if
13 they had anybody try to threaten their life, they would not
14 be able to press charges, criminal charges, Your Honor.

15 And so it does involve that that was the intent of the
16 statute to only protect certified teachers that work at a
17 public school, but to exclude any kind of protection from
18 any other teachers that are lawfully teaching in private
19 schools or, again, in this instance, teachers that are not
20 yet certified but are working towards certifications and
21 also considered to be teachers.

22 And so that's the reason, Your Honor, that it is clear
23 from the intent of the statute to cover all -- and, and
24 legislation has a way of making themselves clear, Your
25 Honor. They could of clearly put certified teachers within

1 the statute but they chose not to.

2 THE COURT: Thank you.

3 All right. Mr. Bender makes -- wants to borrow other
4 provisions of the code that deals with the required
5 reporting of child abuse or child neglect is revealed. It
6 requires a teacher to make a report as well as others.

7 So, it would seem like that -- I'm struggling with that
8 because I think that the purpose of that mandating reporting
9 is that, when a person within a school setting becomes aware
10 of child abuse or child neglect, the purpose of that statute
11 is to want to get to the root or get to the bottom of a
12 child neglect but not leave it just hanging out there.

13 So, according to Mr. Bender's argument, those people
14 that it -- that -- who's not certified to become possessed
15 with knowledge of child abuse or child neglect can be like
16 an ostrich and stick their head in the sand and not do
17 anything as well as private school teachers who are not
18 certified by the Department of Corrections -- by the
19 Department of Education. I'm not sure I buy all that.

20 State's position though bars other provisions of the
21 code that wants to take this word teacher -- and I've got
22 the codes out. I understand that there is a distinction
23 between -- that there's a difference between 16-3-140 and
24 59-25-20 and it seems like that, the term teacher, they make
25 a distinction. They use terms of teacher, principal, and

1 they also use public official.

2 It would seem that there would be a slot in there where
3 a coach for a high school football team would fall somewhere
4 within what this statute's reach is trying to get because
5 the criminal statute is meant to reach and say okay, if you
6 threaten the life of this person that works in a school
7 setting, and it's related to what their duties are, then
8 there should be some type of an ability for the law to hold
9 criminally accountable those people that would threaten
10 those people.

11 But Mr. Bender's position is that it doesn't fit, that
12 the statute is deficient, and that this term teacher is not
13 met by the way the statute's designed right now.

14 I tell you both I don't know. I'm gonna take a look at
15 it. I don't think the fact that I'm not gonna make a ruling
16 right now is going to delay the proceeding of this trial. I
17 think y'all can proceed on.

18 I will continue to take a look at it. I'll listen to
19 the evidence as, as, as it is presented and we will revisit
20 this during the course of this trial, yeah, because I think
21 I -- my, my view of wanting to handle it this way is that I
22 anticipate that during the course, at the end of this
23 presentation of the evidence, I would be asked to give a
24 lesser included offense charge anyway. So, the jury would
25 hear the same information.

1 So, on the harassment, I'm gonna deny the motion
2 because it's a factual matter that the jury's got to hear,
3 I've got to hear, may hear it -- may -- can look forward to
4 hearing it in the future.

5 And on the issue of teacher, whether or not this is a
6 teacher, I am not gonna make a ruling now and we'll proceed
7 on with this trial.

8 The State's not gonna make the argument that, that a
9 coach is a public official?

10 SOLICITOR CUENCA: Yes, Your Honor. The State's
11 argument is that the coach could potentially be a public
12 official.

13 THE COURT: For purposes of the criminal statute, could
14 a coach be a public official?

15 MR. BENDER: I wasn't aware that they're elected. So I
16 don't believe so but I believe they're either hired or
17 appointed. So, a public official is somebody that's elected
18 for the purposes of the statute.

19 THE COURT: The criminal statute or the certification
20 statute?

21 MR. BENDER: Criminal statute.

22 SOLICITOR CUENCA: Your Honor, if I may?

23 THE COURT: A public official means an elected or
24 appointed official of the United States or of this state or
25 of a county or municipality or other political subdivision

1 of the state. A school district is a political subdivision.

2 I take it that they don't appoint coaches?

3 I don't know. I mean I've worked -- I have a history
4 of working in, in the education area. I'm -- so, I'm aware
5 of the procedure.

6 You're saying that the selection of a football coach
7 would not be an appointed official?

8 MR. BENDER: Are you responding to me or her?

9 THE COURT: It's your argument that you just said---

10 MR. BENDER: Okay.

11 THE COURT: ---that he would -- had to be elected.

12 MR. BENDER: No, I wouldn't say that he's appointed.

13 THE COURT: Okay.

14 MR. BENDER: He's hired by them. I mean he's usually
15 hired by either the principal or the superintendent with,
16 I'm assuming, you know, certification, not certification,
17 but with approval from the board of trustee. But I wouldn't
18 call that an appointment.

19 THE COURT: Okay. Yes, ma'am.

20 SOLICITOR CUENCA: Your Honor, after reading through
21 the statute, it does not appear that he would fall under a
22 public official. Your Honor, he is---

23 THE COURT: For the criminal statutes?

24 SOLICITOR CUENCA: Right. Yes, Your Honor. Just as a
25 coach, he's not appointed himself or elected. And so the

1 State withdraws that argument that he is a public official.

2 THE COURT: Okay. All right. Then I'll just look at
3 it from the teacher step.

4 All right. Anything else before -- is the jury here?

5 THE BAILIFF: Yes, sir.

6 THE COURT: They're all here.

7 All right. The jury's all here.

8 Anything else that -- from the lawyers?

9 (WHEREUPON, Solicitor Cuenca nods affirmatively.)

10 THE COURT: Uh-huh. (Affirmative).

11 SOLICITOR CUENCA: Yes, Your Honor.

12 May it please the Court.

13 The State does have another motion as far as the scope
14 of testimony in regards to the defendant's son, Aiden Kyzer.

15 There is a lot of history and information that the
16 State does not believe is relevant to this case, Your Honor,
17 and would not like to bring -- but we would like the Court's
18 direction on what can or can not be said, and it is the
19 State's proposal that testimony be allowed as far as Coach
20 Brown having, at some point, coached the defendant's son.
21 We do not have to refer to names.

22 And then specifically that there was one instance that,
23 due to the defendant's son, Aiden, his choices that he made,
24 he was essentially removed from the team. And, again, he
25 was given an opportunity -- the facts are, Your Honor, just

1 for the sake of the motion, and not for the sake of the
2 trial, that he either told a coach none of your fucking
3 business or mind your fucking business. That was
4 essentially what was said.

5 He was given an opportunity to apologize to the coach
6 but he chose not to, Your Honor, and that's the reason that
7 he was then essentially removed based on his decision.

8 And so the State is just asking Your Honor to have
9 testimony to just say that he -- again, Coach Brown coached
10 him at some point. Due to the defendant's son's actions or
11 inactions, he was then removed from the team, and that's
12 part of what then transpired, this, this harassment, as well
13 as the eventual threatening of Coach Brown.

14 THE COURT: Okay. Thank you.

15 Yes, sir.

16 MR. BENDER: And---

17 THE COURT: How far do you intend to, to go into
18 background information?

19 MR. BENDER: I think it's gonna be difficult to
20 forecast that unfortunately simply because, in looking at
21 the witness list, we've got a lot of the people that were
22 present at these meetings discussing specific actions.

23 All right. So, we've got a, a now superintendent who
24 was principal. We've got an athletic director. We've got a
25 baseball coach. We've got a former superintendent that's

1 listed.

2 We've, we've got a lot of moving parts there, and, and
3 I'm not sure what their testimony is going to elicit. I, I
4 don't know if we wall off certain things based upon that --
5 I'm, I'm not -- I'm not a hundred percent certain -- I mean
6 I think I know what the majority of it is. But I'm not a
7 hundred percent certain what's going to come out.

8 I don't intend -- I mean Aiden -- and Aiden's present
9 first off. But Aiden, Aiden's not on trial. I -- my, my
10 intent is that it's minimal. But, at the same time, nothing
11 happens in a vacuum and what happened, and what happened
12 post that incident, is what led -- it -- what happened with
13 his, with his decision to remove himself from the team, and
14 then what happened in the span of time in-between that and,
15 and the Los Mexicanos incident is relevant because that's
16 what led up to it. That's, that's what influenced all of
17 it.

18 So -- although I don't intend on putting a lot in about
19 Aiden, again, the reasoning behind certain things is, is
20 because of Aiden and because of certain actions that were
21 taken against him or certain conversation that were had
22 because of him.

23 SOLICITOR CUENCA: If I may, Your Honor?

24 It does get very tricky because, like I said, there is
25 so much back story and history and it's true that several of

1 our witnesses were people that were involved in some of the
2 discussions regarding Aiden. But the State is not trying to
3 include any of that into this situation, Your Honor.

4 However, if there's going to be testimony -- if, if the
5 defense is going to be putting up testimony that, due to
6 Coach's (sic) Brown's action of removing him based on
7 Aiden's decision, then he was struggling and having suicidal
8 ideations, Your Honor, then we want to be careful that we
9 give the information necessary, and, again, we're not trying
10 to bring in any of Aiden's.

11 It's true Aiden is not in trial here, Your Honor, and
12 that is not the State's desire to bring that here, Your
13 Honor. We're just trying to -- that's to limit what is said
14 and that's why I'm saying that the State is willing to just
15 stipulate to a -- certain facts enough so that the jurors
16 know what led to then the harassment and then the threat to
17 the Coach Brown but nothing further, Your Honor.

18 One or two sentences or -- and, again, I'm not trying
19 to go into great detail, Your Honor, but there is a lot that
20 I -- the State does not believe is relevant.

21 THE COURT: Okay. Thank y'all for that.

22 All right. This is what we're gonna do at this
23 juncture.

24 I can not make the necessary analysis based upon
25 arguments of counsel whether the probative value, versus

1 prejudicial effect as sort of an evidence that, that comes
2 in. I had not heard the evidence. So, I can not make, make
3 that analysis. Do -- I can not perform that analysis.

4 What we're gonna do -- sir, do you need a break?

5 MR. BENDER: Your Honor, I would like to talk with him,
6 and, and if you can give us a five minute recess.

7 THE COURT: All right. We'll come back in about five
8 minutes.

9 MR. BENDER: Thank you, Your Honor.

10 (WHEREUPON, a short recess was taken at this time.)

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

12 SOLICITOR CUENCA: Your Honor, the State's final
13 request is to be able to use the statement that the
14 defendant made to Coach Brown in the opening statement. It
15 is offensive and could potentially -- it occurs -- you know,
16 the word fuck you and the State just wants permission to be
17 able to use that in the opening statement.

18 THE COURT: Okay. Thank you.

19 But before I address that, let me address the other.

20 SOLICITOR CUENCA: Yes, Your Honor.

21 THE COURT: Okay. All right. As far as the background
22 information, sort of agree with both sides.

23 You know, I can not do the necessary analysis under the
24 rules of evidence of the prejudicial effect, probative value
25 to tell you whether a particular statement or comment is

1 gonna come in or not. I don't know. I haven't heard it.

2 we've had a brief conference with the lawyers where
3 they explained to me some of the background of the case. I
4 do not believe that it would -- I am not inclined nor do I
5 believe it's necessary, for purposes of the substantive
6 trial of this case, the substantive trial being whether or
7 not the State has met their burden of proof to meet the
8 elements that are contained in the indictments, to go into
9 great detail as to the background or to what led up to these
10 allegations of the, of the threat or of that harassment. I
11 think the State's case is -- should center on did these
12 things occur, not the motivations to why they occurred,
13 because I've not seen anything that's being presented to me
14 yet that there is some type of affirmative defense that's
15 being offered by the defense to say -- against, against
16 these charges.

17 so either they -- either the State will meet their
18 burden of proof or they will not. The motivation of the
19 defendant, if the State meets their burden of proof, the
20 motivation of the defendant is pretty much irrelevant to, to
21 that process.

22 I'm not suggesting to the defense though that if there
23 is a -- if the jury finds that the defendant is guilty of
24 one or both of these charges, that that information is not
25 relevant during the mitigation phase of any sentencing that

1 would take place. I think then, if that's something the
2 State or the defense feels that is, is significant to
3 presenting a -- mitigation efforts that you don't want 10
4 year -- a 10 year prison term, let me hear it and let then
5 me decide or filter that into my judgment as to what type of
6 sentence would be imposed.

7 So, I'm not saying don't tell me about it but tell me
8 about it at the appropriate time and that would be after
9 there is a conviction if one, in fact, does occur by the
10 jury.

11 with that being said, it is gonna be, to large -- I, I
12 would think the way that this is gonna progress, State's
13 gonna present their case. If the State goes down a
14 particular path, that's probably gonna force the door to
15 become opened for the defense that then the defense is gonna
16 have to go down that same path.

17 So, use, use your judgment wisely because if you -- if,
18 if you feel like there is things that should not be gone
19 into, then don't go into them, you know. But I -- I'm not
20 gonna tell you how to try your case cause I don't know what
21 you're planning on presenting to prove the elements of the
22 offense.

23 If, if the door is opened and the defense goes down
24 there, I just think, you know, both sides need to make the
25 appropriate objection. I just think, if we go too far down

1 those paths, it's gonna turn into a contest of collateral
2 issues that's gonna just muddy the water for the jury as to
3 whether or not the State has met their burden of proof
4 beyond a reasonable doubt as to the elements and --
5 contained in the charges.

6 So, that's a very muddy way of saying I can't make a
7 ruling on that cause I don't know what the evidence is, you
8 know, on that.

9 As far as the statement, using the closing argument, do
10 you have any response on, on -- she wants -- apparently
11 there's a statement some -- is that a written statement
12 somewhere?

13 SOLICITOR CUENCA: Yes, Your Honor. It's a written
14 statement and the State intends to use it in the, in the
15 closing -- opening---

16 THE COURT: Opening.

17 SOLICITOR CUENCA: ---opening and closing.

18 THE COURT: Okay. We'll go address the closing later.

19 SOLICITOR CUENCA: Yes, Your Honor.

20 THE COURT: Okay. Any objection to her using the
21 statement in the opening?

22 MR. BENDER: Are you talking about the -- his written
23 statement or verbal statement or what?

24 SOLICITOR CUENCA: Coach Brown's written statement.

25 MR. BENDER: Oh, yeah, yeah. I'm fine with that.

1 SOLICITOR CUENCA: The, the, the statement made by the
2 defendant that is written down.

3 MR. BENDER: I'm perfectly fine with that.

4 THE COURT: Okay. He doesn't have any objection to you
5 using that statement. So --.

6 MR. BENDER: I -- I'd also ask though that part of the
7 issue with it is that the meetings started happening
8 initially that they're alleging are part of the harassment
9 because Coach Brown and a few of his assistant coaches were
10 calling Aiden an ass clown. So, I would ask that that be
11 able to be used during opening as well.

12 THE COURT: You're gonna use that in your opening?

13 MR. BENDER: I believe so, Your Honor, cause they're
14 using meetings that were taking place at the school to
15 address that with the superintendent, with the principal.
16 That's what they're using as their meetings for the
17 harassment to, to -- these alleged pattern is meetings with
18 the administration where the coach and his assistant coaches
19 were verbally dis -- disparaging a minor.

20 THE COURT: But doesn't that then get into what I
21 thought we just had the discussion about is not wanting
22 it -- not wanting to turn it into a, a trial over the
23 minor's conduct or the minor's inappropriate conduct or the
24 lack of the minor's conduct?

25 MR. BENDER: Well, I'm not talking about the minor's

1 conduct. I was talking about Coach Brown's conduct and his
2 assistant coaches.

3 SOLICITOR CUENCA: If I may?

4 THE COURT: But then I could see -- I mean just based
5 on what I've heard so far, if they're having meetings where
6 there's -- calling the, the son names or names that the son
7 would find offensive or the dad would find offensive, well
8 then it's gonna be well, that's the motivation for why you
9 got so angry. Then it's turn into well, was the son, in
10 fact, inappropriate, does -- was he, in fact, acting in a
11 way that they should of called him those names and then we
12 get into where -- this trial's not about that.

13 MR. BENDER: I, I understand.

14 THE COURT: All right.

15 SOLICITOR CUENCA: If I may, Your Honor?

16 The State is not planning to introduce the meetings as
17 part of the harassment. And as part of the, the argument
18 and the motion of what specific instances of harassment
19 were, two of them were at the baseball field. The other one
20 was in an office where the defendant and the victim were,
21 and then the fourth one was at the restaurant, Your Honor.

22 So, those -- that's, that's the extent of the
23 harassment. The State will not be going into meetings with
24 Aiden and with some of the other individuals.

25 THE COURT: Does---

1 SOLICITOR CUENCA: The State will---

2 THE COURT: Does Mr. Bender know those that you said
3 they were four occasions, the baseball field, an office
4 meeting, and what were the other two?

5 SOLICITOR CUENCA: Well, it wasn't an office meeting,
6 Your Honor. It was -- they were both in the same area at
7 the same time. It was not in a meeting. One was gonna go
8 see Doctor Booker and it just happened that they were there
9 at the same time---

10 THE COURT: Okay.

11 SOLICITOR CUENCA: ---in the same location.

12 THE COURT: Thank you for that.

13 I'm still not clear. Categorize -- category -- tell me
14 a name that I can call the four meetings or the four times
15 that the State intends to, to say that this is the conduct
16 that led to the harassment first.

17 SOLICITOR CUENCA: Yes, Your Honor, and it's a --
18 listed in the indictment.

19 THE COURT: All right. Just tell me what they are.

20 SOLICITOR CUENCA: Yes, sir.

21 THE COURT: Okay. Tell me what they are.

22 SOLICITOR CUENCA: Yes, sir.

23 THE COURT: It's a---

24 SOLICITOR CUENCA: Two instances---

25 THE COURT: ---simple question.

1 SOLICITOR CUENCA: Two instances in April, 2018, two
2 baseball games---

3 THE COURT: Okay.

4 SOLICITOR CUENCA: ---Your Honor. There was a third
5 one.

6 THE COURT: All right. Two baseball games in --

7 SOLICITOR CUENCA: Yes.

8 THE COURT: -- 2018.

9 So that's one and two?

10 SOLICITOR CUENCA: Yes, Your Honor.

11 THE COURT: Okay. All right.

12 SOLICITOR CUENCA: And in April, 2018.

13 THE COURT: Right.

14 SOLICITOR CUENCA: They were both at the same place at
15 the same time --

16 THE COURT: Okay.

17 SOLICITOR CUENCA: -- Your Honor, and then the fourth
18 one was the Mexican restaurant in September of 2018.

19 THE COURT: All right. I'm, I'm sorry. I, I must be
20 slow today.

21 Two baseball games, April '18. The third one is a --
22 you said they were at the same place at the same time?

23 SOLICITOR CUENCA: Yes, Your Honor.

24 THE COURT: What do you call that?

25 Was it at a gas station?

1 Were they at a restaurant?

2 Were they at where?

3 SOLICITOR CUENCA: No, at the school, Your Honor.

4 THE COURT: At the school.

5 SOLICITOR CUENCA: Yes, sir, one was going to see
6 Doctor Booker. I'm not sure why the defendant was there.
7 But they were both just at the same place at the same time.

8 THE COURT: Okay. So I can call that school meeting?

9 SOLICITOR CUENCA: Yes, Your Honor.

10 THE COURT: I mean is that appropriate?

11 Is that -- that's a good classification?

12 SOLICITOR CUENCA: The only reason I hesitate is
13 because they were not suppose to be a meeting between the,
14 the three of, of them, Your Honor.

15 THE COURT: Okay. I wasn't using meeting as formal.

16 Okay. Say school -- okay. Okay. So we've got April,
17 2018 baseball game, one, 2018, April '18, baseball game.
18 That's the second. We've got something that occurred on
19 school that's not called a meeting. That's three. And then
20 the Mexican restaurant incident on the 4th, and the Mexican
21 restaurant would be the last?

22 SOLICITOR CUENCA: Yes, Your Honor.

23 THE COURT: So that would be the one that we would say
24 in September of 2019?

25 SOLICITOR CUENCA: That's correct.

1 THE COURT: Okay.

2 Okay. Those are your four instances that she intends
3 to present to meet the elements of harassment first.

4 MR. BENDER: Okay. I, I don't know about the -- I mean
5 I just talked to my client about this one. I mean it -- my
6 understanding is it was in the lobby of the high school?

7 THE DEFENDANT: Superintendent's office.

8 MR. BENDER: Okay. So---

9 THE COURT: Is that the one that you're referring to?

10 SOLICITOR CUENCA: I believe that's, that's the one,
11 yes, Your Honor.

12 THE COURT: Okay. So I can call that superintendent
13 office meeting.

14 Okay. All right. The reason I wanted to hear that
15 because then that tells me that this idea that you want to
16 go into those other what I call collateral issues that
17 involve the son are not needed right now. I don't know what
18 the -- I don't know how they're gonna present this but, you
19 know, if they're -- if they don't open the door, it's sort
20 of left up to you whether or not you open the door and
21 that's gonna raise an objection that if -- I don't intend
22 to -- my -- the reason we're having this lengthy discussion,
23 I don't think this needs to be a trial about the son.

24 MR. BENDER: I agree.

25 THE COURT: Yeah.

1 MR. BENDER: I agree.

2 SOLICITOR CUENCA: The State agrees as well.

3 THE COURT: Okay. All right.

4 All right. So, for opening statements, you can use
5 whatever statement you asked about using. I'm not, I'm not
6 gonna tell you -- I don't know what her opening statement's
7 gonna be. But I don't think that would allow you to use
8 those references to the -- about the son.

9 MR. BENDER: I'll refrain at the, at the --.

10 THE COURT: Okay. I mean if they come in during the
11 trial, then, you know, might be open game with closing
12 argument but I just don't think that it's gonna take place.

13 Okay. Okay. What about this?

14 Anything else before we bring the jury?

15 SOLICITOR CUENCA: Nothing from the State, Your Honor.

16 MR. BENDER: Just that we had talked earlier and I
17 think you were already gonna order the sequestering of
18 witnesses.

19 THE COURT: Okay. Yeah, we're gonna order sequestering
20 of witnesses.

21 MR. BENDER: Okay.

22 THE COURT: All right. Lawyers approach a moment.

23 (WHEREUPON, a bench conference was held at this time.)

24 THE COURT: All right. We're gonna take a short
25 recess, but before we take a recess, we're gonna -- when we

1 come back we'll begin with the opening statements from the
2 attorneys.

3 I want to speak to the parties that, that are involved
4 in these cases.

5 I, I know very little about the case other than what
6 has been provided to me by the attorneys and we've had some
7 rather extensive meetings both this morning before the jury
8 selection or jury qualification. We've had extensive
9 meetings to inform me of bringing up, up to speed and it
10 is -- and this is not uncommon.

11 I've been doing this job almost 20 years and, and, if
12 there is a, a surprise or if there is something that I think
13 the parties learn about the judicial system in trial work is
14 that the lawyers of both sides in this case, and in most
15 cases, do very -- work very hard in trying to prepare cases
16 to bring to trial, and there's a lot of work that goes on by
17 the lawyers that I, as a judge, do not -- they're not shared
18 with me. And the lawyers try to use the filtering and
19 shifting of the evidence as to what is the important
20 evidence that needs to be heard by a judge or presented to a
21 judge.

22 That shifting and that filtering of the evidence is
23 done at -- to even a great degree when it comes to those 12
24 people that sit in that box. Those 12 people that sit in
25 that box are performing today and tomorrow and ever how long

1 it takes this case probably one of the highest civic duties
2 that a citizen can do for this great country that we live
3 in. Outside of military service and active time, service on
4 that jury is a very high and important constitutional role
5 in the success of this country.

6 And we ask 12 people to -- from our community to come
7 in and know absolutely nothing about the case, know nothing
8 about the parties, and ask them to sit in the process of
9 a -- what's known as a trial to let them filter through
10 evidence that will be presented to them from witnesses that
11 testify from that witness stand and then listen to me give
12 them probably anywhere from a 30 minute to an hour charge on
13 what the law is that they're gonna apply to the evidence
14 that they receive from that witness stand.

15 That is a heavy, heavy burden and responsibility that
16 those 12 people are gonna undertake. What those 12 people
17 are going to do is the heart of our judicial -- of, of our
18 justice system that we have in this county and in this
19 country.

20 I can not do my role as a judge if I do not advise the
21 parties that what that jury is gonna be asked to do in this
22 case is no different than what they do in probably every
23 other case that comes in front of them. It's a hard job.

24 And you -- and it's -- frequently there's two sides to
25 every issue in this case. There's two sides that sit in

1 this courtroom. One party's gonna lose. One party's gonna
2 win and sometimes you leave a courtroom and you think
3 justice was served, look at me. Sometimes you leave and say
4 how can that be justice.

5 I tell you that because, in my experience, I have
6 witnessed juries where I'm scratching my head going how in
7 the world did they make that decision that they did because
8 they followed the law that I gave them and they listened to
9 the evidence and they unanimously, 12 people on that jury,
10 decided the, the case a particular way.

11 I can not criticize those 12 people sitting over there
12 once they have made a factual determination of what the
13 facts are in a case and I encourage the parties to not do so
14 either because they are the ones who will determine what is
15 justice in this case.

16 I've seen criminal cases found not guilty. I've seen
17 criminal cases where people were found guilty. I've been in
18 civil trials where they've given millions of dollars. I've
19 been in civil trials where they've given zero and do not
20 understand completely how they came to the decisions that
21 they made but the -- but the real virtue and the aura or
22 the, or the value of what our justice system is is that it's
23 decided by those 12 people. It's not decided by some man or
24 woman in a black robe. Thank goodness it's not.

25 We're at a moment in this trial where a window has

1 opened -- where the window -- I should say where that window
2 has not closed and we're at that -- we're at the trial where
3 that window's about to come shut and what I'm speaking of is
4 that I tell you that about my role, my view of the role of
5 the jury to encourage the parties to talk during this break.

6 My understanding is that there are still ways that this
7 case can be resolved without asking those 12 people to do
8 so. But it takes people to give on each side and if we're
9 to get, to get this case resolved.

10 I tell you that because resolving a case like this and
11 having some control over the outcome I think is a wise thing
12 cause you'll at least have that control to a degree over the
13 outcome of the case. But it requires some giving on both
14 sides.

15 I'm gonna step down for a few moments. I'm gonna let
16 you have an opportunity to talk. When we come back we're
17 going to at least start with the opening statements. It
18 will start with me giving an opening charge to the jury and
19 receiving the opening statements in this trial.

20 Once we start -- I don't make offers. I don't remove
21 offers. But I dare say that I would think that the State
22 would probably say all bets are off at this point, no offers
23 will be made after that. They might change their mind. I
24 don't know.

25 But I think this is one of those times where I

1 understand the window is still open and not closed and I
2 would encourage the parties to talk cause there is great
3 wisdom in having some control over the resolution of cases
4 like, like this and not putting it into the hands of 12
5 remarkable citizens that are from our community that are
6 performing the most important civic duty that they can.
7 That is to sit as a juror in a criminal trial in this state.

8 I'm gonna step down and I will see y'all in a few
9 moments.

10 Thank you very much.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: All right. I think what the game plan is
13 for the rest of the day, given the hour that it is, I would
14 propose that we just do the opening statements and then I'll
15 send the jury home and ask them to be back at 9:30 in the
16 morning.

17 Does that sound appropriate to everyone?

18 SOLICITOR CUENCA: Yes, Your Honor.

19 MR. BENDER: Yes, Your Honor.

20 THE COURT: Okay. All right. Let's get -- let's bring
21 the jury in.

22 Juror Number 50, Mr. Christopher Dugan, Dugan, he will
23 serve as the foreperson.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: All right. Ladies and gentlemen, thank you
2 for your patience while we got it to the -- to a point where
3 we could bring you into the courtroom. As you will
4 hopefully not learn on very many occasions, but as you've
5 just experienced, there are times during this process of
6 conducting a trial that I have to have conversations with
7 the attorneys and there -- these conversations deal with the
8 actual trial itself.

9 I'll explain my role and your role briefly in an
10 introduction charge that I'm about to give you. But do
11 accept my apologies for keeping you back so long. But it
12 was necessary in order for us to get to the point that we
13 could bring you in in order to work more efficiently while
14 you're here in the courtroom.

15 with that being said, I need for you to please stand,
16 raise your right-hand. The Clerk of Court, she's got to
17 administer an oath to you.

18 (WHEREUPON, the jury panel was placed under oath at
19 this time.)

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Thank you. You may be seated, ladies and
22 gentlemen.

23 Ladies and gentlemen, we are now going to start with
24 the trial of the case of the State of South Carolina versus
25 Wesley Ray Kyzer.

1 But before we begin this trial, I want to tell you that
2 this trial probably will be different from what you might
3 expect. Many people do not have the chance to attend an
4 actual court session as you are doing now and may think,
5 from watching television or movies or reading books, that
6 trials are always full of high drama, intense action, and
7 rivetting circumstances.

8 While all of these things may be true at times, ladies
9 and gentlemen, this trial is not for entertainment. This
10 trial -- a trial is often slow -- I'm sorry. This trial is
11 not for entertainment, ladies and gentlemen. It is a
12 fundamental part of our democracy.

13 In a trial, it is often slow, deliberate, and
14 repetitive, the opposite of what maybe you have seen in
15 televisions or watched on a movie or read about in a book.
16 This courtroom is a place of honor dedicated to the
17 protection and preservation of every citizen's rights
18 through what many have called the greatest justice system
19 ever created.

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

1 But, ladies and gentlemen, remember that you have now
2 taken an oath to try this case and reach a fair and just
3 verdict and you are also expected to be professional,
4 reasonable, and ethical and I thank you for accepting the
5 important responsibility of jury service and for your
6 contribution today to our justice system.

7 Now, ladies and gentlemen, what I will say now is
8 intended to serve simply as an introduction to the trial of
9 this case. These remarks are not a charge on the law of the
10 case. I will instruct you on the law applicable to this
11 case at the end of the trial before you retire to consider
12 your verdict. This is merely an explanation of the
13 procedures that we will follow in the trial of this case so
14 that you may better understand what is happening.

15 The defendant in this case is charged by way of
16 indictment filed in this Court with the crimes of
17 threatening a public official, teacher, or principal, and
18 also harassment in the first degree, the elements of which
19 will be explained to you later.

20 The indictments are simply the charge by which the case
21 is brought into Court and they are not, in any sense,
22 evidence of the allegations contained in them. The
23 defendant has pled not guilty to these indictments. The
24 state, therefore, has the burden of proving each of the
25 elements in the indictments beyond a reasonable doubt and it

1 will be your duty, ladies and gentlemen, to decide whether
2 the State has met that burden.

3 Your purpose, as jurors, is to find and determine the
4 facts of this case. You are the sole judge of the facts.
5 If at anytime I make any comments regarding the facts, you
6 must disregard my comments. You are to determine facts from
7 the testimony you hear and the other evidence that's
8 introduced in Court.

9 It is up to you to determine the inferences which you
10 feel may be properly drawn from the evidence that is
11 presented. It is especially important that you perform your
12 duty of determining the facts diligently and conscientiously
13 because, ordinarily, there's no way to correct an erroneous
14 determination of facts that is made by a jury.

15 On the other hand, with equal emphasis, the same law
16 that makes you the judge of the facts makes me the judge of
17 the law. The law, as given by the Court, is the only law
18 that you may consider. You must accept it and follow it
19 even though you may disagree with it.

20 I can not tell you what the facts are and you can not
21 disagree with me about what the law is or what the law
22 should be. Your job is to take the law as I give it to you
23 and apply it to the facts as you find them to be from the
24 testimony of the witnesses and any other evidence that is
25 introduced during the course of this trial. After doing

1 that, you will render your verdict, a true and just verdict,
2 under the solemn oath that you just took as jurors.

3 Now, as I've told you before, until I advise you to
4 begin your deliberation, you must not discuss the case with
5 anyone including your fellow jurors, friends, family
6 members, and anyone else that is involved with this case.
7 You can not have any face to face discussions. You can't
8 have discussions by telephone, email, text, blog, or any
9 other types of communication. You simply can not talk to
10 anyone about this case.

11 But, likewise, you can not use any computer, cell
12 phone, or other electronic communication devices while in
13 the courtroom or in your -- or in the deliberation room and
14 you can not receive any type of information or do any type
15 of independent research into this trial. Naturally, while
16 you're on breaks or at night, you have the access to your
17 computers and cell phones, but you can not do any type of
18 investigation into this case and you must disregard -- I do
19 not think there's gonna be any newspaper coverage of this
20 case. But if there is -- or news coverage. You can not
21 review or read or -- any type of news coverage that may be
22 out there about this case.

23 Ladies and gentlemen, you are to consider -- you must
24 not consider anything that maybe you've heard about or read
25 about this case outside of the courtroom prior to this

1 trial, whether it is before or just prior to entering this
2 trial. After the case is submitted to you, you must discuss
3 it in the jury room only with your fellow jurors.

4 The attorneys and the parties of this case have been
5 advised they are not to talk to you at all. So, if you see
6 anyone involved in the case at all and they do not even say
7 hello to you as you come and go from the courthouse, they're
8 not being rude or unfriendly. They are simply following my
9 instructions.

10 Ladies and gentlemen, it is important that you keep an
11 open mind and not decide any issue in this case until all of
12 the evidence has been presented, the parties have made their
13 closing arguments to you, and I have instructed you on the
14 law of this case. It is your solemn responsibility to
15 assure, to assure that your verdict is based solely and only
16 on the evidence that is presented to you in this trial and
17 on the law as I instruct you during the closing arguments of
18 the trial.

19 In just a moment the solicitor will make what is called
20 an opening statement in which the solicitor will explain to
21 you the issues in the case or at least what the solicitor
22 thinks the issues are in the case. Now, the attorney for
23 the defendant may also make an opening statement although he
24 is not required to do so.

25 Ladies and gentlemen, what the attorneys tell you

1 during their opening statements is not evidence in the case.
2 It is only their contention as to what the issues are in the
3 case. The evidence in the case will be presented to you by
4 testimony of witnesses from this witness stand and any
5 exhibits that's introduced during the course of this trial.

6 Now, from time to time you may hear one of the lawyers
7 say something like Your Honor, I believe we have a question
8 of law or matter of law to discuss with you or they may say
9 Your Honor, may we approach the bench or sometimes I myself
10 may find it necessary to exclude you from the courtroom for
11 a short while while the attorneys and I discuss what is
12 called matters of law.

13 The reason for this is because you are the judge of the
14 facts, and sometimes, when discussing matters of law with
15 the attorneys, it may be necessary for me to take -- to make
16 some comments about the facts of the case in con -- in, in
17 ruling upon whether or not a particular law applies or not.
18 I'm not suppose to tell you what I think about the facts.
19 So, I will excuse you from the courtroom while these
20 discussions take place so that you will, in no way, be
21 swayed or influenced by anything that I say in ruling on
22 matters of law.

23 In determining what the true facts are, ladies and
24 gentlemen, you must decide whether or not the testimony of a
25 witness is believable. It will be my responsibility to rule

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

5 In deciding whether to believe a witness, you have the
6 right to consider the interest of any witness, the bias of a
7 witness, the prejudice of any witness, and the opportunity
8 for the witness to have seen the matters and things about
9 which the witness may testify and the way the witness acts
10 on the witness stand. You have the right to consider
11 anything that is in the record that will help you evaluate
12 the testimony of the witness.

13 What that means is that it is your duty to pay close
14 attention to the witnesses, to observe the witnesses, to
15 listen to them, and pay close attention to the attorneys and
16 to this Court. Do not let your thoughts wonder but give
17 strict attention to the testimony in the case so that, at
18 the end of the testimony after the arguments of counsel and
19 the charge on the law by the Court, you will then be in a
20 position to determine what the true facts are, to apply the
21 law to those facts, and thus render a true and just verdict.

22 Now, Mr. Foreman, it will be your added responsibility
23 to preside over the jury in the deliberation room and to
24 write the verdict for the jury. But I will give you further
25 instructions on that towards the end of this case.

1 Now, in order to preserve everyone's rights, I will
2 give the parties an opportunity to object to anything that I
3 have thus said.

4 Any objections from the State?

5 SOLICITOR CUENCA: No objections from the State, Your
6 Honor.

7 THE COURT: Any from the defense?

8 MR. BENDER: No, Your Honor.

9 THE COURT: Thank you.

10 Ladies and gentlemen, at this time we will receive the
11 opening statements from the attorneys.

12 SOLICITOR CUENCA: May it please the Court, opposing
13 counsel, ladies and gentlemen of the jury.

14 On September 24th, 2018, here in Spartanburg County,
15 specifically at a Mexican restaurant called Los Mexicanos,
16 the defendant, Wesley Ray Kyzer, approached the victim,
17 Coach Wesley Brown. He approached him and he said fuck you.
18 Fuck you. You better hope that I don't see you outside or I
19 will kill you. Fuck you. Those are the words that came out
20 of the defendant's mouth directed towards the Coach Brown.

21 Now, this was the last incident. Prior to this
22 incident at Los Mexicanos the defendant had been harassing
23 Coach Brown.

24 My name is Maressa Cuenca and I, along with my
25 co-counsel, Hope Coleman-Hicks, represent the State in this

1 matter.

2 Mr. Wesley Kyzer, the defendant, is charged with
3 harassment first degree and with threatening a teacher.

4 Now, it is my job to present the evidence to you and I
5 will be presenting the evidence in different ways. Evidence
6 is presented through testimony and it is your job to take
7 the evidence that is presented and later apply it as the,
8 the judge will be giving you the law at the end and render a
9 verdict in this case.

10 Now, again, the State will be presenting evidence
11 through testimony and initially the State will present the
12 testimony of the victim, Coach Brown, and Coach Brown will
13 testify as to the harassment that he felt, the emotional
14 distress, the way that it affected him, his interactions
15 with the defendant. He will also testify of the last
16 specific incident where the defendant told him fuck you, I
17 will kill you.

18 Now, there will also be other testimony of other
19 witnesses because that day at the restaurant he was not the
20 only one sitting there eating with him. There were other
21 coaches as well and we're going to be bringing Coach
22 Caldwell, Coach Thomas, and Coach Miller and they will also
23 testify that the defendant did, in fact, threaten Coach
24 Brown.

25 Further, the State is going to be bringing other

1 witnesses. Specifically the superintendent and the
2 principal that will testify as well as to Coach Brown not
3 only being a coach at Spartanburg High School but also being
4 a teacher and potentially the State might have more
5 witnesses, more evidence.

6 But, again, at the end of the case, I do believe that
7 you will find that the State has met its burden of proof and
8 that you will find that the defendant's guilty.

9 Now, this is an important case. It is important for
10 Coach Brown who has suffered harassment, whose life has been
11 threatened. It is an important case for him.

12 So I'm asking you to use your common sense when you are
13 evaluating the evidence, when you are listening to the
14 testimony, the same common sense that you use when you're
15 making an important decision in your life, and asking you to
16 use your good judgment. I'm asking you to weigh the
17 credibility of any evidence that is presented through
18 testimony or if there's any evidence through exhibits. And,
19 at the end of the case, I will come before you and ask you
20 that you find Defendant Wesley Kyzer guilty of harassment in
21 the first degree and threatening a teacher.

22 Thank you.

23 THE COURT: Yes, sir.

24 MR. BENDER: Thank you.

25 Thank you, Your Honor.

1 Again, we had a short introduction earlier but my name
2 is Michael Bender. I work at a law firm here in Spartanburg
3 and in Columbus, North Carolina. My client, Wesley Ray
4 Kyzer.

5 Let me tell you and forecast for you -- first, let me
6 do a, a brief overview of how trial's go because so far
7 today y'all've had a lot of down time, right?

8 But the way these trials work is we're gonna have
9 opening statements. Then the State's gonna put on evidence.
10 Then the defendant's gonna put on evidence. Then there's
11 closing statements. Then you get to the -- finally
12 deliberate.

13 Okay. So, there's parts to it and it goes in that
14 order.

15 Unfortunately for y'all there's a lot of down time
16 in-between every single one of those parts. So, prepare for
17 that.

18 But what we do in opening statements is we're just
19 forecasting the evidence for you.

20 Okay. As the judge said, all the evidence that you're
21 actually going to consider will be right here.

22 Okay. Exhibits, videos, any evidence that you need to
23 make a decision in this case will be from there.

24 Our job right now is just simply a forecast of what we
25 believe will come in.

1 okay. So, let's go through some of the things that I
2 believe are going to come in.

3 One, okay, is that, on September 24th, 2019,
4 Mr. Kyzer did say fuck you three times Mr. Brown. That
5 happened. He did not, and the evidence will show, say
6 anything else.

7 The evidence you're gonna see is that there were four
8 coaches sitting at that table. All of them gave a statement
9 that day.

10 Now we're a long time from then, right?

11 Two and a half years.

12 All of them gave a statement that day. Not a single
13 one of the statements matches. Not one. And not a single
14 one of those statements says anything about I'll kill you
15 besides Coach Brown's.

16 Okay. Pay specific attention to -- all of them gave
17 written statements and how much those written statements
18 change compared to what's gonna come out right here.

19 Okay. Now, he's charged criminally with a felony and
20 they want to make him a felon for saying fuck you to
21 somebody and here's what the evidence is also gonna show.

22 After that happened, the four coaches remained seated.
23 Mr. Kyzer, who was with his wife, walked out of a
24 restaurant, paid his bill, and just went on his way.

25 Okay. Mr. Brown, the baseball coach, went back to his

1 coach's office, kicked up his feet, and had a chuckle with
2 the SRO of the school, with the athletic director, and with
3 whoever else just happened to come in and out of the coach's
4 office during that time period. He specifically states,
5 during that conversation, he's not scared. It's no issue.

6 He doesn't mention anything about saying that he
7 would -- I would -- he was gonna kill him. He says the fuck
8 you part, which happened. But all of these other things are
9 add-ons.

10 So, pay specific attention to what was said then versus
11 what is said now.

12 Okay. Also, harassment, I think the judge is going to
13 instruct you, at the end of this trial, that harassment is a
14 repeated pattern of behavior.

15 Okay. The instances that were referenced, three of
16 those instances the parties never spoke. Take that into
17 consideration. Harassment, three of the instances the
18 parties never spoke and the last instance was the Mexican
19 restaurant, and the time period between those, 18 months.

20 Is that a pattern?

21 I'm gonna ask y'all to pay very close attention. This
22 is important. You know, y'all have undertaken a, a, a very
23 tall task in deciding another person's fate.

24 I ask you to pay attention to the evidence. I ask you
25 to pay attention to the shifting evidence and I ask you to

1 hold the state to their burden.

2 The burden of proof in this matter rests solely at
3 their table, right.

4 Proof beyond a reasonable doubt which means that you
5 have to be entirely convinced and completely satisfied that
6 what they allege happened happened. No doubt. And if you
7 pay attention to the evidence, listen to the judge's
8 instructions, you're not gonna be able to get that.

9 Thank y'all for today.

10 THE COURT: All right. Ladies and gentlemen, part of
11 what we did prior to your coming in here, we tried to lay
12 out a game plan, a schedule for how the witnesses would
13 appear and we decided it would probably be best if we took
14 the evening break now and not start any of the witnesses.

15 So I'm gonna remind you of my ongoing charge to you
16 that you can not have any discussions among any -- with
17 anyone about anything involving the case. You're now gonna
18 go home. You're gonna see loved ones, sit around the dinner
19 table.

20 Do not -- that -- what kind of case is it.
21 Respectfully tell them that the judge has said I can not
22 discuss anything with you. You can let them know, after the
23 case is over, you can talk to they're blue in the face as
24 much as they want to. But until the case is over you can't
25 have any discussions with anyone about anything involving

1 the case.

2 The other ongoing instruction, do not do any type of
3 independent research or investigation into this case. You
4 heard our names. You've heard the lawyer's name. You've
5 heard a location.

6 Don't go out of your way to even go drive down a
7 particular road to check out a place. Do not do -- do not
8 go onto the internet to do any research. Don't pull
9 Webster's Dictionary.

10 Allow the lawyers to present to you the evidence that
11 you will consider as part of your deliberations and allow me
12 to instruct you on the law that you will apply to that
13 evidence.

14 But with those instructions to you, I would ask that
15 you be back in the jury deliberation room by 9:30 in the
16 morning and we will begin with the presentation of the
17 evidence.

18 You may go with the bailiffs.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. If y'all would, start filtering
22 any requests to charge. I'll put my own together but start
23 filtering to me any special requests that y'all would,
24 would, would have.

25 Lawyers want to approach.

1 (WHEREUPON, a bench conference was held at this time.)

2 THE COURT: All right. We'll step down till 9:30.

3
4 (WHEREUPON, Court was in recess for the evening.)

1 Tuesday, March 18th, 2022

2
3 THE COURT: We're missing a lot of jurors this morning
4 and I've been told that someone pulled an alarm in that
5 garage. So that might explain why they're not in the
6 building yet.

7 So, give us just a moment. We're down to four that
8 we're missing. I'll keep you updated. If, by chance, we
9 get 12 and we can't find the 13th, I'll talk to counsel
10 about proceeding with 12. But just be patient with us cause
11 we're just looking for the jurors which we need but thank
12 y'all very much.

13 we'll be -- anything -- do y'all need me before --
14 anything before we start the trial?

15 SOLICITOR CUENCA: No, Your Honor. But we do have the
16 jury charges you requested if you would like that at this
17 time.

18 THE COURT: Okay. Do you want to go ahead and provide
19 those?

20 SOLICITOR CUENCA: Yes, Your Honor.

21 MR. BENDER: She'd provided them to me, Your Honor.

22 THE COURT: Okay. Do you have any special ones you
23 want me to consider?

24 MR. BENDER: I've, I've got a few but I think we need
25 to wait for that as far as the -- to see if they comply.

1 THE COURT: Well, I wasn't gonna make decisions but it
2 makes it easier for me as I go ahead and prepare them cause
3 I then can remove them out one at a time.

4 MR. BENDER: It's mainly gonna be related to, to that
5 59 statute that deals with certified teachers.

6 THE COURT: Okay. All right.

7 Okay. We'll come back and I'll keep you posted when we
8 get the jurors here.

9 Thank you very much.

10 (WHEREUPON, a short recess was taken at this time.)

11 THE COURT: Okay. Thank y'all very much.

12 While you're waiting, I am told that all the jurors are
13 here.

14 Thank you for bringing up the issue of this
15 construction of the statute. I'm gonna go ahead and make a
16 ruling on the application on, on what defense counsel has
17 raised.

18 I'm gonna deny the motion to dismiss based upon my view
19 of 59-25-20 that deals with the qualifications of teachers
20 is an employment statute. Broadly, it's an employment
21 statute and that, and that statute is geared towards telling
22 school boards of trustees that, when they employ teachers,
23 they have to employ people who are certified by the State
24 Department of Education in order for them to be a teacher in
25 the employment of a public school.

