

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Thomas A. Russo, Circuit Court Judge

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AUG 16 2013

S.C. Supreme Court

ROBERT D. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213166

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
ANDERS BRIEF	645
PROSE ANDERS BRIEF	657
COURT OF APPEALS OPINION	683
APPLICATION FOR POST-CONVICTION RELIEF	684
RETURN	689
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	695
POST-CONVICTION RELIEF HEARING TRANSCRIPT	700
POST-CONVICTION RELIEF EXHIBITS	773
ORDER OF DISMISSAL	775
INDICTMENTS	781

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

) **ORIGINAL**

-VS-

) 2008-GS-22-0213

) 2008-GS-22-0214

) 2008-GS-22-0215

Robert Dexter Brown,

DEFENDANT.

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE

JAMES E. LOCKEMY

IN THE CIRCUIT COURT OF HORRY COUNTY (15TH JUDICIAL
DISTRICT) BEGINNING ON 11:47 AM ON THE 29TH DAY OF JULY,
2008, IN THE GEORGETOWN COUNTY COURTHOUSE, GEORGETOWN,
SOUTH CAROLINA.

REPORTED BY: H. Eugene Buckner

ORIGINAL

ALMA Y. WHITE
CLERK OF COURT

2010 JUL 12 AM 11:07

FILED
GEORGETOWN COUNTY, S.C.

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
PO BOX 1462, CONWAY, SC 29526-1462

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PAGE/LINE

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INDEX TO COUNSEL'S EXHIBITS

PAGE/LINE

STATE'S EXHIBIT NUMBER 1, PHOTO.....	
STATE'S EXHIBIT NUMBER 2, PHOTO.....	
STATE'S EXHIBIT NUMBER 3, PHOTO.....	182
STATE'S EXHIBIT NUMBER 4, PHOTO.....	182
STATE'S EXHIBIT NUMBER 5, PHOTO.....	
STATE'S EXHIBIT NUMBER 6, PHOTO.....	
STATE'S EXHIBIT NUMBER 7, PHOTO.....	182
STATE'S EXHIBIT NUMBER 8, PHOTO.....	164
STATE'S EXHIBIT NUMBER 9, PHOTO.....	
STATE'S EXHIBIT NUMBER 10, PHOTO.....	
STATE'S EXHIBIT NUMBER 11, PHOTO.....	
STATE'S EXHIBIT NUMBER 12, PHOTO.....	
STATE'S EXHIBIT NUMBER 13, PHOTO.....	164
STATE'S EXHIBIT NUMBER 14, PHOTO.....	
STATE'S EXHIBIT NUMBER 15, 911 TAPE CD.....	
STATE'S EXHIBIT NUMBER 16, BAG CONTAINING CELL PHONE.....	176
STATE'S EXHIBIT NUMBER 17, LARGE EVIDENCE BAG....	
STATE'S EXHIBIT NUMBER 14, PHOTO.....	
.....	
DEFENDANTS'S EXHIBIT NUMBER 1, PHOTO BOARD WITH 4 PICTURES.....	203
DEFENDANTS'S EXHIBIT NUMBER 2, CALENDAR FOR 2006 and 2008.....	

1 THE COURT:

2 All right; Madam solicitor,
3 call your first case please, ma'am.

4 MS. BIAGIANTI:

5 Thank Your Honor; may it please
6 The Court?

7 The State would call the State
8 versus Robert Dexter Brown, case number 2008-GS-22-213, a
9 true Bill indictment for assault battery with intent to
10 kill;

11 the State versus Robert Dexter
12 Brown, case number 2008-GS-22- 215, true billed
13 indictment for kidnapping;

14 2008-GS-22-214 State versus Robert
15 Dexter Brown, a true billed indictment for assault and
16 battery of a high and aggravated nature.

17 THE COURT:

18 Okay.

19 Now Mr. Goude, you represent -- uh
20 -- Mr. Brown?

21 MR. GOUDE:

22 Yes, Your Honor.

23 THE COURT:

24 All right.

25 Ladies and gentlemen of the jury,

1 the -- I have in my hand documents called indictments.

2 Now the fact that these are
3 indictments; all that does is charge the Defendant with a
4 crime.

5 It is not evidence that the
6 Defendant's committed any crime whatsoever.

7 It is a procedure to bring it
8 before the jury -- to before you, the jury; you to decide
9 whether or not the Defendant committed these crimes
10 beyond a reasonable doubt.

11 The burden is upon the State to
12 prove guilt beyond a reasonable doubt; and not upon the
13 Defendant to prove himself innocent.

14 So the fact that he is charged
15 with these crimes is not evidence. And these indictments
16 are not evidence that he's committed any crime
17 whatsoever.

18 The State alleges that:

19 The Defendant did on or about the
20 21st of February 2008; that he did committed an law -- uh
21 -- unlawful act of violent injury to one Lee Epps with
22 malice -- uh -- uh -- thus committing the crime, assault
23 and battery with intent to kill.

24 Further that he did on or about
25 the same date commit an assault and battery upon one

JURY VOIR DIRE AND SELECTION

7

1 Tywanda Keith -- uh -- uh -- uh -- assault and battery of
2 a high and aggravated nature.

3 And further, that he did on or
4 about the 21st of February 2008 unlawfully seize, kidnap,
5 and attempt to carry away one Tywanda Keith without
6 authority of law.

7 Does anybody on the jury panel
8 know anything about these allegations?

9 Anybody on the jury panel know
10 anything about the allegations?

11 If so, please stand up.

12 WHEREUPON: THERE WAS NO RESPONSE
13 FROM ANY MEMBER OF THE JURY POOL.

14 THE COURT:

15 Potential witnesses; those who may
16 testify; that doesn't mean they will testify; we just
17 want to make sure just case they do, that you -- uh --
18 have -- uh -- uh -- knowledge of these individuals.

19 Uh -- Lee Epps, Tywanda Keith,
20 Kathy Browry:

21 Uh -- Does anybody on the jury
22 panel know or have any relationship with those three
23 individuals?

24 If so please stand up?

25 Lee Epps, Tywanda Keith, Kathy

1 Browry, B-r-o-w-r-y?

2 Anybody on the jury panel?

3 Are these two of the individuals,
4 her?

5 MS. BIAGIANTI:

6 Yes sir. That's Mr. Lee Epps and
7 Tywanda Keith.

8 THE COURT:

9 Okay. Ms. Browry -- uh -- will
10 be here later, I guess.

11 Now, does anybody know these
12 individuals at all; or have any relationship with them,
13 personal, social, or otherwise?

14 WHEREUPON: ONE MEMBER OF THE JURY
15 POOL STOOD IN RESPONSE TO THE QUESTION BY THE COURT.

16 THE COURT:

17 Anyone else; other than the one
18 gentleman, standing?

19 WHEREUPON: THERE WAS NO FURTHER
20 RESPONSE FROM ANY MEMBER OF THE JURY POOL.

21 THE COURT:

22 You may be seated.

23 What is your name, sir?

24 JURY POOL MEMBER:

25 My name's Stacy Jackson. I'm

JURY VOIR DIRE AND SELECTION

9

1 Juror Number 69.

2 THE COURT:

3 All right. Stay -- wait.

4 JURY POOL MEMBER JACKSON:

5 Okay.

6 THE COURT:

7 I'm just going by the numbers.

8 Stacy Jackson, Juror 159. That gives them a chance to
9 look you up and all that while I'm repeating your name.

10 All right; Stacy Jackson, Juror
11 169?

12 JURY POOL MEMBER JACKSON:

13 Just 69.

14 CLERK:

15 69.

16 THE COURT:

17 Just 69? Stacy Jackson, Juror 69.

18 Now Mr. Jackson, who do you know
19 of those three individuals?

20 JURY POOL MEMBER JACKSON:

21 I know Lee.

22 THE COURT:

23 You know Lee Epps?

24 How do you know Mr. Epps?

25 JURY POOL MEMBER JACKSON:

1 I do -- have a business in Andrews
2 and he's one of my customers.

3 THE COURT:

4 So he's one of your customers?

5 JURY POOL MEMBER JACKSON:

6 Yes sir.

7 THE COURT:

8 Uh -- Do you know anything about
9 these allegations?

10 JURY POOL MEMBER JACKSON:

11 No; I don't know anything.

12 THE COURT:

13 Okay. Now, would the fact that
14 he's a customer -- you have many customers; don't you?

15 JURY POOL MEMBER JACKSON:

16 Yeah; but --

17 THE COURT:

18 You do a very good business; don't
19 you?

20 JURY POOL MEMBER JACKSON:

21 Yeah; but I don't want to --

22 THE COURT:

23 Well, I -- I'm just asking you
24 questions.

25 You want to add too much all the

JURY VOIR DIRE AND SELECTION

11

1 time.

2 (Laughter erupts in the
3 courtroom.)

4 THE COURT:

5 Now, do you have a relationship
6 with him other than him being a customer?

7 JURY POOL MEMBER JACKSON:

8 Yes sir.

9 THE COURT:

10 A friendship?

11 JURY POOL MEMBER JACKSON:

12 Uh -- It's not that close; but I
13 know his family.

14 THE COURT:

15 Now, would that affect your
16 ability to be fair and impartial?

17 JURY POOL MEMBER JACKSON:

18 No sir.

19 THE COURT:

20 Would you listen to the matter
21 make your decision based on the evidence in the case and
22 the law as I instruct it to you?

23 JURY POOL MEMBER JACKSON:

24 Yes, I will.

25 THE COURT:

JURY VOIR DIRE AND SELECTION

12

1 Were you about to say something?

2 JURY POOL MEMBER JACKSON:

3 No sir; I said: yes, I will.

4 THE COURT:

5 Okay. Now, would the fact that -

6 - uh -- you know him or know anybody in his family, will

7 that in any way influence your decision?

8 JURY POOL MEMBER JACKSON:

9 (Nods in the negative.)

10 THE COURT:

11 Sir?

12 JURY POOL MEMBER JACKSON:

13 No sir.

14 THE COURT:

15 All right, thank you. You may be

16 seated.

17 Anyone else?

18 WHEREUPON: THERE WAS NO FURTHER

19 RESPONSE FROM ANY MEMBER OF THE JURY POOL.

20 THE COURT:

21 Now I'm going to call out some

22 name of people who work with law enforcement agencies of

23 Georgetown County or -- or the City of Georgetown.

24 You may know these people -- that

25 they're officers -- by their names. You may have seen

JURY VOIR DIRE AND SELECTION

13

1 them at some presentation or whatever -- or this or that;
2 but what I want to know is:

3 Whether you have some relationship
4 with them; business, personal, or otherwise; or social;
5 or any -- any type of relationship with them; kinship,
6 whatever:

7 Uh -- Sergeant Steven church of
8 the Georgetown Police Department;

9 Investigator John L. Sparkman of
10 the Georgetown Police Department;

11 Deputy Jarod Barton of the
12 Georgetown County Sheriff's Department;

13 Officer Pamela Kosiak of the -- uh
14 -- Georgetown Police Department;

15 Joanne Clary of the Detention
16 Center;

17 Uh -- And Investigator -- uh --
18 Jimmy Burke of Georgetown Police Department.

19 If you have any relationship with
20 these individuals; business, personal, or otherwise; or
21 kinship; please stand up.

22 WHEREUPON: SEVERAL MEMBERS OF THE
23 JURY POOL STOOD IN RESPONSE TO THE QUESTION BY THE COURT.
24 THE COURT:

25 Okay; one, two; anyone else?

JURY VOIR DIRE AND SELECTION

14

1 WHEREUPON: THERE WAS NO FURTHER
2 RESPONSE FROM ANY MEMBER OF THE JURY POOL.

3 THE COURT:

4 Okay; you were first, sir. What
5 is your name, sir?

6 JURY POOL MEMBER MCCARLEY:

7 Robert McCarley, Juror Number 86.

8 THE COURT:

9 Robert McCarley, Juror Number 86?

10 And -- uh -- of the people I
11 called out, who do you have a relationship with, sir?

12 JURY POOL MEMBER MCCARLEY:

13 Officer Jarod Bardon and I are
14 friends.

15 THE COURT:

16 Officer Jarod Bardon is a friend
17 of yours?

18 When you say that, do y'all go to
19 school together; or y'all just recently had a friendship?

20 JURY POOL MEMBER MCCARLEY:

21 School together; and talk
22 occasionally; and see each other on --

23 THE COURT:

24 How often would you see him, in
25 say, the last three months?

JURY VOIR DIRE AND SELECTION

15

1 JURY POOL MEMBER MCCARLEY:

2 Twice.

3 THE COURT:

4 All right. Twice; and that would
5 be where? Tell me.

6 JURY POOL MEMBER MCCARLEY:

7 Uh -- One time having a beer at
8 the Big Tuna; and another time --

9 (Laughter erupts.)

10 THE COURT:

11 The Big Tuna?

12 JURY POOL MEMBER MCCARLEY:

13 -- watching Clemson sports.

14 THE COURT:

15 And watching what kind of sports?

16 JURY POOL MEMBER MCCARLEY:

17 Clemson sports.

18 THE COURT:

19 Where's that school. I've never
20 heard of that.

21 (Laughter erupts.)

22 THE COURT:

23 All right. I'm just talking.

24 All right; now -- but he -- but he

25 COURT REPORTER:

1 I'm sorry, Your Honor. I didn't
2 get that.

3 THE COURT:

4 Clemson. You don't get it.
5 Clemson. Uh -- They watched Clemson sports.

6 But -- uh -- were you there with
7 other people or just you and him?

8 JURY POOL MEMBER MCCARLEY:

9 There were some others there.

10 THE COURT:

11 All right. So he's there with a
12 group of people?.

13 Now, with -- with your association
14 -- uh -- with him, would that in any way make you look
15 upon him different than you would -- would look upon any
16 other witnesses?

17 JURY POOL MEMBER MCCARLEY:

18 No sir.

19 THE COURT:

20 Would you treat him just like you
21 would any other witness?

22 JURY POOL MEMBER MCCARLEY:

23 Yes sir.

24 THE COURT:

25 Uh -- Would -- uh -- he -- If he

JURY VOIR DIRE AND SELECTION

17

1 testifies in this case; would his testimony -- the fact
2 that him testifying as opposed to other people, make any
3 special situation with regard to how you look at the
4 testimony?

5 JURY POOL MEMBER MCCARLEY:

6 I don't believe so; no sir.

7 THE COURT:

8 Would you be fair both to the
9 State and to the Defense?

10 JURY POOL MEMBER MCCARLEY:

11 Sure.

12 THE COURT:

13 Would you make your decision based
14 on the evidence in the case of the law as instructed to
15 you?

16 JURY POOL MEMBER MCCARLEY:

17 Yes sir.

18 THE COURT:

19 All right. You may be seated,
20 sir; thank you.

21 And your name, ma'am?

22 JURY POOL MEMBER PIETURSE:

23 Jean Pieturse.

24 THE COURT:

25 Uh -- Give me your last name?

1 JURY POOL MEMBER PIETURSE:

2 Pieturse.

3 THE COURT:

4 Pieturse? How do you spell that?

5 JURY POOL MEMBER PIETURSE:

6 Uh -- P-i-e-t-u-r-s-e

7 THE COURT:

8 All right. Now, Ms. Pieturse,
9 what is your number?

10 JURY POOL MEMBER PIETURSE:

11 103.

12 THE COURT:

13 All right. Now which one of the
14 people do you know?

15 JURY POOL MEMBER PIETURSE:

16 I know Officer Sparkman. I taught
17 him; and I think I taught --

18 THE COURT:

19 Taught him what? Oh, I'm sorry.

20 (Laughter erupts.)

21 THE COURT:

22 But -- uh -- you taught him in
23 school?

24 JURY POOL MEMBER PIETURSE:

25 I think.

JURY VOIR DIRE AND SELECTION

19

1 THE COURT:

2 Okay. And what type of -- what
3 do you teach?

4 JURY POOL MEMBER PIETURSE:

5 I teach high school math.

6 THE COURT:

7 All right. And how long ago was
8 that you think he was in your class? Couple years; three
9 or four?

10 JURY POOL MEMBER PIETURSE:

11 Uh -- About 1990.

12 THE COURT:

13 Did you say 1990?

14 JURY POOL MEMBER PIETURSE:

15 Yes sir.

16 THE COURT:

17 Ma'am, I don't want to say
18 anything other than:

19 You look like in 1990 you'd
20 probably be in the ninth-grade; but -- uh --

21 (Laughter erupts.)

22 THE COURT:

23 -- you were teaching in 1990?

24 JURY POOL MEMBER PIETURSE:

25 Uh-huh.

1 THE COURT:

2 All right. Now, ma'am -- uh --
3 would that in any way affect your ability to be fair and
4 impartial?

5 JURY POOL MEMBER PIETURSE:

6 Uh -- No sir.

7 THE COURT:

8 Uh -- Other than him in your
9 class, have y'all had an association after that?

10 JURY POOL MEMBER PIETURSE:

11 I was also teach his daughter in
12 gymnastics.

13 THE COURT:

14 Okay. And other that -- uh -- is
15 she in your class now?

16 JURY POOL MEMBER PIETURSE:

17 She will be in the Fall.

18 THE COURT:

19 How did you know that? You got a
20 list of --

21 JURY POOL MEMBER PIETURSE:

22 We have registration.

23 THE COURT:

24 All right. But before that, was
25 she in your class before?

JURY VOIR DIRE AND SELECTION

21

1 JURY POOL MEMBER PIETURSE:

2 Yes.

3 THE COURT:

4 All right. Now, would -- uh --
5 that in any way affect your ability to be fair and
6 impartial?

7 JURY POOL MEMBER PIETURSE:

8 No sir.

9 THE COURT:

10 Would you look upon him like you
11 would any other witness?

12 THE COURT:

13 Yes sir.

14 THE COURT:

15 Would the fact that he was in your
16 class; and that fact that his daughter may be in your
17 class -- gymnastics; you say; getting ready to try out on
18 the Olympics and all.

19 Uh -- Would the fact that -- uh --
20 that occurs, would that in any way affect your ability to
21 be fair and impartial?

22 JURY POOL MEMBER PIETURSE:

23 No -- No sir?

24 THE COURT:

25 Would you be fair both to the

1 State and to the Defense?

2 JURY POOL MEMBER PIETURSE:

3 (Nods in the affirmative.)

4 THE COURT:

5 Would you make your decision on
6 the evidence in the case and the law as I instruct it to
7 you?

8 JURY POOL MEMBER PIETURSE:

9 Yes.

10 THE COURT:

11 Thank you, Ms. Pieturse; you may
12 be seated now.

13 Did I say Officer Pamela Kosiak?

14 I don't know if I did -- if I didn't --

15 MS. BIAGIANTI:

16 Yes, Your Honor.

17 THE COURT:

18 -- say it again. All right.

19 Uh -- Chris Armstrong of the
20 Georgetown County Excuse me, sir.?

21 Anybody have a relationship with
22 Chris Armstrong of the Georgetown County Excuse me, sir.?

23 If so, please stand up.

24 WHEREUPON: THERE WAS NO RESPONSE
25 FROM ANY MEMBER OF THE JURY POOL.

JURY VOIR DIRE AND SELECTION

23

1 THE COURT:

2 Okay.

3 Uh -- Now an Emergency Room

4 Doctor, Dr. Heather Justice; does anybody -- uh -- have a
5 relationship with Dr. Heather Justice; her being your
6 physician or you have some other type of interaction with
7 Dr. Heather Justice; or kinship to her?

8 If so please stand up.

9 WHEREUPON: THERE WAS NO RESPONSE
10 FROM ANY MEMBER OF THE JURY POOL. And okay.

11 THE COURT:

12 Okay.

13 I have handwritten note with some
14 other names on it.

15 Are these other names I need to
16 call out?

17 MS. BIAGIANTI:

18 Those aren't from me, Your Honor,
19 so I don't know; but --

20 THE COURT:

21 Okay. We'll call them out,
22 then. Okay; I got them.

23 Uh -- Heyward Larimore; Gene
24 Larimore; of Gresham, South Carolina?

25 Anybody know these individuals at

1 all, please stand up.

2 WHEREUPON: THERE WAS NO RESPONSE
3 FROM ANY MEMBER OF THE JURY POOL.

4 THE COURT:

5 Okay.

6 Uh -- Aldoro Brown of Georgetown
7 South Carolina?

8 Anybody have any type of -- uh --
9 knowledge or relationship to Aldoro Brown, Georgetown
10 County, South Carolina?

11 WHEREUPON: ONE MEMBER OF THE JURY
12 POOL STOOD IN RESPONSE TO THE QUESTION BY THE COURT.

13 THE COURT:

14 Okay. And what is your name,
15 ma'am?

16 JURY POOL MEMBER DEBRA DEAS:

17 My name is Debra Deas, Juror
18 Number 49.

19 THE COURT:

20 Yep. Debra Deas?

21 JURY POOL MEMBER DEBRA DEAS:

22 Yes.

23 THE COURT:

24 How you spell Deas?

25 JURY POOL MEMBER DEBRA DEAS:

JURY VOIR DIRE AND SELECTION

25

1 D-e-a-s.

2 THE COURT:

3 D-e-a-s?

4 JURY POOL MEMBER DEBRA DEAS:

5 Uh-huh.

6 THE COURT:

7 All right. And your number again
8 is?

9 JURY POOL MEMBER DEBRA DEAS:

10 49.

11 THE COURT:

12 All right, Ms. Deas, how do you
13 know Ms. Aldoro Brown?

14 JURY POOL MEMBER DEBRA DEAS:

15 We worshiped together -- uh --
16 many years at church.

17 THE COURT:

18 Okay. Do you -- Have you and her
19 talked about this case at all?

20 JURY POOL MEMBER DEBRA DEAS:

21 No.

22 THE COURT:

23 Uh -- Do you know anything about
24 these allegations?

25 JURY POOL MEMBER DEBRA DEAS:

1 No sir.

2 THE COURT:

3 All right. Would the fact that
4 she goes to church with you there, would that in any way
5 affect your ability to be fair and impartial?

6 JURY POOL MEMBER DEBRA DEAS:

7 No sir.

8 THE COURT:

9 Would you look upon her like you
10 would any other witness?

11 JURY POOL MEMBER DEBRA DEAS:

12 No sir -- Yes. Yes.

13 THE COURT:

14 You would? Okay. So she wouldn't
15 -- The fact that she's a witness, would that have any
16 special meaning in the case as opposed to other
17 witnesses?

18 JURY POOL MEMBER DEBRA DEAS:

19 No.

20 THE COURT:

21 All right. And you would be fair
22 to buy sides?

23 JURY POOL MEMBER DEBRA DEAS:

24 Yes.

25 THE COURT:

JURY VOIR DIRE AND SELECTION

27

1 You'd make your decision based on
2 the evidence and the law as I instruct it to you?

3 JURY POOL MEMBER DEBRA DEAS:

4 Yes.

5 THE COURT:

6 All right. Thank you ma'am; you
7 may be seated.

8 THE COURT:

9 Is this Isaac Pratt?

10 MR. GOUDE:

11 Isaac Pyatt, Your Honor.

12 THE COURT:

13 Uh -- Isaac Pyatt?

14 MR. GOUDE:

15 Yes sir.

16 THE COURT:

17 Anybody know Isaac Pyatt?

18 Is that a magistrate?

19 MS. BIAGIANTI:

20 Yes sir.

21 MR. GOUDE:

22 That's the Magistrate, yes sir.

23 THE COURT:

24 Anybody have a relationship with
25 him; business personal or otherwise; Isaac Pyatt?

1 WHEREUPON: THERE WAS NO RESPONSE
2 FROM ANY MEMBER OF THE JURY POOL.

3 THE COURT:

4 All right.

5 If you would -- uh -- Mr. Goude,
6 ask Mr. Brown to stand up for me, please.

7 WHEREUPON: DEFENDANT BROWN STOOD.

8 THE COURT:

9 Turn around and face the --

10 WHEREUPON: DEFENDANT BROWN TURNED
11 TO FACE THE JURY AS INSTRUCTED BY THE COURT.

12 THE COURT:

13 Okay. Uh -- This is Mr. Robert
14 Dexter Brown.

15 You may be seated Mr. Brown.

16 Uh -- Does anybody on the jury
17 panel know Mr. Brown, or have any business, personal,
18 social relationship with him?

19 If so, please stand up.

20 WHEREUPON: THERE WAS NO RESPONSE
21 FROM ANY MEMBER OF THE JURY POOL.

22 THE COURT:

23 Okay.

24 Just as a matter of information --
25 uh -- if you, or someone in your family, works for a law

JURY VOIR DIRE AND SELECTION

29

1 enforcement agency -- that is a police agency -- uh --
2 Sheriff's Department, Highway Patrol, SLED, FBI, CIA or
3 whatever; somebody works for that -- them in any capacity
4 whatsoever, just please stand up.

5 We just want to know.

6 It doesn't make any difference as
7 far as your service. We just want to know.

8 WHEREUPON: SEVERAL MEMBERS OF THE
9 JURY POOL STOOD IN RESPONSE TO THE QUESTION BY THE COURT.
10 THE COURT:

11 Okay. Okay. And ma'am, give me
12 your name.

13 JURY POOL MEMBER SUE GAMBLE:

14 Sue Gamble, Juror Number 46.

15 THE COURT:

16 Sue what now?

17 JURY POOL MEMBER SUE GAMBLE:

18 Sue Gamble.

19 THE COURT:

20 Sue Gamble?

21 JURY POOL MEMBER SUE GAMBLE:

22 Yes.

23 THE COURT:

24 All right, Mr. Gamble, Juror 46;

25 Yes ma'am?

JURY VOIR DIRE AND SELECTION

30

1 JURY POOL MEMBER SUE GAMBLE:

2 My sister is a city municipal
3 clerk of court.

4 THE COURT:

5 Thank you, ma'am. You may be
6 seated

7 Your name again, sir?

8 JURY POOL MEMBER MCCARLEY:

9 Robert McCarley.

10 THE COURT:

11 That's Robert -- Oh, I thought it
12 said: Bowden.

13 I'm sorry, McCarley.

14 Mr. McCarley, yes sir?

15 JURY POOL MEMBER MCCARLEY:

16 Uh -- Can I speak to you in
17 private about that now?

18 THE COURT:

19 Sure. Come on up.

20 WHEREUPON: JURY POOL MEMBER

21 MCCARLEY BEGAN TO COME FORWARD AS INSTRUCTED BY THE
22 COURT.

23 THE COURT:

24 Well, while he's coming up, we'll
25 go to you, ma'am.

JURY VOIR DIRE AND SELECTION

31

1 What is your name, ma'am?

2 JURY POOL MEMBER MCDANIEL:

3 I'm Teresa McDaniel. I'm Juror

4 Number 87.

5 THE COURT:

6 Okay.

7 JURY POOL MEMBER MCDANIEL:

8 Uh -- My sister is a probation and
9 parole agent in Kershaw County.

10 Uh -- My brother-in-law is a City
11 Police Officer in Lancaster County.

12 My sister-in-law works for the
13 Highway Patrol in Lancaster County; and my mother is
14 retired from the Highway Patrol in Lancaster County.

15 THE COURT:

16 What do you do for a living?

17 JURY POOL MEMBER MCDANIEL:

18 I'm a Secretary of First Baptist
19 Church.

20 (Laughter Erupts.)

21 THE COURT:

22 Thank you ma'am. You may be
23 seated. You may be seated, ma'am.

24 Thank you, ma'am. I appreciate
25 it.

1 And what is your name?

2 JURY POOL MEMBER GEATHERS:

3 Ms. Jannie Geathers.

4 THE COURT:

5 Ms. Geathers?

6 JURY POOL MEMBER GEATHERS:

7 Yes.

8 THE COURT:

9 And what is your number, Ms.

10 Geathers? Do you know?

11 JURY POOL MEMBER GEATHERS:

12 47. 47.

13 THE COURT:

14 Yes ma'am, Ms. Geathers. wylttm

15 JURY POOL MEMBER GEATHERS:

16 My daughter is a Correction's

17 Officer in Barnwell -- Barnwell.

18 THE COURT:

19 Barnwell; all right. Thank you,

20 Ms. Geathers.

21 Yes sir; your name sir?

22 JURY POOL MEMBER OWENS:

23 Sherold Owens, Number 100.

24 THE COURT:

25 You know what, I always like it --

JURY VOIR DIRE AND SELECTION

33

1 ask them their name; they look at the card.

2 (Laughter erupts.)

3 THE COURT:

4 I know you were looking at the
5 number; but you was looking -- all right.

6 Give me your name again, sir.

7 JURY POOL MEMBER OWENS:

8 Uh -- Sherold Owens, Number 100.

9 THE COURT:

10 Yes sir, Mr. Owens?

11 JURY POOL MEMBER OWENS:

12 I got a nephew that -- uh -- has
13 worked for the North Carolina -- I mean, Georgetown
14 County Sheriff's Department.

15 THE COURT:

16 All right. Thank you, sir.

17 Your name, sir?

18 JURY POOL MEMBER JOHNSON:

19 Stoney Johnson, Juror Number 72.

20 THE COURT:

21 Stoney Johnson, Juror Number 72.

22 Yes sir?

23 JURY POOL MEMBER JOHNSON:

24 My sister works for the Bureau of
25 Prisons in Salters.

1 THE COURT:

2 Salters? All right; thank you,
3 sir.

4 Your name, sir?

5 JURY POOL MEMBER GRATE:

6 Chris Grate, Number 52, Your
7 Honor.

8 THE COURT:

9 I didn't hear you, sir. Please
10 give me --

11 JURY POOL MEMBER GRATE:

12 Chris Grate. And my sister works
13 for --

14 THE COURT:

15 No sir; give me your name again,
16 sir.

17 JURY POOL MEMBER GRATE:

18 Chris Grate.

19 THE COURT:

20 Chris Graton?

21 JURY POOL MEMBER GRATE:

22 Grate

23 THE COURT:

24 And your Number?

25 JURY POOL MEMBER GRATE:

25 THE COURT:

1 Collins? Yes, Ms. Collins?

2 JURY POOL MEMBER COLLINS:

3 Number 19. My sister works at J.
4 Reuben Long Detention Center.

5 THE COURT:

6 In Horry County. Thank you,
7 ma'am.

8 Is there anyone else now before --
9 uh -- anyone else?

10 Okay.

11 WHEREUPON: THE COURT AND COUNSEL

12 SPOKE WITH JUROR IN PRIVACY BY THE PODIUM AS FOLLOWS:

13 THE COURT:

14 Yes sir, Mr. McCarley.

15 JURY POOL MEMBER MCCARLEY:

16 My father is J. P. ... (Whispering
17 was not entirely Audible to Court Reporter.)

18 You may know my mother.

19 My grandfather is on the pardon
20 and parole board in Columbia.

21 THE COURT:

22 Okay, your grandfather is on --

23 JURY POOL MEMBER COLLINS:

24 I've attended a couple of those --
25 uh -- I say: statures --- uh -- in the last couple of

JURY VOIR DIRE AND SELECTION

37

1 years; and --

2 THE COURT:

3 Uh-huh.

4 JURY POOL MEMBER COLLINS:

5 -- I just wanted you to know that
6 I've been through that.

7 THE COURT:

8 Okay. Thank you, sir..

9 WHEREUPON: THE COURT RESUMED HIS
10 POSITION AT THE BENCH.

11 THE COURT:

12 Has anybody -- uh -- no, I'm going
13 to ask this in another way.

14 Ladies and gentlemen of the jury,
15 is anybody a member of organizations that focus on -- uh
16 -- studying or -- uh -- or efforts regarding certain
17 crimes; things like mothers against her drunk driving,
18 students against drunk driving;, citizens against violent
19 crime -- uh -- citizens against spousal abuse, or things
20 of that nature; anybody a member of any of those
21 organizations -- just information?

22 If so, please stand up.

23 WHEREUPON: THERE WAS NO RESPONSE
24 FROM ANY MEMBER OF THE JURY POOL.

25 THE COURT:

1 Does anybody contribute more than
2 a hundred dollars a year to any of these organizations?

3 If so, please stand up.

4 WHEREUPON: THERE WAS NO RESPONSE
5 FROM ANY MEMBER OF THE JURY POOL.

6 THE COURT:

7 Okay.

8 Now ladies and gentlemen, this
9 next -- uh -- uh -- question will probably require you --
10 if you would -- I'd rather you come down and let's talk
11 personally if it applies to you.

12 You know, the allegations here are
13 allegations of -- uh -- not only unlawful conduct, but
14 violent conduct.

15 Uh -- If anyone of you -- uh -- or
16 someone in your household -- household means your mother,
17 your father, your siblings, your spouse, or your
18 children, have a victim of a violent crime -- a crime
19 that you consider violent; or if someone in those
20 categories I mentioned have been charged with a violent
21 crime?

22 And the word violent means
23 whatever you think it means. But it means at least
24 something like kidnapping, armed robbery, and assault and
25 battery high and aggravated nature; assault and battery

JURY VOIR DIRE AND SELECTION

39

1 with intent to kill,, something of that nature; any other
2 thing you think violence means; if you've been a victim;
3 members of your household as I defined it has been a
4 victim; or been charged with those things; please -- uh
5 -- come forward and talk to me, if you would please.

6 WHEREUPON: SEVERAL MEMBERS OF THE
7 JURY POOL STOOD AND CAME FORWARD TO THE PODIUM IN
8 RESPONSE TO THE QUESTION BY THE COURT.

9 WHEREUPON: THE COURT MOVED DOWN
10 TO THE PODIUM, ACCOMPANIED BY ALL COUNSEL, TO SPEAK
11 PRIVATELY WITH THE JURY PANEL MEMBERS THAT CAME FORWARD.
12 BAILIFF:

13 Juror Number 83.

14 THE COURT:

15 All right. What is your name?

16 JURY POOL MEMBER KYM LYNAM:

17 Kym Lynam.

18 THE COURT:

19 Kym Lyman?

20 JURY POOL MEMBER KYM LYNAM:

21 Lynam.

22 THE COURT:

23 Lynam?

24 JURY POOL MEMBER KYM LYNAM:

25 Number 83.

1 THE COURT:

2 Okay, Ms. Lynam?

3 JURY POOL MEMBER KYM LYNAM:

4 I -- uh -- was a victim of armed
5 robbery, kidnapping, and rape, 9 years ago.

6 THE COURT:

7 Okay. Was someone prosecuted?

8 JURY POOL MEMBER KYM LYNAM:

9 Yes.

10 THE COURT:

11 Where did it happen?

12 JURY POOL MEMBER KYM LYNAM:

13 In Richland County.

14 THE COURT:

15 Richland County? All right; now
16 because of that, with the allegations here with
17 kidnapping, assault and battery with intent with intent
18 to kill --

19 JURY POOL MEMBER KYM LYNAM:

20 Uh-huh.

21 THE COURT:

22 Would that affect your ability to
23 be fair and impartial?

24 JURY POOL MEMBER KYM LYNAM:

25 No; uh-uh.

JURY VOIR DIRE AND SELECTION

41

1 THE COURT:

2 Would you be able to listen and
3 paying attention, make your decision based on the
4 evidence in the case?

5 JURY POOL MEMBER KYM LYNAM:

6 Yes.

7 THE COURT:

8 And -- uh -- and you would follow
9 the law as I instruct it to you?

10 JURY POOL MEMBER KYM LYNAM:

11 Would what happened to you have
12 anything to do with your decision in this case?

13 JURY POOL MEMBER KYM LYNAM:

14 No.

15 THE COURT:

16 All right. Thank you, ma'am.
17 You may be seated.

18 Next person please?

19 BAILIFF:

20 Juror Number 137.

21 THE COURT:

22 Could you give me your name again,
23 please, sir?

24 JURY POOL MEMBER TURNER:

25 Paul Turner.

1 THE COURT:

2 Paul Turner?

3 JURY POOL MEMBER TURNER:

4 Juror 137.

5 THE COURT:

6 Juror 137? Yes sir, Mr. Turner?

7 JURY POOL MEMBER TURNER:

8 Uh -- My son was just -- uh --
9 about two weeks -- or a week ago -- uh -- pistol-whipped
10 by three people in St. Petersburg.

11 THE COURT:

12 Florida?

13 JURY POOL MEMBER TURNER:

14 Florida; right. We're -- We're
15 going down Saturday to see him.

16 He -- It was basically, they stole
17 his motorcycle and -- uh --

18 THE COURT:

19 So somebody -- you feel somebody
20 was attempted to rob him and maybe beat him up.

21 JURY POOL MEMBER TURNER:

22 Oh, they beat -- Yeah. They stole
23 his motorcycle and beat him up pretty bad.

24 THE COURT:

25 Now, the allegations here are

JURY VOIR DIRE AND SELECTION

43

1 allegations of violent contact.

2 Would the fact that what you feel
3 happened to your son, would that affect your ability to
4 be fair and impartial in this case?

5 JURY POOL MEMBER TURNER:

6 No sir.

7 THE COURT:

8 Would you make your decision in
9 this case based on the evidence and the law as I instruct
10 it to you?

11 JURY POOL MEMBER TURNER:

12 Yes.

13 THE COURT:

14 Would what you feel happened to
15 your son have any affect at all on your decision in this
16 case?

17 JURY POOL MEMBER TURNER:

18 Uh -- No sir.

19 THE COURT:

20 All right. You may have a seat,
21 sir.

22 Yes sir.

23 BAILIFF:

24 Juror Number 48.

25 THE COURT:

JURY VOIR DIRE AND SELECTION

44

1 What's your name again, sir?

2 JURY POOL MEMBER TURNER:

3 | George Geer, Juror Number 48.

4 THE COURT:

5 Okay?

6 JURY POOL MEMBER TURNER:

7 Uh -- My wife's parents were
8 murdered.

9 THE COURT:

10 | How long ago was that?

11 JURY POOL MEMBER TURNER:

12 It's before I knew her. She was
13 maybe one year old.

14 THE COURT:

15 Okay. So it was like 20 some
16 years ago -- 30 years ago, whatever.

17 JURY POOL MEMBER TURNER:

18 It was about 30 -- 32 years ago.

19 THE COURT:

20 Okay. Now, would the fact that
21 happened to your wife's parents, would that affect your
22 ability to be fair and impartial in this case?

23 JURY POOL MEMBER TURNER:

24 No sir.

25 THE COURT:

JURY VOIR DIRE AND SELECTION

45

1 Would you make your decision in
2 this case based on the evidence and the law as I instruct
3 it to you?

4 JURY POOL MEMBER TURNER:

5 Yes sir.

6 THE COURT:

7 Would what happened to her parents
8 have anything to do with your decision in this case?

9 JURY POOL MEMBER TURNER:

10 Thank you very much; be seated.

11 THE COURT:

12 Yes ma'am?

13 JURY POOL MEMBER:

14 (Not Audible. Juror whispers to
15 The Court extremely low.)

16 THE COURT:

17 Let's try that one again; that
18 name there?

19 JURY POOL MEMBER:

20 (Not Audible.) I need to be real
21 quiet.

22 THE COURT:

23 Cottis? (phonetic)

24 JURY POOL MEMBER:

25 Yeah.

1 THE COURT:

2 Melinda?

3 JURY POOL MEMBER:

4 Yes.

5 THE COURT:

6 Yes ma'am.

7 JURY POOL MEMBER:

8 I need to be real quiet (Not
9 Audible. Juror whispers to The Court extremely low.)

10 COURT REPORTER:

11 I can't hear her at all, Your
12 Honor.

13 THE COURT:

14 What she said, her husband was
15 abusive; and she was in hospital for a few weeks --

16 JURY POOL MEMBER:

17 In Greece.

18 THE COURT:

19 -- in Athens Greece because her
20 husband was very abusive.

21 JURY POOL MEMBER:

22 And he's in Colombia for -- (Not
23 Audible.)

24 I mean, I went through the
25 appropriate steps and everything -- (Not Audible.)

JURY VOIR DIRE AND SELECTION

47

1 It was matter of abuse.

2 THE COURT:

3 Okay.

4 JURY POOL MEMBER:

5 And I had to state that my
6 children --

7 THE COURT:

8 Where -- Where's your husband now?

9 JURY POOL MEMBER:

10 He's in Greece; but I mean, I've
11 been a victim of a crime -- (Not Audible.)

12 THE COURT:

13 Thank you. Now, but how -- did
14 that have anything to do with this case?

15 JURY POOL MEMBER:

16 I don't know; because I mean, a
17 girl was kidnapped --

18 THE COURT:

19 No -- No.

20 JURY POOL MEMBER:

21

22 -- I mean, if there's -- this
23 person was taken --

24 THE COURT:

25 No -- No. Ma'am, listen to what I

2 These are allegations. The State
3 has the burden of proving these things --

S Uh-huh.

7 -- occurred beyond a reasonable
8 doubt. Defendant doesn't have to prove himself innocent.

12	JURY POOL MEMBER:

16 THE COURT:

17 So you --

18 JURY POOL MEMBER:

19 -- and put in a position of
20 danger, I think he's pretty well guilty.

21 THE COURT:

22 So you're saying whether it
23 happened or not, you believe it happened?

24 JURY POOL MEMBER:

25 No; I didn't say I believed it

JURY VOIR DIRE AND SELECTION

49

1 happened -- I mean -- you know --

2 THE COURT:

3 What I'm saying is, it doesn't
4 matter whether it's a man or woman; somebody alleges
5 something happened.

6 You understand the State --

7 JURY POOL MEMBER:

8 If there's the evidence -- uh --
9 against him? If there's enough evidence against him.

10 THE COURT:

11 Okay. What if there's not enough
12 evidence?

13 JURY POOL MEMBER:

14 If there's not enough evidence,
15 then I -- I mean I couldn't say he was guilty of it.

16 THE COURT:

17 So you are saying that you'll hold
18 the State to the burden of proving him guilty beyond a
19 reasonable doubt?

20 JURY POOL MEMBER:

21 Yes.

22 THE COURT:

23 No matter if it's a man or a
24 woman?

25 JURY POOL MEMBER:

1 Yeah; well I'd be pretty -- If a
2 guy did it to a woman, I'd be --

3 THE COURT:

4 But no; you'd have to be proven
5 the guy did it; right?

6 JURY POOL MEMBER:

7 Yes.

8 THE COURT:

9 Okay. So if they don't prove it,
10 then you hold them to the standard: beyond a reasonable
11 doubt?

12 JURY POOL MEMBER:

13 Yeah. Yeah.

14 THE COURT:

15 Because we're not here to decide
16 whether someone should be punished for doing something
17 and the jury here is to decide whether it happened or
18 not.

19 JURY POOL MEMBER:

20 Yeah.

21 THE COURT:

22 The fact at issue is whether it
23 happened or not.

24 JURY POOL MEMBER:

25 Yeah.

JURY VOIR DIRE AND SELECTION

51

1 THE COURT:

2 And as a juror, you're -- the
3 burden is on the State to prove beyond a reasonable doubt
4 that it did happen.

5 JURY POOL MEMBER:

6 Uh-huh.

7 THE COURT:

8 And the jury would have to
9 determine if that's been done or not.

10 JURY POOL MEMBER:

11 All right.

12 THE COURT:

13 So as a juror, could you make the
14 decision of whether it did happen or not; and hold the
15 standard of the State --

16 JURY POOL MEMBER:

17 I'd have to.

18 THE COURT:

19 -- to beyond a reasonable doubt?

20 JURY POOL MEMBER:

21 Well, I'd have to. I mean I'd
22 have you, I guess.

23 I mean --

24 THE COURT:

25 Okay. Well, have a seat back

1 with the jury.

2 Mr. Goude (whispers) I'm going to
3 dismiss her from this case?

4 MR. GOUDE:

5 Pardon?

6 THE COURT:

7 I'm dismissing her from this case.

8 MR. GOUDE:

9 Judge, I want to make a motion to
10 dismiss --

11 THE COURT:

12 Well, I got other people to talk
13 to. I just wanted to let you know.

14 MR. GOUDE:

15 Okay.

16 THE COURT:

17 Next person, please?

18 What is your name, sir?

19 JURY POOL MEMBER TORRES:

20 Carlos Torres, Juror 136.

21 THE COURT:

22 Carlos Torres, Juror 136; yes sir?

23 JURY POOL MEMBER TORRES:

24 Uh -- My daughters were mugged in
25 Phoenix, Arizona.

JURY VOIR DIRE AND SELECTION

53

1 THE COURT:

2 And how long ago?

3 JURY POOL MEMBER TORRES:

4 Uh -- 4 years.

5 THE COURT:

6 4 years? All right; so it was a
7 robbery?

8 JURY POOL MEMBER TORRES:

9 Yes; beat up and robbed.

10 THE COURT:

11 Okay. Uh -- Now, would that
12 affect your ability to be fair and impartial in this
13 case?

14 JURY POOL MEMBER TORRES:

15 No sir.

16 THE COURT:.

17 Would you make your decision in
18 this case base on the evidence in this case and the law
19 as I instruct it to you?

20 JURY POOL MEMBER TORRES:

21 Yes sir.

22 THE COURT:

23 Would what would happen in any way
24 affect your decision in this case?

25 JURY POOL MEMBER TORRES:

1 No sir.

2 THE COURT:

3 All right, thank you Mr. Torres.

4 JURY POOL MEMBER TORRES:

5 Thank you.

6 THE COURT:

7 Next person, please?

8 Secretary of the first Baptist

9 Church coming right up here.

10 (Laughter erupts.)