1 16-3-1040 does not have that same language of certified
2 teacher and we have a lot of individuals in this state that
3 are called teachers that are not certified by the State
4 Department of, of Education. I do not consider it logical
5 that the criminal -- that the purpose of the criminal
6 statute would be met by imposing a requirement in the
7 criminal statute that relates to an employment statute.

8 So, I'm gonna deny the motion. I don't know how the
9 lawyers want to approach it during the trial of the case.
10 But that is my ruling as far as this particular case and on
11 the motion that was raised.

12 So I'm gonna deny the motion to dismiss that was raised
13 by the defense.

14 Anything else before we bring the jury in?

15 SOLICITOR CUENCA: No, Your Honor, but I will ask my
16 witnesses to step out.

17 THE COURT: Okay.

18 SOLICITOR CUENCA: Yes, sir.

19 THE COURT: Yeah, the defense had made a motion to
20 sequester. The State was agreeing with that.

21 So, if you are a potential witness in the trial, except
22 for the, for the parties, y'all stay here. Everybody else
23 will move out into the lobby area and, and then, when, when
24 you're called as a witness, somebody will come get you and
25 bring you in.

1 SOLICITOR CUENCA: Thank you, judge.

2 MR. BENDER: And, Your Honor, for clarification on that
3 ruling, you're ruling -- to -- you're denying the motion to
4 dismiss but not saying anything about the ability to talk
5 about it or question about it?

6 THE COURT: I would say I generally agree with that but
7 it is my ruling. And so if you're going to bring up and
8 make an argument to the jury that, that a particular person
9 is not certified as defined by 59-25-20, then that would go
10 against my ruling and I would not allow that cause I do not
11 intend to charge the jury that a definition of teacher, for
12 purposes of the criminal statute, requires that the person
13 be certified under 59-25-20.

14 MR. BENDER: Okay. But it still allows me to argue
15 that he's a public employee, not a teacher?

16 THE COURT: I mean that's your, that's your call. I'm
17 not gonna -- yeah, I, I -- I'm not excluding that. I'm not
18 saying that that's a good idea but I'm not excluding that.

19 And that -- and then, likewise for the State, I'm not
20 saying that you don't have to watch out for what he just
21 said. That is y'all's trial strategy, not mine. Not -- I'm
22 not preventing any of that, yeah.

23 SOLICITOR CUENCA: Yes, Your Honor.

24 THE COURT: Okay.

25 All right. Do you have anybody that's present that you

1 intend to call as a witness that they need to remove
2 themselves?

3 MR. BENDER: No, Your Honor.

4 THE COURT: Okay.

5 All right. Is the State ready to call their first
6 witness?

7 SOLICITOR CUENCA: Yes, Your Honor.

8 THE COURT: Okay.

9 SOLICITOR CUENCA: The State---

10 THE COURT: We got to bring the jury in.

11 Okay. Go ahead and bring the jury.

12 Anybody gonna have an expert witness in this case?

13 SOLICITOR CUENCA: No, Your Honor.

14 MR. BENDER: No.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: Good morning, ladies and gentlemen. We are
18 now ready to begin the presentation of the evidence in the
19 case.

20 Is the State ready to call their first witness?

21 SOLICITOR CUENCA: Yes, Your Honor.

22 The State will call Robert Wesley Brown to the stand.

23 THE COURT: Sir, just come right up here and let the
24 Clerk of Court swear you in. Just come right up here to
25 the -- that, that -- the stand and the Clerk of Court will

1 meet you up there.

2 ROBERT BROWN, being first duly
3 sworn, testified as follows:

4 THE COURT: Sir, just step up and be careful when
5 you're stepping up. Have a seat in the chair. Pull the
6 chair up to the microphone if you would and, and speak up
7 loud enough to the court reporter and all the members of the
8 jury and all of us can hear you.

9 DIRECT EXAMINATION

10 BY SOLICITOR CUENCA:

11 Q Good morning, Coach Brown.

12 A Good morning.

13 Q Will you please state your full name for the record?

14 A Yes, Robert Wesley Brown.

15 Q And please tell the jurors where you work currently?

16 A I work at Spartanburg High School.

17 Q Okay. And what -- how long have you been at
18 Spartanburg High School?

19 A This is my seventh year.

20 Q And what is your position there at the high school?

21 A I am the strength -- assistant strength coach at the
22 high school. I'm also the head baseball coach and, and
23 serve many other duties inside of that title.

24 Q Okay. And prior to working at Spartanburg High School,
25 have you worked elsewhere?

Robert Brown - Direct examination
by Solicitor Cuenca

1 How long have you been in education?

2 A This will be my 15th year in the school system. This
3 will be my 23rd year as a baseball coach in the State of
4 South Carolina and those stops were previous in Aiken, South
5 Carolina.

6 Q Coach Brown, tell us a little bit more about what you
7 do as an assistant strength coach.

8 A As an assistant strength coach we share duties. Our
9 head coach -- our head strength coach and I, we actually
10 lesson plan together. Every other week we rotate who does
11 the lesson plans.

12 On top of that, I'm the one that enters all the grades.
13 I give the grades for each kid.

14 On a daily basis I handle all the attendance inside of
15 there and you, you -- we run through -- each day is
16 something different that we do with each, each kid each --
17 based upon the sport, it's kind of sport specific on, on
18 what we try to do and I'm a little more in tune to a spring
19 sport and he's a little more in tune to a football type
20 mindset. So we kind of share those duties as far as what
21 we -- our expertise is in.

22 Q And approximately, approximately how many classes do
23 you teach a week per se?

24 A Per week, it's about 30 classes, six a day. Roughly
25 350 kids come through our room every single day for every

Robert Brown - Direct examination
by Solicitor Cuenca

1 sport in the high school.

2 Q Okay. Would you tell us a little bit more about what
3 is your role as the baseball coach, head baseball coach?

4 A As the head baseball coach, I'm a father to the kids.
5 A lot of the kids don't have a father in their life. I'm
6 the accountant. I handle all of the fundraising. I do all
7 kinds of public speaking engagements.

8 I'm the field maintenance guy, the field manager. I
9 handle the maintenance on the field. I'm the equipment
10 manager. I, I get meals for every game through the
11 community. I'm in control of all the community service
12 projects that we do throughout the community.

13 It, it, it -- you know, they're -- we, we also, as the
14 head coach, deal with different, different ethnic
15 backgrounds, different diversities, different demographics.
16 So I have to be very, very genuine in the sense of having
17 every one within our program feel the same about what we're
18 trying to do and what we're trying to accomplish.

19 So, it's, it's a role that you have to be very open
20 minded and listen be -- and be able to handle different
21 situations throughout the course of the season or a daily
22 basis for that matter.

23 Q Thank you.

24 And, Coach Brown, do you know the defendant, Wesley
25 Kyzer?

Robert Brown - Direct examination
by Solicitor Cuenca

1 A Yes.

2 Q Would you be able to recognize him if you saw him?

3 A Yes, ma'am.

4 Q Is he in the courtroom today, Coach Brown?

5 A Yes, ma'am, he's right here.

6 Q Would you please point to him?

7 A Right here.

8 SOLICITOR CUENCA: Let the record reflect that he is
9 pointing to the gentleman sitting next to Mr. Bender.

10 THE COURT: All right. Thank you.

11 Now, coach, you are facing the ladies and gentlemen of
12 the jury and your voice is gone down. Really speak up
13 because she's got to be able to hear it, I do, and everybody
14 on this side of the courtroom. So -- but continue to face
15 that way but just speak up.

16 THE WITNESS: Yes, sir.

17 Q Let's go to the incident of September 24, 2019.

18 Do you recall what happened that day?

19 A Yes, ma'am, we -- me and three other coaches were at
20 Los Mexicanos Restaurant.

21 Q And let me---

22 A We---

23 Q Let me stop you right there.

24 Is that in Spartanburg?

25 A Yes, ma'am.

Robert Brown - Direct examination
by Solicitor Cuenca

1 Q And---

2 A It's directly across from the new high school off of
3 East Main Street.

4 Q Okay. Continue.

5 A Myself and Coach Miller, Coach Caldwell, and Coach
6 Thomas walked in for lunch, and when we walked in for lunch,
7 I, I made eye contact with Mr. Kyzer's wife. So I knew that
8 they were in there and I was the first one to walk in and we
9 walked to the back of the restaurant to a booth and I slid
10 into the booth.

11 And we were sitting there and our food arrived and
12 started eating, and, all of a sudden, Mr. Kyzer walked up to
13 our booth. He shook the hand of Coach Miller and, and after
14 he shook Coach Miller's hand, he turned and looked to me
15 directly and said fuck you, fuck you, you better hope I
16 don't see you outside of here or I will kill you, fuck you.
17 Like I said, if I see you outside of here, I will kill you.

18 At that time that's when Coach Thomas turned and looked
19 at Mr. Kyzer and said that's enough, could you leave us
20 alone so we could finish our lunch, and then you need to
21 apologize to these families that heard you. Was Kyzer then
22 said to me fuck you again. Coach Caldwell then replied to
23 him I hope the Lord blesses you and then Ryan Thomas stood
24 up and Mr. Kyzer walked off.

25 Q And, Coach Brown, just so that we can have a little bit

Robert Brown - Direct examination
by Solicitor Cuenca

1 of an understanding of where you were.

2 If, if we're saying that this is the booth that you
3 were sitting in, the counsel table, where were you in
4 relation to this table sitting when you pull into the booth?

5 A Um.

6 Q Were you towards the right side?

7 A So, if that's the aisleway right there walking down the
8 middle of the aisle of the restaurant, I would of been the
9 first one in the booth where she is sitting.

10 Q Okay. So then -- so where Ms. Coleman-Hicks here on
11 the left side is where you would have been and who was
12 beside you closer to the aisle?

13 A Coach Thomas.

14 Q Coach Thomas.

15 And who was directly across from you?

16 A Coach Caldwell.

17 Q And then who was directly across from I guess Coach
18 Thomas?

19 A Coach Miller.

20 Q Okay. And then you were stating that the defendant
21 walked from the back towards the booth, heading towards the
22 booth or was he facing you or was he behind you when he was
23 walking towards the booth?

24 A He was behind us.

25 Q Okay.

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by Solicitor Cuenca

1 A He was at the front of the restaurant. We were in the
2 back.

3 Q Coach Brown, how did it make you feel?

4 A Well, it was threatening. I mean a man that size, he's
5 a big guy, strong guy, and he, he -- he was standing over
6 the top of us and staring a hole through me when he said it,
7 and, and it -- you, you instantly go into survival mode and
8 you're looking around trying to figure out how you're gonna
9 get out of that booth if something was to go awry and, and
10 it just -- it was a moment that's shaken me. It's two and a
11 half years I've had to sit there and worry about it, shake
12 about it.

13 Q Sir, what do you do after, after that incident?

14 A Well, we got up, walked out -- after we paid, we got
15 out -- we walked out of the restaurant. We went back to the
16 school and I, I contacted my AD when we got there, Coach
17 Staley, and asked what I should do and, and then I think I
18 contacted the SRO at the time, Mr. Johnson, and informed him
19 of what took place. And, and then I think, from there, the
20 City of Spartanburg was contacted and then they arrived.

21 Q Okay. And I did -- I, I forgot to ask.

22 Was Mr. Kyzer, the defendant, was he alone that day?

23 A No, ma'am, his, his wife was with him and then another
24 couple was sitting with him in the booth.

25 Q When Mr. Kyzer, the defendant, approached you, was his

Robert Brown - Direct examination
by Solicitor Cuenca

1 wife with him as well?

2 A No, ma'am.

3 Q Where was his wife if you can recall?

4 A I couldn't see. But you go back on the, on the video
5 and he -- she was at the front of the restaurant. She
6 went---

7 Q Okay.

8 A ---towards the cashier and he came to the back of the
9 restaurant.

10 Q So you didn't -- you couldn't see her but she was not
11 with Mr. Kyzer when this incident happened at the booth?

12 A Correct.

13 Q Okay. After you contacted the SRO, Deputy Johnson,
14 what, what did you-all do after that?

15 A Just---

16 Q Was---

17 A Just explained the incident to him and, and it took a
18 little bit cause obviously I was pretty shaken. It took me
19 a little while to calm down. So, it took a little while to
20 get all the information out and we just discussed the
21 incident and what, what options I had and what, what I
22 probably should do about that. I never had went through
23 that before.

24 Q Coach Brown, was this the first time that you felt
25 threatened or -- by Mr. Kyzer?

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by Solicitor Cuenca

1 A No, ma'am.

2 Q Tell us a little bit more about that.

3 A My timeframe may be a little off. I apologize. But
4 there was another incident where his son was no longer with
5 us on the team and he showed up to a couple of the baseball
6 games, two of them that I recall. During the games -- and
7 he specifically sat in the direction that he had never sat
8 before in my line of sight, which is the field -- when
9 you're standing in the dugout and you're looking, there's
10 only -- I would only see kind of certain areas of the
11 stadium and I didn't realize he was there until the kids
12 started talking about it and then I kind of looked up and I
13 saw him.

14 He was staring at me the whole game through the most
15 part. Seemed like every time my eyes went that direction I
16 was getting looked at. It just kind of -- it bothered me.

17 The other incident, the other incident was one time at
18 the district office when we were having issues. I do a
19 yearly meeting at the time with our superintendent and I
20 always do it near our season and we go over a few of what I
21 may need or what we can do better or what I can do better.

22 And the -- so we were in the district office and I was
23 sitting in the lobby of the district office, and there is a
24 desk at the front and then there's a hallway kind of like --
25 this angle I'm sitting, it goes between the two tables. And

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1 I was waiting on Doctor Booker to come down and, and get me
2 for the meeting.

3 Well, about that time Mr. Kyzer walks in the front door
4 and he says or the -- excuse me. The, the, the secretary or
5 the front desk attendant, she says sir, can I help you and
6 then Mr. Kyzer sees me sitting over there on the bench and
7 looks at me and says yes, I'm here for the same thing he is.
8 I'm here to get him fired and literally as he's saying that
9 Doctor Booker was coming down the hallway and he didn't hear
10 it because he was down a hallway. But he was motioning for
11 me and I got up and walked to the back. Once again, I felt
12 threatened at that situation.

13 Q Thank you, Coach Brown, and I want to just go back and
14 flesh out a little bit more.

15 You mentioned that there were approximately two
16 incidents at a baseball game.

17 Is that correct?

18 A Yes, ma'am.

19 Q And do you know roughly a -- around -- when those,
20 those games took place?

21 A It would of been mid April --

22 Q April?

23 A -- of that year because of who we were playing. It, it
24 was the Dorman series and all that kind of transpired and
25 then within maybe the end of that week and then prior to

Robert Brown - Direct examination
by Solicitor Cuenca

1 that first, or excuse me, after that it would of been maybe
2 the games of the following week or a game the following
3 week.

4 Q You mentioned April of that year.
5 which year, Coach Brown?

6 A 2018 I believe.

7 Q And those games were where?

8 A At Duncan Park.

9 Q And is that in Spartanburg County?

10 A Yes, ma'am, that's our home facility.

11 Q Okay. And now regarding the -- so those were separate
12 incidents.

13 Regarding the third incident that you mentioned at the
14 office, which office is that?

15 A That's Spartanburg District -- School District 7, the,
16 the district offices.

17 Q And that's in Spartanburg County?

18 A Yes, ma'am.

19 Q Okay. And then -- so, up until April and then there
20 was this incident, is that correct, of -- in September 24,
21 2018?

22 A Yes, ma'am.

23 Q Okay. Have you seen the defendant since then?

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

25 Q Okay. Coach Brown, after these incidents that you've

Robert Brown - Direct examination
by Solicitor Cuenca

1 described, were you also aware of other instances of the
2 defendant showing up and demanding that you be fired?

3 A Yes, ma'am, that day in the district office I was
4 informed that he had showed up. I don't know the exact
5 number but multiple times.

6 MR. BENDER: Objection, Your Honor.

7 THE COURT: Okay. I'm gonna allow -- I haven't heard
8 anything objectionable yet. I'm gonna allow him to answer
9 but object if he says something that you want me to listen
10 to or tell me what the objections are.

11 Go ahead, sir.

12 THE WITNESS: I was told by our superintendent that he
13 had shown up multiple times over the course---

14 MR. BENDER: Objection, Your Honor.

15 THE COURT: Okay. I'll sustain that objection.

16 Q After your knowledge and after these incidents of
17 harassment---

18 MR. BENDER: Objection, Your Honor, about the way that
19 question's phrased.

20 THE COURT: Okay. Go ahead and re, restate the
21 question.

22 Q After everything that happened with your encounters
23 with the defendant, how did you, how did you feel, Coach
24 Brown?

25 A Could you repeat that?

Robert Brown - Direct examination
by Solicitor Cuenca

1 Q Sure.

2 How do you feel after all of these encounters with the
3 defendant culminating till the very last one in September,
4 2019?

5 A Yeah, it's, it's, it's, it's heart breaking. It
6 just -- you, you give so much as a coach and, and, and they
7 don't under -- parents don't understand sometimes how much
8 you go through and what you pour into somebody and what you
9 try to do. It just -- it tears your heart out of your
10 chest. You just give so much. It, it just -- it, it -- so,
11 yeah, I always look right and left when I go in the
12 community looking for his truck to make sure it's not behind
13 me. My wife even knows that too.

14 Q Did you suffer any emotional or mental distress?

15 A Absolutely. I mean when you go through -- when you go
16 through this situation, you're, you're, you're constantly
17 reevaluating things and you're trying to figure out, you
18 know, is there anything I could of done differently, is
19 there -- but you go back and you have to stand strong in
20 your values as a coach and what you believe in.

21 So, it's hard to -- it's hard to go out in public not
22 knowing what's gonna take place sometimes to the point that
23 you just don't go out to eat dinner at certain areas in
24 Spartanburg.

25 Q So this has affected your private life?

Robert Brown - Direct examination
by Solicitor Cuenca

1 A Absolutely. We don't go out in Spartanburg to eat
2 ever. We, we go to different towns.

3 SOLICITOR CUENCA: One moment, Your Honor.

4 (Pause.)

5 Q Coach Brown, I don't have any further questions.
6 Please ask -- answer any that Mr. Bender has for you.

7 A Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MR. BENDER:

10 Q Coach Brown, are you a teacher at the school or a
11 coach?

12 A Teacher and a coach.

13 Q Okay. But you're not a certified teacher, right?

14 A No, sir.

15 Q Okay. You've never been a certified teacher, right?

16 A No, sir.

17 Q Now, when you say that you removed his son from the
18 team, you gave him an option to leave the team and he took
19 that option to leave the team, right?

20 A No, sir.

21 Q Okay. It wasn't that he had to either apologize to an
22 assistant coach or turn in his things?

23 SOLICITOR CUENCA: Objection, Your Honor. Irrelevant.

24 THE COURT: All right. You're gonna have to lay a
25 better foundation.

Robert Brown - Cross-examination
by Mr. Bender

1 SOLICITOR CUENCA: May we approach, Your Honor?

2 THE COURT: Y'all want to approach.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: Ladies and gentlemen, this is one of those
6 times where I have to ask y'all to please go back to the
7 jury deliberation room. I have to have a conference with
8 the lawyers and we'll get you back just shortly.

9 Remember, don't have any discussions among yourselves
10 or with anyone else about anything involving the case and
11 don't do any type of independent research.

12 You may go with the bailiff.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury panel.)

15 THE COURT: Yes, ma'am. Tell me -- yes, ma'am, tell me
16 your objection.

17 SOLICITOR CUENCA: Yes, Your Honor.

18 The information that Mr. Bender is trying to ask of
19 Coach Brown is not relevant to the case. Coach Brown, first
20 of all, he was never asked about any conferences or any
21 meetings.

22 Second of all, any of his testimony that he has been
23 given, the only thing he's capped it as when his son was no
24 longer in the team, which, again, does, does not open the
25 door, Your Honor, to more instances about Aiden, about the

Robert Brown - Cross-examination
by Mr. Bender

1 situation. And so the question that Mr. Bender's going to,
2 it's only gonna be drawing information that is not pertinent
3 to the case, Your Honor, and that should be excluded.

4 THE COURT: Yes, sir.

5 MR. BENDER: Thank you, Your Honor.

6 I mean the first thing they talked about is games where
7 Mr. Kyzer showed up where Aiden's no longer on the team.
8 So, we have to get to the point as to why Aiden's no longer
9 on the team, as to why -- if he's saying he felt threatened
10 by Mr. Kyzer, and that's his exact words, I felt threatened
11 that he was sitting there, then that's fair game. That can
12 be explained as to why he felt threatened. Otherwise we've
13 just got somebody showing up and watching a baseball game.

14 So, if the testimony was that he said he felt
15 threatened while Mr. Kyzer was sitting there, we have to get
16 behind that and see why he felt threatened and the reason
17 why he felt threatened is all these other things. They
18 brought that in.

19 SOLICITOR CUENCA: Your Honor, that would go contrary
20 to your own ruling yesterday that that story is not relevant
21 to this case, that the case stands alone on the elements of
22 the statute, and that is the extent of the testimony that we
23 are seeking.

24 THE COURT: Okay. Thank y'all for that.

25 I agree that it goes contrary to my ruling. I wonder

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by Mr. Bender

1 why you want to bring up the basis of the threats because it
2 seems like that enhances the State's case but that's your
3 call.

4 I'm gonna let him -- he is on cross-examination. Now,
5 cross-examination, the cross-examiner has a lot more leeway
6 to go into a lot of subjects of credibility, of
7 believability, of, of biases that a particular witness may
8 have.

9 But with that in mind, again, my desire with my earlier
10 ruling is not to make this into a ruling as to whether or
11 not anything the son did or did not do was proper or, or
12 improper. The fact that -- I'm gonna let it go forward with
13 the fact that there is a -- I haven't heard what it's about
14 but there is some dispute that is going on between the coach
15 and the father that has something to do with the son.

16 I think that is sufficient and that is something that
17 probably would create a better story, more enlightening for
18 the jury. But whether or not the dispute between the coach
19 and the father has merit I don't think is what this case is
20 going to be about as far as the criminal prosecution is
21 concerned.

22 So I caution the lawyers. Let's don't go too far down,
23 down that hole. I'm gonna allow counsel to go into it
24 briefly. If it gets too far afield I'll entertain another
25 objection from the State if the State wants to object to it.

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1 But I just -- I think it is contrary to my earlier ruling
2 and my desire that the jury focus on the criminal statute
3 and whether or not the State has met those elements. But
4 I'm gonna let counsel go into it briefly.

5 SOLICITOR CUENCA: Your Honor?

6 THE COURT: Uh-huh. (Affirmative).

7 SOLICITOR CUENCA: May I ask a clarifying question --

8 THE COURT: Uh-huh. (Affirmative).

9 SOLICITOR CUENCA: -- of the scope or, or what is the
10 extent of those questions that he can ask?

11 Would that also elicit information about Aiden saying
12 mind your fucking business which is the incident that we're
13 talking about?

14 THE COURT: I mean that's something that I think
15 counsel's got to be concerned about cause if he goes too far
16 down that road or too far down that path, I think it does
17 open that, open that up, you know, and whether or not the
18 State desires to use that and elicit that, you know, that's
19 gonna be the State's call. But I -- that's why I wondered
20 why counsel wants to go down this path.

21 But I'm gonna let him go down it a little bit. Again,
22 it's not gonna be -- this trial is not gonna be a trial
23 about whether or not whatever the son did or did not do was
24 proper or improper and it's not gonna be a trial about
25 whether or not the son should or should not have been on the

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by Mr. Bender

1 baseball team.

2 This is a criminal---

3 SOLICITOR CUENCA: Thank you, judge.

4 THE COURT: This is a criminal case dealing with
5 allegations that deal with threatening the life of a school
6 teacher or public official or employee and also of
7 harassment. That's what this focus of this trial has to be
8 on.

9 okay. while the jury's out, anybody need a short
10 recess before we bring them back in?

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay. All right. Then let's bring them
13 back in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: Counsel ready to proceed?

17 MR. BENDER: Yes, Your Honor.

18 CONTINUED CROSS-EXAMINATION

19 BY MR. BENDER:

20 Q Now, the previous question, Mr. Brown, was did you---

21 (WHEREUPON, the microphones in the courtroom started
22 malfunctioning at this time.)

23 THE COURT: Okay. Let's take a -- ladies and
24 gentlemen, let's take a short recess. We've got some
25 technology issues. Just retire back to the jury

Robert Brown - Cross-examination
by Mr. Bender

1 deliberation. We'll get you back just shortly. Just go
2 with the bailiff.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Sir, you can step down. Just remember or I
6 need to remind you you're in the process of giving
7 testimony. You can talk to people but don't talk to them
8 about -- ma'am, if you would, keep the door closed.

9 Okay?

10 THE BAILIFF: Okay. I'm sorry.

11 THE COURT: Sir, you may step down. Just don't talk to
12 people about the substance of your testimony. We'll get you
13 back just shortly. We're gonna try to figure out what this
14 is.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury panel.)

17 THE COURT: Okay. We're gonna step down for a few
18 seconds.

19 (Pause.)

20 Okay. We'll come back in just a few minutes.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Okay. So the Clerk of Court is somehow
23 located the master switch. We're gonna try it again. If it
24 happens again, our option is to kill all of the, the
25 microphones in the courtroom, and, at that point, I will

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1 just have to continue to remind the witnesses and remind the
2 lawyers and anybody else who's talking that you're gonna
3 have to really use your very strong outside voice cause we
4 will not have the ability to be microphoned.

5 But, with that, that's gonna be the game plan right
6 now. So, we're gonna try it one more time.

7 They've also taken steps to have the technology people
8 to come in but they're not in the building yet. So --.

9 All right. Let's bring them in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Okay. Thank you, ladies and gentlemen, for
13 your patience.

14 What we're gonna do is gonna, gonna try to continue.
15 We've contacted the Clerk of Court, the technology people
16 that deal with the courthouse. We've located a master
17 switch. It is something that deals with these microphones.

18 We're gonna continue to try. If it happens again,
19 we're gonna then probably kill the microphones in this
20 courtroom and turn them all off. And then, at that point,
21 I'm gonna encourage you to listen very closely cause nobody
22 will be microphoned at that point.

23 But we're now gonna continue with the questioning.

24 Yes, sir, counsel.

25 MR. BENDER: Thank you, Your Honor.

Robert Brown - Cross-examination
by Mr. Bender

1 CONTINUED CROSS-EXAMINATION

2 BY MR. BENDER:

3 Q Now, Mr. Brown, I believe we were talking about that
4 when Aiden was given the option to either apologize to the
5 coach or to turn in his things.

6 You said that was untrue?

7 A Yes, sir.

8 Q Okay. So you removed him from the team?

9 A Yes, sir.

10 Q Okay. And it wasn't a situation where he was given an
11 opportunity to either apologize to an assistant coach or
12 turn in his things?

13 A No, he was given that opportunity.

14 THE COURT: All right. Counsel, counsel, approach the
15 bench.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 Q Now, Aiden is Mr. Kyzer's son, correct?

19 A Yes, sir.

20 Q Okay. And he had played baseball for you, correct?

21 A Yes, sir.

22 Q And did I just hear you right before that you said that
23 you did give him that option?

24 A Yes, sir, I gave him the option.

25 Q Okay. Okay. And what year was that?

Robert Brown - Cross-examination
by Mr. Bender

1 A That would of been 2018.

2 Q Okay. Now, let's go towards these, these two games
3 that you said that Mr. Kyzer attended.

4 Do you remember what teams you were playing?

5 A No, sir, I don't off the top of my head.

6 Q Do you remember what dates they were on?

7 A No, sir, I don't.

8 Q Okay. But previously, when you talked with a law
9 enforcement officer, you had said that he attended every
10 game after his son was no longer on the team, correct?

11 A I don't recall.

12 Q You don't recall?

13 A I don't recall saying that. I'm not saying I didn't
14 but I don't recall it.

15 MR. BENDER: Approach, Your Honor?

16 THE COURT: The witness or me?

17 MR. BENDER: Oh, the witness.

18 THE COURT: Yes, sir.

19 MR. BENDER: Thank you, Your Honor.

20 Now, do you recognize what I'm holding here?

21 A Yes, sir. Yes, sir.

22 Q Okay. And what is that?

23 A That's a statement.

24 Q Okay. And whose statement is it?

25 A It's mine.

Robert Brown - Cross-examination
by Mr. Bender

1 Q Okay. And what does it say in your statement about how
2 many baseball games he went to?

3 A It says he came to every single game afterwards.

4 Q Okay. So, that's not true, right, cause now you're
5 testifying that he only came to two?

6 A Correct.

7 Q Okay. So what you wrote there wasn't true?

8 A Correct.

9 Q Although that was a witness statement that you provided
10 to a law enforcement officer?

11 A Correct.

12 Q Okay. Let's go through -- while we're on the
13 statement, let's go through these other things.

14 what we hear earlier was that you had -- he sat at the
15 baseball game twice, right?

16 A Yes, sir.

17 Q Okay. And, at those two times, he never once talked to
18 you, right?

19 A No, sir.

20 Q Never directly contacted you?

21 A No, sir.

22 Q Never called you?

23 A No, sir.

24 Q Never met you in person afterwards?

25 A Yeah, I mean the restaurant.

Robert Brown - Cross-examination
by Mr. Bender

1 Q At the baseball game.

2 A No, sir.

3 Q Okay. So let's go to the second baseball game.

4 You didn't talk with him, right?

5 A No, sir.

6 Q He didn't call you, right?

7 A No, sir.

8 Q You didn't meet with him afterwards in person?

9 A No, sir.

10 Q Okay. And let's, let's get beyond this every single
11 game as it stands cause obviously that wasn't true when you
12 wrote that, right?

13 A Correct.

14 Q Okay. So, both times at the baseball games you didn't
15 see -- you, you saw him but you didn't talk with him and
16 didn't meet with him?

17 A Correct.

18 Q He didn't come up to you after the game?

19 A Correct.

20 Q He didn't come up to you before the game?

21 A Correct.

22 Q He didn't reach out via telephone, text, or email
23 before or after either of those games?

24 A No, sir.

25 Q Okay. Now let's get to this next part where you say

Robert Brown - Cross-examination
by Mr. Bender

1 that you saw him at the superintendent's office.

2 A Yes, sir.

3 Q That's at the district office for Spartanburg School
4 District 7, correct --

5 A Yes, sir.

6 Q -- where you're an employee?

7 A Correct.

8 Q Okay. Now, you were there you said for your yearly
9 meeting with Doctor Booker?

10 A Yes, sir.

11 Q Okay. So Doctor Booker, at that point in time, was the
12 superintendent at Spartanburg School District 7, correct?

13 A Yes, sir.

14 Q Okay. And you had a once yearly meeting with him about
15 how the program was going, job performance?

16 was it a review or like you just -- you called it
17 yourself?

18 A No, sir, that's something we'll -- that's something
19 that we as coaches all do --

20 Q Okay.

21 A -- meet with our superintendent to see the direction of
22 where we're going.

23 Q Okay. Cause is he the one that's responsible for
24 hiring and firing or is it the principal?

25 A That's above my pay. I don't know.

Robert Brown - Cross-examination
by Mr. Bender

1 Q Okay. Well, when you interviewed for the job, did you
2 interview with Mr. Booker or did you interview with Mr.
3 Stevens?

4 A Both of them.

5 Q Okay. So, Mr. Booker was somewhat involved in the
6 hiring process?

7 A Yes, sir, I met with him after. I met with him after I
8 had an initial interview and came back up for a follow-up.

9 Q Okay. But on this particular instance that you
10 described earlier when you ran into Mr. Kyzer, he didn't
11 talk to you, right?

12 Mr. Kyzer didn't talk to you in that -- in that
13 superintendent's office, did he?

14 A He was referring to me as I was sitting there, yes,
15 sir.

16 Q Did he talk with you though?

17 Did he come and address you?

18 A He addressed me as I'm here for the same reason and
19 pointed at me.

20 Q Okay. He just said I'm here for the same reason?

21 A I said he -- you're right. I said earlier that I was
22 here. He was here for the same reason and it was to make
23 sure I'm fired.

24 Q And you're saying that's what he said that day?

25 A Yes, sir.

Robert Brown - Cross-examination
by Mr. Bender

1 Q Okay. And he was there to meet with Mr. Booker because
2 of you?

3 A I have no idea.

4 Q Okay. But he had no reason to know you'd be there,
5 right?

6 A Correct.

7 Q Okay. He didn't reach out to you before that meeting?

8 A No, sir.

9 Q He didn't reach out to you after that meeting, right?

10 A No, sir.

11 Q And when was that meeting?

12 A I don't have a specific date but it had to be in the
13 year of 2018.

14 Q Okay.

15 A That April timeframe of 2018.

16 Q Do you remember if your season was still going at that
17 point?

18 A No, sir, I don't remember.

19 Q Okay. So it's -- you think it was around April of
20 2018?

21 A Yes, sir.

22 Q Okay. And then, after April of 2018, the next time you
23 see or hear or any, any communication with Mr. Kyzer is
24 September 24th, 2019, right?

25 A That's correct.

Robert Brown - Cross-examination
by Mr. Bender

1 Q Okay. That's 17 months, right, where there was no
2 contact?

3 A Yes, sir.

4 Q Okay. Now, earlier you testified about this. So let's
5 go back to this statement you wrote.

6 In addition, in this statement, you said that he had
7 severely threatened you and others in closed door meetings
8 at the district office?

9 A It wasn't at the district office. It was at the high
10 school.

11 Do you want me to elaborate on that?

12 Q Yeah, it's up to you.

13 A So, for instance, we had a meeting, myself,
14 Mr. Stevens, and Coach Staley, and then the family. In, in
15 that meeting, he does -- in that meeting he threatened my
16 job multiple times while standing -- well, while sitting
17 across the table from me and on multiple occasions he
18 continued and just stare a hole through me in the middle of
19 the meeting anytime I tried to respond or anything.

20 So, to me, it's threatening to have somebody as vocal
21 and aggressive as I've witnessed that standing there looking
22 over the top of you in a meeting threatening the principal,
23 threatening me, and threatening the AD's jobs all right
24 there.

25 Q Okay. But he didn't threaten you?

Robert Brown - Cross-examination
by Mr. Bender

1 He didn't threaten you with physical harm?

2 A I felt threatened by the way he was carrying himself,
3 yes.

4 Q But he didn't threaten you?

5 He didn't say he was gonna put his hands on you?

6 He didn't try to fight you?

7 He didn't do any of those things?

8 A No, sir.

9 Q He wanted you held accountable, right?

10 That's why he was there.

11 A That's true.

12 Q He didn't want you held accountable for what happened?

13 A What happened?

14 I'm not sure.

15 SOLICITOR CUENCA: Object, Your Honor. Irrelevant.

16 THE COURT: He's opened the door. I'm gonna let him
17 go.

18 Q Okay. So, y'all were there in a meeting?

19 A Yes, sir.

20 Q You, the athletic director, the principal?

21 A Yes, sir.

22 Q Mr. Kyzer, Mrs. Kyzer, and Aiden, correct?

23 A Correct.

24 Q Okay. And y'all were talking about something that
25 happened, right?

Robert Brown - Cross-examination
by Mr. Bender

1 A Yes, sir.

2 Q And what was that?

3 A I -- there's multiple things that's happened. I mean
4 --.

5 Q Okay. Well, one of them was a bullying issue, right?

6 A In their eyes, yes. In their---

7 Q It wasn't just their eyes, right, cause I mean after
8 this meeting---

9 SOLICITOR CUENCA: Objection, Your Honor. Irrelevant.
10 This is -- if we may approach?

11 THE COURT: All right. Lawyers approach.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 THE COURT: All right. Ladies and gentlemen, it's
15 another one of those times where I've got to have a
16 discussion with the lawyers. I'll talk softly. Maybe the
17 microphone won't go off. We're gonna have a lawyer -- I
18 mean a discussion with the lawyers outside of your presence.
19 Please retire back to the jury deliberation room. We'll get
20 you back just shortly.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Yes, ma'am.

24 SOLICITOR CUENCA: Your Honor, regarding the bullying
25 situation, the State objects to any of that information

Robert Brown - Cross-examination
by Mr. Bender

1 coming in.

2 That is regarding an incident where there was a group
3 of texts, Your Honor. Now, Coach, Coach Brown was in the
4 group text but there was another coach that mentioned
5 something about ass clown in reference to Aiden. However,
6 Your Honor, it was not Coach Brown who sent that text.

7 He was not found -- the other two coaches were
8 disciplined and dealt with, Your Honor, but Coach Brown was
9 not because he was not a part of that. And so any bullying
10 reference is not even related to Coach Brown, Your Honor,
11 and that is part of the meeting that, that Mr. Bender is
12 referencing.

13 So, again, it is irrelevant to, to this case and it's
14 irrelevant to Coach Brown directly, Your Honor.

15 THE COURT: Yes, sir.

16 MR. BENDER: Your Honor, I was more getting into the
17 fact that his statement says that he threatened him and why
18 he was in these closed door meetings in his statement when
19 he didn't testify to that earlier.

20 So, that's what I was getting at was the fact that he's
21 written this statement and then his testimony is, is quite a
22 bit different. That's where I'm going, Your Honor.

23 The bullying happened. I mean two coaches were
24 reprimanded and then, in addition, beyond the two coaches
25 being reprimanded, he had a -- he -- a practice of not

Robert Brown - Cross-examination
by Mr. Bender

1 allowing any parent at practice. And, after this meeting
2 that he says he was threatened, he was no longer allowed to
3 not -- to have closed practice and all parents were allowed
4 at those.

5 So I mean --.

6 SOLICITOR CUENCA: Your Honor, as Mr. Bender mentioned,
7 it was two other coaches that were reprimanded. It was not
8 Coach Brown. He was not found at fault in any of this
9 situation and---

10 THE COURT: Okay.

11 SOLICITOR CUENCA: ---and going towards bullying is not
12 the same as towards the statement of closed meetings, Your
13 Honor. It's not.

14 THE COURT: Okay. All right. Thank you very much,
15 both of you.

16 All right. This is a criminal trial. This is not a
17 civil proceeding. I've shared with counsel that a lot of
18 this back story that's going on that you're presenting in a
19 criminal trial is relevant in a criminal proceeding if this
20 jury finds the defendant guilty of a crime and whether or
21 not I need to send the defendant to prison.

22 It bears very little relevance to whether or not a
23 crime has been committed or not. The prejudicial effect
24 outweighs the probative value of allowing this type of
25 information into the jury when it does not even deal with

Robert Brown - Cross-examination
by Mr. Bender

1 this particular victim.

2 Be cautious if you go down that track because I intend
3 to try to keep the jury's attention to the criminal aspects
4 of the conduct that's alleged in the indictments and not the
5 administrative school decisions that were made concerning
6 this coach or this father or the father's son. This is a
7 criminal case.

8 Okay. A parent can disagree adamantly with the
9 decisions that are made by school administrators but then,
10 if there's a line crossed, and that is what this trial is
11 about, crosses into the criminal area, then this type of
12 case proceeds. But this is not gonna be a case over whether
13 or not the parent was justified in doing it. That comes at
14 the mitigation stage of a criminal proceeding, not the guilt
15 phase.

16 You're -- you have a lot of leeway on cross-examination
17 but your leeway is limited by my rulings.

18 Okay. Let's bring the jury back.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: Yes, sir.

22 MR. BENDER: Thank you, Your Honor.

23 CONTINUED CROSS-EXAMINATION

24 BY MR. BENDER:

25 Q Now, we've got the baseball game, the baseball game,

Robert Brown - Cross-examination
by Mr. Bender

1 and Doctor Booker's office, correct?

2 A Yes, sir.

3 Q Okay. After the first baseball game did you attempt to
4 go get a restraining order against Mr. Kyzer?

5 A No, sir.

6 Q After the second baseball game did you attempt to go
7 get a restraining order against Mr. Kyzer?

8 A No, sir.

9 Q After this run-in at Doctor Booker's office, did you
10 attempt to go get a, a restraining order against Mr. Kyzer?

11 A No, sir.

12 Q Okay. And then after the incident at Los Mexicanos you
13 did not attempt to go get a restraining order against Mr.
14 Kyzer, correct?

15 A False.

16 Q Can you explain the false?

17 A Yeah, I mean I -- obviously I've never been through
18 something like this. So, when I was discussing it with our
19 district, that is exactly what I tried to do but they did
20 adhere to that.

21 Q Okay. So, the district -- the school district told you
22 not to get a restraining order is what your testimony is?

23 A Yes, sir, that's what I'm saying.

24 Q Okay. Okay. And by school district, what person in
25 the school district told you that -- not to get a

Robert Brown - Cross-examination
by Mr. Bender

1 restraining order?

2 A I don't know specifically cause it's handled as a
3 discussion through the proper chain of command.

4 Q Okay. Did the school district tell you not to get a
5 restraining order after the baseball game?

6 A Say that one more time. I apologize.

7 Q After the first baseball game that you allege he
8 attended, did the school district tell you not to get a
9 restraining order after the second baseball game?

10 A No, sir.

11 Q Did the school district tell you not to get a
12 restraining order after the meeting with Mr. Booker --
13 Doctor Booker?

14 A No, sir.

15 Q So, none of those times that happened 17 months before
16 this other part did you even feel the need to go get a
17 restraining order, correct?

18 A One more time please.

19 Q You didn't feel the need, after those -- these alleged
20 incidents that you say, you didn't feel the need to get a
21 restraining order at any point during that time period,
22 right?

23 A No, sir, not at that point.

24 Q Okay. And you would admit the 17 months -- there's no
25 pattern in that 17 month period, right, because there's a

Robert Brown - Cross-examination
by Mr. Bender

1 huge gap?

2 SOLICITOR CUENCA: Objection, Your Honor.

3 THE COURT: All right. I'm gonna -- what's your
4 objection one more --?

5 SOLICITOR CUENCA: It's a legal issue, Your Honor, not
6 for the jurors --

7 THE COURT: All right.

8 SOLICITOR CUENCA: -- to determine.

9 THE COURT: I'm going to sustain the objection.
10 I'm gonna let you just rephrase.

11 Q Okay. There was a 17 month window where nothing
12 happened, right?

13 A Yes, sir.

14 Q Okay. From April of 2018 to September of 2019 there
15 wasn't any contact. There wasn't any emails. There wasn't
16 any in person meetings.

17 Right?

18 A That's correct.

19 Q Okay. Now, going to that day at Los Mexicanos, your
20 testimony said that he said fuck you three times and then a
21 fourth time, correct?

22 A Yes, sir.

23 Q So your testimony today is that he said it four times?

24 A Is that a question?

25 Q Yeah.

Robert Brown - Cross-examination
by Mr. Bender

1 A I'm, I'm not saying---

2 Q Okay. Are you saying that he said it four times?

3 A Yes, sir.

4 Q Okay. So, you're saying he said that to you four times
5 that day?

6 A (WHEREUPON, the witness nodded affirmatively.)

7 Q And what do you -- you got something in your hand
8 there.

9 what is that?

10 A It's the statements.

11 Q Okay. So, you're reading from the written statement
12 you prepared earlier?

13 A No, I didn't prepare earlier. It's from the original
14 statement.

15 Q The original statement you prepared back in 2019?

16 A Correct.

17 Q Okay. Okay. So you knew, when you were testifying
18 because you had your statement in your hand, you knew when
19 you were testifying earlier about there only being two
20 games, that your original statement was false, right?

21 A No, sir, that's not the way it was perceived on my
22 part. The way it was perceived on my part as the incident
23 took place throughout the course of the day and, throughout
24 the course of the next several days, things start coming a
25 little more aware of what actually, in my mind, things I had

Robert Brown - Cross-examination
by Mr. Bender

1 missed or things I had thought about due to the fact I was
2 pretty shaken up as anyone would be.

3 Q Okay. But you knew testifying that it -- him coming to
4 every game was, was false?

5 A I didn't think of it in that aspect, no, sir. I did
6 not think that way.

7 Q Okay.

8 A I just wanted to tell the truth about it.

9 Q Okay. You also testified that you said one of the
10 baseball coaches stood up or one of the other coaches stood
11 up, right?

12 A Coach Thomas.

13 Q Okay. But you've reviewed the video, right?

14 A Slightly.

15 Q Okay. And you realize, during the video, that no coach
16 stands up?

17 A He stood up. The coach stood up. Coach Thomas stood
18 up. That's when he backed up and walked off. You're just
19 not gonna be able to see the angle because of where it's
20 come -- the camera's on one end and it's an angle.

21 Q So you're saying the video doesn't show him standing
22 up?

23 A I don't know that. I didn't watch it all the way
24 through.

25 Q Now, y'all finished eating after that, correct?

Robert Brown - Cross-examination
by Mr. Bender

1 A Yes, sir.

2 Q Okay. So, after that happened, you finished eating,
3 went and paid, then went back to school, right?

4 A Yes, sir.

5 Q Okay. And once you were there, then you talked with
6 who, the school resource officer?

7 A Yes, sir, I believe Coach Staley. I just' brought it to
8 his attention and that's when Officer Johnson came down.

9 Q Okay. Now, it's -- it was September, right, when that
10 happened?

11 A Yes, sir.

12 Q Okay. It's not baseball season, right?

13 A No, sir.

14 Q So, during that time period, were you coaching another
15 sport?

16 A Yes, sir, I was.

17 Q Okay. And that was football, correct?

18 A Yes, sir.

19 Q And the ninth grade team or JV team?

20 A It's not split up like that. It's -- everybody's
21 together.

22 Q Okay.

23 A So, varsity, JV, and ninth grade.

24 Q Okay. So they you -- you were -- you went to practice
25 that day as well, right?

Robert Brown - Cross-examination
by Mr. Bender

1 A Yes, sir.

2 Q Okay. So, after this issue, you finished your meal and
3 then went -- had a conversation and then went to practice
4 that day?

5 A Yes, sir.

6 Q Okay. And you didn't miss any other practices because
7 of this that year, right?

8 A No, sir.

9 Q Okay. And you haven't missed any practices since then,
10 correct?

11 A No, sir.

12 Q You didn't miss any baseball games or any baseball
13 practices because of this?

14 A No, sir.

15 Q Okay. And you didn't go see a licensed professional at
16 any point about this?

17 SOLICITOR CUENCA: Objection, Your Honor. Relevance.

18 THE COURT: All right. He's on cross-examination.

19 He's got a little bit more leeway.

20 Go ahead.

21 A No, sir.

22 Q Okay.

23 A I'm sorry. I got last.

24 Q It's okay. It happens.

25 That's all at this time, Your Honor.

Robert Brown - Redirect examination
by Solicitor Cuenca

1 THE COURT: I'm sorry?

2 I didn't hear you.

3 MR. BENDER: That's all at this time, Your Honor.

4 THE COURT: Any redirect limited to what he went into?

5 SOLICITOR CUENCA: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY SOLICITOR CUENCA:

8 Q Coach Brown, Mr. Bender was talking about the
9 statements and, you know, you not -- about specifically that
10 he didn't come to all of the events but now you're saying
11 that he only came to two of them.

12 How soon after did you write that statement when it
13 happened?

14 A I don't know. A couple hours maybe had went by.

15 Q How were you feeling still during that time after he
16 had just threatened you with I will kill you?

17 A Still shaken.

18 Q Okay.

19 A You know, I just -- I had went through situations as a
20 coach many times dealing with situations and this is the
21 first time that that had ever happened where it just shook
22 me in my 20 years of coaching.

23 Q So, is it possible that you couldn't remember
24 everything accurately?

25 A Absolutely.

Robert Brown - Redirect examination
by Solicitor Cuenca

1 Q And there were some -- even though you were being
2 truthful?

3 A Absolutely.

4 Q Was---

5 A I tried to call my wife, and thank goodness she didn't
6 answer, just trying to talk to somebody and the only people
7 around, which we didn't discuss the situation, but the only
8 people around that made me feel comfortable were coaches
9 because they were the ones that were there with me.

10 Q And Mr. Bender also was mentioning that you didn't miss
11 any of the practices.

12 Could you really have missed a -- practices, Coach
13 Brown, without---

14 A Could I have missed them?

15 Q Could you have missed the practices?

16 A I'm confused by that.

17 Q Do you -- as the head coach, baseball coach, did you
18 even have the ability to just miss time from work even if
19 you felt emotional?

20 A Oh absolutely not. Just like I had to go to my game
21 when I left here yesterday. Straight to the game. I can't
22 do that because that's everything against what we teach our
23 kids how to fight through adversity.

24 Q No matter how you felt you were still showing up?

25 A One hundred percent.

Robert Brown - Redirect examination
by Solicitor Cuenca

1 Q And that's the reason that you didn't miss your
2 practices?

3 A The reason I got into coaching and teaching, to make a
4 difference.

5 Q Let's go very briefly into Mr. Bender was asking you
6 about the son and why he was no longer in the team.

7 Could you just very briefly state the reason that the
8 son was no longer in the team?

9 A So, there was an incident in a game, and, and that -- I
10 believe the, the, the young man, he struck out and he came
11 to the dugout, and, when he did, one of our assistant
12 coaches asked him the question what were you thinking, what
13 was your approach there, something to that effect, and the,
14 the young man replied none of your fucking business.

15 So, I gave him the opportunity to apologize to the
16 coach and he came to -- I gave him a -- I think a couple of
17 days to think it through and he came to my office, was very
18 cordial, very nice, and, and, and I said man, I said, you
19 know, I'm gonna have to get you to apologize and, and he
20 said something to the effects of I'm not allowed to. I'm
21 not allowed to apologize.

22 MR. BENDER: Objection, Your Honor.

23 THE COURT: Objection?

24 MR. BENDER: Hearsay.

25 THE COURT: Hearsay.

Robert Brown - Redirect examination
by Solicitor Cuenca

1 All right. It's not for the truth of the matter
2 asserted. I think it's the -- but I'm gonna allow it.

3 MR. BENDER: Okay.

4 THE COURT: It's his perception.

5 Q When you're referencing the young man, you're referring
6 to the defendant's son?

7 A Yes, ma'am.

8 Q And, and, after that meeting, is that the reason---

9 A Well, yeah, I said that -- I said well, you're gonna
10 have to apologize. He said I'm not allowed to and I said
11 well, you need to turn your self -- stuff in and he got very
12 dejected. It's like he'd seen a ghost and I said I'm sorry,
13 man, I said but I got to do what I go to do and he left and
14 went, went and got it, turned his stuff in. Went and got
15 his stuff, I believe, and came back and then turned it in
16 back in my office while we were out on the field practicing
17 still.

18 Q Lastly, Coach Brown, you testified that you have these
19 encounters in April, 2018, then in September of 2019, and
20 you also testified that you were aware that the defendant
21 was trying to get you fired.

22 What is going through your mind from this time in April
23 of 2018 to this last event in September?

24 How were you feeling?

25 What, what are you sensing during that period of time?

Robert Brown - Redirect examination
by Solicitor Cuenca

1 A Yeah, I mean you, you obviously, as a human being, you
2 start questioning am I doing something wrong, am I doing
3 something right, what am I doing right and need to keep
4 doing. But you -- obviously a threat like that and, and you
5 try your best to look in the mirror, which I try to do every
6 day and see what I need, you know, what, what, what caused
7 this, how can I go about this differently. And you question
8 yourself.

9 I even questioned myself for even moving here seven
10 years ago to, to accept this position because I'd never
11 dealt with parents to this magnitude here.

12 Q And this---

13 A So, it made me feel -- it made me feel very dejected
14 and I was single at the time. So, I was by myself for the
15 most part living in a town that I didn't know anybody that I
16 took this job.

17 Q Other than dejected, do you feel -- did you feel
18 anything else during that period from April until September?

19 A I, I had several job offers in that timeframe too and
20 very seriously thought about taking them just to get away,
21 even one at a college, at a university, and just didn't -- I
22 don't know. I just didn't feel like I had finished what I
23 started. I wanted to see this thing through because
24 everybody told me we couldn't do it here and we have. So, I
25 just wanted to follow through with it.

Robert Brown - Redirect examination
by Solicitor Cuenca

1 Q You testified, when Mr. Bender was asking you about
2 whether the defendant spoke with you or, or approached you
3 during the baseball games, and you testified that he had
4 not.

5 But tell the jurors what nonverbals, what did you
6 observe that made you feel either harassed or threatened?

7 Tell us about the things that the -- that you observed
8 that only you know because of your physical impression of
9 the situations.

10 A Just from things that had transpired in the past, I
11 just feel like that the, the reputation of the individual is
12 very aggressive and, and, and---

13 MR. BENDER: Objection, Your Honor.

14 Approach?

15 THE COURT: All right. Lawyers approach.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 Q Coach Brown, just explain to the jurors what the
19 defendant was doing or what you observed when he made you
20 feel threatened in those instances?

21 A It, it -- just him even being at the game and, and
22 knowing the things that we had went through.

23 MR. BENDER: Objection, Your Honor.

24 THE COURT: All right. I'm gonna let him go ahead.

25 You want to go ahead and ask the next question?

Robert Brown - Redirect examination
by Solicitor Cuenca

1 Q And what did you just observe on those instances?

2 A Just, just him sitting in the line of sight when he had
3 never sat in those seats before. He always sat about a row
4 and a half over farther in the stands, and it's not that I
5 look up there often. It's just, with the issues we had had,
6 I kind of looked in the stands some and---

7 MR. BENDER: Objection.

8 SOLICITOR CUENCA: Just one moment, Your Honor.

9 THE COURT: I'll overrule the objection.

10 Q The -- Coach Brown, I have one question regarding the
11 incident at Los Mexicanos on September.

12 Could you describe the way that the defendant -- the
13 statement that you said, the threat, the fuck you, fuck you,
14 and what he said, could you describe how the defendant said
15 that, made that threat?

16 A Yes. So he never was hollering whatsoever. He
17 actually was pretty calm and -- but I, I vaguely remember
18 maybe his hands being in his pocket after he shook all --
19 Coach Miller's hand. But he said it very stern, the fuck
20 you, fuck you, and then the part about if I see you outside
21 of here I will kill you, he lowered his voice way down,
22 almost to a whisper, and then raised it back up as he
23 continued on. But never to the point of drawing attention
24 to the whole restaurant.

25 SOLICITOR CUENCA: One moment, Your Honor.

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 (Pause.)

2 SOLICITOR CUENCA: No further questions, Your Honor.

3 THE COURT: All right, sir. Thank you very much.

4 Watch your step as you're stepping down.

5 Lawyers approach.

6 You may retire back to the seat.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: State ready to call their next witness?

10 SOLICITOR CUENCA: Yes, Your Honor.

11 The State would call Andrew Caldwell.

12 THE COURT: Will you bring in Andrew Caldwell?

13 Ladies and gentlemen, when they're bringing in the
14 witness you can stand up and stretch your legs for a moment
15 if you'd like.

16 You're Mr. Caldwell?

17 (WHEREUPON, Mr. Caldwell nods affirmatively.)

18 THE COURT: Just come right up here and let the Clerk
19 of Court swear you in, sir.

20 ANDREW CALDWELL, being first duly
21 sworn, testified as follows:

22 THE CLERK: Have a seat.

23 DIRECT EXAMINATION

24 BY SOLICITOR CUENCA:

25 Q Good morning, Coach Caldwell.

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 Will you please state your full name for the record?

2 A Andrew Morrow Caldwell.

3 Q What do you do, Mr. Caldwell?

4 A I'm the strength coach.

5 Q And---

6 A Yes, ma'am.

7 Q ---where do you work---

8 A Spartan---

9 Q ---Coach?

10 A Spartanburg High School.

11 Q How long have you been there?

12 A Seven years, going on eight.

13 Q Tell us a little bit about your ed -- educational
14 background and career.

15 A Educational background, I have a Bachelor's Degree in
16 physical education, master's degree in exercise physiology,
17 human performance, and I have a doctorate in organizational
18 leadership.

19 Q And how long have you been in education?

20 A Eighteen years.

21 Q That's a long time.

22 A Yes.

23 Q Where did you work in 2019?

24 A Spartanburg High School.

25 Q Where -- and what was your position there?

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 A I was the strength coach.

2 Q Strength coach.

3 Do you know a Coach Wesley Brown?

4 A Yes, ma'am.

5 Q How do you know him?

6 A He is my assistant.

7 Q Okay. And, by assistant, what do you mean?

8 A He just assists me in the weight room.

9 Q Okay. Is -- like an assistant coach, assistant
10 teacher?

11 A Yes, assistant teacher.

12 Q Do you know the defendant, Coach Caldwell?

13 Do you know---

14 A Yes.

15 Q ---Mr. Kyzer?

16 A Yes.

17 Q Okay. would you be able to recognize him if you saw
18 him?

19 A Yes.

20 Q Okay. Is he in the courtroom today, sir?

21 A Yes, ma'am.

22 Q And would you be able to point to him?

23 A Yes, ma'am.

24 Now?

25 Q Yes, sir.

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 A (WHEREUPON, the witness points.)

2 SOLICITOR CUENCA: Please let the record reflect that
3 he's -- the witness has pointed to the defendant who's
4 sitting next to Mr. Bender.

5 THE COURT: Yes, ma'am.

6 Q Mr. Caldwell or Coach Caldwell, I'm just gonna go
7 specifically to the incident of September 24, 2019.

8 Do you recall that day, sir?

9 A Yes, ma'am.

10 Q Okay. Where were you that day?

11 A Los Mexicanos, a Mexican restaurant across from the
12 school.

13 Q And that's in Spartanburg County?

14 A Yes, ma'am.

15 Q And do you remember if it was during the week or
16 weekend?

17 A Not like a specific date.

18 But do you remember when in the week that was or --?

19 A What day of the week?

20 Q No, I'm sorry. Whether it was the week -- it was a---

21 A It was a---

22 Q ---during the week or weekend?

23 A It was a weekday.

24 Q A weekday.

25 Okay. Can you tell us who else was there with you?

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 A Ryan Thomas and Chris Miller and Wesley Brown.

2 Q And tell us what happened that day, Coach Caldwell.

3 A We were having lunch and Mr. Kyzer walked up to the
4 table and spoke to Coach Miller and then turned to Coach
5 Brown and said fuck you, fuck you. I hope I see you outside
6 here.

7 Q And how did that make you feel, Coach Caldwell?

8 A Well, at that point we were sitting at a booth sitting
9 down. You know, it's -- threatened.

10 Q And those comments were directed at who, Coach
11 Caldwell?

12 A At Coach Brown.

13 Q And you said -- but you said that you felt threatened?

14 A Yes, ma'am, I mean we were---

15 Q And why---

16 A ---sitting down.

17 Q Why did you feel threatened?

18 A Cause he was standing over the table.

19 Q And where were you in relation to Coach Brown?

20 Were you in front of Coach Brown, across from him?

21 A Across from Coach Brown --

22 Q Okay.

23 A -- on the inside part of the booth.

24 Q On the inside?

25 A Yes, ma'am.

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 Q And what was going through your mind when the defendant
2 approached and threatened you?

3 A Well, at that point I didn't know if -- I didn't know
4 what was going on. I didn't know if someone else was gonna
5 approach the table as well. So, of course, at that point
6 I'm trying to figure out exactly what's going on, if I need
7 to be concerned, if something physicals getting ready to
8 take place. So --.

9 Q Is it possible that, with all of those concerns in your
10 mind, that you didn't hear everything that was said at that
11 time, Coach Caldwell?

12 A Yes, ma'am. At that point, you know, I'm not as
13 concerned about what's being said as what could potentially
14 take place. I'm trying to think, you know, is how, how am I
15 gonna get out of the situation, how -- do I need to protect
16 Coach Brown.

17 Q And when you said again that you felt threatened
18 because you were sitting at the booth and what about the
19 defendant made you feel threatened?

20 A That he was standing over the booth and that we were
21 sitting at a physical disadvantage.

22 Q Okay. How would you characterize the statements that
23 the defendant made to you in general?

24 A Aggressive.

25 SOLICITOR CUENCA: Okay. Just one moment please.

Andrew Caldwell - Direct examination
by Solicitor Cuenca

1 (Pause.)

2 Q I have no further questions, Coach Caldwell.

3 If you could please answer any that Mr. Bender might
4 have for you.

5 MR. BENDER: Thank you.

6 CROSS-EXAMINATION

7 BY MR. BENDER:

8 Q Mr. Caldwell, you said you're the head strength coach
9 at Spartanburg High School?

10 A Yes, sir.

11 Q Okay. Now, you just testified that you felt
12 threatened, right?

13 A Yes, sir.

14 Q Okay. You didn't go take out a charge against
15 Mr. Kyzer, right?

16 A No, sir.

17 Q Did you take out a restraining order since you felt
18 threatened?

19 A No, sir.

20 Q Okay. Did you take any other actions since you felt
21 threatened?

22 A No, sir.

23 Q Okay. Now, you weren't here for previous testimony but
24 would it surprise you if someone else has just testified
25 that, when Mr. Kyzer came up to the table, he was speaking

Andrew Caldwell - Cross-examination
by Mr. Bender

1 calmly cause you just said he was aggressive, right?

2 A Yes, sir.

3 Q Okay. So would it surprise you if somebody said that
4 he was calm and that he was -- had -- even had his hands in
5 his pockets?

6 Is that actually what happened or was it aggressive?

7 A What happened at the restaurant?

8 Q Yes, sir.

9 A It was aggressive.

10 Q Okay. So, he didn't say it calmly in, in what you're
11 saying, right?

12 A (WHEREUPON, the witness shrugs his shoulders.)

13 Q So you're saying he said it aggressively, right?

14 A Yes.

15 Q Not calmly, not with his hands in his pockets, right?

16 A He was -- said it aggressively.

17 Q Okay. And you didn't hear him say I'll kill you,
18 right?

19 A I did not hear him say I'll kill you.

20 Q Okay.

21 A But, at that point, I'm, I'm thinking about other
22 things. Not necessarily the things he did say or he didn't
23 say.

24 Q Okay. So, am I taking your statement to mean that you
25 did hear these things and you're not sure what else was said

Andrew Caldwell - Cross-examination
by Mr. Bender

1 or that you're not even sure what you wrote he said?

2 A That's what he said.

3 Q Okay. So, you're sure about this part but you're not
4 sure about whatever else might of been said?

5 A I'm sure about what I said.

6 Q What you wrote?

7 A Yes.

8 Q Okay. Okay. And that doesn't include I'll kill you,
9 right?

10 It just says that he said fuck you, fuck you, I hope I
11 see you outside here, and that's it, right, and that Coach
12 Thomas then said something but that's what you wrote, right?

13 A Yes.

14 Q And you wrote that the day of, right?

15 A Yes.

16 Q At six o'clock?

17 A Yes.

18 MR. BENDER: Okay. No further questions, Your Honor.

19 THE COURT: Any redirect limited to what he went into?
20 Stay right there, sir.

21 SOLICITOR CUENCA: None, Your Honor.

22 THE COURT: All right, sir. Thank you very much. You
23 may step down.

24 Any reason why the witness can not be excused?

25 SOLICITOR CUENCA: Your Honor?

Ryan Thomas - Direct examination
by solicitor Cuenca

1 Yes, Your Honor, if he may be excused.

2 MR. BENDER: The same.

3 THE COURT: Sir, you may be excused.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you very much for coming.

6 The State's witness -- is the next witness ready?

7 SOLICITOR CUENCA: Yes, Your Honor.

8 The State calls Ryan Thomas to the stand.

9 THE COURT: Bring Ryan Thomas.

10 Ladies and gentlemen, again, you may stand and stretch
11 your legs while the witness is coming.

12 Mr. Thomas, just come right up here and let the Clerk
13 of Court swear you in.

14 THE WITNESS: Yes, sir.

15 RYAN THOMAS, being first duly
16 sworn, testified as follows:

17 THE COURT: Sir, watch your step but have a seat in
18 that chair and pull the chair up to the microphone if you
19 would.

20 THE WITNESS: Yes, sir.

21 DIRECT EXAMINATION

22 BY SOLICITOR CUENCA:

23 Q Good morning, Coach Thomas.

24 How are you?

25 A I'm good. Thank you.

Ryan Thomas - Direct examination
by Solicitor Cuenca

1 Q Good.

2 Please state your full name for the record.

3 A It's Ryan Joseph Thomas.

4 Q And what do you do, Coach Thomas?

5 A I'm currently a PE teacher, assistant strength coach,
6 the football coach at T.L. Hanna High School in Anderson,
7 South Carolina.

8 Q Okay. And prior to being at T.L. Hanna, where did you
9 work, Coach Thomas?

10 A I was employed by Spartanburg District 7 at McCants,
11 Spartanburg High School, and also Carver Middle School.

12 Q How long were you working at Spartanburg High School?

13 A I had some -- I was working there essentially all five
14 years just in different capacities at times.

15 Q What years were those?

16 A 2015 through 2020.

17 Q So, you were working at Spartanburg High School in
18 2019?

19 A Yes, that is correct.

20 Q And what two -- what was your position there at that
21 time?

22 A Well, I've had a placement at the district. So I did
23 the first three periods of the day at Carver Middle School
24 and then I would leave Carver Middle School and come to the
25 high school and serve as an assistant strength coach under

Ryan Thomas - Direct examination
by Solicitor Cuenca

1 Coach Caldwell.

2 Q Do you know Coach Brown, sir?

3 A Yes, ma'am.

4 Q How do you know him?

5 A I worked with him at Spartanburg in the weight room.
6 We both served Coach Caldwell and also I served as Coach
7 Brown's assistant on his baseball team.

8 Q And do you know the defendant, Mr. Wesley Kyzer?

9 A No, ma'am, I don't know him. I don't know him
10 personally.

11 Q Have you seen him before?

12 A Yes, ma'am, I have.

13 Q And would you recognize him if you saw him in the
14 courtroom today?

15 A Yes, ma'am.

16 Q And would you point to him please?

17 A (WHEREUPON, the witness points.)

18 SOLICITOR CUENCA: Your Honor, let the record reflect
19 the witness has pointed to the defendant.

20 THE COURT: Yes, ma'am.

21 Q Do you recall an incident on September 24th, 2018?

22 A Yes, ma'am.

23 Q What exactly -- first of all, where did it happen --
24 where were you there?

25 A Coach Miller, Coach Brown, and Coach Caldwell and I had

Ryan Thomas - Direct examination
by Solicitor Cuenca

1 lunch at Los Mexicanos right across from the new Spartanburg
2 High School.

3 Q And this was during the work week?

4 A Yes, ma'am.

5 Q What happened that day, Coach Thomas?

6 A Well, we were sitting at a table and Coach Brown and
7 myself were sitting next to each other and I was in the
8 aisle seats. Coach Miller was across from me and he was in
9 the aisle seat and inside of Coach Miller I believe was
10 Coach Caldwell.

11 So it was us four sitting there and it was just a
12 regular lunch and Mr. Kyzer walked up and shook Coach
13 Miller's hand, which is a pretty common occurrence with
14 Coach Miller. You know, people come up all the time to
15 either say hello to Coach Miller, Coach Caldwell, or Coach
16 Brown if we been -- we were out together.

17 He was shaking Coach Miller's hand just saying hello,
18 and while he was shaking his hand, he looks over to Coach
19 Brown and these are his words, not mine, he says fuck you
20 and everyone just kind of paused. I mean not -- as you --
21 not expecting it and he proceeded to say again two more
22 times fuck you, fuck you, and finally I was like man, are
23 you serious right now and he said yeah, I'm serious.

24 And then he looked at Coach Brown and he said you
25 better hope I don't catch you out somewhere, and I was like

Ryan Thomas - Direct examination
by Solicitor Cuenca

1 you got to, you got to leave, and he stood there kind of
2 abrasively just kind of over and then eventually he turned
3 and, and walked off and that was the, the incident.

4 Q How did you feel from the -- from that incident, Coach
5 Thomas?

6 A Kind of the, the positioning of him, I felt almost
7 pinned in and he's a -- an opposing mail. He's a big guy
8 and he was kind of standing over me and I was in the point
9 where it's -- when I asked him to leave, I was, I was just
10 uncomfortable.

11 And so that's why I, I asked him if he was serious and
12 then I asked him, I asked him to leave. And it was, it was
13 just one of these deals where, you know, you can't -- it
14 catches you offguard. And so that's -- to answer your
15 question, I was -- I don't know. I felt kind of trapped.

16 Q And what is going through your mind as well right after
17 hearing the first fuck you?

18 A I don't know. I was kind of shocked. You don't
19 know -- I don't know. I can't really tell you. If, if you
20 hear it, you're just kind of caught offguard and I guess, in
21 my mind, I, I was thinking is this serious right now. I
22 mean is this really happening. And so I guess that's why I
23 asked him if he was serious and he said he was.

24 Q And because you mentioned that you were shocked and you
25 were caught offguard, is it possible that you didn't hear

Ryan Thomas - Direct examination
by Solicitor Cuenca

1 everything that was said that day, Coach Thomas?

2 A I mean possibly. But I, you know, I felt like that's
3 what I -- I mean that's what I heard him say was, you know,
4 better not let me catch you outside here or something like
5 that.

6 Q And how would you characterize those statements that
7 the defendant made?

8 A You know, when you hear somebody say something like
9 that, I guess he was telling him don't let him catch him
10 outside because of what he may do to him. I don't, I don't
11 know. That's the way that I took it.

12 SOLICITOR CUENCA: Just one second please.

13 (Pause.)

14 Q I have no further questions, Coach Brown -- Thomas.
15 Please answer any that Mr. Bender has for you.

16 A Yes, ma'am.

17 MR. BENDER: No questions.

18 THE COURT: All right. Thank you, sir. You may step
19 down. Watch your step as you're stepping down.

20 THE WITNESS: Yes, sir. Thank you.

21 THE COURT: Any reason why the witness can not be
22 excused?

23 SOLICITOR CUENCA: Your Honor, can -- if he may be
24 excused.

25 MR. BENDER: No, Your Honor.

Chris Miller - Direct examination
by Solicitor Cuenca

1 THE COURT: Sir, you may be excused as well. Thank you
2 very much for coming.

3 THE WITNESS: Yes, sir.

4 THE COURT: Lawyers approach one moment.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: State ready to call their next witness.

8 SOLICITOR CUENCA: Yes, Your Honor.

9 The State would call Coach Chris Miller.

10 THE COURT: Bring Miller in if you would.

11 Sir, just come right, right up here. Let the Clerk of
12 Court swear you in.

13 CHRIS MILLER, being first duly
14 sworn, testified as follows:

15 THE CLERK: Have a seat.

16 THE COURT: Sir, watch your step and have a seat in
17 that chair and pull the chair up to the microphone if you
18 would.

19 DIRECT EXAMINATION

20 BY SOLICITOR CUENCA:

21 Q Good morning, Coach Miller.

22 A Good morning.

23 Q Could you please state your full name for the record?

24 A Christopher Claffey Miller.

25 Q Thank you.

Chris Miller - Direct examination
by Solicitor Cuenca

1 Coach Miller, what do you do?

2 A I'm a teacher and coach.

3 Q Okay. And how long have you been a coach?

4 A 40, 41 years.

5 Q And where do you currently work, sir?

6 A I work at Gaffney High School or Gaffney Middle School
7 but I'm employed at Cherokee County.

8 Q And, prior to this, where did you work?

9 A I worked at Spartanburg High School.

10 Q How long did you work at Spartanburg High School?

11 A About six and a half years.

12 Q And what were those years that you worked there, sir?

13 A It was from 2013 to 2020.

14 Q And so you were working there in 2019?

15 A Yes, ma'am.

16 Q And what, and what was your position during that time
17 in 2019?

18 A I was the head football coach.

19 Q Coach Miller, do you know Coach Brown?

20 A Yes, I do.

21 Q And how do you know him?

22 A We met as -- when he was employed by the school to
23 become the head baseball coach there and then we worked just
24 about every day cause he was employed in, in the weight
25 room. He was one of the strength coaches.

Chris Miller - Direct examination
by Solicitor Cuenca

1 Q And do you also know the defendant, Wesley Kyzer?

2 A Yes.

3 Q And will you be able to recognize him if you saw him
4 today?

5 A Yes, ma'am.

6 Q Would you be able to point to him?

7 Is he in the courtroom today?

8 A Yes, ma'am.

9 (WHEREUPON, the witness points.)

10 SOLICITOR CUENCA: Let the record reflect that the
11 witness has pointed to the defendant, Your Honor.

12 THE COURT: Yes, ma'am.

13 Q How -- let's just go to the incident of September 24th,
14 2019.

15 Do you recall that day, Coach Miller?

16 A Yes, ma'am.

17 Q Where were you?

18 A We were at the school and then we kind of got together,
19 Coach Caldwell, Coach Thomas, and Coach Brown, and myself,
20 to go out to eat. And we went right across the street from
21 the high school to a Mexican restaurant.

22 Q What happened that day, sir, at the Mexican restaurant?

23 A We were sitting at the restaurant just talking about
24 the day and I kept noticing Mr. Kyzer at the time. I knew
25 him. I only met him on like once. But I noticed him

Chris Miller - Direct examination
by Solicitor Cuenca

1 staring at us or looking at our table and I kept telling the
2 guys, I said, there's a, there's a guy over there that's,
3 that's kind of looking at us. I said I'm wondering what he,
4 you know, what he's looking at us for.

5 And then, toward the end of our meal, we were getting
6 ready to leave and he walked up to us, and he stuck his hand
7 out to me, shook hands with me, and greeted me, and I said
8 how you doing. He said fine. And he turned around and he
9 looked at wes and he started saying F you and he said it
10 like three times and I thought he was kidding. I, I thought
11 it was a joke.

12 I thought, you know, cause we -- I'm sorry but we --
13 we're coaches and we get a lot of people just coming up to
14 us and just talking to us in restaurants sometimes. And I
15 thought that wes knew him and I thought they were kidding
16 around. And then Coach Thomas said are you kidding. And he
17 said no, I'm not. And that's when Coach Thomas said well, I
18 think you need to leave our table.

19 Q Did---

20 A And---

21 Q And what happened next?

22 A Well, he just let Coach Brown know if you -- if I catch
23 you out in the community by yourself somewhere, it's, it's
24 gonna be me and you and -- I'm gonna get after you.

25 Q So eventually you, you understood that it was no longer

Chris Miller - Direct examination
by Solicitor Cuenca

1 a joke or what you---

2 A No.

3 Q ---proceed to leave---

4 A I understood it real quickly after that that it was
5 no -- it wasn't a joke.

6 Q How would you characterize the statement that the
7 defendant made to Coach Brown?

8 A As threatening.

9 SOLICITOR CUENCA: I have no further questions, Your
10 Honor.

11 If you -- Coach Brown, if -- Coach Miller, if you could
12 please answer the questions of Mr. Bender.

13 CROSS-EXAMINATION

14 BY MR. BENDER:

15 Q Coach Miller, you wrote a statement after this,
16 correct?

17 A Yes, sir.

18 Q Okay. And in that statement you don't say anything
19 about him saying I'll kill you, correct?

20 A No, sir.

21 Q Okay. Cause you didn't hear that?

22 A Not to my knowledge.

23 Q Okay. And not to your knowledge at that day either,
24 right, cause you didn't write it that day?

25 A Right.

Chris Miller - Cross-examination
by Mr. Bender

1 Q okay. And the statement you did write is a little
2 different than what you just testified to, right?

3 A I, I don't know.

4 Q Do you want to see the statement?

5 A Yes, sir, I mean what did I say that was any different
6 than --.

7 Shaking hands. Wes Brown.

8 Okay.

9 Q So that's a little different than what you just said,
10 right?

11 A I mean I, I thought I said what was on the -- somewhat
12 of what that was about and, no, I haven't said it verbatim.

13 Q Okay. Well, I'm not -- you don't have to say it
14 verbatim.

15 I'm just indicating -- I'm just letting you know that
16 it's different, isn't it?

17 After you've read your statement, what you just
18 testified to was different?

19 A I didn't think so.

20 Q Okay. Cause here you just say that he said something
21 about he would get above him, right?

22 That's what's written here, right?

23 A He would get what?

24 Q Above him.

25 A He would get above him?

Chris Miller - Cross-examination
by Mr. Bender

1 Q Yeah, that's your writing.

2 A I don't know what that statements means.

3 Q Okay. But you do admit that that is your statement
4 though, right?

5 A Yes, sir.

6 Q That's your signature at the bottom?

7 A Uh-huh. (Affirmative).

8 Q Okay. Now---

9 A I said he would get after him. I didn't say above him.

10 Q You meant to say---

11 A That's what, that's what I said just a minute ago.
12 That's what I meant.

13 Q When you put above him here, that's what you meant?

14 A Yeah.

15 Q Okay. Now, Mr. Kyzer's son had also played for you,
16 correct?

17 A Yes.

18 Q Okay. And you had never had any issues with Mr. Kyzer?

19 A No.

20 Q Okay. That's why you knew who he was that day?

21 A I had met him like one time and I think that was after
22 Aiden had been released from the baseball team. He wanted
23 to have a meeting with me. That was the only time I'd ever
24 met him.

25 Q Okay. But no issues with Mr. Kyzer?

Chris Miller - Cross-examination
by Mr. Bender

1 A No.

2 MR. BENDER: Okay. Thank you, Your Honor.

3 THE COURT: Any redirect limited to what he went into?

4 SOLICITOR CUENCA: No, Your Honor.

5 If this witness could be excused.

6 THE COURT: Thank you, sir. You may step down. Watch
7 your step as you're stepping down.

8 Any witness -- any reason why the witness can not be
9 excused from the State?

10 SOLICITOR CUENCA: No, Your Honor.

11 MR. BENDER: None, Your Honor.

12 THE COURT: Thank you, sir. You may be excused as
13 well.

14 Lawyers approach.

15 (WHEREUPON, a bench conference was held out of the
16 hearing of the jury at this time.)

17 THE COURT: All right. Ladies and gentlemen, I'm gonna
18 let you take a short recess. I remind you not to have any
19 discussions among yourselves about anything involving the
20 case. Do not do any type of independent research. I'm
21 gonna let you go with the bailiff and they'll take you back
22 to the jury deliberation room.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. We're gonna step down for a few

1 minutes. We'll come right back.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: Anything before we bring the jury in?

4 SOLICITOR CUENCA: No, Your Honor.

5 THE COURT: All right. Let's bring the jury.

6 Thank you very much.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: Is the State ready to call their next
10 witness?

11 SOLICITOR CUENCA: Yes, Your Honor.

12 At this, at this time the State would call Russell
13 Booker.

14 THE COURT: Doctor, just come right up here and let the
15 Clerk of Court swear you in. She will meet you over there.

16 RUSSELL BOOKER, being first duly
17 sworn, testified as follows:

18 THE COURT: Watch your step as you're stepping up. But
19 have a seat in the chair and pull the chair up to the
20 microphone.

21 DIRECT EXAMINATION

22 BY SOLICITOR CUENCA:

23 Q Good morning, Doctor Booker.

24 A Morning.

25 Q Okay. Please state your full name for the record.

Russell Booker - Direct examination
by Solicitor Cuenca

1 A Russell William Booker.

2 Q What do you do, Doctor Booker?

3 A I am the executive director at the Spartanburg Academic
4 Movements. It's a nonprofit here in Spartanburg.

5 Q How long have you been the executive director there?

6 A September of 2020.

7 Q Prior to September, 2020, what did you do?

8 How were you employed?

9 A I was an educator. Prior to that though I served as a
10 school superintendent in Spartanburg School District 7 from
11 2010 until 2020.

12 Q How many years have you been in the educational system?

13 A 29.

14 Q That's a long time, Doctor Booker.

15 A Long time.

16 Q And what years were you at Spartanburg High School?

17 A I---

18 Q I'm sorry.

19 As, as the superintendent---

20 A Sure.

21 Q ---in District 7.

22 A I came to Spartanburg 7 in -- July 1st of 2009 as the
23 superintendent elect and the following year I assumed the
24 role as superintendent. So, 11 total years.

25 Q So you, in 2019, you were superintendent in District 7?

Russell Booker - Direct examination
by Solicitor Cuenca

1 A In 2018?

2 Q '19.

3 A I was.

4 Q Okay. And as well as 2018?

5 A Yes.

6 Q Okay. And what exactly do you do as your -- in your
7 role as a superintendent?

8 A So, I give oversight to pretty much all aspects of the
9 school district whether that's with our students and student
10 achievement. There were some 7,200 students, 1,200 staff
11 members within the school district. So 14 schools. And my
12 role was to, you know, serve as the CEO of, of the school
13 system. I had a nine member board that I reported to as
14 superintendent and, of course, the board gives the
15 superintendents the authority to make sure the district is
16 operating --

17 Q Okay.

18 A -- efficiently.

19 Q And do you know Coach Brown, Doctor Booker?

20 A I do.

21 Q How do you know Coach Brown?

22 A He was one of our coaches on the baseball team --

23 Q Was---

24 A -- and one of our staff members at Spartanburg High
25 School.

Russell Booker - Direct examination
by Solicitor Cuenca

1 Q Okay. Was he also a teacher there, Doctor Booker?

2 A Yeah, Coach Brown was the assistant strength coach or
3 he is the assistant strength coach.

4 Q And that is considered a teaching position?

5 A It is considered a staff position. 1,200 employees in
6 the school district. About 800 of those employees are what
7 we would consider professional certified staff, and, you
8 know, some five to 600 of our staff members are, you know,
9 noncertified. But they are still members of the staff.

10 Q And so you consider -- when you staff, that is teachers
11 or some -- or it's just a general term---

12 A Yeah, that---

13 Q ---for all of them?

14 A That may be a teacher. That may be a substitute. That
15 may be a teacher assistant. That may be a career
16 development facilitator. They're just a number of positions
17 that are noncertified within the school system.

18 Q Doctor Booker, do you also know the defendant, Wesley
19 Kyzer?

20 A I do.

21 Q Okay. And would you be able to identify him if you saw
22 him?

23 A Absolutely.

24 Q Is he in this courtroom today, sir?

25 A He is.

Russell Booker - Direct examination
by Solicitor Cuenca

1 Q Could you point to him?

2 A Sure. Mr. Kyzer's over here to my left.

3 SOLICITOR CUENCA: Let the record reflect that the
4 witness has pointed to the defendant next to Mr. Bender.

5 THE COURT: Yes, ma'am.

6 Q And specifically, Doctor Booker, do you recall of
7 instances when the defendant sought or requested that Coach
8 Brown be fired?

9 A Yes.

10 Q Okay. One moment.

11 (Pause.)

12 Q You answered yes.

13 Do you remember the -- or roughly the date range on
14 when the defendant was asking for Coach Brown to be fired,
15 whether it's a year or the month?

16 A I would suspect, it's been a long time, that it would
17 of been somewhere between 2018 to 2019.

18 Q Okay. But you don't have any specific months within
19 those years?

20 A Not that I could share and be absolutely certain about.

21 Q Okay. One moment please.

22 (Pause.)

23 SOLICITOR CUENCA: I have no further questions. Please
24 answer any that Mr. Bender might have for you.

25 A Sure.

Russell Booker - Cross-examination
by Mr. Bender

1 CROSS-EXAMINATION

2 BY MR. BENDER:

3 Q Thank you, Doctor Booker.

4 Now, you were superintendent from 2018 and 2019 for
5 District 7, correct?

6 A That's correct.

7 Q Okay. And you just gave an answer about the difference
8 between certified and noncertified staff.

9 The reason y'all have that difference is because only
10 certified staff can be the teachers, right?

11 A Well, certified staff have what's called due process.
12 By that, once they reach a certain status teaching, they're
13 not -- they're no longer referred to as at will staff. An
14 at will staff member is someone that you can let go on the
15 spot with no, no due process, which means they don't have
16 any appeals to the superintendent or to the board, and they
17 are at an at will status.

18 Certified staff members don't have those rights.

19 Certified staff members have due process rights.

20 Noncertified don't.

21 Q Okay. And so you have both certified and noncertified,
22 correct?

23 A Yes. All school districts do.

24 Q Okay. And can a certified teacher be a noncertified
25 staff member?

Russell Booker - Cross-examination
by Mr. Bender

1 A Well, a certified teacher would be certified. So I --
2 so --.

3 Q So only somebody that's not a certified teacher who
4 doesn't have a teaching certificate can be a noncertified
5 staff member?

6 A I'm not sure I understand the question.

7 Q If somebody has a teaching certificate --

8 A Yeah.

9 Q -- and they're allowed to teach because they're
10 certified to teach, they can never be considered a
11 noncertified staff member, correct?

12 A Well, they're, they're certified. So -- now they can
13 serve in a noncertified role. I mean if they were a teacher
14 assistant in a school, then those are noncertified
15 positions. So, because -- they would still be certified.
16 But if you're in a noncertified role, then you don't have
17 those due process rights.

18 Q Okay. And some coaching roles can be noncertified,
19 correct?

20 A And many of them are, yes.

21 Q Okay. Now, you said you know Mr. Kyzer, correct?

22 A That is correct.

23 Q Okay. And you had had a meeting with him, correct?

24 A I, I would need for you to be a little more specific
25 with me about a meeting.

Russell Booker - Cross-examination
by Mr. Bender

1 Q Did you have a meeting with him in 2018?

2 A I -- yeah, I had a meeting with Mr. Kyzer when he first
3 came to the district to enroll his son. I've had
4 interactions with Mr. Kyzer at football games. I've
5 received emails from Mr. Kyzer throughout the, the '18, '19
6 school year, and I don't know a specific date that I had a
7 meeting with him in '18 and '19. I -- but if you can share
8 that date with me I'll try to recall --

9 Q Okay.

10 A -- to the best of my ability.

11 Q Well, you just testified that you had a meeting with
12 him about firing Coach Brown, right?

13 A I did not.

14 Q You didn't testify about that -- to that?

15 A No.

16 Q So you never had a meeting with Wesley Kyzer about
17 firing Coach Brown?

18 A No, I did not testify that I had a conversation with
19 him about firing Coach Brown.

20 Q Okay. So you didn't have a meeting with him about it?

21 A I'm asking if you can help me recall the date of that
22 meeting and the specifics around it.

23 Q It would of been around April of 2018.

24 A So around April of 2018?

25 Q Yes, sir.

Russell Booker - Cross-examination
by Mr. Bender

1 SOLICITOR CUENCA: Your Honor---

2 A Was---

3 SOLICITOR CUENCA: ---permission to approach?

4 A Was this meeting at---

5 THE COURT: Okay. Hang on one second.

6 You have an objection you want to approach about?

7 SOLICITOR CUENCA: Yes, Your Honor. Just to the line
8 of questioning.

9 THE COURT: All right. You want to approach?

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 Q So you don't even remember whether you had a meeting
13 with him in October -- April of 2018?

14 A I remember Mr. Kyzer coming to the district office.
15 There was not a meeting scheduled with him and he wanted to
16 see me. But there was not a meeting that was scheduled with
17 him. Mr. Kyzer did have a meeting, a scheduled meeting,
18 with Doctor Thomas White who served as our district liaison
19 for athletics.

20 Q Thomas---

21 A That---

22 Q You said Thomas white?

23 A Doctor Thomas White. He was the assistant
24 superintendent and they had a formal meeting.

25 Q Okay. Now, after -- you were still the principal when

Russell Booker - Cross-examination
by Mr. Bender

1 this incident at Los Mexicanos happened, correct?

2 I mean not the principal.

3 You were superintendent, correct, doctor?

4 A Yeah.

5 what was the date of the incident?

6 Q It was September of 2019.

7 A Then I would of still been superintendent.

8 Q Okay. And after that incident, Mr. Kyzer contacted you
9 about using the track at Spartanburg High School, correct?

10 A I received an email from Mr. Kyzer asking if he could
11 use the track during off-hours because he had undergone -- I
12 can't remember if it was a knee surgery or what have you,
13 and we granted him permission to use the track off-hours
14 when no one else was on the campus.

15 Q Okay. All right. Thank you, doctor.

16 That's all the questions I have.

17 THE COURT: Any redirect limited to what he went into?

18 SOLICITOR CUENCA: No, Your Honor.

19 If this witness could be excused?

20 THE COURT: Any reason why the witness can not be
21 excused?

22 MR. BENDER: There is not.

23 THE COURT: Sir, thank you very much. Watch your step
24 as you're stepping down but you may be excused.

25 Is the State ready to call their next witness?

Ben Johnson - Direct examination
by Solicitor Cuenca

1 Thank you very much, doctor.

2 SOLICITOR CUENCA: If we may approach, Your Honor?

3 THE COURT: Okay.

4 (WHEREUPON, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: State ready to call their next witness?

7 SOLICITOR CUENCA: Yes, Your Honor.

8 The State would call Deputy Ben Johnson.

9 THE COURT: Lawyers approach while we're waiting for
10 Mr. Johnson.

11 Lawyers. Lawyers.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 THE COURT: Officer, if you will, just let the Clerk of
15 Court swear you in.

16 THE WITNESS: Yes, sir.

17 BEN JOHNSON, being first duly
18 sworn, testified as follows:

19 THE COURT: Sir, watch your step and step up and have a
20 seat in the chair and pull the chair up to the microphone.

21 DIRECT EXAMINATION

22 BY SOLICITOR CUENCA:

23 Q Hi, Deputy Johnson.

24 Could you please state your full name for the record?

25 A Deputy Robert Benjamin Johnson.

Ben Johnson - Direct examination
by Solicitor Cuenca

1 Q And what do you do, Deputy Johnson?

2 A I'm currently employed by the Spartanburg County
3 Sheriff's Office assigned to the school resource division in
4 Spartanburg County School District 7.

5 Q All right. How long have you been in that position?

6 A I've been with District 7 for approximately eight
7 years. The most recent four years up to the current point
8 at Spartanburg High School.

9 Q And prior to working at the Sheriff's Office, what is
10 your employment in law enforcement, Deputy Johnson?

11 A The entire 10 years that I've done law enforcement has
12 been with the Sheriff's Office.

13 Q Okay. And then, prior to that, what did you do before
14 working at the Sheriff's Office?

15 A Approximately five to six years prior to the Sheriff's
16 Office I was an EMT at Spartanburg County EMS, and prior to
17 my employment at EMS I was with multiple county fire
18 agencies including Pacolet, Westview, and Glendale Fire
19 Departments.

20 Q And what exactly are your duties either as a deputy or
21 as an SRO at the, the district?

22 A Gotcha.

23 So, my day-to-day duties is I am tasked with the safety
24 and security of the campus of Spartanburg High school, all
25 189 acres and approximately 2,200 souls on campus. Those

Ben Johnson - Direct examination
by Solicitor Cuenca

1 daily duties re -- incorporated with a liaison of
2 Spartanburg County School District 7 and Spartanburg County
3 Sheriff's Office.

4 Employed by the Sheriff's Office, I am there to make
5 sure that all the state and local laws are carried out as
6 needed as well as assisting the school district as well as
7 Spartanburg High School specifically in any safety and
8 security matters that occur on campus.

9 Q Okay. And do you receive any training for your
10 position, sir?

11 A Yes, I was class of '88 of the South Carolina Criminal
12 Justice Academy back in early 2012, and specifically to the
13 duties of school resource officer, I attended South Carolina
14 Criminal Justice Academy for a basic school resource officer
15 certificate training course.

16 Q Were you employed in your present capacity on
17 September 24th, 2019?

18 A Yes, ma'am, I was.

19 Q And were those the same duties that you had?

20 A Yes, ma'am, they were.

21 Q Okay. Were you working that day of September 24th,
22 2019?

23 A I, I believe so, yes, ma'am.

24 Q And what happened that day, sir?

25 A On that specific date, if I remember correctly, I had

Ben Johnson - Direct examination
by Solicitor Cuenca

1 been notified of a situation that had occurred earlier in
2 the day I believe with a situation involving some threats
3 made to one of our coaching staff. I was then tasked with
4 conversating between district officials as to whether or not
5 a trespass notice was necessary for the situation.

6 Q You said there were other officials.

7 What other officials were there?

8 A Typically the policy and procedure that we follow in
9 District 7 along with the Sheriff's Office is any particular
10 campus administrator has the authority to request a
11 trespasser from their campus specifically. Due to the
12 concerns that were brought to light, it was the thought that
13 a potential trespass notice from the entire district
14 campuses would be needed, and, at the time, those decisions
15 had to be made by the superintendent or a designated
16 assistant superintendent.

17 Q Okay. Let's go back a little bit more to, to what
18 happened on September 24th, 2019.

19 What exactly -- where were you on September 24th,
20 2019?

21 A I was -- if I remember correctly I was working at my
22 assigned post at Spartanburg High School during that date
23 and time for allotted hours of the day, which typically run
24 between 8:00 and 4:30.

25 Q So you were at the high school that day and what did

Ben Johnson - Direct examination
by Solicitor Cuenca

1 you -- did you find out of any incident that happened that
2 day?

3 A Yes, I was notified by Coach Brown and I believe an
4 administrator, I don't remember the specific administrator,
5 that, during a lunch outing or during a lunch period, the
6 coaches had attended a lunch over at the Los Mexicanos
7 Restaurant directly across from Spartanburg High School off
8 East Main Street---

9 Q Uh-huh. (Affirmative).

10 A ---and that there had been an altercation, a verbal
11 altercation, that had occurred and I summoned the city
12 determining that they would be the appropriate jurisdiction
13 for any potential complaint or report.

14 Q Was the location that's -- Los Mexicanos, is that in --
15 where is that located?

16 Is that in Spartanburg County?

17 A It is within Spartanburg County. It also falls within
18 the jurisdiction of Spartanburg City Police Department. One
19 reason that we kicked those particular cases to the city is
20 it's the policy of the Sheriff's Office that, when the
21 school resource officers are on sight or on campus, that
22 we're only investigating the crimes to where all, all
23 parties are available to us on those campuses to be able to
24 provide maximum coverage of those schools without pulling an
25 officer out of the school setting.

Ben Johnson - Direct examination
by Solicitor Cuenca

1 Q And when you found out about this incident that
2 happened in Los Mexicanos, what was your involvement in that
3 case?