11 Now let's see, you're Teresa

12 McDaniels, Juror Number 87. Yes, Ms. McDaniels?

13 JURY POOL MEMBER MCDANIEL:

14 My daughter was the victim of a
15 sexual assault at age 15. She's 27 now.

16 THE COURT:

17 Okay. And so what County was
18 that in?

19 JURY POOL MEMBER MCDANIEL:

20 That was here in Georgetown.

21 THE COURT:

22 Now, did you involve yourself with
23 the prosecution -- uh -- help with the prosecution of the
24 other --

25 JURY POOL MEMBER MCDANIEL:

JURY VOIR DIRE AND SELECTION

55

1 We didn't go to trial.

2 THE COURT:

3 Okay. Was someone charged with
4 this?

5 JURY POOL MEMBER MCDANIEL:

6 Yes.

7 THE COURT:

8 And did they plead guilty, then;
9 or --

10 JURY POOL MEMBER MCDANIEL:

11 Yes.

12 THE COURT:

13 Was this a friendship-type person
14 or was it a family member; or what?

15 JURY POOL MEMBER MCDANIEL:

16 It was actually a police officer.

17 THE COURT:

18 Okay. Now as a result of what
19 occurred there with your daughter, would that in any way
20 affect your ability to be fair and impartial in this
21 case?

22 JURY POOL MEMBER MCDANIEL:

23 No, it will not.

24 THE COURT:

25 Okay. Would you make your

1 decision in this case based on the evidence in this case
2 and the law as I instruct it to you?

3 JURY POOL MEMBER MCDANIEL:

4 Yes.

5 THE COURT:

6 Uh -- Would what happened to her
7 have anything to do with your decision in this case?

8 JURY POOL MEMBER MCDANIEL:

9 No.

10 THE COURT:

11 All right. Thank you very much.

12 You may be seated.

13 JURY POOL MEMBER MCDANIEL:

14 Thank you.

15 THE COURT:

16 Next person please.

17 What is your name, ma'am? You
18 are?

19 JURY POOL MEMBER NESS:

20 Elizabeth Ness.

21 THE COURT:

22 Ness?

23 JURY POOL MEMBER NESS:

24 Juror Number 96.

25 THE COURT:

JURY VOIR DIRE AND SELECTION

57

1 Yes, Ms. Ness?

2 JURY POOL MEMBER NESS:

3 I had sort of put this in the back
4 of my mind; but we own a pharmacy; and my husband -- uh
5 -- it was in 1995.

6 It was an armed robbery. And two
7 men ran in the front door; hit him in the head with a
8 gun; and shot a Technician in the back.

9 THE COURT:

10 How is the technician?

11 JURY POOL MEMBER NESS:

12 Well, she did recover,
13 fortunately.

14 But I mean they never caught the
15 people, sir.

16 I mean it was an aggravated
17 assault against my husband.

18 THE COURT:

19 All right. Uh -- Would what
20 occurred there in 1995; would that affect your ability to
21 be fair and impartial in this case?

22 JURY POOL MEMBER NESS:

23 I hope not. I mean --

24 THE COURT:

25 Well, would you listen in this

1 case and hold the standard -- uh --

2 JURY POOL MEMBER NESS:

3 All right --

4 THE COURT:

5 -- of the State to beyond a
6 reasonable doubt?

7 JURY POOL MEMBER NESS:

8 -- I will listen to the evidence;
9 yes.

10 THE COURT:

11 And would you make your decision
12 based on whether the State's proven guilt beyond a
13 reasonable doubt?

14 JURY POOL MEMBER NESS:

15 Yes.

16 THE COURT:

17 Would you go in it with an open
18 mind; and on the standard that -- uh -- hold the State to
19 the that standard?

20 Ma'am?

21 JURY POOL MEMBER NESS:

22 I think I can. I think I can.

23 THE COURT:

24 And -- uh -- would what occurred
25 in '95 have anything to do with your decision in this

JURY VOIR DIRE AND SELECTION

59

1 case?

2 JURY POOL MEMBER NESS:

3 No.

4 THE COURT:

5 Okay. And you'll be fair to both
6 sides?

7 JURY POOL MEMBER NESS:

8 Yes.

9 THE COURT:

10 Thank you. You may be seated.

11 Next person, please.

12 How you doing? What's your name
13 please, sir?

14 JURY POOL MEMBER MCCANTS:

15 Michael McCants, Juror Number 85.

16 THE COURT:

17 Mr. McCants; yes sir?

18 JURY POOL MEMBER MCCANTS:

19 I'm not sure; I just wanted to get
20 this out of the way -- uh -- but just a few years ago, my
21 daughter was sexually abused; and had the court here; and
22 -- uh -- the person who did it was convicted; and Mr.
23 Goude was his defender.

24 THE COURT:

25 Okay. Would the fact that

1 occurred with your daughter and Mr. Goude was involved;
2 would that in some way affect your ability to be fair and
3 impartial in this situation?

4 JURY POOL MEMBER MCCANTS:

5 No sir.

6 THE COURT:

7 Uh -- Would you feel that you
8 could sit on the jury and be fair to both sides?

9 JURY POOL MEMBER MCCANTS:

10 Yes sir; I just wanted it to be
11 known.

12 THE COURT:

13 And would you hold the State to a
14 standard proving guilty beyond a reasonable doubt?

15 JURY POOL MEMBER MCCANTS:

16 Yes sir.

17 THE COURT:

18 And would what occurred to your
19 daughter, or Mr. Goude's involvement, would that in any
20 way affect your decision in this case??

21 JURY POOL MEMBER MCCANTS:

22 No sir.

23 THE COURT:

24 None; no way at all?

25 JURY POOL MEMBER MCCANTS:

JURY VOIR DIRE AND SELECTION

61

1 No sir.

2 THE COURT:

3 All right; you can have a seat.

4 All right, Counsel; matters about
5 jurors I've talked with?

6 MR. GOUDE:

7 Uh -- Judge, I move to excuse
8 Number 85, the man you just talked to; since I
9 represented the guy charged with raping his daughter?

10 THE COURT:

11 Okay. Well, I'll make a decision
12 on that in a minute. What else?

13 MR. GOUDE:

14 The next one is Number 87, the
15 woman who's daughter was a victim of sex abuse; and she
16 had one, two, three, four -- some of her family members
17 were on the Highway Patrol and it could be some officers.

18 I move to excuse her for cause.

19 THE COURT:

20 Who else? Is that it?

21 MR. GOUDE:

22 Number 83, a woman that was a
23 victim of armed robbery, kidnapping, and rape; basically
24 the same thing charged here.

25 THE COURT:

1 Who's this -- what's --

2 MR. GOUDE:

3 Number 83; says she was a victim
4 of armed robbery, kidnapping, and I move to excuse her.

5 THE COURT:

6 Okay. Yeah.

7 MR. GOUDE:

8 That's it.

9 THE COURT:

10 Any response from the State?

11 MS. BIAGIANTI:

12 Number 83 said she could be fair
13 and impartial to both sides.

14 85; she also said she could be
15 fair and impartial.

16 And then, Teresa McCants, although
17 she has some members in the Highway Patrol, the Defendant
18 was a police officer who pled guilty to the charge.

19 And she basically said --

20 THE COURT:

21 Okay. Okay. The gentleman --
22 the gentleman who -- uh -- who you represented -- uh --
23 from his daughter, I'm granting your motion.

24 He's going to be excused.

25 What's his name?

JURY VOIR DIRE AND SELECTION

63

1 MS. BIAGIANTI:

2 McCants, Michael.

3 THE COURT:

4 Is that 85?

5 MS. BIAGIANTI:

6 85.

7 THE COURT:

8 85. Now, on the other one -- the
9 lady who -- uh -- has people in law enforcement, I deny
10 that motion.

11 She's going to stay with us.

12 Uh -- The one who was a victim; I
13 agree with you Mr. Goude. I think that's too close.

14 I'm going to excuse her; 83.

15 Is that 83?

16 MR. GOUDE:

17 Yes sir.

18 THE COURT:

19 All right. Anything else?

20 MS. BIAGIANTI:

21 I do have a concern about the
22 gentleman who stood up and said his sister worked in
23 Judge Pyatt's office; on his witness list, he put Judge
24 Isaac Pyatt -- Oh, let's just put that one aside. No.

25 THE COURT:

1 Well, that's just for documents;
2 right?

3 It's not for credibility; is it?

4 MR. GOUDE:

5 I had some CDV hearings in there;
6 so probably we should excuse him in case that secretary-
7 clerk told her brother about what went on in his court.

8 THE COURT:

9 Well, if y'all can agree to that;
10 fine.

11 But other than that, I don't know
12 that I --

13 MS. BIAGIANTI:

14 I'd like him excuse too.

15 THE COURT:

16 All right. What number is he?

17 MR. GOUDE:

18 Wasn't that Grate?

19 MS. BIAGIANTI:

20 Yes sir.

21 MR. GOUDE:

22 He was Number 52.

23 THE COURT:

24 All right. Anything other than
25 the attorneys, Mr. Goude -- Ms. Biagianti?

JURY VOIR DIRE AND SELECTION

65

1 Anything other than attorneys?

2 MR. GOUDE:

3 No, Your Honor.

4 MS. BIAGIANTI:

5 No, Your Honor.

6 THE COURT:

7 All right.

8 Ladies and gentlemen of the jury,
9 the process of The Court system is:

10 You as a jury, you decide the
11 issues about facts about what's been proven beyond a
12 reasonable doubt or not.

13 You make those decisions.

14 However, I instruct you on the
15 law. And you must follow the law as I instruct it to
16 you.

17 You cannot impose the law that you
18 think should apply. You cannot impose the law that you
19 thought applied before you came in here.

20 You must impose the law and follow
21 the law as I instruct you.

22 Does anybody on the jury panel
23 feel you cannot follow that procedure of following the
24 law as I instruct you.

25 If so, please stand up.

1 WHEREUPON: THERE WAS NO RESPONSE
2 FROM ANY MEMBER OF THE JURY POOL.

3 THE COURT:

4 All right.

5 If you would, Mr. Biagianti,
6 introduce yourself to the jury, please.

7 MS. BIAGIANTI:

8 Thank Your Honor. If it please The
9 Court?

10 My name's Dorie Biagianti; and I
11 am a Solicitor, also known as a Prosecutor, here with the
12 15 Circuit, which is in Georgetown and Horry County.

13 And sitting with me is my
14 assistant, Joy Marnes (phonetic).

15 THE COURT:

16 All right. Uh -- Anybody in the
17 jury related by blood or marriage to Ms. Biagianti or
18 anybody in the Solicitor's Office of the fifteenth
19 judicial circuit; or have any involvement with them at
20 all.

21 If so, please stand up.

22 WHEREUPON: ONE MEMBER OF THE JURY
23 POOL STOOD IN RESPONSE TO THE QUESTION BY THE COURT.

24 THE COURT:

25 Give me your name again, ma'am?

JURY VOIR DIRE AND SELECTION

67

1 JURY POOL MEMBER CARNLEY:

2 Rose Carnley, Number 13.

3 THE COURT:

4 Yes, Ms. Carnley?

5 JURY POOL MEMBER CARNLEY:

6 I'm sister-in-law to Joy Marnes

7 (phonetic) . She's my sister-in-law.

8 THE COURT:

9 Okay. And what's Ms. Marnes

10 (phonetic) position with you all?

11 MS. BIAGIANTI:

12 Ms. Marnes is my assistant.

13 THE COURT:

14 Okay. She assistant solicitor?

15 MS. BIAGIANTI:

16 No sir. She my assistant at the
17 table here.

18 THE COURT:

19 Oh, and you're a sister-in-law
20 with her?

21 JURY POOL MEMBER CARNLEY:

22 Yes sir.

23 THE COURT:

24 Would that affect your ability to
25 be fair and impartial or make you feel uncomfortable at

1 all, ma'am?

2 JURY POOL MEMBER CARNLEY:

3 No sir.

4 THE COURT:

5 Could you be fair to both sides?

6 JURY POOL MEMBER CARNLEY:

7 Yes sir.

8 THE COURT:

9 All right. Would the fact she's
10 there as an assistant there, would that in any way affect
11 your decision in the case at all?

12 JURY POOL MEMBER CARNLEY:

13 No sir.

14 THE COURT:

15 Okay. Would you hold the
16 standard of the State to proof beyond a reasonable doubt?

17 JURY POOL MEMBER CARNLEY:

18 Yes sir.

19 THE COURT:

20 And follow my instructions on the
21 law.

22 JURY POOL MEMBER CARNLEY:

23 Yes sir.

24 THE COURT:

25 Anyone else?

JURY VOIR DIRE AND SELECTION

69

1 Okay; Mr. Goude?

2 MR. GOUDE:

3 My name is Ruben Goude. I'm a
4 lawyer here in Georgetown and I live here in Georgetown
5 County; and I'll be representing Mr. Robert Dexter Brown
6 in the case.

7 THE COURT:

8 Anybody on the jury panel related
9 by blood or marriage to Mr. Goude; or have any business,
10 personal or social relationship with him, including being
11 represented by him now or in the past or any other
12 relationship?

13 If so, please stand up.

14 WHEREUPON: THERE WAS NO RESPONSE
15 FROM ANY MEMBER OF THE JURY POOL.

16 MR. GOUDE:

17 Your Honor, also seated here with
18 us is Nicholas McCarver who's a law student who is
19 interning with us defense lawyers this summer.

20 THE COURT:

21 Okay. Is he -- Are you from
22 Georgetown, Mr. McCarver?

23 MR. MCCARVER:

24 No sir; Charleston.

25 THE COURT:

1 Charleston? In Charleston they
2 don't stand up when they talk to law -- or Judges -- eh,
3 Mr. McCarver?

4 MR. MCCARVER:

5 Yes, Your Honor.

6 THE COURT:

7 There we go. You got to be an
8 intern. I'll just get you ready for it there.

9 MR. MCCARVER:

10 Yes, Your Honor.

11 THE COURT:

12 Okay. Anybody know Mr. McCarver
13 or have any relationship with him?

14 If so, please let me know.

15 WHEREUPON: THERE WAS NO RESPONSE
16 FROM ANY MEMBER OF THE JURY POOL.

17 THE COURT:

18 All right.

19 Uh -- Strikes will be 5 and 10.

20 State ready?

21 MS. BIAGIANTI:

22 Yes sir.

23 THE COURT:

24 Defense ready?

25 MR. GOUDE:

JURY VOIR DIRE AND SELECTION

71

1 Yes, Your Honor.

2 THE COURT:

3 All right. If y'all would -- uh
4 -- uh -- and let's come and let's make sure everybody has
5 the same numbers of those who we have excused.

6 Ms. Biagianti and Mr. Goude, y'all
7 come up, please; over here, if y'all would please; and --
8 uh -- I'll tell you what:

9 Before we do that, let me also
10 mention something else to you.

11 (WHEREUPON: Counsel for each party
12 conferred off the record with The Court at the bench at
13 12:19 p.m.)

14
15 THE COURT:

16 Ladies and gentlemen, you live in
17 a modern County.

18 In the old days -- The way we're
19 selecting jurors has been changed all over the States.
20 Gradually, they are changing from county to county.

21 In the most modern counties, they
22 put your names into a computer and push a button; and the
23 computer jumbles your names up; and then it prints out a
24 list of your names at random. And we then call the names
25 as they are a random; and each side gets to say yea or

1 nay regarding who's juror.

2 And -- uh -- if it were some other
3 county, they might have an iron, or a stone, or a bronze
4 little circular cylinder they will turn around and around
5 and around; and draw a name out; and that call the name
6 out. And then each side could say yea or nay.

7 If you're in Dillon County, the
8 Clerk Of Court would put your names in a Tampa Nugget
9 box.

10 (Laughter erupts.)

11 And we would pick them and call
12 your name out at random.

13 But in Georgetown County, you are
14 very modern. And you have the names already jumbled; and
15 I have your name here.

16 So I now have the order your names
17 will be called out.

18 The attorneys do not know; but I
19 know and the clerk knows. So she's going to call your
20 names out.

21 When she calls your name out,
22 please, if you would, come down to the front. Come to
23 that microphone there; turn around and face those two
24 white doors that use to open up into the wild, wonderful,
25 spacious, Georgetown County air.

JURY VOIR DIRE AND SELECTION

73

1 If you would, come in turn around.

2 And when you turn around, we'll then ask each side.

3 If the clerk says:

4 Have a seat in the jury box over

5 here to the left -- these nice, comfortable, chairs.

6 Or the clerk could say:

7 If you would please, go back to

8 your seat.

9 But, one or the other is what's

10 going to happen.

11 The best thing is to stay there

12 until she tells you to do one or the other.

13 As I said, 5 and 10 are the

14 strikes. We will now proceed.

15 Madam Clerk, your first juror,

16 please.

17 CLERK:

18 Juror Number 87 Teresa McDaniel.

19 You should bring all your

20 belongings with you when you come up here.

21 (WHEREUPON: The juror came

22 forward and turned and faced counsel table as

23 instructed.)

24 CLERK:

25 What says the State?

1 MS. BIAGIANTI:

2 Please present Mrs. McDaniel.

3 CLERK:

4 What says the Defense?

5 MR. GOUDE:

6 Excuse Mrs. McDaniel.

7 CLERK:

8 You may return to your seat.

9 (WHEREUPON: This jury panel

10 member, not being accepted by all parties, returned to
11 the panel and was not seated as a juror in this case.)

12 CLERK:

13 Juror Number 48, George Geer.

14 (WHEREUPON: The juror came

15 forward and turned and faced counsel table as

16 instructed.)

17 CLERK:

18 What says the State?

19 MS. BIAGIANTI:

20 Please present Mr. Geer.

21 CLERK:

22 What says the Defense?

23 MR. GOUDE:

24 Swear the juror.

25 CLERK:

JURY VOIR DIRE AND SELECTION

75

1 Please take a seat in the jury
2 box.

3 WHEREUPON: The juror came forward
4 as instructed and took a seat in the jury box.

5 CLERK:

6 Juror Number 68, Martha Ann Isaac.

7 (WHEREUPON: The juror came
8 forward and turned and faced counsel table as
9 instructed.)

10 CLERK:

11 What says the State?

12 MS. BIAGIANTI:

13 Please present Mrs. Isaac.

14 CLERK:

15 What says the Defense?

16 MR. GOUDE:

17 Swear the juror.

18 CLERK:

19 Please take a seat in the jury
20 box.

21 WHEREUPON: The juror came forward
22 as instructed and took a seat in the jury box.

23 CLERK:

24 Juror Number 74, Kathy Keith.

25 (WHEREUPON: The juror came

1 forward and turned and faced counsel table as
2 instructed.)

3 THE COURT:

4 Uh -- If I would -- Can I see
5 y'all one second, please?

6 (WHEREUPON: Counsel for each party
7 conferred off the record with The Court at the bench at
8 12:23 p.m.)

9 CLERK:

10 Proceed, Judge?

11 THE COURT:

12 Wait one second.

13 Okay. If y'all would come
14 approach back over here.

15 (WHEREUPON: Counsel for each party
16 conferred off the record with The Court at the bench at
17 12:25 p.m.)

18 THE COURT:

19 Excused by The Court.

20 Ms. Keith, You may have a seat,
21 ma'am. You're excused by The Court.

22 CLERK:

23 You may return to your seat.

24 (WHEREUPON: This jury panel
25 member, not being accepted by all parties, returned to

JURY VOIR DIRE AND SELECTION

77

1 the panel and was not seated as a juror in this case.)

2 CLERK:

3 Juror Number 41, Annette Fisher.

4 (WHEREUPON: The juror came

5 forward and turned and faced counsel table as

6 instructed.)

7 THE COURT:

8 You brought all your belongings

9 there.

10 CLERK:

11 What says the State?

12 MS. BIAGIANTI:

13 Please present Mrs. Fisher.

14 CLERK:

15 What says the Defense?

16 MR. GOUDE:

17 Excuse the juror.

18 You may return to your seat.

19 (WHEREUPON: This jury panel

20 member, not being accepted by all parties, returned to

21 the panel and was not seated as a juror in this case.)

22 CLERK:

23 Juror Number 27 -- uh -- Susan

24 Cyr.

25 MR. GOUDE:

JURY VOIR DIRE AND SELECTION

78

1 What was that number? Ms. --

2 | CLERK:

3 27.

4 (WHEREUPON: The juror came
5 forward and turned and faced counsel table as
6 instructed.)

7 THE COURT:

8 Is that pronounced correctly; Can
9 you recall?

10 JUROR:

11 Yes sir.

12 | CLERK:

13 What says the State?

14 MS. BIAGIANTI:

15 Please present Mrs. Cyr.

16 CLERK:

17 What says the Defense?

18 MR. GOUDE:

19 Swear the juror.

20 | CLERK:

21 Please take a seat in the jury
22 box.

23 WHEREUPON: The juror came forward
24 as instructed and took a seat in the jury box.

25 Juror Number 34, William Dunbar.

JURY VOIR DIRE AND SELECTION

79

1 (WHEREUPON: The juror came
2 forward and turned and faced counsel table as
3 instructed.)

4 CLERK:

5 What says the State?

6 MS. BIAGIANTI:

7 Please present Mr. Dunbar.

8 CLERK:

9 What says the defense?

10 MR. GOUDE:

11 Swear the juror.

12 CLERK:

13 Please take a seat in the jury
14 box.

15 WHEREUPON: The juror came forward
16 as instructed and took a seat in the jury box.

17 CLERK:

18 Juror Number 19k, Annie Collins.

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 CLERK:

23 What says the State?

24 MS. BIAGIANTI:

25 Please present Mrs. Collins.

1 CLERK:

2 What says the Defense?

3 MR. GOUDE:

4 Swear the juror.

5 Please take a seat in the jury
6 box.

7 WHEREUPON: The juror came forward
8 as instructed and took a seat in the jury box.

9 CLERK:

10 Juror Number 90, Kenisha Morant.

11 (WHEREUPON: The juror came
12 forward and turned and faced counsel table as
13 instructed.)

14 CLERK:

15 What says the State?

16 MS. BIAGIANTI:

17 Please dismiss this juror.

18 CLERK:

19 You may return to your seat.

20 (WHEREUPON: This jury panel
21 member, not being accepted by all parties, returned to
22 the panel and was not seated as a juror in this case.)

23 CLERK:

24 Juror Number 114, Sherry Rufus.

25 (WHEREUPON: The juror came

JURY VOIR DIRE AND SELECTION

81

1 forward and turned and faced counsel table as
2 instructed.)

3 CLERK:

4 What says the State?

5 MS. BIAGIANTI:

6 Please present Mrs. Rufus.

7 CLERK:

8 What says the Defense?

9 MR. GOUDE:

10 Excuse the juror.

11 CLERK:

12 You may return to your seat.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 Juror Number 71, Marcella Johnson.

18 MS. BIAGIANTI:

19 What number?

20 CLERK:

21 71.

22 (WHEREUPON: The juror came
23 forward and turned and faced counsel table as
24 instructed.)

25 CLERK:

JURY VOIR DIRE AND SELECTION

82

1 What says the State?

2 MS. BIAGIANTI:

3 Please present Mrs. Johnson.

4 CLERK:

5 What says the Defense?

6 MR. GOUDE:

7 Swear the juror.

8 CLERK:

9 Please take a seat in the jury
10 box.

11 WHEREUPON: The juror came forward
12 as instructed and took a seat in the jury box.

13 CLERK:

14 Juror Number 45, Dorinda Gallant.

15 (WHEREUPON: The juror came
16 forward and turned and faced counsel table as
17 instructed.)

18 CLERK:

19 What says the State?

20 MS. BIAGIANTI:

21 Please present Ms. Grant -- excuse
22 me -- Ms.. Gallant.

23 CLERK:

24 What says the Defense?

25 MR. GOUDE:

JURY VOIR DIRE AND SELECTION

83

1 Swear the juror.

2 CLERK:

3 Please take a seat the jury box.

4 WHEREUPON: The juror came forward
5 as instructed and took a seat in the jury box.

6 CLERK:

7 Juror Number 7 -- uh -- Kristin
8 Bradley.

9 (WHEREUPON: The juror came
10 forward and turned and faced counsel table as
11 instructed.)

12 CLERK:

13 What says the State?

14 MS. BIAGIANTI:

15 Please present Ms. Bradley.

16 CLERK:

17 What says the Defense?

18 MR. GOUDE:

19 Swear the juror.

20 CLERK:

21 Please take a seat in the jury
22 box.

23 WHEREUPON: The juror came forward
24 as instructed and took a seat in the jury box.

25 CLERK:

1 Juror Number 67 -- uh -- Sara

2 Hooks.

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What says the State?

8 MS. BIAGIANTI:

9 Please present Mrs. Hooks.

10 CLERK:

11 What says the Defense?

12 MR. GOUDE:

13 Excuse the juror.

14 CLERK:

15 You may return to your seat.

16 WHEREUPON: The juror came forward
17 as instructed and took a seat in the jury box.

18 CLERK:

19 Juror Number 126, Josie Solomon.

20 (WHEREUPON: The juror came
21 forward and turned and faced counsel table as
22 instructed.)

23 CLERK:

24 What says the State?

25 MS. BIAGIANTI:

JURY VOIR DIRE AND SELECTION

85

1 Please present Mrs. Solomon.

2 CLERK:

3 What says the Defense?

4 MR. GOUDE:

5 Swear the juror.

6 CLERK:

7 Please take a seat in the jury
8 box.

9 WHEREUPON: The juror came forward
10 as instructed and took a seat in the jury box.

11 CLERK:

12 Juror Number 143, Taco Wijthoff;
13 is that right?

14 JUROR:

15 Yes ma'am.

16 MR. GOUDE:

17 What was that number?

18 CLERK:

19 133.

20 (WHEREUPON: The juror came
21 forward and turned and faced counsel table as
22 instructed.)

23 CLERK:

24 What says the State?

25 MS. BIAGIANTI:

1 Please excuse Mr. Wijthoff.
2 You may return to your seat.
3 WHEREUPON: The juror came forward
4 as instructed and took a seat in the jury box.
5 CLERK:
6 Juror Number 140, Marcella White.
7 (WHEREUPON: The juror came
8 forward and turned and faced counsel table as
9 instructed.)
10 CLERK:
11 What says the State?
12 MS. BIAGIANTI:
13 Was that Number 140?
14 CLERK:
15 140.
16 MS. BIAGIANTI:
17 Please present Ms. white.
18 CLERK:
19 What says the Defense?
20 MR. GOUDE:
21 Excuse the juror.
22 You may return to your seat.
23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

JURY VOIR DIRE AND SELECTION

87

1 CLERK:

2 Juror Number 132, Charles
3 Thompson.

4 (WHEREUPON: The juror came
5 forward and turned and faced counsel table as
6 instructed.)

7 CLERK:

8 What says the State?

9 MS. BIAGIANTI:

10 Please excuse Mr. Thompson.

11 CLERK:

12 You may return to your seat.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 Juror Number 35 -- uh -- Kathleen
18 Duncan.

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 CLERK:

23 What says the State?

24 MS. BIAGIANTI:

25 Please present Ms. Duncan.

1 CLERK:

2 What says the Defense?

3 MR. GOUDE:

4 Excuse the juror.

5 CLERK:

6 You may return to your seat.

7 (WHEREUPON: This jury panel
8 member, not being accepted by all parties, returned to
9 the panel and was not seated as a juror in this case.)

10 CLERK:

11 Juror Number 6, Octavia Black.

12 (WHEREUPON: The juror came
13 forward and turned and faced counsel table as
14 instructed.)

15 CLERK:

16 What says the State?

17 MS. BIAGIANTI:

18 Please present Ms. Black.

19 CLERK:

20 What says the Defense?

21 MR. GOUDE:

22 Swear the juror.

23 CLERK:

24 Please take a seat in the jury
25 box.

JURY VOIR DIRE AND SELECTION

89

1 WHEREUPON: The juror came forward
2 as instructed and took a seat in the jury box.

3 CLERK:

4 Juror Number 31, Kiawana Deas.

5 MS. BIAGIANTI:

6 What Number?

7 CLERK:

8 31.

9 (WHEREUPON: The juror came
10 forward and turned and faced counsel table as
11 instructed.)

12 CLERK:

13 What says the State?

14 MS. BIAGIANTI:

15 Please excuse Ms. Deas.

16 CLERK:

17 You may return to your seat.

18 (WHEREUPON: This jury panel
19 member, not being accepted by all parties, returned to
20 the panel and was not seated as a juror in this case.)

21 THE COURT:

22 Now my count at this time -- My
23 count at this time is four for the State and six for the
24 Defense.

25 Is that your count, Madam Clerk?

1 CLERK:

2 Yes, Your Honor.

3 THE COURT:

4 Your count -- uh -- Madam

5 Solicitor?

6 MS. BIAGIANTI:

7 Yes sir.

8 THE COURT:

9 Mr. Goude?

10 MR. GOUDE:

11 Yes sir.

12 THE COURT:

13 All right.

14 CLERK:

15 Juror Number 17 -- uh -- Claudia

16 Cohen.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 CLERK:

21 What says the State?

22 MS. BIAGIANTI:

23 Please present Ms. Cohen.

24 CLERK:

25 What says the Defense?

JURY VOIR DIRE AND SELECTION

91

1 MR. GOUDE:

2 Excuse the juror.

3 CLERK:

4 You may return to your seat.

5 (WHEREUPON: This jury panel
6 member, not being accepted by all parties, returned to
7 the panel and was not seated as a juror in this case.)

8 CLERK:

9 Juror Number 137, Paul Turner.

10 (WHEREUPON: The juror came
11 forward and turned and faced counsel table as
12 instructed.)

13 CLERK:

14 What says the State?

15 MS. BIAGIANTI:

16 Please present Mr. Turner.

17 CLERK:

18 What says the Defense?

19 MR. GOUDE:

20 Swear the juror.

21 CLERK:

22 Please take a seat in the jury
23 box.

24 WHEREUPON: The juror came forward
25 as instructed and took a seat in the jury box.

1 CLERK:

2 Juror Number 42, Dorothy Frantz.

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What says the State?

8 MS. BIAGIANTI:

9 Please present Mrs. Frantz.

10 CLERK:

11 What says the Defense?

12 MR. GOUDE:

13 Excuse the juror.

14 You may return to your seat.

15 (WHEREUPON: This jury panel
16 member, not being accepted by all parties, returned to
17 the panel and was not seated as a juror in this case.)

18 CLERK:

19 Juror Number 99; Johnny Owens.

20 (WHEREUPON: The juror came
21 forward and turned and faced counsel table as
22 instructed.)

23 CLERK:

24 What says the State?

25 MS. BIAGIANTI:

JURY VOIR DIRE AND SELECTION

93

1 Please present Mr. Owens.

2 CLERK:

3 What says the Defense?

4 MR. GOUDE:

5 Swear the juror.

6 Please take a seat in the jury
7 box.

8 WHEREUPON: The juror came forward
9 as instructed and took a seat in the jury box.

10 THE COURT:

11 All right; we'll get -- uh -- an
12 alternate -- uh -- two strikes for the Defense; one
13 strike for the State -- uh -- on the alternate.

14 Let's proceed, please.

15 CLERK:

16 Juror Number 119uh Deanne Shelley.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 CLERK:

21 What says the State?

22 MS. BIAGIANTI:

23 Please present Ms. Shelley.

24 CLERK:

25 What says the Defense?

1 MR. GOUDE:

2 Excuse the juror.

3 CLERK:

4 You may return to your seat.

5 (WHEREUPON: This jury panel
6 member, not being accepted by all parties, returned to
7 the panel and was not seated as a juror in this case.)

8 CLERK:

9 Juror Number 21, Debra Conyers.

10 (WHEREUPON: The juror came
11 forward and turned and faced counsel table as
12 instructed.)

13 CLERK:

14 What says the State?

15 MS. BIAGIANTI:

16 Please present Mrs. Conyers.

17 CLERK:

18 What says the Defense?

19 MR. GOUDE:

20 Excuse the juror.

21 CLERK:

22 You may return to your seat.

23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

JURY VOIR DIRE AND SELECTION

95

1 CLERK:

2 Juror Number 145, Tammy Williams.

3 (WHEREUPON: The juror came

4 forward and turned and faced counsel table as

5 instructed.)

6 CLERK:

7 What says the State?

8 MS. BIAGIANTI:

9 Please present Mrs. Williams.

10 CLERK:

11 What says the Defense?

12 MR. GOUDE:

13 Swear the juror.

14 THE COURT:

15 Okay. And we'll get another

16 alternate too, please. Uh -- If you would, two strikes

17 for the Defense, and one strike for the State.

18 CLERK:

19 Juror Number 26, Wendy Cribb.

20 (WHEREUPON: The juror came

21 forward and turned and faced counsel table as

22 instructed.)

23 CLERK:

24 What says the State?

25 MS. BIAGIANTI:

1 Please present Ms. Cribb.

2 CLERK:

3 What says the Defense?

4 MR. GOUDE:

5 Excuse the juror.

6 CLERK:

7 You may return to your seat.

8 (WHEREUPON: This jury panel
9 member, not being accepted by all parties, returned to
10 the panel and was not seated as a juror in this case.)

11 CLERK:

12 Juror Number 3, Travis Armour.

13 MS. BIAGIANTI:

14 What number?

15 CLERK:

16 Three.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 CLERK:

21 What says the State?

22 MS. BIAGIANTI:

23 Please present Mr. Armour.

24 CLERK:

25 What says the Defense?

JURY VOIR DIRE AND SELECTION

97

1 MR. GOUDE:

2 Swear the juror.

3 CLERK:

4 Please take a seat in the jury
5 box.

6 WHEREUPON: The juror came forward
7 as instructed and took a seat in the jury box.

8 WHEREUPON: The jury panel
9 selection was completed at 12:38 p.m.

10 THE COURT:

11 Okay.

12 Ladies and gentlemen of -- uh --
13 this jury, if you would, please -- uh -- I need you all
14 to step to our jury room.

15 And I think in this county you
16 have to walk in front of everybody here; but -- but if
17 you would, when you go to the jury room, do not say
18 anything about the case.

19 Don't discuss it at all.

20 Uh -- It's probable I'm going to
21 give you a lunch hour before we get started with the
22 case; but there are a couple of things I need to handle
23 before that.

24 So just get to know each other.
25 Say hello to each other and get to know a little bit

1 about each other.

2 Other than that, do not discuss
3 this case at all.

4 Please proceed to the jury room.

5 (WHEREUPON: The jury empanelled
6 in the case withdrew from the courtroom at 12:39 PM, July
7 29th, 2008; and was no longer present during the
8 following proceedings.)

9 THE COURT:

10 Okay. Are there any motions from
11 the -- uh -- State or from the Defense regarding jury
12 selection; the method by the Clerk's office in getting
13 the names at random -- uh -- the calling of the names --
14 uh -- the strikes by either side under Batson or any
15 other motions regarding jury selection?

16 Anything from the State?

17 MS. BIAGIANTI:

18 No sir.

19 THE COURT:

20 Anything from the Defense?

21 MR. GOUDE:

22 No, Your Honor.

23 THE COURT:

24 All right. Uh -- And I'll put
25 some other the matters on record in a minute.

JURY VOIR DIRE AND SELECTION

99

1 Before that, ladies and gentlemen
2 of the venire of the jury -- uh -- we're going to let you
3 all go now.

4 Uh -- Uh -- And you will call in
5 after six o'clock tonight -- after six o'clock tonight.

6 Now, do you have that phone
7 number?

8 Ms. White, have you told them or
9 given them about the information with the phone number?

10 CLERK:

11 Yes, Your Honor.

12 THE COURT:

13 So everyone knows how to call in.

14 If you have question about it, let
15 me know now.

16 If you've got any questions about
17 the number you need to call, let me know now.

18 WHEREUPON: THERE WAS NO RESPONSE
19 FROM ANY MEMBER OF THE JURY POOL.

20 THE COURT:

21 So everybody knows how to make
22 that phone call to call in?

23 All right, very good.

24 Uh -- Ms. Keith, I need to see you
25 before you leave.

1 Uh -- Uh -- For the rest of you,
2 if you'll call in after six o'clock tonight?

3 What it will do is:

4 It will tell you either to call
5 back tomorrow night; or it may tell you to come in
6 tomorrow; one or the other.

7 It'll tell you one or the other.

8 So -- uh -- uh -- please just call
9 after six.

10 Ms. -- uh -- Carnley and Ms.
11 Cohen, y'all need to stay with me too, please. I need to
12 talk to you all.

13 For the rest of you -- uh -- don't
14 forget to leave those blue badges. Those are buttons.
15 Those things are a hundred dollars a piece -- uh -- to
16 the taxpayers of Georgetown County.

17 (Laughter erupts.)

18 Now, you may not be coming back
19 this week. It could be this case last for the rest of
20 the week -- you have other things -- or you may be coming
21 back next week -- I mean this week, not next week; don't
22 get scared -- uh -- this week.

23 So I don't know if I'll be seeing
24 you the rest of the week or not; but -- uh -- but -- uh
25 -- just in case I don't get the opportunity to see you,

JURY VOIR DIRE AND SELECTION

101

1 I'm going to step down just like I use to at the door.

2 I'd like to thank you personally
3 for being part of the judicial system -- of your system
4 -- uh -- uh -- this day; and it may be later this week.

5 We don't know yet.

6 I'll stand over here with the
7 officer.

8 WHEREUPON: At 12:42 p.m., The
9 Court left the bench to excuse and shake hands with the
10 remaining jury venire not chosen in this case; and the
11 said remaining jury panel exited the courtroom; being no
12 longer present during the following proceedings.

13 WHEREUPON: The Court resumed the
14 bench at 12:44 p.m.

15 THE COURT:

16 All right; let's put a couple of
17 things on the record.

18 Uh -- The matter on Mr. Cramer:

19 I don't know what the juror number
20 is; but C-r-a-m-e-r (23) -- uh -- that had the conviction
21 -- uh -- he wasn't called, but I do need for the record
22 that -- that great efforts were done by the probation
23 office to see if they could find anything.

24 They even went to the County where
25 -- uh -- he says he was convicted of this breaking and

1 entering down in Florida when he was 18.

2 And they said they found no record
3 of it anywhere in that county; on their website; have no
4 record of it.

5 He wasn't called; but everybody
6 came up and they agreed to leave him on the jury pool;
7 but he wasn't called in this case.

8 And that's what we discussed -- uh
9 -- Mr. Court Reporter over her on the side. I wanted to
10 put on the record what we discussed the first time.

11 The second time -- uh -- Juror --
12 uh -- Number -- Number 74 -- uh -- Kath Keith (74) who
13 was fourth on the ones of those who were called up here:

14 Uh -- The court reporter -- I
15 mean, The Clerk Of Court, Ms. White, informed me that Ms.
16 Keith's husband was here with her, and that she had
17 worked third shift last night.

18 And I talked with her over there
19 just then. She worked third shift. Uh -- She called it
20 graveyard shift; but she worked all night last night.

21 I talked to Ms. Biagianti, as well
22 as Mr. Goude, if they wanted her to be on the jury or
23 what? Uh -- And both of them said they would like have
24 her excused because of the important nature of this case
25 and her having worked all night last night.

JURY VOIR DIRE AND SELECTION

103

1 Uh -- I told Mr. Goude, though,
2 before I would take his position on this, I wanted him to
3 talk it over with his client first.

4 Mr. Goude went back and talked
5 with Mr. -- uh -- Mr. Brown. And after talking with Mr.
6 Brown, they came back up and Mr. Goude said that Mr.
7 Brown agreed that Ms. Keith, if she worked all last
8 night, should be excused from the pool.

9 And of course the State agreed
10 that she -- of her to be excused from the pool.

11 Now, those are the only two things
12 we talked about at the bench -- uh -- during the course
13 of jury selection that was not on the record.

14 Ms. Biagianti, is that an accurate
15 representation of what we discussed about this matter
16 over on the side that was not on the record?

17 MS. BIAGIANTI:

18 Yes sir; it's accurate.

19 THE COURT:

20 Mr. Goude, is that an accurate --
21 uh -- reflection and account of what we discussed; and
22 did you talk with Mr. Brown before you decided on Keith;
23 and talked about -- about Mr. Crammer -- uh -- Cramer?

24 Is that an accurate account?

25 MR. GOUDE:

1 Yes, Your Honor.

2 THE COURT:

3 All right. If y'all need to add
4 anything to it, let me know.

5 MR. GOUDE:

6 No, Your Honor.

7 MS. BIAGIANTI:

8 No sir.

9 THE COURT:

10 All right.

11 And -- uh -- uh -- As I understand
12 it, y'all have no motions regarding -- uh -- jury
13 selection.

14 Now -- uh -- Ms. -- uh --

15 Biagianti, how long do you think your case will be?

16 Your case -- uh -- uh -- assuming
17 reasonable type cross-examinations, you think you can get
18 your case up in a couple of hours, or do you think it'll
19 take into tomorrow to --

20 MS. BIAGIANTI:

21 I think it'll probably go into
22 morning.

23 THE COURT:

24 All right.

25 MS. BIAGIANTI:

MOTIONS IN LIMINE

105

1 A very short tomorrow morning.

2 THE COURT:

3 Okay. And -- uh -- what -- what
4 I think we should do then -- uh -- is:

5 Let's take a -- uh -- uh -- lunch
6 situation. Uh -- Let's say 2:30. Uh -- I need to go do
7 something. Let's say 2:45.

8 We'll get started back at 2:45.

9 It's a quarter till 1:00 now,
10 right?

11 MS. BIAGIANTI:

12 Yes.

13 THE COURT:

14 Uh -- So Uh -- I'm going to give
15 them two hours, because I got to do something. And we'll
16 start it back -- get it started back, then, at that time;
17 and go from there, okay.

18 Uh -- Now -- uh -- are there any
19 matters that y'all know of that we need to deal with
20 regarding motions?

21 Uh -- Ms. Biagianti, do you have
22 any Jackson v Ghettoe (phonetic)?

23 MS. BIAGIANTI:

24 Uh -- I don't have any Jackson v.
25 Ghettoe; but only, I believe Mr. Goude's going to make a

1 motion to limit the testimony of the victim -- victim --
2 regarding some prior incidents of -- uh -- I would call
3 it harassment.

4 Uh -- I am not planning to get
5 into those on my -- uh -- case in chief.

6 I -- I plan --

7 THE COURT:

8 So you don't plan to get into
9 prior bad acts?

10 MS. BIAGIANTI:

11 Not unless the Defendant
12 testifies.

13 THE COURT:

14 All right.

15 MS. BIAGIANTI:

16 If the Defendant testifies, I will
17 -- uh -- call the officer --

18 THE COURT:

19 Depending on what he says; okay?

20 MS. BIAGIANTI:

21 Depending on what he says, Your
22 Honor; if he denies these allegations.

23 But I would tell The Court that I
24 am planning to ask some very -- uh -- fine questions in
25 regard to prior contact with the Defendant.

MOTIONS IN LIMINE

107

1 I question -- And to give you the
2 -- the -- the picture:

3 This incident occurred February
4 21st of 2008.

5 The -- uh -- victim, Ms. Keith,
6 broke up with the Defendant, October -- November of 2007.

7 They had no contact between the
8 time she broke up; and around -- uh -- New Year's.

9 Well then, after New Year's, she
10 started getting -- uh -- and for the record -- lots of
11 harassment phone calls; she and the new boyfriend.

12 And there are at least three
13 documented incident reports of -- of that nature, as well
14 as the Defendant going to her work approximately a month
15 before the incident and posing as her brother.

16 And the officer -- There was
17 actually an off-duty police officer working at her
18 employment at that time that.

19 They told him to leave. Uh -- He
20 left for a little bit. And then he --

21 THE COURT:

22 Now, is she going to testify about
23 the phone calls from her own personal contact with a
24 voice on the other end of the line?

25 MS. BIAGIANTI:

1 Yes sir.

2 I'm not planning to ask about
3 these. I'm only going to ask specific questions, such as
4 -- uh -- you know:

5 After New Years, did you have
6 contact with the Defendant?

7 Yes.

8 Was that contract initiated by
9 you?

10 No, it wasn't.

11 How much contact did you have?

12 You know -- Several phone calls.

13 And I'm just planning to leave it
14 at that; because -- uh -- I don't want to get into
15 inquiring about --

16 THE COURT:

17 All right. Now, what about the
18 issue of the posing as a brother?

19 Is that going to be of her
20 personal knowledge, or someone's going to come and
21 testify to that?

22 MS. BIAGIANTI:

23 Uh -- That is going to be her
24 personal knowledge; but -- uh -- I really wasn't planning
25 to get into that on my direct; only if the Defendant

MOTIONS IN LIMINE

109

1 testifies, and --

2 THE COURT:

3 Okay. So that you don't plann to
4 bring out your case in chief?

5 MS. BIAGIANTI:

6 No sir.

7 THE COURT:

8 All right. And only on -- if he
9 testifies. If it becomes relevant? If he opens the door
10 to something?

11 You're not going to ask him that
12 if it's not relevant. So we'll wait and see if it
13 becomes relevant.

14 All right. Uh -- Anything else?

15

16 MS. BIAGIANTI:

17 Uh -- The other question I would
18 ask that be allowed to ask is:

19 Six days prior to the incident,
20 the -- both victims took out warrants on the Defendant
21 for telephone harassment.

22 Uh -- So I don't know how much
23 lee-way you want to be with that; but they are, magistrate
24 level warrants.

25 But I can pose my question -- you

1 know:

2 Did you receive so many phone
3 calls that you sought law-enforcement's help?

4 Yes.

5 And leave it at that, if that's --
6 but I think those are still pending; because he --

7 THE COURT:

8 Well I -- Once you get into the
9 magistrate and you need to get to: somebody had to make a
10 finding of probable cause, I have a concern with that,
11 unless it becomes an impeachment matter.

12 But as far as them going and
13 seeking law enforcement, then -- uh -- that -- uh -- I --
14 I'll hear from Mr. Goude if that is a problem.

15 MS. BIAGIANTI:

16 Okay. Thank you.

17 THE COURT:

18 So anything from you, Mr. Goude?

19 MR. GOUDE:

20 Uh -- Just simple stuff, Judge.

21 Uh -- We would make a motion that
22 the prosecutor produce any additional prosecution
23 witness' statements that they have not given to us at
24 this time.

25 THE COURT:

MOTIONS IN LIMINE

111

1 On what grounds is that?

2 MR. GOUDE:

3 It's on the grounds that we will
4 have under Grady --

5 THE COURT:

6 But what rules says they have to
7 give you their prosecuting witness' statements before the
8 prosecution witness testifies?

9 MR. GOUDE:

10 I know if you do it after the
11 witness testifies, you've waived that motion --

12 THE COURT:

13 Well, they can give it to you now;
14 but I'm saying what -- how can I force them?

15 Tell me what authority I have to
16 tell them they've got to do that?

17 MR. GOUDE:

18 I understand the rule says after
19 the witness testifies; but I also know that Grady says --

20 THE COURT:

21 Well, Ms. Biagianti, what I'd like
22 you to do is:

23 If you have witnesses that have
24 some convictions that would save us time; because if not,
25 he's going to have -- I'm going to have to give him a

1 break after every Direct and give him a chance to check
2 out the records.

3 So Uh -- I assume you've checked
4 the record of your --

5 MS. BIAGIANTI:

6 Yes sir. I understand -- uh --
7 the victim, Ms. Tywanda Keith -- uh -- the victim, Mr.
8 Lee Epps, as well as independent witness Kathy Browry --
9 uh -- these -- none of those have impeachable records.

10 They don't have any convictions, I
11 don't think. We just have some -- uh -- magistrate level
12 arrest.

13 But I'm telling The Court that --

14 THE COURT:

15 Well, I want you to give to him
16 anything you have regarding any records they have.

17 MS. BIAGIANTI:

18 Okay.

19 THE COURT:

20 Uh --

21 MS. BIAGIANTI:

22 All right. Uh -- They may not
23 have seen these documents --

24 THE COURT:

25 As far as the statement -- I

MOTIONS IN LIMINE

113

1 assume that the statement -- that's up to you; but if
2 they do testify, I will let him view them briefly if he
3 wants for any impeachment purpose.

4 MS. BIAGIANTI:

5 The only written statements I have
6 are the victims' Tywanda Keith, and -- uh -- the
7 independent witness, Kathy Browry.

8 They gave a written, each.

9 And I will --

10 THE COURT:

11 What do you have; two? Who are
12 they again, now?

13 MS. BIAGIANTI:

14 The victims' Tywanda Keith, and
15 the independent witness -- uh -- Kathy Browry.

16 THE COURT:

17 Okay. Uh -- Well -- uh -- at
18 some point in time, I'm going to let him review those.
19 So you could save time by letting him review them
20 beforehand.

21 But I'll let him review them
22 before he cross-examines.

23 Anything else for Mr. Goude?

24 MR. GOUDE:

25 Judge, we'd make a motion in

1 limine that:

2 Uh -- The solicitor be instructed
3 to instruct all their witnesses not to mention any prior
4 criminal record of Mr. Brown.

5 THE COURT:

6 Granted.

7 MR. GOUDE:

8 The -- uh --

9 THE COURT:

10 Unless there's some relevance to
11 it, Ms. Biagianti.

12 Anything about their actions
13 because of something like that; or you --

14 MS. BIAGIANTI:

15 Well, I don't plan to ask them any
16 questions that will elicit such responses.

17 THE COURT:

18 Well, make sure you tell them not
19 to say anything.

20 MS. BIAGIANTI:

21 Well they're in the courtroom,

22 Your Honor.

23 THE COURT:

24 I know; but you tell them too --
25 remind them.

MOTIONS IN LIMINE

115

1 All right. Mr. Goude, what else?

2 MR. GOUDE:

3 Judge, Mr. Brown has been served

4 -- I don't see any jurors present here.

5 He's been served notice of an
6 intention to seek -- uh -- life in prison as a penalty in
7 this case if he is convicted of the assault and battery
8 with intent with intent to kill and the kidnapping.

9 At this time, we would make a
10 motion for The Court that since the prior records we've
11 been provided for about 30 years ago, that those be -- in
12 the 70s actually -- that those be too remote to be used
13 to enhance any sentence or to give Mr. Brown life in the
14 penitentiary.

15 We make that motion on the ground
16 of unconstitutionality under the South Carolina and
17 United States Constitutions; and also as being cruel and
18 unusual punishment in both the South Carolina and the
19 United States Constitutions.

20 So I make that motion now.

21 THE COURT:

22 Now Ms. Biagianti, what type of --
23 uh -- notice does Mr. Brown have that you plan to seek a
24 life imprisonment upon conviction of either kidnapping or
25 assault and battery with intent with intent to kill?

1 MS. BIAGIANTI:

2 Your Honor, we served both Mr.
3 Goude and the Defendant, at the detention center, of the
4 clocked copy of the our notice to seek life -- uh --
5 without the possibility of parole.

6 And it's clocked in the Clerk of
7 Court April the 24th of 2008.

8 THE COURT:

9 What proof of service do we have
10 of that?

11
12 MS. BIAGIANTI:

13 Your Honor, I have an affidavit of
14 service -- uh -- by our Solicitor's Investigator Steven
15 David Brown, who says he personally handed it to the
16 Defendant, and -- uh -- the attached note -- reply from
17 prison.

18 Uh -- And --

19 THE COURT:

20 Have you filed that?

21 MS. BIAGIANTI:

22 Sir? No sir, it's not filed.

23 THE COURT:

24 I'd like you to file that too,
25 please.

MOTIONS IN LIMINE

117

1 MS. BIAGIANTI:

2 Yes sir.

3 Uh -- And I will also make a copy
4 of the notice -- uh --

5 THE COURT:

6 All right; and on what basis is it
7 that you seek to life without a parole if the Defendant's
8 convicted of these crimes?

9 MS. BIAGIANTI:

10 Your Honor, in 1979 in -- uh --
11 Washington, DC, he was convicted of armed robbery and
12 armed kidnapping; and I have provided Mr. Goude with a
13 copy.

14 I have certified copies of his --
15 uh -- prior record from Washington, DC; and I've already
16 provided that to Mr. Goude.

17 THE COURT:

18 Have you filed that with the
19 Clerk's Office at all?

20 MS. BIAGIANTI:

21 No sir; not yet.

22 THE COURT:

23 If he is convicted, I want that
24 filed as some sort of evidence. If he's convicted, then
25 during the sentence proceeding, I do need to have that to

1 make sure that that is -- uh -- that you have it.

2 Mr. Goude, have you and your
3 client seen both the notice they plan to seek it, as well
4 as the conviction record from Washington, DC?

5 MR. GOUDE:

6 Yes, Your Honor.

7 THE COURT:

8 Do you or your client contest that
9 y'all were served with notice, or contest this conviction
10 in 1979 of armed Robert and -- What was the other charge?

11 MS. BIAGIANTI:

12 Armed kidnapping.

13 THE COURT:

14 Armed kidnapping?

15 MR. GOUDE:

16 We do not contest that we were
17 given notice of it.

18 My client wishes me to state that:

19 The conviction was in another
20 state -- actually in Washing, DC -- and that he was
21 convicted as a juvenile slant youthful offender; and
22 therefore wishes me to make the motion that:

23 That conviction cannot be used in
24 South Carolina to enhance --

25 THE COURT:

MOTIONS IN LIMINE

119

1 What does your client's date of
2 birth?

3 MR. GOUDE:

4 My client's date of birth is
5 September the 28th, 1957.

6 MS. BIAGIANTI:

7 Your Honor --

8 THE COURT:

9 57? So he would have been 21 or
10 22 during that time?

11 MR. GOUDE:

12 I had down the offense date was
13 January the 27th, 1977, and the conviction date was May
14 the 24th, 1978.

15 That's what I've got on the
16 report.

17 THE COURT:

18 And what's his date of birth
19 again?

20 MR. GOUDE:

21 September the 28th, 1957.

22 THE COURT:

23 So he would have been fifth -- 19
24 when he was charged; all right?

25 MR. GOUDE:

1 That's correct.

2 THE COURT:

3 And -- uh -- twenty-something --
4 one or two, when he was convicted?

5 MR. GOUDE:

6 That's the way I -- I read it,
7 Your Honor.

8 THE COURT:

9 All right; what were you going to
10 say Mr. Biagianti?

11 MS. BIAGIANTI:

12 Your Honor, for the record -- uh
13 -- I also have the original -- uh -- indictment -- the
14 grand jury charges -- uh -- for the record.

15 But additionally, the sentence
16 date wasn't until March 26th, 1979. And he received a
17 sentence not to exceed 18 years concurrent with any other
18 sentence. Uh -- And then, that was for the armed
19 kidnapping.

20 And as to the armed robbery, he
21 received a sentence not to exceed 9 years concurrent with
22 Count A.

23 Uh -- So clearly not --

24 THE COURT:

25 The one he got 18 years was which

MOTIONS IN LIMINE

121

1 one?

2 MS. BIAGIANTI:

3 18 years for the armed kidnapping;
4 and 9 years concurrent on the armed robbery.

5 THE COURT:

6 Now, what evidence do we have he
7 was convicted under some juvenile statute?

8 MS. BIAGIANTI:

9 We have -- I have no evidence of
10 that.

11 THE COURT:

12 Mr. Goude?

13 MS. BIAGIANTI:

14 And they actually must list the
15 United States Penal Code under which he was sentenced in
16 the order.

17 MR. GOUDE:

18 Your Honor --

19 THE COURT:

20 Other than the fact he was 19 at
21 the time of he was charged; 20 or 21 or 22 when he was
22 convicted, what evidence do you have it was a juvenile
23 procedure.

24 MR. GOUDE:

25 My client says he was convicted

1 under the youthful offender act of Washington, DC; and
2 therefore he states that that is a juvenile slant
3 youthful offender record that should not or could not be
4 used to enhance the penalty in this case.

5 THE COURT:

6 Although he admits he was 19 when
7 he was charged; and over 20 when he was convicted?

8 MR. GOUDE:

9 Uh -- Yes, Your Honor.

10 THE COURT:

11 And he says -- you say that
12 Washington, DC, has juvenile statutes permit an 18 year
13 sentence for juvenile crimes?

14 MR. GOUDE:

15 He says he was -- uh -- released
16 in two years on that sentence.

17 THE COURT:

18 You have any information on that.

19 MS. BIAGIANTI:

20 No; I don't have any information
21 as to his release date.

22 THE COURT:

23 Interesting. Uh -- I will address
24 that at a later date if he is convicted; but please
25 proceed as if I have denied your motion Mr. Goude.

MOTIONS IN LIMINE

123

1 So it's very serious matter; but
2 proceed as if I have denied your motion.

3 MR. GOUDE:

4 Thank Your Honor.

5 THE COURT:

6 But I'll address it later on when
7 we have more information about it; but in this state, it
8 seems to me that the State has enough evidence to seek
9 life without parole.

10 MR. GOUDE:

11 Your Honor, the stat --

12 THE COURT:

13 And under the statute as I read it
14 -- uh -- if in fact he is convicted, he will receive life
15 without parole if he's convicted of the kidnapping and
16 assault and battery with intent with intent to kill;
17 because both of those are most serious crimes.

18 MR. GOUDE:

19 And Judge, in addition to the
20 motion not to be able to use the prior conviction in the
21 1970s on the unconstitutional grounds, we also ask The
22 Court not to use the prior conviction to enhance the
23 present penalty on the grounds that the prior conviction
24 is too remote.

25 We will note that:

1 The statute is not specifically
2 have any -- uh -- time period on it or time limit.

3 We do note just in -- for The
4 Court's comparison, that:

5 If you have a witness testifying;
6 if you have a prior conviction that's over 10 years old
7 -- uh -- the rule of evidence is:

8 That is generally too remote to be
9 able to impeach a witness for a conviction that's over 10
10 years old.

11 Yet here, you're saying you can
12 send somebody to -- not you; but -- uh -- the statute as
13 it's written -- is saying that you can send somebody to
14 the penitentiary for life for a conviction that's over 10
15 years old; and you can't even use it to impeach a
16 witness, which would be a much less serious --

17 THE COURT:

18 Well, as you know, the rules
19 provide use it if you send someone in writing and The
20 Court makes certain determinations.

21 MR. GOUDE:

22 That's our motion on that point,
23 Your Honor.

24 THE COURT:

25 All right. Uh -- Any response to

MOTIONS IN LIMINE

125

1 the motion Ms. -- uh -- Biagianti?

2 MS. BIAGIANTI:

3 Uh -- As to --

4 THE COURT:

5 Remote in time and constitution.

6 MS. BIAGIANTI:

7 Well, we would argue that under
8 the statute it would definitely be an enhancement for
9 sentencing.

10 I would ask for a compromise if he
11 got up on the stand and he subjected himself to cross-
12 examination to ask him about the things I can ask him
13 under the rule.

14 And just to give you his whole NCI
15 true history:

16 Uh -- The armed kidnapping and the
17 armed robbery; that did happen in 1979.

18 So if you will not allow me to ask
19 about that under Rule 303, then I would ask for a
20 compromise --

21 THE COURT:

22 Or 609; unless you made certain
23 notifications.

24 MS. BIAGIANTI:

25 Yes sir. Uh -- But I would ask

1 that I be allowed to ask if he was convicted of a felony
2 for which he received jail-time -- uh -- for those two
3 charges.

4 He also has a receiving stolen
5 goods in 1984; and I -- even though that's older than 10
6 years old, I would submit to you that that's of the kind
7 of thing that puts his credibility into -- uh -- into
8 play there.

9 He has a carrying a pistol without
10 a license and in '98. I will concede that I cannot ask
11 him about that.

12 He has an escape charge from
13 prison in 2000. Uh -- To be honest, I have a question
14 about whether I should be able to ask him about that or
15 not; because in my mind, I think that is a crime of -- of
16 honesty; and it is a plus 15 years old -- I mean, it's a
17 less 15 years old question.

18 THE COURT:

19 I know; but my understanding of
20 escape; you can't get any more time than what you
21 originally had; is that right?

22 MS. BIAGIANTI:

23 Well, he actually got 18 to 54
24 months for that charge.

25 THE COURT:

MOTIONS IN LIMINE

127

1 He got what?

2 MS. BIAGIANTI:

3 18 to 54 months. this was all in
4 Washington, DC.

5 THE COURT:

6 Oh, okay. They must have a
7 different crime there -- carrying a pistol out of
8 Washington.

9 MS. BIAGIANTI:

10 And then in -- uh -- 2000 --
11 February 14th, 2002, also convicted of attempted burglary
12 second, where he was sentenced to 18 to 54 months.

13 THE COURT:

14 So that's no question about that,
15 if -- if you've got a record of that.

16 THE COURT:

17 And then destruction of property
18 in -- uh -- where he received 180 days February 14th of
19 2000.

20 And --

21 THE COURT:

22 Well, that all depends on whether
23 or not 609 applies when it is beyond one year as far as
24 the sentence.

25 MS. BIAGIANTI:

1 And -- uh -- I will check on that,
2 Your Honor.

3 THE COURT:

4 And I will address that later when
5 you complete your case, anyway.

6 That -- that's a long time off.

7 MS. BIAGIANTI:

8 Yes sir.

9 THE COURT:

10 And I'll save that to once your is
11 case is over and I'm handling the motions.

12 MS. BIAGIANTI:

13 And there's the last --

14 THE COURT:

15 Uh -- But I will let -- go ahead,
16 I'm sorry.

17 MS. BIAGIANTI:

18 Oh, the last two -- uh -- on here:

19 Unlawful entry where he received
20 90 days and I'll check Rule 609 on that as well.

21 And then he was convicted of an
22 attempted theft too; and I would present that -- uh --
23 regardless of what the penalties are, that's a crime with
24 dishonesty.

25 THE COURT:

MOTIONS IN LIMINE

129

1 All right.

2 Well, we'll address that into your
3 case; but it's unlikely, unless it's become relevant, I'm
4 going to let something in that's over 10 years old
5 regardless of the nature -- uh -- unless you've followed
6 some sort of written notification; then I'll make a 609
7 and 403 determination.

8 So you might as well assume on
9 something over 10 years old, unless the door is opened by
10 them, I'm not going to let in that in front of the jury.

11 Other matters, I will look at 609
12 and make a determination on them; but we'll address that
13 later on.

14 Mr. Goude, as far as your motion
15 regarding constitutionality and remoteness:

16 Uh -- I deny that motion,
17 respectfully.

18 I feel the statute is clear that
19 anybody who's convicted of two most serious offenses
20 sometime in their lifetime, and after they're convicted
21 of the second one, that person -- uh -- under the law is
22 to be -- uh -- incarcerated the rest of her life.

23 Uh -- So -- uh -- what other
24 motions do you have?

25 MR. GOUDE:

1 Judge, the only one -- other one I
2 think I had was -- uh -- and the Solicitor pretty much
3 stipulated to this at the beginning; but my motion is to
4 make sure it's clear:

5 We make a motion in limine of
6 instructing the Solicitor and their witnesses to make no
7 mention of any prior difficulties or incidences between
8 my client and the -- uh -- Ms. Keith -- Tywanda Keith
9 witness, and the Mr. Lee Epps witness.

10 They had had these harassing phone
11 call -- calls or CDV Magistrate as sure court warrants
12 against each other back and forth for several months
13 prior to this incident.

14 Uh -- So we would ask that no
15 witness testify about any of this prior to this date of
16 this incident, which is February --

17 THE COURT:

18 Well, you heard what she said as
19 far as what she was going to go into. Does that address
20 your concern?

21 MR. GOUDE:

22 It addresses my concerns --
23 basically it addresses my concerns.

24 Of course, I know the witnesses
25 are not lawyers and if the question is asked of --

MOTIONS IN LIMINE

131

1 THE COURT:

2 I will not permit any matters
3 regarding judicial decisions -- uh -- regarding probable
4 cause unless I've first made a ruling and find it to be
5 relevant.

6 And so both sides must assume that
7 at this stated, I'm finding them not relevant, unless --
8 because I've heard no evidence.

9 So if you want to -- anybody wants
10 to give me the name of the judge that decided the
11 warrants or whatever else, needs to first take a break
12 and let me hear -- uh -- in camera.

13 So does that address your concern,
14 Mr. Goude?

15 MR. GOUDE:

16 I think it does, Your Honor.

17 THE COURT:

18 All right.

19 Uh -- And now, for the record, do
20 you have negotiations?

21 I want to make sure if there are
22 negotiations, that the Defendant was aware of them and
23 made his decision regarding those negotiations; since if
24 he is convicted, he faces this life without parole.

25 So were there negotiations that

1 Defendant was made aware of?

2 Ms. Biagianti -- Mr. Goude?

3 MS. BIAGIANTI:

4 Yes sir. I -- I clarified -- uh
5 -- with Mr. Goude yesterday, that they did offer him --
6 uh -- to plead guilty to an ABWIK charge; and although it
7 would be his second most serious strike, we would allow
8 him to plead to ABWIK and 17 years, which would be a no
9 parole offense.

10 THE COURT:

11 Mr. Goude, have you discussed that
12 with -- uh -- Mr. Brown?

13 MR. GOUDE:

14 Yes, Judge. We had talked about
15 the -- uh -- Solicitor's offer to plead to assault and
16 battery with intent with intent to kill against -- uh --
17 Mr. Lee Epps who was cut on the hand and the side.

18 And Mr. Robert Brown did not wish
19 to plead to that.

20 He said basically he is 50 or 51
21 years old; and if he got a 17 year no parole 85 percent
22 sentence under assault and battery with intent to kill,
23 he would be almost 70 years old when he would get out of
24 prison.

25 And he did not want to do that.

MOTIONS IN LIMINE

133

1 Of course, he said he didn't do it
2 any way; was not guilty of the charge; and he did not to
3 accept that plea offer.

4 THE COURT:

5 All right.

6 Uh -- Mr. Brown, you're in the
7 courtroom. If what Mr. Goude has told me is incorrect,
8 please stand up and let me know.

9 DEFENDANT:

10 Yes sir, Your Honor; that is
11 correct.

12 THE COURT:

13 Thank you, sir. You may be
14 seated.

15 DEFENDANT:

16 Okay.

17 THE COURT:

18 I find you made a knowing -- uh --
19 decision not to accept the plea negotiations.

20 Uh -- All right.

21 So anything need to be discussed
22 before -- uh -- we bring that jury and let them go to
23 lunch; and get ready to start with opening statements
24 when they get back.

25 Anything else we need to decide?

1 MS. BIAGIANTI:

2 Your Honor, I forgot to make -- uh
3 -- I noticed some people in this courtroom that I would
4 ask for any defense witnesses to be sequestered; and I
5 would abide by that as well.

6 THE COURT:

7 Okay. Well then, we'll all do
8 that.

9 Unless y'all tell me otherwise,
10 any witnesses should not be in court until after they
11 testify and not discuss -- uh -- their testimony with
12 other witnesses.

13 All right; hearing nothing else,
14 bring the jury in, please.

15 MS. BIAGIANTI:

16 And I understand that that does
17 not apply to the victims or the chief investigating
18 officer.

19 Is that right?

20 THE COURT:

21 That's the normal procedure.

22 MS. BIAGIANTI:

23 sir?

24 THE COURT:

25 That's the normal procedure.

MOTIONS IN LIMINE

135

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 1:10
3 PM, July 29th, 2008; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 Okay.

7 Now ladies and gentlemen, I'm
8 going to now let you all go to lunch and have a long
9 lunch till three o'clock.

10 And then we'll get started at that
11 time -- uh -- with this case.

12 Now in the meantime, do not
13 discuss this case among yourselves or with anyone else.

14 Uh -- When you home for lunch,
15 don't talk about it with your family or friends or
16 whatever else.

17 Uh -- This matter should be one
18 that you decide based on the evidence in the case
19 presented in the court of law, and not anywhere else.

20 If anybody talks to you or says
21 anything to you -- uh -- about this case, let me know
22 right away.

23 You shouldn't talk about this
24 matter until you've heard all the evidence, including at
25 the very end of it, my discussing with you on the law.

1 So you need to just be recipient
2 to the information and not discussing the matter.

3 When you return from lunch, return
4 to the jury room; not to -- uh -- not to the courtroom;
5 but -- uh -- to -- uh -- the jury room.

6 When you get in the -- uh -- jury
7 room, I'd like to you, if you would, to select -- uh --
8 your foreperson; and that will be your administrative
9 spokesperson; and won't be -- uh -- uh -- anyone that has
10 any more power or authority than any other juror.

11 It just means that that person
12 will be the one who will -- uh -- be the administrative
13 spokesperson of the jury; and that person will be the one
14 to sign the verdict form and begin deliberations at the
15 end of the trial.

16 But it will not mean that person
17 has any other type of -- uh -- of authority.

18 Whoever you select as a juror
19 foreperson can be anyone other than my two alternates --
20 uh -- Ms. Williams and Mr. Armour.

21 But the rest of you -- uh --
22 you're eligible.. If you wish to be considered, just
23 announce it and y'all make your decision as to who should
24 be your foreperson.

25 Whoever you choose, they should

MOTIONS IN LIMINE

137

1 sit -- I think Ms. Gallant -- uh -- where Ms. Gallant is
2 sitting. Sit right there as the foreperson.

3 The rest of you can sit anywhere
4 you wish.

5 My two alternates sit on the back
6 where they're sitting; and everyone can sit wherever you
7 wish.

8 But now, the foreperson sits there
9 on the front row on the end.

10 Uh -- Once again, when you come
11 back, go right to the jury room; and don't come into the
12 courtroom. And we'll see you now at 3 p.m.

13 You may that at this time.

14 If you would also, ladies and
15 gentlemen, those of you who have shorts on, don't wear
16 shorts back after lunch if you can help it.

17 If you can't, then tonight -- when
18 you come back tomorrow, don't wear shorts; all right.

19 (WHEREUPON: The jury empanelled
20 in the case withdrew from the courtroom at 1:13 PM, July
21 29th, 2008; and was no longer present during the
22 following proceedings.)

23 THE COURT:

24 I'm handing these indictments to
25 the well fed and hard-working Clerk of Court, Alma white,

1 so that I won't loose them.

2 Uh -- We'll now proceed with the
3 break.

4 I'll see y'all around 3:00
5 o'clock; and we'll get started; and then go about two --
6 two and half hours -- maybe three.

7 Please make sure no one has
8 contact with jurors -- any witnesses or family members or
9 whatever else.

10 (WHEREUPON: The court was
11 declared in recess at 1:15 PM, July 29th, 2008.)

12 (WHEREUPON: The court was called
13 to order by the Bailiff at 3:23 PM, July 29th, 2008; and
14 all pertinent parties, along with their counsel, were
15 back and present in the courtroom.)

16 BAILIFF:

17 All rise.

18 THE COURT:

19 Okay. Be seated and we'll try to
20 get going here.

21 Okay. Uh -- As I mentioned
22 before we broke, any need of anything before we get
23 started?

24 State?

25 MS. BIAGIANTI:

MOTIONS IN LIMINE

139

1 Nothing.

2 Just for the record, Your Honor, I
3 did give Mr. Goude both NCI sheets of -- of both victims
4 as well as -- uh -- the written Statement of Tywanda
5 Keith and the written statement of -- uh -- Kathy Browry.

6 I've also clerked in a copy of the
7 certificate of service that list the life, as well as the
8 Defendant's certified -- the original certified -- uh --
9 copies of his record from Washington, DC with the clerk's
10 office.

11 THE COURT:

12 Okay.

13 Mr. Goude, you ready to get
14 started?

15 MR. GOUDE:

16 We're ready to get started, Your
17 Honor when we get the jury in here.

18 THE COURT:

19 All right. Have they named a
20 foreperson?

21 WHEREUPON: The bailiff approaches
22 the bench and has a conversation with The Court.

23 THE COURT:

24 All right -- uh -- Mr. Geer is the
25 foreperson.

1 Uh -- So bring in the jury, please

2 (WHEREUPON: The jury empanelled
3 in the case was escorted back into the courtroom at 3:25
4 PM, July 29th, 2008; and was in fact present during the
5 following proceedings.)

6 THE COURT:

7 All right; Mr. Geer, I understand
8 that you won the election for foreperson?

9 FOREPERSON:

10 Yes sir.

11 THE COURT:

12 Congratulations. That's was with
13 a hard-fought campaign.

14 (Laughter erupts.)

15 All right; ladies and gentlemen,
16 we are now ready to -- uh -- proceed with the case.

17 Madam -- uh -- Clerk, you got the
18 documents there I gave you earlier?

19 Okay.

20 Now ladies and gentlemen, I'm
21 about to swear again as a jury for the case. But before
22 I do so, let me -- uh -- give you a few words of
23 instruction.

24 As I said while you were out
25 there, you are the finders of fact; not I.

MOTIONS IN LIMINE

141

1 You will be the ones to decide the
2 issues of fact.

3 And also -- uh -- the fact that
4 the Defendant is charged with crimes -- with three
5 crimes, assault and battery with intent to kill, assault
6 and battery of a high and aggravated nature and
7 kidnapping; the fact that he is charged with these
8 crimes, that is not evidence that he has committed the
9 crimes.

10 The burden is upon the State to.
11 prove guilt beyond a reasonable doubt of each and every
12 one of these allegations.

13 It is not upon the Defendant to
14 prove himself innocent. The Defendant has no duty to
15 prove himself innocent.

16 So the burden is upon the State to
17 prove guilt beyond a reasonable doubt.

18 Now ladies and gentlemen, how will
19 you make your decisions in that regard?

20 Well, you will be presented
21 evidence.

22 Now in your everyday life when
23 you're asked to make decisions, you gather information
24 together.

25 You gather information together.

1 You adhere to some of it and give weight to it; and other
2 parts of information you gather, you don't give much
3 weight to it. And -- And when you gather all that
4 information, you then make your decision.

5 Well, in a court of law it's a
6 little bit like that; except we don't use that word
7 information. We use the word: evidence.

8 And how do you get the evidence?

9 You get the evidence by people
10 coming up here to this witness stand, taking an oath, and
11 then responding to the questions from the attorneys.

12 The responses the witnesses make
13 once they consider the questions asked, becomes evidence,
14 information, for you to consider as you decide -- uh --
15 these issues that are before you.

16 That's why I said it's very
17 important for you the jury to pay attention;, to observe,
18 to listen.

19 Because although you may hear
20 words -- questions -- what words you believe, what words
21 you don't believe, what words you give weight to, what
22 words you don't give weight to.

23 Uh -- So you need not only just to
24 listen; but also to observe and pay attention.

25 That's very important.

MOTIONS IN LIMINE

143

1 So you'll have witnesses coming up
2 -- uh -- giving testimony, which is evidence.

3 You may also have exhibits which
4 are items, objects, documents -- uh -- photographs;
5 things of that nature. They become evidence for you to
6 consider in making your decision.

7 Once you have been presented all
8 the evidence, then the attorneys will be able to come up
9 and give a closing summation -- a closing argument, some
10 people call it -- to you, about what they feel the case
11 has shown or has not shown.

12 And then after that, I will
13 instruct you on the law. In other words, I will give you
14 your instructions on the law.

15 You don't need to be concerned
16 with what the law is regarding these issues. I will tell
17 you the law. And you must follow the law as I give it to
18 you.

19 So therefore, you will decide what
20 matters have been proven beyond a reasonable doubt.

21 I will tell you the law.

22 You put down what you have decided
23 with the law; put it together, and reach your decision
24 and your verdict.

25 And once again, the most part of

1 this is you paying attention and listening.

2 Because although the verdict form
3 is going to be signed by Mr. Geer, your foreperson, it
4 must be the verdict of all 12 jurors. So it must be a
5 unanimous verdict.

6 So all of you need to pay
7 attention. All of you need to listen. And when it's
8 come time to -- when it comes time to discuss this issue,
9 all of you need to discuss it; so that all of you are
10 involved.

11 The case begins with an opening
12 statement by each side; a brief comment about what the
13 case is about and what they feel it will show you -- or
14 not show you; and then the presentation of evidence; then
15 the closing arguments; and then my charge on the law; and
16 then your deliberations.

17 Now if the exhibits are introduced
18 in this case -- and I anticipate some will be -- uh --
19 they become evidence that you will be able to take to the
20 jury room with you.

21 So don't let the presentation of
22 an exhibit take you mind and your observations off the
23 testimony of a witness.

24 Because although you will be able
25 to take those exhibits into the jury room with you, you

MOTIONS IN LIMINE

145

1 will not be able to take anything other than your memory
2 of what the witness said in the jury room with you.

3 You have a court reporter here
4 who's taking everything down. And if for some reason you
5 need to, would play something back. But we want to make
6 sure you listen and attention to the witnesses.

7 All right; with that, any
8 objection to the opening comments to the jury by the
9 State?

10 MS. BIAGIANTI:

11 No sir.

12 THE COURT:

13 Any objections by the Defense?

14 MR. GOUDE:

15 No, Your Honor.

16 court

17 If you would, please swear the
18 jury.

19 (WHEREUPON: the jurors selected
20 in this case were properly and duly sworn by the Clerk at
21 3:31 PM, July 29th, 2008.)

22 THE COURT:

23 All right. We're ready for the
24 opening statement by the State. Ms. Biagianti?

25 MS. BIAGIANTI:

1 Thank Your Honor. May it please
2 The Court?

3 MS. BIAGIANTI:

4 Obsession; fatal attraction; there
5 is no more us.

6 If I can't have you, nobody will.

7 It's so hard to say goodbye.

8 That's the theme of this case.

9 That's, in a nutshell, what this
10 case is about.

11 You're going to hear from Ms.
12 Tywanda Keith, who's the victim sitting behind our table
13 in the light green suit.

14 She at some point in time dated
15 that man right there, the Defendant Robert Dexter Brown.

16 She dated him for about a year.

17 She's going to tell you about that
18 relationship. And she's going to tell you that she broke
19 up with him in 2007; by October -- November, 2007.

20 She doesn't here from the
21 Defendant for couple of months.

22 At some point in time right after
23 the break up, however, she for some reason she'll
24 explain, has to move in with this Defendant's momma.

25 She's going to tell you it's for

OPENING STATEMENTS OF COUNSEL

147

1 work; and proximity to her job.

2 But even though she's living at
3 his momma's house, they don't have any contact. There is
4 no more us.

5 She meets Mr. Lee Epps; although
6 she had known Mr. Lee Epps for a time before that. But
7 they start dating in January -- January of this year.

8 They move in together; move into
9 Lee's house.

10 She's going to tell you that
11 that's when some contact started to be from the
12 Defendant; some unwanted contact.

13 She's going to tell you -- and Mr.
14 Lee Epps is going to tell you -- that on February 21st of
15 this year, they at the Palmetto Tax Service office here
16 in Georgetown, right by Fred's -- here in the city limits
17 of Georgetown.

18 She was getting taxes done. Mr.
19 Epps was sitting in the car waiting for her. She was in
20 there minding her own business, getting ready to get her
21 taxes done.

22 Her ex-boyfriend comes walking;
23 peeps in the window; see Tywanda there.

24 She's going to tell you about that
25 fateful day and what happened to her and Lee.

1 She's going to tell you the
2 Defendant came down and sat next to her. She's going to
3 tell you how she felt.

4 He said some horrible things to
5 her; and takes out the knife; put it in her side; says:

6 You're coming with me.

7 No. No; I'm not coming with you.

8 She's going to tell you she was
9 not raising her voice. She was trying to comply with his
10 demands.

11 I'm not going outside would you
12 Dexter.

13 No; you're coming outside with me
14 now.

15 Pulls her outside.

16 She's walking, but she doesn't
17 want go out there -- unwillingly. Remember, he had the
18 knife. Gets outside.

19 At this point Mr. Epps, the new
20 boyfriend, doesn't know what's going on. He's not in
21 there.

22 He sees the two of them come
23 outside and he's going to tell you he's wondering:

24 Who's this man?

25 Sees that the situation is getting

OPENING STATEMENTS OF COUNSEL

149

1 a little rough. Chivalrous man; comes to the aid of his
2 girlfriend.

3 As soon as he's running up, the
4 victim says:

5 Don't come over here. He has a
6 knife. Lee, don't come over here; he has a knife.

7 That's when the Defendant turns
8 around and stabs the victim -- stabs Mr. Epps; stabs him
9 not only in his side, but also his hand.

10 He's going to tell you about the
11 injuries he sustained; and the permanent problems he has
12 because of the injury.

13 Tywanda is also going to tell you
14 that:

15 As she was being drug outside,
16 there's a struggle; she also got injured. And you're
17 going to see pictures today.

18 Thank God, for whatever reason
19 that man decides to leave; decides he's done enough work
20 for today, and flees the scene.

21 Now as the judge told you, you as
22 jurors have great -- a great gift; and that's your common
23 sense.

24 And all I ask you to do is:

25 Listen to the witnesses, look at

1 the evidence, and use your commonsense.

2 Just think to yourself:

3 Does this truly really make
4 sense?

5 Don't be afraid of the obvious.

6 Because if you really listen, it's
7 going to be very obvious what this case is about.

8 Now as the judge instructed you,
9 the Defendant is charged with three things:

10 Assault and battery with intent to
11 kill for stabbing Mr. Lee Epps; assault and battery of a
12 high and aggravated nature for touching -- the physical
13 touching -- and the injury of Tywanda Keith; as well as a
14 kidnapping charge.

15 And the judge later on is going to
16 instruct you as to the law; so if there's anything that I
17 say that's different; but I just want to keep a couple of
18 things in mind. I'm not going into it in great depth.

19 The kidnapping in this case
20 doesn't mean you have to throw someone across your back
21 and take them far away. It just mean when you restrict
22 someone's freedom of movement, even for a split-second.

23 It doesn't have been for five
24 minutes. It doesn't have to be for ten minutes. It
25 doesn't have to be for an hour.

OPENING STATEMENTS OF COUNSEL

151

1 She's going to tell you she did
2 not want to go outside with this man.

3 You're also going to hear from the
4 doctor who treated Mr. Epps, along with potential other
5 witnesses who saw this assault taking place.

6 Now again, before I sit down:

7 Don't be afraid of the obvious.
8 Listen to the evidence. And I'm confident that when you
9 listen to the evidence, you're going to return a verdict
10 which speaks the truth; that is:

11 That that man is guilty of assault
12 and battery with intent to kill, kidnapping and ABHAN.

13 Thank you.

14 THE COURT:

15 Thank you, Ms. -- uh -- Biagianti.

16 Uh -- Mr. Goude?

17 MR. GOUDE:

18 Ladies and gentlemen, my name is
19 Goude -- Reuben Goude -- and I represent Mr. Brown -- Mr.
20 Robert Dexter Brown.

21 I'm from here in Georgetown and i
22 practice next door. That's where my office is.

23 What I'm going to ask you to do
24 is:

25 Listen to the witnesses who get on

1 the stand; and you'll come back tomorrow since this day's
2 almost gone. Some time tomorrow, we'll come back and
3 I'll go over the testimony with you guys; and ask you to
4 vote not guilty tomorrow of the charges.

5 Thank you.

6 THE COURT:

7 Thank you, Mr. Goude. First
8 witness for the State?

9 MS. BIAGIANTI:

10 Your Honor, the State would call
11 Tywanda Keith.

12 WHEREUPON: TYWANDA KEITH WAS DULY
13 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Please be seated and state your
16 name for the record, please?

17 WITNESS:

18 My name is Tywanda Keith.

19 THE COURT:

20 And Ms. Keith, would you spell
21 your first name and last name please.

22 WITNESS:

23 T-y-w-a-n-d-a, K-e-i-t-h.

24 THE COURT:

25 All right; your witness.

TESTIMONY OF TYWANDA KEITH

153

1 MS. BIAGIANTI:

2 Thank you.

3 DIRECT BY MS. BIAGIANTI:

4 Q. Tell the jury how old you are?

5 A. 40.

6 Q. Are you married?

7 A. Divorced

8 Q. Any children?

9 A. Two boys.

10 Q. What are their names?

11 A. Travelle Antonio Keith and Tony Rashad Keith

12 (phonetic).

13 Q. How old are the?

14 A. Travelle is 18 and Tony is 14.

15 Q. Now, do you that the other victim in this case, Mr.

16 Lee Epps?

17 A. Yes ma'am.

18 Q. Uh -- Tell us a little bit how you know; him you met
19 him?

20 A. Through singing in church for about five or six
21 years. He sings gospel. And I sing gospel also.

22 Q. Okay.

23 A. And he's my boyfriend now.

24 Q. When -- how long -- Would you tell us about your
25 relationship and when you started dating?

1 A. Me and Lee started dating -- uh -- about the last
2 part of December. Uh -- I moved in with him in January.

3 Q. And where -- Where do you live now?

4 A. In Andrews; at his house in Andrews.

5 Q. And -- uh -- give us telephone number.

6 A. -----

7 Q. That's a little off the wall question; but do you
8 know if he -- is he right-handed or left-handed?

9 A. He's right-handed.

10 Q. And are you currently working?

11 A. Yes ma'am.

12 Q. Where at?

13 A. Prince George Nursing Home.

14 Q. How long have you been there? Tell us what you do
15 there.

16 A. I'm a CAN. I been there for 9 months now.

17 Q. And do you -- uh -- Defendant Robert Dexter Brown?

18 A. Yes ma'am.

19 Q. How do you know him?

20 A. He's my ex-boyfriend.

21 Q. Tell us a little bit about when you met Mr. Brown;
22 how long you dated -- uh -- the circumstances; why you
23 broke up.

24 A. I met him in November of 2006. Uh -- We started
25 dating. And we moved in together. And -- uh -- then

TESTIMONY OF TYWANDA KEITH

155

1 after that, he left to go out of town to see his son.

2 And then after he did that, I just
3 broke up with him because he wanted to go take care of
4 some business with his son in DC.

5 Q. How long was he gone for?

6 A. For about two months.

7 Q. And when did you end the relationship with the
8 Defendant?

9 A. He left like the -- uh -- like the last week in
10 September.

11 Q. Of what year?

12 A. Of 2008. Well, I'm sorry; 2007.

13 Q. And -- uh -- you said that you broke up with him
14 because he needed to be taking care of business and he
15 who's gone for two month?

16 A. Yes ma'am.

17 Q. Did you have any conversation with him before he
18 left about the status of your relationship?

19 A. Yes ma'am. I didn't want him to go; and he said he
20 had do go up there and take care of some business with
21 his son in DC.

22 Q. So what did you tell him?

23 A. That if he left, that the relationship was over.
24 There wasn't going to be no more us. So he chose to --
25 to leave.

1 Q. After that conversation, did you have conversations
2 with him -- uh -- during that timeframe -- uh -- just
3 making that concrete?

4 A. Yes ma'am.

5 Q. Did he come back to town?

6 A. Yes. Uh-huh.

7 Q. When was that?

8 A. I'm thinking probably October -- November, up in
9 that area. I'm not specifically sure exactly when he
10 came back; but he did come back to Georgetown.

11 Q. And were you still living in the same house where
12 you living at that point, or -- How do you -- How do you
13 know he came back to Georgetown?

14 A. Because -- uh -- he had called my mom's cell phone
15 and asked my mom where I was at.

16 And I was at her house during that
17 time.

18 And she gave me the phone. And --
19 uh -- he asked:

20 So why did you leave?

21 And I told him:

22 Because I told you that if you go
23 to DC that it was going to be over. There is no more us.
24 So you chose to -- to go up there and that was it.

25 Q. And when approximately was that?

TESTIMONY OF TYWANDA KEITH

157

1 A. Uh -- It had to have been like in the first -- the
2 second week in October, I'm thinking.

3 Q. Now, do you know the Defendant's mom?

4 A. Yes ma'am.

5 Q. What is her name

6 A. Ms. Aldoro Brown.

7 Q. And how do you know -- uh -- her mom -- his mom; and
8 tell me a little bit about your relationship with his
9 momma?

10 A. We had a real good relationship. Uh -- After me
11 and Dexter had broke up and he wasn't staying there, I
12 had asked her if I could stay with her because my car had
13 broke down.

14 And by me having a job at Prince
15 George, it would have been easier if I stayed in
16 Georgetown, instead of in Loris with my mom, getting back
17 and forth to work.

18 So she agreed and said, yes, that
19 I could stay with her until I get myself together.

20 Q. And where does she stay in Georgetown?

21 A.

22 Q. Where is that?

23 A. In Georgetown.

24 Q. What sec --

25 A. In Kingstonton (phonetic).

1 Q. Kingston Town(phonetic)?

2 A. Yes ma'am.

3 Q. And -- uh -- you mentioned that the Defendant was
4 not living there when you were living there?

5 A. No ma'am.

6 Q. And -- uh -- you mentioned that the Defendant was
7 living there when you were living there?

8 A. No ma'am.

9 Q. Do you know where he was living?

10 A. Uh -- He was at a friend's house -- uh -- uh --
11 Debby Bowser (phonetic). He would be at her house a lot.

12 Q. And how do you know that?

13 A. Because she would come by and pick him up; and then
14 -- uh -- a lot of times he would call her to come and get
15 him; and be out late in the midnight hours, and stuff.

16 Q. And you found that -- out that through his mom?

17 A. His niece.

18 Q. His niece?

19 A. Yes ma'am.

20 Q. Did she live with you?

21 A. Yes. Uh-huh.

22 Q. Oh, While you were living with his mom?

23 A. Yes.

24 Q. Okay. Tell me who was living at that house.

25 A. Uh -- His mom, his brother Jimmy, and his niece

TESTIMONY OF TYWANDA KEITH

159

1 Teesha (phonetic).

2 Q. And you?

3 A. Yes ma'am.

4 Q. Uh -- Do you -- uh -- see this gentleman by the name
5 who's called Robert Dexter Brown?

6 A. Yes ma'am.

7 Q. And please point to him.

8 A. He's sitting right there.

9 Q. And describe the articles of clothing he is wearing,
10 please.

11 A. It's a gold shirt with a black jacket.

12 MS. BIAGIANTI:

13 Your Honor, please let the record
14 reflect she pointed to the Defendant.

15 THE COURT:

16 So reflected.

17 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

18 Q. Now when you living at your mom's house -- his mom's
19 house, were you dating him at any point?

20 A. No ma'am.

21 Q. Did you have any contact with him?

22 A. No ma'am.

23 Q. Now did there come some point in time where you
24 moved out of his mom's house?

25 A. Yes ma'am.

1 Q. And where did you move to?

2 A. In Andrews.

3 Q. With who?

4 A. With Lee.

5 Q. And tell us approximately when that was?

6 A. About the first week in January.

7 Q. And did you take all of your belongings with you
8 from his momma's house?

9 A. Not all of them; because my stuff was in the
10 garage;. And when I went there to get my stuff, I got
11 the ones that was -- was visible to me. So I took all of
12 those.

13 Q. How much do you estimate was left in the garage?

14 A. I'm not sure.

15 Q. Was it a box? Two boxes? Three boxes? Four boxes?
16 A truckload?

17 A. It could have been two or three boxes.

18 Q. Now had you had any contact with the Defendant by
19 the time -- from the time you broke up until you moved
20 into his mom's house?

21 A. No contact.

22 Q. Now tell us, once you moved into Mr. Lee's household
23 to stay, up until the point of this incident, was there
24 contact with the Defendant?

25 A. He was calling on the phone.

TESTIMONY OF TYWANDA KEITH

161

1 Q. Uh -- Were these -- Tell us, were these unwanted
2 calls, wanted calls? How would you describe it to the
3 jury?

4 A. Unwanted calls.

5 Q. And approximately how many calls did you receive
6 from this Defendant?

7 A. Many.

8 Q. And at some one in time did you seek the assistance
9 of law enforcement because of these calls?

10 A. Yes ma'am.

11 Q. Now with these calls, did you at any time let the
12 Defendant know -- uh -- whether you wanted a relationship
13 or you didn't want a relationship? Well, tell us briefly
14 what you would tell him.