4 A So initially the involvement was minimal to the point
5 of determining that a potential police report would be
6 needed. I spoke to Coach Brown as to the request if he
7 wanted to speak to a law enforcement officer in regards to a
8 report. Advised him that the city would be taking care of
9 that and I coordinated the response of the city, not with
10 the officer specifically, but notified dispatch that a city
11 officer would be needed in reference to a complaint.

12 Q And so you yourself did not draft a report?

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

14 Q What -- were you privy to -- so then did the city
15 arrive --

16 A Yes, ma'am.

17 Q -- and to -- on campus?

18 And what exactly were you privy to?

19 What conversations were you privy to regarding that
20 incident on September 24th?

21 A So, the conversations that I had in determining whether
22 or not a police report was warranted, I did coach -- talk to
23 Coach Wes Brown. He had stated that an individual by the
24 name of Wes Kyzer, which I was familiar with through past
25 interactions, had come up and confronted him verbally at the

Ben Johnson - Direct examination
by Solicitor Cuenca

1 restaurant. It was told to me that threats had been made.
2 And so, therefore, that was kind of my interaction or
3 knowledge of the specific incident.

4 when Officer Trammell I believe with the city
5 responded, as I walked him to the location of where Coach
6 Brown and any other individuals were that may be making
7 statements, I kind of had a generic conversation with hey,
8 this is kind of what's going on, what's occurred, I'm gonna
9 take you down to where the complainant and/or witnesses are.
10 And if you need anything from myself or the county, just let
11 us know what it is we can do to assist you with.

12 Q Did you know of these threats that were made to Coach
13 Brown prior, prior to going to see the defendant, Deputy
14 Johnson?

15 A Yes. Yes. So---

16 Q You knew of these threats before?

17 A Yes, ma'am.

18 So based off what I -- the conversation I with Coach
19 Brown, I had also talked to the city officer briefly like I
20 stated just going to -- taking him to the location where
21 Coach Brown was. We generated conversations with school and
22 district level officials as to whether or not the need of a
23 trespass was taking -- would -- needed to take place. Based
24 off their decision to do so, I did have that foreknowledge
25 and spoke to the district administration about the

Ben Johnson - Direct examination
by Solicitor Cuenca

1 foreknowledge of those threats.

2 Q After your conversation then with Coach Brown, did you
3 talk to anybody else -- with any of the other witnesses?

4 A Not that I recall specifically.

5 Q After speaking with Coach Brown, what did you do?

6 A I went back and took out the school level
7 administrator. I believe it was Doctor Vance Jones at the
8 time and still currently is. I spoke to him about what all
9 had occurred.

10 My understanding was he had kind of a brief
11 understanding that something had occurred and told him of
12 the concerns that Coach Brown had obviously with threats
13 being made and asked if he wanted to pursue a trespass
14 notice.

15 Q And, and based on that conversation, what did you do
16 next?

17 A Because it was the potential need for trespassing from
18 multiple campuses, we contacted the district office. I
19 believe it was Mr. Jeff Stevens that we spoke to. And he
20 had decided that he wanted a trespass to be placed into
21 effect as soon as possible for all District 7 campuses as
22 well as District 7 sanctioned events including the area of
23 Duncan Park where Spartanburg High School plays baseball.

24 Q And what did you do next based on that?

25 A I notified my supervisor of what -- a request was

Ben Johnson - Direct examination
by Solicitor Cuenca

1 made -- being made, and as soon as the school day had ended
2 or as soon as I could get out to the residence of Mr. Wes
3 Kyzer, I went out and made a verbal notification of the
4 trespass notice and its -- the parameters and everything
5 that was involved in the trespass notice itself.

6 Q You mentioned that you knew about the threats.

7 Did you also know about the harassment?

8 A I had heard circumstantial stories since I had been in
9 the district. I had a previous encounter with Mr. Kyzer
10 that could probably be considered -- to fall in line with
11 the type of behavior that was exhibited that day in -- at
12 least in my opinion.

13 MR. BENDER: Objection, Your Honor.

14 THE COURT: Sustain the objection.

15 Q When you went to see -- to serve the trespass notice,
16 did you have any conversations with the defendant?

17 A Yes, ma'am. Yes, ma'am, I knew the defendant's son I
18 would say, you know, equitably, equitably well as he was a
19 student my first year being assigned to Spartanburg High
20 School. So I, to my knowledge, we got along pretty well.
21 And so, throughout the process of the trespass notice, I did
22 also have additional conversation of inquiring how his son
23 was doing.

24 Q And so you know the defendant or you would recognize
25 the defendant if you saw him?

Ben Johnson - Direct examination
by Solicitor Cuenca

1 A Yes.

2 Q Is he in the courtroom today?

3 A Yes, ma'am.

4 Q Could you be able to point to him?

5 A Absolutely. That's Mr. Wes Kyzer right there.

6 SOLICITOR CUENCA: Let the record reflect that the
7 witness has pointed to the defendant sitting next to Mr.
8 Bender.

9 THE COURT: Yes, ma'am.

10 Q Deputy Johnson, what other -- when you served the
11 trespass notice, would you explain to the jurors why you
12 only mentioned harassment but you had mentioned you, you
13 hadn't heard anything about the threats?

14 A So, it's common practice within law enforcement
15 agencies, when another agency is leading up a specific
16 situation, we don't comment on cases -- matters that they
17 may be working on because I can't guarantee which direction
18 another agency is going to go.

19 So a lot of times I will make very generic statements.
20 I'll try to answer questions I can and a lot of times I will
21 follow them up with, you know, not sure exactly what another
22 agency's gonna do. But, at the same time, this is a
23 possibility or potential that you may be facing.

24 Q And so that's the reason that you didn't mention
25 anything further to the defendant about threats?

Ben Johnson - Direct examination
by Solicitor Cuenca

1 A Well, you know, the -- I guess the, the term threats
2 can be, you know, used unilaterally or generic. I did not
3 know specific words that were stated in the threats. So
4 that would be why I probably made a statement of that
5 nature.

6 Q When you went to serve the trespass notice, did the
7 defendant tell you anything, Deputy Johnson?

8 A The encounter itself lasted I believe approximately 15
9 to 20 minutes. So there was a lot of things stated.

10 Q Okay.

11 A One thing that I do remember specifically is he stated
12 multiple times that he was gonna catch Coach Brown slipping
13 throughout that encounter.

14 Q Did he deny having told the -- Coach Brown the
15 statement of fuck you?

16 A No, I, I don't believe he denied that at all.

17 Q Did he -- did he mention that he had been there at the
18 Mexican restaurant, at Los Mexicanos that day?

19 A Yes, he did.

20 Q Okay. And so you -- and you said that he mentioned
21 several times that he told Coach Brown that he would catch
22 him slipping?

23 A Well, he -- my -- to my knowledge, during that
24 interaction, he told me several times that he was going to
25 catch him slipping and that, if I remember correctly or

Ben Johnson - Direct examination
by Solicitor Cuenca

1 recall correctly, he did indicate that he had made the
2 comment to Coach Brown during that intersection --
3 interaction that he was gonna catch him slipping.

4 Q Deputy Johnson, after speaking with the defendant, and
5 those comments, what did you do next?

6 A Well, the, the conversation itself, like I said, it
7 went on for about 15 to 20 minutes and there was some
8 interjection of inquiring about the, the care or the current
9 status of his son cause, like I said, we did have -- at
10 least a rapport previously. So, the conversation kind of
11 went multiple directions throughout the 15 to 20 minutes.

12 By the time it was said and done, I did reiterate that
13 the, you know, trespass was indefinite, what it involved,
14 and included. He did -- he did ask a couple of questions
15 that I was not able to provide specific answers because most
16 of them were related to the potential city case that I was
17 not specifically involved in.

18 Q Okay. And what happened next?

19 A After the conclusion of that trespass notification, I
20 cleared that particular area through dispatch and returned
21 home that day or went home that day.

22 Q Did you help at all getting the statements, Deputy
23 Johnson---

24 A I---

25 Q ---from the witnesses?

Ben Johnson - Direct examination
by Solicitor Cuenca

1 A I don't specifically recall that. It's common
2 practice, a lot of times if the city is coming over, that we
3 will give individuals the blank copies of the city's reports
4 cause obviously I work with the county. We keep both sets
5 in-house just to try to aid the efforts of other law
6 enforcement agencies. But I don't remember specifically
7 doing that. So --.

8 Q Okay. Just one moment please.

9 (Pause.)

10 Q Deputy Johnson, when you were speaking with the
11 defendant, did he make any other statements that he wanted
12 you to relay to Coach Brown?

13 A Absolutely. One of the statements, if I recall
14 correctly, was he wanted me to deliver a fuck you. I
15 believe it was directly to Coach Brown and possibly District
16 7 administrators. Like I said, I know it's one of the two
17 if not both.

18 The other comment he made is he was very clear on the
19 fact that he was looking for the opportunity to specifically
20 seek out or run into Coach Brown's family and to do
21 everything he could to make them feel as though he felt that
22 Coach Brown made, I guess, his family go through or the
23 emotions his family went through. But he was specific in
24 nature enough as far as trying to influence or seek that out
25 for Coach Brown's child specifically too and wife.

Ben Johnson - Direct examination
by Solicitor Cuenca

1 Q One moment.

2 (Pause.)

3 Q I have no further questions. Please answer any that
4 Mr. Bender might have for you.

5 A Yes, ma'am.

6 MR. BENDER: Could we approach real quick, Your Honor?

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 CROSS-EXAMINATION

10 BY MR. BENDER:

11 Q Mr. Johnson, how long have you been employed as the SRO
12 at Spartanburg?

13 Was that four years you said?

14 A Spartanburg High School or Spartanburg District 7?

15 Q Spartanburg School District 7.

16 A Approximately eight years.

17 Q Eight years.

18 And the last four at the high school?

19 A Yes, the last four have been at Spartanburg High
20 School.

21 Q Okay.

22 A Almost four cause I haven't completed the fourth year
23 yet.

24 Q Okay. Now, on this date, on the 24th of September,
25 2019, you were on-duty that day, correct?

Ben Johnson - Cross-examination
by Mr. Bender

- 1 A That is correct, I was.
- 2 Q Okay. And you were at Spartanburg High School---
- 3 A That is---
- 4 Q ---correct?
- 5 A Yes, sir, that is correct.
- 6 Q And you then had a conversation with Mr. Brown, right?
- 7 A Coach Brown, yes, sir, I did.
- 8 Q And where did that conversation take place at?
- 9 A I can not recall the exact -- I mean it's on campus. I
- 10 don't resolve -- exactly recall the specific room location.
- 11 I'm inclined to believe it was probably on or about the
- 12 athletic area of the campus which is downstairs.
- 13 Q Okay. Maybe in a coach's office?
- 14 A I can't re -- I can not recall.
- 15 Q Okay. And, during that conversation, you called Wesley
- 16 Kyzer crazy, correct?
- 17 A I can not recall specific words that were made --
- 18 mentioned that day.
- 19 Q Okay. But you would maybe be able to recall it if you
- 20 actually saw a video of that, correct?
- 21 A If there's a video available.
- 22 Q All right. So, you called him -- after that, you
- 23 talked with Coach Brown, correct?
- 24 A I did talk to Coach Brown that day, yes.
- 25 Q Okay. And you tell him that they're gonna trespass

Ben Johnson - Cross-examination
by Mr. Bender

1 everything -- trespass him from all the campuses of District
2 7, right?

3 A Possibly. Like I said, I don't remember the exact time
4 and, and verbiage.

5 Q Okay. And you then informed Coach Brown that he
6 couldn't go get a restraining order, correct?

7 A I advised him of more or less the procedures of
8 requesting a restraining, a restraining order to my
9 knowledge.

10 Q And that you didn't think he was even eligible to ask
11 for one, right?

12 A I don't recall that statement.

13 Q Okay. So then, after this, you then had a conversation
14 with Officer Trammell?

15 A Yes, I did speak with Officer Trammell as he arrived on
16 campus.

17 Q Okay. And what did you go into with Officer Trammell?

18 A It would be customary for me to probably, utilizing an
19 additional agency, to give them the, the basic information
20 of what I know to be happening at that time and then take
21 them where they need to go without trying to get into
22 specifics if -- unless I know what the specifics are.

23 Q Okay. So you took him back to the athletic fields
24 where the practice was, right?

25 A No, actually I believe I took him down to the athletic

Ben Johnson - Cross-examination
by Mr. Bender

1 department which was inside.

2 Q All right. And then he's the one that actually got the
3 statements together?

4 A I can not recall specifically. Once I introduced him
5 to Coach Brown, I don't recall any other specific
6 interactions that he did or related to me taking statements.

7 Q Okay. So, after that happened, what time did you go
8 serve the trespass notice?

9 A I believe it was probably right at or about five
10 o'clock that afternoon.

11 Q And do you remember when you had your conversation with
12 Coach Brown what time it was?

13 A I do not remember specifically. It would of been after
14 whatever time he returned from lunch. So, I would speculate
15 around the lunchtime period.

16 Q Okay. Now, when you went and had this conversation
17 with Mr. Kyzer informing him of the trespass notice, did you
18 have your body camera activated?

19 A I did.

20 Q Was it activated the entire time you talked with him?

21 A There was a pause in-between -- in the middle of it --
22 the accusation.

23 Q And how long was that pause for?

24 A I don't know specifically. Probably a few minutes at
25 most.

Ben Johnson - Cross-examination
by Mr. Bender

1 Q Okay. And then you reactivated it, correct?

2 A That is correct.

3 Q And you turned those videos into the solicitor's
4 office?

5 A I submitted them how we always do, yes, sir.

6 Q And how do you always submit them?

7 A We download them in the solicitor's office. If they
8 have a case we can upload those.

9 Q Okay. And did you review those videos before you came
10 in today?

11 A I have reviewed the video, yes, sir, or both of those
12 videos.

13 Q Okay. And, to your knowledge, has it been altered or
14 amended in any way?

15 A Not to my knowledge.

16 Q Okay. So, the video you reviewed is how the things
17 actually happened that day?

18 A The two segments that I reviewed, which were
19 encompassing the entire encounter with Mr. Kyzer, was the
20 best of -- I mean it -- I remember it to be as that, best of
21 my memory --

22 Q Okay.

23 A -- from two years ago.

24 Q And do you remember telling Mr. Kyzer that there wasn't
25 a threat that day when you were talking with him?

Ben Johnson - Cross-examination
by Mr. Bender

1 A That there was not a threat?

2 Q Yes.

3 A I don't understand your question.

4 Q Do you remember telling Mr. Kyzer that there was not a
5 threat made that day when you went to serve the trespass
6 notice?

7 A I don't recall that particular verbiage, no, I do not.

8 Q Okay. And you talked about his son, correct?

9 A I did.

10 Q Talked about his house, right?

11 A Yes, I did talk about his house I believe.

12 Q Okay. And what you're saying is, after you had this
13 friendly conversation with him, you don't remember calling
14 him crazy earlier?

15 A I, I don't remember. I can tell you that probably,
16 generically speaking, the, the term crazy, not as a
17 clinician in any way, shape, or form, probably has been
18 utilized to sum up or summarize various things that have
19 happened at, at a high school, in a school setting. So --.

20 Q So it's possible you did?

21 A I don't recall specifically. So --.

22 Q Okay. Okay. Did you have any other interaction with
23 Mr. Kyzer after the trespass notice?

24 A I do not believe so.

25 Q Okay. And you were not present at Los Mexicanos?

Ben Johnson - Cross-examination
by Mr. Bender

1 A That is correct.

2 Q Okay. And previous to that incident, had officer --
3 had Coach Brown ever asked you about getting a restraining
4 order against Mr. Kyzer?

5 A I don't recall specifics. I'm sure that -- I'm trying
6 to remember. I don't recall him specifically asking for a
7 restraining order. I know we had talked about previous
8 concerns of Mr. Kyzer based off of things that he had done
9 in the past, things that I had been a party to in the past,
10 even as far as him being escorted out of Wofford College---

11 MR. BENDER: Objection, Your Honor.

12 A ---previous to that, sir.

13 THE COURT: All right. I'm gonna let him answer it.
14 You asked the question.

15 MR. BENDER: Okay.

16 A So, at Wofford College, we had a specific incident
17 where his behavior -- I was requested or an officer was
18 requested, that was my first year at Spartanburg High
19 School. He had been, what was told to me, causing a scene
20 and issue at the top of the grandstands on the home side to
21 the point that he had been asked to leave the property. At
22 that point I did escort him off of that property. He was
23 kind of boisterous and belligerent that evening. He did
24 comply with my particular request.

25 Q Uh-huh. (Affirmative).

Ben Johnson - Cross-examination
by Mr. Bender

1 A But instances like that as well as him showing up
2 multiple times at Duncan Park during games where I had seen
3 him, never had personal interactions with him at those
4 particular situations, and other various issues that I had
5 heard tale of as far as his encounters that he had at
6 Spartanburg High School with various different
7 administrators. Most all---

8 Q But you have no actual knowledge of those?

9 A No.

10 Q You've heard about---

11 A I was not there at those.

12 Q Okay.

13 A I was at Wofford College and I was the one that
14 trespassed him from that game, yes.

15 Q And that was a football game---

16 A That was a football game---

17 Q ---correct?

18 A ---yes, sir.

19 Q Okay. But he didn't get trespassed from District 7
20 after that?

21 A Not that particular incident I don't believe so.

22 Q And he only ever got trespassed after this Los
23 Mexicanos incident?

24 A I can tell you that I'm the only one that trespassed
25 him after that. I can't tell you what officers may or may

Ben Johnson - Cross-examination
by Mr. Bender

1 not have done if they had been requested to do so.

2 Q Well, you have access to the system, right?

3 A Yes. But I don't necessarily go in and just check
4 random people all the time to see what other officers may or
5 may not have done to them.

6 Q Right.

7 But you check the system when you put that, that one in
8 in 2019 --

9 A I---

10 Q -- and you could see that there wasn't any other ones
11 in there?

12 A I pulled up his name. I did not look at the other
13 trespass or any specific information related to him. I
14 entered the one that I had been requested to enter.

15 Q Okay. Now, this Duncan Park incident you're saying
16 where he's at baseball games, he was allowed to be at those
17 baseball games, correct?

18 A Yes, sir. I did not state that there was a Duncan Park
19 incident. I said I noticed that he had been at Duncan Park
20 multiple times.

21 Q Okay. And he was allowed to be there, right?

22 A As far as I know. As long as he purchased a ticket.

23 Q And you're allowed to be there if you want to be there,
24 correct?

25 A I'm employed. So, I'm paid to be there for security

Ben Johnson - Cross-examination
by Mr. Bender

1 purposes.

2 Q Okay. Did you have to---

3 A So, obviously, yes.

4 Q Did you have to talk to Mr. Kyzer at any of those
5 instances?

6 A I -- on the occasions that I worked those particular
7 events I did not personally speak to Mr. Kyzer on those.

8 Q So you had no interaction with him at them?

9 A Not at Duncan Park, no.

10 Q Okay. And you had no interaction at any baseball game
11 with him?

12 A Not that I can recall me specifically. We do have
13 other officers that work. I don't know what they may of
14 done but not me.

15 Q Okay. But you don't know of anything?

16 A I am not currently aware, no.

17 Q Okay. But you're inferring that there might be other
18 things but you don't actually know anything, right?

19 A I'm inferring that I, I specifically don't know---

20 Q Right.

21 A ---of anything. But because we work multiple officers
22 at various different events and venues, I don't know
23 specifically what could or could not have possibly happened.

24 Q Right.

25 But you've never seen him at a baseball game, correct?

Ben Johnson - Cross-examination
by Mr. Bender

1 A That is correct.

2 Q You've never talked with him, right, at a baseball
3 game?

4 A Not that I can recall.

5 Q Okay. You never had any interaction with him at a
6 baseball game?

7 A No, not that I can recall.

8 Q Not a phone call, correct, at a baseball game?

9 A Right.

10 Q Not a text message at a baseball game with Mr. Kyzer,
11 correct?

12 A No, not from Mr. Kyzer, no.

13 Q Okay. And you didn't witness anything at that baseball
14 game that made you take any other action, correct?

15 A Which baseball game are you referencing?

16 Q You're the one that said baseball games.

17 A Correct.

18 Q At any of those games did you witness anything that
19 made you take any other actions?

20 A No, not at any games that I was assigned to work, no.

21 Q Okay. And, to your knowledge, the video that you
22 recorded is an accurate reflection of what happened the day
23 you recorded it?

24 A It is an accurate reflection of the time that I spent
25 with him, yes.

Ben Johnson - Cross-examination
by Mr. Bender

1 MR. BENDER: Okay. That's all at this time, Your
2 Honor.

3 THE COURT: Any redirect limited to what he went into?

4 SOLICITOR CUENCA: No, Your Honor.

5 THE COURT: Thank you, officer. You may step down.
6 Watch your step as you're stepping down.

7 Any reason why the witness can not be excused?

8 SOLICITOR CUENCA: No, Your Honor.

9 THE COURT: From the defense?

10 MR. BENDER: No.

11 THE COURT: Officer, you may be excused as well.

12 MR. BENDER: No, no.

13 Are you saying excused like completely?

14 THE COURT: That's usually what excused means.

15 MR. BENDER: No, I'm, I'm -- I've subpoenaed him too,
16 Your Honor.

17 THE COURT: Okay. So you -- officer, just wait
18 outside. You can talk with the lawyer. He'll let -- tell
19 you your schedule.

20 okay?

21 THE WITNESS: Thank you, sir.

22 THE COURT: Yes, sir.

23 Lawyers approach just one moment.

24 SOLICITOR CUENCA: Yes, Your Honor.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: All right. Ladies and gentlemen, we're
3 going to take a lunch break now. Thank you very much for
4 your time and your patience while we went through the
5 process today of receiving this testimony.

6 Now that you're -- have already taken in testimony, I
7 stress, and you're leaving the building, I stress to you
8 don't do any type of independent research or investigation.
9 Don't go around riding around looking for locations or
10 anything. Don't talk to people about anything that we're
11 doing in the case.

12 So, no discussions among yourselves or with anyone else
13 and no independent research or investigation.

14 Looking at the clock on the wall, I've got to let all
15 these people have lunch breaks as well, security, everybody.
16 I'm gonna ask you to be back in the jury deliberation room
17 by two o'clock. That will give you an hour and a half.

18 You may go with the bailiff and thank you very much.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Anything before I step down?

22 SOLICITOR CUENCA: No, Your Honor.

23 THE COURT: Anything before I step down?

24 MR. BENDER: No, Your Honor.

25 THE COURT: All right. Thank you very much. We're

1 gonna step down. I'll see y'all about 2:00.

2 (WHEREUPON, Court was in recess for the lunch hour.)

3 THE COURT: Is your witness here?

4 SOLICITOR CUENCA: Yes, Your Honor.

5 THE COURT: Okay. Anything else before we bring the
6 jury in and resume testimony?

7 SOLICITOR CUENCA: No, Your Honor.

8 MR. BENDER: No, Your Honor.

9 THE COURT: Okay. Let's bring the jury in.

10 THE BAILIFF: Yes, sir.

11 THE COURT: Who is your witness?

12 SOLICITOR CUENCA: Your Honor, that would be Officer
13 Trammell.

14 THE COURT: Okay. If you'll bring Officer Trammell in.

15 THE BAILIFF: Yes, Your Honor.

16 THE COURT: Sir, just stand right there, and then, once
17 the jury comes in, I'll let her announce your name and
18 you'll come up here.

19 Okay?

20 THE WITNESS: All right.

21 THE COURT: Thank you, sir.

22 THE WITNESS: Yes, sir, Your Honor.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Is the State ready to call their next

David Trammell - Direct examination
by Solicitor Cuenca

1 witness?

2 SOLICITOR CUENCA: Yes, Your Honor.

3 The State would call Officer Trammell.

4 THE COURT: Sir, just come right up here and let the
5 Clerk of Court swear you in.

6 DAVID TRAMMELL, being first duly
7 sworn, testified as follows:

8 THE CLERK: Have a seat there.

9 THE COURT: Watch your step as you're stepping and just
10 step up there and have a seat in the chair. Pull the chair
11 up to the microphone if you would, sir.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY SOLICITOR CUENCA:

16 Q Good afternoon, Officer Trammell.

17 Would you please state your full name for the record?

18 A David Trammell.

19 Q And what do you do, officer?

20 A Police officer with Spartanburg City Police Department.

21 Q How long have you been with the city?

22 A About five years.

23 Q And do you receive any training in order to be an
24 officer there?

25 A I went through the academy and then went through an

David Trammell - Direct examination
by Solicitor Cuenca

- 1 FT -- FTO program.
- 2 Q Uh-huh. (Affirmative).
- 3 And what is FTO, Officer Trammell?
- 4 A It's our field training program.
- 5 Q Okay. And what exactly do you do as an officer?
- 6 A I work for -- I work patrol.
- 7 Q Okay.
- 8 A I answer calls and -- for service.
- 9 Q And were you employed in that capacity on
- 10 September 24th, 2019?
- 11 A Yes, I was.
- 12 Q Okay. Were you working that day on September 24th,
- 13 2019?
- 14 A Yes, I was.
- 15 Q And were you called to Spartanburg High School?
- 16 A I was.
- 17 Q Okay. What exactly happened when you were called or
- 18 what was the reason for the call?
- 19 A Received a call for service for a gentleman making
- 20 threats.
- 21 Q And when you arrived, who did you speak with, officer?
- 22 A I spoke with the head coach, Robert Brown.
- 23 Q And what did you -- what did Coach Brown state
- 24 happened?
- 25 A May I reference my report?

David Trammell - Direct examination
by Solicitor Cuenca

1 Q Yes --

2 A Okay.

3 Q -- if you need to refresh your memory.

4 A Yes, ma'am. Coach Brown or Robert Brown stated that he
5 was eating at Los Mexicanos and told me that he had an
6 individual come up to him, Wesley Kyzer, and say some vulgar
7 words to him and made some threats to him.

8 Q Okay. And where is Los Mexicanos?

9 Is that in Spartanburg County?

10 A It's within the city limits of Spartanburg and
11 Spartanburg County.

12 Q Okay. And after you spoke with Coach Brown, did you
13 speak with anybody else, any of the other witnesses?

14 A Not to my recollection but no. I believe I just spoke
15 to Coach Brown.

16 Q Did you receive any written statements from the
17 witnesses?

18 A Later that day I did.

19 Q Okay. And after, after that date -- was it a long
20 interaction or very brief interaction or interaction when
21 you were filing or speaking with Coach Brown?

22 A To my recollection it was, it was a few minutes that I
23 spoke with him.

24 Q Okay. And, after that day, and you said -- did you
25 receive a statement that day?

David Trammell - Direct examination
by Solicitor Cuenca

1 A I did.

2 Q Okay. And from the witnesses and I'm assuming it's
3 from like the coaches that were there that day.

4 Is that correct?

5 A Correct. I received them later that day.

6 Q And, after that day, what happened?

7 Did you ever speak again with the defendant?

8 A Maybe briefly by phone but not to my knowledge and what
9 it was I don't remember.

10 Q You don't remember.

11 Okay. Was that the extent of your involvement in this
12 case, Officer Trammell?

13 A That's the extent.

14 Q Okay. I have no further questions. Please answer any
15 that Mr. Bender might have.

16 CROSS-EXAMINATION

17 BY MR. BENDER:

18 Q Thank you, officer.

19 So you were dispatched to Spartanburg High School to,
20 to investigate this case, correct?

21 A Correct.

22 Q And so far you've testified that the one thing you did
23 was talk with Coach Brown and collect statements?

24 A Yes.

25 Q Is that all you did?

David Trammell - Cross-examination
by Mr. Bender

1 A And then I also signed warrants.

2 Q Okay. So where did you get your information that you
3 put into your report?

4 A I received it from Coach Brown, a statement, as well as
5 the other coach's statements.

6 Q Okay. Cause there's quite a bit in the report that
7 isn't in any of the statements, right?

8 You want to -- do, do you have your file there?

9 A I do.

10 Q You can review your file. If you want to look at your
11 file, there's quite a bit in there that obviously there was
12 something else that happened because what's in your report
13 and what's in the statements don't match.

14 A In what's -- what aspect are you referring to?

15 Q Okay. So, as part of your investigation at some point
16 you put in here that he's banned from District 7 schools,
17 but, at that time, he hadn't been banned from District 7
18 schools, correct, cause you could of gone into Spillman and
19 checked that, right?

20 That would of shown whether there was a trespass from
21 District 7 schools.

22 A To my knowledge that was just what I was informed of at
23 the time.

24 Q Okay. So somebody informs you erroneously that he was
25 banned from District 7 schools, and, instead of checking it,

David Trammell - Cross-examination
by Mr. Bender

1 you just put it in your report, right?

2 A Yes.

3 Q Okay. And, in addition, as part of your report, you
4 say that he had threatened administrators, right?

5 A That's what I was told.

6 Q Okay. Did you go interview an administrator?

7 A I did not.

8 Q Okay. Did you talk to anybody about that?

9 A Not in reference to that, no, sir.

10 Q Okay. So you just put that into your report
11 erroneously as well?

12 A Correct.

13 Q Okay. And then you put in here that he had been told
14 not to show back up to Spartanburg 7 before, right?

15 Not to come to games?

16 A Can I reference?

17 Q Yeah, yeah, take a look.

18 A Can you repeat your question?

19 Q You put in here that he wasn't allowed to be at the
20 school for games, right?

21 A Correct.

22 Q Okay. But that's not true.

23 There was nothing -- why he -- there was no reason why
24 he couldn't go to games, correct?

25 A No reason other than that's what I was informed.

David Trammell - Cross-examination
by Mr. Bender

1 Q Okay. So, somebody informed you erroneously again that
2 he couldn't be at games, and instead of back checking that,
3 you just put it in your report, right?

4 A Correct.

5 Q Okay. And this information about threatening
6 administrators, not being allowed on school property, not
7 being able to come to games, those are all things that you
8 then told the magistrate when he took out charges, right?

9 A I don't believe I added those into the magistrate to my
10 recollection. But it was just the, the statements.

11 Q Well, let me ask you this.

12 Based off just the statements, now knowing that all of
13 those things are erroneous, would you still have done the
14 same thing?

15 A Based on the statements, yes.

16 Q Okay. So, at some point you told the magistrate---

17 SOLICITOR CUENCA: Objection, Your Honor. This is
18 irrelevant what is told to the magistrate.

19 THE COURT: All right. Ladies and gentlemen, at this
20 time I got to take up an issue with the attorneys outside of
21 your presence. So I'm gonna ask that you retire back to the
22 jury deliberation room and not have any discussions among
23 yourselves about anything involving the case. We'll get you
24 back just shortly.

25 (WHEREUPON, the following takes place outside the

David Trammell - Cross-examination
by Mr. Bender

1 presence of the jury.)

2 THE COURT: All right. You want to explain to me your
3 relevancy objection?

4 SOLICITOR CUENCA: Your Honor, yes.

5 This case has already been indicted. He has already
6 been found by the Grand Jury to be true billed. So the
7 information that is being solicited as far as the, the
8 warrant, the magistrate, it's just not relevant to, to this
9 occurring---

10 THE COURT: Okay.

11 SOLICITOR CUENCA: ---in the case, Your Honor.

12 THE COURT: Yes, sir.

13 MR. BENDER: Your Honor, I was just going through and
14 the reasoning that he took out the charge was he states
15 specifically that Mr. Kyzer had been told to stay away from
16 the school and had shown up on school grounds multiple times
17 and that's why he took out the warrant.

18 THE COURT: Well, I know that's what you want him to
19 say but that's not what he said.

20 MR. BENDER: Okay. Well, that's why the warrant was
21 taken out. That's the exact reason that's in the warrant.
22 So, I'm just going through exactly what type of
23 investigation he did and what he did to take out the
24 charges.

25 THE COURT: Okay. Any reply?

David Trammell - Cross-examination
by Mr. Bender

1 SOLICITOR CUENCA: Your Honor, the incident at Los
2 Mexicanos did not happen at the school, Your Honor.

3 THE COURT: Okay. I mean I think this officer, the way
4 I'm viewing this officer's being presented, is because he's
5 part of the link of the investigation. You presented him as
6 that. He's entitled to go into the investigation.

7 She -- you're entitled to rehabilitate. So everything
8 you just argued to me you can rehabilitate the witness if
9 you choose to approach it that, that way. I think his
10 questioning is, is, is pro -- is relevant because it goes to
11 the witnesses credibility or biases or the standard of
12 things that someone can go into that a, that an attorney
13 who's exploring the voracity of a witness can go into.

14 Okay. Other objection besides relevancy I will be
15 listening for.

16 SOLICITOR CUENCA: No, Your Honor.

17 THE COURT: No, ma'am, I'm saying --

18 SOLICITOR CUENCA: Oh.

19 THE COURT: -- I will be listening for other objections
20 besides relevancy.

21 SOLICITOR CUENCA: Yes, Your Honor.

22 THE COURT: Okay.

23 All right. Anything else?

24 MR. BENDER: No.

25 THE COURT: All right. Let's bring the jury back in.

David Trammell - Cross-examination
by Mr. Bender

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: Yes, sir, Mr. Bender.

4 MR. BENDER: Thank you, Your Honor.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. BENDER:

7 Q Did you talk to any other coaches in person besides
8 Coach Brown?

9 A Not to my recollection. I believe it was only Coach
10 Brown in person.

11 Q Okay. Other than that, you had just the written
12 statements provided by the coaches?

13 A Correct.

14 Q Okay. Did you go and view the video at the restaurant?

15 A I did.

16 Q Okay. And did you download the video from the
17 restaurant?

18 A Not that day and, to my knowledge, I don't know why I
19 didn't go back and get it -- stuff.

20 Q Okay. Do you remember what the video showed?

21 A It showed what appeared to be the coaches sitting at a
22 table, and what -- it appeared to be Wesley Kyzer walking up
23 to them and just standing there for a few moments, and then
24 walked away and I believe he paid for his food and then
25 left.

David Trammell - Cross-examination
by Mr. Bender

1 Q okay. Did you see any uproar in the restaurant or
2 anything like that?

3 A I didn't see that cause it was also difficult to see as
4 well from the angle of the footage.

5 Q okay. But, from what you saw, he walked up, stood
6 there for a couple of moments and walked off?

7 A Correct.

8 Q Paid for his food and left?

9 A Correct.

10 Q Did the coaches get up right afterwards after he walked
11 off?

12 A From I seen, no.

13 Q Any of the coaches stand up after he walked off?

14 A I couldn't tell if they did or not.

15 Q Okay. So you didn't talk to anyone besides the four
16 coaches?

17 A In reference to this case?

18 Q Yes, sir.

19 A Can, can you repeat and explain it a little bit?

20 Q Yeah.

21 Did you talk to anyone -- in your investigation, okay,
22 besides Coach Brown and those other three coaches and, and
23 I'm -- I think you've testified that you didn't talk to the
24 other three coaches but besides Coach Brown --?

25 A Referring to SROs, administrators, are you just talking

David Trammell - Cross-examination
by Mr. Bender

1 about---

2 Q Yeah.

3 Did you talk to the principal?

4 A No, I don't recall that I did.

5 Q Did you talk to the assistant principal?

6 A I don't recall that I did, no.

7 Q Okay. Did you talk with any of the administrators for
8 Spartanburg District 7?

9 A I don't believe I did that day.

10 Q Okay. Did you talk with the defendant that day,
11 Mr. Kyzer?

12 A No. No, I did not.

13 Q Okay. So, before you went and took out charges, you
14 didn't talk with him at all?

15 A No, I did not.

16 Q Okay. Did you check Spillman that day?

17 A May I refer to my report?

18 Q Uh-huh. (Affirmative).

19 A Based on this, no, but I'm sure that I did when I
20 looked his name up in Spillman.

21 Q Okay.

22 A To what extent I don't recall.

23 Q Okay. But, regardless, you didn't put it in your
24 report, right?

25 A Correct.

David Trammell - Cross-examination
by Mr. Bender

1 Q Okay. And so taking out a warrant for first degree
2 harassment, that's a pattern of interactions, right?

3 A Correct.

4 Q Okay. And, in your report, can you look at your report
5 and denote what the pattern of interactions you see is?

6 I mean let me back up.

7 Do you have timeframes on any of the things here?

8 A No, no timeframes.

9 Q So you don't know when any of these things occurred?

10 A Correct.

11 Q Okay. Did you ask when they occurred?

12 A I did not.

13 Q Okay. But being that one of the charges is suppose to
14 be a pattern of things, that is important to know when
15 things occurred, correct?

16 A Correct.

17 Q Okay. But in here, in this report, before you put it
18 to the magistrate, you didn't do anything like that?

19 A Not in the report, no.

20 Q Okay. Well, I mean did you have something else besides
21 the report?

22 A No, just -- that's it.

23 MR. BENDER: Okay. Thank you, Your Honor.

24 THE COURT: Any redirect limited to what he went into?

25 SOLICITOR CUENCA: Yes, Your Honor. Briefly.

David Trammell - Redirect examination
by Solicitor Cuenca

1 REDIRECT EXAMINATION

2 BY SOLICITOR CUENCA:

3 Q Officer Trammell, when you are investigating a case, do
4 you take down information that people give you say as---

5 A Any case or --?

6 Q When you're writing your report, do you include in your
7 reports what's given to you?

8 A Yes.

9 Q Okay. And you know whether it's statements they either
10 orally tell you or in writing, do you include that in your
11 reports --

12 A Yes.

13 Q -- as part of your investigation?

14 A Yes.

15 Q Okay. So there's no reason for you not to, not to
16 include it in your report?

17 A Correct.

18 Q And if -- Mr. Bender was asking about the same
19 statements about the threats to the administrators.

20 Was this specific investigation regarding threats to
21 administrators or the threat to Coach Brown?

22 A It was the threat towards Coach Brown.

23 Q So, was there any need to do further investigation into
24 any threats to administrators?

25 A No, there wasn't.

David Trammell - Redirect examination
by Solicitor Cuenca

1 Q Okay. And was there -- as part of your investigation
2 regarding this case, did you need to have conversations with
3 an, with an administrator or principal --

4 A No, I did not.

5 Q -- to complete your investigation?

6 A No, cause it took police off campus.

7 SOLICITOR CUENCA: Okay. One second.

8 (Pause.)

9 SOLICITOR CUENCA: I have no further questions.

10 THE COURT: All right. Thank you.

11 Thank you, officer. You may step down.

12 Any reason why the witness can not be excused?

13 SOLICITOR CUENCA: No, Your Honor.

14 MR. BENDER: I would ask him to stay, Your Honor.

15 THE COURT: You've got him under subpoena?

16 MR. BENDER: Yes, Your Honor.

17 THE COURT: All right, sir. Just step outside and talk
18 to Mr. Bender. He'll let you know your schedule.

19 THE WITNESS: All right. Thank you, Your Honor.

20 THE COURT: State ready to call their next witness?

21 SOLICITOR CUENCA: Yes, Your Honor.

22 The State would call Jeff Stevens to the stand.

23 THE COURT: Sir, just come right up here and let the
24 Clerk of Court swear you in.

25 Lawyers approach one moment.

Jeff Stevens - Direct examination
by Solicitor Cuenca

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 JEFF STEVENS, being first duly
4 sworn, testified as follows:

5 THE COURT: Yes, ma'am.

6 SOLICITOR CUENCA: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR CUENCA:

9 Q Mr. Stevens, could you please state your name, full
10 name, for the record?

11 A Yes, my name's Jeff Stevens.

12 Q And what -- where are you employed right now,
13 Mr. Stevens?

14 A I'm superintendent of Spartanburg School District 7.

15 Q How long have you been superintendent in District 7?

16 A This is my second year.

17 Q Okay. And, prior to that, where were you -- what were
18 you doing?

19 A For the 19/20 school year I was chief operations
20 officer --

21 Q Okay.

22 A -- and I was principal of the high school 10 years
23 prior to that.

24 Q Okay. And how long have you been in education?

25 A 31 years. This is my 31st year.

Jeff Stevens - Direct examination
by Solicitor Cuenca

1 Q All right. And so you said that in 2019 you were a
2 principal or 2019 what was your position?

3 A The 2019---

4 Q Yes, sir.

5 A ---'20 school year I was the chief operations officer.

6 Q Okay.

7 A Yeah.

8 Q And in 2018 to the---

9 A 2018---

10 Q ---2019---

11 A ---'19 I was principal of Spartanburg High School,
12 yeah.

13 Q Thank you.

14 Do you know Coach Brown, Mr. Stevens?

15 A I do.

16 Q And how do you know him?

17 A He works as an employee at Spartanburg High School.

18 Q And is Coach Brown recognized as a teacher by District
19 7?

20 A Yes.

21 Q And was he recognized as a teacher between -- in 2018
22 and 2019?

23 A Yes.

24 Q Okay. Do you also know the defendant, Mr. Stevens?

25 A Yes.

Jeff Stevens - Direct examination
by Solicitor Cuenca

1 Q Okay. And do you also recall instances where the
2 defendant requested that Coach Brown be fired, Mr. Stevens?

3 A Yes.

4 Q And approximately when were those instances, whether
5 it's a month, year?

6 Just an approximate.

7 A I'm gonna say in 2017, '18, four or five years ago we
8 had a couple meetings.

9 SOLICITOR CUENCA: Okay. One second.

10 (Pause.)

11 Q I have no further questions, Mr. Stevens. Please
12 answer any that Mr. Bender might have.

13 A Okay.

14 SOLICITOR CUENCA: Thank you.

15 MR. BENDER: Thank you.

16 CROSS-EXAMINATION

17 BY MR. BENDER:

18 Q Mr. Stevens, you said that, that Coach Brown is
19 employed as a teacher?

20 A Yes, he is employed in School District 7. I, I, I view
21 him as a teacher. He is an employee of our district and he
22 does everything consistent with that that a teacher would
23 do.

24 Q Right.

25 But he's not certified, right?

Jeff Stevens - Cross-examination
by Mr. Bender

1 A He's not certified.

2 Q Okay.

3 A No, sir.

4 Q Because, by law, y'all have to have certified teachers
5 in public schools, correct?

6 A Correct.

7 Q Okay. Now, you said you had meetings with Mr. Kyzer,
8 correct?

9 A Yes, had a couple meetings with Mr. Kyzer. One with---

10 Q Okay.

11 A ---his son and his wife.

12 Q Okay. And I believe the prosecutor just asked you
13 about what took place during those meetings, correct?

14 SOLICITOR CUENCA: Objection, Your Honor.

15 THE COURT: You want to just ask a, a question and not
16 characterize it.

17 Q You were previously asked about what took place during
18 some of those meetings with Mr. Kyzer, correct?

19 SOLICITOR CUENCA: Objection, Your Honor.

20 THE COURT: All right. I'm gonna allow it. I -- he's
21 on cross-examination. He's got a lot more leeway.

22 Go ahead.

23 A I don't recall that as a question that she asked about
24 what happened during the meeting?

25 I don't recall her asking that.

Jeff Stevens - Cross-examination
by Mr. Bender

- 1 Q You were just asked whether Mr. Kyzer asked for the
2 baseball coach to be fired during a meeting?
- 3 A Oh, yes.
- 4 Q Right?
- 5 A Yes.
- 6 Q And you responded---
- 7 A I'm sorry.
- 8 Q ---in the affirmative?
- 9 A Yes.
- 10 Q Is that correct?
- 11 A That's correct.
- 12 Q Okay.
- 13 A I'm sorry.
- 14 Q All right. Now, what was the reasoning behind that?
- 15 A A lot of it centered around the culture of the baseball
16 program and things that they thought were going on with
17 re -- retaliation or the culture of the baseball program,
18 harassment, things that, that were being claimed.
- 19 Q Okay. Bullying?
- 20 Is that---
- 21 A Bullying.
- 22 Q ---one of them?
- 23 A Bullying was one of them too, yes.
- 24 Q Any disciplinary action come out of those meetings?
- 25 A Not for Coach Brown.

Jeff Stevens - Cross-examination
by Mr. Bender

- 1 Q Okay. But for---
- 2 A And I---
- 3 Q ---some staff?
- 4 A Yeah, for some staff. But it didn't come out of those
- 5 meetings that were already previously done by or taken care
- 6 of by our -- Coach Staley who was our athletic director.
- 7 Q Okay. During those meetings with Wesley Kyzer, did you
- 8 feel threatened by Mr. Kyzer?
- 9 A I, I did not feel threatened by Mr. Kyzer.
- 10 Q Did any other administrator in the meeting ever say to
- 11 you that they felt threatened by Mr. Kyzer in that meeting?
- 12 A Not that I recall.
- 13 Q Any meeting that you had with Mr. Kyzer, did you feel
- 14 threatened?
- 15 A No, I don't, I don't think I felt threatened, no.
- 16 Q Okay. And you were present for multiple meetings,
- 17 correct?
- 18 A Well, not multiple meetings. I was present with one.
- 19 It was myself, Coach Brown, Coach Staley, Mr. and
- 20 Mrs. Kyzer, and I believe their son was there too.
- 21 Q Okay. All in a room together?
- 22 A Yes, sir.
- 23 Q And you're saying out of that meeting you didn't feel
- 24 threatened?
- 25 A No.

Jeff Stevens - Cross-examination
by Mr. Bender

1 Q Correct?

2 A I did not.

3 Q Okay. Have you had any interaction or have you had any
4 face-to-face meeting with Mr. Kyzer since that meeting?

5 A I can't remember. I can't recall if the, the one I met
6 with me and his wife was after that meeting or before. I
7 think it was after that meeting. So, if there was, it was
8 on, one more meeting.

9 Q Okay. Now, that was in 2017, correct?

10 A I, I -- as, as I recall, I think it was 2017. Might of
11 been another one in 2018.

12 Q Okay. Now, you, you have a little bit more knowledge
13 about the baseball team specifically because your son played
14 on the baseball team?

15 A He did.

16 Q Right?

17 A He did.

18 Q Was the same age as Mr. Kyzer's son?

19 A Yes.

20 Q Right?

21 A Yes.

22 Q Okay. So, because of that, in all likelihood, you
23 would of been at most of the baseball games?

24 A Yes.

25 Q Okay.

Jeff Stevens - Cross-examination
by Mr. Bender

1 A Yes.

2 Q So, did you witness anything inappropriate as far as
3 Mr. Kyzer attending baseball games?

4 A I did, I did not.

5 Q Okay.

6 A Not myself I didn't. I did not.

7 Q Okay. But you were at all the games, right?

8 A Probably 85 to 90 percent of them I, I was there.

9 Q Okay.

10 A Unless I had another duty with another athletic team or
11 concert or something of that nature I was there.

12 Q Okay. So---

13 A Uh-huh. (Affirmative).

14 Q ---home games and do you try to make away games---

15 A Sure.

16 Q ---too?

17 A Sure.

18 Q Okay. And you're saying that, during that entire time
19 period, you never witnessed anything out of ordinary -- the
20 ordinary?

21 A Not that I can recall.

22 MR. BENDER: Thank you, Your Honor.

23 THE COURT: Any redirect limited to what he went into?

24 SOLICITOR CUENCA: Just one.

25 REDIRECT EXAMINATION

Jeff Stevens - Redirect examination
by Solicitor Cuenca

1 BY SOLICITOR CUENCA:

2 Q Mr. Stevens, do you recall everything from the games
3 that you went to, the multiple games that you went to?

4 A No, I don't recall everything.

5 SOLICITOR CUENCA: That's, that's it, Your Honor.
6 Thank you.

7 THE COURT: Thank you, sir.

8 Are you done with the witness?

9 SOLICITOR CUENCA: Yes, sir.

10 THE COURT: Thank you, sir. You may step down.

11 THE WITNESS: Okay.

12 THE COURT: Any reason why the witness can not be
13 excused?

14 SOLICITOR CUENCA: No, Your Honor.

15 MR. BENDER: No, sir.

16 THE COURT: Then you may be excused as well.

17 THE WITNESS: Okay.

18 THE COURT: Thank you for coming.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: State ready to call their next witness?

21 SOLICITOR CUENCA: Your Honor, it -- that is the last
22 witness and if I can have just one moment, Your Honor?

23 THE COURT: Okay.

24 SOLICITOR CUENCA: Thank you.

25 (Pause.)

1 SOLICITOR CUENCA: Your Honor, at this point the State
2 rests.

3 THE COURT: All right. Ladies and gentlemen, at this
4 time I've, I've got to take up some matters with the
5 attorneys outside of your presence. I'm gonna remind you
6 don't have any discussions among yourselves about anything
7 involving the case. Do not do any type of independent
8 research but you may go back to the jury deliberate --
9 assembly room and we'll get you back just shortly.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Yes, sir.

13 MR. BENDER: At this time, Your Honor, I'd just make --
14 I'd make a motion to dismiss the harassment charge. I'm not
15 gonna address, I'm not gonna address the threat charge. I
16 think that's a question for the jury.

17 The, the harassment charge though is based off what
18 we're suppose to believe is a pattern of conduct and
19 behavior. What they've listed as the conduct and behavior
20 they're talking about appears to be two baseball games and
21 what we have into evidence is that he was present at a
22 baseball game.

23 There was no prohibition from him being at the game.
24 There was no contact between the parties. There was nothing
25 said. There was no physical meeting. There was nothing

1 done during those two baseball games.

2 So, all the evidence suggests that these two baseball
3 games were nothing more than Mr. Kyzer being at a baseball
4 game, watching kids that his, his child had played with for,
5 you know, upwards of 10 years.

6 The next incident is a bump in at the District 7
7 offices and all we can describe there is that he never
8 talked to him directly and that what he says is that or at
9 least he alleges that he said that I'm here to try to get
10 him fired. That's it.

11 We've, we've got essentially no meetings, nothing --
12 no, no contact, no talk, and that's in 2018, a time where
13 they just happened to be in the same superintendent's office
14 in 2018, and then an incident in 2019.

15 Now, the incident -- that, that's indisputable but
16 there's no pattern of conduct. There's nothing that's been
17 put forward in the evidence that can with -- withstand the
18 charge of continued pattern of intrusion into someone's
19 private life. Matter of fact, the charge, intrusion into
20 private life, what we've got testified is the one with
21 Mr. Booker is about his public life, right, as a baseball
22 coach. Has nothing to do with his private life.

23 There's been no evidence that he sees him outside of
24 school, that he sees him anywhere during these other time
25 periods.

1 So, I would ask with -- as far as the harassment
2 charge, that that matter can not be, can not be sustained
3 going forward with what's been put into evidence, Your
4 Honor.

5 THE COURT: And your argument is based on the idea of
6 or proposition it has to be a pattern of conduct?

7 MR. BENDER: Yes, Your Honor.

8 THE COURT: Okay. Yes, ma'am.

9 SOLICITOR CUENCA: Your Honor, may it please the Court.

10 The standard for a directed verdict is in the light
11 most favorable to the nonmoving party and the Court is
12 reviewing whether existence or nonexistence of the evidence,
13 and in regards to the harassment first degree, Your Honor,
14 there is -- the statute says that a pattern is defined as
15 two or more acts occurring over a period of time, however
16 short, evidencing a continuity of purpose and the statute
17 says -- so pattern, two or more acts, and it's intentional,
18 substantial, and an unreasonable intrusion to the private
19 life of a targeted person.

20 Your Honor, Coach Brown testified that there were four
21 separate instances, more than two acts, where he felt
22 harassed and he felt that there was -- he suffered emotional
23 distress from these. The first one being at the lobby of
24 Doctor Booker near his office, the two were at the baseball
25 games, Your Honor, where he did testify that the -- he had

1 no reason to be there even though technically he could have
2 been there but the way that he observed the defendant he
3 felt harassed by the defendant the way he was sitting, the
4 line of vision.

5 Your Honor, and then lastly is the fourth one which is
6 the incident at the Mexican restaurant, Your Honor, where
7 that threat to his life was substantial. It was
8 unreasonable. It was intentional, Your Honor. And, again,
9 that did disrupt his private life because of the emotional
10 distress, the fear, the threats to himself and to his family
11 as well, Your Honor. And, as the statute says, this can --
12 there is no need for an actual meeting or for the defendant
13 to speak directly to the victim.

14 Your Honor, the statute says that it can be a, a
15 maintenance of a presence near the targeted person's place
16 of work.

17 And so, by Mr. Kyzer's presence in those games, by his
18 very affirmative threats at the Mexican restaurant, and then
19 his presence at the lobby, Your Honor, we're asking that you
20 deny the motion for -- to dismiss the case.

21 THE COURT: Any reply?

22 MR. BENDER: At, at -- the reply's gonna be very
23 similar to what, what was said earlier is that the -- one,
24 the two baseball games, we've got in 2018, in April of 2018.
25 More specifically, which I think they said both were in

1 April, April, 2018, May, 2018, June, July, August,
2 September, October, November, December, January of 2019,
3 February, the start of another baseball season, March, 2019,
4 April, May, June, the end of that entire baseball season
5 there's no contact and then we're all the way into September
6 of 2019 where we, where we have this incident at Los
7 Mexicanos. I don't see how that's a pattern of anything.

8 In addition, the, the motion -- the, the emotional
9 effects testified to I don't believe withstand what, what
10 was designed by the statute where it essentially just says
11 that he doesn't go out to eat as much anymore. But he
12 didn't -- he didn't testify that -- to seeing anyone. He
13 continued on, ate his meal that day, continued on to
14 practice, never missed a practice, never missed a game. By
15 my -- from what I heard in testimony, essentially just
16 carried on about life without there being any emotional or
17 physical effects.

18 But beyond I think the main argument is the pattern,
19 Your Honor, is that there was no pattern.

20 Thank you, sir.

21 THE COURT: Briefly.

22 SOLICITOR CUENCA: Yes, Your Honor.

23 THE COURT: Limited to what he went into.

24 SOLICITOR CUENCA: Yes, Your Honor. The statute does
25 not require it to be within a specific period of time. It

1 just says period of time.

2 So, whether it was within one month or two years, Your
3 Honor, the Legislature could have said within 90 days. Yet
4 it is not in there, Your Honor.

5 These are essentially what Mr. Bender is arguing are
6 for the jurors to determine whether -- for them to determine
7 whether or not he is guilty, Your Honor. But not at the
8 directed verdict state.

9 Thank you.

10 THE COURT: Any closing?

11 MR. BENDER: We can stop at two each, Your Honor.

12 THE COURT: Okay.

13 (Pause.)

14 THE COURT: Okay. This is the -- the stage of the case
15 that we're in, I am obligated and bound by viewing the light
16 in -- view -- viewing the evidence in the light and most
17 favorably to the nonmoving party. This would be the State.

18 I also have to view the inferences, reasonable
19 inferences, from the evidence in a light most favorable to
20 the nonmoving party.

21 In doing so, I've got to deny the motion. I think the
22 State is correct in their interpretation of the statute. I
23 can not weigh and judge the, the weight of the evidence at
24 this point. I have to just look for the existence of the
25 evidence. And when I apply the standard that I have to

1 apply to the evidence that has been presented to the case in
2 a light that is most favorable to the case, I would have to
3 deny the motion at this time.

4 But thank you for the arguments.

5 You need to talk to your client about testifying?

6 MR. BENDER: I, I will, Your Honor, if I can have---

7 THE COURT: Okay. I'm gonna step down and then we'll
8 come back and address that issue.

9 MR. BENDER: Thank you.

10 Can I go out to the restroom?

11 THE COURT: Yeah. Yes, sir.

12 MR. BENDER: All right.

13 THE COURT: We're gonna step down. We'll come back in
14 just a few minutes.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: And have you and your client discussed his
17 right to testify?

18 MR. BENDER: We have, Your Honor.

19 THE COURT: And does your client intend to testify?

20 MR. BENDER: He does, Your Honor.

21 THE COURT: Okay.

22 All right. Mr. Kyzer, if you will, please stand and
23 raise your right-hand. I'm -- you and I have to have a
24 discussion now. It's gonna be on the record.

25 (WHEREUPON, the defendant was placed under oath at this

1 time.)

2 THE COURT: Thank you, Mr. Kyzer. You may put your
3 hand down.

4 Now, Mr. Kyzer, if ever during this give and take we're
5 about to have you can't hear me, you just let me know and
6 I'll speak up.

7 okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: But, likewise, this lady over here to my
10 right's a court reporter. She's taking down everything
11 that's said. I need you to speak up loud enough so that she
12 can hear you as well.

13 Now, Mr. Kyzer, at this time I'm going to explain to
14 you certain of your rights, and if you do not understand
15 anything that I say, I need you to please let me know. And
16 if you want me to explain anything in more detail, please
17 let me know that as well.

18 okay, sir.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Sir, we've now reached the
21 stage of the trial where you may present your defense. You
22 have the right to claim the protections of the Fifth
23 Amendment to the Constitution of the United States.

24 Now, this amendment provides, in part, that no person
25 shall be compelled in any criminal case to be a witness

1 against himself. This means that you can not be required to
2 testify in this case. You have the right to testify on your
3 own behalf. However, no one can make you testify. This is
4 a personal right and no one can waive this right except you.

5 If you decide to testify, you will be subject to the
6 same rules that govern other witnesses and you may be
7 examined and cross-examined on any relevant issue in this
8 case.

9 In addition, if you have any convictions involving
10 dishonesty or false statements or for crimes punishable by
11 imprisonment for more than one year, and this Court
12 determines that the probative value of admitting this
13 evidence outweighs its prejudicial effect to you, the
14 solicitor will be able to introduce your record to attack
15 your credibility. If you decide to testify, this decision
16 on your part must be freely, voluntarily, and intellectually
17 made with the knowledge of the protections given to you by
18 the Fifth Amendment and the consequences of your decision to
19 testify.

20 Now, if you decide not to testify, I will instruct the
21 jurors that they can not give the fact that you did not
22 testify any consideration whatsoever and that there is to be
23 absolutely no prejudice to you because you did not testify.

24 Now this it -- it's left entirely up to you whether or
25 not you wish to testify. You may talk to your lawyer, your

1 family, and friends, or anyone else. But the final decision
2 is left up to you whether you testify in this case.

3 Now, do you understand what I've just explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you have any questions about what
6 I've just explained to you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you discussed with your lawyer whether
9 you should or should not testify?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you wish to talk to your lawyer some
12 more at this time about the decision whether to testify or
13 not?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Are you satisfied with the work that
16 your lawyer has done for you?

17 THE DEFENDANT: I'm, I'm pleased, yes, sir.

18 THE COURT: Okay. And, sir, do you, do you wish to
19 testify in this case or---

20 THE DEFENDANT: Yes, sir.

21 THE COURT: ---do you not?

22 THE DEFENDANT: No, I do, yes, sir.

23 THE COURT: Okay. Now, Mr. Kyzer, has anybody
24 threatened you in any way or promised you anything in order
25 to get you to make this decision to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Am I correct to conclude that your decision
3 to testify in this case that it is a free and voluntary
4 decision by you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And, Mr. Kyzer, what we'll do is we
7 will proceed with the -- your decision to testify. If
8 between now and the time you get called on the witness stand
9 you change your mind, you just tell your lawyer and, and we
10 will -- then you will not testify but we'll proceed as if
11 you're testifying.

12 But thank you, Mr. Kyzer.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Lawyers approach.

15 You can have a seat, Mr. Kyzer.

16 Lawyers approach. Let's get a schedule.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: All right. I believe now we'll move to the
19 State indicated they might have some motions in limine.

20 SOLICITOR CUENCA: Yes, Your Honor.

21 May it please the Court.

22 The State does tend to or ask to exclude certain
23 evidence or reference specifically to any kind of testimony
24 that references the incident with when the, the term ass
25 clown was used as well as any kind of reference to the word

1 potential fag as well, Your Honor, any of instances or
2 testimony potentially of the son, Aiden's, suicidal
3 ideations as well.

4 Your Honor, the State is also asking to exclude any
5 kind of recordings from any meetings that were taken by the
6 defendant during some meetings that were pertinent or
7 related to the son, Aiden. They are not relevant. They
8 would mislead the jurors, Your Honor, and it would just be a
9 confusion of issues.

10 And so that is the State's motion regarding --.

11 THE COURT: All right. Let me ask you this.

12 Do you -- does the defense have recordings that were
13 done in meetings?

14 MR. BENDER: Yes, we do.

15 THE COURT: All right.

16 MR. BENDER: And we provided them to the State.

17 THE COURT: Okay. Do you -- does the defense intend to
18 present those recordings as part of the defense -- as part
19 of the defendant's testimony?

20 MR. BENDER: We were not.

21 THE COURT: Okay. Then they don't -- we don't have to
22 worry about that.

23 SOLICITOR CUENCA: Okay.

24 THE COURT: How about -- again I -- y'all know the
25 facts of this case. I do not.

1 Is there gonna be a reference in the, in the
2 defendant's testimony as to the suicidal tendencies?

3 MR. BENDER: I don't foresee diving into that.

4 THE COURT: Okay.

5 MR. BENDER: Again, I don't -- I mean I don't foresee
6 that. That's, that's why I've, when I talked about the
7 video, that we would be cutting off the video.

8 THE COURT: Okay.

9 MR. BENDER: Yes, sir, Your Honor.

10 THE COURT: What, what about -- I, I -- again, I don't
11 know what y'all are talking about. The State's also asking
12 that there be -- did you say A-S-S clown?

13 SOLICITOR CUENCA: Yes, Your Honor.

14 THE COURT: And fag, is there a -- do you intend to
15 elicit that testimony?

16 MR. BENDER: I, I---

17 THE COURT: Okay.

18 MR. BENDER: I hadn't intended to.

19 THE COURT: Okay. Then we won't have that. And so the
20 State, likewise, by making the motion, needs to not open the
21 door to those issues.

22 SOLICITOR CUENCA: That's correct, Your Honor.

23 THE COURT: Okay.

24 SOLICITOR CUENCA: Thank you.

25 THE COURT: All right.

1 Okay. Anything else before we bring the jury in?

2 SOLICITOR CUENCA: No, Your Honor.

3 THE COURT: Okay. All right. I would suggest we bring
4 the jury in and then any other motions that the State has
5 we'll take up after the defendant testifies.

6 SOLICITOR CUENCA: Thank you, judge.

7 THE COURT: Uh-huh. (Affirmative).

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Is the defense ready to call their first
11 witness?

12 MR. BENDER: Yes, Your Honor.

13 We would call Wesley Kyzer.

14 THE COURT: Sir, just come right up here and let the
15 Clerk of Court swear you in.

16 WESLEY KYZER, being first duly
17 sworn, testified as follows:

18 THE COURT: Sir, watch your step.

19 THE WITNESS: Okay.

20 THE COURT: But step up there and have a seat in the
21 chair and pull the chair up to the microphone for me.

22 DIRECT EXAMINATION

23 BY MR. BENDER:

24 Q Can you state your name please, sir?

25 A Wesley Kyzer. Wesley Ray Kyzer.

Wesley Kyzer - Direct examination
by Mr. Bender

1 Q Okay. And where do you live, Mr. Kyzer?

2 A I currently live at 215 California Avenue, Spartanburg,
3 South Carolina 29303.

4 Q Okay. And how long have you resided there?

5 A Maybe four months.

6 Q And, before that, where did you reside?

7 A I lived at 1401 Fernwood-Glendale Road Spartanburg,
8 South Carolina 29307.

9 Q Okay. And how long have you resided in Spartanburg,
10 Mr. Kyzer?

11 A I've been in Spartanburg County since probably '96.
12 No, my wife graduated in '96. I've been in Spartanburg
13 County since probably about '93.

14 Q Okay.

15 A 1993.

16 Q Okay. Thank you, sir.

17 And do you have a family, Mr. Kyzer?

18 A I do. My wife's name's Aliena Kyzer. My daughter's
19 Kayla Kyzer. My youngest son's Aiden Kyzer and my oldest
20 boy is Wesley Kyzer, Junior.

21 Q And do any of them live in the home with you?

22 A I do not live in a home. I live in a motor home in the
23 back of the property at 215 California Avenue, Spartanburg,
24 South Carolina 29303.

25 Q Okay. So none of the -- none of your children live in

Wesley Kyzer - Direct examination
by Mr. Bender

1 your, in your current residence?

2 A No, sir, they live in homes that I own, but no, they
3 don't live with me, no, sir.

4 Q And what do you do for a living?

5 A I build homes. I'm a residential construction builder
6 but I tell everybody I manage people, money, and time. In
7 the process we build a house.

8 Q How long have you been building homes?

9 A About 2002. Licensed, 2004.

10 Q And where all do you build homes?

11 A Anywhere in the state. I mean I've built down in
12 Columbia. I built in Anderson, Spartanburg, Greenville,
13 Greer. Makes no difference. You pay for travel time, we'll
14 come to you.

15 Q Okay. Now, tell me how do you know Wesley Brown?

16 A He's the Spartanburg High School baseball coach.

17 Q Okay. And when did you meet Mr. Brown?

18 A Probably Aiden's ninth grade year. We were -- no, I'm
19 not -- well, I'm not a hundred percent certain. I don't
20 know if it was his eighth grade year, like the latter part
21 of his eighth grade going into his ninth grade. It had to
22 have been the summer of his ninth grade year -- going into
23 his ninth grade year cause I think that was when he was
24 introduced.

25 Q And when you say introduced, you mean he was hired?

Wesley Kyzer - Direct examination
by Mr. Bender

1 A I, I believe so. That's correct. >

2 Q Okay. Now, you met him obviously cause Aiden was
3 playing baseball, correct?

4 A Yes, sir, I take at the time we were -- the first time
5 that I met him we were in the, the gym. Well, not the gym
6 but the weight room and I'm not quite sure why I was there.
7 My -- I wasn't there to meet him. It could of just been to
8 pick up Aiden or at something. I don't know. But Aiden
9 told me that the coach was there. So, we walked over and
10 introduced ourself.

11 Q Now, did Aiden play baseball for Spartanburg High
12 School?

13 A He does. He did.

14 Q Now, we talked some -- there's been some talk about
15 baseball games and meetings at the school.

16 Tell me this.

17 When did the -- when did you start having meetings at
18 the school?

19 A Sophomore year.

20 Q Aiden's sophomore year, correct?

21 A Yes, sir.

22 Q Okay. And those meetings, those would of been in 2017?

23 A Yes, sir, I believe so.

24 Q Okay. Now, did you ever have a meeting with Coach
25 Brown?

Wesley Kyzer - Direct examination
by Mr. Bender

1 A Yes, that -- I mean I, I classify when we introduced
2 ourself. The meeting was -- well, let me back up. The
3 first the -- so that was the first time that I saw him.
4 What I would say is a meeting would be when he addressed the
5 whole auditorium, you know, later on in that year where he
6 was introduced as the head coach and his vision and what he
7 wanted to bring to Spartanburg County baseball.

8 Q Okay. That was -- was that 2016, '17, somewhere in
9 there?

10 A Sophomore year.

11 Q All right.

12 A No, sorry. Freshman year. That, that was the freshman
13 year.

14 Q Now, earlier you heard Doctor Stevens testify that he
15 had a meeting with you, and Coach Brown, and Athletic
16 Director Staley --

17 A Yes, sir.

18 Q -- your wife, and Aiden, correct?

19 A Yes, sir.

20 Q And do you recall about when that happened?

21 A That was 2017, yes, sir.

22 Q Okay.

23 A That was right around March and I, I think it's really
24 before the season kicked off. They went -- they took a trip
25 I believe it was down to Columbia, stayed at a motel, hotel,

Wesley Kyzer - Direct examination
by Mr. Bender

1 or something like that, and somebody else on the team had a
2 place at the lake and --.

3 Q Okay. That was March, 2017?

4 A I, I believe -- I believe so, yes, sir. That's
5 sophomore year.

6 Q Okay. Did your son play baseball that year?

7 A Yes, sir, he did.

8 Q Okay. Now, going into 2018, did he play baseball in
9 2018?

10 A He did, yes, sir.

11 Q Okay.

12 A That would of been his junior year.

13 Q Okay. Now, did he finish the season that year?

14 A No, sir, he did not.

15 Q Do you remember about when he left the team that junior
16 year?

17 A I believe earlier testimony said Dorman. But I, I was
18 thinking -- I didn't think that he went to the Dorman -- I
19 was thinking his last one wrapped up was Byrnes if I'm not
20 mistaken. So, that would of been before. I think it went
21 Byrnes, Dorman but I'm not a hundred percent sure.

22 Q And that would of been in March of that year?

23 A I believe so. Like latter part of March.

24 Q Okay.

25 A But, again, I'm not a hundred percent on the date nor

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1 the team.

2 Q Let me ask you this.

3 How long has Aiden played baseball?

4 A Four.

5 Q Since he was four?

6 A Yes, sir, I love sports.

7 Q Now, has he played with the same kids growing up?

8 A Yes, sir. So I mean somewhat. He's played -- the two,
9 the two kids that -- we were enrolled originally at, at
10 Byrnes High School. Byrnes High School was -- the, the
11 Byrnes system was the first school system that my kids were
12 enrolled in. My oldest child and Kayla, they graduated out
13 of Byrnes, and then we took Aiden to Spartan High.

14 So, Aiden went over there his freshman year. So, up
15 till that point, Aiden went through the Byrnes system and he
16 was playing, you know, all the Byrnes baseball players.

17 Q Okay.

18 A So, I mean if you're doing your little whatever it is,
19 pee wee baseball, he's with Byrnes kids and then there was
20 two kids from that program that went to Spartan High as
21 well. One was before us. His name's Joey Nelson and then I
22 think the other one was during when, when Aiden moved over
23 there, which was Joey Stribling.

24 Q Okay. And how long have you known those kids?

25 A Well, they've done---

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1 SOLICITOR CUENCA: Your Honor, objection. The
2 relevancy of the line of questioning.

3 THE COURT: All right. I'm gonna let him proceed and
4 he'll lay -- I'm sure he'll connect it in. If not, I'll
5 entertain another motion later.

6 SOLICITOR CUENCA: Thank you, Your Honor.

7 Q Go ahead, sir. I'm sorry.

8 A You asked how long I --?

9 Q How long had you known those kids, the -- that your---

10 A I think they played ball with Aiden ever since he was
11 five, six years old. Joey -- Joe and Joey were older than
12 Aiden.

13 Q So, did you have a good relationship with some of the
14 kids on that team that Aiden was on?

15 A Yes, sir, and their fathers.

16 Q Okay.

17 A Joey and I would go -- I said Joey. I misspoke. Joey
18 Stribling is the father. The son is Conner Stribling. So I
19 should replace Conner with Joey. It's Conner Stribling.
20 Joey Nelson were the two kids. Mike Nelson and Joey
21 Stribling are the two fathers.

22 Q And so did you keep in touch with, with those families?

23 A Yes, sir, I mean I -- I'll still reach out to Joey ever
24 now and then just to check on him. His father asked me to
25 ride Joey around when he had to do career day and I tried

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1 everything I could to talk him out of building homes. You
2 need to get into the medical field.

3 So, yeah, I feel as though I -- my relationship with
4 Joey Stribling, the father of Conner, and Conner, I mean it
5 stopped at the, the baseball field.

6 Q Okay. So, in March of 2018 when, when Aiden left the
7 team, were those two kids still on the team?

8 A Yes, sir.

9 Q Okay.

10 A That -- it would of been their senior years.

11 Q Did you still have a relationship with them at that
12 time?

13 A I did with Joey, yes, sir.

14 Q Okay. Did you communicate with him, interact with him?

15 A I -- yes, sir, I did.

16 Q And---

17 A I send Joey a text, checking on him, how it's going,
18 good luck, you know, stuff of that nature, how did you do.

19 Q And would he communicate back?

20 A Yes, sir.

21 Q So did you go to any baseball games after Aiden got off
22 the team?

23 A Yes, sir.

24 Q Okay. Do you remember which ones you went to?

25 A Barely. They were two away games. So, as previous

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1 testimony talked about earlier, Mr. Booker, he mentioned
2 that I had a meeting with Mr. White. My wife and I met with
3 Mr. White because we were -- we felt as though Aiden
4 wasn't -- he was given an ultimatum and he chose that
5 ultimatum but I still fought for the fact that, in the
6 handbook, handbook read that---

7 SOLICITOR CUENCA: Objection, Your Honor. Irrelevance.

8 THE COURT: All right. I'm gonna let him go into that
9 a little bit. I'll entertain more objections later if they
10 don't connect.

11 THE WITNESS: Well, continue, sir?

12 THE COURT: Yes, sir.

13 A So, went into, went into the handbook and read that,
14 that the, the duties of the kids, what they could and
15 couldn't do. Swearing was a one game suspension.

16 And so that's what we were, we were fighting for that
17 our son shouldn't have been given the ultimatum and that in
18 the, the -- their own handbook was a one game suspension.

19 So, I think it took a couple of days from that time
20 that Aiden chose not to apologize, and by the time we met
21 with Mr. White, I'm, I'm a hundred percent sure that it was
22 two away games. The first away game was with Gaffney and
23 the second away game was with Mauldin. Mauldin I'm not a
24 hundred percent sure. That's just the best of my
25 recollection but the number one game was Gaffney.

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1 I did not go to any of the baseball games at Spartan
2 High School after Aiden chose not to be a part of the
3 program anymore.

4 Q Okay. And the game you went to in Gaffney, that was,
5 I'm assuming, at Gaffney?

6 A Yes, sir.

7 Q And Gaffney's baseball facility, where is that located?

8 A That little Siri tells us. Just punch in it -- and so
9 I, I can't -- it's like a field. I mean nothing's like
10 Spartan High. There's no stadium around. So everything
11 else is just a field.

12 Q Is that in Cherokee County?

13 A Yeah. Yes, sir, it's in Cherokee County.

14 Q And Mauldin, did they play their games at Mauldin High
15 School?

16 A The, the game I attended was at Mauldin High School,
17 yes, sir.

18 Q And that's in Greenville County?

19 A I believe so, yes, sir.

20 Q So after Aiden left the team, the two games you
21 attended, was one at Gaffney in Cherokee County and---

22 A Yes, sir.

23 Q ---one was at Mauldin High School in Greenville County?

24 A I be -- I believe so. I have texts with the gentleman
25 stating I'm gonna come see you tonight I believe.

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1 Q Okay.

2 A That would of been with Joey Nelson. I have texts with
3 Joey Nelson.

4 Q Okay. Let me ask this.

5 Did you have a, a standard place you sat at Gaffney's
6 baseball stadium?

7 A No, sir.

8 Q Did you have a regular place you sat at Mauldin's High
9 school stadium?

10 A No, sir. I remember the Gaffney game. I was
11 sitting -- if you say the, the catcher is at twelve o'clock,
12 I sit probably about one or two. I remember cause a foul
13 ball came over and went right in my wife's face. Caught it.

14 Q Okay. And do you remember where you sat at the Mauldin
15 game?

16 A We sat towards the, towards the end. If I'm, if I'm
17 not mistaken, I'm -- I think they had maybe gray dugouts or
18 something and then their, their seating wasn't even as nice
19 as Gaffney. If you said Gaffney's a field, Mauldin was kind
20 of a pasture it seemed like. I don't know. But the -- it
21 was -- I was slid over towards the exits. So, it would of
22 been on the third base side.

23 Q Okay. Did you have any contact with Coach Brown during
24 the Gaffney game?

25 A No, sir.

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- 1 Q Did you have any contact with Coach Brown during that
2 Mauldin game?
- 3 A No, sir.
- 4 Q Did you call him before the Gaffney game?
- 5 A No, sir.
- 6 Q Did you call him before the Mauldin game?
- 7 A No, sir.
- 8 Q Did you have -- did you call him, text him, or email
9 him after the Gaffney game?
- 10 A No, sir.
- 11 Q Did you call him, text him, email him after the Mauldin
12 game?
- 13 A No, sir.
- 14 Q Did you talk with him at the game?
- 15 A No, sir.
- 16 Q Did you talk with him before the game?
- 17 A No, sir.
- 18 Q Did you talk with him after either of those games?
- 19 A No, sir, I did not.
- 20 Q Did you have any communication or contact with him
21 during either of those baseball games?
- 22 A No, sir, I did not.
- 23 Q And to the best of your recollection that was in April
24 of 2018?
- 25 A The, the Mauldin was a playoff game I believe, yes,

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1 sir, and I think the Gaffney, the Gaffney game was the, the,
2 the -- I think it was the last game that they played of the
3 season and then the, the Mauldin was the first of the -- it
4 might of been the second. I don't know. I don't know.

5 Q And, during that time period, you maintained the
6 relationship with these kids that Aiden had played with?

7 A With, with Joey Nelson, yes, sir. I have several
8 texts, you know, wishing Joey luck, asking Joey how he did,
9 just -- I have several texts. When I say several, I'm
10 thinking maybe 10, 15, something like that --

11 Q Okay.

12 A -- you know, just asking how he did.

13 Q Next want to direct your attention to this meeting or
14 this, this pass-by at Doctor Booker's office at the
15 Spartanburg 7 District Office.

16 A Yes, sir.

17 Q Now, did that happen before the baseball games or
18 after?

19 A I'm not, I'm not sure what you're asking.

20 Q Did, did that -- the time that this -- this time that
21 you were in the same lobby as Coach Brown, was that
22 before---

23 A Okay.

24 Q ---or after the baseball games or do, or do you
25 remember?

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by Mr. Bender

1 A I, I -- I'm thinking it's, it's gonna be during the
2 season because I went to meet with them about retaliation.

3 Q And when you went that day, did you talk with Doctor
4 Booker?

5 A Yes, sir, I did.

6 Q And how long was that conversation?

7 A Maybe five, ten minutes.

8 Q Okay.

9 A If my memory serves, Mr. White was in there as well but
10 I---

11 Q In the same---

12 A I could be---

13 Q ---room with you?

14 A With Mr. Booker?

15 Q Yes.

16 A I, I believe so. I believe so, yes, sir, because if
17 I -- if I'm not mistaken, I think Mr. White is the one who
18 came and got me out of the lobby.

19 Q Okay. Now, during that time, did you talk with
20 Mr. Brown?

21 A No, sir.

22 Q Did you talk with anyone in the lobby?

23 A The receptionist.

24 Q Okay. And what did you say to the receptionist?

25 A I did tell the receptionist that I believe we're here

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1 for the same reason. I did not tell the receptionist that
2 I'm here to get him fired.

3 Q Okay. And that was in 2018, correct, April or May,
4 somewhere around there?

5 A Yes, sir.

6 Q Okay. Now, did you have any other contact with Coach
7 Brown after that?

8 A No, sir. No, that, that would of been it because,
9 after that, cause Aiden -- no, I, I didn't. I don't believe
10 so. And if they say I'm wrong, I'll say that I'm wrong, but
11 I don't believe I did.

12 Q Okay. You didn't contact -- you didn't see him the
13 next year, correct, up until the Los Mexicanos?

14 A No, sir, when, when -- Aiden's junior year, when
15 that -- when he chose not to apologize, that was the last
16 time that we did baseball. That, that was it.

17 So, after those two -- after the two games his junior
18 year that I, I went to the last two of the games, that was
19 it. Aiden, Aiden still played football. He punted for
20 Spartan High.

21 I got a text that he was -- that Brown was moving over
22 as a coach and I sent a text to Coach Miller that I heard
23 that Brown was gonna start being a football coach and --
24 which I have that in texts on my phone outside and Coach
25 Miller said yes, and I, I told Coach Miller that it was kind

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1 of discerning to me and he said that Coach Brown's role
2 would not interfere with---

3 SOLICITOR CUENCA: Objection, Your Honor. Hearsay.

4 THE COURT: I'll sustain the objection.

5 Q Wes?

6 A Sir?

7 Q He played -- he played football that, that year?

8 His---

9 A He, he played---

10 Q I guess that would be -- is that his senior year or is
11 that his junior year?

12 A That was going into his senior year but Aiden played
13 football all four years at Spartan High.

14 Q Okay. And you didn't have any -- even though Coach
15 Brown was coaching football that year, you didn't have any
16 contact with him?

17 A No, sir.

18 Q No run-in's?

19 A No, sir.

20 Q No text messages, no emails?

21 A No, sir.

22 Q Okay. So the next time you see him is at Los
23 Mexicanos?

24 A Yes, sir, that's correct.

25 Q Okay. Now, tell me what happened that day.

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1 A I was with a couple of clients and my wife, and I just
2 saw a look on my wife's face. She was sitting across from
3 me. I saw a look on my wife's face and I looked to my left.
4 Brown walked in.

5 We finished having our lunch. I gave the keys to my
6 clients. Told them y'all can roll on if you want to. I'm
7 gonna be a minute.

8 Walked over there to the table, and in a disarming way,
9 I shook Mr. Miller's hand. I looked at Brown and I told
10 Brown fuck you, fuck you, fuck you. The man to my left, I
11 didn't know his name at the time, was -- I can't remember
12 his name now. Tom -- Mr. Thomas.

13 He said really? Is this the, is the place?

14 I mean nobody really said anything. Brown never looked
15 at me. Brown stayed forward the whole time there. Caldwell
16 never did, did say anything and I, I did tell Brown I'll
17 catch you slipping with your kids, and I'll tell them the
18 same bullshit you told mine, and I said if you try to grab
19 me, I'll get on top of you. That's what I said.

20 Stand behind it then. Stand behind it now --

21 Q Now why were you---

22 A -- and I rolled on out.

23 Q Why were you angry with Mr. Brown?

24 A The way he and his staff bullied my kid, things that
25 they said in a group text message.

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1 SOLICITOR CUENCA: Objection, Your Honor.

2 If we may approach?

3 THE COURT: All right. Y'all want to approach.

4 (WHEREUPON, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: All right. Ladies and gentlemen, this is
7 one of those times I have to take up a matter of law outside
8 of your presence. Please do not have any discussions among
9 yourselves about anything involving the case. We'll get you
10 back just shortly.

11 Please retire back to the jury deliberation,
12 deliberation room.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Okay. We had a brief, brief bench
16 conference. The State was -- issued an objection to the
17 testimony that was being elicited.

18 Do you want to put it on the record?

19 SOLICITOR CUENCA: Yes, Your Honor.

20 The State objects to the testimony of the defendant as
21 to the text messages. That is in reference to the incident
22 of ass clown where it is in relation to Aiden.

23 Your Honor, according to Rule 403, that is only going
24 to confuse the issues. It's going to mislead the jurors.
25 That is specifically related to Aiden and you've heard the

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1 motion prior to the defense case in chief. That was not
2 going to be evidence or testimony that was going to be
3 elicited, Your Honor.

4 So that is the reason that the State objects to this
5 line of testimony.

6 THE COURT: Okay. Then I'd ask at the bench
7 conference, I asked defense if he intended to elicit
8 testimony from the witness that pertained to those two
9 references that we covered previously which was the
10 reference to the ass clown and to the term fag.

11 Do you intend to reference -- elicit that testimony
12 from this witness?

13 MR. BENDER: No.

14 THE COURT: Okay. All right. What we're gonna do is,
15 as I expressed at the bench conference, I, I think the
16 defense does have -- I think the defense can ask this line
17 of questioning with some guardrails.

18 Again, this is not gonna be a trial as to whether or
19 not the, the son has done something wrong or, or right, and
20 it's not a trial as to whether or not the school district or
21 the coach's response to whatever the son did was appropriate
22 or not appropriate.

23 I think the jury's heard information that now they can
24 conclude that there were issues between the parent and the
25 coach. You know, we don't know -- I, I do not believe that

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1 it's -- that this jury needs to know the integral details of
2 conflict between the parent and the coach.

3 So, if he will ask his question and move on from this
4 question, I'm gonna allow the question to be, to be stated.

5 SOLICITOR CUENCA: May I put one more thing on the
6 record, Your Honor?

7 THE COURT: Uh-huh. (Affirmative).

8 SOLICITOR CUENCA: Further, Coach Brown was not in any
9 way related to this incident, Your Honor, and that's the
10 reason that the State thinks it is misleading the jurors.

11 THE COURT: Okay.

12 SOLICITOR CUENCA: Thank you, Your Honor.

13 THE COURT: Thank you for brining that out. That's
14 something that you can do on, on cross-examination, point
15 that out to the jury. I, I still think that it's
16 appropriate for the defense to ask this question and then
17 move on.

18 SOLICITOR CUENCA: Thank you, judge.

19 THE COURT: Okay.

20 All right. Let's bring the jury back in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: Yes, sir.

24 MR. BENDER: Thank you, Your Honor.

25 CONTINUED DIRECT EXAMINATION

Wesley Kyzer - Direct examination
by Mr. Bender

1 BY MR. BENDER:

2 Q Now, I think previously you were answering a question
3 about why you were upset and why you said that to him,
4 correct?

5 A Yes, sir.

6 Q Okay. And it stemmed from your son's involvement with
7 the baseball team, correct?

8 A It, it -- from how my son was treated by the coaching
9 staff of the baseball team, yes, sir.

10 Q Okay. Well, let me ask you this now.

11 When you said that to him, did you mean that as a
12 threat?

13 A No, sir, he didn't threaten to kill my kid. He just,
14 you know, he just used words, he and his staff did, and I
15 just wanted to basically let them know what if I used them
16 words on your kid, how would you feel.

17 If I wanted to grab that man at that restaurant I could
18 of grabbed that man. Not, not saying that that's nothing
19 that my wife and I have ever done at District 7 had anything
20 to do with violence.

21 The man said I'm a tall man. My mama's 5'4". I mean I
22 can't help my size. I can choose my words and I chose not
23 to threaten that man in a physical way.

24 Q When you talked with him, did you intend to threaten
25 him?

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1 A No, sir, I was very direct. I said fuck you, fuck you,
2 fuck you. I'll catch you slipping with your kids. I'll
3 tell them the same thing that you told mine. If you try to
4 grab me, I'll get on top of you. Not at anytime did I
5 threaten him.

6 Q Now explain the last part to me.

7 A What do you mean?

8 Q The kids, when you say the kids, tell me, tell me what
9 you meant by that.

10 A Call his kids the name that he had his staff called
11 mine.

12 Q Did what happen inflict pain on your family?

13 A Sure it did.

14 Q Did it have emotional turmoil within your family?

15 A I know it -- we're not supposed to talk about it but
16 yes, it did.

17 Q Okay. At any point were you intending violence upon
18 Mr. Brown?

19 A I have learned there's worse things than, than violence
20 with kids. No, my intent was never violence cause I'm
21 capable of telling somebody I'll stomp your fucking ass if I
22 want to and I didn't do it. I just wanted to let him to
23 know the words and the pain of hearing somebody talking to
24 your people the way you talked to mine. It had nothing to
25 do with violence.

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by Mr. Bender

1 Q Did you intend to threaten any of the other coaches
2 that were sitting there?

3 A No, sir, I didn't pay them much attention.

4 Q When you said it, were you calm?

5 A I, I believe I was, yes, sir.

6 Q Were you standing over their table trying to intimidate
7 them?

8 A No, sir. No, their -- they have that glass or what
9 have you as -- Coach Miller made here. There was Caldwell,
10 Brown, Thomas, Thomas, Miller. I walked, I walked up to the
11 table, took -- shook Miller's hand and I was standing
12 towards Miller more so than anything.

13 But there's video footage from that, that incident that
14 shows exactly how long I was there, where I stood.

15 Q How long, how long were you there at the table?

16 A At their table?

17 Q (Mr. Bender nods affirmatively.)

18 A Maybe 30 seconds, 40 seconds. Just long enough to say
19 what I wanted to say.

20 Q And so, afterwards, did you leave the restaurant?

21 A Yes, sir.

22 Q Did you have a---

23 A I, I went to the, to the cash register. My wife was
24 still there at the cash register. So, I went -- waited for
25 her to finish up the transaction and spoke to Moses. Moses

Wesley Kyzer - Direct examination
by Mr. Bender

1 is the son-in-law of the owner. Spoke to him for a brief
2 moment and, and left.

3 Q Did you ever have any other contact with them?

4 A No, sir.

5 Q Okay.

6 A These court proceedings is the first time that I, I
7 seen him since that time, what, two and a half, two and a
8 half years ago.

9 Q Now, did Officer Johnson come out to your house later
10 day?

11 A He did.

12 Q Was that the same day?

13 A Yes, sir, it was. Right around five o'clock or so, a
14 little after maybe.

15 Q And what did Officer Johnson tell you?

16 A Officer Johnson came out to tell me that he was serving
17 a no trespass, no trespass for District 7 --

18 Q Okay.

19 A -- on an incident that happened at Los Mexicanos. I
20 told him there was no incident. I -- actually I don't think
21 he said incident. I think he said encounter or something to
22 that effect and I, I told him there's, there's no issues, no
23 problems. I told the boy fuck you. I think that's on tape
24 as well.

25 Q Did you ever intend to threaten him?

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by Mr. Bender

1 A Threaten who?

2 Q Brown when you told him that.

3 A No, sir.

4 Q Okay. What did you tell Officer Johnson?

5 A I asked officer -- I, I didn't tell Officer Johnson
6 anything. I asked Officer Johnson if Mr. Brown said that I
7 threatened him in any way and he said no. It's on that
8 video. He said that he basically stated what I said.

9 I did tell, I did tell Mr. Johnson that he could send a
10 message for me and he said I don't know if I could, sir, I
11 think is what he said. I said tell that mother fucker I
12 said fuck you again and he laughed or chuckled a little bit
13 and he said I don't think I can do that and then we just had
14 a conversation.

15 Q Okay.

16 A And then he did turn off his body cam and then he, he
17 briefed me on a few things and then he turned his body cam
18 back on and then he asked me the questions that he briefed
19 me about and then we had more dialogue.

20 Q And when y'all were talking, what all did y'all talk
21 about?

22 A Talked a little bit about Aiden. Talked about things
23 that had happened with Aiden. I told him that---

24 Q Don't---

25 A I, I---

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by Mr. Bender

1 Q Listen.

2 A I'm---

3 Q What else did you talk about besides Aiden?

4 A Talked about it had nothing to do with the school.

5 Wasn't on school property. I did, I did tell him that --

6 cause I asked him if -- I think I said that if, if he said

7 that I threatened him and he told me no. I told him that

8 I -- what I told -- what I said at the restaurant. You

9 know, I told him that I'd catch his -- catch him slipping

10 with his kids and I'd tell them what he told mine.

11 Q Did you explain it to him --

12 A I did.

13 Q -- what that meant?

14 A Yes, sir.

15 Q And how did you explain that to him?

16 A Told him the same bullshit that he gave my kid I'd give
17 his.

18 Q And what's that mean?

19 A Just the, the words.

20 Q Okay.

21 A Words, words mean something. You know, they -- I'm 49

22 years old. I'm still my mama's baby. You know, they still

23 my children and there's nothing -- you know, people, people

24 feel as though they can say whatever it is that they want to

25 to your kid. But when you tell them all right, I'll say it

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1 to yours, they tighten up the chains real quick.

2 It's never about violence. Never. It's words and
3 words do mean something.

4 Can you ask my daughter to step out?

5 THE COURT: All right. Ladies and gentlemen, we're
6 gonna take a short recess. Please retire back to the jury
7 deliberation room. Do not have any discussions among
8 yourselves about anything involving this case.

9 Go with the bailiff.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Mr. Bender, I am going to ask you to remove
13 everyone associated with your case from this courtroom if
14 they can not control their emotions.

15 MR. BENDER: Yes, sir.

16 THE COURT: Inform your witness that he shall not refer
17 to anyone in the audience of this courtroom ever during his
18 testimony.

19 MR. BENDER: Yes, sir.

20 THE COURT: This Court controls the receipt of
21 testimony before this jury, not any witness.

22 This Court is going to step down because this witness
23 is crying. Obviously he needs to gain his composure.

24 Sir, you may step down but you can not have any
25 discussions with anyone about the substance of your

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1 testimony.

2 Advise this Court when your husband has regained his
3 composure.

4 I am going to step down.

5 THE WITNESS: I apologize.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: All right. Sir, if you want to retake the
8 witness stand. I just need to remind you that you remain
9 under oath.

10 Do you understand that?

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you, sir.

13 (WHEREUPON, the witness returns to the stand.)

14 THE COURT: Lawyers approach a moment.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: Okay. Let's bring the jury back in.

17 Just give me a moment, Ben.

18 THE BAILIFF: Sir?

19 THE COURT: Give me one---

20 THE BAILIFF: Yes, sir.

21 THE COURT: Mr. Kyzer, my comments to you---

22 THE WITNESS: Yes, sir.

23 THE COURT: ---is that you can not talk to people---

24 THE WITNESS: Okay.

25 THE COURT: ---out in the audience.

Wesley Kyzer - Direct examination
by Mr. Bender

1 THE WITNESS: I apologize, Your Honor. Yes, sir.

2 THE COURT: I understand this is an emotional testimony
3 for you but don't project outward like that.

4 Okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: If you have -- if you see anything like
7 that that you say think somebody needs to be removed, ask
8 your lawyer to approach you.

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: I think that's appropriate.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you, Mr. Kyzer.

15 Yes, sir.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Bring them in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: Yes, sir.

21 MR. BENDER: Thank you, Your Honor.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. BENDER:

24 Q Mr. Kyzer, in this conversation with Mr. Johnson, was
25 it cordial?

Wesley Kyzer - Direct examination
by Mr. Bender

1 A I believe so, yes, sir.

2 Q Okay. Any ill will or bad feelings when you talked
3 with Mr. Johnson?

4 A No, sir, I don't believe so. I mean he, he showed --
5 he was pleasant, showed concern, showed understanding. I
6 mean I, I -- my intersection with him the whole time, it was
7 fine.

8 Q I mean was that -- obviously besides the fact that he's
9 delivering a no trespass, correct?

10 A Well, I mean that had nothing to do with him.

11 Q Right.

12 Now, again, tell me about what -- the meaning of, of
13 what you said to Coach Brown.

14 what, what was your intent with it?