15 A. I told him to stop calling because there was nothing
16 else me and him had in common. It was no more us. Leave
17 me along. Stop calling me.

18 And he continued to keep calling.

19 Q. Any question in your mind about what you said that
20 he could have heard something different?

21 A. No ma'am. I kept telling him:

22 Please stop calling me.

23 Q. Directing your attention to February 21st of this
24 year -- uh -- tell us -- the jury -- a little bit about
25 what your plans were for that day.

1 A. I got that morning.

2 Me and Lee talked about taking some clothes that I had to
3 the Salvation Army that morning.

4 And -- uh -- we got up.

5 So I said:

6 Well, after we go to drop off the
7 clothes to the Salvation Army, I'll go and do my taxes.

8 So he said:

9 Well -- uh -- I got to go pay the
10 cable bill.

11 So I said:

12 Well, if you could just drop me
13 off by the tax office place and go pay the cable bill; by
14 the time you come back, I should be finished.

15 But that didn't happen.

16 Uh --

17 Q. Well, let me interrupt you.

18 A. Okay.

19 Q. Do you remember what day of the week this was?

20 A. It was Thursday.

21 Q. Okay. So tell me what happened -- uh -- once you
22 got to the tax place. You know what time of day it was?

23 A. I signed at the tax office place at 2:21. When I
24 signed in -- uh -- the girl that was in the back came up
25 front.

TESTIMONY OF TYWANDA KEITH

163

1 She said:

2 Tywanda, we're going to call you

3 next.

4 So I said: Okay.

5 So I was -- I just sat down beside

6 the door where the window was at.

7 Q. Where was Mr. Epps?

8 A. He was at the cable place; but then I saw he came
9 across the street and parked in front of the -- the tax
10 office place.

11 Q. He was waiting outside in the parking lot?

12 A. Yes, he was in the car waiting.

13 MS. BIAGIANTI:

14 Your Honor, may I approach the
15 witness?

16 THE COURT:

17 Yes.

18 WHEREUPON: SEVERAL EXHIBITS WERE
19 MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS FOR
20 IDENTIFICATION ONLY.

21 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

22 Q. I'm showing you what's marked as State's Exhibit
23 Number 8, a photograph.

24 Do recognized what this is?

25 A. Palmetto Tax Service in Georgetown.

1 Q. Uh -- Is that where you went on February 21st, 2008?

2 A. Yes ma'am.

3 Q. I'm showing you State's Exhibit Number 13. Do you
4 recognize what that is?

5 A. A sitting area inside the tax office.

6 Q. And State's Exhibit Number 14; do you know what that
7 is?

8 A. The sitting area where I was sitting inside the tax
9 office.

10 Q. Would it be fair to say that 13 and 14 are opposite
11 sides of the tax office?

12 A. Yes ma'am. Yes ma'am.

13 Q. And you recognize these photos?

14 A. Yes ma'am.

15 Q. Has there been any deletions or additions that
16 you've heard of since -- uh -- they were taken?

17 A. No ma'am.

18 MS. BIAGIANTI:

19 Your Honor, at this time, I would
20 move States Exhibits 8, 13, and 14, into evidence.

21 MR. GOUDE:

22 No objection, Your Honor.

23 THE COURT:

24 Okay; in evidence.

25 WHEREUPON: STATE'S EXHIBIT

TESTIMONY OF TYWANDA KEITH

165

1 NUMBERS 8, 13, and 14, WERE ENTERED INTO EVIDENCE WITHOUT
2 OBJECTION.

3 DIRECT EXAMINATION BY MS. BIAGIANTI:

4 Q. And State's Exhibit Number 8; explain to the jury
5 what that is.

6 A. This called Palmetto Tax Service in Georgetown --
7 uh -- beside Fred's.

8 Q. Where is Fred's in relation to the tax office?

9 A. In Georgetown, South Carolina.

10 Q. Is it to the right of it; or the left of it? If
11 we're looking at this picture, is Fred's over here, or
12 over here?

13 A. Fred's is over here --

14 Q. Do you --

15 A. -- on my right side.

16 Q. Do you know what is over here?

17 A. Subway.

18 MS. BIAGIANTI:

19 Your Honor, can I publish this?

20 THE COURT:

21 Yes; in evidence.

22 Publishing means that she will
23 show you these and pass them around.

24 Uh -- But once again, please know
25 they will be in the jury room with you; so you don't need

1 to look at them like you won't see them again.

2 You may proceed.

3 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

4 Q. I'm giving you State's -- uh -- Exhibit Number 13
5 now. Please tell our jury what that is a picture of?

6 A. This is the sitting area inside Palmetto Tax Service
7 in Georgetown.

8 Q. Were you sitting at anyone of these chairs?

9 A. No ma'am.

10 Q. Okay. And if this picture were taken -- uh -- from
11 the front door, what side of Palmetto Tax are those
12 chairs on?

13 A. It's facing the wall back here. It would be behind
14 you.

15 Q. But if you walk in the front door, is it your -- is
16 it the right-hand --

17 A. It would be on the right-hand side.

18 Q. And State's Exhibit Number 14; explain to the jury
19 what that is a picture of.

20 A. This is the front door of Palmetto Tax.

21 Q. Is this looking at the front door over here?

22 A. Yes ma'am; right here. And this is the window. And
23 I was sitting over here.

24 Q. Which chair were you sitting in?

25 A. I was sitting in the chair beside the wall right

TESTIMONY OF TYWANDA KEITH

167

1 here.

2 Q. And just for the record, if the other chairs were on
3 the right side when you come in the front door --

4 A. They would be on the left side.

5 Q. Now slow down and tell us what happened once you
6 walked in and after you signed in?

7 A. I walked in Palmetto Tax at two -- I signed in at
8 2:21; and I sat down. And I was just waiting on them to
9 call me to come in the back.

10 And as I was sitting there
11 waiting, I saw when Mr. Brown came up to the door and
12 looked in; because I'm blind on my right side, so in
13 order for me to see him, he was like in front of the door
14 like this right here.

15 Q. You can't see peripherally? If someone's right next
16 to you, you can't see him?

17 A. No ma'am; because I'm -- uh -- I'm blind in right
18 eye.

19 So when he walked in the tax
20 office place my heart dropped.

21 Q. Why is that?

22 A. Because I got scared; because of the previous
23 telephone calls that -- the threats -- the threatening
24 telephone calls that you had -- uh -- stated earlier.

25 Uh -- He sat beside me and he

1 pulled out a knife on my side.

2 And I looked down; and I saw the
3 knife. And I said:

4 What are you doing?

5 And he said:

6 Bitch, you dead.

7 (Whereupon: The witness becomes
8 very emotional and starts to tear and choke up.

9 Q. That's all right

10 A. I said:

11 Dexter, please don't kill me in
12 here.

13 He said:

14 Bitch, you dead.

15 I said:

16 Dexter, please don't kill me in
17 here.

18 He said:

19 Get up and come outside with me
20 right now.

21 I said:

22 No; I'm not going outside with
23 you.

24 He said:

25 Tywanda, get up and come outside

TESTIMONY OF TYWANDA KEITH

169

1 with me right now.

2 I said:

3 No; I'm not going outside with
4 you.

5 And then he looked at me; and he
6 said:

7 Get up and come outside with me
8 right now.

9 I said:

10 Dexter, I'm not going to go
11 outside with you.

12 If you going to kill me, I'd
13 rather for you to kill me in here so the people who is in
14 here could see what you're doing to me.

15 And then when I said that, that's
16 when he grabbed me here; and he pulled me up out of the
17 chair going towards the door.

18 Q. Now when you were responding back to him, were you
19 screaming; were you calmly -- describe to us what you
20 were doing?

21 A. It was a low tone of voice. It wasn't a scream or
22 anything. It was just like a -- a normal talk.

23 Q. And why were you staying normal talking?

24 A. Because I was scared.

25 Q. That's why you complied with him?

1 A. Yes. I was hoping at the same time that somebody
2 would see was going on; but not wanting to -- not wanting
3 to get anybody hurt that was inside the tax office place.

4 Q. So, tell me when -- Continue where you left off. He
5 grabbed me, I believe you said.

6 A. And he grabbed me; and --

7 Q. How did -- How did he grab you?

8 A. By my shirt, like this; and he pulled me. And I got
9 up.

10 Then as we were going outside the
11 door, he was just like pulling me.

12 And I was still saying:

13 Dexter, please don't kill me.

14 Please, don't kill me out here.

15 And that's when he threw me
16 against the wall.

17 Q. Was that -- Well, let's back up for a minute.

18 What was he doing with his right
19 arm once he had you -- uh --

20 A. It was around --

21 Q. What was he doing with his arm?

22 A. It -- It -- His arm was around my neck and he had --
23 you know -- the left hand was here, and his arm was
24 around my neck; and he was pulling me outside the door.

25 Q. And do you think you can you demonstrate for me?

TESTIMONY OF TYWANDA KEITH

171

1 A. Yes ma'am.

2 Q. You want to --

3 A. Yes.

4 MS. BIAGIANTI:

5 Your Honor, can the witness step
6 down?

7 THE COURT:

8 You may step down, ma'am; but
9 remember there is no microphone down there and the court
10 reporter must hear you as you speak; so speak loud so the
11 court reporter can hear you.

12 You may step down.

13 WHEREUPON: The witness left the
14 box and joined the Solicitor in front of the jury rail.

15 Q. Uh -- I'll pretend like I'm you; and you pretend as
16 if you're the Defendant Dexter.

17 A. (The witness demonstrates how she was grabbed.)

18 Q. That forceful?

19 A. Yes.

20 THE COURT:

21 If you would, describe what
22 happened -- uh -- Ms. Biagianti -- over here with Mr.
23 Goude.

24 MS. BIAGIANTI:

25 Your Honor, I believe she has her

1 right-hand around my neck, pulling me close to her -- uh
2 -- and -- and forcing me to walk.

3 THE COURT:

4 Now Mr. Goude, is that what you
5 saw; so I can reflect it on the record here.

6 MR. GOUDE:

7 That's good, Judge.

8 THE COURT:

9 All right; the record shows --
10 shall reflect that's what occurred.

11 You may proceed.

12 As far as between the witness and
13 Ms. -- uh -- Biagianti.

14 WHEREUPON: The witness returned
15 to stand.

16 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

17 Q. Now, were you going outside willingly?

18 A. No ma'am.

19 Q. Uh -- Continue from where he through you against the
20 wall; inside or outside the door?

21 A. Outside the tax office place.

22 Q. Uh -- I'm showing you State's Exhibit Number 8
23 again.

24 Please explain -- tell us what --
25 where you -- where you went when you got outside the

TESTIMONY OF TYWANDA KEITH

173

1 business or what wall it was?

2 A. Right here; the wall's beside the tax office place
3 on the outside --

4 THE COURT:

5 A little louder.

6 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

7 Q. You're going to have to speak a little louder.

8 A. The wall outside the tax office place,, right beside
9 Fred's.

10 Q. What happened next?

11 A. As Dexter was standing in front of me with both
12 hands like this right here. And I was standing in the
13 front of him.

14 That's when I glanced -- Lee --

15 Q. He had his arms like this where you couldn't move?

16 A. Yes ma'am; right. And as he was doing that, I saw
17 Lee coming up on my left side; and I yelled; I said:

18 Lee, please don't come over here.

19 He has a knife. Please don't come over here.

20 And as soon as I said that, that's
21 when I saw Dexter did like this; two jabs like that.

22 Q. What happened next?

23 A. Dexter started pulling me towards Fred's. And I'm
24 dragging my feet, because I didn't want to go with him.

25 And then I saw a white car came up

1 beside me, which was Lee.

2 And the kind of car that he has;
3 when you put the car in park, the doors automatically
4 lock.

5 So I'm trying to get in the car;
6 and the door just kept locking.

7 So I'm running around the car;
8 trying to get in the car, hollering and screaming.

9 Then eventually the door came --

10 Q. Let's slow down for a second. Tell us about the
11 point in time where the Defendant -- you say he's
12 dragging you back towards Fred's.

13 Tell us about Lee, and what you
14 saw. Did anything happen significant when that occurred?

15 A. He pushed me. And then I kind of like stumbled a
16 little bit. And that's when the car came up. And I was
17 trying to get in --

18 Q. Did anything happen significant with your purse?

19 A. Yes. Uh --

20 Q. Tell us about that.

21 A. He grabbed my purse and took something out of my
22 pocket book; and then my strap popped on my pocketbook.

23 Q. The strap on your pocketbook broke?

24 A. Popped; yes.

25 WHEREUPON: A BAG CONTAINING A

TESTIMONY OF TYWANDA KEITH

175

1 CELL PHONE WAS MARKED BY THE COURT REPORTER AS STATE'S
2 EXHIBIT NUMBER 16 FOR IDENTIFICATION ONLY.

3 MS. BIAGIANTI:

4 Your Honor, let the record
5 reflect, I'm opening State's Exhibit Number 16 for ID, a
6 brown paper bag.

7 I'm showing it to counsel.

8 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

9 Q. And I think you said that he took something out of
10 your purse. Do you know what he took out?

11 A. My cell phone.

12 Q. I'm showing you what's in State's Exhibit Number 16
13 for ID. Do you recognize what this is?

14 A. That's my cell phone.

15 Q. How do you know it's your cell phone?

16 A. Because I had just got this a couple of weeks before
17 the incident happened.

18 Q. And is this the cell phone you say he took out of
19 your purse?

20 A. Yes ma'am.

21 Q. And in seeing this cell phone, have you had this
22 cell phone in your possession since this incident?

23 A. No ma'am.

24 MS. BIAGIANTI:

25 Your Honor, at this time, I would

1 move State's Exhibit Number 16 into evidence.

2 THE COURT:

3 Any objection?

4 MR. GOUDE:

5 No objection.

6 THE COURT:

7 Sixteen, you say?

8 MS. BIAGIANTI:

9 Yes sir.

10 THE COURT:

11 It's in evidence.

12 WHEREUPON: STATE'S EXHIBIT NUMBER

13 16 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

14 DIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

15 Q. So he takes your cell phone out of your purse; let's
16 you go; finished telling us about trying to get in the
17 car?

18 A. I was trying to get in the car; and the car door
19 kept locking. Then the door -- the passenger door --
20 swings open, and I hop in the car.

21 I -- I just jumped in the car.

22 Q. Who was driving?

23 A. Lee was driving.

24 Q. While this was going on, could you hear what else
25 was going on? Did you hear anyone else -- uh -- any

TESTIMONY OF TYWANDA KEITH

177

1 other voices?

2 Tell me what was going on in your
3 mind when all this was happening?

4 A. When he was pulling me out the tax office place and
5 saying that he was going to kill me, I started having
6 flashbacks about my kids -- that I wasn't going to see my
7 kids anymore because I was going to die.

8 I thought I was I was -- I thought
9 he was going to kill me.

10 Q. Did you hear any other people talking? Do you know
11 if anyone else called 911 or anything like that?

12 A. I don't -- I didn't hear nobody calling 911 or
13 anything.

14 Q. Tell us what happened once you got the car? What
15 did you do then?

16 A. I got in the car. Blood was everywhere. Blood was
17 on the steering wheel; on the seat; on the window outside
18 the car.

19 And Lee was holding his hand up
20 like this. And we were driving out going toward the
21 projects.

22 But Dexter was on the bike going
23 towards the projects. And as Lee was leaving, he was
24 going towards Dexter; and I said:

25 No Lee; don't hit him. Let's go

1 to the Sheriff's Office. Don't hit him.

2 Q. Now you mentioned that he was on a bike.

3 A. Yes ma'am.

4 Q. When did -- When did his bike come into play?

5 A. I saw the bicycle when I got in the car. And Dexter
6 was on the bicycle riding.

7 He had --

8 Q. In what direction?

9 A. He had already turned me loose and jumped on the
10 bicycle.

11 Q. Well, what direction were you headed in? Do you
12 remember what the name of that street is?

13 A. No ma'am.

14 Q. If I told you Marivan (phonetic) --

15 A. Okay.

16 Q. -- Road; would that sound correct?

17 A. Uh -- That's the road going towards the projects?

18 Q. Yes ma'am. What way did you go away from the
19 Defendant Dexter?

20 A. We made a left turn at the stop sign. And Dexter
21 went towards the project. He made a right.

22 Q. At the point -- uh -- you said Lee was driving; and
23 where did you guys go?

24 A. To the Sheriff's Department in Georgetown.

25 Q. Now why did you go to the Sheriff's Office?

TESTIMONY OF TYWANDA KEITH

179

1 A. I just thought it would be quicker; because it was
2 not too far down the road.

3 Q. Quicker than what?

4 A. Calling 911; and them taking forever to get there.

5 Because I was scared Dexter
6 probably was going to make a U-turn to come back to
7 finish what he didn't completed.

8 Q. Did you think you were going to get help closer to
9 the Sheriff's Office?

10 A. Yes ma'am.

11 Q. Tell us what's happened once you got to the
12 Sheriff's Department?

13 A. When we got to the Sheriff's Department, we ran
14 inside. The ladies who was in the back, they dispatched
15 and a bunch of officers came up to the front.

16 And as Lee was sitting in the
17 chair, he had his hand up. And then I looked down. And
18 I saw a bunch of blood just pouring down on the floor.

19 And I leaned over. And I was
20 like:

21 Oh, my God.

22 I said:

23 You got stabbed in the side.

24 And the officer held his shirt up.

25 And he was like:

1 He get you in the side.

2 Q. Up until the point, did you know that Lee got
3 stabbed in the side?

4 A. No ma'am.

5 Q. How bad was Lee bleeding?

6 A. Real bad. The hand was just pouring blood. And the
7 side; it was like water turned slowly, but still running.

8 that's how the blood was coming
9 out of his side.

10 Q. Ms. Keith, I'm going to show you what has been
11 marked as State's Exhibit Number 3 for ID; State's
12 Exhibit Number 4 for ID; and State's Exhibit Number 7 for
13 I'd.

14 Do you recognize that?

15 A. Yes ma'am.

16 Q. What do you recognize that as being?

17 A. A stab wound to the left hand.

18 Q. Of who?

19 A. Lee Epps.

20 Q. Caused by?

21 A. Mr. Robert Dexter Brown.

22 Q. I'm showing you State's Exhibit Number 4 for I'd.

23 Do you recognize that?

24 A. Yes ma'am.

25 Q. And what is that?

TESTIMONY OF TYWANDA KEITH

181

1 A. A stab wound to the hand; left hand.

2 Q. Of whom?

3 A. Lee Epps.

4 Q. Caused by whom?

5 A. Robert Dexter Brown.

6 Q. Do you know where these were taken at?

7 A. Georgetown Memorial Hospital.

8 Q. I'm showing you State's Exhibit Number 7 for ID. Do
9 you recognize that?

10 A. Yes ma'am.

11 Q. And what is that?

12 A. Stab wound to the side.

13 Q. And on whom?

14 A. Lee Epps.

15 Q. Caused by whom?

16 A. Robert Dexter Brown.

17 Q. Was that also taken at Georgetown Memorial Hospital?

18 A. Yes ma'am.

19 MS. BIAGIANTI:

20 Your Honor, at this time I move

21 State's Exhibits 3, 4, and 7, into evidence.

22 THE COURT:

23 Any objection?

24 MR. GOUDE:

25 We have no objection, Your Honor.

1 THE COURT:

2 What numbers are they?

3 MS. BIAGIANTI:

4 Three, four and seven.

5 THE COURT:

6 Numbers 3, 4, and 7 are in
7 evidence.

8 WHEREUPON: STATE'S EXHIBITS 3, 4,
9 AND 7 WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION.

10 MS. BIAGIANTI:

11 Your Honor, I'm going to ask those
12 other questions before we give them to the jury.

13 DIRECT EXAMINATION BY CONTINUED:

14 Q. Uh -- Tell us what that is a picture of.

15 A. A stab wound to the left-hand; and it's Lee Epps'
16 left-hand.

17 Q. And -- uh -- that was several minutes after the
18 actual stabbing; correct?

19 A. Yes ma'am.

20 Q. Tell us what that one shows?

21 A. A stab wound to the left-hand of Lee Epps.

22 Q. And number 7?

23 A. Stab wound to the side; and that's Lee Epps side
24 also.

25 Q. Also taken at the hospital?

TESTIMONY OF TYWANDA KEITH

183

1 A. Georgetown Memorial Hospital.

2 Q. Approximately how long were these -- uh -- photos
3 taken from the incident; an hour, a day, two months?

4 A. Minutes after the stabbing happened; because they
5 called -- uh -- paramedics. And they came and got him;
6 and took him straight to the emergency room.

7 Q. At some point in time -- uh -- did law enforcement
8 become involved?

9 A. Yes ma'am.

10 Q. And whom did you speak with at law enforcement; if
11 you -- if you remember his name?

12 A. Officer -- uh -- Chuck, I think it was.

13 Q. Well was it this officer, perhaps?

14 A. Sparkman came in -- uh -- after I had got through
15 talking to the officer that -- uh -- came and did the
16 statement inside the -- they took me by the little room
17 and talking to me; him and a -- a victim's advocate.

18 And then Sparkman came in and --
19 uh -- talked to me.

20 Q. And when you say Sparkman you talking about
21 Investigator Johnell Sparkman?

22 A. Yes.

23 Q. Did you give Investigator Sparkman a statement of
24 what happened that day?

25 A. Yes ma'am, I did.

1 MS. BIAGIANTI:

2 Your Honor, can we approach?

3 THE COURT:

4 Yes.

5 (WHEREUPON: Counsel for each party

6 conferred off the record with The Court at the bench at

7 4:11 p.m..)

8 THE COURT:

9 You may proceed.

10 DIRECT BY MS. BIAGIANTI:

11 Q. Tell us how this has impacted your life?

12 A. I'm scared a lot. I'm on medication for nervousness
13 and being fidgety; hard to sleep a night; just nervous of
14 being in places by myself now.

15 Q. Is there any question in your mind that the person
16 who assaulted you stabbed Mr. Epps is that man sitting
17 right there, Robert Dexter Brown?

18 A. Yes ma'am.

19 Q. Any question in your mind?

20 A. No question.

21 MS. BIAGIANTI:

22 Please answer any questions that

23 -- uh -- Mr. Goude may have.

24 THE COURT:

25 One second, Mr. Goude. Wait one

TESTIMONY OF TYWANDA KEITH

185

1 second, Mr. Goude.

2 Okay; you may proceed with cross-
3 examination

4 CROSS-EXAMINATION BY MR. GOUDE:

5 Q. Ma'am, as I understand it from what you were saying,
6 you met Mr. Robert Dexter Brown in -- I believe you said
7 October, 2006?

8 A. November.

9 Q. November?

10 A. 2006.

11 Q. And where were you living at that time?

12 A. After I met him?

13 Q. Before -- Before you met him? I'm asking where you
14 were living at that time?

15 A. With my mom in Loris.

16 Q. And where was he living at that time?

17 A. With his mom.

18 Q. Where was she living?

19 A. in Kingstonton (phonetic).

20 Q. Up here in Kingston in Georgetown?

21 A. Yes sir.

22 Q. And you said after you met him, you moved in with
23 Mr. Brown while he was living with his mother here in
24 Georgetown?

25 A. At first; and then we got -- uh -- we moved to this

1 trailer park and Georgetown.

2 Q. When you first moved in with Mrs. Brown, who was he
3 living with?

4 A. He was staying with his mom at first; then me and
5 him moved out into the trailer park.

6 Q. You moved into -- uh -- Mr. Brown's mother's house
7 in Kingston first?

8 A. Yes sir.

9 Q. And you met him -- you said what month?

10 A. November, 2006.

11 Q. When did you move? What month did you move in with
12 Mr. Brown?

13 A. In December.

14 Q. Of what year?

15 A. 2006.

16 Q. Uh -- How long had you known him when you moved in
17 with him?

18 A. About a month.

19 Q. And y'all stayed at his mother's house?

20 A. Yes.

21 Q. And y'all had a bedroom next to the garage?

22 A. Yes sir.

23 Q. Y'all meaning you and Mr. Brown?

24 A. Yes sir.

25 Q. How long did y'all stay with Mr. Brown's mother

TESTIMONY OF TYWANDA KEITH

187

1 before y'all moved out of that house?

2 A. For about five or six months.

3 Q. And then you and he -- Mr. Brown -- moved somewhere
4 else?

5 A. Yes sir.

6 Q. Where did y'all move then?

7 A. It was at -- uh -- at Greenacres Trailer Park in
8 Georgetown.

9 Q. Who else lived in the trailer beside you and him?

10 A. Just me and him in the trailer.

11 Q. How long did y'all stay there?

12 A. For about four months -- four or five months. We
13 didn't stay there that long.

14 Q. And did y'all move after you moved out of that
15 trailer?

16 A. After that happened -- uh -- he had left to go out
17 of town to DC. And that's when I had asked him not to
18 go; because we had already done moved back to his mom's
19 house.

20 And he said that he was going to
21 take care of some business with his son. And I asked him
22 not to go.

23 And my car had brokeed down on
24 me; so I had asked his mom: will it be okay if I stay
25 there, being that I started at Prince George.

1 It -- It would be quicker for me
2 to go back and forth to work, and closer; instead of me
3 driving from my mom's house in Loris all the way back to
4 Georgetown.

5 Q. When Mr. Brown left to go to DC, did he keep the
6 trailer at Greenacres and keep paying the rent on it?

7 A. No -- No sir.

8 Q. Did you keep the trailer --

9 A. No sir.

10 Q. -- and anything else y'all may have owned?

11 A. No sir.

12 Q. And y'all moved back into the mother's house before
13 he left for DC?

14 A. Before -- Before he went to DC. Yes sir.

15 Q. And when he went to DC, you stayed with his mother?

16 A. Yes sir. I had asked her;: will it be okay if I
17 stay with her because my car broke down; and she said:
18 yes, it would be okay if I stayed with her.

19 Q. And Mr. Brown came back from -- from -- uh -- DC?

20 A. I don't know exactly when he came back. But he
21 didn't come back and stay at his mom's house; but his
22 niece told me that he was back in town.

23 Q. When he came back from -- uh -- DC, at some point he
24 moved back in his mother's house?

25 A. No sir; not while I was there.

TESTIMONY OF TYWANDA KEITH

189

1 Q. And you moved out of his mother's house about when?

2 A. I moved out, and I moved in with Mr. Epps in
3 January.

4 I went to my mom's house in
5 October.

6 And then I asked his mom: will it
7 be okay if I stay with her? And she told me: yes, it
8 would be okay.

9 Q. Who's mom?

10 A. Mr. Robert Brown's mom.

11 Q. How long did you stay with your mom in Loris?

12 A. For about three or four months.

13 Q. In October, then?

14 A. I was at her house in October; because Dexter called
15 -- when he got back he called my mom's cell phone and
16 asked my mom if I was there.

17 And she gave me the phone. And I
18 talked to him. And that's when he asked me: why did I
19 leave?

20 And I told him:

21 Because you choose to go to DC
22 instead of saying here.

23 Q. And you stayed in Loris. You stated there three
24 months? You stayed there in October, November, and
25 December?

1 A. I was there October and part of November.

2 Q. And then you left there and went back to Mr. Brown's
3 mother's house in Kingston?

4 A. No sir.

5 Q. Where else did you live besides Loris in October and
6 November?

7 A. I was staying at -- Sometime I would stay at Mr.
8 Epps house in Andrews; because it would be closer for me
9 get back and forth to work.

10 Q. When did you go back to Mr. Brown's mother's house
11 and start living with her so you could work in
12 Georgetown?

13 A. It was -- uh -- I'm -- I'm thinking like the first
14 or second week in October?

15 A. I thought you said you were in Loris in October and
16 --

17 A. Well, it -- it was about the second -- the first or
18 second week in October. I can't remember the exact date.

19 Q. All right. I'm not trying to shake you here; but
20 I'm just trying to find out where you lived.

21 A. Oh, I understand.

22 Q. I'm trying to get -- Did you leave Loris and then go
23 straight back to Robert Brown's mother and her brick
24 house in Kingston?

25 A. Yes sir.

TESTIMONY OF TYWANDA KEITH

191

1 Q. And you just stayed there two or three months; and
2 then you moved in with Mr. Epps in January of 2008?

3 A. Exactly.

4 Q. How long did you know Mr. Epps -- uh -- Well, you
5 and he started dating in December?

6 A. Yes sir.

7 Q. And you moved in with him in January?

8 A. Yes sir.

9 Q. Now, who owns the house in -- uh -- Where were you
10 living?

11 A. We lived in Andrews?

12 Q. Who owns that house?

13 A. He does.

14 Q. All right; now before you moved in with Mr. Epps, at
15 some point in October, November, December, at Robert
16 Brown's mother's house -- Aldoro -- Her name's Aldoro
17 Brown; is that right

18 A. Yes sir.

19 Q. And she lives there in the back part of Kensington?

20 A. Yes sir.

21 Q. Did you -- uh -- walk in on Robert Brown and this
22 lady you were talking about right here, Betty Gibson
23 Browser -- uh -- in the bed there in the bedroom in his
24 mother's house?

25 A. Yes sir.

1 Q. And you said you on the date that this incident.
2 occurred -- uh -- February -- It was February the 21st of
3 2008 the day you're talking about at the tax office that
4 it happened?

5 A. Yes sir.

6 Q. And I think you said -- And I think you said
7 February the 21st of 2008 was a Thursday.

8 I'll show you a calendar here just
9 to verify that.

10 And does it show for the year
11 2008, February 21st -- just like you said -- was a
12 Thursday?

13 A. Yes. sir.

14 Q. And Palmetto Tax Service, as you -- as you have
15 stated -- is over there in the -- uh -- shopping center
16 where the Subway is. Is that correct?

17 A. Yes sir.

18 Q. And that's where the big Winn-Dixie Grocery Store
19 used to be?

20 A. I don't know if there was a shopping center there a
21 long time ago. I don't know.

22 Q. That's where -- uh -- CVS Pharmacy was, up until
23 last year?

24 A. Yes sir.

25 Q. And now Fred's is where CVS Pharmacy was?

TESTIMONY OF TYWANDA KEITH

193

1 A. Yes sir.

2 Q. And Palmetto Tax Service -- like you said -- is
3 between the -- uh -- Fred's store -- you can sort of see
4 it here on y'all's Exhibit Number 10.

5 Uh -- This is the big shopping
6 center and Fred's is -- I guess that's Fred's right there
7 where the guy's going in the door.

8 Can you see?

9 A. Yes sir.

10 Q. And then the tax service is sort of at the end of
11 this fertilizer or potting soil or whatever it is?

12 A. It's on that side of the wall; yes sir.

13 Q. Oh. Yeah. Okay. There's a much better picture,
14 Number 11.

15 All right; so you go there to do
16 your taxes.

17 Now did you have a cell phone that
18 day?

19 A. Yes sir, I did.

20 Q. And what was your -- That was the -- the little
21 phone y'all looked at here a minute ago?

22 A. Yes sir.

23 MR. GOUDE:

24 Give me that cell phone.

25 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

1 Q. And this is the cell phone that you had?

2 A. Yes sir.

3 THE COURT:

4 All right; let the record reflect
5 it's State's Exhibit whatever.

6 MR. GOUDE:

7 It's State Exhibit, Judge, Number
8 16.

9 THE COURT:

10 All right.

11 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

12 Q. And was this cell phone that you had, it was in your
13 -- you said you were carrying a pocketbook that day?

14 A. Yes sir.

15 Q. What size pocketbook was it?

16 A. A small-sized pocketbook-- burgundy pocketbook.

17 Q. Now have you ever called -- uh -- No. Let me ask
18 you this before I ask that one.

19 Uh -- So off and on -- Would it be
20 fair to say that:

21 You stayed at Mr. Brown's mother's
22 house -- Aldoro's -- from somewhere around November and
23 December '06 to December or January -- December of '07 or
24 January of '08 -- somewhere in there, with the exceptions
25 you've talked about, staying in the trailer and --

TESTIMONY OF TYWANDA KEITH

195

1 A. Yes sir.

2 Q. -- staying at your mother's?

3 A. Yes sir.

4 Q. And did she have a house-phone in her house?

5 A. Yes sir.

6 Q. And do you know what that phone number was of her
7 house phone?

8 A. Yes sir.

9 Q. What was that number please?

10 A.

11 Q. And your -- that was for Mrs. -- that was the house
12 phone; not a cell phone, but her house-phone?

13 A. Her house-phone; yes sir.

14 Q. And your cell phone number of that little phone
15 there you just talked about; what was that number?

16 A. Uh -- I forgot the number by heart.

17 Q. Can you look at the phone and see? Is there a way
18 to punch it or something?

19 THE COURT:

20 You'd have to turn it on, would
21 you not?

22 MS. BIAGIANTI:

23 It's not on.

24 THE COURT:

25 Would you like to ask here if she

1 denies the numbers of the phone number is; and give her a
2 number to look at.

3 MS. BIAGIANTI:

4 MR. GOUDE:

5 Uh -- That's MS. BIAGIANTI:

6 It's not on, Your Honor. So you
7 might ask her to turn it on.

8 COURT REPORTER:

9 I'm sorry?

10 THE COURT:

11 She says it's not on. I'm not
12 sure how --

13 Mr. Goude, do you want to ask her:
14 does she deny the number was?

15 MR. GOUDE:

16 Yes, Judge, I can do that.

17 THE COURT:

18 You're in cross-examination; you
19 can lead.

20 WHEREUPON: The witness cuts on
21 the aforesaid cell phone and it chimes in open court.

22 THE COURT:

23 You know, there's a Supreme Court
24 rule about having cell phones in the courtroom?

25 MR. GOUDE:

TESTIMONY OF TYWANDA KEITH

197

1 Yes sir. I was hoping you would
2 arrest Ms. Keith and -- uh -- send her to jail.

3 THE COURT:

4 Since you gave it to her, I'm not
5 sure about that, Mr. Goude..

6 THE COURT:

7 Ma'am do you remember the number
8 it says on there, then?

9 WITNESS:

10 Not by heart, sir. I don't
11 remember the number; but I've already --

12 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

13 Q. Could it have been -- Ma'am, would it have been ...

14

15 A. That sounds familiar. I --

16 Q. That was on a statement when you talked with the
17 police the date of the incident.

18 A. Okay.

19 Q. Is that what you would have told them?

20 A. Yes sir.

21 Q. All right. And when you went to the tax service
22 office that day before Mr. Brown showed up, did you --
23 didn't you -- did you talk with somebody on you -- or
24 didn't you talk to somebody on your cell phone while you
25 were there in the tax office?

1 A. Did I talk to someone on my phone inside the tax
2 office?

3 Q. Uh-huh.

4 A. Yes sir.

5 Q. And did Mr. -- Didn't Mr. Robert Brown, while you --
6 when you got there to the tax office, didn't he call you
7 from his house --

8 A. No sir.

9 Q. Let me just ask the questions before you answer.
10 While you there at the tax office and sitting there in
11 the tax office -- uh -- didn't Mr. Brown call you from
12 his house and ask you where you were and what you were
13 doing?

14 A. No sir.

15 Q. Didn't you tell him you were at the tax office?

16 A. No sir.

17 Q. Didn't he ask you: could he borrow some money; and
18 you told him to had five dollars to loan him?

19 A. No sir.

20 Q. Well, when he came down at the tax office; and you
21 and he walked from inside the tax office to outside,
22 didn't you give him five dollars?

23 A. No sir.

24 Q. Did you have anything on you that day?

25 A. No sir; I had no money on me.

TESTIMONY OF TYWANDA KEITH

199

1 Q. None at all?

2 A. None at all.

3 Q. All right. Now at some point, after the first part
4 of January, 2008, when you moved out of Mr. Brown's
5 house; between then and February the 21st -- let's say
6 the day before February the 21st -- between the date you
7 moved out of Mr. Brown's house in early January -- or his
8 mother's house and February the 20th, the day before this
9 occasion, at some point during that time did Mr. -- uh --
10 Brown ask you to marry him?

11 A. He had came by my job --

12 MS. BIAGIANTI:

13 Your Honor, I object. Can we
14 approach?

15 THE COURT:

16 Sure.

17 Ms. Alma, would you cut that phone
18 off for me.

19 (WHEREUPON: Counsel for each party
20 conferred off the record with The Court at the bench at
21 4:29 PM.)

22 THE COURT:

23 All right; proceed on.

24 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

25 Q. Uh -- Ma'am, as -- as we were talking -- uh -- at

1 some point in between -- uh -- the first part of January
2 when you moved out of Mr. Brown's and his momma's house
3 that she owns it, and the day before this incident -- so
4 that we don't confused, it was February 21st, Thursday,
5 the date of this incident -- sometime in that -- uh --
6 period of time, did Mr. Robert Dexter Brown ask you to
7 marry him?

8 A. Yes he did.

9 Q. Okay. When he asked you to marry him, did he give
10 you an engagement ring?

11 A. He brought the ring by my job.

12 Q. Did you take the ring from his hands or from his
13 person?

14 A. He told me that: I better take.

15 Q. Did -- Did you take the ring?

16 A. Yes sir, I did.

17 Q. As of -- uh -- February the 21st, 2008, the day
18 this incident occurred, did you still have the ring that
19 he had given you?

20 A. I took it by the Sheriff's Department the next day.

21 Q. What -- What day?

22 A. He brought -- He brought the ring by my job January
23 24th. I took the ring by the Sheriff's Department the
24 25th; and I talked to Deputy Arde (phonetic).

25 She had the ring for two or three

TESTIMONY OF TYWANDA KEITH

201

1 days. It was trying to call him -- to contact him; to
2 tell him to please come and get the ring back.

3 Q. Okay. All right. Do you know -- Did you say
4 approximately when that was?

5 A. When he -- When he brought the ring?

6 Q. When he gave you the ring?

7 A. Yes sir. He -- He brought --

8 Q. What date was that?

9 A. January -- It was in January of 2008; January the
10 24th.

11 Q. January the 20 fourth?

12 WHEREUPON: A PHOTO BOARD WITH 4
13 PICTURES WAS MARKED BY THE COURT REPORTER AS DEFENDANT'S
14 EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.

15 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

16 Q. I am going to show you some pictures --
17 THE COURT:

18 Are they in evidence?

19 MR. GOUDE:

20 Uh -- They're marked as Defense
21 Exhibit 1, Judge.

22 THE COURT:

23 Okay. Okay.

24 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

25 Q. Which -- uh -- I'll ask you to look at. And they

1 have the dates on them. They are labeled A, B, C, D --
2 Defense Exhibit 1, and the date's written on the front of
3 them -- May the 27th, 2008 on all four of them.

4 And it looks like -- Is the -- uh
5 -- Number A; is that the Aldoro Brown -- Robert's
6 mother's house?

7 Is that what that is?

8 A. That's the garage area; yes sir.

9 Q. And these photographs of clothes laying out on the
10 garage floor -- shoe and clothes and all; does those look
11 like you clothes?

12 A. Yes sir.

13 Q. And that Number D ma'am, does that show the bedroom
14 going off of the -- well, the end of the house where the
15 garage was --

16 A. Yes sir.

17 Q. Is that the bedroom that you and Mr. Brown used.

18 A. Yes sir.

19 MR. GOUDE:

20 Judge, we would offer that as our
21 first exhibit.

22 Uh -- We've shown it to the
23 prosecutors and given them a copy of it.

24 MS. BIAGIANTI:

25 Your Honor -- uh -- I don't object

TESTIMONY OF TYWANDA KEITH

203

1 to the -- the content; but I do object to May 27th, 2008.

2 There's no testimony -- anything
3 about May 27th, 2008.

4 I don't know if he took these
5 photos. Uh -- She recognizes --

6 THE COURT:

7 Let me see the photos, please.

8 MS. BIAGIANTI:

9 Someone wrote on them, May 27th,
10 2008.

11 THE COURT:

12 I'll put them in evidence. We'll
13 address the date thing later on.

14 In evidence.

15 MR. GOUDE:

16 Thank you.

17 THE COURT:

18 Defense Exhibit 1.

19 WHEREUPON: DEFENDANT'S EXHIBIT
20 NUMBER 1 WAS ENTERED INTO EVIDENCE.

21 CROSS-EXAMINATION BY MR. GOUDE CONTINUED:

22 Q. Ma'am, on the -- uh -- day this thing happened
23 February the 21st, 2008, when you made a statement -- 4
24 -- or 1605 -- 4:05 p.m., did you tell the police then
25 that -- uh -- Robert D. Brown ran in the tax office

1 behind me and swung the knife two times?

2 A. Yes sir.

3 Q. When -- uh -- Mr. Brown came to the tax office -- uh
4 -- did he -- when he such as the down and talked to you,
5 did he ask you if you would step outside so y'all would
6 have some privacy?

7 A. No sir. He did not.

8 Q. At --- uh -- some point after you moved out of -- uh
9 -- Mr. Brown's house, and before the date in question --
10 before February the 21st -- which would somewhere around
11 a six-week period of time -- had you asked Mr. Brown to
12 -- that when he called you, to -- for him to dial star-67
13 before he actually called you, so that it would block his
14 phone number on the house phone that you were staying in
15 at Mr. Epps's, so you wouldn't able to see the number --
16 so Mr. Epps wouldn't be able to see the number of Robert
17 Brown calling you?

18 A. No sir.

19 Q. Did you know that if you dialed star-67, that that
20 would block your number from going through on the phone?

21 A. Yes sir.

22 Q. And on the -- uh -- day in -- When you were talking
23 with the police after this occurred, on -- on the next
24 day, February the 22nd, 2008, did you tell the police:

25 He was dragging me outside.

TESTIMONY OF TYWANDA KEITH

205

1 A. Yes sir.

2 Q. As far as you know, did that -- on that day,
3 February the 21st, 2008 when this occurred, had Mr. Brown
4 and Mr. Epps met before?

5 A. No sir.

6 MR. GOUDE:

7 That's all the questions we have,
8 Judge.

9 THE COURT:

10 Okay; redirect?

11 MS. BIAGIANTI:

12 Yes sir.

13 REDIRECT EXAMINATION BY MS. BIAGIANTI:

14 Q. Now, since Mr. Goude brought up the fact that -- uh
15 -- the Defendant proposed to you on January 21st, 2008;
16 tell us a little bit about that?

17 A. I was at work and Dexter came in my job, and --

18 Q. Did you want him to come then?

19 A. No ma'am; because he wasn't supposed to be around
20 me. He came; brought the ring; and he was like:

21 Tywanda, will you marry me?

22 And I looked at him; and I said:

23 No; because there is no us.

24 So he said:

25 Well, you going to take this ring.

1 But, I didn't want to make a scene
2 on my job; so I took the ring.

3 Q. Did you put it on your finger?

4 A. No ma'am; it stayed inside the box. The next day --
5 or the next morning, I got up. Lee took me to the
6 Sheriff's Department; and I gave the ring to Deputy Arde
7 (phonetic). And I told her what had happened.

8 Q. Now on January 24th, 2008, did something else happen
9 that day at your work?

10 A. Yes ma'am. Uh --

11 Q. After the engagement incident?

12 A. Yes.

13 Q. Well, tell me: What -- What did you do after the
14 engagement incident? Did you alert anyone? Did you tell
15 anybody?

16 A. I went to my head D.O.N., which is the Head Director
17 of Nursing.

18 I went to Darrell and Helen, and I
19 told them that my ex-boyfriend came up here trying to
20 propose to me knowing that me and him are no longer
21 together -- you know-- and I was scared.

22 So -- uh -- the polices were
23 already out there.

24 So they took me to the front; and
25 I talked to --

TESTIMONY OF TYWANDA KEITH

207

1 Q. What do you mean that the police were already out
2 there? Let's just be clear. They weren't there for a
3 call; but they actually work there off-duty; is that
4 correct?

5 A. Yes ma'am.

6 Q. All right. Continue?

7 A. And -- uh -- they took me to the front. And I
8 talked to the officer. And I gave him a statement --
9 what had happened.

10 And I told him that I didn't feel
11 comfortable by him coming to the job because he was not
12 supposed to be around me.

13 So they said:

14 Okay; Tywanda, by an officer being
15 here, if anybody comes up here and asked for you -- you
16 know -- we'll ask questions.

17 Q. Well, did something happen later that evening?

18 A. Yes ma'am. I was in a resident's room --

19 MR. GOUDE:

20 Objection -- uh -- to the
21 relevancy and it's going beyond the scope --

22 MS. BIAGIANTI:

23 Well the relevancy issue opened
24 the door when --

25 THE COURT:

1 Continue on.

2 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

3 Q. Go ahead.

4 A. I was a resident's room; and the officer came down
5 the hall --

6 THE COURT:

7 Don't tell us what the officer
8 said.

9 WITNESS:

10 Uh -- The officer said:

11 Tywanda --

12 THE COURT:

13 No; don't tell us what the officer
14 said.

15 MS. BIAGIANTI:

16 Tell us --

17 WITNESS:

18 Okay.

19 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

20 Q. What did you do in response to the what the officer
21 told you? What did you tell the officer back?

22 A. That's -- That's the guy that's not supposed to be
23 around me. That's him.

24 Q. And what did you do -- uh -- after the officer left?
25 How were you feeling, knowing that that can mean Dexter

TESTIMONY OF TYWANDA KEITH

209

1 is there?

2 A. I was told not to leave --

3 THE COURT:

4 No ma'am; don't tell us what
5 someone told you?

6 WITNESS:

7 I didn't leave the area. I stayed
8 at the nurses desk.

9 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

10 Q. How were you feeling?

11 A. Nervous and scared.

12 Q. Now are you aware of -- uh -- when the Defendant
13 came up, are you aware -- uh -- who he said he was?

14 MR. GOUDE:

15 Objection, unless she --

16 THE COURT:

17 Unless you know of your own --
18 Unless she heard it herself -- If she heard him say
19 herself, she may do so.

20 MS. BIAGIANTI:

21 Okay; I apologize.

22 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

23 Q. Mr. Goude had you look at some pictures of some
24 clothing -- uh -- Defense Exhibit Number one. Did you
25 leave the clothing like that?