15 A My, my intent, it's, it's all words. It's -- again --
16 and I tell it like this. Excuse me.

17 Like I told the officer, I have no, no desire to harm
18 that man and I think that, on the video, it states -- I, I
19 tell him I choose not to harm that man. I just want that
20 man to hear somebody talk to his people like he talked to
21 mine, let him feel the same pain and suffering that my wife
22 and I felt and the helplessness that we felt. And I, I
23 can't say that he agreed or disagreed -- he didn't disagree.
24 I just -- I don't know if he said I understand. I don't
25 know that.

Wesley Kyzer - Direct examination
by Mr. Bender

1 But it kind of ended with that and he -- you know, he
2 said he had to go. I think he -- well, I know he said
3 something about church, his wife would get on him, and my
4 wife was out there at the time. And I said, you know, we're
5 not about busting him up, you know. So, head on.

6 Q Thank you, sir.

7 That would be my questions, Your Honor.

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION

10 BY SOLICITOR CUENCA:

11 Q Good afternoon, Mr. Kyzer.

12 A Good afternoon.

13 Q How tall are you, sir?

14 A Six foot.

15 Q Six foot.

16 A Six, 6'1", something like that.

17 Q Okay. Now, you reference in your testimony, testimony
18 earlier about some texts but Coach Brown was not the one who
19 sent that text.

20 Isn't that true?

21 A I know Coach Brown was included on the text. So, it
22 was a string of texts and Coach Brown never stopped or said
23 let's not talk about this person this way.

24 Q And, again, the question is Coach Brown was not the one
25 that sent the texts. It's a yes or no question---

Wesley Kyzer - Cross-examination
by Solicitor Cuenca

1 A Okay.

2 Q ---Mr. Kyzer.

3 A At what part?

4 Q He did not send---

5 A Because he, he did send a threat on that text.

6 Q But the text that you referenced was not the one
7 that -- Coach Brown did not send that.

8 Is that correct?

9 A I think I don't understand your question.

10 Q Okay.

11 A I don't understand it then because there's, there's a,
12 a conversation that's going on. So, if there's a, a text
13 with a conversation with me, you, and your, your partner,
14 she's says something, you said something, I said something.
15 Then it's, then it's still a text with all of us talking.

16 Q The text that you have issue with, Mr. Kyzer, Coach
17 Brown was not the one that sent that text.

18 Isn't that true?

19 A I guess I'm, I'm gonna go with I don't understand then.

20 Q Okay. Let's move on.

21 So, you testified that on September 24th, 2018, you
22 were at the Mexican restaurant, Los Mexicanos, correct?

23 A That's correct.

24 Q And that you approached the table where Coach Miller,
25 Coach Thomas, Coach Brown, and Coach Caldwell were sitting.

Wesley Kyzer - Cross-examination
by Solicitor Cuenca

1 Is that correct?

2 A That's correct.

3 Q And that you told Coach Brown fuck you, correct?

4 A That's correct.

5 Q Not just once or twice but three times.

6 Is that correct?

7 A Yes, that's correct.

8 Q And you threatened to kill him, didn't you?

9 A That is one hundred percent false.

10 Q When Deputy Johnson came to serve a no trespass notice

11 --

12 A Uh-huh. (Affirmative).

13 Q -- you testified that you sent a message with him.

14 Is that correct?

15 A I told him --.

16 Q Or to -- if he could send a message?

17 A That's correct.

18 Q Is that correct?

19 A That's correct.

20 Q And the message that you wanted to send was can you
21 tell that mother fucker fuck you again.

22 A That's correct.

23 Q Is that correct?

24 A One hundred percent correct, yes.

25 Q And you also told Deputy Johnson that you told Coach

Wesley Kyzer - Cross-examination
by Solicitor Cuenca

1 Brown fuck you, I'll catch your ass slipping one of these
2 damn days.

3 Isn't that true?

4 A I told him my explanation of what I said at the
5 table---

6 Q Now, is this a yes---

7 A ---because I -- I'm sorry.

8 Q This is just a yes or no question, Mr. Kyzer.

9 Did you or did you not tell Deputy Johnson that you
10 told Coach Brown "fuck you, I'll catch your ass slipping one
11 of these damn days"?

12 A I don't know if that's the exact thing that I told him
13 but I do know that there's video and I'll agree one hundred
14 percent to that video and what it states that I said to
15 officer Johnson at that time.

16 Q Do you need to -- would it help to recall your memory
17 if you watched that, Mr. Kyzer?

18 A Oh, yes, one hundred percent.

19 SOLICITOR CUENCA: Okay. Your Honor, if we may
20 approach?

21 (WHEREUPON, a bench conference was held out of the
22 hearing of the jury at this time.)

23 SOLICITOR CUENCA: Your Honor, if I may, at this time,
24 play it?

25 THE COURT: All right. You got it set up to, to the

Wesley Kyzer - Cross-examination
by Solicitor Cuenca

1 part we're looking for?

2 SOLICITOR CUENCA: This is it, Your Honor.

3 THE COURT: All right. You sure the audio's gonna
4 work?

5 SOLICITOR CUENCA: I don't -- I am not sure, Your
6 Honor.

7 (WHEREUPON, a portion of a video was played at this
8 time.)

9 Q So, Mr. Kyzer, did you -- isn't it true you told Deputy
10 Johnson that you told Coach Brown fuck you, I'll catch your
11 ass slipping one of these damn days?

12 A I agree to that one hundred percent but what you're
13 leaving off is my explanation of my words that followed it.
14 So, yes, ma'am, I agree that I said that but there's more to
15 it. I gave a definition of what I meant by it, and it was
16 not anything to do with violence.

17 SOLICITOR CUENCA: One moment.

18 (Pause.)

19 SOLICITOR CUENCA: I have no further questions, Mr.
20 Kyzer.

21 THE COURT: Any redirect limited to what she went into?

22 MR. BENDER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. BENDER:

25 Q Do you remember what you said to explain it?

Wesley Kyzer - Redirect examination
by Mr. Bender

1 A Yeah, what, what I said at the restaurant that, you
2 know, I'll say the same things to your people that you said
3 to mine. That's, that's it.

4 Q And do you remember---

5 A And, and I have a -- I'm sorry. I didn't mean to
6 interrupt.

7 Q Do you remember exactly what you said in your
8 explanation?

9 A That I'd catch your -- catch you slipping and I'll tell
10 your kids the same bullshit you told mine. And then, later
11 on, I don't know if -- I think that was the first part of
12 the video. So, there's, there's two parts.

13 There's a six minute track and a 10 minute track. And
14 the, the reason why there's a gap in the six and the 10 is,
15 again, my wife and I got emotional and Mr. Johnson shut his
16 cameras off and he allowed---

17 Q Mr. Kyzer, hold on one minute.

18 A Okay.

19 Q The, the act -- the, the question---

20 A Yes, sir.

21 Q ---was do you remember how you explained -- so you just
22 saw the, the seven second clip about what you said, correct?

23 A Yes, sir.

24 Q And the, the question is do you remember how you
25 explained it?

Wesley Kyzer - Redirect examination
by Mr. Bender

1 A There's more video. So, I mean one hundred percent
2 I'll agree to whatever's on it -- what's after. So, I mean
3 I -- right now I'm, I'm drawing a --.

4 Q You're drawing a blank right now?

5 A Yes, sir.

6 Q Do you think if you were able to view the video that
7 that might refresh your recollection on what you said that
8 day?

9 A Yes, sir, one hundred percent.

10 MR. BENDER: Approach, Your Honor?

11 THE COURT: Lawyers approach.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 Q Mr. Kyzer, let me ask you this.

15 A Yes, sir.

16 Q Does the explanation of that have to do with you
17 intending violence on either Mr. Brown or his family?

18 A Yes, sir.

19 Q The explanation of it talks about whether you intended
20 violence?

21 A No, I mean it, it explains that I do not. I did not
22 intend violence on him.

23 Q Okay. And he---

24 A And---

25 Q Either him or his family?

Wesley Kyzer - Redirect examination
by Mr. Bender

1 A That's, that's correct.

2 Q Okay.

3 A I, I gave a good, thorough definition of what my
4 meaning was, what my intent was. I did it at the first few
5 moments after I asked about the message, and then I did it,
6 like I said, there's two clips, on the back end. I gave --
7 I -- again, I reiterated.

8 You know, I do not and I specifically said I do not
9 wish harm on that man. I do not wish death on that man. I
10 choose not to harm that man and I believe Mr. Johnson said
11 okay.

12 And I could be wrong with that but it's on tape one
13 hundred percent of what I said and my definition, my meaning
14 behind it.

15 MR. BENDER: Okay. That's all my questions, Your
16 Honor.

17 THE COURT: Thank you, sir. You may step down. Watch
18 your step as you're stepping down.

19 THE WITNESS: Yes, sir.

20 THE COURT: You may return back to counsel table.

21 Ladies and gentlemen, give me just one moment. Let the
22 witness return back to his chair.

23 (Pause.)

24 THE COURT: All right. Ladies and gentlemen, thank you
25 for your time and your patience today while we went through

1 the presentation of the testimony and I -- again thank you
2 also for your patience while we did the back and forth.
3 Hopefully you got a lot of cardio moving back and forth from
4 the jury box and in the jury, jury deliberation room.

5 But they're just those moments during the trials when I
6 have to have discussions with the lawyers that have to be
7 with -- outside of your presence and that's why we're, we're
8 doing that.

9 Given the hour that it is, we're gonna take an evening
10 break. Remind you of my ongoing instruction to you.

11 Do not have any discussion with anyone about anything
12 involving the case. Do not try to do any type of
13 independent research or investigation into the case. And
14 what I'm gonna ask, if you would, to be back in the jury
15 deliberation room by 9:30 in the morning and we'll try to be
16 prompt. And hopefully we won't have another alarm in the
17 parking deck, you know, that will delay your entry into the
18 building. But do try to be into the jury deliberation room
19 by 9:30 in the morning.

20 Thank you very much. You may go with the bailiff.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury panel.)

23 THE COURT: Okay. Does the State wish to briefly argue
24 their motions in limine in regards to the videos?

25 SOLICITOR CUENCA: Yes, Your Honor.

1 THE COURT: Okay.

2 SOLICITOR CUENCA: If, if I may?

3 THE COURT: Uh-huh. (Affirmative).

4 SOLICITOR CUENCA: Regarding the BWCs, they're two of
5 Deputy Johnson's body cam videos and one of officer
6 Trammell.

7 Your Honor, those should not be admitted into evidence
8 and should be excluded based on Rules of Evidence 801. They
9 are hearsay, Your Honor, and there are no exceptions to that
10 hearsay rule on why they should be admitted. And so that's
11 right -- that's the reason the State would ask that those
12 not be admitted into evidence if that is the intent of the
13 defense.

14 In regards to the surveillance of the Mexican
15 restaurant, Los Mexicanos, from the -- what the State
16 understands, there's not going to be any witness to testify
17 as to the -- set up the foundation or the authentication of
18 the surveillance.

19 So, for those reasons, we're also asking that that be
20 excluded and not be admitted into evidence as part of the
21 defense case.

22 Thank you, Your Honor.

23 THE COURT: So you're talking about three things?

24 You're talking about two body cams -- three body cams
25 and a Mexican restaurant video?

1 SOLICITOR CUENCA: Yes, Your Honor.

2 THE COURT: Okay. Yes, sir.

3 You intend to present all four of those?

4 MR. BENDER: There was three, the body cameras, the
5 Johnson -- Johnson has the two and then Trammell has one.

6 THE COURT: What -- she's counting the Mexican
7 restaurant as a separate video.

8 MR. BENDER: That's a -- that's the -- there's, there's
9 no---

10 THE COURT: That one I don't have to worry about.

11 MR. BENDER: No.

12 THE COURT: Okay. We won't worry about the Mexican
13 restaurant.

14 MR. BENDER: Those, those three, Your Honor. One is --
15 based upon the testimony that came out, I think part of it
16 would probably be impeachment purposes for the extrinsic
17 evidence based upon what they testified to earlier and also
18 I'd ask for the rule of completeness on Johnson's because
19 they already showed some of it.

20 So, I'd ask that the remainder of that video be shown.

21 THE COURT: Are you intending to -- who are you
22 intending to call for witnesses?

23 SOLICITOR CUENCA: Trammell and Johnson.

24 THE COURT: So you would actually call the officers to
25 present the body cams?

1 MR. BENDER: Yes, Your Honor.

2 SOLICITOR CUENCA: If I may respond, Your Honor?

3 THE COURT: Yes, ma'am.

4 SOLICITOR CUENCA: Regarding to impeachment, Mr. Bender
5 should have impeached while Ms. -- Deputy Johnson was on the
6 stand, Your Honor, and it is not the proper conduct to
7 impeach after the testimony has been given. So that is not
8 a proper reason to admit the BWC, and further, Your Honor,
9 there is nothing to impeach.

10 Deputy Johnson did not say anything that was contrary.
11 His testimony was there were some instances that he did not
12 recall, which is not any reason to impeach someone, Your
13 Honor.

14 Further, in regards to the rule of completeness, that
15 does not apply in this case, Your Honor. I was asking the
16 defendant if he needed to refresh his recollection of that
17 specific statement. He said he did. That is the reason
18 that I presented that. Otherwise, there is no reason to
19 admit the BWC, Your Honor.

20 Thank you.

21 THE COURT: Any response?

22 MR. BENDER: Your Honor, you've, you've been present
23 during this and what I would say is that -- when I put them
24 back on the stand, if their testimony is, is not what, what
25 it is in the body cam footage, I very well could do it on

1 impeachment.

2 what I would ask is that you maybe take this proffer of
3 the videos to you and you can look at them in camera and
4 make the decision.

5 THE COURT: Yes, ma'am.

6 SOLICITOR CUENCA: Your Honor, the defendant --
7 Mr. Bender has already had the opportunity to cross-examine
8 the deputy and the officer. The only reason that he would
9 want to put them on the stand again just to admit the BWCs,
10 Your Honor, if, at that point, they said something contrary
11 to their BWC, then, at that point, it would be proper to
12 impeach.

13 But his very purpose of bringing both of them to
14 testify, according to him, is to admit those BWCs, Your
15 Honor. It's not to try to impeach them with the BWCs.

16 And so, again, because it, it is hearsay, and there is
17 no exclusion, and there's no rule to -- that would not be to
18 exclude it from the hearsay, then that is the reason that
19 the State is asking that they not be admitted into evidence,
20 Your Honor.

21 THE COURT: Thank you.

22 Anything else?

23 MR. BENDER: No, Your Honor.

24 THE COURT: Okay. I think the State is right in
25 regards to the videos that, that you are suggesting or

1 wanting to introduce for impeachment purposes.

2 The witnesses have already testified and I think the
3 better -- the appropriate use of those videos would of,
4 would of been to do so at the time that they testified.

5 You can still call the witnesses as a part of your case
6 but I don't think there is an impeachment foundation to use
7 those videos.

8 Now, on the, on the video that has been used in
9 cross-examination of your client, I think I do have to view
10 that video to determine whether or not the rule of
11 completeness would require that complete interview to be
12 published to the jury. So, I do need to see that one based
13 on the rule of completeness.

14 Don't know what my ruling would be cause I haven't seen
15 it. So I think I've got to see it.

16 Do y'all have that for me to take a look at?

17 SOLICITOR CUENCA: Your Honor?

18 MR. BENDER: I've, I've got it. It's actually -- it's
19 two parts. It's the same interview but he, as he testified
20 to earlier, he cut his body camera off while he's doing it
21 and then cut it right back on.

22 So, there's actually -- that's the two we're talking
23 about with Johnson.

24 THE COURT: How long is that?

25 MR. BENDER: Yeah, it's 16 total.

1 THE COURT: Okay.

2 MR. BENDER: And I would -- I mean I would allege, even
3 with the rule of completeness, at the 4:45 mark of the first
4 video, that the rest of it is, is things that we -- you've
5 already ruled can't be talked about.

6 THE COURT: Okay. Help me understand.

7 Well, what -- so what is it that you're telling me that
8 I need to look at?

9 SOLICITOR CUENCA: The, the rest of it.

10 THE COURT: After 4:45, the rest?

11 MR. BENDER: So, 4:45 to six minutes. So it's just a
12 minute and 15.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. BENDER: Okay. It -- it's -- basically the only
15 thing talked about in that minute and 15 is, is the
16 attempted suicides. So -- and then it picks back up at the
17 10 minute -- the next one, the 10 minute one, I would allege
18 has everything that's admissible.

19 THE COURT: So you're wanting to start listening to it
20 at 10?

21 MR. BENDER: No, no. At -- so the, the first video you
22 had listened to from the beginning to 4:45.

23 THE COURT: Okay.

24 MR. BENDER: The second video you would listen from one
25 all the way through to 10.

1 THE COURT: And I'm gonna be able to work this?

2 MR. BENDER: I think so.

3 THE COURT: All right.

4 MR. BENDER: It should be listed under additional
5 discovery two.

6 THE COURT: All right. We'll come back.

7 Thank you very much.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: All right. We'll go back on the record.
10 Thank y'all for the opportunity of, of reviewing the,
11 the officer's video.

12 We're looking at the, the issue of the rule of
13 completeness. I've looked at them. The best that I believe
14 that a rule of completeness ruling that would allow use of
15 the videos would apply to, and I'm gonna call it the first
16 video, would be the, the video where the officer's arriving
17 versus the video where the officer's departing.

18 That video, the best that I would consider would be
19 until about, and these are my numbers, not exact, give or
20 take five, 10 seconds one way or the other, is where there's
21 a -- beginning of a discussion about the son. I, I think
22 we -- according to my rulings, we directed that's not gonna
23 come in and that's when the, the defendant gets into the
24 discussion with the officer about you know what's happened
25 and he starts giving a lot of the details about it. That,

1 that I would not allow in.

2 And so the best I could do under the rule of
3 completeness would be about two minute and 27 seconds.

4 So, y'all take a look at it and let me know. Given the
5 hour that it is, we're not gonna present it right now.
6 we -- the jury's gone home.

7 So, we'll take the rest of this issue up in the morning
8 if there's any more issues to be taken up about this
9 particular issue.

10 So -- but thank y'all for the opportunity to look at
11 those.

12 Okay. I'll see y'all about 9:30.

13 MR. BENDER: Thank you, Your Honor.

14 SOLICITOR CUENCA: Yes, Your Honor.

15 THE COURT: Okay.

16
17 (WHEREUPON, Court was in recess for the evening.)
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25

wednesday, March 9th, 2022

1
2
3 THE COURT: Okay. Any updates or anything y'all want
4 to tell me?

5 We're still waiting on one of the jurors.

6 SOLICITOR CUENCA: Nothing from the State, Your Honor.

7 THE COURT: Your witness is here?

8 MR. BENDER: One, one witness, Your Honor, and she's
9 present.

10 THE COURT: Okay. All right. We can't do anything
11 until we get the last juror.

12 MR. BENDER: Of course.

13 THE COURT: Okay. All right. Then we'll step down and
14 hopefully the juror will be here soon.

15 Thank you.

16 SOLICITOR CUENCA: Thank you, judge.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: Okay. I am now told that all the jurors
19 are here.

20 Anything before we bring them in?

21 MR. BENDER: Nothing, Your Honor.

22 SOLICITOR CUENCA: Nothing from the State, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: Good morning, ladies and gentlemen.
2 Is the defense ready to present their next witness?

3 MR. BENDER: Yes, Your Honor.

4 Aliena Kyzer.

5 THE COURT: Just come right up here and let the Clerk
6 of Court swear you in.

7 ALIENA KYZER, being first duly
8 sworn, testified as follows:

9 THE COURT: Yes, sir.

10 MR. BENDER: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. BENDER:

13 Q Please state your name for the jury.

14 A Aliena Kyzer.

15 Q And, for the court reporter, can you spell your first
16 name?

17 A A-L-I-E-N-A.

18 Q Thank you, ma'am.

19 Now where do you live?

20 A I live at 215 California Avenue in a motor home.

21 Q Okay. And who do you live with?

22 A My husband, Wesley Kyzer.

23 Q Okay. How long have you and Wesley been married?

24 A Thirty years.

25 Q Okay. And family?

Aliena Kyzer - Direct examination
by Mr. Bender

1 A Yes, we have three children. Our son, Wesley, is 29.
2 our daughter, Kayla, 24, and then our son, Aiden, is 21.

3 Q Okay.

4 A And then we have --

5 Q Go ahead.

6 A -- four grandchildren.

7 Q Okay. And how are you employed?

8 A I'm a business analyst with Optum.

9 Q And how long have you been employed with them?

10 A 23 years.

11 THE COURT: Ma'am, if you would, see if you can slide a
12 little bit closer.

13 (WHEREUPON, the witness complies.)

14 THE COURT: There you go. Thank you.

15 Q Now, do you know the -- Coach Brown?

16 A I do.

17 Q Okay. And have you ever met him?

18 A I have.

19 Q Okay. And when did you first meet him?

20 A I think probably the in person would be when we had
21 issues with our son. Prior to that it was just when he took
22 over the baseball program and had like an all parent
23 meeting.

24 Q Okay. Now, when you say the -- there, there was issues
25 with your son, is this this meeting with Mr. Stevens and

Aliena Kyzer - Direct examination
by Mr. Bender

1 Mr. Staley?

2 A Right. So there -- I had taken my son to a doctor's
3 appointment and he let me know that there had been texts
4 that had been sent out to the entire team that made---

5 SOLICITOR CUENCA: Your Honor, objection.

6 THE COURT: I'll sustain the objection.

7 MR. BENDER: Thank you.

8 The meeting, the meeting was where you first met him
9 though in person, right?

10 A Correct. Yeah, it was Stevens, Staley, Brown, my
11 husband, Aiden, and myself.

12 Q Okay. And were you present for the duration of that
13 meeting?

14 A I was.

15 Q Okay. And at any point in that meeting was anybody
16 threatened?

17 A No.

18 Q Did you threaten anybody?

19 A No.

20 Q Did Wes threaten anybody?

21 A No.

22 Q Did Aiden threaten anybody?

23 A No.

24 Q Did either Mr. Staley or Mr. Brown threaten anybody?

25 A No.

Aliena Kyzer - Direct examination
by Mr. Bender

1 Q Okay. So that meeting happened and that meeting
2 happened in 2018 or 2017?

3 A 2017.

4 Q Now, there's been talk, and you haven't been in the
5 courtroom, but after Aiden left the baseball team, did you
6 go with Wesley to any baseball games?

7 A Yes.

8 Q Okay. Which games did you go to?

9 A From what I recall, we went to two away games. One was
10 in Mauldin and one in Gaffney. After he chose to leave the
11 team I refused to go to any more home games because, given
12 the circumstances around it, I wasn't gonna contribute any
13 more financially to their program.

14 Q Now, did you go to all the games when he was on the
15 team?

16 A Yes. Unless -- I mean there may -- if I had work or
17 something like that, I might of missed one or two, but if he
18 was there I was there.

19 Q Okay. And are you positive that those are the only two
20 games that you went to after he was no longer on the team?

21 A Yes.

22 Q Okay. And was Wesley there with you?

23 A He was.

24 Q Okay. Now, did y'all talk to the coach at those games?

25 A No.

Aliena Kyzer - Direct examination
by Mr. Bender

1 Q Did you approach the coach at those games?

2 A No.

3 Q Did you make any contact with the coach---

4 A No.

5 Q ---at those games?

6 okay. Did you make any contact with anybody on the
7 coaching staff at those games?

8 A No.

9 Q With any administrator at those games?

10 A No.

11 Q Okay.

12 A We were just there to support a couple of players that
13 our son had played with prior to even Spartan High.

14 Q Okay. Now, in 2019, at Los Mexicanos, were you there
15 at that restaurant?

16 A I was.

17 Q Okay. And so tell me what happened that day when you
18 were at the restaurant?

19 A My husband called, asked if I wanted to go to lunch.
20 He was meeting some clients who were looking to have him
21 build a house for them in Gaffney.

22 I got there. I got us a table. They, they came. He
23 came with the clients. We had lunch. I know at one point
24 Aiden came in, dropped in. Aiden left.

25 After he had left, while we were still there with the

Aliena Kyzer - Direct examination
by Mr. Bender

1 clients, Brown came in with three other people, walked
2 passed us and, and sat. We continued eating, talking with
3 the people, got up to leave.

4 I took the ticket, went to the register to pay. The
5 other people came and then walked out, walked outside to
6 wait on us, and we walked back to the table to speak to
7 Coach Miller and, and Brown.

8 Q Okay. How long was he back there?

9 A I mean he was, he was up front before I had been
10 finished paying the bill.

11 Q Okay. Was he acting any different afterwards?

12 A No.

13 Q Calm?

14 A Yes.

15 Q Okay. After y'all left, was he calm?

16 A Yes.

17 Q Okay.

18 A We left. I went back to work and then he went with the
19 clients to look at their property in Gaffney.

20 Q Okay. So he continued on with his day and went to
21 work?

22 A Yes.

23 Q You continued on with your day and went to work?

24 A Yes.

25 Q Anything out of the ordinary --

Aliena Kyzer - Direct examination
by Mr. Bender

1 A No.

2 Q -- from your interactions?

3 Did he say anything at the table as far as like I'm
4 gonna go, I'm gonna threaten Coach Brown or anything like
5 that?

6 A No.

7 Q Did he ever make mention that he was gonna threaten
8 Coach Brown?

9 A No, the --.

10 Q Go ahead.

11 A The -- you know, the only thing he had ever said to me
12 was, you know, that he wouldn't like it if someone talked to
13 his children the way that he talked to ours. But I had
14 always told him, you know, I knew that was something he
15 would never do anyway cause he's always been about the kids.

16 Q Okay.

17 okay. That's my questions at this time, Your Honor.

18 THE COURT: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY SOLICITOR CUENCA:

21 Q Good morning, Mrs. Kyzer.

22 So, is it your testimony that you didn't approach the
23 table at the Mexican restaurant with your husband?

24 A It is.

25 SOLICITOR CUENCA: I have no further questions, Your

1 Honor.

2 THE COURT: Any reply limited to what she went into?

3 MR. BENDER: No.

4 THE COURT: Ma'am, you may step down. Watch your step
5 as you're stepping down.

6 Defense ready to call their next witness?

7 MR. BENDER: That's the defense's witnesses, Your
8 Honor.

9 THE COURT: The State know yet if they intend to call a
10 reply witness?

11 SOLICITOR CUENCA: The State will not call a reply
12 witness, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, this is
14 one of those times where I've got to take up some matters
15 with the attorneys.

16 If you would, please retire back to the jury
17 deliberation room. We'll get you back just shortly. Do not
18 have any discussions among yourselves or anyone else about
19 anything involving the case.

20 Thank you very much.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Anything before I step down?

24 I'm working on the charges.

25 SOLICITOR CUENCA: No, Your Honor.

1 MR. BENDER: No, Your Honor.

2 THE COURT: All right. Give me just a moment and we'll
3 be right back.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. This is -- we have to do the
6 arguments, charge to the jury, let them deliberate. I've
7 got to give y'all -- what I prefer to do is to give y'all my
8 proposed charges and then we do a charge conference on that.

9 Do y'all have a -- y'all have any preference on if you
10 want to try to get it all done this morning or you want to
11 break it up and try to do the charge conference and then,
12 based on the results of the charge conference, let y'all
13 have some time to do -- to prepare for closing arguments and
14 start the closing arguments maybe about 1:00, 1:15?

15 MR. BENDER: I'm -- I don't have a preference. I, I
16 think we can just kind of soldier on if you want, Your
17 Honor. It's up to you though.

18 THE COURT: Well, I know it's up to me.

19 MR. BENDER: Okay.

20 THE COURT: But I'm trying to be accommodating to
21 y'all.

22 MR. BENDER: I'm ready. I'm, I'm prepared to move
23 forward with the break if, if the other side is.

24 THE COURT: Okay.

25 SOLICITOR CUENCA: Your Honor, the State is ready to

1 proceed.

2 THE COURT: Okay.

3 All right. Y'all want to approach?

4 (WHEREUPON, a bench conference was held at this time.)

5 THE COURT: All right. Let's start with the verdict
6 form.

7 Do y'all understand what I did with the verdict forms?

8 MR. BENDER: Yes, Your Honor.

9 SOLICITOR CUENCA: Yes, Your Honor.

10 THE COURT: Okay. All right. Any, any objections,
11 concerns, anything about the charges?

12 SOLICITOR CUENCA: Yes, Your Honor.

13 After hearing the testimony that was given, I don't
14 think it would be appropriate to charge the harassment
15 second degree just because there was no testimony towards
16 the, the second degree.

17 The difference between a first degree and the second
18 degree is more that the second degree has communication and
19 whether texts or verbal communication directly with that
20 individual, Your Honor, and there's just no testimony.

21 THE COURT: What do you call the test -- what do you
22 call the words at the restaurant?

23 SOLICITOR COLEMAN-HICKS: If I may, Your Honor?

24 I apologize.

25 The main difference---

1 THE COURT: Now -- okay.

2 SOLICITOR COLEMAN-HICKS: I'm sorry.

3 THE COURT: He gets to say one lawyer gets to argue.

4 SOLICITOR COLEMAN-HICKS: I'm sorry, Your Honor.

5 THE COURT: You have any objection to both of them
6 arguing?

7 okay. what do you want me to know?

8 It takes too long -- we're trying to get -- we're
9 trying to get it to a jury.

10 what do you want me to know?

11 SOLICITOR COLEMAN-HICKS: Your Honor, the main
12 difference between a harassment first degree and harassment
13 second degree is that harassment second degree is generally
14 electronic either by phone, written letter, text message of
15 that sort. First degree is visual, in person contact, and
16 that's the main difference.

17 THE COURT: I think you need to check the definition of
18 harassment. Verbal is in both of them.

19 SOLICITOR COLEMAN-HICKS: I agree, Your Honor.

20 THE COURT: Okay.

21 SOLICITOR COLEMAN-HICKS: I agree.

22 THE COURT: Okay.

23 All right. Yes, sir.

24 Anything else from the State?

25 SOLICITOR CUENCA: Yes, Your Honor.

1 THE COURT: Okay.

2 SOLICITOR CUENCA: In regards to the threatening of a
3 public employee, that should also not be charged.

4 Based on the evidence that was given, there was no
5 contradictory testimony that he was not a teacher. And so
6 that the threatening a public employee just would not be
7 appropriate in this instance.

8 THE COURT: All right. I understand the legal
9 arguments you're presenting but we are in a trial where we
10 have to deal with facts.

11 Okay. Do you agree that there's no evidence?

12 MR. BENDER: I do not.

13 THE COURT: Okay. He does not.

14 And you would want me not to include threatening a life
15 of a public employee in this case?

16 SOLICITOR CUENCA: That's fine, Your Honor. You can
17 include it.

18 THE COURT: I mean I just want to -- I want you to
19 understand what you're asking me to do.

20 Does the State -- do you really not want me to charge
21 that?

22 SOLICITOR CUENCA: Your Honor, we can in this instance.
23 We can, yes, Your Honor, charge that and---

24 THE COURT: I mean I'm trying to understand. I, I --
25 I'm trying to really understand why that -- State's taking

1 that position.

2 SOLICITOR CUENCA: Your Honor, there is no dispute
3 that, from the evidence, that the -- Coach Brown was not a
4 teacher.

5 THE COURT: Okay.

6 SOLICITOR CUENCA: And if we include that as part of
7 the verdict or an option as a verdict, then it's potential
8 that they might be confused by that issue, Your Honor, when
9 there was no evidence pointing to the contrary.

10 THE COURT: Okay. That's a better argument.

11 Okay. That's a better argument.

12 What she's saying is that there's so little evidence to
13 contrary -- to, to go against this idea that the teacher
14 aspect of the case that I need to not charge what I would
15 consider maybe not technically a lesser included offense
16 that I should not charge the public employee issue.

17 MR. BENDER: There's been some evidence though and I
18 believe that's enough to get to the lesser included.

19 THE COURT: Yeah, I think he's right. I, I think -- I
20 think I've got to charge it. I don't think I have an option
21 not to. I think it is reversible error for me not to charge
22 it when there is some evidence that he might not be a
23 teacher. Not saying that's a wise strategic trial move on
24 the part of the defense to argue that. But he's saying that
25 it is and he gets to try his case.

1 SOLICITOR CUENCA: Yes, Your Honor, and since we are
2 gonna be including then, Your Honor, there is some language
3 that needs to be changed from the --.

4 THE COURT: Why don't you offer me some language as a
5 suggestion to change?

6 SOLICITOR CUENCA: Yes, Your Honor. Regard---

7 THE COURT: What is that language?

8 SOLICITOR CUENCA: Regarding the harassment first
9 degree---

10 THE COURT: Now we're dealing with the public
11 employee---

12 SOLICITOR CUENCA: Oh.

13 THE COURT: ---issue.

14 SOLICITOR CUENCA: Yes, Your Honor.

15 THE COURT: Okay.

16 SOLICITOR CUENCA: Your Honor, the threatening life of
17 a teacher, it says public official instead of public
18 employee.

19 THE COURT: Okay. That's because the statute uses the
20 word public official when we're talking about a teacher.
21 When we're talking about a public employee, they do not use
22 that terminology of public official.

23 SOLICITOR CUENCA: That's correct, Your Honor.

24 After -- so after the statute itself underneath it says if
25 you find that the State has not proven that the defendant is

1 guilty of threatening the life of a teacher, you must then
2 determine whether the State has proven that the defendant is
3 guilty of threatening the life of a public official and that
4 should be public employee if I am reading that correctly,
5 Your Honor.

6 THE COURT: That is correct. Public employee.
7 Okay. All right. I've got that change.
8 Anything else?

9 SOLICITOR CUENCA: Yes, Your Honor.

10 Further in the threatening the life of a public
11 employee, the State would also ask that Subsection E-2 be
12 added to it that defines a public employee, Your Honor,
13 since that would be -- just complete the whole statute and
14 that is true that I've -- I failed to give that as part of
15 my jury charge to the Court, Your Honor. So, that was my
16 mistake.

17 THE COURT: Okay. I'm gonna add E-2 in there even
18 though I do say in the preceding paragraph, I make the
19 distinction that it is not a teacher.

20 okay. But we will include a public employee definition
21 contained in E-2.

22 SOLICITOR CUENCA: Thank you, judge.

23 THE COURT: Uh-huh. (Affirmative).

24 What else does the State have?

25 SOLICITOR CUENCA: Your Honor, the last one has to do

1 with the harassment first degree -- second -- Your Honor,
2 in, in the harassment first degree at the very end where it
3 is charging the jurors that if the State has not proven the
4 first degree, they needed to look at the second degree, Your
5 Honor, harassment in the second degree does include pattern
6 to be a requirement, Your Honor.

7 So -- and from the statute, it says second degree, that
8 there -- that has to be a pattern of intentional,
9 substantial, and unreasonable intrusion, Your Honor, and in
10 this jury charge---

11 THE COURT: Then what's the difference between first
12 and second?

13 SOLICITOR CUENCA: The electronic communication is my
14 understanding, Your Honor, of --.

15 THE COURT: Harassment in the first degree is, is
16 harassment in the first degree because it has an electronic
17 communication?

18 SOLICITOR CUENCA: Part of -- part of it is, Your
19 Honor.

20 THE COURT: Well, what's the -- I'm asking. I need to
21 know.

22 What is the difference between -- what's the State's
23 position as to the difference between harassment in the
24 first degree and harassment second degree?

25 SOLICITOR CUENCA: Your Honor, if I may defer to my

1 cocounsel on that?

2 THE COURT: Okay. I just want to know.

3 SOLICITOR COLEMAN-HICKS: Yes, Your Honor.

4 Generally, harassment second degree is used in
5 instances where there's no in person contact even if it's
6 verbally over the phone, text message, social media, written
7 letters, things of that nature. Harassment first degree is
8 used when there is direct contact, in person, or maintenance
9 at a person's job. I mean surveillance of a person's job,
10 home, school, et cetera.

11 That's the State's position generally when choosing how
12 to indict a case, Your Honor, and in terms of the jury
13 charge---

14 THE COURT: Well, the reason, the reason I want to know
15 is because this is language that's given to me by Court
16 Administration --

17 SOLICITOR COLEMAN-HICKS: Yes, Your Honor. I
18 understand.

19 THE COURT: -- to, to delineate between harassment
20 first and harassment second.

21 SOLICITOR COLEMAN-HICKS: Yes, Your Honor.

22 THE COURT: And the State is now arguing a position,
23 and I'm willing to take a look at it, but it's different
24 than what Court Administration's telling us.

25 SOLICITOR COLEMAN-HICKS: Well, Your Honor, I will

1 certainly defer to Court---

2 THE COURT: No, it's---

3 SOLICITOR COLEMAN-HICKS: ---Administration.

4 THE COURT: Y'all are, y'all are the advocates for the
5 State and I'm just trying to understand what the State's
6 position is when it comes to harassment first and harassment
7 second. Then I want to hear from the defense as well.

8 SOLICITOR COLEMAN-HICKS: And, Your Honor, the State is
9 fine including the harassment second charge as part of the
10 jury charges. No objection to that, Your Honor.

11 I would just ask that, so as not to confuse the jury,
12 the last sentence that the elements of harassment in the
13 first, they include all the elements of harassment in the
14 first degree except for the pattern of harassment. I would
15 just ask that Your Honor include the language from the
16 statute that says harassment in the second degree may
17 include but is not limited to verbal, written, or electronic
18 contact.

19 THE COURT: So---

20 SOLICITOR COLEMAN-HICKS: That's my request, Your
21 Honor.

22 THE COURT: Well, let me ask you this.

23 I, I heard from your co-counsel that she's arguing that
24 harassment in the second degree does require that pattern
25 but you're now saying it does not?

1 SOLICITOR COLEMAN-HICKS: It does, Your Honor, and it
2 does re -- any charge for harassment requires a pattern,
3 which just means two or more instances over a period of
4 time. So, I would just ask -- that's why I'm just asking
5 that the exact elements of harassment second, the verbal,
6 written, or electronic contact, be included in the jury
7 charges.

8 That is -- the Code Section, Your Honor, is
9 16-3-1700(b).

10 THE COURT: Uh-huh. (Affirmative).

11 B -- say it---

12 SOLICITOR COLEMAN-HICKS: B.

13 THE COURT: B?

14 SOLICITOR COLEMAN-HICKS: Yes, sir.

15 THE COURT: Do you have any comment?

16 MR. BENDER: I'm okay, I'm okay with that, with that
17 addition.

18 THE COURT: Pardon?

19 MR. BENDER: I'm okay with that addition that they
20 suggested, Your Honor.

21 Didn't they suggest a sentence -- another sentence at
22 the end of that?

23 SOLICITOR COLEMAN-HICKS: Yes.

24 MR. BENDER: Yeah, that, that -- if, if you choose, I
25 will be okay. I will consent to that additional.

1 THE COURT: So that the issue, if I understand the
2 State's position correctly, you take a look at the
3 harassment in the first degree charge, at the end of that
4 harassment first degree charge is the catchall paragraph
5 that says if you find the State has not proven the defendant
6 is guilty of harassment in the first degree, you must then
7 determine whether the State has proven the defendant's
8 guilty of harassment in the second degree.

9 Harassment in the second degree includes all of the
10 elements of harassment in the first degree except for
11 patterns of harassment, and, according to the statute, it
12 should be the patterns of harassment previously outlined in
13 harassment in the first degree.

14 Harassment in the second degree, degree includes --
15 it -- harassment in the second degree may include, but is
16 not limited to, verbal, written, or electronic contact that
17 is initiated, maintained, or repeated.

18 SOLICITOR COLEMAN-HICKS: Yes, Your Honor.

19 THE COURT: Okay.

20 SOLICITOR COLEMAN-HICKS: Thank you.

21 THE COURT: No, thank you. The other one's harassment
22 in the first degree --.

23 Okay. Anything else from the State---

24 SOLICITOR CUENCA: No, Your Honor.

25 THE COURT: ---on the charges?

1 SOLICITOR CUENCA: No.

2 THE COURT: What about the defense, you got -- you --
3 do you have any comments, suggestions?

4 MR. BENDER: We're -- I'm good with the, with -- how
5 they're written including the changes.

6 THE COURT: Okay. All right. How long does the State
7 anticipate -- now, my understanding is what we do now is
8 State opens in full. Defense has the -- then responds
9 however they want to respond and the State replies limited
10 to what the defense brought up and, and his positions.

11 How long does the State think, time wise?

12 SOLICITOR CUENCA: Your Honor, probably anywhere from
13 10 to 15 minutes.

14 THE COURT: That would be your opening?

15 SOLICITOR CUENCA: Yes, Your Honor.

16 THE COURT: You think -- rough idea.

17 MR. BENDER: Yeah, 15, 20 minutes probably.

18 THE COURT: And then reply?

19 Okay.

20 SOLICITOR CUENCA: Yeah. No, it would just depend on
21 what --.

22 THE COURT: Okay. The, the reason I ask, I got
23 involved in a case one time. We were trying -- you know,
24 worried about bathroom breaks and stuff like that.

25 Lawyer for the defense said, you know, it was, it was a

1 complex case, he said maybe an hour. After two hours and 15
2 minutes I sat him down. It was just too long.

3 So, I'm not gonna hold you to those times but give me
4 an idea because, if we run into bladder problems and stuff,
5 we'll probably have to cut you off and say it's -- enough's
6 enough.

7 All right.

8 SOLICITOR CUENCA: Your Honor?

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR CUENCA: If I may, the State asks for 10
11 minutes in argue -- the closing arguments?

12 THE COURT: Sure. Yeah, yeah. I'm gonna step down
13 anyway cause I got to print these off.

14 SOLICITOR CUENCA: Thank you, Your Honor.

15 THE COURT: Yeah.

16 Okay. We will come back and then receive the closing
17 arguments and the charge -- to the charge.

18 Thank you very much.

19 SOLICITOR CUENCA: Thank you, judge.

20 THE COURT: Uh-huh. (Affirmative).

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Anything else before we bring the jury in?

23 SOLICITOR CUENCA: No, Your Honor, and I apologize if I
24 kept the Court waiting.

25 THE COURT: No, you're fine.

1 Anything from the defense?

2 MR. BENDER: No, Your Honor.

3 THE COURT: Let's bring them in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. Ladies and gentlemen, the, the
7 parties have now presented to you all of the evidence that
8 will be presented as part of this case. It is now time for
9 the attorneys to make what is known as their closing
10 arguments to you.

11 The arguments of the attorneys are not evidence in the
12 case. Their statements and arguments to you are meant to
13 help you understand the evidence and apply the law to that
14 evidence. But you should disregard any remark, statement,
15 or argument which is not supported by the evidence that has
16 been presented during the course of this trial or the law
17 that I will explain to you after they present the arguments
18 to you.

19 But, at this time, we will receive the closing
20 arguments from counsel.

21 Thank you very much.

22 Yes, ma'am.

23 SOLICITOR CUENCA: May it please the Court --

24 THE COURT: Uh-huh. (Affirmative).

25 SOLICITOR CUENCA: -- opposing counsel.

1 Ladies and gentlemen of the jury, words do mean
2 something. That was the exact testimony that the defendant
3 made yesterday. He said words do mean something and, in
4 this case, the evidence has shown that the defendant's words
5 meant to threaten Coach Brown.

6 His words meant to threaten, to kill Coach Brown or
7 inflict harm on Coach Brown or his immediate family.

8 Even the defendant himself testified on the stand, when
9 he told Deputy Johnson that he told Coach Brown fuck you,
10 I'll catch your ass slipping one of these damn days, words
11 do mean something.

12 Now, it is the State's burden to prove beyond a
13 reasonable doubt the charges presented against the
14 defendant, and the judge is going to go into more detail as
15 far as the law. But beyond a reasonable doubt means firmly
16 convinced that you do not hesitate to act, and the State
17 would show that it has proved beyond a reasonable doubt that
18 the defendant, Mr. Kyzer, is guilty of harassment in the
19 first degree and to threaten the life of a teacher.

20 So, let me go through each element and the evidence
21 that was presented to be able to show that the State has met
22 its burden.

23 Now, in regards to the threatening the life of a
24 teacher, the State must, must prove that he was a teacher,
25 and you-all heard from the evidence yesterday, Coach Brown

1 testified that he was not only the head baseball coach, but
2 he was also the assistant weight coach. And that was
3 essentially a teaching position.

4 And that required, upon his testimony, that he had
5 about 350 students. He taught approximately 60 classes a
6 week. He had to handle their grades, attendance, everything
7 that a teacher does. He was a teacher. He was a coach,
8 yes, but he was also a teacher.

9 But we also heard from Mr. Jeff Stevens himself, who
10 was at that point principal and then became CEO, a
11 superintendent, that Coach Brown was a teacher. And so the
12 evidence we have proven that he was, in fact, a teacher, not
13 just a teacher, but a secondary elementary, which is high
14 school. He testified that he worked for Spartanburg High
15 School.

16 So, that element has been met.

17 In regards to the second element of knowingly and
18 willfully delivered or conveyed verbal communication which
19 consists of a threat to take the life of or to inflict
20 bodily harm upon a teacher or members of his immediate
21 family.

22 So, let's talk about the incident in September 24th,
23 2018.

24 You heard the testimony of Coach Brown and he said that
25 that day he was going out to eat lunch at Los Mexicanos. It

1 was during the work week. He went with Coach Miller, Coach
2 Thomas, and Coach Caldwell.

3 He mentioned that he stepped in. He noticed the
4 defendant's wife. They went into a booth. They started
5 eating and he mentioned that the defendant approached their
6 booth.

7 Now, the defendant testifies, and as you can well see,
8 is 6-feet tall. He approached the booth to shake hands with
9 Coach Miller when he then turns to the coach and says fuck
10 you, fuck you, fuck you. You better hope I don't see you
11 outside of here or I will kill you.

12 Now, Coach Brown also testified that he was in -- the
13 defendant was not moving. He wasn't necessarily yelling.
14 In fact, when he was threatening him, he did start lowering
15 his voice. But the threats were directed towards him. And
16 that is that testimony that you heard from Coach Brown
17 yesterday.

18 However, he was not the only one there. Coach
19 Caldwell, who testified after Coach Brown, was present. He
20 said the very same thing. They were eating and all of a
21 sudden the defendant came up and he said fuck you. Coach
22 Caldwell said that he couldn't remember everything that was
23 said because his mind was already going into how I stay
24 safe. When somebody's hovering over him, he felt himself
25 threatened.

1 He testified that the comments were directed towards
2 Coach Brown. However, he felt threatened himself because he
3 couldn't get out of the booth. He didn't know there was
4 someone behind the defendant. So, his mind was already in
5 fight or flight.

6 So, the comments that he remembered were fuck you. I
7 hope I see you outside of here. Those are the comments that
8 he heard the defendant tell Coach Brown.

9 Now we go into Coach Thomas. Coach Thomas was present
10 there as well as that day.

11 Now, he did testify that he did not know the defendant
12 prior to this. He mentioned that he was sitting right next
13 to Coach Brown, closer to the aisle, and when the defendant
14 came and said fuck you, he told him are you, are you being
15 serious. And he also heard the defendant say, not just
16 once, but three times, fuck you. You better hope I don't
17 catch you out somewhere. And that is when the def -- Coach
18 Thomas had asked him to leave.

19 Finally we come to Coach, Coach Miller. He was a
20 former football coach at Spartanburg High School. He was
21 the one that the defendant was coming to say hello to. And
22 when he heard fuck you, he thought he was joking.

23 But then he testified that he soon realized that it was
24 not a joke. This was a threat that was made.

25 It's interesting as well that when Deputy Johnson, who

1 testified that he had gone to the defendant to give the no
2 trespass notice, when he confronted the defendant, the
3 defendant told him that he did say fuck you three times,
4 and, in fact, the defendant and himself testified and
5 admitted that he asked Deputy Johnson can you send a message
6 to Coach Brown. Specifically he said can you tell the
7 mother fucker fuck you again.

8 That is the message he wanted to send to Coach Brown,
9 and he told Deputy Johnson that he told Coach Brown fuck
10 you, I'll catch your ass slipping one of these damn days.
11 And although the defendant said my intent was not to harm,
12 words do mean something.

13 Now, the State has met its elements of a verbal
14 communication that contains a threat to take the life of
15 Coach Brown or to inflict bodily harm to himself or to his
16 family members.

17 Now, the last element has to do with if the threat is
18 directly related to the teacher's professional
19 responsibilities, and you heard unlimited testimony that the
20 defendant's son had been in the baseball team that the --
21 that Coach Brown was the head coach of. And because of his
22 decisions, and his cursing at a coach, he decided not to
23 apologize and was then asked or removed from the team, and
24 that is the back story that is tied to the teacher's
25 professional responsibility.

1 Now, the defendant was mad at Coach Brown and he
2 remained angry. In fact, there was testimony from the
3 defendant that his son was removed from the team
4 approximately in March, 2018, and this event in Los
5 Mexicanos happened in September 24th, 2019.

6 That is approximately 17 months of anger to then
7 threaten the life of the coach 17 months after this incident
8 with the son had happened.

9 And so the State has met its elements beyond a
10 reasonable doubt that the defendant did, in fact, threaten
11 the life of Coach Brown or threatened to inflict bodily harm
12 upon the teacher.

13 Let's move on to the charge of harassment and it is the
14 State's position that it's also met its elements -- burden
15 beyond a reasonable doubt of harassment in the first degree.

16 Now, harassment, harassment in the first degree
17 requires a pattern of intentional, substantial, and
18 unreasonable intrusion into the private life of a targeted
19 person. However, the statute is very clear on what is
20 pattern and pattern means two or more acts occurring over a
21 period of time, however short, evidencing a continuity of
22 purpose.

23 So, what you do not see in that definition is that it
24 has to be done within five days, five months, five years.
25 There's no time period. It says a pattern of two or more

1 acts occurring over a period of time, however short,
2 evidencing a continuity of purpose, and the way that this
3 can demonstrate the pattern, it doesn't have to be the only
4 way, but a way that -- to prove that is the maintenance of
5 presence, essentially your presence, near the targeted
6 person's, in this case Coach Brown, place of work or another
7 place regularly occupied or visited by the targeted person.

8 So, those are the elements that the State must prove,
9 and there's evidence, as referenced earlier, that Coach
10 Brown testified that the defendant's son had been removed
11 from the team because he wouldn't apologize for swearing,
12 and Coach Brown testified that he knew of instances after
13 the fact where the defendant sought to get him fired.

14 The defendant affirmatively was seeking to get Coach
15 Brown fired but his was not the only testimony of that. We
16 also have Mr. Jeff Stevens, who, at that point, was the
17 principal. He said he was principal from 2018 till 2019
18 before he switched to becoming COO.

19 His testimony was also that he knew instances where the
20 defendant sought to get Coach Brown fired, and that is also
21 the testimony of the superintendent at that time, Doctor
22 Booker, that he also knew that the defendant was seeking to
23 get Coach Brown fired and specifically there was one time,
24 from what Coach Brown testified, that around April, 2018,
25 they had been in the same lobby. And even though the

1 defendant didn't address him specifically enough for the --
2 Coach Brown to hear that the defendant was there to get, for
3 the same reason, to get Coach Brown fired. So that was an
4 incident in April, 2018.

5 Now we also heard testimony that the defendant, after
6 his son had already been removed from the team, had gone to
7 at least two home games in Spartanburg High School, and
8 Coach Brown testified that he remembers seeing him within
9 the line of vision and he felt threatened.

10 Now, Coach Brown didn't testify that he spoke with him.
11 So, there's no evidence to say that he actually spoke to him
12 or addressed him, but the manner in which the defendant
13 presented himself, Coach Brown felt threatened.

14 Now, it is also true that the defendant testified that
15 he was in -- he went to two Spartanburg High School games
16 that were not home games, the one in Mauldin and the one in
17 Gaffney. That doesn't mean that he didn't also come and,
18 and was present in two of the home games. In fact, when --
19 his wife had also testified that she, herself, had not gone
20 to the home games.

21 That doesn't mean that he hadn't gone by himself.
22 There's no testimony that the defendant and the wife always
23 went to home games or always went to the games, all the
24 games, together.

25 So, again, those were two instances of a pattern of

1 harassment, of intentional, substantial, and unreasonable
2 and then it comes to yes -- even though it is April, 2018,
3 there's nothing occurring until, other than, of course,
4 Coach Brown having to psychologically be thinking about the
5 fact that the defendant is seeking to get him fired.

6 He said that he felt emotionally distressed. Coach
7 Brown also testified that he himself was potentially
8 thinking of other jobs. During that period he didn't know
9 if he was going to be fired. He only knew that there
10 were -- that the defendant was seeking to get him fired.

11 And so it comes to the culmination of
12 September 29th -- 24th, 2019, which was the final act of
13 harassment that set that final pattern in which the
14 defendant threatened to kill him.

15 But one other comment that I did want to make in
16 regards to the games. We also have Deputy Johnson who
17 testified that he remembered seeing the defendant at
18 baseball games or the home baseball games. So, we also have
19 that added testimony that he was seen at home baseball
20 games, the defendant was.

21 Now, that is one element we have met and the final one,
22 it says that it serves no legitimate purpose and causes the
23 person -- and would cause a reasonable person in his
24 position to suffer mental or emotional distress.

25 Coach Brown did testify that he suffered emotional

1 distress. He and his family felt the threat that was said
2 on September 24th, 2019. As stated, he was, he was not
3 able to go out to dinner. He just decided not to go out to
4 eat in Spartanburg because of that fear. He's always had --
5 have his lookout for the defendant's truck.

6 This is not something that is just one instance and you
7 forget. You have it in the back of your mind. He suffered
8 mental and emotional distress. He also stated that he felt
9 dejected during this time period.

10 Ladies and gentlemen of the jury, the State has proved
11 its case beyond a reasonable doubt. I ask you to weigh the
12 credibility of the testimony that was given on the stand,
13 the testimony of Coach Brown, the coaches, the
14 superintendent, Doctor Booker, the principal, Mr. Jeff
15 Stevens. I'm asking you to weigh the credibility of each
16 witness and their testimony.

17 And I'm asking you not to look at this case in the
18 abstract but think of what a reasonable person in Coach's
19 (sic) Brown's situation how he would feel.

20 It is one thing to be upset that your son is no longer
21 on this team but the defendant crossed that line. He
22 crossed it when he threatened the life of Coach Brown or
23 threatened to inflict bodily harm on Coach Brown because the
24 threat against Coach Brown, those words do mean something.

25 So, I'm asking you to find that the defendant is guilty

1 of harassment in the first degree and for threatening the
2 life of Coach Brown who is a teacher.

3 Thank you.

4 THE COURT: Yes, sir.

5 MR. BENDER: Thank you, Your Honor.

6 Thank you, ladies and gentlemen of the jury.

7 I know it's taken a couple days here to get through all
8 this but there was quite a bit of evidence that had to be
9 put on.

10 First, let's address this, this harassment charge,
11 okay, and what you have to meet for the harassment charge.

12 Now, the State must prove beyond a reasonable doubt
13 that the defendant engaged in a pattern of intentional,
14 substantial, and unreasonable intrusion into the private
15 life of a targeted person.

16 Intentional, substantial, and unreasonable intrusion
17 into the private life of the targeted person, and what do we
18 have in this case?

19 What they've put up is that Mr. Kyzer, along with his
20 wife, attended two baseball games. Didn't talk with the
21 coach. Attended two baseball games. Didn't talk with any
22 administration. Didn't talk with anyone.

23 Attended two baseball games that he was allowed to
24 attend, and, apparently, that's a pattern, right?

25 They want you to say that's two or more. So, if you go

1 to two baseball games, and the person feels threatened, even
2 though you don't talk with them, you don't do anything to
3 them, you don't look at them, you're sitting there enjoying
4 the baseball game, but if the person feels threatened,
5 that's suppose to be harassment now.

6 Now, one thing the judge is going to tell you in these
7 jury instructions is you got to use common sense.

8 Okay. He's -- the, the, the instructions given will go
9 into the law but, above all else, you have to use common
10 sense.

11 Okay. Going to two baseball games that you're legally
12 allowed to go to is not harassment. Going up to a
13 superintendent to talk with the superintendent about the
14 issues of your son being bullied by a coaching staff, and
15 wanting the coaching staff held accountable for that, that's
16 not harassment. That's not an intrusion into anybody's
17 private life and it's certainly not unreasonable.

18 Is going to two baseball games -- going to a baseball
19 game that you're allowed to go to, does that sound like it's
20 something that's unreasonable?

21 Sound like something that's substantial?

22 Going up to a superintendent and asking that somebody
23 be held accountable for your son that's been bullied by
24 adults, does that sound like something that's unreasonable?

25 No.

1 There's no pattern of unreasonable intrusion into
2 anyone's private life. Not one bit.

3 I'll get to the second charge here in a minute but
4 first let's talk about how we even came to these charges.

5 Okay. Now let me be perfectly clear. Everyone in this
6 courtroom, in this jury should be scared of how this
7 happened cause you heard from Officer Trammell on the stand.
8 He was the city officer.

9 He went and interviewed somebody for what his testimony
10 was was less than 30 minutes. Didn't talk to anyone else.
11 Collected four statements. All of which don't -- none of
12 which match. Not a single one of them say the same thing.
13 And went and took out charges on somebody. And now they
14 find themselves here in Court facing a jury based upon that.

15 That should scare every one of us. Thirty minutes,
16 that's what he testified. He talked to somebody for 30
17 minutes. Got four statements, none of which matched, and
18 we're here in front of a jury right now because of that.

19 Another element of this harassment issue is they keep
20 saying -- the State says that Mr. Brown is, is threatened by
21 him because of his size.

22 There's no where where you're gonna find that being
23 6-foot, 6'1", whatever size you are, means that you, all of
24 a sudden, have to start acting differently, right?

25 If you're tall, you, all of a sudden, have to act

1 differently?

2 You have to assume that people are, are scared of you?

3 You dress a certain way, if you act a certain way,
4 because you're tall, you're suppose to assume that people
5 are scared of you?

6 Is that reasonable cause part of that harassment charge
7 it that -- it has to be reasonable for the person to infer
8 that.

9 well, that's not reasonable.

10 Assuming that somebody's a threat because they're tall
11 when they've done nothing is not reasonable. Going to
12 baseball games is not unreasonable. Asking and advocating
13 for your child is not unreasonable. It will be unreasonable
14 if you didn't advocate for your child, if you didn't stand
15 up for them. That's unreasonable.

16 Not going to bat for your child is the unreasonable
17 part. But advocating for your child is never unreasonable
18 and that's what we have. Going to two baseball games and
19 advocating for your child is apparently a pattern of
20 intentional, substantial, and unreasonable intrusion cause
21 you have to prove all of those.

22 All of those have to be met. Not one, not two, but
23 every single part of that has to be met. It has to be
24 intentional, substantial, and unreasonable.

25 well, they haven't met any of it. When it comes time

1 to look at that charge, there was no harassment here.

2 Okay. Going on. Let's talk about the witnesses that
3 did testify and let's go through.

4 Coach Brown got up on the stand and testified that he
5 heard Mr. Kyzer say I will kill you, right, and multiple
6 witnesses then went through and said how the booth was,
7 right, and the way that they were sitting in the booth,
8 Mr. Brown was the furthest away from Mr. Kyzer.

9 You've got Mr. Brown in the back, another coach across
10 from him, another coach on the outside, and Coach Miller.
11 And the testimony is that he's shaking Coach Miller's hand
12 when, by his own testimony, he calmly is told fuck you and
13 somehow, out of the five people sitting in that area, in
14 that table, the only person that heard I will kill you is
15 Coach Brown.

16 Now, are we to believe that the other four that all
17 heard or said something got that wrong or that Coach Brown,
18 the only person that said it out of five, is right that he
19 said I'll kill you?

20 So, for them to make their case on this threat of I
21 will kill you because he wasn't threatened by the fuck you,
22 right, because his exact words on the stand were he came up
23 to me. He was calm. Even had his hands in his pocket when
24 he said it.

25 So, the words fuck you are not the threat, right?

1 what they allege the threat is is that I will kill you.
2 But, to believe that, you to believe that the other four are
3 wrong and he's right.

4 Okay. And so, again, you have to use your common sense
5 on that but also let's go back and talk about how this came
6 about is that they finished their meal after this incident.
7 After Mr. Kyzer comes up and says that to him, they finish
8 their meal, go over to the school hanging out in the coach's
9 office, when they call a city officer over.

10 The city officer talks to them for 30 minutes, collects
11 some statements, but, in that 30 minutes, Coach Brown does
12 provide a statement and what does he say?

13 In his statement he states that he says I will kill
14 you.

15 Well, no one else said that. Not one other person.
16 The two people that were actually closest to Mr. Kyzer, the
17 other person there, and Mr. Kyzer, everybody is in agreement
18 except him that those words weren't said. Beyond that, his
19 statement then says that he has severely threatened me and
20 others in closed door meetings.

21 But then what happened?

22 We put on the superintendent, right, Mr. Stevens. We
23 put on the superintendent who was in those meetings and we
24 asked him was anybody threatened. No. No. Nobody was
25 threatened in those meetings.

1 If there would of been a threat, that would of been the
2 time to take out the charge, right?

3 That's the pattern but no, there was no threat. He
4 then says that he came to all the games. His statement, I
5 came -- his -- Wes Kyzer and his wife came to every single
6 game after that. well, that's a lie too.

7 So what we've got is somebody who went back over, had a
8 story, felt embarrassed about being told fuck you in front
9 of his coaching friends, and what's he do?

10 He starts embellishing his story. All of a sudden
11 we've added in an I'll kill you. We've added in that he
12 went to every game. We've added in that he threatened me in
13 closed door meetings.

14 Well, that didn't happen. It's an embellishment. It's
15 a lie. None of those things happened.

16 What they have made a, a -- well, the State has gone
17 over and over again is that Mr. Kyzer was seeking to have
18 the coach held accountable for bullying his son. He was
19 seeking that.

20 And so really, when it comes down to it, what these
21 charges are is retaliation, right?

22 You try to get me fired. Now I'm gonna put charges on
23 you. That's what it is. It's a retaliatory action and I --
24 and, and while I'm at it, he came to some base -- you went
25 to all my games and you threatened me in closed door

1 meetings.

2 well, that never happened but now we're here with a
3 second charge of harassment.

4 Okay. The reason his statement doesn't make sense is
5 cause he made it up. He definitely -- Mr. Kyzer testified
6 exactly what he said. He definitely came up to him and he
7 definitely told him fuck you three times.

8 Okay. But that wasn't a threat. Mr. Brown even
9 testified that that was not a threat. Came up calm. Came
10 up with his hands in his pocket.

11 What Mr. Brown said was a threat was that I'll kill
12 you, which we now know, after everyone else testified, that
13 he didn't say that. That's an embellishment.

14 What Mr. Kyzer did say is don't let me catch you
15 slipping, right, a conditional statement. Not a threat, not
16 a knowing and willfully delivering to a teacher that you're
17 going to either talk the life or inflict bodily harm upon
18 them. That's not what that is. That's not what that
19 statement is.

20 The fuck yous, that's just him expressing to him how he
21 feels about him, how he feels about him after he bullied his
22 son, how he feels about him. That's exactly what it was and
23 then he explained to you how it affected him, how it
24 affected his family, what they went through, and his meaning
25 was that he hopes that Coach Brown, at some point, gets to

1 feel that type of pain and that type of, of anguish and
2 hopelessness cause that's what described it, right.

3 That's what it comes down to is your son gets bullied
4 and you meet with administrators and try to stand up for
5 your family and nothing happens and you feel that sense of
6 hopelessness. You feel that sense of, of despair that
7 you're, you're trying to advocate for your blood, for your
8 people, and there's just hopelessness.

9 The other parts of the statute, the threatening the
10 life of a teacher, one of them is he's got to be a teacher,
11 right?

12 So, there's been some discussion. Coach Stevens, all
13 of them were very careful. Somewhat evasive in some of
14 their answers but very careful to state that we consider him
15 a teacher, right, that he's paid like a teacher, that he's
16 considered a teacher, that he teaches classes.

17 well, he's a coach. Okay. The only people that are
18 actually teachers are certified teachers.

19 Okay. Everyone else, you're either an administrator, a
20 teacher who's certified to teach, or you're a public
21 employee and, i.e., a coach, a custodian, a lunchroom
22 worker, a bus driver.

23 So, there is a difference and you're actually going to
24 have two charges. One is threatening the life of a teacher.
25 The other one is threatening the life of a public employee

1 and the judge is gonna read both of those to you.

2 okay. And there's -- the public employee, the State
3 must prove beyond a reasonable doubt the defendant knowingly
4 and willfully delivered or conveyed to a public employee a
5 communication which contains a threat to take the life or to
6 inflict bodily harm upon a public employee. That's what he
7 is.

8 All right. He's a public employee. Yeah, you can call
9 somebody a teacher. You can say whatever they are that
10 they're, they're in a weight room class or they're an
11 assistant to something, but, in reality, you're not a
12 certified teacher, you fall under a different category which
13 is public employee.

14 SOLICITOR CUENCA: Objection, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, I'm -- I
16 have instructed you that the arguments that are presented by
17 the attorneys are not evidence in this case. Their
18 statements and arguments are meant to help you understand
19 the evidence and apply the law to that evidence.

20 You should disregard any remark, statement, or argument
21 which is not supported by the evidence presented during the
22 trial or the law that I will explain to you afterwards.

23 Go ahead, sir.

24 MR. BENDER: Thank you.

25 In addition to the threatening the life of a teacher or

1 public employee, you have to do it directly related to their
2 responsibilities, right?

3 well, the evidence that we heard on the stand is that,
4 when this happened in 2019, his son wasn't on the baseball
5 team, right?

6 So, when the threat happened, when they allege that
7 this happened, we don't have it being related to the
8 professional responsibilities. We still have bad blood
9 because of when he bullied his child 17 months prior.
10 That's what we have.

11 So, again, the elements that you have to prove beyond a
12 reasonable doubt that you knowingly and willfully delivered,
13 that you're trying to inflict bodily harm, and that it's
14 directly related to the responsibilities, well, at the time,
15 at the time they allege that wasn't the case.

16 Okay. So, please remember and look back. You are the
17 ones that will, that will decide the evidence. Your
18 recollections, not mine, will be your guiding light.

19 Okay. And stand strong.

20 All right. The way you feel about the case is what
21 should guide you, not that of your other jury members.

22 When you go back there, there's actually gonna be four
23 charges. There's going to be harassment first degree, which
24 hasn't been proven because there is no pattern. But there's
25 also gonna be harassment second degree, which, again,

1 requires a pattern.

2 I'm gonna ask you to find Mr. Kyzer not guilty of
3 harassment because the elements established of a pattern of
4 conduct, of intentional, substantial, and unreasonable
5 intrusion into the private life has not been met. So, when
6 you get to deliberations, I'm gonna ask you to find him not
7 guilty of that.

8 The second charge is the threatening the life of a
9 teacher. There's gonna be another charge where there's
10 threatening the life of a public employee. I think the
11 evidence will show, and you've seen all the evidence, that
12 that didn't happen.

13 I'm gonna ask you to find him not guilty of threatening
14 the life of a teacher ever. I'm gonna ask you to find him
15 not guilty of threatening the life of a public employee.

16 Credibility and what was said on the stand by each
17 person who testified is to be determined by you. You will
18 take into account who was credible, and who is not credible,
19 but this case, again, comes back to retaliatory actions and
20 you heard it over and over again that they were upset that
21 Mr. Kyzer was advocating for his child and that's what this
22 is about.

23 Upset that he tried to get him fired because the
24 coaching staff had bullied his son and this is the
25 retaliation. He was embarrassed, got told fuck you in front

1 of his friends, and then went and embellished almost the
2 entire thing.

3 said that he had been yelled at in meetings that
4 somebody else testified that was in the meeting didn't
5 happen.

6 said that he came to all the games.

7 Now, when we get to Court -- see now, when we get to
8 court, it's only two games, right?

9 When he gives a statement -- when he's, when he's
10 trying to get these charges put on him, it's all the games
11 but now, when we get in here, it's two.

12 Thank you for your time but please use your common
13 sense when looking at all the evidence that's come into this
14 courtroom.

15 I'm gonna ask you to find him not guilty in these
16 matters.

17 Thank you.

18 THE COURT: Yes, ma'am.

19 SOLICITOR CUENCA: Ladies and gentlemen of the jury,
20 let me be clear. There is absolutely no evidence presented
21 that Coach Brown ever bullied the defendant's son.

22 This case is not about school policies or procedures.
23 This case is not about the defendant's son. This case is
24 about the actions of the defendant towards Coach Brown that
25 were unreasonable, threatening, and far beyond advocating

1 for ones child. That's what this case is about.

2 The defendant himself admitted on the stand that the
3 defendant -- that Coach Brown is not the one alleged to have
4 sent those text messages.

5 There is no evidence to prove retaliation or to show
6 retaliation.

7 Words do have meaning. And so I'm asking you to find
8 the defendant guilty of harassment first degree and
9 threatening the life of a, yes, a coach but, yes, a teacher
10 as well.

11 Thank you.

12 THE COURT: Could you slide that podium over?

13 SOLICITOR CUENCA: Yes, Your Honor.

14 THE COURT: All right. Thank you.

15 Ladies and gentlemen of the jury, if you would, stand
16 and stretch your legs for a moment. I'm gonna -- then I'm
17 going to instruct you on the law. .

18 (Pause.)

19 THE COURT: All right. Thank you, ladies and
20 gentlemen.

21 Ladies and gentlemen, the indictments charge the
22 defendant with harassment in the first degree and
23 threatening a public official, teacher, or principal.

24 Now I remind you that the fact that the defendant was
25 arrested, charged, and indicted in this case is not evidence

1 in this case and can not be considered by you as evidence of
2 guilt in this case nor does it create any presumption or
3 inference of guilt.

4 These documents are simply the formal, written
5 instruments which brings the charge made against the
6 defendant into court. These are the formal documents by
7 which this case is brought to trial.

8 The defendant has pled not guilty to the indictments
9 and that plea puts the burden on the State to prove the
10 defendant guilty. A person charged with committing a
11 criminal offense in South Carolina is never required to
12 prove himself innocent.

13 I charge you that it is an important rule of law that
14 the defendant, in a criminal trial, no matter what the
15 seriousness of the charge may be, will always be presumed to
16 be innocent of the crime for which the indictment was issued
17 unless guilt has been proven by evidence satisfying you of
18 that guilt beyond a reasonable doubt.

19 The presumption of innocence does not end when you
20 begin your deliberation but it accompanies the defendant
21 throughout the trial until you reach a verdict of guilty
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the defendant

1 which remains with the defendant until it has been stripped
2 from the defendant by evidence satisfying you of the
3 defendant's guilt beyond a reasonable doubt. The
4 presumption of innocence is not mere legal theory. It is
5 not just a legal phrase. It is a substantial right to which
6 every defendant is entitled unless you, the jury, are
7 satisfied of the evidence of the defendant's guilt beyond a
8 reasonable doubt.

9 what is reasonable doubt in the law?

10 A reasonable doubt is the kind of doubt that would
11 cause a reasonable person to hesitate to act. The State has
12 the burden of proving the defendant guilty beyond a
13 reasonable doubt and some of you may have served on juries
14 in civil cases where you were told that is it only necessary
15 to prove that a fact is more likely true than not true such
16 as by the greater weight or the preponderance of the
17 evidence.

18 In criminal cases, the State must -- the State's proof
19 must be more powerful than that. It must be beyond a
20 reasonable doubt.

21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the defendant's guilt. There are
23 very few things in this world that we know with absolute
24 certainty, and, in criminal cases, the law does not require
25 proof that overcomes every possible doubt.

1 If, based on your consideration of the evidence, you
2 are firmly convinced that the defendant is guilty of the
3 crime charged, you must find the defendant guilty. If, on
4 the other hand, you think there's a real possibility that
5 the defendant is not guilty, you must give the defendant the
6 benefit of that doubt and find him not guilty.

7 Now, ladies and gentlemen, I remind you that, during
8 this trial, you and I have had certain duties to perform.
9 As the trial judge, it has been my responsibility to preside
10 over the trial of this case and I also have the duty to rule
11 on the admissibility of evidence offered during this trial.

12 You are to consider only the competent evidence before
13 you. You, you are to consider only the testimony which has
14 been presented from the witness stand and any exhibits which
15 have been made part of the record in this case and any
16 stipulations of counsel. I have had the additional duty to
17 charge you the law applicable to this case.

18 As the presiding judge, I am the sole judge of the law
19 of this case and it is your duty, as jurors, to accept and
20 apply the law as I now state it to you. If you already have
21 any idea as to what the law is or what the law ought to be,
22 and it does not agree with what I now tell you the law is,
23 you must abandon this idea because you are sworn to accept
24 the law and apply the law exactly as I state it to you.

25 In every case tried in this Court before a jury, the

1 jury becomes the sole and exclusive judge of the facts in a
2 case. A trial judge can not intimate, state, comment on, or
3 make any statement to a trial jury about the facts in a
4 case.

5 Since you, the jury, are the sole judge of the facts in
6 this case, you are not to infer from what I have said during
7 the process of this trial in ruling on the admissibility of
8 evidence or otherwise or anything that I say now during the
9 course of this instruction to you that I have any opinion
10 about the facts in this case. The law does not allow me to
11 have an opinion about the facts in this case. This is a
12 matter solely for you, the jury, to determine.

13 As jurors, it is your duty to determine the effect, the
14 value, the weight, and truth of the evidence presented
15 during this trial.

16 But, ladies and gentlemen, normally there are two types
17 of evidence which are presented during the course of a
18 trial, direct evidence and then circumstantial evidence.

19 Direct evidence is the testimony of a person who claims
20 to have actual knowledge of a fact such as an eye witness.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicating the existence of a fact. The
23 law makes absolutely no distinction between the weight or
24 value to be given either direct or circumstantial evidence
25 nor is a great degree of certainty required of

1 circumstantial evidence than of direct evidence.

2 Ladies and gentlemen, you should weigh all the evidence
3 in this case, and after weighing all the evidence, if you
4 are not convinced of the guilt of the defendant beyond a
5 reasonable doubt, you must find the defendant not guilty.

6 Now, necessarily, ladies and gentlemen, you must
7 determine the credibility of witnesses who have testified in
8 this case. Credibility simply means believability. It
9 becomes your duty, as jurors, to analyze and to evaluate the
10 evidence and determine which evidence convinces you of its
11 truth.

12 In determining the believability of witnesses who have
13 testified in this case, you may believe one witness over
14 several witnesses or several witnesses over one witness.
15 You may believe a part of the testimony of a witness and
16 reject the remaining part of the testimony of that same
17 witness. You may believe the testimony of a witness in its
18 entirety or reject the testimony of a witness in its
19 entirety.

20 You may consider whether any witness has exhibited to
21 you any interest, bias, prejudice, or other motive in this
22 case. You may also consider the appearance and the manner
23 of a witness while on the witness stand.

24 Ladies and gentlemen, the defendant is charged with
25 harassment in the first degree. The State must prove,

1 beyond a reasonable doubt, that the defendant engaged in a
2 pattern of intent -- of intentional, substantial, and
3 unreasonable intrusion into the private life of a targeted
4 person that serves no legitimate purpose and causes that
5 person and would cause a reasonable person in his position
6 to suffer mental and emotional distress.

7 Intentional means willful, intending the result which
8 actually occurs, not accidental or involuntary.

9 Intent may be shown by acts and conduct -- and acts and
10 conduct of the defendant and other circumstances from which
11 you may naturally and reasonably infer intent.

12 The State may prove harassment by showing that the
13 defendant engaged in a pattern of conduct such as following
14 the targeted person as he moves from one location to
15 another, or visual or physical contact that is initiated,
16 maintained, or repeated after a person has been provided
17 oral or written notice that the contact is unwanted or after
18 the victim has filed an incident report with a law
19 enforcement agency, or surveillance of or maintenance of a
20 presence near the targeted person. That -- I'm sorry.
21 Presence near the targeted person's residence, place of
22 work, school, or another place regularly occupied or visited
23 by the targeted person or vandalism and property damage.

24 Now those are only examples of harassment. You may
25 find other conduct of the defendant which caused the victim

1 mental distress that would be harassment. A pattern means
2 two or more acts occurring over a period of time, however
3 short or long, evidence a continues -- a continues -- a
4 continuity of purpose.

5 If you find that the State has proven -- has not proven
6 that the defendant is guilty of harassment in the first
7 degree, you must then determine whether the State has proved
8 that the defendant is guilty of harassment in the second
9 degree.

10 Harassment in the second degree includes all of the
11 elements of harassment in the first degree except the
12 pattern of harassment previously outlined above. Harassment
13 in the second degree may include but is not limited to
14 verbal, written, or electronic contact that is initiated,
15 maintained, or repeated.

16 Now, to establish harassment in the second degree, the
17 State must prove, beyond a reasonable doubt, the defendant
18 engaged in a pattern of intentional, substantial, and
19 unreasonable intrusion into the private life of a targeted
20 person that serves no legitimate purpose and causes the
21 person -- and would cause a reasonable person in his
22 position to suffer mental or emotional distress.

23 Intentional means willful, intending the result which
24 actually occurs, not accidentally or involuntary.

25 Intent may be shown by acts and conduct of the

1 defendant and other circumstances from which you -- from
2 which you may naturally and reasonably infer intent.

3 The State may prove harassment by showing the defendant
4 engaged in a pattern of verbal, written, or electronic
5 contact that is initiated, maintained, or repeated. You may
6 find that other conduct of the defendant which caused the
7 victim mental distress would be harassment.

8 A pattern means two or more acts occurring over a
9 period of time, however short or long, evidencing a
10 continuity of purpose.

11 Ladies and gentlemen, the defendant is also charged
12 with threatening the life of a teacher.

13 The State must prove, beyond a reasonable doubt, that
14 the defendant knowingly and willfully delivered or conveyed
15 to a teacher of an elementary or secondary school a threat
16 to take the life of or to inflict bodily harm upon the
17 teacher or member of his immediate family if the threat is
18 directly related to the teacher's professional
19 responsibilities.

20 The threat may be verbal or expressed in a letter or
21 paper, writing, print, missive, document, or electronic
22 communication.

23 If you find that the State has not proven that the
24 defendant is guilty of threatening the life of a teacher,
25 you must then determine whether the State has proved that

1 the defendant is guilty of threatening the life of a public
2 employee.

3 Threatening the life of a public employee includes all
4 of the elements of threatening the life of a teacher except
5 the element of a teacher of an elementary or secondary
6 school.

7 To establish threatening of a life of a public employee,
8 the State must prove, beyond a reasonable doubt, that the
9 defendant knowingly and willfully delivered or conveyed to a
10 public employee a letter or paper, writing, print, missive,
11 document, or electronic communication, or verbal, or
12 electronic communication which contains a threat to take the
13 life of or to inflict bodily harm upon the public employee
14 or a member of his immediate family if the threat is
15 directly related to the public employee's official
16 responsibility.

17 Public employee means a person employed by the state, a
18 county, a municipality, a school district, or a political
19 subdivision of this state. Except for purposes of this
20 section, a public employee does not include a teacher of an
21 elementary or secondary school.

22 Now, Mr. Foreman, ladies and gentlemen, they're two
23 possible verdicts that you may find, guilty or not guilty.

24 I have, I have prepared two verdict forms for you to
25 use. One deals with the threat of -- charge and the other

1 deals with the harassment charge.

2 I have had to list not guilty and guilty on this form
3 but the fact that I've listed one before the other or one
4 right after the other has no bearing. I simply had to put
5 one before the other and that's what I've done on the
6 documents. So don't let that sway you in your
7 deliberations.

8 But, Mr. Foreman, ladies and gentlemen, I need for you
9 to understand that you are to consider both of these charges
10 in your, in your deliberation.

11 Mr. Foreman, ladies and gentlemen, I need for you to
12 understand that your decision has to be unanimous. All 12
13 members of the jury must agree on the verdict.

14 And, ladies and gentlemen, and Mr. Foreman, your
15 verdict can not be arbitrary or capricious or based upon
16 passion or prejudice. Your verdict must be based solely on
17 the evidence that has been presented during the trial of
18 this case and the law that I have just given you to apply to
19 that evidence.

20 Now, Mr. Foreman, once the jury has considered both of
21 the charges and completed their work and made a unanimous
22 decision, and you have completed the verdict forms, do not
23 forget to knock on the door and let us know. I had a jury
24 one time was back there for an unusually long length of time
25 and finally I sent a bailiff back there to figure out what

1 was going on, and I had forgot to tell them to knock on the
2 door and let us know when you finish. So, let us know when
3 you finish and then we will receive your verdict.

4 Now, ladies and gentlemen, I do want you to know we
5 have ordered lunch for you. It should be here in about 15
6 minutes or so.

7 So, you -- there will be an interruption in, in your
8 deliberations. When that interruption occurs, if someone
9 enters the jury room, stop your deliberations. The
10 deliberations are to occur only when all 12 members are
11 present.

12 Likewise, if there's a juror that has to go to the
13 restroom, make a telephone call or leave the jury room, stop
14 the deliberations and do not resume your deliberations until
15 all 12 members are present.

16 But, with those instructions -- and, and do not begin
17 right now. I'm gonna let you go to the jury deliberation
18 room but I still have to take up some matters of law with
19 the attorneys.

20 So, don't start your deliberations until the bailiff
21 comes and informs you to do so.

22 But, at this time, you may retire back to the jury
23 deliberation room.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Any exceptions from the State to the
2 charge?

3 SOLICITOR CUENCA: No, Your Honor.

4 THE COURT: Any from the defense?

5 MR. BENDER: No, sir.

6 THE COURT: All right. I don't believe we had any
7 evidence presented. So, we don't have that for y'all to
8 review.

9 Mr. Bailiff, I will give you these two verdict forms.
10 Give them to the foreperson and they may begin their
11 deliberations.

12 All right. We're going to step down. If, by chance,
13 you leave the building or something, be sure that we have
14 your cell numbers. They might have a question. They might
15 come back with a verdict but we need to relatively quickly
16 have, have contact with you.

17 SOLICITOR CUENCA: Yes, Your Honor.

18 THE COURT: We will step down.

19 Bring the alternate out.

20 (WHEREUPON, the alternate juror was dismissed at this
21 time.)

22 (WHEREUPON, the jury began deliberations at 11:49AM and
23 returned with a question at 1:52PM.)

24 THE COURT: We have a question from the jury.

25 One is what's they -- what's the difference between

1 harassment first degree and second degree. On that I
2 will -- I would -- my suggestion would be I just offer -- I
3 can tell the foreperson -- foreman to let them know I'll
4 just recharge them on the two and just recharge them.

5 The second question. Can we see the video we saw in
6 Court.

7 That video was not made evidence in the case but it is
8 part of the record of this case. If you were gonna show it
9 again, the State would have to gear it up again.

10 SOLICITOR CUENCA: Okay, Your Honor.

11 THE COURT: I mean do y'all -- what's, what's your
12 position on do they see it again or not?

13 MR. BENDER: My position is they, they can't cause
14 it's -- was never admitted into evidence. It's not -- I
15 mean I know it's in the record that it was shown but it's
16 not -- it wasn't admitted. So --.

17 THE COURT: Okay.

18 SOLICITOR CUENCA: We can play it again, Your Honor.
19 That would be the State's position.

20 THE COURT: All right.

21 SOLICITOR CUENCA: And we're just referencing that
22 small clip of --?

23 THE COURT: Uh-huh. (Affirmative).

24 SOLICITOR CUENCA: Yes, Your Honor.

25 THE COURT: Okay. I think it's -- I'm going to -- on

1 the video question, I think it's a reasonable question as
2 long as the state can gear it up to play just that video we
3 can play it.

4 It's -- to me, it's no different than if they asked say
5 can we rehear Officer John Doe's testimony and then we would
6 bring the court reporter in and then she'd play the
7 testimony, you know. So, I, I view it no different than
8 that. So I think it's a reasonable request.

9 Let me do this. I'm gonna bring the foreperson out and
10 let him know what we're gonna do but prepare the jury to
11 come back out here.

12 Will you bring the foreperson?

13 THE BAILIFF: Yes, sir.

14 SOLICITOR COLEMAN-HICKS: Your Honor, may I go get the
15 laptop that we need?

16 THE COURT: Uh-huh. (Affirmative).

17 (WHEREUPON, the foreperson comes into the courtroom at
18 this time.)

19 THE COURT: All right. Mr. Dugan, you may stand right
20 there. You can just stand right there.

21 I've received the questions from the jury. Thank you
22 very much for presenting them to me.

23 This is what we're going to do and I'm telling you this
24 cause you can let the jury know to be prepared. They're
25 gonna have to come back out to the courtroom.

1 I will recharge the jury on harassment in the first
2 degree and harassment in the second degree.

3 Okay. I can not explain the difference but I will
4 recharge you on that.

5 On the video, I have asked that that be replayed for
6 y'all. So, it may take us a few minutes. But just be
7 patient with us. But we'll bring the jury out and we'll
8 play that as well.

9 Okay?

10 THE FOREMAN: Okay.

11 THE COURT: If you can just let them know so if they
12 need to use the restroom or get ready to come back out.

13 THE FOREMAN: Okay.

14 THE COURT: Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the foreman.)

17 THE COURT: All right. We'll step down. Let me know
18 when y'all've got it set up and ready to go.

19 SOLICITOR CUENCA: Yes, judge. Thank you.

20 THE COURT: We'll be at ease.

21 We'll make this note a Court's Exhibit.

22 (WHEREUPON, the note from the jury was marked as
23 Court's Exhibit No. 1 and received into evidence at this
24 time.)

25 (WHEREUPON, a short recess was taken at this time.)

1 THE COURT: Okay. Do y'all know it's gonna work?
2 You've tested it?

3 SOLICITOR COLEMAN-HICKS: We did, Your Honor.

4 THE COURT: Okay. What I would propose, I'm gonna
5 charge them first since the questions came that way.

6 SOLICITOR CUENCA: Okay.

7 THE COURT: So we'll charge first and then we'll let
8 y'all play it.

9 SOLICITOR CUENCA: Is it okay that it's in the
10 background, Your Honor?

11 THE COURT: Oh, yeah, that's fine.

12 SOLICITOR CUENCA: Okay.

13 THE COURT: Yes.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen, thank you very much for the question.

18 On the question, question one was what is the
19 difference between harassment first degree and second
20 degree. I'm gonna -- what I can do is recharge you on that
21 law that relates to harassment. So, if you would, please
22 listen to the charge again.

23 The defendant is charged with harassment first degree.
24 The State must prove, beyond a reasonable doubt, that the
25 defendant engaged in a pattern of intentional, substantial,

1 and unreasonable intrusion into the private life of a
2 targeted person that serves no legitimate purpose and causes
3 the person -- and would cause a reasonable person in his
4 position to suffer mental or emotional distress.

5 Intentional means willful, intending the result which
6 actually occurs, not accidentally, or involuntary.

7 Intent may be shown by acts and conduct of the
8 defendant and other circumstances from which you may
9 naturally and reasonably infer intent.

10 The State may -- excuse me. The State may prove
11 harassment by showing the defendant engaged in a pattern of
12 conduct such as following the targeted person as he moves
13 from location to location, or visual or physical contact
14 that is initiated, maintained, or repeated after a person
15 has been provided oral or written notice that the contact is
16 unwanted, or after the victim has filed an incident report
17 with a law enforcement agency, or surveillance of or the
18 maintenance of a presence near the targeted person's
19 residence, place of work, school, or another place regularly
20 occupied or visited by the targeted person or vandalism and
21 property damage.

22 These are only examples of harassment. You may find
23 that other conduct of the defendant which caused the victim
24 mental distress would be harassment.

25 A pattern means two or more acts occurring over a

1 period of time, however short or long, evidencing a
2 continuity of purpose.

3 If you find that the State has not proven that the
4 defendant is guilty of harassment in the first degree, you
5 must then determine whether the State has proved that the
6 defendant is guilty of harassment in the second degree.

7 Harassment in the second degree includes all of the
8 elements of harassment in the first degree except the
9 patterns of harassment previously outlined above.

10 Harassment in the second degree may include, but is not
11 limited to, verbal, written, or electronic contact that is
12 initiated, maintained, or repeated.

13 To establish harassment in the second degree, the State
14 must prove, beyond a reasonable doubt, that the defendant
15 engaged in a pattern of intentional, substantial, and
16 unreasonable intrusion into the private life of a targeted
17 person that serves no legitimate purpose and causes the
18 person -- and would cause a reasonable person in his
19 position to suffer mental or emotional distress.

20 Intentional means willful, intending the result which
21 actually occurs, not accidentally, or voluntary.

22 Intent may be shown by acts and conduct of the
23 defendant and other circumstances from which you may
24 naturally and reasonably infer intent.

25 The State may prove harassment by showing that the

1 defendant engaged in a pattern of verbal, written, or
2 electronic contact that is initiated, maintained, or
3 repeated. You may find that other conduct of the defendant
4 which caused the victim's mental distress would be
5 harassment.

6 A pattern means two or more acts occurring over a
7 period of time, however short or long, evidencing a
8 continuity of purpose.

9 Ladies and gentlemen, I'm now going to ask the State to
10 prepare the video that you requested in your second question
11 which is that you've asked to see the video that you saw in
12 Court.

13 (WHEREUPON, the video was played for the jury at this
14 time.)

15 SOLICITOR CUENCA: Your Honor, would you like me to
16 replay that again since it was choppy initially?

17 THE COURT: If you would cause it, it was not choppy
18 during the trial.

19 (WHEREUPON, the video was played for the jury at this
20 time.)

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

22 Ladies and gentlemen, you may return back to the jury
23 deliberation room and continue your deliberations.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. We'll step down.

2 Again, if y'all leave, be sure that we are able to
3 reach you.

4 SOLICITOR CUENCA: Thank you, judge.

5 (WHEREUPON, the jury began deliberations again at
6 2:10PM and returned with a verdict at 3:15PM.)

7 THE COURT: All right. I'm informed that the jury has
8 reached a verdict.

9 Anything before we bring the jury back in from the
10 State?

11 SOLICITOR CUENCA: No, Your Honor.

12 THE COURT: Any from the defense?

13 MR. BENDER: No, Your Honor.

14 THE COURT: Thank you very much.
15 We'll bring them back in.

16 THE BAILIFF: Yes, sir.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Mr. Foreman, I'm informed that the ladies
20 and gentlemen of the jury has reached a verdict.

21 Is that correct?

22 THE FOREMAN: Yes, sir.

23 THE COURT: Please give it to the bailiff if you would.

24 (WHEREUPON, the foreman complies.)

25 THE COURT: All right. Madam Clerk?

1 THE CLERK: Yes, sir.

2 THE COURT: If you will please publish the verdict.

3 THE CLERK: In the General Sessions Court, Case Number
4 2020-3001, the state of South Carolina versus Wesley Ray
5 Kyzer, we, the jury, unanimously find Wesley Ray Kyzer
6 guilty of threatening the life of a teacher. This is signed
7 by the foreperson and dated today's date.

8 Case Number 2020-3000, the verdict for harassment, we,
9 the jury, unanimously find Wesley Ray Kyzer not guilty of
10 harassment first degree.

11 We, the jury, unanimously find Wesley Ray Kyzer not
12 guilty of harassment second degree. This is signed by the
13 foreperson and dated today's date.

14 Ladies and gentlemen of the jury, if these are your
15 verdicts and still your verdicts, please raise your
16 right-hand.

17 (WHEREUPON, all jurors raise their hands at this time.)

18 THE CLERK: So say you-all.

19 THE COURT: Thank you very much.

20 Anything from the State or the defense before I dismiss
21 the jury?

22 SOLICITOR CUENCA: Nothing from the State, Your Honor.

23 MR. BENDER: Nothing, Your Honor.

24 (WHEREUPON, the jury was dismissed at this time.)

25 THE COURT: Anything from the parties before we proceed

1 with sentencing?

2 SOLICITOR CUENCA: Nothing from the State, Your Honor.

3 MR. BENDER: No, Your Honor.

4 THE COURT: All right. If you would, I'm going to --
5 if you will, everybody -- Mrs. -- everybody stay in the
6 courtroom.

7 Mr. Kyzer, just stay in the courtroom. I'm gonna step
8 down. We do not have the paperwork to proceed with the
9 sentencing but I'll come back just shortly.

10 okay?

11 MR. BENDER: Just stay in---

12 THE COURT: Yeah, if you've got -- I'll take that
13 paperwork but we're waiting on another -- probation and
14 parole as well.

15 SOLICITOR CUENCA: And, if I may, I will present it to
16 Mr. Bender first.

17 THE COURT: Okay.

18 SOLICITOR CUENCA: It sounds like---

19 THE COURT: That will be great. I'll be right back.

20 Thank you very much.

21 I'll come right back.

22 (WHEREUPON, a short recess was taken at this time.)

23 THE COURT: Give me just a moment.

24 (Pause.)

25 THE COURT: Okay. We will go on the record on the

1 matter of State versus Wesley Ray Kyzer. This is the
2 sentencing phase of this proceeding.

3 Mr. Kyzer, I just got a couple -- I need to remind you
4 you remain under oath. Just have a couple demographic
5 questions and then we'll move into the more substantive part
6 of this proceeding.

7 How old are you, sir?

8 THE DEFENDANT: 49.

9 THE COURT: 49?

10 THE DEFENDANT: 49.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: Associate's Degree.

13 THE COURT: Did you obtain a high school diploma first?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Married, single, divorced, widowed?

16 THE DEFENDANT: Married.

17 THE COURT: Do you -- and you have three children?

18 THE DEFENDANT: Three children.

19 THE COURT: How, how old is the oldest?

20 THE DEFENDANT: 29.

21 THE COURT: And youngest?

22 THE DEFENDANT: 21.

23 THE COURT: And you -- I believe you told me you were a
24 contractor?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Ever serve in the military?

2 THE DEFENDANT: No, sir.

3 THE COURT: When you got arrested on these charges, how
4 long a time, if any, did you spend in jail before you made
5 bond?