1 A. No ma'am.

2 Q. How did you leave the clothing?

3 A. They were in a -- uh -- container, like a long
4 container -- like a box that had a lid on it.

5 Q. Plastic box?

6 A. Yes ma'am.

7 Q. They weren't all strewed out like that?

8 A. No ma'am.

9 A. Tell us a little bit about the knife?

10 A. The knife that I saw was a little short, sliver --
11 like a fishing knife; a little short one -- had a black
12 handle with a sharp edge; and had ridges inside the
13 knife.

14 That's the one that I saw when --
15 he had in my side.

16 MS. BIAGIANTI:

17 Your Honor, can we approach?

18 THE COURT:

19 You may.

20 (WHEREUPON: Counsel for each party
21 conferred off the record with The Court at the bench at
22 4:48 PM.)

23 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

24 Q. I'm showing you State's Exhibit Number 16, your cell
25 phone that's already in evidence.

TESTIMONY OF TYWANDA KEITH

211

1 I'm going to turn it on.

2 WHEREUPON: Ms. Biagianti turns
3 the cell phone, State's Exhibit 16, on in open court.

4 REDIRECT EXAMINATION BY MS. BIAGIANTI CONTINUED:

5 Q. Can you get to -- uh -- your last call? Then go to
6 "outgoing."

7 A. Okay.

8 Q. The last call was to? What number is that?

9 A. ..

10 Q. And what date and time does that phone state that
11 last call was?

12 A. That says: February 21st, 2:06.

13 Q. P.m. or a.m.?

14 A. P.m. -- on a Thursday.

15 Q. That's before this happened?

16 A. Yes ma'am.

17 Q. And that's the last call?

18 A. The last call; yes ma'am.

19 Q. Now, I want you go to the second to the last call.
20 What number is that?

21 A.

22 Q. And what time was that?

23 A. 1:54 p.m. on a Thursday, February 21st, 2008.

24 Q. And the third next last call?

25 A. My mom, and that was at 11:52 on a

1 Thursday a.m., February 21st, 2008.

2 Q. Okay. And forth last call?

3 A. Shawna.

4 Q. Who is Shawna?

5 A. I sing with her -- That was at 11:35

6 a.m., Thursday morning, February 21st, 2008.

7 Q. Fifth last call?

8 A. Her name is Pangela; but we call her Pan. She works

9 with me. Her number is 843-7 -- I mean, . And

10 that was at 11:32 Thursday a.m., February 21st, 2008.

11 Q. The sixth to the last call?

12 A. Shawna again; . (sic) That was at 11:20 a.m.

13 Thursday morning, February 21st, 2008.

14 Q. Seventh to the last call?

15 A. Missy. She works with me also. Her number is

16 . And that was at 11:19 Thursday morning at

17 February 21st, 2008.

18 Q. Eighth to last call?

19 A. That's my voicemail.

20 Q. And what time was that one?

21 A. Uh -- 11:17 a.m., Thursday morning, February 21st,

22 2008.

23 Q. Ninth to last call?

24 A. My mom; , and that was at 6:37 p.m. that

25 Wednesday, February the 20th, 2008.

TESTIMONY OF TYWANDA KEITH

213

1 Q. So did you call the Defendant from this phone
2 February 21st, 2008?

3 A. No ma'am; I did not.

4 MS. BIAGIANTI:

5 I'm going to turn it off, Your
6 Honor, for the record.

7 WHEREUPON: Ms. Biagianti turns
8 off the cell phone, State's Exhibit 16.

9 Q. Uh -- I believe Mr. Goude asked you about: at some
10 point in time, walking in on the Defendant with some
11 other woman in his momma's house. Was -- Is it while you
12 were living there?

13 A. Yes, I was staying there during that time.

14 Q. Was he staying up there at the time?

15 A. No ma'am.

16 Q. So -- uh -- I guess the inference is that you're to
17 get back. Uh -- Do you have any reason to lie about
18 this?

19 A. No ma'am.

20 Q. So just because you caught him with some other woman
21 -- uh -- does that affect what you're doing or saying?

22 A. No ma'am.

23 Q. I believe also Mr. Goude asked you about -- uh --
24 giving the Defendant five dollars that day, that you
25 denied; correct?

1 A. Right.

2 Q. Did you have any money at all that day?

3 A. No money whatsoever.

4 Q. How did you get home that night?

5 A. A police officer gave me five dollars to put gas in
6 the car; because the car was on "E."

7 MS. BIAGIANTI:

8 Thank you.

9 THE COURT:

10 Any other questions, Mr. Goude?

11 MR. GOUDE:

12 Just briefly.

13 RE-CROSS-EXAMINATION BY MR. GOUDE:

14 Q. Now when you all were at the taxi -- tax office --
15 you road with Mr. Epps; right?

16 A. Yes sir, I did.

17 Q. It was his car y'all were riding in; right?

18 A. Yes sir, it was.

19 Q. And you -- uh -- caught Mr. Brown in his mother's
20 house in the bedroom with -- uh -- with the other lady;
21 you were still living there in the house; right?

22 A. Yes sir.

23 Q. At the -- uh -- And you that you worked -- you were
24 working during this time: January, February, at the
25 Prince George Nursing Home here in --

TESTIMONY OF TYWANDA KEITH

215

1 A. Yes sir.

2 Q. And that is a retirement home --

3 MS. BIAGIANTI:

4 Your Honor, I don't think I went
5 into this prior in my --

6 MR. GOUDE:

7 Yes, you did.

8 THE COURT:

9 Hold on a second. All right. Is
10 your objection on relevance?

11 MS. BIAGIANTI:

12 Yes sir.

13 THE COURT:

14 Uh -- Anything else?

15 MS. BIAGIANTI:

16 No sir.

17 THE COURT:

18 Overruled. Let's proceed.

19 RECROSS-EXAMINATION BY MR. GOUDE CONTINUED:

20 Q. Is Prince George Nursing Home here in Georgetown?

21 A. Yes sir.

22 Q. And that's the retirement home slant nursing home?

23 A. Yes sir.

24 MR. GOUDE:

25 Thank you. That's all I have.

1 THE COURT:

2 You may step, down ma'am.

3 Ladies and gentlemen of the jury,
4 depending on how long the next witness takes, this may be
5 the last witness of the day; but -- uh -- let me have a
6 conference with the attorneys, and give y'all a chance to
7 take a break.

8 So if you would, please step to
9 the jury room; and I'll let you know -- uh -- whether or
10 not we're going to break for the day in little while.

11 Y'all may step to the jury room.

12 (WHEREUPON: The jury empanelled
13 in the case withdrew from the courtroom at 4:56 PM; July
14 29th, 2008; and was no longer present during the
15 following proceedings.)

16 THE COURT:

17 All right.

18 Let me put on the record some
19 things we did at the bench conferences, so that we'll
20 know everything we talked about.

21 Uh -- We had three bench
22 conferences.

23 The first one was -- uh -- the --
24 uh -- Solicitor; she approached, and she wanted to know
25 if she could ask the -- uh -- uh -- witness regarding the

1 restraining order she took out for him.

2 Uh -- I asked for the purpose of
3 it. Mr. Goude said he objected; and I asked for the
4 purpose of it. And she said just to show her state of
5 mind.

6 And my concern was:

7 Well, if they believe what she
8 says occurred, at this stage, there's no impeachment of
9 that; and -- uh -- uh -- I would not permit that
10 question.

11 Uh -- The next thing came up about
12 -- uh -- Mr. Goude's question about engagement ring and
13 whether the Defendant ask her to marry him.

14 And -- uh -- the solicitor
15 approached and said: she felt that opened the door to
16 other questions.

17 Mr. Goude didn't indicate one way
18 or the other about it.

19 Uh -- But in any event, I said:

20 Well yours questions, if they are
21 about the issues he brought up, I'll let you ask them.
22 And she did.

23 Uh -- She said something about
24 there would be some evidence -- some testimony that -- uh
25 -- from other witnesses -- that the Defendant later went

1 to -- a police station; and she had said the ring had
2 been stolen or something of that nature; which -- uh --
3 uh -- she has -- uh -- witnesses about that. And that
4 would be interesting if Mr. Goude did open that up.

5 Uh -- And the last -- uh -- thing
6 that came up is:

7 Uh -- The solicitor wanted to have
8 the witness -- uh -- uh -- turn on the phone so she could
9 show what numbers had been dialed from that phone in
10 response to Mr. Goude's questions about whether she
11 called him or not; and I permitted that to occur.

12 Those are the three bench
13 conferences.

14 Did I leave anything out about our
15 conversations at the bench, Ms. -- uh -- Biagianti?

16 MS. BIAGIANTI:

17 No sir.

18 THE COURT:

19 Mr. Goude?

20 MR. GOUDE:

21 Not that I can remember, Judge;

22 no.

23 THE COURT:

24 All right, good.

25 Now -- uh -- How long does your

1 next witness take?

2 MS. BIAGIANTI:

3 I suspect he'll be lengthy;
4 because he's the second victim, Your Honor; probably an
5 hour and a half or two hours.

6 Ms. Keith was about an hour and a
7 half; so I think his will be about the same.

8 THE COURT:

9 All right.

10 Well, The Court reporter; we will
11 not have him tomorrow; and I'd rather not have witnesses'
12 testimony intercepted in between.

13 We'll have another court reporter
14 tomorrow because I think -- uh -- you're going out of
15 town somewhere, I think.

16 So instead of inter -- uh --
17 interspersing -- Is there a chance that we'll get this
18 case in to the jury tomorrow?

19 MS. BIAGIANTI:

20 Yes sir. I plan -- I'll be done
21 by noon, depending on what time we start.

22 THE COURT:

23 Okay. Well, let's start at 9:00
24 o'clock. Lets just start at 9:00 tomorrow. That way we
25 can make sure we get as much as we can get in tomorrow.

1 All right; bring the jury back
2 out, please.

3 (WHEREUPON: The jury empanelled
4 in the case was escorted back into the courtroom at 5:03
5 PM, July 29th, 2008; and was in fact present during the
6 following proceedings.)

7 THE COURT:

8 Well, Mr. Geer, you're learning
9 one of the rules of forepersons; you don't let the jury
10 come out and everybody's in the bathroom.

11 'Nothing more embarrassing to have
12 everybody come and have a seat; and all of a sudden
13 everybody runs out the bathroom there.

14 So when somebody says they're
15 ready to bring you out, you let them know: someone's in
16 the restroom and you'll let them know when you're ready
17 to come. That way, everyone comes out at the same time.

18 The next witness is going to be
19 rather lengthy, so -- uh -- we're going to do that
20 tomorrow.

21 Our court reporter, here, is -- uh
22 -- won't be with us tomorrow. We have another court
23 reporter. And what happens is:

24 With the record of these things --
25 you know -- they're going to have compare and -- and put

1 the records together.

2 It's probably better not to have a
3 witness that may not finish today with one court reporter
4 and go in the middle of it with another one tomorrow.

5 Uh -- So -- uh -- we're going to
6 start at 9:00 tomorrow morning. And -- uh -- we'll start
7 then with the next witness in the case.

8 As I told you when you broke for
9 lunch, please do not -- uh -- discuss this case with
10 anyone at home; anything about it; even the nature of the
11 charges.

12 Because if you do, it's human
13 nature -- I mean, you can imagine if someone mentioned to
14 you: I'm so and so doing such; and you're going to
15 comment. Because it's just human nature to do it.

16 So the best thing is not to say
17 anything to anyone other than:

18 I'm on jury duty. I can't discuss
19 anything about what the nature of the charges are or
20 anything else.

21 That's the only way to make sure
22 that -- uh -- your decision is made on the evidence
23 that's presented in the courtroom and the law as I
24 instruct it to you.

25 With that in mind, one rule I say

1 is:

2 When you leave here tonight, don't
3 discuss this matter with your -- with your friends, your
4 family, your enemies, your mirror, or your dog or your
5 cat.

6 And that's the best way to do it;
7 all right.

8 We'll see you then tomorrow
9 morning at 9:00 o'clock in the jury room. See you at 9
10 a.m. in the jury room.

11 By the way, since they're coming
12 so early, Mr. Clerk?

13 CLERK:

14 Yes sir.

15 THE COURT:

16 How about have a little goodies
17 for them in the morning.

18 CLERK:

19 Yes sir.

20 CLERK:

21 Good; we'll have surprise goodies
22 in the morning.

23 We'll see y'all tomorrow morning
24 at 9:00 o'clock.

25 (WHEREUPON: The jury empanelled

1 in the case withdrew from the courtroom at 5:04 PM, July
2 29th, 2008; and was no longer present during the
3 following proceedings.)

4 THE COURT:

5 All right.

6 Uh -- Uh -- Then we'll see you all
7 then -- uh -- tomorrow morning.

8 Ms. -- uh -- Biagianti, I told the
9 jurors to call back tomorrow after six. I get the
10 feeling we're not going to need that jury this week; but
11 -- uh --

12 MS. BIAGIANTI:

13 No sir. We will not need them.

14 THE COURT:

15 But just to be safe, we'll call
16 them back tomorrow.

17 All right; we'll see y'all
18 tomorrow.

19 Uh -- Let me -- uh -- Did you know
20 that -- uh -- a hundred and seven pounds -- something I
21 charged over in Scotland turns out to be \$228.00.

22 MS. BIAGIANTI:

23 Well, what did you spend that
24 hundred and seven pounds on?

25 THE COURT:

1 I didn't ask you to ask me any
2 questions.

3 (Laughter Erupts.)

4 I'm not over there.

5 Thank y'all. We'll see you all
6 tomorrow.

7 WHEREUPON: THERE BEING NOTHING
8 FURTHER TO BE HEARD ON THIS DATE IN THIS PARTICULAR
9 MATTER, THE FIRST DAY'S PROCEEDINGS WERE CONCLUDED AT:
10 5:06 PM, JULY 29TH, 2008.)
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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 29th day of July, 2008;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of October, 2008.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) INDICTMENT NO. 08-GS-22-213
08-GS-22-214
08-GS-22-215

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
-VS-)
ROBERT DEXTER BROWN,)
DEFENDANT.)

TRANSCRIPT OF RECORD
PORTION OF TRIAL

Wednesday & Thursday
July 30 & 31, 2008
Georgetown, S. C.

B E F O R E:

HONORABLE JAMES E. LOCKEMY, JUDGE, AND A JURY

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

DORIE C. BIAGIANTI, ESQUIRE
Assistant Solicitor, Fifteenth Judicial Circuit
Attorney for the State

C. REUBEN GOUDE, ESQUIRE
Public Defender for Georgetown County
Attorney for the Defendant

LINDA W. MCCALL
OFFICIAL REPORTER

INDEX

WEDNESDAY, JULY 30, 2008

(SW) STATE'S WITNESSES

(DW) DEFENDANT'S WITNESS

TRIAL CONTINUED

NOTE: FIRST PART OF TRIAL TAKEN BY ANOTHER COURT REPORTER

DISCUSSION REGARDING JUROR #3, ALTERNATE 3

(SW) OFFICER PAMELA KOSIAK

DIRECT EXAMINATION BY MRS. BIAGIANTI 7

CROSS EXAMINATION BY MR. GOUDE 12

(SW) LEE EPPS

DIRECT EXAMINATION BY MRS. BIAGIANTI 13

CROSS EXAMINATION BY MR. GOUDE 35

REDIRECT EXAMINATION BY MRS. BIAGIANTI 37

(SW) KATHY BROWY

DIRECT EXAMINATION BY MRS. BIAGIANTI 39

CROSS EXAMINATION BY MR. GOUDE 58

REDIRECT EXAMINATION BY MRS. BIAGIANTI 59

(SW) SGT. JOANN CLAREY

DIRECT EXAMINATION BY MRS. BIAGIANTI 61

CROSS EXAMINATION BY MR. GOUDE 64

REDIRECT EXAMINATION BY MRS. BIAGIANTI 66

(SW) DR. HEATHER JUSTICE

DIRECT EXAMINATION BY MRS. BIAGIANTI 68

CROSS EXAMINATION BY MR. GOUDE 84

		iii
1	THE STATE RESTS	85
2	MOTIONS AND RULING OF THE COURT	86
3	CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT	87
4	<u>(DW) JEAN LOWRIMORE</u>	
5	DIRECT EXAMINATION BY MR. GOUDE	98
6	CROSS EXAMINATION BY MRS. BIAGIANTI	110
7	<u>(DW) HEYWARD MELVIN LOWRIMORE</u>	
8	DIRECT EXAMINATION BY MR. GOUDE	120
9	CROSS EXAMINATION BY MRS. BIAGIANTI	130
10	REDIRECT EXAMINATION BY MR. GOUDE	134
11	RE-CROSS EXAMINATION BY MRS. BIAGIANTI	136
12	JUROR #19 EXAMINED BY THE COURT	137
13	<u>(DW) ALDORA B. BROWN</u>	
14	DIRECT EXAMINATION BY MR. GOUDE	142
15	CROSS EXAMINATION BY MRS. BIAGIANTI	148
16	JURORS #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED	149
17	DECISION OF THE DEFENDANT TO TESTIFY	168
18	REMARKS OF THE COURT	169
19	<u>(DW) ROBERT DEXTER BROWN</u>	
20	DIRECT EXAMINATION BY MR. GOUDE	170
21	CROSS EXAMINATION BY MRS. BIAGIANTI	217
22	MOTION TO SUPPRESS - <u>JACKSON V DENNO</u> HEARING (IN CAMERA)	226
23	<u>(DW) INVESTIGATOR JOHNNELL SPARTMAN (IN CAMERA)</u>	
24	DIRECT EXAMINATION BY MISS BIAGIANTI	228
25	RULING OF THE COURT	243

iv

1	(DW) <u>ROBERT DEXTER BROWN</u>	
2	CONTINUED CROSS EXAMINATION BY MRS. BIAGIANTI	247
3	REDIRECT EXAMINATION BY MR. GOUDE	274
4	RE-CROSS EXAMINATION BY MRS. BIAGIANTI	278
5	THE DEFENDANT RESTS	278
6	MOTIONS AND RULING OF THE COURT	280
7	REQUESTS TO CHARGE	281
8	<u>THURSDAY, JULY 31, 2008</u>	
9	FURTHER RULING OF THE COURT	287
10	CHARGE CONFERENCE	288
11	SUMMATIONS BY	
12	MR. GOUDE	293
13	MRS. BIAGIANTI	343
14	CHARGE OF THE COURT	365
15	MOTIONS AND RULING OF THE COURT	385
16	EXHIBITS AGREED UPON/JURY BEGINS DELIBERATIONS AT 6:04 P.M.	387
17	JURY QUESTIONS AND RESPONSE OF THE COURT	388
18	JURY REACHES VERDICT AT 7:12 P.M.	396
19	VERDICT	397
20	MOTIONS AND RULING OF THE COURT	399
21	SENTENCE OF THE COURT	402
22	REMARKS OF THE COURT	410
23	CERTIFICATE OF THE COURT REPORTER	415

EXHIBITSSTATE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	PHOTOGRAPH		29
2	PHOTOGRAPH		29
5	PHOTOGRAPH		22
6	PHOTOGRAPH		29
8	PHOTOGRAPH		35
9	PHOTOGRAPH		27
10	PHOTOGRAPH		27
11	PHOTOGRAPH		27
12	911 TAPE CD		63
13	LARGE EVIDENCE BAG		34
14	CAD SHEET	62	
15	CD - STATEMENT - BROWN		
16	(NOW COURT'S EXHIBIT #3)	234	
17	CD - STATEMENT - BROWN		
18	(NOW COURT'S EXHIBIT #4)	234	
19	NOTHING OFFERED		
20	MIRANDA FORM	229	
21			
22	NOTE:		
23	STATE'S EXHIBITS #3, #4, #7, #8, 13, #14 AND #16		
24	PRESENTED DURING FIRST PART OF TRIAL TAKEN BY ANOTHER		
	COURT REPORTER.		

vi

DEFENDANT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
2	CALENDAR - 2006-2008	178	
3	PERSONAL PROPERTY RECEIPT		66

NOTE: DEFENDANT'S EXHIBIT #1 PRESENTED DURING FIRST PART OF
TRIAL TAKEN BY ANOTHER COURT REPORTER

COURT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	JUROR SHEET - WILLIAMS		164
2	JUROR SHEET - ARMOUR		164
3	CD - STATEMENT - BROWN		291
4	CD - STATEMENT - BROWN		291
5	JURY QUESTION		389
6	JURY QUESTION		389
7	CERTIFICATE OF PRIOR CONVICTION		
	AND NOTICE TO SEEK LIFE		401

DISCUSSION REGARDING JUROR #3, ALTERNATE

3

WEDNESDAY, JULY 30, 200

TRIAL CONTINUED

NOTE: FIRST PART OF TRIAL TAKEN BY ANOTHER COURT REPORTER

(The Court convenes the trial of this case with all parties present in the courtroom.)

DISCUSSION REGARDING JUROR #3, ALTERNATE

THE COURT: Okay. Be seated everyone.

Ms. McCall, good morning to you.

COURT REPORTER: Good morning, Your Honor.

THE COURT: Now, have you and Gene, have you got everything situated as far as you know where the exhibits that are introduced and those that aren't introduced and you got control of them and you know what witnesses were taken for the first witnesses we've got.

COURT REPORTER: Yes, sir, I do have that information.

THE COURT: Okay. Then, I think we're ready to go, then. Alright.

COURT REPORTER: Thank you, Your Honor.

THE COURT: Thank you.

Okay, now, the parties talked to me in chambers before I came out, and the conversation was Ms. Biagianti happened to be talking with someone within the Solicitor's Office, I think the PTI Office or something and says that last night this person was at a social gathering, and at the social gathering she happened to talk with Juror #3, Travis Armour, our alternate, one of our alternates, one

DISCUSSION REGARDING JUROR #3, ALTERNATE

4

1 of our two alternates, and he mentioned to her that he was on a
2 jury and ABWIK was the charge and that Ms. Biagianti was
3 prosecuting it, ah, and just happened to mention, you know, he was
4 - - and I'm in the courtroom on a case, and it was ABWIK case and
5 that Ms. Biagianti was prosecuting it.

6 Was there anything else?

7 MISS BIAGIANTI: I asked, ah, Christina if she said
8 anything to him, and she said, no, she didn't say anything to him
9 but it was - - -

10 THE COURT: Did she say he said anything about the evidence
11 presented or anything?

12 MISS BIAGIANTI: She didn't tell me anything like that,
13 Your Honor.

14 All she said was he was there and she was listening to his
15 conversation, and that's what it sounded like.

16 THE COURT: Well, did she say that?

17 MISS BIAGIANTI: Yes, sir.

18 THE COURT: Okay.

19 Well, if she said - - -

20 MISS BIAGIANTI: She said she overheard him telling people
21 he was on the jury and that it was ABWIK.

22 THE COURT: So people other than her but nothing other than
23 he was on the jury and the charge was ABWIK?

24 MISS BIAGIANTI: Correct. That's what she told me, Your
25 Honor.

DISCUSSION REGARDING JUROR #3, ALTERNATE

5

1 And the other thing is she did not know his name. I want to
2 put that on the record. She said it was a young fellow probably
3 early twenties, brown hair, medium build, and I looked in the jury
4 room, and he is the only one who fits that description.

5 THE COURT: Well.

6 MISS BIAGIANTI: But she did not know his name.

7 THE COURT: What I suggest we do is wait and see towards
8 the end of the trial if we need an alternate or not. Then I may
9 bring him out and examine him.

10 He did technically violate my direction. I just don't want to
11 upset the jurors and have them wondering what's going on if I
12 dismiss him or dismiss someone right now or get into a
13 interrogation of someone now.

14 The case is probably going to be in the jury's hand sometime
15 today. So I think we need to go ahead and just go ahead and go
16 now, and then I'll examine it later. If at the point in time we
17 need an alternate, I'm going to examine him before then, and if
18 not, before the jury begins to deliberate I'm going to make sure he
19 is the one we're talking about and not some other juror.

20 So, that's where we are in this regard.

21 Anybody object to that procedure?

22 State?

23 MISS BIAGIANTI: No, sir.

24 THE COURT: Defense?

25 MR. GOUDE: Nothing else, Judge. Yes, that's fine with

DISCUSSION REGARDING JUROR #3, ALTERNATE

6

1 us.

2 THE COURT: Okay.

3 Alright. You ready for your next witness?

4 MISS BIAGIANTI: Yes, sir.

5 THE COURT: Alright.

6 Bring the jury out, please.

7 (The jury returns to the courtroom AT 9:33 a.m.)

8 THE COURT: Good morning.

9 Hope y'all had a nice - - did you have a breakfast buffet in
10 there for them in there this morning? Grits, eggs, bacon, the
11 omelets cooked to your choice?

12 JUROR: Not quite, Your Honor. Almost.

13 THE COURT: Almost. Good.

14 Well, we're ready to proceed in this matter.

15 You recall yesterday we had the opening statements as well as
16 one witness, and we'll proceed now with other witnesses.

17 Mr. Clerk, it does seem a little warm in here. I'm not sure
18 why but let's see if we can - - are y'all saying I must be crazy.

19 You looked at me like, "Wait a minute."

20 So, it's cool to you all in here?

21 JUROR: Cool, Judge.

22 THE COURT: Alright. Well, then, do not do anything.
23 Leave it as it is.

24 When we see any little sweat beads coming off any of the
25 jurors' face, we'll then change it.

OFFICER KOSIAK - DIRECT EXAMINATION BY MISS BIAGIANTI

7

1 Alright. We'll now proceed with the next witness in the
2 case.

3 Ms. Biagianti.

4 MISS BIAGIANTI: Thank you, Your Honor.

5 The State would call Pamela Kosiak.

6 This way, please. Have a seat right there.

7 THE COURT: Come around and be sworn, please.

8 (The witness takes the witness stand.)

9 OFFICER PAMELA KOSIAK, being duly sworn,
10 testifies as follows:

11 CLERK OF COURT: Please be seated and state your name for
12 the record spelling your name, please.

13 OFFICER KOSIAK: My name is Officer Pamela Kosiak. Kosiak
14 is K-o-s-i-a-k.

15 THE COURT: Okay. Your witness.

16 MISS BIAGIANTI: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MISS BIAGIANTI:

18 Q. Can you please tell us where you're employed and in what
19 capacity and for how long you've been so employed?

20 A. I work at the City of Georgetown Police Department. I've been
21 employed there for approximately two years, and I protect the
22 public in responding to calls, patrolling the streets and the
23 roadways.

24 Q. And what type of police officer are you?

25 A. I'm a police officer at Level II.

OFFICER KOSIAK - DIRECT EXAMINATION BY MISS BIAGIANTI

8

1 Q. Um, and you already explained to us some of your duties.

2 Is it - - do police street officers often work special detail
3 or, um, overtime at some places around town?

4 A. Yes, we do.

5 Q. Um, where are some of the places you have worked?

6 A. I have worked at various parks for different events that has
7 been held in the city. I've also worked off-duty at Prince George
8 Health Center in Merriville.

9 Q. Directing your attention to January 24th of 2008, were you
10 working off-duty at Prince George Medical Health?

11 A. Yes, I was.

12 Q. Is there anything that strikes you in particular about that
13 day?

14 A. Yes, there is.

15 Q. Tell us about that.

16 A. The victim, Tywanda Keith - - I arrived there.

17 Q. Do you recognize Tywanda Keith in the courtroom today?

18 A. Yes, I do.

19 Q. Can you please point to her and describe an article of
20 clothing she is wearing?

21 A. She's wearing a striped shirt just behind Investigator
22 Spartman.

23 MISS BIAGIANTI: Your Honor, if you'd let the record
24 reflect that she's pointed to the victim, Ms. Keith.

25 THE COURT: The record shall so reflect.

OFFICER KOSIAK - DIRECT EXAMINATION BY MISS BIAGIANTI

9

1 MISS BIAGIANTI: Thank you, Your Honor.

2 Q. Continue.

3 A. I arrived at Prince George for my shift at 8:00 p.m. that
4 night. I was briefed by the person I was relieving that Ms. Keith
5 had let them know that her ex-boyfriend had been coming up there
6 the last few nights just before she was - - -

7 MR. GOUDE: Objection to the hearsay, Judge. This is
8 something the officer is saying that other people told her. That's
9 hearsay.

10 THE COURT: Um, at this stage I will deny the motion but as
11 we go on with this, ma'am, try your best. I think this is
12 foundational and is within our Rule 801 and would be permissible at
13 this time but please try to avoid saying what someone other than
14 the defendant said.

15 Please proceed.

16 OFFICER KOSIAK: Alrighty.

17 Q. So what were you briefed about, excuse me, events that had
18 been going on between Ms. Keith and her ex-boyfriend?

19 A. I had - - I was just advised that he may show up. So I made
20 contact with - - with Ms. Keith. She informed me that her
21 boyfriend Mr. Brown had been coming up there to - - -

22 THE COURT: Now, let's just go on if you would, please,
23 ma'am. I will sustain the objection at this time.

24 OFFICER KOSIAK: Okay.

25 Q. Once you were told that information, what did you do? Were

OFFICER KOSIAK - DIRECT EXAMINATION BY MISS BIAGIANTI

10

1 you on the look-out for someone in particular?

2 A. She gave me a physical description of him, and I proceeded - -

3 -

4 Q. Did someone come to the property fitting that description?

5 A. Yes.

6 Q. And what did that person do?

7 A. I opened the door and asked who he was. He said that he was
8 Dexter, Ms. Keith's brother, and she was expecting him to be
9 picking her up.

10 Q. And what did you do next?

11 A. I made contact with Ms. Keith, and I told her her brother
12 Dexter was here.

13 Immediately, she looked - - -

14 Q. Don't tell what she said.

15 A. Okay.

16 Q. When you told her that information, how did she appear to you?

17 A. She - - she appeared to be afraid.

18 Q. Okay.

19 And in response to what she told you, what did you do?

20 A. I went back to the door. I made contact with Mr. Brown. Asked
21 him why he had lied to me. I told him that I did know who he
22 actually was. He said that he just wanted to talk to her. He
23 wasn't a bad guy.

24 I advised him that he was not welcome on the property anymore
25 and Ms. Keith did not want him around her and to leave her alone.

OFFICER KOSIAK - DIRECT EXAMINATION BY MISS BIAGIANTI

11

1 Q. At that point what did he do?

2 A. He - - we carried on a little small talk. He got back in the
3 Explorer that he arrived in, and I watched him pull out onto Ryan
4 Street.

5 Q. And once he left were you alerted to anything?

6 A. I was.

7 Approximately five minutes later some of the other staff
8 members came up to me and said that they saw. - - -

9 THE COURT: No, ma'am. No, ma'am. Don't tell us what
10 someone said.

11 OFFICER KOSIAK: Okay.

12 Q. Did you become aware that someone was back on the property?

13 A. I did.

14 Q. And did - - what did you do in response to having that
15 information?

16 A. I went outside to an area right near the corner of Maple and
17 Ryan Street where the dumpsters for Prince George Health Care
18 Center are located, and I located Mr. Brown standing there lurking
19 around.

20 Q. What did you tell Mr. Brown at that time?

21 A. I advised him that he was not on the property but I wanted him
22 to leave the area. I did not want him waiting around for Ms.
23 Keith.

24 Q. Did you tell him - - advise him that - - about trespassing at
25 that time?

OFFICER KOSIAK - CROSS EXAMINATION BY MR. GOUDE

12

1 A. I did. I gave him a trespass notice that if he were to come
2 back on the property that he would be arrested.

3 Q. Did you got back and speak with Ms. Keith after that?

4 A. I attempted to go back inside and speak to Ms. Keith. Um, I
5 had found out from other staff members that when I went back in
6 while I was speaking to Mr. Brown, she had another employee sneak
7 her out another door and drive her home while I had him distracted.

8 Q. Thank you.

9 Please answer any questions Mr. Goude may have.

10 THE COURT: Okay.

11 Any cross examination, Mr. Goude?

12 Let's proceed, please.

13 CROSS EXAMINATION BY MR. GOUDE:

14 Q. Pamela, when you were talking to Mr. Brown when he was there
15 asking to speak with Ms. Keith, ah, did you see Mr. Brown's there
16 in the Ford Explorer parked or at the trash dumpsters?

17 A. He was the passenger in the Ford Explorer. I did not look in
18 the vehicle. He advised me that it was his mother that brought him
19 there, though.

20 Q. Okay.

21 And he said his name was Dexter?

22 A. That is right.

23 Q. Okay.

24 Thank you very much.

25 THE COURT: Anything else?

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

13

1 MISS BIAGIANTI: No, sir.

2 THE COURT: You may be excused.

3 Any need for this witness to remain or can she return to her
4 duties?

5 Any objection?

6 MISS BIAGIANTI: She can return to her duties, Your Honor.

7 THE COURT: Any objection, Mr. Goude?

8 MR. GOUDE: No, sir.

9 THE COURT: You may return to your duties, then.

10 Thank you very much.

11 (The witness leaves the witness stand.)

12 THE COURT: Next witness.

13 MISS BIAGIANTI: The State would call Lee Epps to the
14 stand, Your Honor.

15 (The witness takes the witness stand.)

16 LEE EPPS, being duly sworn, testifies as
17 follows:

18 CLERK OF COURT: Please be seated. State your name for the
19 record spelling your last name.

20 MR. EPPS: First name Lee. Last name Epps, E-p-p-s.

21 THE COURT: Okay. Your witness.

22 DIRECT EXAMINATION BY MISS BIAGIANTI:

23 Q. Okay, Mr. Epps, you're going to have to keep your voice up
24 because I know you speak softly.

25 Tell the jury who old you are.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

14

- 1 A. Thirty-eight.
- 2 Q. And are you married?
- 3 A. Single.
- 4 Q. Do you have any children?
- 5 A. Two twin boys.
- 6 Q. Tell us their names and ages.
- 7 A. Daniel and David, twelve years old.
- 8 Q. I'm sorry?
- 9 A. Daniel and David, twelve years old.
- 10 Q. Twins?
- 11 A. Twins.
- 12 Q. Do you know the other victim in this case, Ms. Tywanda Keith?
- 13 A. Yes, I do.
- 14 Q. And how long have you known Ms. Keith for?
- 15 A. Approximately about five, six years in the singing field-wise.
- 16 Q. Um, how do you know?
- 17 A. Well, through singing, basically.
- 18 Q. Through singing.
- 19 A. Right.
- 20 Q. And is it fair to say you are boyfriend/girlfriend at this
- 21 time?
- 22 A. Yes, ma'am.
- 23 Q. Ah, tell us if you can approximately when you began dating
- 24 Tywanda.
- 25 A. Approximately around and off on in November.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

15

1 Q. Okay.

2 A. In November.

3 Q. And tell us when you began - - you live together now?

4 A. Yes, I do.

5 Q. When did you begin living together?

6 A. Physically the first part of January, 2008.

7 Q. And where are you living?

8 A. Andrews.

9 Q. Did she move into your house?

10 A. Yes.

11 Q. And for the record give us your home telephone number.

12 A.

13 Q. Are you currently working, sir?

14 A. Disabled.

15 Q. Tell us a little bit about how you became disabled.

16 A. Got caught up in a corn auger back in 1993 on my job.

17 Q. Did you have some pretty serious injuries?

18 A. Yes, I did, plus, I'm a diabetic also.

19 Q. And are you right-handed or left-handed, sir?

20 A. Right-handed.

21 Q. Do you know the defendant, Robert Dexter Brown?

22 A. No, I don't.

23 Q. Do you know him since this - - have you become aware of him
24 since this incident?

25 A. What - - I don't understand that question.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

16

1 Q. Did you meet Mr. Brown before this incident?

2 A. No, I haven't.

3 Q. The day of the incident you saw Mr. Brown?

4 A. First time.

5 Q. Do you know, ah, who Mr. Brown is if you saw him?

6 A. No, ma'am.

7 Q. You wouldn't know who he is if you saw him?

8 A. No, ma'am.

9 Q. Now, prior to meeting him for the first time as you said the
10 day of this incident, had you had occasion to speak with him on the
11 phone?

12 A. Several times.

13 Q. And was this contact initiated by you or by Mr. Brown?

14 A. By Mr. Brown.

15 Q. How many times do you think - - you said several but
16 approximately how many times do you think you had unwanted phone
17 conversations?

18 A. Twelve.

19 Q. Twelve?

20 A. Twelve.

21 Q. And did you make it clear to Mr. Brown that these were
22 unwanted conversations?

23 A. Yes, ma'am.

24 Q. And at some point did you seek law enforcement - -

25 A. Yes, ma'am.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

17

1 Q. -- help?

2 A. Yes, ma'am.

3 Q. Now, without getting into the substance of the conversation,
4 at some point did you give the defendant a name of who you were?

5 A. Yes, I did.

6 Q. And what did you tell him?

7 A. Derek.

8 Q. And why did you tell him Derek?

9 A. Because I didn't know who he was, and he was -- kept calling
10 my house.

11 Q. Was Derek a fake?

12 A. A fake name, right.

13 Q. Now, again, without elaborating on the conversations, based on
14 these unwanted conversations, how would you feel?

15 A. Very afraid.

16 Q. And as a result of these conversations were you aware of
17 whether Ms. Keith and Mr. Brown were still boyfriend/girlfriend?

18 A. No, they were not.

19 Q. Do you see Mr. Brown in the courtroom today?

20 A. Yes, I do.

21 Q. Please point to him and tell us an article of clothing he's
22 wearing.

23 A. He wearing a white shirt and a blue jacket.

24 MISS BIAGIANTI: Your Honor, please let the record reflect
25 that he's pointing to the defendant.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

18

1 THE COURT: So, reflected.

2 Q. Now, were you aware that there were phone calls to Tywanda as
3 well?

4 A. Yes, ma'am.

5 Q. And how was it that you know that?

6 A. Because certain times he called, I picked the phone up twice.

7 Q. While she was at the house.

8 A. Right.

9 Q. Directing your attention to February 21st of this year, tell
10 our jury a little bit about that morning and what your plans were
11 for the day an so forth.

12 A. Okay.

13 On that date, February 21st, our plan was to take her to the
14 tax place.

15 Q. Take who?

16 A. Tywanda to the tax place to have her taxes done and to drop
17 off some clothes at the Salvation Army and for me to go pay my
18 cable bill.

19 Okay.

20 After we got there I drop off - - -

21 A. Got where?

22 Q. To the tax office, Palmetto Tax. When we got there, she got
23 out the car. For about, I'd say ten seconds she was standing on
24 the outside and we was joking with one another.

25 After that I pulled off. She went into the tax office. I

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

19

1 went to Time Warner Cable about - - stayed there about not quite a
2 minute. Something told me to go on back.

3 I got - - as I got back to the Palmetto Tax place - - -

4 Q. And you were - - how far is Time Warner Cable and Palmetto
5 Tax?

6 A. Just across the street. Probably - - just across the street.

7 Q. Different shopping centers?

8 A. Right. Different plazas.

9 Q. Right.

10 A. As I got back into the parking lot for some reason my mind
11 told me just to back up in a parking space, not to pull forward.

12 As I was backing - - I was sitting in my car I noticed Mr.
13 Brown coming on his bicycle.

14 Q. Well, wait. Did you know who Mr. Brown was at the time?

15 A. I didn't know who it was. I didn't know who it was.

16 Q. Just some guy on a bicycle?

17 A. Some guy on a bicycle. Coming from next to the liquor store
18 and Frazer riding. So I was sitting in the car saying to myself,
19 "Man, here's somebody coming up to get their money on a bicycle.
20 That must be nice."

21 After that, as he got pulled up in front of Palmetto Tax
22 Office, he got out of - - off his bicycle. He looked in the
23 window. After he done that he came back and sat about ten seconds.
24 He reached both hands into his pockets, and he took them out and he
25 went on in the tax office. So, I'm still sitting in the car at

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

20

1 this time.

2 About ten seconds later he comes with Tywanda Keith in a
3 headlock form out of the - - pulling her. Like I said, it was a
4 forceful pull because she was dragging. He was, like, pulling her
5 along under his arm.

6 I stood and got of my car because I didn't know who he was.

7 At this time he - - -

8 Q. What were you thinking at this point?

9 A. I was - - really, I was upset because I didn't know who the
10 guy was or what was going on. I thought he was going to cut her or
11 something like that.

12 Q. You thought he was going to hurt her?

13 A. Was going to cut her.

14 At that point he shoved her against the wall. At that point
15 I got out of my car.

16 Q. Let's stop for a minute.

17 MISS BIAGIANTI: Your Honor, can I approach the witness?

18 Q. Mr. Brown, I'm showing you State's Exhibit #8. It's already
19 in evidence.

20 Describe or tell us which wall that as you said Mr. Brown
21 pushed Ms. Keith against it.

22 A. This come out the front the door, it's this wall right here.

23 Q. Alright.

24 I'm sorry. You can continue.

25 A. Okay.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

21

1 At that time I'm getting out my car. I'm coming towards them.
2 The whole time he have her blocked under him with both hands on the
3 wall like this. She sees me coming. He never sees me.

4 When I got to about here to where you sitting, that's when she
5 yells to me, "Lee, please don't come here. He has a knife."

6 At that time he turns around to me. I started backing up. He
7 turns around to me and says, "Yeah, by the way. Me and you need to
8 have a talk."

9 As I was trying to go back in - - to get back towards the tax
10 office when I went to put my hand on the door before I got in the
11 door good, he done like that. He caught me in the side.

12 As I'm already in the tax place, he never came in behind me
13 but I - - -

14 Q. Did you know at that point that he had gotten you in the side?

15 A. No, I did not. I didn't notice. I know I had felt - - he
16 reached for my side.

17 Q. So, you didn't know you were actually stabbed?

18 A. At that time, no, I didn't.

19 At that time he still got the door open but he never came in.

20 At that time I'm going back next to the door with both of my
21 hands down. At that time he stuck me in the side - - in the hand.
22 That's when I threw my hand out and my hand started bleeding.

23 At that time - - -

24 Q. Let me stop right there.

25 I'm showing you State's Exhibit #3 that's already in evidence.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

22

1 That's the wound on your hand?

2 A. Yes, ma'am.

3 Q. Caused by Mr. Brown?

4 A. Yes, ma'am.

5 Q. I'm showing you State's Exhibit #4 already in evidence.

6 Was that just another view of the cut?

7 A. Yes, ma'am.

8 Q. And this is State's Exhibit #5 for I.D. Do you recognize
9 this?

10 A. Yes, ma'am.

11 Q. And what is that?

12 A. My left hand.

13 Q. Is that a picture of - - who is that a picture of?

14 A. Me.

15 MISS BIAGIANTI: Your Honor, at this time I would move
16 State's Exhibit #5 for I.D. into evidence.

17 THE COURT: Okay. Any objection?

18 MR. GOUDE: No objection, Your Honor.

19 THE COURT: In evidence, Exhibit #5.

20 (The Court Reporter accepts State's Exhibit #5 into evidence.)

21 Q. Where was this picture taken at?

22 A. At the hospital.

23 MISS BIAGIANTI: Your Honor, I would like to publish this
24 to the jury.

25 THE COURT: You may do so.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

23

1 Q. You can continue.

2 A. Okay.

3 By that time after I was already cut in my hand he had already
4 left and went back to Tywanda. Had her by the - - -

5 Q. Let's pause for a moment right there.

6 What if anything were you doing inside the tax place?

7 A. Excuse me?

8 Q. What if anything were you doing inside the tax place?

9 A. What was I doing inside the tax place?

10 Q. Inside the tax place.

11 A. I was running for my life.

12 Q. Well, did you say anything to anybody?

13 A. I - - I yelled out. I said, "Oh, he got me."

14 Q. Were, ah, were other people in the tax office at this point?

15 A. At that time I noticed two couples in the corner when I first
16 - - when we came in.

17 Q. Two people in the corner?

18 A. Right.

19 Q. Was any employees of the tax office, were they out in the
20 lobby area at this time?

21 A. No, they were all in the back but Miss Kathy, the owner of the
22 place, she did yell. She said, "Do not bring that inside of
23 here."

24 I don't know what she thought - - we were some guys who were
25 coming in fighting.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

24

1 Q. But she said, "Don't bring that in here"?

2 A. "Don't bring that inside our office."

3 Right.

4 Q. Okay, and then what happened?

5 A. After that, he had already went back to where Ms. Keith was
6 against the wall. Grabbed her by the hair pulling her towards
7 Fred's.

8 At this time Miss Kathy came on the outside to see what's
9 going on. She had the phone in her hand but she didn't know at
10 the moment.

11 I yelled for - - -

12 Q. She didn't know what was really going on?

13 A. She didn't know what was going on but she saw him pulling her
14 by her head towards Fred.

15 That's when I yelled to her. I said, "Don't stand there.
16 Call 911. He don't suppose to even be around her."

17 That's when she got on the phone, and she started calling 911.

18 Q. So you said, "She - - he's not even suppose to be around her."

19 A. Suppose to be around her, right.

20 Q. Okay.

21 Keep going.

22 A. At that time he's pulling her by her head trying to get her
23 towards Fred's. I'm running to my car. Get's in my car - - -

24 Q. Were you pleading at this point?

25 A. Yeah, I was bleeding real bad.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

25

1 Q. Then what?

2 A. I go - - made it to my car. Got in my car and was following
3 behind him. As soon as I got to Fred's that's when somehow she
4 got away. She was around my car because the way my car's designed,
5 every time she'd try the door, it keep locking on her. It keep
6 locking.