6 THE DEFENDANT: The rest of that morning and then I---

7 THE COURT: Did you---

8 THE DEFENDANT: That evening -- the following day.

9 THE COURT: Okay.

10 THE DEFENDANT: So, I was just there from maybe seven
11 or eight o'clock to --

12 THE COURT: Okay.

13 THE DEFENDANT: -- 4:00 or 5:00 in the afternoon.

14 THE COURT: All right. From the State, any prior
15 record?

16 SOLICITOR CUENCA: Yes, Your Honor.

17 May it please the Court.

18 Just one. 1990, buying beer underage. That is it,
19 Your Honor.

20 THE COURT: All right. And did we have any information
21 from the victim that wished to address the Court?

22 SOLICITOR CUENCA: The victim does not wish to speak,
23 Your Honor.

24 THE COURT: Any input from the victim?

25 SOLICITOR CUENCA: Yes, we're asking for a TRO, Your

1 Honor, to be signed.

2 THE COURT: All right. Let me see that.

3 SOLICITOR CUENCA: If I may approach?

4 THE COURT: Anything else from the State?

5 SOLICITOR CUENCA: No, Your Honor. The State does not
6 make any recommendations in this case.

7 THE COURT: All right. Yes, sir, Mr. Bender.

8 MR. BENDER: Thank you, Your Honor.

9 As you see, Mr. Kyzer, and he's talked with you, I'm
10 sorry -- the little bit but his family's here. He's got a
11 strong support system. He's got, like he said, three
12 children, four grandchildren, and appears to be another
13 grand, grandchild on the way here shortly. He's employed.
14 His wife's employed.

15 As you can see, no prior record except a -- an underage
16 alcohol ticket that was 25 years ago, 27 years ago.

17 What I would say, Your Honor, is that, unfortunately,
18 the, the drive to protect or the, or the feeling of wanting
19 to protect family can sometimes overwhelm the, the
20 inhibited -- the inhibition of someone.

21 I would ask Your Honor for a probationary sentence in
22 this matter because I don't want a 20 second snippet of his
23 life to define him going forward, Your Honor. I don't think
24 that's who he is in general.

25 He made a mistake. The jury returned a verdict and now

1 he's got to, you know, he's got to live with that.

2 But, again, Your Honor, he's got a very strong support
3 system. He's employed full-time. His wife's employed
4 full-time. And, and I'd ask that you put him on a
5 probationary sentence and allow him -- there's gonna be a
6 permanent restraining order.

7 I think you've heard essentially that he hasn't had any
8 contact with the coach since -- there was no contact in 2017
9 to one incident, 2019, and then now we're in 2022. So we're
10 essentially at five years where there was one contact. It
11 looked at -- I assume you're signing the permanent
12 restraining order. So that will be in place but that's what
13 we would be asking Your Honor.

14 THE COURT: Mr. Kyzer -- nobody else to address the
15 Court but the defendant?

16 MR. BENDER: It -- his family is, is present, Your
17 Honor.

18 THE COURT: Okay.

19 MR. BENDER: And I just note that they are present.
20 They are here in support of him.

21 THE COURT: All right. Mr. Kyzer, do you agree with
22 the statements just made by your lawyer?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Kyzer, is there anything else that you
25 would like to say or want me to know or consider?

1 THE DEFENDANT: Well, I take full responsibility, the
2 whole thing.

3 I chose to walk to that table. Simple as that.

4 Everything else wouldn't of fell into place if I didn't
5 walk to that table. So, therefore, I, I am responsible.

6 I don't agree but I accept it.

7 Monday -- I -- well, I told my attorney, I said I
8 won't, I won't accept a deal. I said -- and I'm not trying
9 to -- I'm not getting into anything. I'm just telling you
10 my, my thought process---

11 THE COURT: This is your time---

12 THE DEFENDANT: ---during---

13 THE COURT: ----to let me know---

14 THE DEFENDANT: Well, I, I, I accept their decision.
15 I'm not trying to get you to change -- I don't know what
16 your mind is. So, I'm not trying to get you to change
17 anything. I'm just telling you my thought process in
18 dealing with it.

19 I, I told my attorney -- well, in the very beginning I
20 told him he didn't have to trust me. I said wait until we
21 get the evidence and then you make a decision whether or not
22 you believe me or not. And then I, I do feel as though, as
23 time went on, started getting stuff in, everything that I
24 told him up to getting the information, it started being
25 verified. Still I'm responsible. I walked to that table.

1 So, I had that. He -- he'd call and tell me you have
2 an offer and I told him no, you know, I'm, I'm sorry. I, I
3 will not admit to something that I didn't do.

4 I understand they're saying that I did it but it's,
5 it's -- so, Monday, this past Monday when we was at the
6 auditorium, he came to me and he, he mentioned the -- they,
7 they made an offer and I told him no. You know, still, I'm
8 not gonna accept it.

9 We came into your courtroom here and you shook me a
10 little bit. When I say a little, I don't mean -- when I say
11 that I'm -- I don't mean to minimize it. But you, you said
12 don't put it in the jury's hands basically and I think you
13 was talking to them as well. But you was looking at me in
14 my eyes.

15 And then you mentioned time behind it. You know, one
16 of the other words that you spoke was 10. We went outside.
17 I told my lawyer, I said take the deal. I said I'll take
18 it. I said but I do not want a permanent restraining order
19 and that was the holdup. And the reason -- cause they're --
20 this was my, this was my first. It's nothing like I
21 expected. You know, I mean it's, it's just not.

22 I still think that I, I wouldn't of taken the
23 permanent -- I don't know that I'd still taken that deal
24 because of the permanent restraining order and the reason
25 being I feel as though I was put in places that I wasn't, I

1 wasn't there and I, I think that we proved that. And I
2 didn't want to get caught somewhere that, unbeknownst to me,
3 somebody saw me, take a picture, call an officer, and say
4 hey, I got a restraining order against this person and he's
5 here and then be brought back to you or another judge and
6 being told that I couldn't behave and that's just not the
7 case.

8 So, that's what I -- that's what I was worried about.
9 That's -- that was my driving fact with making the decision
10 that I, that I did to go forward. I didn't want you to
11 think that your recommendation fell on deaf ears. But I, I
12 had a reason why I didn't want to take that restraining --
13 that permanent -- I mean if it was three years, five years,
14 you know, whatever it is.

15 I mean if I see somebody, just like I said, I can walk
16 away. I can turn around. But if I don't see the person,
17 there's nothing I can do. And then if I'm not trusted now,
18 I'm definitely not gonna be trusted then.

19 So, appreciate it but that's, that's my thought through
20 the whole process. And I appreciate the work of my lawyer.

21 THE COURT: Thank you, Mr. Kyzer.

22 Let me ask you a question.

23 I heard twice during this trial testimony about you're
24 living in a mobile home or---

25 THE DEFENDANT: Motor, motor home.

1 THE COURT: Motor home.

2 THE DEFENDANT: So this has taken so long. We didn't
3 know what the financial impact was gonna be.

4 So, we sold our home. We have two other homes but my,
5 my daughter lives in one with her man and kids, and then I
6 wasn't gonna -- we weren't gonna penalize Aiden and put him
7 out of our other house because of a decision that I made.

8 I do own some property that we do plan on -- we plan on
9 building on. But, again, not knowing what's going on,
10 we're, we're in the process of building. We put the
11 foundation in and I told my bride that we're just gonna --
12 we're gonna stop and see what happens. We have the money to
13 pay off the loan if I go away.

14 You know, I mean we thought about this. This wasn't
15 just a quick decision. But if every -- depending on what
16 happens, we're either gonna move down and continue building
17 or my wife's gonna get an apartment somewhere but, right
18 now, our current is in the motor home.

19 THE COURT: All right. Thank you for sharing that with
20 me.

21 THE DEFENDANT: The, the place is Prosperity that we
22 are building.

23 THE COURT: All right. Thank you, sir.

24 (Pause.)

25 THE COURT: All right. On this case, it will be a five

1 year sentence at the State Department of Corrections and the
2 payment of a \$5,000 fine. That will be suspended upon the
3 service of 90 days, and a payment of a \$5,000 fine, followed
4 by five years of supervision by the Department of Probation.

5 He gets credit for the one day. I've indicated, since
6 I'm not hearing much from the victim, I'm gonna allow him
7 the opportunity to try to do that under the home detention
8 program.

9 Special terms and conditions of the case, no possession
10 of any firearms, no contact with the victim, that's direct
11 or indirect, as well as my desire is that you comply with
12 a -- some type of program. I've indicated it to be the
13 anger management program. Some type of program developed by
14 the Department of Probation, you got to successfully
15 complete that.

16 Talk to your lawyer as to any term -- as to what these
17 terms and conditions mean. Failure by you to comply with
18 any of that can lead you into the Department of Corrections.
19 I've also executed the permanent restraining order
20 prohibiting you from being in contact with the, with the --
21 Mr. Brown or members of his family.

22 This is for how long, 30 years, 40 years?

23 SOLICITOR CUENCA: 100.

24 THE COURT: One hundred years.

25 SOLICITOR CUENCA: Yes, sir.

1 THE COURT: If you have any questions as to what that
2 means and the reach of that, please talk to your lawyer as
3 well because if I -- even if you comply with the sentence
4 that I've imposed, violating the permanent restraining order
5 is a separate criminal -- potentially criminal violation.

6 Good luck to you, sir.

7 THE DEFENDANT: Appreciate it.

8

9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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1 STATE OF SOUTH CAROLINA)

IN THE COURT OF
GENERAL SESSIONS
OF THE SEVENTH
JUDICIAL CIRCUIT

2 COUNTY OF SPARTANBURG)

4 STATE OF SOUTH CAROLINA,)

5 Plaintiff,)

TRANSCRIPT OF RECORD
2019-GS-42-03001

6 vs.)

7 WESLEY RAY KYZER,)

9 Defendant.)

ORIGINAL

11 December 9, 2022
12 Spartanburg, South Carolina

13 B E F O R E:

14 HONORABLE J. MARK HAYES, II, Judge.

16 A P P E A R A N C E S

17 MARESSA CUENCA, ASSISTANT SOLICITOR
For The State

18 SPENCER H. SMITH, ASSISTANT SOLICITOR
19 For The State

20 C. RAUCH WISE, ESQUIRE
21 For Defendant

24 Julie A. Cendroski,
Circuit Court Reporter III
25 Seventh Judicial Circuit

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1 THE STATE VS. WESLEY RAY KYZER

2 THE COURT: We'll go on the record on the matter
3 of the State versus Wesley Ray Kyzer. I have that this
4 is a motion that has been filed by Mr. Wise on behalf of
5 the defendant. The original case number is
6 2020-GS-42-3001. And I have that Mr. Wise is the
7 moving party. I'll be more than happy to hear from you.

8 MR. WISE: Thank you. Your Honor, this is a
9 motion involving a juror who didn't disclose a
10 relationship with one of the witnesses for the State.
11 We would like to call Mr. Torian Richardson, who is the
12 juror in this case, as a witness.

13 THE COURT: Okay. Mr. Richardson?

14 (Witness comes forward.)

15 THE COURT: Sir, just come right up here. I'll
16 tell you, what Mr. Richardson, come right back over
17 here. Place your left hand on the bible and raise your
18 right hand. (Complies.)

19 Do you solemnly swear that the testimony you're
20 about to give the Court will be the truth, the whole
21 truth, and nothing but the truth?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you, Mr. Richardson. Watch
24 your step as you're stepping up, and just have a seat in
25 the chair and pull the chair up to the microphone.

1 THE WITNESS: All right.

2 THE COURT: Give us your full name again, sir.

3 THE WITNESS: Torian Rashad Richardson.

4 THE COURT: Thank you, sir.

5 TORIAN RASHAD RICHARDSON,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WISE:

9 Q. Mr. Richardson, back on the first part of March
10 of this year, March 7th through 9th, to be exact, did
11 you have an opportunity to serve as a juror in the case
12 of the State versus Wesley Ray Kyzer?

13 A. Yes, sir.

14 Q. Okay. Do you remember, was there anybody on the
15 State's witness list that you recognized?

16 A. Yes, sir. Coach -- what's his first -- I think
17 it's Chris Miller.

18 Q. Chris Miller, all right. And how did you know
19 Mr. Miller?

20 A. He was my high school football coach.

21 Q. And you played football where?

22 A. At Byrnes High School.

23 Q. And from checking your background, you had rather
24 a successful high school career?

25 A. I guess so, yes, sir.

1 Q. Did you receive a scholarship?

2 A. Yes, sir.

3 Q. And where did you go? Where did you play
4 football on a scholarship?

5 A. East Carolina University.

6 Q. All right. And was Coach Miller involved in any
7 of the recruiting efforts with you?

8 A. Not really.

9 Q. Okay.

10 A. My father, my father and my godfather actually
11 did all my recruiting.

12 Q. Okay. But you knew Coach Miller through playing
13 with him, I believe, for three years at Byrnes High
14 School?

15 A. Yes, sir. Yes, sir.

16 Q. Okay. Do you recall the Court calling out
17 Christopher Miller's name?

18 A. I do not.

19 Q. You do not? But you did recognize him in the
20 courtroom?

21 A. Yes, sir. Yes, sir.

22 Q. And you did not disclose that, that you knew Mr.
23 Miller at the trial?

24 A. No, sir.

25 MR. WISE: Your Honor, that's all I have for this

1 witness.

2 THE COURT: All right. If you would, sir, just
3 let the solicitor, she's gonna ask you a few questions.

4 CROSS-EXAMINATION

5 BY MS. CUENCA:

6 Q. Mr. Richardson, did you remember Coach Miller at
7 the time of the trial?

8 A. Well, when I seen him, I remembered.

9 Q. Okay. And how long did you know him when you
10 were playing football?

11 A. Right along about three years.

12 Q. About three years. And what was his involvement
13 with you or in what capacity did you know him?

14 A. Just, he was just a football coach.

15 Q. Football coach. After you graduated from Byrnes
16 High School, did you keep in touch with him?

17 A. No. No, ma'am.

18 Q. So when was the last time that you spoke with
19 him?

20 A. I think the last time I spoke with Coach Miller,
21 I came to a game when I was -- well, when I left to go
22 to school and I came back by a game I seen him. That
23 was probably around 2011.

24 Q. Okay. So 2011 was the last time that you spoke
25 with him?

1 A. Yes, ma'am.

2 Q. Okay. And you mentioned you did not remember him
3 being read out as a witness, correct?

4 A. (No verbal response.)

5 THE COURT: I'm sorry, you've got to give a
6 verbal response.

7 THE WITNESS: Oh, no. No, I don't.

8 BY MS. CUENCA:

9 Q. That day or when you were being selected as a
10 juror, you were asked if you have a close, personal
11 relationship with any of these individuals, which would
12 include the witness, or if you shared any type of
13 employment or work relationship or professional
14 relationship with any of these individuals. So I'm
15 going to ask you, at the time of trial on March 2022,
16 rather 2021, do you have a close personal relationship
17 with Coach Miller?

18 A. No, I don't.

19 Q. Okay. And at the time of the trial, do you have
20 a social relationship with Coach Miller?

21 A. No, I don't.

22 Q. Okay. Have you ever shared any type of
23 employment relationship with Coach Miller?

24 A. No, I don't.

25 Q. Okay. How about a work relationship in the past?

1 A. No.

2 Q. What about a professional relationship with him
3 in the past?

4 A. No.

5 Q. Okay. Were you trying to conceal the fact that
6 you knew Coach Miller?

7 A. Oh, no.

8 Q. Okay. Did you understand that that question was
9 meant for you to understand whether or not you had a
10 work relationship, personal relationship, close
11 relationship with Coach Miller at the time of the trial?

12 A. No. I, I didn't think a high school coach was
13 considered a personal relationship.

14 Q. Okay. So why didn't you stand when that question
15 was read, Mr. Richardson?

16 A. I, I don't even -- I can't even -- I don't even
17 know. I just, I just thought, I mean, since he's a high
18 school coach it's not really personal or anything, so I
19 just didn't understand.

20 Q. Okay. Is it because you didn't believe that the
21 question applied to you?

22 A. Yes. Yes, that's why.

23 SOLICITOR CUENCA: I have no further questions,
24 Your Honor.

25 THE COURT: All right. Any redirect?

1 MR. WISE: Just a few.

2 REDIRECT EXAMINATION

3 BY MR. WISE:

4 Q. I assume playing with Coach Miller you had some
5 type of work relationship with him in that sense.

6 A. I mean, I guess if you consider playing high
7 school football is considered work.

8 Q. Uh-huh.

9 A. I mean....

10 Q. And you did recognize him in the courtroom?

11 A. Yes, sir.

12 Q. When you saw him in the courtroom?

13 A. Yes, sir.

14 Q. And you recognized him as your high school coach?

15 A. Yes, sir.

16 MR. WISE: Okay. Thank you, that's all.

17 THE COURT: Thank you, sir, you may step down.

18 Watch your step as you're stepping down, if you would.

19 Any reason why the witness could not be excused?

20 MR. WISE: I have no objection.

21 SOLICITOR CUENCA: No objection, Your Honor.

22 THE COURT: Sir, thank you for coming. You may
23 be excused as well.

24 THE WITNESS: Thank you.

25 (Witness leaves courtroom.)

1 MR. WISE: I call Mr. Kyzer.

2 (Witness comes forward.)

3 THE COURT: Sir, just come right up here. If you
4 would, just place your hand on the bible and -- place
5 your left hand on the bible and raise your right hand.
6 (Complies.)

7 Do you solemnly swear that the testimony you're
8 about to give the Court will be the truth, the whole
9 truth, and nothing but the truth?

10 THE WITNESS: Always, yes, sir.

11 THE COURT: All right, sir. Watch your step as
12 you're stepping up. Just have a seat in the chair.
13 Speak into the microphone, if you would.

14 WESLEY RAY KYZER,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q. Mr. Kyzer, if you would, tell us how you came to
19 be focused on the juror Torian Richardson in this case.

20 A. Well, I have a loving wife and she, she just
21 never stops.

22 Q. Uh-huh.

23 A. Unfortunately, her grandmother cracked her hip.

24 Q. Uh-huh.

25 A. And my wife went to stay with her in Aiken, where

1 she lives. And one of the things about my wife is she
2 has to have a TV on.

3 Q. Has to have a what?

4 A. A TV on, television.

5 Q. Okay.

6 A. I mean, she just cannot.

7 Q. Right.

8 A. She just has to have that. And fortunately for
9 me, my wife's grandmother only had five channels.

10 Q. Uh-huh.

11 A. And one of the channels that my wife got to
12 choose from, it had the case of Laci Peterson and Scott
13 Peterson.

14 Q. Uh-huh.

15 A. And they were talking about juror tampering.

16 Q. Right.

17 A. And so the first thing my loving bride did, is
18 she started looking down the list.

19 Q. Right.

20 A. The first name that popped up was Mr. Richardson
21 and there was a connection between Richardson and
22 Miller.

23 Q. I believe the record reflects that Torian
24 Richardson was actually the first juror selected, right?

25 A. Yes, sir.

1 Q. And what did you learn about Mr. Richardson
2 through that Google research?

3 A. What he stated here today, that I think he was on
4 three, three championship football teams with -- as
5 Coach Miller as the coach.

6 Q. Uh-huh.

7 A. That he had -- I thought he had an offer from
8 Kentucky and went to Eastern Carolina. I mean, just
9 everything that was associated with him and Coach
10 Miller.

11 Q. All right. I'm gonna hand you these three
12 pictures. Were these -- I'm gonna show you these three
13 pictures. Were these things that you found in relation
14 to Mr. Richardson?

15 A. It appears to be, yes, sir.

16 MR. WISE: All right. Move to introduce these as
17 exhibits one, two, and three.

18 SOLICITOR CUENCA: No objection, Your Honor.

19 THE COURT: Without objection.

20 (Defendant's Exhibit Number 1, Byrnes H.S. Team
21 Photograph, was marked for identification.)

22 (Defendant's Exhibit Number 2, Byrnes H.S. Team
23 Photograph, was marked for identification.)

24 (Defendant's Exhibit Number 3, Byrnes H.S. Team
25 Photograph, was marked for identification.)

1 (Defendant's Exhibits 1, 2, and 3 were entered
2 into the record.)

3 BY MR. WISE:

4 Q. All right. Mr. Kyzer, if you had known that
5 Torian Richardson had played for three years for Coach
6 Christopher Miller, would you have approved him to be on
7 your jury?

8 A. No, sir. If I had found out that he had cut the
9 lawn one time for Chris Miller, he wouldn't be on my
10 jury.

11 MR. WISE: Okay. Thank you. That's all the
12 questions I have, Your Honor.

13 CROSS-EXAMINATION

14 BY SOLICITOR CUENCA:

15 Q. Mr. Kyzer, when did you find out that Torian
16 Richardson played for Coach Miller?

17 A. I think my trial was on March -- ended on March
18 10th. I was sentenced to 90 days of probation -- or,
19 I'm sorry, 90 days of house arrest. I got two days
20 credit, so I think I finished up June the 6th with the
21 house arrest. And, let's see, I got five years prison,
22 which was suspended to five years probation, so I think
23 I was a month or two on that. And then somewhere in
24 that time, so July. It would be, I think I contacted my
25 lawyer the next day, so he would have a better -- or if

1 you wanted me to look at an email file or something like
2 that, I can give you an exact date.

3 Q. Oh, no.

4 A. But somewhere in that time.

5 Q. And that'll be 2021?

6 A. No, this year actually.

7 Q. So around about July 20 ---

8 A. I'd say August or so, somewhere in there.

9 July/August.

10 Q. Okay. July/August of this year is when you found
11 out about the juror?

12 A. Somewhere in there.

13 MS. CUENCA: Okay. I have no further questions,
14 Your Honor.

15 THE COURT: Any redirect, limited to what she
16 went into?

17 MR. WISE: No, Your Honor.

18 THE COURT: Thank you, sir, you may step down.
19 Anything else, Mr. Wise?

20 MR. WISE: Nothing further as far as testimony is
21 concerned.

22 THE COURT: The State have any witnesses they
23 intend to call?

24 SOLICITOR CUENCA: No, Your Honor.

25 THE COURT: All right.. Do y'all wish to present

1 arguments?

2 MR. WISE: I would, briefly, Your Honor. I call
3 the Court's attention to two cases. One is
4 The State versus Gullledge, which is 277 S.C. 368, 287
5 S.E 2d 488, a 1982 case where the Court there said where
6 a trial judge grants counsel's request that the judge
7 ask a particular question on voir dire, counsel is
8 entitled to a truthful answer to the question. You
9 know, Mr. Richardson, to his credit, said he recognized
10 Mr. Miller as being his coach and was in the courtroom
11 and he -- the questions, as I read them, were certainly
12 broad enough to require him to make that response. And
13 when he did not make that response, he did not give a
14 truthful answer to the question. So, therefore, I think
15 we're entitled to a new trial.

16 And also, in Long versus Norris and Associates,
17 civil case 342 S.C. 561, 538 S.E. 2d, page five, Court
18 of Appeals opinion from 2000, they said it is the duty
19 of every potential juror to make true and full
20 disclosure during voir dire because counsel is entitled
21 to rely on the answers in determining whether to
22 exercise a preemptory strike.

23 I think you can almost take judicial notice of
24 the fact that I don't know of any lawyer that would
25 allow a person who played for a coach to sit on the jury

1 if the coach is going to be an adverse witness. That
2 relationship, at least from my experience, has always
3 been very special. And, certainly, would question the
4 objectivity of the, of the juror.

5 So I think on that basis and the basis of those
6 two cases that I've cited to the Court, that Mr. Kyzer
7 is entitled to a new trial in this matter because of
8 failure to disclose by the Court.

9 I want to hand up to the Court, excerpts from the
10 transcript that reflects the questions that, that were
11 asked by the Court. And the fact that Mr. Richardson in
12 that portion of the transcript did not respond.

13 THE COURT: Yes, ma'am.

14 SOLICITOR CUENCA: Your Honor, may it please the
15 Court? Melissa Cuenca on behalf of the State. The
16 State is asking the Court to deny the defendant's motion
17 for three reasons. First of all, Your Honor, there was
18 no concealment. Second of all, even if there was a
19 concealment, it was not intentional. Third of all,
20 there was no prejudice, Your Honor.

21 Regarding the first, the standard, Your Honor,
22 when looking whether or not a new trial is required,
23 only when the Court finds that the juror intentionally
24 concealed the information, and the new information
25 concealed would have supported a challenge for cause or

1 would have a material factor of the use of the party's
2 preemptory challenges.

3 Your Honor, the defendant has not met that
4 standard of intentional concealment. Your Honor, the
5 case law is that when determining whether a juror's
6 failure to respond to a voir dire question amounts to
7 intentional concealment, there's a fact intensive
8 determination that must be made on a case-by-case basis.

9 Your Honor, first on the first point of no
10 concealment, in this case the voir dire in question is,
11 quote, if you have, present tense, a close, personal or
12 social relationship with any of those individuals.

13 Mr. Torian Richardson testified, Your Honor, that
14 he did not. There was no testimony or evidence that he
15 had a close, personal, or social relationship at that
16 time of the trial with Coach Miller.

17 Your Honor, the second part is past tense, or if
18 you shared any type of employment or work relationship
19 or professional relationship with any of these
20 individuals. As well, Your Honor, there is the fact
21 that Mr. Richardson was a stand-out wide receiver at
22 Byrnes High School when Coach Miller was a head football
23 coach back in 2007/2008, Your Honor, does not fit into
24 the employment, work, or professional relationship.
25 Thus, Mr. Richardson had no reason to stand up and there

1 is no concealment in this regard.

2 Your Honor, further, the State's voir dire, which
3 is question 13, that was provided, which I cannot affirm
4 to the Court, Your Honor, whether or not it was read,
5 but it was something that was submitted to the Court,
6 because I do not have a copy of the transcript, Your
7 Honor. But that said: Does anyone on the jury know of
8 any reason why they could not give the State or the
9 defendant a fair trial. And that goes, again, to the
10 aspect of it was not prejudicial, Your Honor.

11 The State would like to submit several of the
12 cases that it's gonna be relying on. And, for the
13 record, I've provided a copy to the defense attorney, as
14 well as to the Court, Your Honor.

15 Your Honor, in the case of Smith v. The State,
16 and that's a 2007 Supreme Court case, and the facts are
17 that the juror knew the defendant. They were both
18 incarcerated at the same facility and shared the -- and
19 that juror shared that information with one of the --
20 with the members of the jury.

21 Your Honor, during the voir dire, the judge asked
22 members of the jury if they were related by blood or
23 marriage or had a close personal, or were a close,
24 personal friend. The juror did not respond. And they
25 had three preemptory challenges left, Your Honor. In

1 that case the Court found that there was no -- it did
2 not address that specific question, Your Honor, and thus
3 did not grant a new trial in that case.

4 Your Honor, regarding the second, even if there
5 was concealment, there is no testimony, Your Honor, of
6 evidence of intentional concealment by Mr. Richardson,
7 and, thus, cannot be inferred that the juror was not
8 impartial. Your Honor, when I asked Mr. Richardson if
9 he knew to conceal it, he said that he did not. He
10 testified, Your Honor, that he didn't think that this
11 question applied to him.

12 Your Honor, when we're looking at the case law on
13 this, there is a case, State v. Woods, which is where
14 the standard comes from. The Court says that they held
15 that intentional concealment occurs when the question
16 presented to the jury on voir dire is reasonably
17 comprehensible to the average juror. And the subject of
18 the inquiry is of such significance that the juror's
19 failure to respond is unreasonable.

20 Your Honor, it is not unreasonable when Mr.
21 Richardson did not believe that this voir dire questions
22 applied to him because he did not have a close, personal
23 relationship or a work relationship with him. And, Your
24 Honor, this inference does not apply. The Court finds
25 in the case of -- other cases, Your Honor, that when

1 there is no intentional concealment, the inquiry is
2 there, Your Honor. The Court doesn't look any further.

3 Your Honor, but it is also the State's argument
4 that, if anything, that even if it was a concealment,
5 Your Honor, it was an unintentional concealment because
6 the question was ambiguous and comprehensible to the
7 average juror or the subject of the inquiry is far
8 removed in time.

9 In this case, Your Honor, Mr. Richardson
10 testified that he had not even spoken with Coach Miller
11 since 2011, which the trial was held in 2021, which
12 would have been ten years before, Your Honor. That
13 there is no intentional concealment in this case.

14 Your Honor, lastly, there is no prejudice to the
15 defendant. In this specific case, Your Honor, the
16 threat that was made in September, there were several
17 other witnesses as well. Coach Caldwell, Coach Thomas,
18 Coach Miller was one of them. They were testifying to
19 the same thing, Your Honor. So Chris Miller was
20 testifying to what other coaches had already testified.
21 And so, lastly, we think there is no prejudice to the
22 defendant as far as the testimony that was given.

23 Your Honor, for the reasons and because of the
24 case law where a new trial was not required, which the
25 State provided and it will not be going in depth to each

1 case, but would like the Court to consider, we're asking
2 that because there was no concealment or if concealed,
3 it was unintentional, that the Court deny the
4 defendant's motion for a new trial. Thank you.

5 THE COURT: You referenced a case of
6 State vs. Wood, that's the copy of the case you gave me?

7 SOLICITOR CUENCA: State v. Woods, yes, Your
8 Honor.

9 THE COURT: Okay. All right. Thank you, I've
10 got it.

11 SOLICITOR CUENCA: That's where the standard is.

12 THE COURT: All right.

13 Any, any reply to her argument?

14 MR. WISE: I would just point out to the Court
15 that, you know, as far as willful concealment, you have
16 to consider the totality of the circumstances. And, Mr.
17 Richardson was candid enough to admit that when he was
18 in the courtroom he recognized Judge Miller -- I mean,
19 not Judge Miller, Coach Miller, and that, you know, he
20 knew Coach Miller was a witness.

21 And I think the questions asked by the Court
22 clearly would cause any reasonable person to respond by
23 saying Coach Miller coached me for three years when I
24 was in high school, and he did not respond to those. So
25 I think that is evidence of a willful concealment.

1 And, of course, I think Mr. Kyzer was prejudiced
2 by the fact that, you know, we really -- it is someone
3 that any objective lawyer would have struck him under
4 the circumstances.

5 And to argue lack of prejudice, you almost have
6 to speculate what happened in the courtroom, and I think
7 that's -- the Court's not gonna do that, quite honestly.
8 The Court is not required to do that. But I think when
9 you've got someone with that close of a relationship to
10 one of the witnesses against him, then we can -- and
11 it's not like it's a witness that is directly involved
12 or was just a document transfer person. He was one of
13 the witnesses that talked about what Mr. Kyzer said when
14 they approached the table. So, I think under those
15 circumstances, prejudice can be presumed.

16 THE COURT: Yes, ma'am.

17 SOLICITOR CUENCA: Your Honor, to Mr. Wise's
18 point of having knowledge or knowing that witness, Your
19 Honor, the case that I referenced earlier,
20 Smith v. State, the juror was incarcerated with the
21 defendant, Your Honor, so he knew him. But because the
22 voir dire question did not address that specifically,
23 Your Honor, then the Court found that no new trial was
24 granted. It would not have solicited him standing up.

25 That is not the only case, Your Honor. The one

1 that was presented to the Court as well, State v. Woods,
2 the juror failed to state that she knew a witness and
3 she did not have a social relationship with him. But,
4 again, because that voir dire did not specifically
5 address that -- or would require the juror to stand up,
6 the Court did not grant a new trial.

7 Your Honor, on the case State v. Ruttle, it's a
8 little bit different on the facts, but it is one that
9 Judge Cole ruled on. That one is there was a tangential
10 -- the question was whether the juror's family and
11 relationship should have known the juror from school or
12 church. It was a little bit more tangential in the
13 sense that the juror might not have had direct knowledge
14 of a juror, but because of her family she should have.
15 And there as well, Judge Cole did not grant a new trial
16 on the case, Your Honor.

17 So, again, the fact that Mr. Richardson knew
18 Coach Miller, does not mean that the defendant has met
19 its duty to show that he intentionally concealed it,
20 Your Honor, because he, based on the voir dire, he
21 should not have a reason to stand up to answer, Your
22 Honor. Thank you.

23 THE COURT: All right. I will take a look at it
24 and let you know. Thank you very much.

25 MR. WISE: Thank you.

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SOLICITOR CUENCA: Thank you, Judge.

(Court concluded at 11:58 a.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

Wesley Ray Kyzer,

Defendant.

2020 GS 42 03001

NOTICE OF APPEAL

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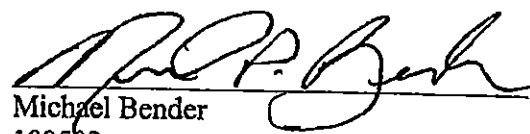
Mar 23 2022

SC Court of Appeals

Wesley R. Kyzer appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Mark Hayes on March 9, 2022. Appellant received written notice of entry of this Order on March __, 2022.

March 14, 2022


Wesley R. Kyzer


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AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY
2022 MAR 14 PM 4:20

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
In The Court of General Sessions
Hon. J. Mark Hayes, II

Appellate Case No. 2022-000358
Lower Case No. 2020-GS-42-03001

State of South Carolina Respondent

VS.

Wesley Ray Kyzer Appellant

Motion to Suspend the Appeal

Wesley Ray Kyzer, Appellant, hereby moves this Court to suspend the appeal in this matter so that the Appellant, pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, may file a Motion for a new trial in the Court of General Sessions for the County of Spartanburg based upon after discovered evidence. This motion is based upon juror misconduct as set forth in the proposed motion attached to this motion.

August 25, 2022


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S. C. Bar No 6188
Rauchwise@gmail.com
Attorney for Wesley Ray Kyzer

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
 The State,	)	
	)	
-vs-	)	Motion for New Trial
	)	
Wesley Ray Kyzer,	)	on After Discovered Evidence
	)	
Defendant.	)	2020-GS-42-3001

Pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, Wesley Ray Kyzer moves this Court for a new trial based upon after discovered evidence of juror misconduct based upon the following facts:

1. In the trial of this case, the first juror to be call was Torian Richardson, Tr. at 30, ll 13-23. Since the trial , during a Google search by a family member of the jurors to determine if any of them made any comments about the trial, Mr. Kyzer learned that Mr. Richardson was a standout wide receiver at Byrnes High School for Christopher Miller, the head football coach and a witness for the state. In the years 2007 and 2008 Mr. Richardson was part of the AAAA Division I State Championship teams. He received an athletic scholarship to East Carolina University.

2. At the trial, the trial judge asked the jury this question as to the proposed witnesses, of which Christopher Miller was one:

“[I]f you have a close personal, social relationship with any of those individuals, or if you’ve shared any type of employment or work relationship or professional relationship with any of those individuals, I would ask that you please stand at this time” Tr. at 10, ll 16-21. This

question should have required a response from an outstanding player who played on two state championship teams for Coach Miller.

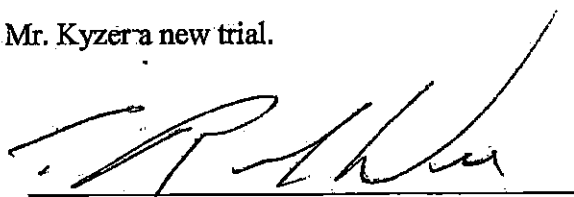
3. Mr. Richardson did not respond to the question. Had Mr. Richardson responded and provide correct answers, the Defense would have stricken Mr. Richardson or asked that he be excused for cause because of the close personal relationship of player and coach.. As he was the first juror called, Mr. Kyzer had strikes to use if he were not excused for cause.

4. The South Carolina Supreme Court has said, "Where a trial judge grants counsel's request that the judge ask a particular question on voir dire, counsel is entitled to a truthful answer to the question." *State v. Gullede*, 277 S.C. 368, 370, 287 S.E.2d 488, 490 (1982). Here by not responding, Mr. Richardson gave a false answer.

5. Because Mr. Richardson provided false, or at best misleading information, Mr. Kyzer was deprived of his right to an impartial jury as guaranteed by Article I, § 14 of the Constitution of the State of South Carolina and the Sixth Amendment to the Constitution of the United States of America.

Wherefore, Wesley Ray Kyzer hereby requests that this Court conduct a hearing as to the answers provided by Torian Richardson and grant Mr. Kyzer a new trial.

August 25, 2022



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Attorney for Wesley Ray Kyzer

The South Carolina Court of Appeals

The State, Respondent,

v.

Wesley Ray Kyzer, Appellant.

Appellate Case No. 2022-000358

The Honorable J. Mark Hayes, II
Spartanburg County
Trial Court Case No. 2020GS4203001

ORDER

Counsel for the Appellant has filed a motion to hold this appeal in abeyance. No return was filed to this motion. The motion is hereby Granted, and the appeal is held in abeyance for a period of ninety (90) days. Counsel must provide this office with a status update upon the expiration of the ninety (90) days.

FOR THE COURT

BY

V. Claire Allen

CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Clarence Rauch Wise, Esquire

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Oct 12 2022

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

ORDER

vs.)

Indictment No. 2020-GS-42-03001

Wesley Ray Kyzer,)

DEFENDANT.)

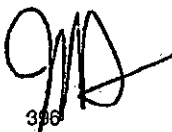
This matter was before the Court for hearing on the defendant's motion, by and through C. Rauch Wise, Esq., for a new trial on the grounds of after discovered evidence of juror misconduct. South Carolina Rules of Criminal Procedure 29(b). A hearing was held on December 9, 2022. The Defendant was present and represented by C. Rauch Wise, Esq. The State was represented by Assistant Solicitor Maressa M. Cuenca.

The defendant was found guilty by a jury on March 9, 2022, of Threatening the Life of Robert Wesley Brown, a Public Official, Teacher, or Principal from Spartanburg High School, and sentenced by the court. He appealed his conviction and sentence on March 14, 2022, which is presently pending before the South Carolina Court of Appeals. The Court of Appeals, upon motion by the defendant, has suspended the appeal and granted leave for the defendant to make this motion now before this Court for a new trial.

MOTION FOR NEW TRIAL

The defendant moves this Court to grant him a new trial on the grounds of after discovered evidence of juror misconduct, pursuant to Rule 29(b). The allegation was that the

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Defendant had been denied his constitutional right to a fair trial because Juror T.R. failed to stand when asked about relationships with potential witnesses who may be called as part of the case. The threat made against Robert Wesley Brown was witnessed by several individuals, including an individual named Christopher Miller. During the trial it was established that Mr. Miller was a coach from Spartanburg High School when the threat was witnessed by him. On or about July 2022, the defendant learned that Juror T.R. was a standout wide receiver at Byrnes High School for Mr. Miller in 2007 and 2008. Juror T.R was the first juror selected in the case.

At the hearing on the motion, the defendant testified and presented testimony of one other witness, Juror T.R. Juror T.R. appeared to be cooperative and candid with his responses and highly credible due in part to his body language, tone, overall demeanor and mannerism while on the witness stand when responding to both of the attorney's questions.

APPLICABLE LAW

All criminal defendants have the right to be tried by a fair and impartial jury. U.S. CONS. amens. VI and XIV; S.C. CONS. art. I, Section 14. As part of the process for determining juror impartiality, the Court must conduct *voir dire* for discovery of the existence of any bias, prejudice, or interest that a potential juror might have in the case or against a party. *State v. Kelly*, 331 S.C. 132 (1998). The process is also designed to afford the parties reasonable opportunity and ability to intelligently exercise peremptory challenges based upon reasonable and constitutional grounds. *State v. Gullette*, 277 S.C. 368 (1982).

SPARTANBURG COUNTY
CLERK OF COURT
AMY W. COX
"A motion for a new trial based on after-discovered evidence must be made within one
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(1) year after the date of actual discovery of said facts." SCRCPP, 29(b). A party seeking a new trial

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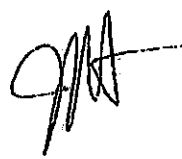
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based upon the disqualification of a juror must demonstrate: "(1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict." *Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 570, 538 S.E.2d 5, 10 (Ct. App. 2000).

"When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." *State v. Woods*, 345 S.C. 583, 587-88 (2001) (internal citation omitted). "[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances. Necessarily, whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." *Id* at 588. "If the court finds no intentional concealment occurred, the inquiry ends there." *Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 155 (Ct. App. 2014) (internal citation omitted).

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DISCUSSION

Prior to jury selection, the Court conducted *voir dire* of the jury panel. The State presented a list of potential witness, which included, but was not limited to, eye witnesses to the threat and investigating police officers. The list of witnesses, to include Mr. Miller, was read to the venire as presented to the Court without objection.

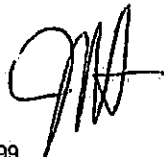
The question at issue in this motion presented to the venire was the following; "if you have a close personal, social relationship with any of those individuals [list of potential witnesses previously announced by the Court], or if you've shared any type of employment or work relationship or professional relationship with any of those individuals, I would ask that you please stand at this time."

Juror T.R. did not stand in response to the question.

The Court's first inquiry is whether or not Juror T.R. intentionally concealed the information—namely, that he knew Mr. Miller and that he was a standout wide receiver at Byrnes High School for Mr. Miller in 2007 and 2008.

First, the Court did not find that Juror T.R. concealed information. From the present motion hearing it was established that while in high school in 2007 and 2008, Juror T.R. was a member of the Byrnes High School football team. In 2007 and 2008, Mr. Miller was the head coach of the Byrnes High School football team when Juror T.R. was a member. Fourteen (14) years had passed since Juror T.R. was a member of the football team and the name Christopher Miller was read to the venire. After high school, Juror T.R. and Mr. Miller did not maintain a

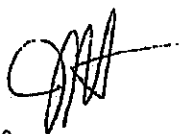
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social or professional relationship, and they had never shared a work or employment relationship. Mr. Miller did not help in securing Juror T.R.'s college football scholarship. Eleven (11) years had passed since he last saw Mr. Miller. Juror T.R. did recognize Mr. Miller in the courtroom (although the record is unclear as to when he first saw Mr. Miller in the courtroom). Juror T.R. testified that he did not stand in response to the *voir dire* question because he did not think the question applied to him. The Defendant testified he would have struck T.R. as a juror from the case if he had known that Juror T.R. had been a player on Mr. Miller's football team. Juror T.R. testified that he did not mean to conceal the fact that he knew Mr. Miller.

In *Smith v. State*, the Supreme Court affirmed the lower court's holding that the petitioner did not suffer *per se* violation of the due process right to a fair and impartial jury when a juror remained silent during *voir dire*. 375 S.C. 507 (2007) (abrogated on separate grounds). The petitioner filed a PCR petition that included the "allegation that after-discovered evidence revealed one of the jurors knew him from being incarcerated in the same facility and shared this information with the other members of the jury." *Id.* at 514. In that case, the *voir dire* question posed was whether any member of the jury pool was "related by blood or marriage or a close personal friend" of the petitioner. *Id.* at 519 (internal quotation marks omitted). The juror testified at the hearing that he was not a close friend of the petitioner, and even the petitioner corroborated that he did not know the juror very well, although they had prior interactions during their period of incarceration. *Id.* at 516, 519. Thus, the Court believed the juror "did not intentionally conceal the existence of his prior relationship with Petitioner." *Id.* at 519. The juror further testified that he did tell other jurors he had been incarcerated with the petitioner, but "he did not have any bias or prejudice against the petitioner, and he and other members of the jury held

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the State to its burden of proof[.]” *Id.* at 517, 519. Based on the testimony presented at the hearing, the Court found the PCR judge properly denied the petitioner’s relief.

Similarly to *Smith v. State*, Juror T.R.’s silence in response to the question was not meant to conceal information under the facts presented to this Court. Based on the wording of the question, Juror T.R.’s lack of response to the question was truthful. When asked if he had a close personal, social relationship with Mr. Miller at the time of the trial, Juror T.R. testified that he did not, as in *Smith*. When asked if he shared any type of employment or work relationship or professional relationship with Mr. Miller in the past, Juror T.R. testified that he did not. The fact that Juror T.R. was an athlete when Mr. Miller was coaching at Byrnes High School does not establish a work or professional relationship between both individuals. Further, any relationship between Juror T.R. and Mr. Miller was fourteen (14) years in the past and they had maintained no relationship in those years. In fact, given the question asked and the relationship (or lack thereof) between Juror T.R. and Mr. Miller by the time the trial occurred, Juror T.R. acted reasonably under the present circumstances in not standing after the question was asked.

Second, the Court found that even if there was concealment, it was not intentional. The defendant has failed to establish that even if there was a failure by Juror T.R. to disclose the information complained of, the failure to disclose was intentional. Juror T.R.’s silence cannot be held as unreasonable given the presentation made to this Court. The question was arguably ambiguous. The defendant argued that a close personal relationship existed between player and coach. However, Juror T.R. testified to the contrary. In *State v. Woods*, the Court defined unintentional concealment in situations “where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances.” *Id.*

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at 588. The *voir dire* was arguably ambiguous and any athlete/coach relationship between Mr. Miller and Juror T.R. was far removed in time, although not close or personal, that Juror T.R.'s silence was reasonable under the circumstances.

Based on case law, the Court's inquiry ends after finding that there was no intentional concealment. *See Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 155 (Ct. App. 2014).

CONCLUSION

The foundation of the present motion is that the defendant was denied his constitutional right to a fair trial and impartial jury. "When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *Woods*, 345 S.C. 583, 587–88 (2001). The Court finds that the defendant has failed to establish his entitlement to a new trial, in that Juror T.R. did not conceal information, but at the very least it was unintentional concealment. During the arguments, this Court was reminded of other questions related to bias and prejudice of potential juror's presented to the venire. Nothing is contained in the present record to infer that Juror T.R. acted impartial manner.

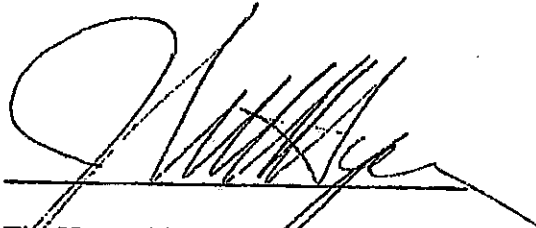
The defendant's motion for a new trial on the grounds of after discovered evidence of juror misconduct should be and is therefore DENIED.

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY
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IT IS SO ORDERED.


The Honorable J. Mark Hayes

Seventh Judicial Circuit

1/9, 2023
Spartanburg, South Carolina

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court

Honorable J. Mark Hayes, II

Appellate Case No. 2022-000358
Trial Court Case No. 2020GS4203001

State....., Respondent,

v.

Wesley Ray Kyzer....., Appellant.

NOTICE OF INTENT TO APPEAL

Wesley Ray Kyzer appeals the Order of the Honorable J. Mark Hayes, II dated and filed January 9, 2023. Appellate received a copy of this decision on January 10, 2023

January 18, 2023



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court

Honorable J. Mark Hayes, II

Appellate Case No. 2022-000358
Trial Court Case No. 2020GS4203001

State..... Respondent,

v.

Wesley Ray Kyzer..... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 4, 2024



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