7 Okay.

8 Q. Before she tried to get in your car, did you see anything in
9 relation to her purse?

10 A. Yes. He was - - he try to push her down the ground and her
11 purse, the strap popped. I noticed that.

12 Q. Did you see, um, what if anything, um, was taken from her
13 purse?

14 A. Her cell phone.

15 Q. Keep going.

16 A. At that time he got her in the front of Fred's. The door
17 finally opened. She jumps in the backseat. At this time I'm
18 saying to myself, "He just stabbed me. I'm going to run him over."

19 At this time as he passed, he riding on his bicycle. It's
20 like a corner. He's riding over that way.

21 I say, "I'm going over there. I'm going to hit him."

22 She said, "No, let's go to the Sheriff Department."

23 Okay. So we went - - I turned left. At this time he made
24 a right to try to go to the project.

25 As I'm stopped completely at the light, I said, "No, he look -

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

26

1 - he just stabbed me. I'm not going on with that."

2 I turned around in the road. Went back after him. At this
3 time he'd already turned off to go in the project. He drop his
4 bike behind a tree. I never went - - -

5 Q. Let me stop you right there.

6 I'm showing you what's marked as State's Exhibit #10 for I.D.
7 Do you recognize that?

8 A. Yes, ma'am.

9 Q. How do you recognize that?

10 A. It's Fred's parking lot.

11 Q. Okay.

12 MISS BIAGIANTI: Your Honor, at this time I'd move State's
13 Exhibit #10 into evidence.

14 THE COURT: Any objection?

15 MR. GOUDE: No objection, Judge.

16 THE COURT: Ten is in evidence.

17 THE COURT: Twelve - - -

18 MISS BIAGIANTI: State's #10, #11 and #12.

19 THE COURT: After you show I.D. for it, I'll put them in.

20 MISS BIAGIANTI: Showing you's State's Exhibit #11 for I.D.

21 Do you recognize that?

22 A. Yes, ma'am.

23 Q. And what is that?

24 A. Fred's parking lot.

25 Q. And State's Exhibit #12 for I.D., do you recognize that?

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

27

1 A. Yes, ma'am.

2 Q. And what is that?

3 A. Palmetto Tax Office.

4 Q. The front of the building?

5 A. The front of the building.

6 MISS BIAGIANTI: Your Honor, at this time I'd move #10, #11
7 and #12 into evidence.

8 THE COURT: Without objection, they are in evidence.

9 (The Court Reporter accepts State's Exhibits #10, #11 and #12
10 into evidence.)

11 Q. So, describe for the jury exactly which way you were traveling
12 and you say he traveled.

13 A. Okay.

14 When we got right here to the liquor store, there's a corner
15 you can cut back behind the liquor store. I'm here right at the
16 stop sign right here. I turned left to go to the red light. He
17 come out of the corner. So I guess he thought I was going to come
18 behind him with the car. So he come out with me sitting here and
19 was trying to make it back this - - he went that way.

20 At that time I'm - - like I told you. I'm - - I stopped, and
21 I backed up, and I went behind him. He's already off the road
22 completely riding the bicycle on the sidewalk.

23 So, when - - as he turned off, I turned around.

24 I say, "Well, we going - - let's go to the Sheriff
25 Department."

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

28

1 He's behind a tree, laughing on his bicycle, and I roll my
2 window down.

3 I said, "That's alright. I will get you."

4 And we went straight to the Sheriff Department.

5 As we got to the Sheriff's Department, they came running out.
6 My hand was hold up. Didn't know that my side was stabbed.

7 Q. You didn't know your side was stabbed?

8 A. Never knew. I was in so much a shock, I didn't know what was
9 going on.

10 Q. How much blood was there?

11 A. It was bleeding real bad.

12 Q. What happened when you got to the Sherif's Office?

13 A. When I got to the Sheriff Office, they was tending to my hand.
14 During that time, Tywanda - - Ms. Keith said, "Lee, your side is
15 bloody. He must be cut - - -"

16 And when the officer hold my shirt up, that's when he say,
17 "Oh, he got you real good."

18 And from there the EMS came and treated me from there and took
19 me to the emergency room.

20 Q. How were you feeling at this time?

21 A. Basically, laughing because everything was in shock. I never
22 thought it - - it would happen.

23 Q. What was Tywanda - - how was she acting?

24 A. She was very scared. She was very scared.

25 Q. Once you got to the hospital, were you seen and treated?

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

29

1 A. Yes, ma'am.

2 Q. At that time did you notice whether Ms. Keith had any injuries
3 on her?

4 A. After they stitched my hand up, I know - - when she came in to
5 see me, she had a big gash around her neck.

6 MISS BIAGIANTI: For the record, I'm showing the witness
7 Exhibits #1, #2 and #6 for I.D.

8 MR. GOUDE: No objection, Your Honor.

9 THE COURT: What numbers?

10 MISS BIAGIANTI: It's #1, #2 and #6, Your Honor.

11 THE COURT: #1, #2 and #6 in evidence.

12 (The Court Reporter accepts State's Exhibits #1, #2 and #6
13 into evidence.)

14 Q. Tell us what that is?

15 A. That's the scar around her neck.

16 Q. Is that what you noticed at the hospital?

17 A. Yes, ma'am.

18 Q. Did she have that, ah, cut on her neck before she was at
19 Palmetto Tax Service that day?

20 A. No, ma'am.

21 Q. Do you know where the picture was taken?

22 A. At the hospital.

23 Q. And #2? Tell us what this is.

24 A. This is the scar around her neck.

25 Q. A different further back view?

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

30

1 A. Yes, ma'am.

2 Q. Again, was this here before you went to Palmetto Tax Service
3 that day?

4 A. No, ma'am.

5 Q. And showing you #6, tell us what that is?

6 A. That's the stab wound in my side.

7 Q. Did you have that before you went to Palmetto Tax service?

8 A. No, ma'am.

9 MISS BIAGIANTI: Your Honor, I'd like to publish these to
10 the jury.

11 THE COURT: Yes, ma'am.

12 Q. How many times did you go back to the hospital following this
13 incident?

14 A. Three times.

15 Q. Including February 21st?

16 A. Right.

17 Q. Tell us what if any other medical professional you've seen
18 besides those three times at the emergency room because of these
19 injuries?

20 A. Well, they referred me to a hand specialist because I have a
21 lot of numbness. I went to - - it was March 4th.

22 Q. Who did you see?

23 A. It was Dr. Hansen, a hand specialist in Conway.

24 Q. Dr. Hansen, a hand specialist in Conway?

25 A. Right.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

31

1 After I got to Dr. Hansen, I explained to him that I had a lot
2 of nerve, you know, numbness. I was assuming it was coming from
3 being a diabetic.

4 So he told me come to find out, he had cut the main nerve and
5 two tendons on these two fingers. So, I still go through therapy
6 right now for the hand. I'm not able to make a fist yet.

7 Q. Now, explain to us the splint that you have on your left hand.

8 A. This is from where he done surgery, and he cut from here to
9 connect the main nerve back to right here.

10 Q. So, you had surgery?

11 A. Had surgery.

12 Q. And I believe you said you're still going to physical therapy?

13 A. Yes.

14 Q. How often to you have to go to physical therapy?

15 A. Three times a week. It already been eight weeks already.

16 Q. And where do you have to go to physical therapy?

17 A. In Conway.

18 Q. Do you have - - I believe you showed us your hand. Do you
19 have any scars from this incident?

20 A. Yes, I do.

21 Q. And tell us where they are.

22 A. The scar is on the side, stab wound, and it still bothers - -
23 it bothers me at nighttime basically. That when the hand really
24 get bad at nighttime, too.

25 Q. And you already showed us the hand.

11

1 A. Right.

2 Q. Now, I forgot to ask you. Did she -- did she have

3 scars from the cut the day from Dexter Brown?

4 A. She still have the scar on her neck.

5 Q. You can still see it?

6 A. You can still see it.

7 Q. Now, did law enforcement become involved the day of this
8 accident?

9 A. Yes, ma'am.

10 Q. And did you tell the police who had done this to you?

11 A. Yes, ma'am.

12 Q. Who did you tell them did this?

13 A. Dexter Brown.

14 SS BIAGIANTTI: Your Honor, we're going to have to open
15 this bag. We need gloves. This might take a minute.

16 Your Honor, I'm going to be opening State's Exhibit #17 for

17 I.D. For the record it is a brown paper bag with contents in it.

18 Your Honor, showing to Mr. Goude before I pull it out.

19 Your Honor, I just pulled -- there are two shirts in State's
20 Exhibit #17 for I.D. Pulling out one of the shirts.

21 Q. Do you recognize this?

22 A. Yes, ma'am.

23 Q. What is this?

24 A. It's my shirt.

25 Q. Were you wearing this shirt that day?

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

33

1 A. Yes, ma'am.

2 Q. On February 21st?

3 A. Yes, ma'am.

4 Q. What is this stuff?

5 A. It's blood.

6 Q. Was this your undershirt or over-shirt?

7 A. Undershirt.

8 Q. I'm pointing to this right here. What side of the shirt is
9 that on? You were wearing it just like this?

10 A. That's the left side.

11 Q. And what is that right there?

12 A. A knife cut.

13 Q. Did you have this on your clothing before you went to Palmetto
14 Tax Service?

15 A. Yes.

16 Q. You had this before you went to Palmetto Service?

17 A. No, ma'am.

18 Q. This happened while you were at Palmetto?

19 A. Yes, ma'am.

20 Q. How did this happen? Who did this?

21 A. Robert Brown.

22 MISS BIAGIANTI: For the record I'm pulling out the second
23 shirt that was in State's Exhibit #17 for I.D.

24 Q. Do you recognize this exhibit?

25 A. Yes, ma'am.

MR. EPPS - DIRECT EXAMINATION BY MISS BIAGIANTI

34

1 Q. What is it?

2 A. My shirt.

3 Q. Was it your undershirt or your over-shirt?

4 A. Over-shirt.

5 Q. Tell us what this is?

6 A. Knife stab.

7 Q. Did you have this before you went to Palmetto?

8 A. No, ma'am.

9 Q. Well, what is this?

10 A. Blood.

11 MISS BIAGIANTI: Your Honor, at this time I'd move State's
12 Exhibit #17 into evidence.

13 MR. GOUDE: No objection, Your Honor.

14 THE COURT: Okay.

15 It's coming in as a bag and the contents inside the bag. #17
16 in evidence.

17 (The Court Reporter accepts State's Exhibit #17 into
18 evidence.)

19 MISS BIAGIANTI: Your Honor, I'm putting both of the two
20 shirts back into the bag.

21 THE COURT: Okay.

22 Q. If you need me to take them out again I will but can you
23 describe for the record how many holes in the black shirt?

24 A. One.

25 Q. And how many holes were in the blue shirt?

MR. EPPS - CROSS EXAMINATION BY MR. GOUDE

35

1 A. Two.

2 Q. I forgot to you ask you about one thing.

3 MISS BIAGIANTI: Reuben, I just forgot to do this.

4 I apologize. I forgot to do this earlier.

5 Q. I'm showing you State's Exhibit #9. Do you recognize that?

6 A. Yes, ma'am.

7 Q. What is that?

8 A. Palmetto Tax Service.

9 MISS BIAGIANTI: Your Honor, at this time I will move
10 State's Exhibit #9 into evidence.

11 MR. GOUDE: No objection.

12 THE COURT: In evidence.

13 (The Court Reporter accepts State's Exhibit #9 into evidence.)

14 Q. Any question in your mind who stabbed you that day?

15 A. No, ma'am.

16 Q. Who stabbed you?

17 A. Robert Brown.

18 Q. Thank you.

19 Please answer any questions Mr. Goude has for you.

20 THE COURT: Alright.

21 Cross examination.

22 MR. GOUDE: Just a couple, Judge.

23 CROSS EXAMINATION BY MR. GOUDE:

24 Q. Sir, did you have - - on that day, did you have a cell phone?

25 A. No, sir.

MR. EPPS - CROSS EXAMINATION BY MR. GOUDE

36

1 Q. Did - - Mr. Robert Dexter Brown drove up on a bicycle and went
2 into the tax office - - service. Where did he - - where did he
3 park his bicycle?

4 A. Right here - - in front of the door.

5 Q. And it was leaning up against something?

6 A. Yes, sir. It had been pulled right here.

7 Q. What is that, the left of the door?

8 A. The left of the door, exactly.

9 Q. Thank you.

10 Past - - you said past - - to the left of the front door?

11 A. Right.

12 Q. How old did you say you were?

13 A. Thirty-eight.

14 Q. What is your height?

15 A. Five, two to five, six.

16 Q. There's a lot of difference between five, two and five, six.

17 A. Five, six.

18 Q. And what is your weight?

19 A. 160.

20 Q. And you said, ah, when, ah, Ms. Keith got in the car with you
21 after the incident, did you grab her by the front of her
22 sweatshirt?

23 A. Did I grab her where?

24 Q. By the front of her sweatshirt?

25 A. No, I did not.

MR. EPPS - REDIRECT EXAMINATION BY MISS BIAGIANTI

37

1 Q. And as far as the knife goes, really, was that your knife?

2 A. I'm thirty-eight years old. I never carried a pocket knife in
3 my life.

4 Q. And you didn't pull the knife out of your pocket on Mr. Brown?

5 A. I never had a knife.

6 MR. GOUDE: That's all I have, Judge.

7 THE COURT: Okay.

8 Redirect?

9 MISS BIAGIANTI: Briefly, Your Honor.

10 REDIRECT EXAMINATION BY MISS BIAGIANTI:

11 Q. You said you didn't have a knife?

12 A. Never did.

13 Q. Did you see the defendant have a knife?

14 A. He had something in his hand, a sharp object.

15 Q. And how was his hand?

16 A. With it balled up.

17 MISS BIAGIANTI: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. GOUDE: No, sir.

20 THE COURT: You may step down.

21 (The witness leaves the witness stand.)

22 THE COURT: Ladies and gentlemen of the jury, I have a
23 brief hearing on another matter that we're going to do now. So,
24 I'm going to let you take your mid-morning break.

25 If you, um, some of you would like to step outside or

MR. EPPS - REDIRECT EXAMINATION BY MISS BIAGIANTI

38

1 whatever, let the bailiff know, and he'll just walk outside with
2 you.

3 Do not discuss the case at all but we'll take about a twenty
4 minute break now, if you would please.

5 Step to the jury room.

6 Well, y'all can take a twenty minute break. I got another
7 hearing.

8 My Law Clerk sat down beside me, and the first thing he said,
9 "It's hot in here."

10 No, it's not.

11 (The jury retires to the jury room at 10:15 p.m.)

12 THE COURT: Okay.

13 (The Court recesses the trial of this case to address other
14 matters before the Court and thereafter reconvenes the trial of
15 this case.)

16 THE COURT: Alright.

17 Mr. Goude, you ready for the jury to come in?

18 MR. GOUDE: Yes, Your Honor.

19 THE COURT: Bring the jury in, please.

20 (The jury returns to the courtroom at 10:58 p.m.)

21 THE COURT: Okay.

22 Ladies and gentlemen, we're ready now to proceed with the next
23 witness for the State.

24 Ms. Biagianti.

25 MISS BIAGIANTI: Thank you, Your Honor.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

39

1 The State would call Kathy Browy to the stand.

2 (The witness takes the witness stand.)

3 THE COURT: If you would, Mr. Clerk, swear the witness in,
4 please.

5 KATHY BROWY, being duly sworn,
6 testifies as follows:

7 CLERK OF COURT: State your name for the record and spell
8 your last, please.

9 MRS. BROWY: My name is Kathy Browy, Kathy with a K, B-r-o-
10 w-y.

11 THE COURT: Alright.

12 Your witness.

13 DIRECT EXAMINATION BY MISS BIAGIANTI:

14 Q. Good morning, Mrs. Browy.

15 Can you tell us a little bit about yourself - your age, are
16 you married and do you have any children?

17 A. Alright.

18 I am [REDACTED] old. I am married twenty-six years. I
19 have two grown sons, twenty-four and twenty-two.

20 I have lived here in Georgetown County for twenty-six years
21 now.

22 Q. And are you employed currently?

23 A. Ah, I'm double employed.

24 Q. Tell us a little bit about your employment.

25 A. Yes.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

40

1 I, ah, work during the tax season for Palmetto Tax Service and
2 continue to work for them throughout the year as needed, and then
3 during the off - - what I call off-season, I work for Remember When
4 Tours as a tour guide for the historical district and for the
5 Market Place as a cashier there.

6 Q. For those of us who aren't into the tax business, what's the
7 in-season and the off-season?

8 A. Okay. In-season is from January 1st through April 15th full-
9 time. Then after April 15th until December 31st is as on-call
10 needed.

11 Q. And how long have you been with Palmetto Tax Service?

12 A. For over ten years.

13 Q. And where is the location - - the Palmetto Tax Service
14 location here?

15 A. The one here in Georgetown is at [REDACTED] Street, ah,
16 next door to Fred's - - well, in between Fred's and Subway.

17 Q. In the City of Georgetown - -

18 A. Yes, ma'am.

19 Q. - - Georgetown County?

20 A. Yes.

21 Q. And, um, tell us a little bit about your job at Palmetto Tax
22 Service. Do you have a title?

23 A. Yes. I am the manager of the tax office. I oversee training
24 of, ah, tax preparers, oversee the tax forms and, um, applications
25 going out to the IRS. I do all, ah, I'm the only one that does all

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

41

1 corrections if needed during the year of the tax returns.

2 We talk to the clients to get their needed information and
3 their tax forms, the corrected forms that they would need to
4 prepare taxes, and I do the hiring and firing.

5 Q. Okay.

6 MISS BIAGIANTI: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 Q. Okay, Mrs. Browy, I'm showing what's already in evidence,
9 State's Exhibit #11. Describe to the jury what that picture is.

10 A. Okay.

11 This is the parking lot in front of our business. As you can
12 see, this is Palmetto Tax Service. Here's Fred's. Subway's next
13 door, and an insurance company just recently opened up there also.

14 Q. Okay.

15 And showing you State's Exhibit #13 also in evidence, describe
16 that for the jury.

17 A. Okay.

18 This is the reception area. It's actually in an L-form shape.
19 This is the, ah, left side. If you're looking from my office, it's
20 the left side of the reception. This would be off the right side
21 of the front door.

22 Q. And showing you State's Exhibit #14 already in evidence. Can
23 you describe what that is?

24 A. Okay.

25 This is the other way - - that's on the other part of the L-

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

42

1 shape. This is the front of the door. So this would be to your
2 left.

3 Q. Alright.

4 Now, directing your attention to February 21st of this year,
5 were you working at Palmetto Tax Service that day?

6 A. Yes, ma'am.

7 Q. What hours were you working?

8 A. Ah, I start at 7:30 in the morning, and I'm the last to leave
9 at night. So, it's very - - ah, that particular day I did leave
10 around, between ten and ten-thirty that night.

11 Q. Wow, that's a long day.

12 A. Yes, ma'am.

13 Q. Um, tell us about that day.

14 A. Ah, it started off quite normal. Ah, it - - it's all - - at
15 that period of the time frame with our taxes, ah, I do not need a
16 full crew because it's starting to slow down. So, that particular
17 day I only had myself and another tax preparer that was sharing the
18 responsibility of the reception desk.

19 Ah, ah, at that particular time frame, ah, I was in the office
20 with a client, and, ah, my tax preparer was up front because we had
21 had people coming in.

22 And what normally happens when people come into my office is
23 they come straight to the front desk of the reception area, and
24 they sign their name in. Then the receptionist as they came in
25 would call them to the desk and ask them what they were there for

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

43

1 and then would decide how they would be proceeded to be seen and
2 that.

3 Ah, and we - - we did that all the way up until the afternoon.

4 Q. At approximately what time, um - - -

5 A. It was approximately, ah, what I knew of it at least of the
6 sign-in time, ah, ah, Miss Tywanda came in around 2:30 but I was
7 already with a client.

8 She had called asking to see me because she needed a
9 correction done, and that.

10 And I told her to come in anytime during the day, that, you
11 know, I would see her at my availability.

12 Q. And when you say "correction", you mean amendment to the
13 taxes?

14 A. Yes.

15 An amendment to the correct - - because what she had received,
16 she told me on the phone was more W-2's.

17 Q. So, she had already filed, and she got more W-2's?

18 A. Yeah.

19 She filed way in January, at the end of January.

20 Q. Now, you said Tywanda. Did you know Tywanda Keith?

21 A. Yes, ma'am.

22 Q. How do you know Tywanda.

23 A. Well, I've been doing her taxes since I've been working with
24 Palmetto Tax Service, ah, well, since she started coming into the
25 tax office about four or five years now, and that.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

44

1 Q. Describe your relationship. How would you characterize it?

2 A. Ah, business-style. She comes in to - - to do business with
3 me as far as her taxes are concerned and that, and then I see that
4 she gets a return and all.

5 Q. So, you don't socialize with her and go out with her?

6 A. No, I do not know her outside the office.

7 Q. Um, do you see Tywanda Keith in the courtroom today?

8 A. Yes, ma'am.

9 Q. Can you please point to her and describe an article of
10 clothing she's wearing?

11 A. She's got like a burnt orange and black and white striped
12 thing. She's behind that big man - - that's there sitting at your
13 desk.

14 Q. Investigator Spartman?

15 A. Yeah.

16 MISS BIAGIANTI: Your Honor, for the record, please let the
17 record reflect she's pointed to the victim, Tywanda Keith.

18 THE COURT: So reflected.

19 Q. Um, you said it was about 2:30 - - -

20 A. That she signed in.

21 Q. What if any - - what if anything, um, sticks out in your mind
22 about that day?

23 A. Well, my tax preparer had been doing the signing in. She told
24 that there was a couple, Mr. and Mrs. Lowrimore, that ah, were
25 signed first, and they were there to see me which I do their taxes

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

45

1 every years.

2 And she said there is Ms. Keith who needs an amendment but
3 there was a young gentleman that came in that just needed something
4 quick, and she could see to it.

5 I said, "Well, go on ahead and take him to your office."

6 Which her office was right across from mine.

7 And I told to go on ahead and wait for them and just tell Mrs.
8 Lowrimore and Ms. Keith that I'd be with them as soon as I can.

9 Q. Now, let me stop you right there.

10 Just so the jury has a clear picture, tell us where everyone
11 was sitting.

12 Showing you again State's Exhibit #13.

13 A. Okay.

14 Mrs. Lowrimore and Mr. Lowrimore wer sitting in these two
15 seats I believe or it's these two.

16 Q. So, not to the closest to the door?

17 A. No, un-uh, no.

18 Q. Okay.

19 Now, showing you State's Exhibit #14, who was sitting where?

20 A. The tax preparer told me Ms. Tywanda was over here.

21 Q. So, the last seat to the right?

22 A. Yes.

23 Q. Okay.

24 Now, holding up this picture, can you just describe a little
25 bit about the office?

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

46

1 A. Okay.

2 Q. You said it was an L-shape but what else is there?

3 A. Okay.

4 On the L-shape thing, this comes back going towards the other
5 offices where we're located. Along here is a tall wall even taller
6 than this. It actually comes up to my chest, and that surrounds
7 the whole reception area, and the reception area is almost like I
8 would call a pit, and that.

9 Q. And this is where the receptionist would be sitting?

10 A. Yes, and that.

11 Ah, if you show me this, the L - - the wall continues this
12 way. So depending on where you're sitting over here will
13 determine whether or not you can see anything over that wall
14 because it does block your whole view.

15 Q. So, if someone were sitting, um, as you said in these two
16 seats or these two seats - -

17 A. Uh-huh.

18 Q. - - would they have a clear picture of someone sitting, you
19 know, either over here or in that - - -

20 MR. GOUDE: Objection to this - - I believe you've got
21 witnesses that are going to testify that they were sitting there,
22 and they can testify to what they saw, unless this witness is going
23 say - - -

24 THE COURT: Well, the jury - - is your question going to be
25 to say what the witnesses saw or say were the witnesses there?

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

47

1 MISS BIAGIANTI: My question is, "Is she familiar with the
2 business that if she were sitting in this seat right here, would
3 she be able to see the people sitting over here?"

4 THE COURT: I'll permit that question as far as if she's
5 familiar with that room. She works there. She's in the room as
6 far as anyone sitting there can see them.

7 MR. GOUDE: I would object unless it's phrased, Judge, did
8 she, Mrs. Browy, sit in those chairs and see the people sitting to
9 the right.

10 THE COURT: Your objection is noted. Your objection is
11 overruled.

12 Let's proceed.

13 A. Okay.

14 If you're sitting in these two seats, yes, you can see all the
15 way over there but anywhere farther back, ah, you could see this
16 seats very clearly but any of the others, no.

17 Q. And why is that?

18 A. Because of that wall.

19 Q. Okay.

20 Keep going. Proceed to tell us about that day.

21 A. Alright.

22 Ah, so she proceeded to take the young man to the office next
23 to me - - -

24 Q. When you say "she" you're speaking of who is "she"?

25 A. I'm sorry. Ms., ah, Ladona Heywood, the other tax preparer.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

48

1 Now, her office is totally blocked in. So - - -

2 Q. What does she's totally blocked in mean?

3 A. It's like - - it's got - - it's not walls all the way up to
4 the ceiling. It's, ah, what do you call them?

5 Q. Partitions?

6 A. Yes but it's solid partitions. It's made out of wood.

7 Q. So there are no windows?

8 A. Ah, I'm the only one that has a window in the offices. So
9 she was totally closed off, and that.

10 Q. And describe your window for us.

11 A. My window is I'm sitting here. My window is directly in front
12 of me facing the reception and the front door so that I can see
13 when people are coming or going and, ah, we do have it where I can
14 close it. It's a two-way type thing where on the reception side
15 it's a mirror but on my side I can see through.

16 Q. So, you mean a one-way mirror?

17 A. Yeah.

18 But, ah, when - - when it's only me and one other client, I
19 always keep that window open.

20 Q. Why is that?

21 A. Just so I can hear better of things going on in the office to
22 be more aware of what my surroundings are.

23 Q. Okay.

24 A. And that.

25 Ah, and it was shortly after Ms. Heywood had taken the man.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

49

1 Ah, I was just about done with my client when I heard this banging
2 on my, ah, outer window. It's a large - - as you saw it was total
3 pictures windows and everything, and I thought somebody was coming
4 through. That's how hard it was being hit.

5 Then as I was coming out of my office, a young man rushed in
6 and said, "Call 911. He's going to hurt her."

7 Q. Now, let me pause right there.

8 Do you see that young man in the courtroom today?

9 A. Yes, ma'am.

10 Q. Ah, can you please point to him and describe an article of
11 clothing he's wearing.

12 A. Yes. He's sitting next to Ms. Tywanda, total black in a
13 black shirt, black pants.

14 Q. Okay.

15 MISS BIAGIANTI: Your Honor, please let the record reflect
16 she's pointed to the victim, Lee Epps.

17 THE COURT: So reflected.

18 A. Okay.

19 Q. I'm sorry.

20 A. And, ah, I said, "I don't want this in my office, and I'm
21 calling 911. So I - - -

22 Q. Did you know what was happening at this point?

23 A. No, no.

24 All - - all I knew was there was a confrontation going out in
25 front of my office and I wanted it stopped, and I'm always told.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

50

1 Call 911.

2 Q. So, then what happened?

3 A. So, I went into the reception area, picked up the remote
4 phone.

5 Q. Cordless phone?

6 A. Cordless phone.

7 Q. Okay.

8 A. And came back around the wall of the reception desk coming
9 towards the reception area to the front door when the other
10 gentleman came in.

11 Q. And when you say "other gentleman", do you see him in the
12 courtroom today?

13 A. Yes, ma'am.

14 Q. Can you please point to him and describe an article of
15 clothing he's wearing?

16 A. Yes, ma'am.

17 He's the gentleman over there and I believe a brown suit, the
18 green colored tie.

19 MISS BIAGIANTI: Okay.

20 Your Honor, please let the record reflect she's pointing to
21 the defendant.

22 THE COURT: So reflected.

23 A. Okay.

24 And he told - - he looked at that man - - the first man that
25 came in and said that, "We're not done. It's going to be over with

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

51

1 you."

2 Q. Okay.

3 A. And I yelled. I said, "I want you out of my office. I'm
4 calling 911. The police are going to come."

5 Q. At this point how would you describe the - - the young man who
6 - - who came in and said - - -

7 A. He was quite frightened. He was quite frightened and scared.

8 Q. Did you notice anything about his appearance at that point?

9 A. Ah, not at that point.

10 Q. Okay.

11 A. No.

12 So, ah, ah, the other man went out the door.

13 Q. When you said "other man" are you referring to the - - the
14 defendant?

15 A. This man.

16 Q. Okay.

17 A. Yeah. He went out the door. The young lady was still
18 outside and that.

19 Q. And when you say "young lady" you mean Ms. Keith?

20 A. Yes, Ms. Keith. I saw her outside.

21 Mr. Epps and I went to the door. I went to the door and told
22 Ms. Keith to come on inside the office. I called 911, and that.

23 At that point in time Mr. Brown grabbed Ms. Keith in a neck
24 hold like this and started pulling her towards Fred's.

25 Q. How was - - describe Ms. Keith for me at that point.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

52

1 A. She was scared.

2 Q. And why do you think she was scared?

3 A. And the reason is because her eyes were - - I mostly saw
4 whites and to me that's a frightened person and that, and, ah - - -

5 Q. Could you say whether she was complying, not complying? What
6 was she doing?

7 A. He was having a - - a tough time walking back with her but
8 he was talking to her. I could not hear what he was telling her
9 but he was talking to her, and she just - - it seemed like she
10 started to comply with him, and that.

11 During this time frame of all that I know 911 came - - an
12 officer's voice came over the phone. I told them what was
13 happening and - - -

14 Q. Okay. So, you're talking to 911 as you're witnessing this?

15 A. Yes, yes.

16 And he pulled her from, ah, the front of my office towards
17 Fred's.

18 Q. Let me stop you and show a picture so everyone's clear.

19 I'm showing you what's marked as State's Exhibit #11 and
20 State's Exhibit #12.

21 A. Okay.

22 When I came out of the office here and I told Ms. Tywanda - -
23 Ms. Keith that I called 911, to come in, they were about right
24 there, and that's when he grabbed her and had her in the neck hold
25 all the way towards the front - - in fact, I thought he was going

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

53

1 to take her inside Fred's.

2 Q. And when he was doing that which way were they facing?

3 A. They were facing me. They were both facing me, and that.

4 Q. So, you were able to see her face.

5 A. Yes, yes.

6 They were facing me all the way until he pulled her, ah, I
7 can't remember if they went down the ramp or just on the other side
8 of the ramp where there is the step down off the curb.

9 Q. Was this stuff there at the time?

10 A. Ah, no, uh-uh. There was stuff over here at that time.

11 And then he dragged her around the front. Well, when he
12 dragged her around more towards the front here, that's this.

13 Q. Okay. So, that's State's Exhibit #10.

14 A. When he dragged her more towards this front, he was here along
15 the edge of the sidewalk. I came out so I could keep an eye on
16 her. I was worried about her, and that, and, ah, I could see that
17 he started having his other hand going in her purse. Still had
18 the neck hold on her and was going in her purse, and they stopped
19 about midways in front of Fred's.

20 And I saw him pull something out of her purse. It looked
21 something silver, and then, ah, he threw her like he - - I don't
22 know if she hit the building or not but she hit the ground, and
23 that.

24 And then he came back towards me. I got scared, and I went
25 back in - - into the front door, and I described that he was coming

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

54

1 towards me but because, ah, because of this trash can I didn't see
2 no bike until he got on it.

3 Q. Okay.

4 A. And I told the police officer on the phone that he's picking
5 up a bike and he's taking off towards Fred.

6 Well, the other young man, Mr. Epps, during the time frame of
7 me watching her, I saw him pull out in a white car coming this way
8 towards the front and then turn towards where Ms. Keith was.

9 By the time he could get to Ms. Keith with his - - -

10 Q. He, he being who?

11 A. Mr. Epps.

12 Q. Mr. Epps?

13 A. With the car.

14 Yeah.

15 By the time he could get to Ms. Keith with the car, the
16 gentleman on the bike had already, ah, was starting towards Ms.
17 Keith, and as she was trying to get in the car, he tried to run her
18 down.

19 Q. With the bike?

20 A. With the bike.

21 Q. Alright.

22 A. And then he continued to proceed to ride his bike around the
23 front and around the building which is this ABC Store.

24 Q. Liquor store?

25 A. Yeah, and then I couldn't see them no more.

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

55

1 Well, the - - Ms. Keith and Mr. - - Ms. Keith got into the
2 car, and, ah, took off I thought was after him but when they came
3 up here to the stop sign where it's at Merriman, instead of taking
4 right where I was - - I presume that the defendant went, yes, they
5 went left.

6 And - - and I was told by 911, "Don't worry about it. An
7 officer would be right there."

8 Q. Did you 911 a description of the defendant?

9 A. Yes. I told them that it was a middle-aged black man between
10 forty and fifty. He had on a leather jacket, if I can recall
11 right, it's a black leather jacket and, ah, dark pants, and a blue
12 bike, an old blue bike.

13 Q. Okay.

14 Now, let's kind of back up for a minute.

15 A. Uh-huh.

16 Q. When you saw the defendant and he's dragging Ms. Tywanda back,
17 could you tell who if anybody had been stabbed?

18 A. No, no, I didn't recognize there actually being any blood
19 until everybody left.

20 Q. Did you see anything in the hands of the victim, Mr. Epps?

21 A. No, nothing was in his hands when he came into the office
22 asking us and that. There was nothing in his hands.

23 Q. So, you saw his hands when he came in the office?

24 A. Yes. Yes.

25 Q. At what point did you realize someone was bleeding?

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

56

1 A. Um, after - - after everybody had already left when I was
2 walking back to the inside the office and as I looked down and the
3 sidewalk was just spotted all over with blood and that. More so
4 towards the, ah, parking lot than towards my door.

5 I looked inside my office. I didn't see no blood spots in the
6 office.

7 Q. And when you were watching the defendant drag the victim
8 towards Fred's, did you see either one of those two people
9 bleeding?

10 A. No, no blood from them, none whatsoever.

11 Q. You did see them and you didn't see any blood?

12 A. Right.

13 Q. Were the other two - - I think earlier you described other -
14 - two other customers - -

15 A. Yeah.

16 Q. - - sitting in the store. Were they still in their when Mr.
17 Epps, the victim, came in and said, "Call 911."?

18 A. Yes, ma'am.

19 Q. Okay.

20 I'm showing you what's been marked as State's #15 for I.D.
21 Do you recognize what this is?

22 A. Yes, ma'am.

23 Q. What is it?

24 A. It's the recording of the 911 call.

25 Q. Have you had a chance to listen to it since you made the call?

MRS. BROWY - DIRECT EXAMINATION BY MISS BIAGIANTI

57

1 A. Yes, ma'am.

2 Q. Okay.

3 And is what you heard a fair and accurate representation of
4 the call you made that day on February 21st?

5 A. Yes, ma'am.

6 Q. Any deletions, modifications?

7 A. Well, not that I - - there's a part in there that is blank.
8 So you didn't some of what I thought was being recorded.

9 Q. Okay.

10 But there's no additions or nothing taken out?

11 A. No, un-huh. It was pretty accurate.

12 Q. Okay. Thank you.

13 A. I was scared.

14 Q. I understand.

15 Now, the next day you - - you gave a written statement to the
16 police?

17 A. Not to the police, to the Victim's Advocate.

18 Q. Okay.

19 And have you seen or heard from Tywanda or Mr. Epps about this
20 incident since it happened?

21 A. No.

22 Q. Please answer any questions that Mr. Goude has for you.

23 A. Okay. Thank you.

24 THE COURT: Okay. Mr. Goude.

25 MR. GOUDE: Judge, just a couple.

MRS. BROWY - CROSS EXAMINATION BY MR. GOUDE

58

1 THE COURT: I'm sorry. Is everything okay?

2 COURT REPORTER: Yes, thank you, Your Honor. We're fine.

3 THE COURT: You ready?

4 COURT REPORTER: Yes, sir.

5 THE COURT: Alright.

6 Carry on, Mr. Goude.

7 CROSS EXAMINATION BY MR. GOUDE:

8 Q. Now, you say you haven't seen Ms. Keith since this happened.
9 Did she come in a day or two later and ask you to do the taxes - -
10 correction?

11 A. Yes. Complete her taxes, yes. I'm sorry. She did do that.

12 Q. Do you know Mr. Robert Dexter Brown's cousin, Karen Wilson?
13 Did she work there with y'all in the tax office, too?

14 A. Karen Wilson?

15 Q. Yes, ma'am.

16 A. Not with me.

17 Q. Karen Mitcham, do you know that?

18 A. I didn't have no Karen Mitcham working with me.

19 Q. Is the Palmetto Tax Service Office, is it open today?

20 A. No.

21 Q. And when the - - when Ms. Keith got in the car after the
22 incident was ending, could you tell if she got in the front seat or
23 the back seat of the car?

24 A. She got in the front, I believe it was, if I'm remembering
25 right. She got even, in fact, in the driver's seat, I believe.

MRS. BROWY - REDIRECT EXAMINATION BY MISS BIAGIANTI

59

1 Q. And when - - -

2 A. If I'm remembering right.

3 Q. When Mr. Brown was leaving the front of the tax office on his
4 bicycle and Ms. Keith was getting - - was at the car and getting in
5 the car, did the car get over to where she was before Mr. Brown got
6 his bicycle or did he - - did Mr. Brown have his bicycle over where
7 Ms. Keith was before the car ever came over there?

8 A. No. The car was already up to Ms. Keith before the bike got
9 there. It was when she was trying to get into the car that he
10 tried to run her down with the bike.

11 Q. Did the car - - did the bicycle go on the store side of the
12 car on the - - -

13 A. The parking lot side.

14 Q. Parking lot side?

15 A. Yes.

16 Because he went down that, ah, ah, handicap ramp with his
17 bike.

18 THE COURT: Any other questions, Mr. Goude?

19 MR. GOUDE: Ah - - -

20 No, Judge, no other questions.

21 THE COURT: Any redirect?

22 MISS BIAGIANTI: Two, Your Honor, just two?

23 REDIRECT EXAMINATION BY MISS BIAGIANTI:

24 Q. When you did Tywanda's taxes a couple of days afer this
25 incident, did you speak about your testimony today?

MRS. BROWY - REDIRECT EXAMINATION BY MISS BIAGIANTI

60

1 A. No.

2 Q. And, ah, you testified earlier that you were scared. Do you
3 know which side of the car Tywanda got in or do you know she just
4 got in the car?

5 A. At this point in time from my memory I'm just thinking that it
6 was the driver's side. Which side I don't know but I do know - - -

7 Q. Did she get in the car?

8 A. Yes.

9 Q. Okay.

10 A. She did get in the car.

11 Q. That's all.

12 MR. GOUDE: No questions.

13 THE COURT: You may step down.

14 (The witness leaves the witness stand.)

15 THE COURT: Next witness, please.

16 MISS BIAGIANTI: Your Honor, the State would call Joann
17 Clarey to the stand.

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

19 SGT. JOANN CLAREY, being duly sworn,
20 testifies as follows:

21 CLERK OF COURT: Be seated please. State your name for
22 the record and spell your last, please.

23 SGT. CLAREY: My name is Joann Clarey, C-l-a-r-e-y.

24 THE COURT: And, if you would, Ms. Clarey, make sure,
25 Officer, that you speak in that microphone a little bit louder so

SGT. CLAREY - DIRECT EXAMINATION BY MISS BIAGIANTI

61

1 we can hear you. Okay?

2 SGT. CLAREY: Yes, sir.

3 DIRECT EXAMINATION BY MISS BIAGIANTI:

4 Q. Please tell our jury where you are employed and what capacity
5 and how long you've been there, both positions.

6 A. I work at the Georgetown County Detention Center as a
7 sergeant. I've been employed there about four and a half years.
8 I work for Central Dispatch 911, and I've been there almost a year
9 as a Dispatcher.

10 Q. Now, your testimony today we're going to be talking about your
11 911 service.

12 You said you've been with Central Communications for about a
13 year. What's your job title there?

14 A. I'm a Dispatcher.

15 Q. Will you describe some of your duties as Dispatcher?

16 A. I answer the phone, and I dispatch police officers and EMS and
17 Fire to calls and, of course, we take 911 calls.

18 Q. And I'm directing your attention to February 21st of this year
19 approximately at 2:40 p.m. Were you working at Dispatch that day?

20 A. Yes, ma'am.

21 Q. And did you take the call in regards to a stabbing, slash,
22 assault at Palmetto Tax Service?

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

24 Q. And do you remember off-hand what time that call came in?

25 A. No, ma'am, not exactly.

SGT. CLAREY - DIRECT EXAMINATION BY MISS BIAGIANTI

62

1 Q. If I show you a Call Activity Detail, would that refresh your
2 memory?

3 A. Yes, ma'am.

4 Q. I'm showing what's been marked State's Exhibit #18 for I.D.
5 Do you know what that is?

6 A. Yes, ma'am.

7 Q. What is that?

8 A. This is a CAD Sheet that we can print out. When the call
9 comes in everything we type into the computer as people are talking
10 to us on the telephone and how we dispatch the officers.

11 Q. Now, when you say "CAD Sheet" what does that stand for?

12 If I said Call Activity Detail Sheet - - -

13 A. I filled out. That's exactly what that is.

14 Q. Tell us what time that call - - a call came in that day?

15 A. The call came at 14:46. That's 2:46.

16 Q. P.M.?

17 A. P.M.

18 Q. Thank you.

19 (The Court Reporter accepts State's Exhibit #18 for
20 identification.)

21 Q. I'll let you look at that again.

22 Do you remember how you dispatched the call that you received?

23 A. I dispatched it as - - as domestic problems because of what I
24 was told on the - - on the 911 by the lady at Palmetto.

25 Q. And who responded?

SGT. CLAREY - DIRECT EXAMINATION BY MISS BIAGIANTI

63

1 A. The city police officers.

2 Q. Have you listened to the 911 call since this incident on
3 February 21st?

4 A. Yes, ma'am.

5 Q. I show you what's been marked as State's Exhibit #15 For I.D.
6 Do you recognize this?

7 A. Yes, ma'am.

8 Q. What is this?

9 A. The CD of the 911 call.

10 Q. And since you listened to it has there been any additions,
11 modifications, deletions or additions?

12 A. No, ma'am.

13 Q. Alright.

14 Is this an accurate representation of the call that you
15 received that day on February 21st?

16 A. Yes, ma'am.

17 MISS BIAGIANTI: Your Honor, I'd move State's Exhibit #15
18 into evidence.

19 THE COURT: Any objection?

20 MR. GOUDE: No objection.

21 THE COURT: In evidence..

22 (The Court Reporter accepts State's Exhibit #15 into
23 evidence.)

24 Q. Thank you.

25 Please answer any questions Mr. Goude has for you.

SGT. CLAREY - CROSS EXAMINATION BY MR. GOUDE

64

1 THE COURT: Okay.

2 Cross examination?

3 MR. GOUDE: Yes, briefly, Your Honor.

4 CROSS EXAMINATION BY MR. GOUDE:

5 Q. Sgt. Clarey, you said you worked at the Detention Center?

6 A. Yes, sir.

7 Q. And is that a Detention Center uniform you're wearing?

8 A. Yes, sir.

9 Q. And what's your rank at the Detention Center?

10 A. I'm a sergeant.

11 Q. When a person is arrested and taken to the Detention Center is
12 he searched when he's brought into the Detention Center?

13 A. Yes, sir.

14 Q. Any of his personal property or anything he has on him in his
15 pockets, neck, earrings, hand, watch, anything, do y'all take it
16 off of him?

17 A. We have them remove it.

18 Q. And do y'all make a record of the property the person, the new
19 inmate had on him when he's brought into the Detention Center?

20 A. Yes, sir.

21 Q. And do y'all give that information for that property back to
22 him when he's released from the jail?

23 A. Yes, we do unless they sign it away on a property release
24 form.

SGT. CLAREY - CROSS EXAMINATION BY MR. GOUDE

65

1 Q. And when y'all first bring the person in the jail and he takes
2 some stuff off his person and tries to hand it to you or y'all off
3 of him when he doesn't hand it to you, do y'all fill out a form
4 there at the jailhouse?

5 A. Yes, sir.

6 Q. Called a Personal Property Receipt Form?

7 A. Yes, sir.

8 Q. And do y'all keep those forms there at the jail?

9 A. Yes, sir.

10 Q. I'm showing you what's marked as our next exhibit in order.

11 MISS BIAGIANTI: Can I see that, please?

12 Q. Sgt. Clarey, I'm showing you what's been marked as Defendant's
13 Exhibit #3. Would you identify that as one of the Georgetown
14 County Detention Center Property Receipt Cards?

15 A. Yes, sir, it is.

16 Q. And does it show who - - and on that front information, do
17 y'all put on there the person who is brought in to the jail house?

18 A. The description of their clothes, um, just anything, money,
19 anything they have on them.

20 Q. That - - the Defendant's Exhibit #3, who is the name of that
21 defendant?

22 A. Robert D. Brown.

23 Q. Do you show the date on there when that form is completed?

24 A. 2/21/08.

25 Q. Does it show what property he had on him?

SGT. CLAREY - REDIRECT EXAMINATION BY MISS BIAGIANTI

66

1 A. Yes, sir.

2 Q. What does it show he had?

3 A. Blue pants, a blue and red shirt, brown shoes, white socks, a
4 black coat, one black cell phone, one yellow comb and one black
5 belt.

6 Q. Now, was there - - -

7 A. And five dollars.

8 Q. Five dollars?

9 And did he sign that?

10 A. Yes, he did.

11 Q. Can I see that back?

12 A. Yes, sir.

13 Q. Thank you.

14 MR. GOUDE: Judge, we would offer that as our exhibit.

15 THE COURT: Any objection?

16 MISS BIAGIANTI: No - - no objection, Your Honor.

17 THE COURT: In evidence.

18 (The Court Reporter accepts Defendant's Exhibit #3 into
19 evidence.)

20 THE COURT: Any redirect or any other questions?

21 MR. GOUDE: No other question.

22 MISS BIAGIANTI: Yes, Your Honor.

23 REDIRECT EXAMINATION BY MISS BIAGIANTI:

24 Q. The cell phone that's listed on #3, he had that property on
25 him?

SGT. CLAREY - REDIRECT EXAMINATION BY MISS BIAGIANTI

67

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A. Yes.

Q. But you don't know whether it belonged to him or not. He just had it on him?

A. Correct.

Q. And as far as the five dollars, do you know what denomination -- how the five dollars was made?

A. No, ma'am.

Q. So, it could be five thousand pennies or five one dollar bills? Just totaled --

A. It just totaled five dollars. That's right.

Q. Thank you.

MISS BIAGIANTI: That's all.

THE COURT: Anything else, Mr. Goude?

MR. GOUDE: No, sir.

THE COURT: You may step down, Officer. You may return to your duties if there is no objection.

MISS BIAGIANTI: No objection.

THE COURT: No objection.

Thank you very much.

(The witness leaves the witness stand.)

THE COURT: Alright.

Next witness, please.

MISS BIAGIANTI: Dr. Heather.

DR. HEATHER JUSTICE, being duly sworn, testifies as follows:

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

68

1 CLERK OF COURT: Be seated, please. State your name and
2 spell your last.

3 DR. JUSTICE: My name is Dr. Heather Justice, J-u-s-t-i-c-e.

4 THE COURT: Alright. Your witness.

5 MISS BIAGIANTI: Thank you, Your Honor.

6 DIRECT EXAMINATION BY MISS BIAGIANTI:

7 Q. Good afternoon, Doctor.

8 Tell us what your occupation is, obviously, and how long
9 you've been practicing.

10 A. Sure.

11 I'm an EMS Physician here at Georgetown Hospital and have been
12 practicing for four years.

13 Q. Tell us a little bit about your background, education,
14 experience, undergrad and medical school, residency and things like
15 that.

16 A. Okay.

17 I went to the University of Washington in Seattle for
18 undergrad and I did my medical school training out there as well.
19 I came to Eastern Virginia Medical School in Norfolk for my
20 residency. I finished there just over a year ago.

21 Q. And are you a Board Certified Physician?

22 A. I will be finishing my Board eligibility as of October I take
23 my last certification exam.

24 Q. Congratulations.

25 A. Thank you.

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

69

1 Q. And tell us what hospitals you have privileges at in this
2 area.

3 A. I have Georgetown Memorial Hospital and Waccamaw Community
4 Hospital.

5 Q. And, um, like you said, do you primarily practice in the ER?

6 A. Strictly in the ER.

7 Q. Emergency Room Physician?

8 A. Correct.

9 MISS BIAGIANTI: Your Honor, at this time I'd like to
10 qualify Dr. Justice as an expert in Emergency Room Medicine.

11 THE COURT: Well, you - - you plan to ask her an opinion?

12 MISS BIAGIANTI: Yes, sir.

13 THE COURT: Alright. Mr. Goude, any questions about her
14 qualifications?

15 MR. GOUDE: No, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury, let me tell
17 you what that's all about.

18 Normally, a witness is not permitted to come into court and
19 give an opinion. Normally, a witness is only permitted when they
20 come into court to testify as to what they observed or perceived by
21 their senses, what they heard, smelled, saw, things of that nature.

22 However, if a witness is qualified by licensure, special
23 experience, education in an area not normally associated with lay
24 persons, then that person can be qualified to give an opinion, give
25 opinion testimony.

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

70

1 Now, if a court qualifies the individual to give opinion
2 testimony, that does not mean you must accept the opinion. What it
3 means is the opinion becomes evidence along with all the other
4 evidence in the case that you may consider.

5 You may accept the opinion in part, reject it in part, accept
6 it totally, reject it totally. That's all up to you.

7 -When a court qualifies a witness to give opinion testimony,
8 all the court is doing is saying that is permissible testimony for
9 whatever weight the jury wishes to give it.

10 This person is licensed in the State of South Carolina as a
11 physician. Has completed medical school, and, therefore, I will
12 qualify her to give opinion testimony in the area of medical
13 science, specifically, in the area of emergency room technics for
14 medical science.

15 You may proceed.

16 MISS BIAGIANTI: Thank you, Your Honor.

17 Q. Directing your attention to February 21st of this year at
18 approximately three in the afternoon, were you working as the
19 Emergency Room Physician at that time?

20 A. Yes, I was.

21 Q. Now, what - - -

22 THE COURT: Ms. Biagianti?

23 MISS BIAGIANTI: Yes, sir.

24 THE COURT: Could we take a break right quick?

25 If you would, ladies and gentlemen of the jury, please step to

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

71

1 your jury room and let us know when y'all are ready to come out.
2 We'll wait for you all.

3 I understand that one or two of your jurors need to use the
4 restroom.

5 Okay.

6 (The jury retires to the jury room at 11:45 a.m.)

7 THE COURT: Let the record reflect that the officer came up
8 and told me as you were about to question her that she got a
9 message that the defendant needed to use the restroom real bad
10 right now.

11 Is that right, Mr. Goude?

12 MR. GOUDE: Yes, sir.

13 THE COURT: So, y'all go ahead. We'll wait for y'all.

14 MR. GOUDE: Thank you, Your Honor.

15 (The Court recesses the trial of this case and thereafter
16 reconvenes this trial.)

17 THE COURT: Ready to go now, Mr. Goude?

18 MR. GOUDE: The defendant is ready, Your Honor.

19 THE COURT: If the jury is ready, have them come back in.

20 (The jury returns to the courtroom at 11:52 a.m.)

21 THE COURT: Okay. We are now ready to proceed.

22 As you recall, I qualified this to give opinion testimony.
23 I've explained to you what opinion testimony, um, or how you may
24 consider it one way or another. It's up to you, and we'll now
25 proceed to questions.

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

72

1 You may proceed, Miss Biagianti...

2 MISS BIAGIANTI: Thank you, yes, sir.

3 CONTINUED DIRECT EXAMINATION OF DR. JUSTICE BY MISS BIAGIANTI:

4 Q. As I was saying, directing your attention to February 21,
5 2008, at approximately 3:20 in the afternoon, were you working as
6 an ER Physician that day?

7 A. Yes, I was.

8 Q. And which hospital were you working at?

9 A. Georgetown Memorial Hospital.

10 Q. And did you treat a patient by the name of Lee Epps that day?

11 A. Yes, I did.

12 Q. Tell us about how he came to the ER.

13 A. He came to the ER after being stabbed in the hand, in the left
14 hand and the left side complaining of pain both in the left hand
15 and in the left side.

16 Q. Did he walk in? Did he come by car? How did he get there?

17 A. I don't recall.

18 Q. Would it say that in the medical records?

19 A. It would.

20 Q. Would that refresh your - - -

21 A. Do you mind?

22 Q. - - if you look at your EMS records?

23 A. Yes.

24 The triage note is not here, and that would where it was

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

73

1 normally stated on there.

2 Q. That's okay. That's fine.

3 How would you describe his situation when he came in?
4 Serious, emergent or not emergent?

5 A. Emergent.

6 Q. And describe what emergent means to us.

7 A. Potentially life threatening injury, particularly because of
8 the wound into his side, um, there being multiple organs that if he
9 wounded - - cut into these organs would be very life-threatening.

10 Q. Could you tell when he came in how much blood he had lost or
11 could you tell us if he was bleeding or not?

12 A. He was bleeding. He was not having extensive blood loss but
13 I was more concerned with the intra-abdominal injuries that could
14 be present that would cause internal bleeding that we would not see
15 on the outside.

16 Q. And tell us what you - - or which area did you assess first,
17 the wound in his hand or the wound in his side?

18 A. The wound in his side.

19 Q. And which side is that?

20 A. The left side.

21 Q. Tell us about what you did to treat him and generally describe
22 to the jury.

23 A. I initially because of the risk for intra-abdominal injuries,
24 I just look at the wound to kind of see the location of it. I
25 don't try and investigate the wound with the potential of

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

74

1 disrupting a clot that could an increase in bleeding in the
2 abdominal cavity.

3 Once I - - once - - -

4 Q. What is the abdominal cavity?

5 A. Sorry.

6 Q. The tummy area?

7 A. Tummy area, um, going all the way to the back.

8 Um, once I assessed that his vitals were stable and that he
9 did not seem to be having obvious hemorrhaging from that area, I
10 immediately ordered a CAT Scan in order to further evaluate if
11 there was any intra-abdominal injuries.

12 Q. And why did you order the CAT Scan?

13 A. Because that looks at all the necessary organs: The kidneys,
14 the spleen and the bowels to evaluate for injuries.

15 Q. And, um, at this point did you know how far the knife had
16 penetrated?

17 A. No, and that's why we get the CAT Scan.

18 Q. And what was his course of treatment once you got the CAT Scan
19 back?

20 A. Once the CAT Scan showed that there was no intra-abdominal
21 injuries, then I was - - felt more comfortable in terms of
22 evaluating the wound itself and exploring it to see how deep the
23 wound had gone, how deep if it had gone to what we call facia which
24 is a lining of, um, like - - consider it saran wrap that surrounds
25 the organs, and as long as the saran wrap or that facia is intact,

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

75

1 we can safely discern that there has not been any penetration into
2 the abdominal cavity.

3 Q. And did you do that in this case?

4 A. I - - I did.

5 Q. Doctor, I'm going to show you a photograph.

6 Now, items State's Exhibit #6 and State's Exhibit #7 are
7 already in evidence. Is that the wounds you're talking about?

8 A. Yes.

9 Q. Okay.

10 Just briefly describe in laymen's terms describe what this is
11 and what you're doing.

12 A. Okay.

13 This is a two centimeter laceration to the left flank, kind of
14 lateral or side area on the left side. Um, you can see that there
15 is some blood protruding from it. It - - it's a very - - it looks
16 more circular here. When I evaluated it, it actually is more of
17 a kind of a linear, straight laceration but because of the way the
18 abdominal cavity or the side, um, the tension is on the skin once
19 you make a laceration, it kind of opens up and forms a more
20 circular appearance.

21 Um, you can see here, like I said, you can see there's a lot
22 of the fat tissue is a light tissue along the sides here but it
23 wasn't until I - - I went in and irrigated it out and kind of
24 looked more deeply to evaluate the fascia like I was mentioning.

25 Q. And State's Exhibit #6, describe what that is.

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

75

1 A. This is the same wound just from a different direction. I've
2 got, obviously, a small - - a hematoma starting to develop on that
3 side; ie, a bruise, a large bruise.

4 Q. And tell us on the left side, what - - what organs are on our
5 left side?

6 A. The most significant ones are the kidney, the spleen and the
7 bowel.

8 Q. So, before you explored, you had no idea whether the knife had
9 penetrated those organs?

10 A. Correct.

11 Q. And that's why it's significant?

12 A. When you've got a laceration, you have no idea which angle it
13 actually went into or to what depth it went into, and that's why we
14 play it safe and get the scans that we need to before exploring a
15 wound, and, in essence, trying to prevent a disruption of any
16 bleeding.

17 Q. And what course of treatment did you take at this point?

18 A. Um, after I thoroughly, um, explored it to make sure that
19 there was no obvious penetration into the abdominal cavity which
20 coincided with the results of the CAT Scan, I anesthetized it,
21 washed it out and then sewed it shut.

22 Q. With stitches?

23 A. Stitches, yes.

24 Q. Um, and you went into this before but if the knife had
25 penetrated deeper or hit an organ - - -

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

77

1 MR. GOUDE: Objection. If, Judge.

2 THE COURT: Sustained.

3 MR. GOUDE: Totally irrelevant question.

4 THE COURT: In the form of your question it is sustained.

5 MISS BIAGIANTI: Give me a minute, Your Honor. I'm trying
6 to think about how to rephrase that.

7 Q. Were you confident that the knife did not penetrate those
8 areas?

9 A. Initially I was not which is why I did the tests, um, that I
10 did. Once I had further - - further evaluated it and had the
11 results of the CT Scan, I was confident.

12 Q. Now, explain to us the injuries to his hand.

13 A. He had a - - approximately a I believe it was a two centimeter
14 laceration of the left hand that went just horizontally along
15 before the range of the fourth finger.

16 Q. I'm showing you what's been marked as State's Exhibits #3 and
17 #4 already entered into evidence. That's the wound you just
18 described?

19 A. Yes.

20 Q. As well as Exhibit #4?

21 A. Yes.

22 Q. Okay.

23 Explain to us the significance of having a wound right there
24 and what that picture shows.

25 A. This picture shows again another direct infliction of some

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

78

1 kind of sharp object into the hand causing approximately a two
2 centimeter laceration to the hand. Again, like I said, it's along
3 the range of the fourth finger which the ring finger coming down.

4 You have multiple tendons and nerves in that area that allow
5 you to, ah, be - - both flex and extend your fingers, both we call
6 AB adept which means put your fingers together and apart, AB adept,
7 and along with all the digital nerves that give you sensation to
8 your fingers in that area.

9 Q. Now, describe to us the picture and what that stuff is.

10 A. Um, that's just blood, and I think there's just a little bit
11 of fat tissue that's kind of adipose tissue. It's a little bit of fat
12 that had been protruded from the wound.

13 Q. Something sticking out of his hand - - something a part of his
14 body is sticking out of his hand?

15 A. Correct.

16 Q. And tell us about once you saw that what procedures did you -
17 - did he have done on his hand?

18 A. Sure.

19 The first thing I do is to evaluate his ability to flex and
20 extend his fingers because, obviously, the things we get concerned
21 about are blood vessel injuries, nerve injuries and tendon
22 injuries, the tendons being the, um, um, the tissue that allows you
23 to flex even though the main muscle part of that tissue is actually
24 in your forearm.

25 There's not enough room for the muscles in your hand. So the

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

79

1 muscles in your forearm and the tendons attach to the bones in your
2 fingers and allow you to do your flexion and extension movements.

3 I checked him for both flexion and extension. Like I said,
4 the AB daction and AB daction as well as some of the intrinsic
5 muscles of the hands to make sure they were functioning okay. Once
6 I explored the wound looking for tendon lacerations because even
7 though patients can still flex and extend, they still could have a
8 partial tendon laceration.

9 He was also complaining of some paresthesia, some tingling and
10 some numbness in his - - certain fingers.

11 Q. When you say "paresthesia", what does that mean?

12 A. Numbness or tingling.

13 Q. Okay.

14 A. And his - - in his fingers. So, I was looking for potential
15 nerve injury as well.

16 I did not appreciate any on my examination. However, in
17 follow-up he did have, um, a nerve injuries noted.

18 Q. And, um, did he have any, um, special tests or exams done for
19 his hands: x-rays, CAT Scans?

20 A. Not initially. On his second visit he did have an x-ray done.

21 Q. Um, did you have a chance to speak with Mr. Epps about his
22 injuries?

23 A. I did.

24 Q. And, ah, what did he tell you had happened to him?

25 A. He told me that his girlfriend had gotten into an altercation

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

80

1 - - -

2 MR. GOUDE: Objection to the hearsay. That's not necessary
3 for medical treatment.

4 THE COURT: I sustain.

5 MISS BIAGIANTI: Your Honor - - -

6 THE COURT: You're asking her did she need that for her
7 treatment?

8 MISS BIAGIANTI: That's exactly - - I'm not asking for a
9 name.

10 THE COURT: You didn't - - but you didn't ask her is that
11 why she - - you just asked her to tell us what someone told her.

12 Q. Did you ask some questions to assess not only his injuries but
13 what happened on that date?

14 A. Yes, I did.

15 Q. And did you need that for medical evaluation?

16 A. Yes because I wanted to make sure when I discharged him home
17 he would be safe.

18 Q. And tell us what he said.

19 A. He told me that he'd gotten - - his girlfriend had gotten into
20 an altercation with her boyfriend - -

21 Q. Her boyfriend?

22 A. - - the ex-boyfriend, sorry. Her ex-boyfriend had pulled out
23 a knife, and that's when he got involved to try and break it up,
24 and that's when he got stabbed.

25 Q. Ah, did he - - were his injuries consistent with what he told

1 you?

2 A. Yes.

3 Q. And - - and tell us why you say that.

4 A. Ah, when the injuries were - - both injuries were a small
5 object, linear type lacerations both to his side and his hand which
6 goes along with what he described as being a knife-type laceration.
7 It was not - - it was not hit with a blunt object which I would
8 expect more of a kind of defused or large gash as opposed to a
9 straight, linear laceration which was the case in both of his
10 wounds.

11 Q. And he said - - he said it was a knife?

12 A. He did.

13 Q. Okay.

14 And that is consistent, again, with what - - he said it was a
15 knife that made these wounds?

16 A. Correct.

17 Q. Now, um, based on your experience as an ER Physician, would
18 you consider - - what type of wound would you consider that to be
19 in terms of an aggressor, a defender? What type of wound would
20 that be?

21 MR. GOUDE: Objection to question, Judge.

22 THE COURT: I sustain the objection.

23 Q. Do you know if, um, could you get that type of wound by
24 holding a knife in your hand?

25 A. No.

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

82

1 Q. How - - how does one receive that wound?

2 A. Ah, normally, by the affliction of the hand coming in coming
3 in contact with the sharp end of a knife.

4 Q. What type of, ah, was he given any medication for anything?

5 A. He was given Adacel which is a tetanus shot because any - -
6 any wounds that come into the emergency department that are clean
7 wounds and we don't know where or how exactly they were obtained,
8 we always treat for a possibility of tetanus. He was also given
9 some antibiotics because of the potential risk of infection for his
10 hand wound. I put him on a five day course of antibiotics, and I
11 also gave him some pain medicine.

12 Q. Do you remember if the victim was complaining of pain?

13 A. He was.

14 Q. Did he tell you. Did you assess the pain level?

15 A. Ah, I - - I don't - - I didn't get an actual number one a one
16 to ten scale but he told me he was hurting.

17 Q. Now, did your refer Mr. Epps to any other medical
18 professional?

19 A. I told him to follow up with his primary care doctor, um, in
20 the next two days for recheck, and I told him to come back to the
21 Emergency Department if he was having any other concerns.

22 Q. Um, are you aware if that happened?

23 A. Ah, he did come back to the Emergency Department approximately
24 two days later and was seen by one of my partners, ah, who because
25 he was complaining of more paresthesias or numbness, tingling in

DR. JUSTICE - DIRECT EXAMINATION BY MISS BIAGIANTI

83

1 his hands, at that point he was sent to a hand surgeon for
2 evaluation of nerve - - nerve laceration.

3 Q. And, um, have you had a chance to review those emergency room
4 records from a couple of days later?

5 A. I have.

6 Q. And what was - - how did the diagnose from you change to the
7 next time he was seen.

8 A. The evalua - - they did do a x-ray of the hand which, again,
9 showed no, um, bone abnormalities. As I, um, had - - had decided
10 previously that by - - by the type of wound and location of the
11 wound I did not anticipate there would be, ah, but that was the
12 next step to do on a follow-up visit which is very appropriate.

13 Because of his paresthesias they did not open the wound or
14 take out the sutures that I had placed but referred him to a hand
15 surgeon, a specialist in that area.

16 Q. Um, are you aware of the results of going to the hand
17 specialist?

18 A. He did have nerve repair and I'm not quite sure if he had
19 other, um, repair of any other injuries as well.

20 Q. Now, when you say "nerve repair", he had surgery?

21 A. Yes.

22 Q. Now, when someone has these injuries what type of, ah,
23 permanent could result from these injuries?

24 A. Ah, potential - - if he had nerve or tendon lacerations,
25 potential inability to flex or extend the fingers and potential

DR. JUSTICE - CROSS EXAMINATION BY MR. GOUDE

84

1 inability to feel the fingers at all.

2 Q. And tell us, um, in your opinion if Mr. Epps had not come to
3 the hospital that day what could have happened? How severe were
4 these injuries?

5 A. He could have had exactly as I mentioned inability to flex or
6 extend his fingers permanently and inability to fill those fingers
7 permanently.

8 Q. And what about statistically the stab wound on his left side?

9 A. Um, had he not come in and he had injuries to the kidney,
10 spleen or bowel, he could have - - it could have been potentially
11 life threatening, and he could have died.

12 Q. Please answer any questions Mr. Goude has for you.

13 A. Okay.

14 THE COURT: Alright.

15 Mr. Goude.

16 CROSS EXAMINATION BY MR. GOUDE:

17 Q. Doctor, when you say if he had certain kinds of injuries he
18 would die, he did not have those kinds of injuries, did he?

19 A. Correct.

20 Q. You said he had two cuts: One on the hand and one on the, ah,
21 left side of about two centimeters. How - - how long is that in
22 inches?

23 A. Ah, just about one inch, not quite one inch.

24 Q. Thank you.

25 MR. GOUDE: That's all I have, Judge.

THE STATE RESTS

85

1 THE COURT: Okay.

2 Anything else?

3 MISS BIAGIANTI: Nothing further, Your Honor.

4 THE COURT: Okay.

5 Any objection to the witness being excuse? Hearing none,
6 Doctor, you may return to your duties.

7 Thank you very much.

8 Okay. Next witness for the State.

9 MISS BIAGIANTI: Your Honor, at this time I would just ask
10 to publish the 911 tape which is in evidence.

11 THE COURT: Okay.

12 Have you - - you should have with the witness. Did you move
13 that in evidence?

14 MISS BIAGIANTI: Yes, sir.

15 THE COURT: Was it, ah, Mr. Goude, you didn't object to the
16 911 tape? So, it's in evidence.

17 Madame Court Reporter, do you know what number that was? I
18 just don't recall.

19 MISS BIAGIANTI: It was #15, Your Honor.

20 THE COURT: Alright. #15 is in evidence.

21 You may - - you may publish anything that's in evidence.
22 That's in evidence. You may publish it.

23 (Counsel for the State plays the 911 tape, State's Exhibit
24 #15, already in evidence, for the jury to hear.)

25 THE STATE RESTS

MOTIONS AND RULING OF THE COURT

86

1 THE COURT: Any other witnesses?

2 MISS BIAGIANTI: No, sir, Your Honor. At this time the
3 State would rest.

4 THE COURT: Okay.

5 Alright.

6 Ladies and gentlemen of the jury, if you would at this time,
7 ah, step to the jury room in a minute. I may bring the Foreperson
8 out and let you know whether I'm going to have you go to lunch now
9 or whether we're going, ah, take some more testimony but do not
10 discuss the case yet. Step to the jury room, please.

11 (The jury retires to the jury room at 12:15 p.m.)

MOTIONS AND RULING OF THE COURT

12
13 THE COURT: Okay. Motions at this time. Any motions by
14 the State? Hearing none, motions by the defense?

15 MR. GOUDE: Judge, we have a motion for a directed verdict
16 of not guilty on the three charges, ABHAN, ABWIK and kidnapping on
17 the grounds of the insufficiency of the evidence.

18 That's my motion.

19 THE COURT: After considering the testimony I respectfully
20 deny your motion. I think there's enough for the jury to make the
21 decision.

22 MR. GOUDE: Thank you, Your Honor.

23 THE COURT: Any other motions?

24 MR. GOUDE: No, Judge. I think we have - - three
25 witnesses. They're all relatively short. Maybe - - maybe one

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

87

1 additional witness.

2 Ah, we think Mr. Brown is not going to testify.

3 THE COURT: Well, let me discuss that if we can, first.
4 Could I talk to Mr. Brown, please.

5 Mr. Brown, stand up, please, sir.

6 CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

7 (The defendant stands before the Court.)

8 THE COURT: Mr. - - Mr. Brown, I want to make sure you
9 understand, sir, that, um, um, you do not have a duty to testify in
10 this case. No one can make you testify. The burden is on the
11 State to prove your guilt beyond a reasonable doubt. It is not
12 upon you to prove yourself innocence.

13 Um, and if you chose not to testify and you wanted me to do so
14 I would be glad to tell that jury that you have no duty to testify.
15 The burden is upon the State to prove your guilt beyond a
16 reasonable doubt. It is not upon you to prove yourself innocent,
17 and the fact that you didn't testify should not in any way be used
18 adversed or against you at all. You have a constitutional right
19 not to testify and they shouldn't discuss that in the jury room at
20 all.

21 Now, sir, you have a right not - - not to testify under the
22 Fifth Amendment of the Constitution as well as the corresponding
23 provision of - - of our Constitution in South Carolina but you also
24 have a right to testify if you want to.

25 If you wish to testify, you may do so. You would be under

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 88

1 oath and required to answer any and all questions that are relevant
2 to the case because the State would be able to cross examine you,
3 and if they did, whatever questions they ask you that are relevant
4 in this case you'd have to respond to.

5 In addition, if you have any convictions which fit under our
6 Rule 609, of course, those matters could be introduced not to show
7 whether you did this crime or not but to, ah, ah, reflect upon any
8 credibility issues as the jury sought appropriate.

9 At this time, Miss Biagianti, if he were to testify what
10 convictions would you, ah, seek to introduce under Rule 609?

11 MISS BIAGIANTI: Your Honor, based upon the Rule, I would
12 ask for his receiving stolen goods conviction. Even though that is
13 older than ten years old I would submit to you that it would come
14 in as a crime of dishonesty.

15 I would ask for his escape conviction from February 14th of
16 2000 to come in because he received eighteen to fifty-four months
17 concurrent to any other sentence.

18 I would ask that, ah, his attempted theft, two - - these are
19 all out of Washington, D.C., Your Honor, for the record.

20 THE COURT: What is the date of the attempted theft, two?

21 MISS BIAGIANTI: That is older than ten years old but I
22 would submit that, again, that's a crime of dishonesty.

23 And then his attempted burglary, second degree, back in the
24 year 2000. Of course, he also received eighteen to fifty-four
25 months. I believe that was concurrent with the escape charge.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 89

1 And then, as you know, he has - - -

2 THE COURT: So, your escape charge is less than ten years
3 old?

4 MISS BIAGIANTI: Yes, sir. It's from 2000.

5 THE COURT: Alright.

6 So, the two things less than two years old so far - - or less
7 than ten years old so far are attempted burglary and escape?

8 MISS BIAGIANTI: Correct.

9 THE COURT: Alright. What else?

10 MISS BIAGIANTI: Um, and, then, as you are aware, he has a
11 conviction for armed kidnapping and armed robbery. I would concede
12 that I could not ask him about that specifically but I would ask
13 for a compromise and ask that I be allowed to, "Isn't it true that
14 you've been convicted of a felony for which you did significant
15 jail time?"

16 THE COURT: Why would that be permitted?

17 MISS BIAGIANTI: Because, Your Honor, it goes to his
18 credibility. His credibility - - -

19 THE COURT: It would have - - but, once again, the Rule
20 talks about ten years ago.

21 MISS BIAGIANTI: Yes, sir, but I believe that this is in
22 such close connection with this crime - - it's the same one.

23 THE COURT: Well, don't you think then that under case law
24 that currently is out, especially case law that has been determine
25 in the last four or five years, that you specifically try not to

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 90

1 let evidence in of crimes that are just like this because the jury
2 may not reflect upon the credibility. They may reflect that that
3 crime is evidence that he committed this crime - -

4 MISS BIAGIANTI: Yes, sir.

5 THE COURT: - - and, therefore, that would go against the
6 spirit of the Rule.

7 That's why many times in drug cases even though people have
8 convictions less than ten years old, you don't let other drug
9 convictions in.

10 MISS BIAGIANTI: Yes, sir. I understand, and that's why I
11 would concede not to ask him, "Have you been convicted for armed
12 robbery and armed kidnapping?"

13 I would ask, "Were you convicted of a felony where you did
14 significant time?"

15 THE COURT: I know, and I asked you why would that be
16 permitted? You said because it's so close connection of this
17 crime.

18 MISS BIAGIANTI: Well, and because his credibility is on
19 trial, Your Honor.

20 THE COURT: Well, once again, doesn't the ten year Rule
21 affect the credibility issue? If something is over ten years,
22 you don't let it in.

23 Did you send him a written notice that you - - -

24 MISS BIAGIANTI: No, sir.

25 THE COURT: Well, doesn't the Rule require you to send him

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 91

1 written notice? Look at 609 right quick and look at the ten year
2 requirement and see if it doesn't require that you send him a
3 written notice that you plan to introduce anything over ten years
4 old.

5 MISS BIAGIANTI: And I would submit to you unless you
6 determine in the interest of justice that probative value
7 supported by specific facts, substantially outweighs the
8 prejudicial value.

9 That's what I would argue.

10 THE COURT: Okay.

11 Well, let me see the Rule for just a second. I think there's
12 a prohibition in there. You've got to send him a written notice
13 whether or not I make the determination or not.

14 MISS BIAGIANTI: 609 (b), Your Honor.

15 THE COURT: But it doesn't require you to send him written
16 notice?

17 MISS BIAGIANTI: Yes, sir, but I would submit that notice
18 was given in accordance when I served him with notice to seek life,
19 Your Honor.

20 THE COURT: Okay. Well, that would be notice that you
21 plan to seek life but not notice that you plan to introduce it to
22 the jury. That has nothing to do with the sentence.

23 Anyway, I will permit the grand larceny matter to come in and
24 the escape matter to come in. Those are the only two that I would
25 permit to come in unless, Mr. Goude, you deny he was convicted of

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 92

1 those. Then I would require the State to give me proof that he has
2 been convicted of those.

3 MISS BIAGIANTI: Your Honor, what about the attempted theft
4 which is older than ten years old because you can have a conviction
5 older than ten years old that involves a crime of dishonesty as
6 well as receiving goods?

7 THE COURT: Let me see your Rule for a second there, Miss
8 Biagianti.

9 (The Court reviews the Rule.)

10 MR. GOUDE: Mr. Brown agrees he was convicted of the two
11 charges of escape and attempted burglary.

12 THE COURT: Under 609(b) it says evidence of a conviction.
13 It doesn't say any type of exception. It says evidence of a
14 conviction more than ten years old as calculated herein is not
15 admissible unless the proponent gives to the adverse party
16 sufficient advance written notice of intent to use such evidence to
17 provide the adverse party a fair opportunity to contest the use of
18 this evidence.

19 It doesn't even give the Court any discretion. The sentence
20 before, ah, ah, talks about discretion if it's in the interest of
21 justice but it makes a threshold requirement that, um, advance
22 written notice be provided to the adverse party. I see nothing
23 there regarding whether it's a crime of dishonesty or not.

24 The only issue about the crime of dishonesty is whether or not
25 the sentence of that crime is a year or more and it also doesn't

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 93

1 require the analysis of whether or not the probative value, um, um,
2 um, is, um, ah, outweighs the prejudicial effect and it doesn't - -
3 although 609(a)(2) might require a 403 analysis, but, um, ah, I
4 think evidence of dishonesty has the ten year requirement in it
5 just like anything else does.

6 Miss Biagianti, I'll be glad to let you read that Rule again
7 and tell me where you show - - you see it shows an exception for
8 dishonesty, um, as far as the ten year rule. I don't see that
9 exception. If I'm missing it, please let me know.

10 The dishonesty exception I think goes regarding the
11 availability of sentence, how long a person could be sentenced if
12 they were convicted.

13 For example, petty larceny might be admissible because it
14 involves dishonesty regardless of the amount of time one can
15 receive for it.

16 MISS BIAGIANTI: Your Honor, I would ask that you give me
17 some time to calculate. I know the time polls when defendants are
18 incarcerated.

19 THE COURT: You're right.

20 MISS BIAGIANTI: So, I would ask that you - - -

21 THE COURT: What date was that - - that grand larceny or
22 attempted larceny?

23 MISS BIAGIANTI: You mean the receiving stolen goods and
24 attempted theft?

25 THE COURT: That you want to introduce, yeah? What year

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 94

1 was that?

2 MISS BIAGIANTI: One was in 1987. One was in 1984.

3 You remember he was sentenced to eighteen years in prison in
4 19 - - never mind. Never mind. I withdraw.

5 THE COURT: Alright.

6 MISS BIAGIANTI: He, obviously, didn't do eighteen years if
7 he was convicted for - - 1984.

8 THE COURT: In any event, I will - - now the two things
9 that happened in 2001 or 2000. Did you say attempted grand
10 larceny?

11 MISS BIAGIANTI: Attempted burglary, second.

12 THE COURT: Attempted burglary, second, and what was the
13 other crime? Escape?

14 MISS BIAGIANTI: Escape.

15 THE COURT: Alright. He got eighteen months for the
16 escape?

17 MISS BIAGIANTI: Eighteen to fifty-four months concurrent
18 with any other sentence on the escape, and eighteen to fifty-four
19 months on the attempted burglary, second.

20 THE COURT: Alright, and those matters occurred within the
21 last ten years?

22 MISS BIAGIANTI: Yes, sir.

23 THE COURT: And, Mr. Goude, he admits he was convicted of
24 those?

25 MR. GOUDE: That is correct, Your Honor.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

95

1 THE COURT: Alright.

2 Stand back up, Mr. Brown.

3 (The defendant stands before the Court.)

4 THE COURT: Alright.

5 If, sir, you were to testify, I would let them say - - I find
6 that the probative value outweighs any prejudicial effect.

7 So, if you were to testify, I would permit the State to
8 introduce evidence of those two convictions but not to ask you
9 about them or anything else or not to use them as evidence that you
10 did or did not commit this crime but only as it's used under the
11 Rule to reflect upon credibility if the jury wants to consider
12 that.

13 Now, Mr. Brown, the decision to testify is your decision. It
14 is not your lawyer's decision. It's not your family's decision.
15 It's your decision.

16 I'm going to take a break, and I want you to think about it,
17 and you make your own decision about whether you wish to testify or
18 not.

19 As a recap, if you testify, you'll be cross examined. You'll
20 be under oath.

21 If you, ah, ah, ah, if you testify, evidence of these two
22 crimes can be introduced. So, you may be asked questions from
23 your lawyer as well as cross examined by the Solicitor.

24 If you don't testify and you want me to, if you ask me to,
25 I'll tell the jury not to hold that against you. They may not even

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 96

1 consider it in their deliberations.

2 I'll remind them the burden is on the State to prove your
3 guilt beyond a reasonable doubt, not your duty to prove yourself
4 innocent, and they shouldn't even discuss it in the jury room.

5 But that's all up to you. If you don't want me to tell them
6 that, I won't tell them that.

7 Those things you need to think about. I'm going to take a
8 break now and I'm going to let you think about them.

9 Before we do that, though, do you have any - - do you have any
10 questions of me about your right to testify or not to testify?

11 MR. BROWN: No, sir, Your Honor.

12 I'm perfectly aware of my rights.

13 THE COURT: Alright. I'm going to let you think about it,
14 then, for a while. We're going to take a break at this time. We
15 are in recess for about ten minutes.

16 Mr. Goude, can I see you and Miss Biagianti up here?

17 (The Court recesses the trial of this case for a short period
18 and thereafter reconvenes the trial of this case.)

19 THE COURT: Okay.

20 Mr. Goude, have you talked to your client?

21 MR. GOUDE: Yes, Judge.

22 THE COURT: You think he has - - is he ready to make a
23 decision regarding testifying or not testifying?

24 MR. GOUDE: He thinks he's going to testify. He would
25 like to do that after lunch.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 97

1 THE COURT: Alright. I'll be glad to let him make that
2 decision after lunch if you're putting up other witnesses but
3 you're definitely putting up witnesses whether he testifies or not?

4 MR. GOUDE: Yes, sir, Your Honor.

5 THE COURT: Alright.

6 Well, I'll let him continue to think about his decision and
7 let him make his decision after lunch.

8 Alright. If you would, bring the jury in.

9 (The jury returns to the courtroom at 12:47 p.m.)

10 THE COURT: Ladies and gentlemen, um, before you go to
11 lunch, there are a couple of witnesses from out-of-town. We're
12 going to let them testify so they can get back, and it may mean
13 your lunch may be a little bit late but, ah, as far as letting you
14 off for lunch but we'd like to see if we can get these witnesses
15 in.

16 Alright, Mr. Goude, first witness, please, sir.

17 Y'all need to talk?

18 MR. GOUDE: Judge, the first witness is Jean Lowrimore,
19 Mrs. Jean Lowrimore.

20 THE COURT: Alright.

21 Is the witness on the way?

22 BAILIFF: Yes, sir.

23 THE COURT: Come around, Mrs. Lowrimore, and the Clerk will
24 swear you.

25 (The witness takes the witness stand.)

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

98

1 JEAN LOWRIMORE, being duly sworn,
2 testifies as follows:

3 CLERK OF COURT: Please state your name for the record and
4 spell your last name.

5 MRS. LOWRIMORE: My name is Jean Lowrimore, L-o-w-r-i-m-o-
6 r-e.

7 THE COURT: Okay. Your witness, Mr. Goude.

8 MR. GOUDE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. GOUDE:

10 Q. Mrs. Lowrimore, what's your address? Where do you live?

11 A. , Gresham, South Carolina 29546.

12 Q. What is your social security number?

13 A. Can I look in my purse?

14 Q. Yes, ma'am.

15 A. Because I don't know it by heart, sir.

16 Q. Yes, ma'am.

17 THE COURT: Let me ask you this?

18 Is there a reason you all need the social security number that
19 we can't do without her testifying for it?

20 How about writing it down and giving it to him, ma'am?

21 MRS. LOWRIMORE: Yes, sir.

22 THE COURT: And hand it to the Bailiff.

23 Hand it to Mr. Goude, if you would.

24 Q. What's your date of birth, ma'am?

25 A.

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

99

1 THE COURT: Alright.

2 Just hand the card to the Prosecutor, and y'all need to use it
3 for official purposes and give it back. We don't need to have
4 those things sitting out there.

5 Q. Mrs. Lowrimore, now, did I subpoena you here in court today?

6 A. Yes, sir.

7 Q. Is your husband down the hall?

8 A. Yes, sir.

9 Q. Did I subpoena him, too?

10 A. Yes, sir.

11 Q. I hand you this back.

12 Now, before February 21st of 2008, before February 21st of this
13 year, did you know the defendant Robert Dexter Brown?

14 A. No, sir.

15 Q. Did you know me?

16 A. No, sir.

17 Q. I'm going to direct your attention - - you said you live in
18 what city?

19 A. I live in Marion County, sir.

20 Q. Marion County.

21 I want to direct your attention back to February 21, 2008,
22 about 2:30 in the afternoon. Were you and your husband at the
23 Palmetto Tax Service here in Georgetown?

24 A. We were at the tax office in Georgetown. I don't remember the
25 date, sir.

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

100

1 Q. Okay.

2 And did your husband - - I just need to lead a little bit to
3 get to the point.

4 Did your husband use to live in Georgetown?

5 A. No, sir. My husband use to work in Georgetown.

6 Q. And did he use to do his taxes in the tax office in
7 Georgetown?

8 A. I think he's been doing it for the past couple of years but
9 I'm not sure about that. You would have to ask him. He could give
10 you more definite date, sir.

11 Q. Is that why y'all drove to Georgetown - -

12 A. Yes, sir.

13 Q. - - to do his taxes?

14 A. Yes, sir.

15 Q. Alright.

16 Now, I'm going to direct your attention to that afternoon.
17 Ah, about what time did y'all get to the tax office if you know?

18 A. I do not remember that, sir.

19 Q. Alright.

20 Do you remember the incident that we're here for?

21 A. Yes, sir.

22 Q. About how long had you and your husband been in the tax office
23 before this occurred?

24 A. I think a while but I can't say exactly what time because I do
25 not know but we had been there a while, though.

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

101

1 Q. Alright.

2 I'm going to show you some photographs and, ah, have you done
3 your taxes in the tax service office in Georgetown before this
4 year?

5 A. I think my husband did, sir.

6 Q. Had you been in this office before?

7 A. He took care of it, sir. I just went with him this one time,
8 sir.

9 Q. And you're looking at Prosecutor's Exhibit #8. Is that the
10 place y'all were in?

11 A. Yes, sir.

12 Q. And, also, Exhibit #9, Prosecutor's Exhibit #9, does that look
13 like the place y'all were in?

14 A. Yes, sir. It looks like the same place.

15 Q. Okay.

16 And does #13 - -

17 A. Yes, sir.

18 Q. - - that's fine. Does that look like the inside of the
19 reception area?

20 A. Yes, sir. They had seats on both sides, sir.

21 Q. Okay.

22 And does this look like the parking lot which is #11?

23 A. Yes, sir.

24 Q. And #12, does that also look like the front of the tax service
25 office?

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

102

1 A. Yes, sir.

2 Q. And #10, the same thing? Does that look like the tax service
3 office in front of it?

4 A. Yes, sir.

5 Q. And Does #14 look like the tax service office too?

6 A. Yes, sir.

7 Q. And when you guys, you and your husband, you came in, did you
8 go in the door and, basically, looking at all of these photographs,
9 the tax service office has a - - has facing the glass door that you
10 walk in is a part of the wall inside the door is glass also? Is
11 that correct?

12 A. Yes, sir, if I'm not mistaken. Yes, sir.

13 Q. And if you're not mistaken, if you could look at Exhibit #9.
14 Prosecutor's #9 you see this part?

15 A. Yes. Oh, you talking about that way. I thought you were
16 talking about this way. Yes, sir.

17 Q. And that glass door that you can see through - -

18 A. Yes, sir.

19 Q. - - on the inside and part of the wall there?

20 A. Yes, sir.

21 Q. Now, when you guys went in, you and your husband, did y'all go
22 and sit on the left side as you go in or did y'all go on the right
23 side?

24 A. When you come into the door this away, we were on this side,
25 sir. The right side - - this side.

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

103

1 Q. So, y'all were - - on the right?

2 A. Yes, sir, on this side.

3 Q. Okay.

4 At some time did y'all see a young black lady come into the
5 tax office and sit down?

6 A. Yes, sir.

7 Q. Did you know that person?

8 A. No, sir. Never seen her.

9 Q. Do - - do you know her now?

10 A. No, sir.

11 Q. Where did she sit in the tax office?

12 A. She came into the door, and she sat on this side.

13 Q. Being the left side?

14 A. Yes, sir.

15 Q. Left wall inside?

16 A. Yes, sir.

17 Q. Okay.

18 Now, after that, where you and your husband where you were
19 sitting in your chairs, could you see the young black lady where
20 she was sitting in her chair?

21 A. I could see her real good, sir, because I was on this side of
22 my husband, and my husband was on the other side of me.

23 Q. Alright.

24 Now, after that, did a black man come into the tax service
25 office?

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

104

1 A. Yes, sir.

2 Q. And where did he sit?

3 A. He come in and sat down side of her.

4 Q. And could you see the black man with your eyes - -

5 A. Yes, sir.

6 Q. - - and was there anything obstructing your vision from seeing
7 him?

8 A. No, sir. I could see him crystal clear.

9 Q. And what did the black man and black woman do who were sitting
10 on the opposite side of the reception area from you and your
11 husband?

12 A. They were just talking, sir.

13 Q. Alright, and - - -

14 A. I could not tell what they were saying but you knew they were
15 speaking to one another.

16 Q. Could you hear any hollering?

17 A. No, sir.

18 Q. Any arguing or anything?

19 A. No, sir.

20 Q. Loud noises?

21 A. No, sir.

22 Q. Did eventually they get up and leave out of the tax office?

23 A. Yes, sir.

24 He leaned over towards her and said something to her, and then
25 they got up, and then I can't remember if she was ahead of him or

MRS. LOWRIMORE -- DIRECT EXAMINATION BY MR. GOUDE

105

1 if he was behind her but they got up and walked out the door like
2 nothing was wrong.

3 Q. When they were walking out, did the man have a headlock around
4 the woman?

5 A. No, sir. I would have remembered that, sir.

6 Q. This, ah, just to make sure you and the jury know what a
7 headlock is, did the man have his arm around the woman's head like
8 this dragging her out of the door - -

9 A. No, sir.

10 Q. - - in a headlock?

11 A. No, sir.

12 Q. Could you see any kind of knife in his hand, ma'am?

13 A. No, sir. He had nothing in his hand.

14 Sir, he walked out with her just like you and me are talking
15 like a normal couple. You never knew there was anything wrong
16 between the couple until they stepped outside the door.

17 Q. Did you say they were husband and wife?

18 A. I didn't know if they was husband and wife or boyfriend or
19 girlfriend. They was - - but they - - you didn't know anything
20 was wrong.

21 Q. Did you hear any threats?

22 A. No, sir. You couldn't even hear what they was saying. You
23 knew they was speaking but you couldn't hear what either one of
24 them was saying.

25 Q. Was the woman, ah, the black lady, was she screaming and

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

106

1 hollering for y'all's help?

2 A. No, sir. If she had of been, I'd have been out the backside
3 of the wall.

4 Q. Was the black lady where she was sitting on the opposite side
5 of the reception area from you, let's say you were sitting where
6 you're seated over here, could she see sitting there?

7 A. Yes, sir.

8 Q. Could she see your husband sitting right beside you?

9 A. Yes, sir.

10 Q. Did the black man hit her or anything while you were there?

11 A. No, sir. He never put his hands on her or anything like that.

12 Q. Did she say, "Help," or start crying?

13 A. No, sir.

14 Q. Alright.

15 When they walked out of the tax service office when they
16 walked out of the door, did they go to the left like they were
17 going to Subway or did they go to the right?

18 A. Like they were going to Fred's - -

19 Q. To Fred's.

20 A. To the right, sir.

21 Q. Okay.

22 Now, when they were - - when they went outside, what did you
23 see then? What happened out there?

24 A. Once they turned, you could tell they was arguing.

25 Q. And did you see anybody else join them?

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

107

1 A. A little bit later a younger gentleman come from the parking
2 lot in front of the building and come up towards them, and it
3 looked to me like the gentleman - - the other gentleman who was
4 coming up this way, it looked to me like the lady was trying to
5 get the older gentleman to stop and not go towards the younger
6 gentleman.

7 Q. Okay.

8 And could you see what the - - the younger gentleman, was he
9 a black male also?

10 A. Yes, sir.

11 Q. And what did the two black men do then?

12 A. They went at each other fighting. You could not tell who
13 started it. It was like a cat fight. They just went at each
14 other at the same time.

15 Q. And what happened after that?

16 A. A little bit later the fight broke up and the younger
17 gentleman came into the store and was standing on the side that me
18 and my husband was on and said - - I don't remember he said, "Call
19 911," or "Call the police."

20 He said someone had been stabbed. He didn't say who had been
21 stabbed.

22 Q. And what happened next?

23 A. Then they left.

24 Q. They being who?

25 A. The older - - the younger gentleman left out of the building,

MRS. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

108

1 and they said that the older gentleman got on to his bicycle - - -

2 MISS BIAGIANTI: Your Honor, I object.

3 Q. Don't say what other people said. Just say what you saw.

4 A. No, sir. No.

5 Q. Alright.

6 The younger black man, he came into the tax office?

7 A. He came into the tax office and said, "Call 911," or "Call the
8 police."

9 Q. Who was he talking to?

10 A. He just was talking to anybody, and then the other lady came
11 from the back and asked him to leave.

12 Q. And the other lady, was that Mrs. Browy?

13 A. The tax lady, yes, sir.

14 Q. Now, when they went back outside or did the, ah, while you
15 were in there, the black lady that was outside, did she come back
16 inside?

17 A. No, sir.

18 Q. While you were in there, did the black man - - -

19 MISS BIAGIANTI: Your Honor, I would object to the leading
20 at this point.

21 THE COURT: I would overrule.

22 Go ahead.

23 Q. Did - - did the first black man that walked out with the lady,
24 did he come back in the tax office while you were there?

25 A. No, sir.

1 He and the lady come up towards the door. They never went in
2 the building.

3 Q. And when they, ah, and the tax lady, Mrs. Browy, when she came
4 down, did she go outside?

5 A. Yes, sir. She went outside.

6 Q. And were they all then on the left side of the door as you
7 were looking out?

8 A. They were walking out towards the right side towards Fred's.

9 Q. And did you see what happened after they got - - -

10 A. After they got out of my sight, no, sir, I could not.

11 Q. And was that - - so, part of the wall of the tax office on the
12 left is like metal or wood or something? Is that correct? Is that
13 why you couldn't see?

14 A. I'm not sure, sir.

15 Q. Some kind of material you couldn't see through?

16 A. They got out of my view sight, and I couldn't see them.

17 Q. Okay.

18 Now, who was seated closer to the entrance to the tax office
19 front door?

20 A. I was, sir.

21 Q. You were seated and your husband was seated beside you?

22 A. Yes, sir.

23 Q. Since that day have you talked with any of the people involved
24 at all?

25 A. No, sir.

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

110

1 Q. And did ever see a knife in anybody's hand?

2 A. Excuse me. No, sir.

3 Q. Did you ever see at anytime either of the black men hit the
4 black woman?

5 A. No, sir.

6 If he did, she was out of my sight, sir.

7 MR. GOUDE: No further questions, Your Honor.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION BY MISS BIAGIANTI:

10 Q. Good afternoon.

11 A. Good afternoon, ma'am.

12 Q. You're familiar with the tax lady, Mrs. Browy?

13 A. Yes, ma'am.

14 Q. That's who you were referring to as the tax lady?

15 A. Yes, ma'am. I don't remember her name. I'm sorry.

16 Q. That's alright.

17 A. I've never met her but once.

18 Q. Now, isn't it true after the incident you and your husband
19 told Mrs. Browy that, um, you really didn't want to be involved?

20 A. Well, my husband told her if she needed us to help her that
21 she could call but, um, we didn't see where we could help, ma'am.

22 Q. And you never gave a statement to the police?

23 A. No, sir. We never seen the police, ma'am. They never came,
24 and we were gone later.

25 Q. And you never felt the need to contact the police and let them

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

111

1 know your statement?

2 A. No, sir, because they said if they needed us, they would get
3 in touch with us, and nobody never did.

4 Q. And, um, doesn't the reception area have a pretty big wall
5 around it?

6 A. Ma'am?

7 Q. Where the receptionist sits, isn't there a pretty big wall
8 around that area?

9 A. I could see, um, in there I could see her clearly, ma'am.

10 Q. Okay.

11 Now, um, weren't you and your husband sitting - - you were
12 sitting here and your husband was sitting here?

13 A. We were sitting side by side in two chairs side by side ach
14 other.

15 Q. So, you were sitting - - you were sitting on this seat?

16 A. I think so.

17 From where we were sitting I could see her crystal clear, and
18 I could see the gentleman, too, ma'am.

19 Q. Okay.

20 And there's a big wall that comes around here?

21 A. I think so.

22 Q. Okay.

23 THE COURT: And you're referring to?

24 MISS BIAGIANTI: State's Exhibit #13, Your Honor.

25 Q. Tell me where - - this is State's Exhibit #14. Tell me where

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

112

1 that black female was sitting.

2 A. She was sitting on this side. I can't tell you exactly which
3 seat but she was sitting here, and the gentleman was sitting on the
4 other side of her.

5 Q. Okay.

6 A. They were right together.

7 Q. So, you don't remember which seat?

8 A. No, sir. It wasn't the last one. It was up in there.

9 Q. Okay. So it was more towards the middle?

10 A. Yes, sir, but you could see both of them.

11 She was sitting here and he was sitting here but I could see
12 both people.

13 Q. And you're sure you saw them clearly?

14 A. Yes, ma'am, I could see them clearly.

15 Q. Now, you said one walked in front of the other one. Is that
16 what you said?

17 A. No, ma'am. I said when they walked out the door, one of them
18 -- I don't know if he was ahead of her or if she was ahead of him.

19 Q. And you said you're positive he didn't have a knife?

20 A. No, ma'am. I didn't see a knife in the building whatsoever.

21 Q. But you saw him clearly?

22 A. He walked with his hands just like a normal person. He had
23 his hands right down. He never touched her in anyway.

24 Q. So, it's not true that he had his arm over her neck.

25 A. No, ma'am. I did not see that, ma'am.

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

113

1 Q. So, then, Mrs. Browy was just mistaken that she saw that?

2 MR. GOUDE: Objection.

3 THE COURT: No. I sustain. Just ask questions of
4 witnesses.

5 MR. GOUDE: I don't know if Mrs. Browy ever even said that,
6 Your Honor.

7 Q. Well, isn't it true that you actually never left your seat.
8 When Mrs. Browy left, she came back in and you guys were still
9 sitting in your exact same seats?

10 A. I think that's so.

11 Q. Okay.

12 A. I think I did walk up to the window because I saw blood on the
13 sidewalk.

14 Q. So, you did see blood?

15 A. On the sidewalk.

16 Q. So, you're saying you might have gotten up - -

17 A. Yes, ma'am.

18 Q. - - but your husband didn't get up?

19 A. No, ma'am. My husband - - I got up because I remember going
20 towards the window, and I saw blood, and I told my husband there
21 was blood on the sidewalk.

22 Q. And isn't it true that you heard a - - there was a loud
23 banging noise?

24 A. Ma'am?

25 Q. Wasn't there a loud banging noise of someone banging against

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

114

1 the window?

2 A. I do not remember that, ma'am.

3 Q. And you said you had been sitting there for a while?

4 A. Yes, ma'am.

5 Q. And you were reading something, correct?

6 A. No, ma'am. I had nothing in my hands reading anything,
7 ma'am.

8 Q. Now, you said they were talking but you couldn't hear what
9 they were saying?

10 A. Yes, ma'am. They were speaking to each other but you could
11 not tell - - they weren't talking loud enough for you to hear
12 either on of them.

13 Q. But, clearly, the defendant - - do you recognize the man who
14 came in and sat down that day?

15 A. No, ma'am.

16 Q. So, you wouldn't know him if you saw him?

17 A. I could not - - ma'am, I could not identify him. Like I told
18 both people, I could not identify them if they was in a lineup. I
19 couldn't. I've never seen them but that little bit of time.

20 Q. So, and you don't know who got stabbed?

21 A. No. They said the younger guy got stabbed but I can't say who
22 got stabbed. They said - - I was told the younger gentleman is the
23 one who got stabbed.

24 But I didn't see - - -

25 Q. And when you say the younger gentleman, you're referring to

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

115

1 the guy who did not come in - - originally?

2 A. No, ma'am. The younger - - okay. The older man came in and
3 sit down beside of the young lady. Then, after they walked outside
4 the young man came inside.

5 He's the one they said - - he's the one that said, "Call 911,"
6 or "Call the police department."

7 Q. So, he did say, "Call 911"?

8 A. He said call 911 or the police department. I can't remember
9 which one.

10 Q. I'm sorry. I didn't mean to cut you off.

11 A. I'm sorry.

12 Q. That's alright.

13 Didn't when he came in he had his hand above his head? Did
14 you see some blood?

15 A. I didn't see any stab wounds because he didn't - - he just
16 said, "Call 911. Someone had been stabbed."

17 So, I didn't know which gentleman had been stabbed.

18 Q. He didn't say, "I've been stabbed." He said, "Someone had
19 been stabbed."

20 A. No, ma'am. He said, "Someone had been stabbed."

21 Q. Okay.

22 Did you see his hand up in the air with blood on it?

23 A. No, ma'am. Not that I remember that, no, ma'am.

24 Q. And, um, and I think you said earlier, and I'm not trying to
25 confuse you, but you said that they were talking. Didn't you tell

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

116

1 our investigator that you could tell they were arguing?

2 A. No, ma'am, I did not tell him that.

3 Q. You didn't tell our investigator that you spoke with this
4 morning - -

5 A. No, ma'am.

6 Q. - - that you could clearly tell that they were arguing?

7 A. No, ma'am.

8 He asked me questions. He asked me, "Were they arguing?"

9 And I said, "No, sir."

10 I said, "They were talking to one another but you couldn't
11 understand what they were saying."

12 Q. Okay.

13 And, um, didn't you tell our investigator earlier, too, that
14 someone else was dragging her down beside the building?

15 A. My husband said that but I didn't see that, ma'am.

16 Q. But you didn't you tell our investigator that this morning?

17 A. I told him I was told that but I did not see him do that to
18 her, ma'am.

19 Q. Okay.

20 Because you never got up out of your seat - - or you never
21 went outside?

22 A. Whenever I got up, they was already out of my sight, and if
23 I'm not mistaken, they had already moved away.

24 Q. Okay.

25 A. So.

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

117

1 Q. How many times have you talked to Mr. Goude about this?

2 A. His lawyer?

3 Q. Yes, ma'am.

4 A. He called the house one time if I'm not mistaken, and then I
5 talked with him today. I think that's the only two times. If
6 he's called the house more than that, I do not remember but I do
7 remember him calling the house once, and then I talked with him
8 this morning.

9 Q. And how many times did you go over your testimony today?

10 A. I think it was one time, ma'am.

11 Q. And when you went and spoke with him this morning, your
12 husband was in the room with you?

13 A. Yes, ma'am.

14 Q. So, you guys' stories are pretty much the same - - because you
15 were sitting with one another?

16 A. Yes, ma'am.

17 I remember more than what he did, ma'am.

18 Q. I'm sorry. I couldn't hear you.

19 A. I remember more than what he did.

20 Q. He did - - you remember more than what your husband saw?

21 A. I remember more than what my husband did.

22 Q. Okay.

23 Now, I'm not trying to confuse you but the Court Reporter can
24 read your testimony back.

25 Didn't you tell Reuben that you saw the defendant pulling the

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

118

1 female towards Fred's?

2 A. No, ma'am. I told him earlier - - -

3 Q. You didn't say that?

4 A. No, ma'am. They walked away towards Fred's but he asked me
5 did I see him pull the lady. I said, "No, sir."

6 I said, "I was told that someone said he pulled her down that
7 way," but I did not see that, ma'am.

8 MISS BIAGIANTI: I'm sorry.

9 Q. Did you tell Mrs. Browy, the tax lady, after the incident that
10 you actually saw the defendant for lack of a better term scouting
11 out the place before him?

12 A. No, ma'am.

13 Q. Okay.

14 Never told her that?

15 A. No, ma'am.

16 Q. You never told her that you saw the older black man looking in
17 the window?

18 A. No, ma'am.

19 Q. Thank you.

20 THE COURT: Any redirect, Mr. Goude?

21 MR. GOUDE: No, sir, Your Honor.

22 THE COURT: You may step down.

23 MRS. LOWRIMORE: Can I have my social security card, sir?

24 THE COURT: Yes. Give her the card back if you would,
25 please.

MRS. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

119

1 MISS BIAGIANTI: I don't have it. I gave it - - I think
2 she put it back in her wallet.

3 THE COURT: If you would, check to see if you have it. If
4 you don't have it, we'll get it for you. We'll make sure you
5 don't leave without it.

6 MRS. LOWRIMORE: Okay.

7 (The witness leaves the witness stand.)

8 THE COURT: Next witness, please.

9 MR. GOUDE: We'd call Mr. Heyward Lowrimore, Your Honor.

10 THE COURT: Okay.

11 Y'all want the same thing on him, too? Y'all want the card?

12 MISS BIAGIANTI: Sir?

13 THE COURT: Y'all want his social security card, too?

14 MISS BIAGIANTI: No, sir. I already have that, Your Honor.

15 THE COURT: Okay. Good.

16 You got it, ma'am?

17 MRS. LOWRIMORE: Yes, sir.

18 THE COURT: Good.

19 (The witness takes the witness stand.)

20 MR. GOUDE: He wishes to affirm, Mr. Lowrimore.

21 THE COURT: He may affirm.

22 HEYWARD MELVIN LOWRIMORE, having affirmed,
23 testifies as follows:

24 THE COURT: Have seat.

25 CLERK OF COURT: Please state your name for the record and

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

120

1 spell your last.

2 MR. LOWRIMORE: My name is Heyward Melvin Lowrimore, L-o-
3 w-r-i-m-o-r-e.

4 THE COURT: Alright. Counsel.

5 DIRECT EXAMINATION BY MR. GOUDE:

6 Q. Mr. Lowrimore, what is your address? Where do you live?

7 A. 7000 Bud Dunham Road, Gresham, South Carolina.

8 Q. What county is that?

9 A. Marion.

10 Q. Now, ah, did you use to work in Georgetown?

11 A. Yes.

12 Q. Where did you use to work?

13 A. Piggly Wiggly.

14 Q. And did you get in the habit of having your taxes prepared at
15 Palmetto Tax Service in Georgetown?

16 A. Yes.

17 Q. And do you still work in Georgetown?

18 A. No, sir. I work with the IGA in Florence.

19 Q. This year did you still do your income taxes in Georgetown?

20 A. Yes, sir.

21 Q. You drove from your home in Marion County here in Georgetown?

22 A. Yes, sir.

23 Q. I'm going to direct your attention back to February 21st of
24 2008, the day we're all here in court about, and were you in the
25 Palmetto Tax Service Office that afternoon around 2:00, 2:30,

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

121

1 something like that?

2 A. Yes, sir.

3 Q. And was your wife, Jean, there with you?

4 A. Yes, sir.

5 Q. And you were there to do your 2007 income tax returns?

6 A. Correct.

7 Q. I'm going to show you some photographs that have been put in
8 evidence and ask you if this Prosecution Exhibit #11 here, is that
9 the parking lot at the Palmetto Tax Service Office?

10 A. Yes, sir.

11 Q. And #12, is this the, like, front and side of Palmetto Tax
12 Service?

13 A. Yes.

14 Q. And over to the left of that is Fred's Department Store?

15 A. Right, correct.

16 Q. And is #10 also, basically, showing the front post and stuff
17 in front of the Palmetto Tax Service and Fred's Department Store?

18 A. Correct.

19 Q. And does #13 show - - when you and your wife came in, inside
20 of the reception area are there chairs on the right-hand side of
21 the wall and the lefthand side?

22 A. Right.

23 Q. Which side did you and your wife sit on?

24 A. Ah, coming in we was on the right.

25 Q. Okay.

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

122

1 And does this photograph, Prosecution Exhibit #13, does that
2 show chairs on the right-hand side of the wall of the reception
3 area.

4 A. I don't remember this here.

5 THE COURT: Speak louder, please, sir.

6 Q. Speak up.

7 A. I don't remember this wall here. I mean, it could have been
8 there. I just can't remember.

9 Q. That's the little, ah, looks like little step wall between
10 some of the chairs?

11 A. I can't remember that wall.

12 Q. Okay.

13 But you and her were sitting on that side?

14 A. We was on the right-hand side.

15 Q. And this Prosecution Exhibit #9, does that show the front: A
16 glass door with glass walls on each side of Palmetto Tax Service?

17 A. Right. Yes.

18 Q. And Prosecutor #8, does that also show the front of the
19 Palmetto Tax Service?

20 A. Yes, sir, that's it.

21 Q. Okay.

22 So, you and your wife, y'all came in and you sat on the right
23 side, and do you remember how far down on the right side you sat.
24 There's a line of chairs. Looks like there's about one, two,
25 three, four.

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

123

1 A. This is the glass door here?

2 Q. Yes, sir. That's the glass door.

3 A. We were further up this way.

4 Q. So, y'all were on the chairs on the lefthand side of the
5 picture?

6 A. Yes, sir.

7 Q. Y'all - - y'all were on the lefthand side of that little step-
8 looking wall way?

9 A. Well, I don't remember the wall. I just remember we were
10 further down from the door.

11 Q. Further down from the door.

12 Okay.

13 MISS BIAGIANTI: Can you point it out?

14 Q. It looks like y'all would be sitting in some of these - -

15 A. I would say somewhere in here.

16 Q. - - some of these gray chairs on the left side of the picture?

17 A. Yeah.

18 Q. Some of these gray chairs - - -

19 A. Somewhere in here.

20 Q. Okay.

21 Now, when you sat there, at some point in time a young black
22 woman, ah, come in and sit down in the reception area.

23 A. Yes, she did.

24 Q. Did you know her before that day?

25 A. No, sir.

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

124

1 Q. Did you know me before that day?

2 A. No, sir.

3 Q. Did you Robert Dexter Brown that day?

4 A. No, sir.

5 Q. Since that day have you talked with Robert Dexter Brown any?

6 A. No, sir.

7 Q. Did you talk with the woman, the lady that was in there, the
8 young black lady?

9 A. No, sir.

10 Q. Ah, alright. So, when y'all were in there, do you remember if
11 you and your wife went in before the young, black lady or if she
12 came in before you guys?

13 A. We were in there first.

14 Q. And do you remember when she came in?

15 A. Yes, sir.

16 Q. And where did she sit in the reception area?

17 A. Opposite the room from us.

18 Q. Opposite the room from y'all.

19 So, she would be on the lefthand side as you walking in the
20 door?

21 A. Right.

22 Q. Could you see her from where you were sitting?

23 A. Ah, yes, she was at an angle but I could see her.

24 Q. Okay.

25 Now, at some point did a black man come in?

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

125

1 A. Yes.

2 Q. And what did the black man do when he came in?

3 A. Ah, he just come in and sat down beside her, and they was, um,
4 just carrying on a conversation - - just like me and my wife would,
5 you know. Nothing, no fussing, nothing like that.6 Q. Could you - - by the way they were talking and such, could you
7 form an opinion of what - - -

8 MISS BIAGIANTI: Your Honor, I would object.

9 MR. GOUDE: I'll move on. I'll move on.

10 Q. And so what did they do? What did the black man and the
11 black woman do?12 A. They were sitting there just talking, and, ah, then he leaned
13 over like kind of to her shoulder talking. They were whispering,
14 like, but, you know, we didn't hear anything.15 Q. And at some point did they stay there or did they get up and
16 leave?17 A. They were in there for a few minutes, and then they got up and
18 walked up.19 Q. When they got up and walked out together, do you know in what
20 position they were walking? Was one of them walking in front or
21 the other one behind or were they walking side by side? Can you
22 remember any of that?

23 A. Best of my recollection, they was kind of like side by side.

24 Q. Alright.

25 Now, when they were walking out the door, could you see them

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

126

1 clearly?

2 A. When they went out the door?

3 Q. Yeah. When they were - - not when they got outside. When
4 they were in the reception room getting out of the chair to walk
5 through the door, could you see them?

6 A. Ah, yeah.

7 Q. At any point did the lady that was in there, did she holler or
8 scream or ask for help or anything?

9 A. Not inside the place.

10 Q. When the man and the woman were walking outside the place, at
11 any time did the man grab the woman and - - -

12 MISS BIAGIANTI: Your Honor, I object to his leading.

13 THE COURT: Overruled.

14 Proceed.

15 Q. At any point did the man - - the black man grab the lady
16 around the neck in a headlock or anything?

17 A. I didn't see it.

18 Q. Did he grab her like this?

19 A. I didn't see him.

20 Q. Did you see anything like this?

21 A. I didn't see it.

22 MR. GOUDE: And the record will reflect that I've got my
23 arm around Mr. McCarley's neck in a headlock.

24 So, thank you very much.

25 Q. Ah, did anything appear to be to you with your eyes to be

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

127

1 wrong or violent or threatening or harmful while they were in your
2 sitting area?

3 A. No.

4 Q. When they got outside the door and walked out the door, which
5 way did they go? To the right towards Fred's or did they go to
6 the left?

7 A. I can't say.

8 Q. When they went outside, what did you see when they got outside
9 the building?

10 A. I really didn't pay attention to anything. Me and my wife was
11 just talking, and all of a sudden we heard a fight start.

12 So, I can't tell you who started it or what.

13 Q. When you heard a fight start, what was it you heard?

14 A. It was just, ah, like they hit the glass door like.

15 Q. Uh-huh.

16 A. And, like I said. We really - - I stayed in my seat. So I
17 didn't really get into it.

18 But I heard them hit the glass door and one of the gentleman,
19 I don't even remember which one it was, stuck his head in and said,
20 "Call 911."

21 I couldn't even tell you which one it was.

22 Q. Okay.

23 You talk about you heard - - you heard them hit the glass
24 door. You talking about the front glass door of Palmetto Tax?

25 A. Yeah. Just like when somebody got pushed against it or

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

128

1 something. That's when I turnt my head and looked up.

2 Q. Okay.

3 When you looked up and who could you see outside the building?

4 A. I couldn't pick people out for - - I mean, I know the lady was
5 out there but as far as the gentlemen and stuff, first time I've
6 ever seen them. I couldn't tell you who they were.

7 Q. Don't identify them but could you see the black lady when you
8 looked out of the glass - - -

9 A. I could see her outside the door.

10 Q. Yeah.

11 How many black men was there?

12 A. There was two. Two black men.

13 Q. Two of them?

14 Alright.

15 And one of the stuck his head inside the door and said, "Call
16 911."

17 A. Yes.

18 Q. What did you see after that?

19 A. There was another one. Like I said. There was two run up
20 there, and they was fighting, and that's about all I saw.

21 They kind of went to the right next to Fred's away from us.

22 Q. Okay.

23 A. So I couldn't tell you from there.

24 Q. Okay.

25 If they went to the right towards Fred's why could you not se

MR. LOWRIMORE - DIRECT EXAMINATION BY MR. GOUDE

129

1 them anymore?

2 A. There's a wall where I was sitting at the tax service. At
3 the angle I couldn't see through. You know, the wall sits here -

4 -

5 Q. Yeah.

6 A. - - and I couldn't see past that.

7 Q. Because the wall becomes like solid?

8 A. Yeah, right.

9 Q. And I'm showing you Prosecution Exhibit #14, the solid wall.

10 A. Right.

11 So, I was sitting back here, and say, past this angle, I
12 couldn't see what was going on.

13 Q. Okay.

14 Did you see a knife in anybody's hand?

15 A. I did not but I did - - -

16 Q. Don't say anything about what you heard - -

17 A. Okay. I did not see a knife.

18 Q. - - or what somebody told you. Just say what you saw.

19 A. No.

20 Q. Did you see a knife in anybody's hand?

21 A. I did not see a knife.

22 Q. Now, when the two black men were outside before one of them
23 stuck his head in the door and said, "Call 911," did you see anyone
24 stick his hand in his pocket like he was pulling out something?

25 A. Like I said, I was talking to my wife and wasn't really paying

MR. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

130

1 attention that close.

2 Mostly, I saw a scuffle, two men fighting.

3 Q. Okay.

4 A. The onliest thing I saw concerning anything like that was
5 blood down. I know somebody got stabbed. I don't know who done
6 it.

7 Q. Did you see that when you were leaving?

8 A. When I was leaving, I saw blood on the floor. I know someone
9 got stabbed. I don't know who - - who it was.

10 Q. Okay.

11 Thank you.

12 MR. GOUDE: We have no further questions, Your Honor.

13 THE COURT: Alright.

14 Cross examination?

15 MISS BIAGIANTI: Yes, sir.

16 CROSS EXAMINATION BY MISS BIAGIANTI:

17 Q. Mr. Goude asked you did you see a knife. You said no, right?

18 A. No, I did not see a knife.

19 Q. What did you see?

20 A. Like I said. I just saw two people scuffling together.

21 Q. You didn't see anything in anybody's hand?

22 A. No.

23 Q. And you said when the younger male come in, he said, ah, "Call
24 911."

25 A. No. I said one of the gentleman said that. I don't know who

MR. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

131

1 it was. Somebody said, "Call 911."

2 Q. Well, that's the only one who said, "Call 911."

3 Do you remember him saying, "Someone got stabbed"?

4 A. I can't remember. I really can't.

5 Q. All you remember is, "Call 911"?

6 A. I do remember that.

7 Q. And you remember the glass, of someone hitting glass. Right?

8 A. Yes. I remember someone hitting glass like that - - or
9 hitting the wall outside. It wasn't like breaking glass. It was
10 like they pushed against it. Someone was pushed against the door
11 like.

12 Q. So, you're saying if someone hit the wall outside, a brick
13 wall you would have heard that?

14 A. No. I'm saying it wasn't like breaking glass. It was like
15 someone pushed someone against the glass wall outside.

16 Q. But it was so loud that - -

17 A. I heard that.

18 Q. - - you remember it. You heard it?

19 A. Yes. Right.

20 Q. Um, and what were you and your wife doing at that time when
21 you heard that noise? Did you say anything like, "What was that
22 sound?" or - - -

23 A. I didn't believe what was happening. I've never seen nothing
24 like that in my life. I was kind of stunned.

25 Q. You never in your life have seen that?

MR. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

132

1 A. No, ma'am. I didn't play the hero, I promise you.

2 Q. But, um, not really paying attention.

3 A. I sit in my seat until it was over with and they had already
4 went down next to Fred's. I didn't even - - after it was over with
5 I got up and walked over there.

6 Q. And what were you reading that day?

7 A. Ma'am?

8 Q. Were you reading something that day?

9 A. I was probably looking through a magazine. I can't recall.

10 Q. Now, I think you told Mr. Goude that you were sitting when he
11 showed you the picture with the chairs that you were sitting more
12 towards the left.

13 This is State's Exhibit #13.

14 A. Yeah, it was on this side.

15 Q. So, it was somewhere up here?

16 A. Right.

17 Q. Okay.

18 Now, isn't there a big wall over here - -

19 A. Her desk - -

20 Q. - - at the reception area?

21 A. - - her desk is here, the reception area, but we could see
22 her, the lady on the side. It wasn't like all the way to - - I
23 could see the lady but she wasn't sitting up against the corner.
24 She was kind of further in the middle between the two.

25 Q. And you're positive it was not this side of the wall or do you

MR. LOWRIMORE - CROSS EXAMINATION BY MISS BIAGIANTI

133

1 remember that wall being here?

2 A. I don't remember the wall.

3 Q. Okay.

4 And isn't it true that, um, that you said it sounded like an
5 argument and there were problems?

6 A. Once they got outside the door.

7 Q. Okay.

8 So, when you said that you didn't mean that they were arguing
9 inside?

10 A. No.

11 Q. Could you tell if there was a conversation going on?

12 A. They were talking just like me and my wife would talk just
13 carrying a conversation on.

14 Q. So you couldn't hear what they were saying?

15 A. No.

16 Q. How many times have you met with Mr. Goude?

17 A. With who?

18 Q. Mr. Goude.

19 A. Ah, today's the first day of actually meeting him.

20 Q. How many times you talked to him on the phone?

21 A. Twice I think.

22 Q. And you're under his subpoena - -

23 A. Yes, ma'am.

24 Q. - - to be here?

25 Now, isn't it true that after the incident you told the tax

MR. LOWRIMORE - REDIRECT EXAMINATION BY MR. GOUDE

134

1 lady, Mrs. Browy, that you really didn't see nothing at all?

2 A. That's correct.

3 Q. And you never told this to the police what you came here and
4 told us today?

5 A. I've talked to no one about it except y'all.

6 Q. And never made a written statement?

7 A. No.

8 Q. Never thought that you needed to police and say, "I thought
9 this was just a friendly conversation between the victim"?

10 A. I've never talked to no one.

11 Q. Wasn't there a lot of blood on the pavement outside?

12 A. It wasn't what I would call a lot but it was several drops of
13 blood around there.

14 Q. You don't know who got stabbed - -

15 A. I don't know.

16 Q. - - or with what?

17 A. I couldn't tell you who got stabbed.

18 Q. So, you know someone got stabbed.

19 A. I know someone got stabbed.

20 Q. Thank you.

21 THE COURT: Any redirect?

22 MR. GOUDE: Just a couple, Your Honor.

23 REDIRECT EXAMINATION BY MR. GOUDE:

24 Q. Sir, I just ask if you recall. While you were there did you
25 all after all this was over with this incident, did you and your

MR. LOWRIMORE - REDIRECT EXAMINATION BY MR. GOUDE

135

1 wife go ahead and do your taxes there at the tax office?

2 A. Yes, we did.

3 Q. While you all were still there, you and your wife, did the
4 police come inside the tax office?

5 A. Never saw no one.

6 Q. Did you - - -

7 A. The lady did call 911. So we were there probably forty-five
8 additional minutes at least and the police never showed.

9 Q. They never came in and interviewed you or Mrs. Browy then or
10 your wife then?

11 A. No, sir. Never heard anything.

12 Q. Did the police ever drive to your home in Marion County and
13 ask you any questions?

14 A. No, sir.

15 Q. Did the police ever call you on the telephone like I did and
16 ask you questions since all that happened?

17 A. No, sir.

18 Q. Now, the Solicitor just asked you and you stated that you told
19 Mrs. Browy right after this happened, you had seen nothing at all.
20 When you told her you didn't see nothing at all, did you mean you
21 didn't even see the people sitting in the reception - - -

22 MISS BIAGIANTI: Your Honor, I would object to leading.

23 THE COURT: Again, I overrule.

24 Go ahead.

25 Q. When you told Mrs. Browy after this happened that evening

MR. LOWRIMORE - RE-CROSS EXAMINATION BY MISS BIAGIANTI 136

1 while you were doing your taxes that you didn't see nothing at all,
2 were you meaning you didn't even see the people in the reception
3 area or were you meaning you didn't see anybody starting a fight?

4 A. I mean I didn't see them when they started the fight. I saw
5 the people in the reception area. The gentleman and the lady that
6 was in the reception area sitting there talking, and they got up
7 and they walked out. I saw that.

8 Now, as far as who started the fight, no, I did not see who
9 started the fight.

10 MR. GOUDE: I have no other questions.

11 THE COURT: Anything else, Miss Biagianti?

12 RE-CROSS EXAMINATION BY MISS BIAGIANTI:

13 Q. When you saw the two of them walk out, isn't it true that he
14 had his arm around her shoulder?

15 A. No. I did not see that.

16 Q. You were - - -

17 A. They just walked out like me and my wife would walk out of a
18 store side by side.

19 Q. And you weren't paying attention but you were able to see that
20 clearly?

21 A. Well, I may have had a book but you glance up when someone
22 walks out of the door.

23 Q. So, you just glanced up at them and continued to read your
24 material?

25 A. Well, like I said. I saw them walk out the door. They were

JUROR #19 EXAMINED BY THE COURT

137

1 not arm locked.

2 THE COURT: Now, you may step down, sir.

3 Thank you very much.

4 (The witness leaves the witness stand.)

5 THE COURT: Mr. Goude, those are your two out-of-town
6 witnesses, right?

7 MR. GOUDE: Yes, sir, Judge.

8 THE COURT: I'm - - I'm going to let the jury go to lunch
9 now unless you got somebody that's from out-of-town.

10 Ladies and gentlemen of the jury, y'all just have seat back
11 there, Mr. and Mrs. Lowrimore. We'll let the jury go first.

12 If y'all would, let's go for only an hour, please, so you can
13 get back and we can try to get this case in your hands today.

14 So, we'll see you in one hour, let's say three - - excuse me,
15 three. 2:30, I'll give you an hour and two minutes. 2:34.

16 I'm always trying to be fair.

17 (The jury is released and departs for lunch at 1:33 p.m. to
18 return at 2:34 p.m.)

19 THE COURT: Mr. Clerk, step up here with me.

20 (Bench conference held off the record and outside the presence
21 of the jury.)

22 JUROR #19 EXAMINED BY THE COURT

23 THE COURT: Alright.

24 Linda, let you know I had the Clerk here with the witness.
25 You saw me with the juror.

JUROR #19 EXAMINED BY THE COURT

138

1 Um, this juror and, um, the juror is Annie Collins who is #19,
2 um, she, ah, said that when we mentioned Heyward Lowrimore she
3 didn't know that name but when she saw Mr. Lowrimore, she's known
4 him as Melvin Lowrimore and that she at one time was married to a
5 Lowrimore and that this gentleman is her ex-husband's nephew, and
6 she hasn't seen him in years but she just saw his face and
7 recognized that it wouldn't affect her ability to be fair and
8 impartial but that, um, she saw his face and she knew that.

9 Now, sir, are you known as Melvin Lowrimore?

10 MR. LOWRIMORE: Yes.

11 THE COURT: Okay. Did you know her?

12 MR. LOWRIMORE: I have no idea who she is.

13 THE COURT: Okay.

14 Well, in any event, she just wanted us to know that it
15 wouldn't affect her but y'all wish me to ask the juror any other
16 questions after lunch, just think about it and let me know.

17 Mr. Clerk, stand up. Have I told them everything that she
18 told me?

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

20 THE COURT: Okay.

21 But I'll be glad to ask her other questions in front of y'all
22 if y'all want me to or whatever but, um, um, um, she said that this
23 gentleman was her exhusband - - she said her - - and this also.

24 She said her and her exhusband are on good terms and all like that.

25 It's not like that it was rough divorce. She said they were on

JUROR #19 EXAMINED BY THE COURT

139

1 good terms.

2 Tell - - tell Mr. Goude about it. I rather you talk to him.
3 Mr. Goude, go see what he wants to tell me.

4 Tell you what, sir. You come around here fine. Back there,
5 the Court Reporter can't hear you. Come on around here. Come on.
6 Come on. Yes, sir.

7 Just stand right here in front of the Clerk here.

8 What - - what did you want to say?

9 MR. LOWRIMORE: What did you say the lady's name was
10 again?

11 THE COURT: I think her name is Annie Collins.

12 MR. LOWRIMORE: Yes, sir.

13 That was my aunt. I'm nearsighted. I can't see real close
14 but, yes, that was my aunt. I know her now but you said Annie.
15 I didn't hear you.

16 THE COURT: When was the last time you saw her or spoke to
17 her?

18 MR. LOWRIMORE: My grandma's death about how long? Ten
19 years ago? Ten years ago.

20 THE COURT: Okay.

21 MR. LOWRIMORE: That's the reason I didn't recognize her.
22 It's been a while.

23 Now, I do remember you said, "Annie."

24 THE COURT: Okay.

25 So, y'all think about it and y'all let me know if y'all want

JUROR #19 EXAMINED BY THE COURT

140

1 me to do anything regarding with questioning the juror any further
2 about it.

3 Okay. Other than that we'll take a break for an hour.

4 If y'all have any request for charges, let me know. If not,
5 I've got my charges ready, and we'll see y'all in one hour. Have
6 a good lunch.

7 (The Court recesses the trial of this case for lunch and
8 thereafter resumes the trial of this case.)

9 THE COURT: Be seated.

10 Okay.

11 Mr. Goude, are you ready for me to talk to Mr. Brown, now?
12 Decide what his position is or do we need more time or what?

13 MR. GOUDE: I think we're going to call his mother as our
14 next witness. She'll be the last other than Mr. Brown, and he'll
15 decide after her whether he wants to testify or not.

16 THE COURT: You mean I'm going to send the jury back out,
17 Mr. Goude?

18 MR. GOUDE: I suppose we could - - -

19 THE COURT: Mr. Goude, this is a very important trial.
20 I'll do that but I'm just making sure you understand.

21 MR. GOUDE: Perhaps the Court could tell Mr. Brown - - -

22 THE COURT: No, sir. I tell you what. You've already
23 talked with him about it. We're going to do it that way.

24 How long will the mother be?

25 MR. GOUDE: Probably, ah, ten or fifteen minutes.

1 THE COURT: Alright.

2 And she's a fact witness on this case?

3 MR. GOUDE: Yes, sir. She's a brief witness.

4 THE COURT: Bring the jury in, please.

5 (The jury returns to the courtroom at 2:56 p.m.)

6 Ladies and gentlemen, ah, we're going to do one witness, and
7 then I'm going to ask you to step to the jury room just for a
8 minute, um, but we need to go ahead and get this witness in but I'm
9 going to ask you to step back for another matter I need to handle,
10 um, but you won't be out very long this time.

11 Alright. Your witness, Mr. Goude.

12 MR. GOUDE: Judge, we'd call Aldora Brown.

13 (The witness takes the witness stand.)

14 MISS BIAGIANTI: Your Honor, we're going to need her social
15 security number and date of birth as well.

16 THE COURT: Is Mrs. Brown in the courtroom, Mr. Goude? Why
17 is she not in the courtroom? Where is Mrs. Brown?

18 MR. GOUDE: She's outside.

19 THE COURT: Well, if you knew she was your witness, you
20 could have asked her to come on up.

21 Someone has gone to get her, though?

22 MR. GOUDE: She's down the hall.

23 THE COURT: Very long hall.

24 MR. GOUDE: Well, it's getting longer all the time.

25 THE COURT: And, also, if you would, Mr. Goude, when she

MRS. BROWN - DIRECT EXAMINATION BY MR. GOUDE

142

1 gets in here, step over to the prosecution table with her and let
2 Miss Biagianti write down her social security number if you would.

3 Come around, Mrs. Brown, if you would, please, ma'am. Come
4 right over this way to that table over there, please, ma'am.

5 ALDORA B. BROWN, being duly sworn,
6 testifies as follows:

7 CLERK OF COURT: Please have a seat. State your name for
8 the record spelling your last name, please.

9 MRS. BROWN: My name is Aldora - - Aldora B. Brown, A-l-d-o-
10 r-a B-r-o-w-n.

11 THE COURT: Okay.

12 Your witness, Mr. Goude.

13 DIRECT EXAMINATION BY MR. GOUDE:

14 Q. Mrs. Brown, if you would, tell the Court your address. Where
15 do you live?

16 A. 52 Hunter Lane, Kensington in Georgetown.

17 Q. Alright.

18 Now, in the - - Hunter Lane where you live, is that in the
19 backside of Kensington, the back part of Kensington?

20 A. No. It's at the end of Kensington Blvd.

21 Q. Okay.

22 Well, it's not out on the main highway, is it?

23 A. No.

24 Q. You need to say yes or no.

25 A. No.

MRS. BROWN - DIRECT EXAMINATION BY MR. GOUDE

143

1 Q. No?

2 Now, is the defendant Robert Dexter Brown, is this is your
3 son?

4 A. Yes, it is.

5 Q. And what is his full name?

6 A. Robert Dexter Brown.

7 Q. And how old is your son, Robert Brown?

8 A. He's a senior. He's fifty-one years old. He'll be fifty-one
9 in September.

10 Q. Alright.

11 Now, I want to direct your attention to the end of 2006 around
12 - - the end of 2006, first part of 2007, December of '06 and
13 January of '07. At that point did Robert Brown have a girlfriend
14 that came and started living with you at your house?

15 A. Yes.

16 Q. And what was her name?

17 A. Tywanda Keith.

18 Q. And did, ah, your son and Tywanda live there in your house
19 with you as boyfriend and girlfriend?

20 A. Yes.

21 Q. And was somebody else living there in your house besides you
22 and your son, Robert Dexter Brown, and the girlfriend? Did
23 somebody else live there?

24 A. My granddaughter.

25 Q. And what's her name?

MRS. BROWN - DIRECT EXAMINATION BY MR. GOUDE

144

1 A. Latesha Brown?

2 Q. And how is she now?

3 A. She's eighteen now.

4 Q. Now, ah, from about when - - when Tywanda Keith first moved in
5 with your son in your house back in December of '06, when did she
6 move out of your house?

7 A. That I can't directly answer because I wasn't home from
8 December 'til after New Years, and when I came back after New Years
9 she wasn't there.

10 Q. Alright.

11 Now, the December you're talking about now, what year was
12 that?

13 A. That was 2007.

14 Q. Alright.

15 So, in December, 2007, was Ms. Keith living in your house with
16 your son at that time?

17 A. Yes.

18 Q. And where did you go in December, 2007?

19 A. I went to Washington, D.C.

20 Q. This is about a year after she moved into your house?

21 A. Yes.

22 Q. Ah, and how long were you in Washington, D.C. when you left in
23 December of '07?

24 A. I was there from the first week in December until after New
25 Years. I came back the second week in January.

MRS. BROWN - DIRECT EXAMINATION BY MR. GOUDE

145

1 Q. Came back when in January?

2 A. The second week in January.

3 Q. The second week in January?

4 A. Yes.

5 Q. Now, when you left your home on Hunter Lane in Kensington in
6 December of '07, was Tywanda still living in your house?

7 A. Yes.

8 Q. Was your son Robert living in the house, too?

9 A. Yes.

10 Q. When you came back in January, the second week, was your son
11 Robert still living in your house?

12 A. He was still there.

13 Q. Was Tywanda still living there?

14 A. No.

15 Q. Did you talk with her after that for her to tell you that she
16 had moved out of your house?

17 A. Not really, no.

18 Q. How did you know she had moved?

19 A. I just didn't see her.

20 Q. Okay.

21 And did she leave clothing and stuff there that were still
22 there when you came back in January from D.C.?

23 A. Yes, they were.

24 Q. And did I go to your house after this case started and you
25 showed me some clothes that she had?

MRS. BROWN - DIRECT EXAMINATION BY MR. GOUDE

146

1 A. Yes.

2 Q. And did we take photographs of the clothes that you took out
3 of her bags and scattered on the carport floor so we could see
4 them?

5 A. Yes.

6 Q. And is this Defendant's Exhibit #1, A, B, C, D, four
7 photographs, are these the photographs of your house?

8 A. Yes.

9 Q. And are these the clothes that you and your son took - - was
10 that your son or grandson?

11 A. That was my grandson.

12 Q. That you and your grandson took out of these bags and laid on
13 the shoes and the clothes, were these her clothes?

14 A. Yes, they are.

15 Q. And Exhibit - - Defendant's Exhibit #1-D, that - - is that the
16 bedroom that they stayed in when they were at your house?

17 A. Yes.

18 Q. Now, at some point, ah, let's say in January of 2008, Mrs.
19 Brown, after Tywanda had moved out of your house, did you give
20 Robert a ride over to - - and did you know where Tywanda was
21 working in January and February?

22 A. Yes.

23 Q. Where did she work? Would you speak up loud so we can hear
24 you?

25 A. George - - um, George - - Prince George's Nursing Home I think

1 is what it is.

2 Q. Okay.

3 And so one night in January of this year, 2008, did you give
4 Robert Dexter Brown, your son, a ride over to the Nursing Home
5 where Tywanda was working?

6 A. Yes, I did.

7 Q. And at some point in 2007, did Tywanda and Robert move out of
8 your house for a brief period and go stay at Green Acres Trailer
9 Park and then come back to your house?

10 A. Yes, they did.

11 Q. Do you know about how long they were at the trailer park
12 before they came back to your house?

13 A. About a month and a half, two months.

14 Q. Were they both - - were you home last year on Thanksgiving,
15 2007, were you in your home here in Georgetown?

16 A. 200 - - - ?

17 Q. This past Thanksgiving, were you at your house on that
18 holiday?

19 A. Yes.

20 Q. And was your son Robert Dexter Brown there at your house on
21 that holiday?

22 A. I can't recall whether he was - - he had left to go to
23 Maryland. I can't remember whether he had left at that time or
24 not.

25 Q. Okay.

MRS. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

148

1 Was - - do you remember? Was Tywanda at your house on that
2 Thanksgiving Holiday last year?

3 A. I don't think she was.

4 Q. Do you know where she was at?

5 A. No.

6 Q. And after - - after Ms. Keith moved out of the house, Mr.
7 Brown was - - Mr. Brown, your son, was he dating another woman
8 some, a woman named Betty?

9 A. Yes.

10 MR. GOUDE: We have no other questions, Your Honor.

11 THE COURT: Any questions.

12 MISS BIAGIANTI: Just briefly, Your Honor.

13 CROSS EXAMINATION BY MISS BIAGIANTI:

14 Q. Then it is true your son and Tywanda were broken up at the
15 time of this incident?

16 A. As far as I know, yes.

17 Q. Um, and you talked about going with your son to Prince George
18 Nursing Home back in January. Correct?

19 A. Uh-huh.

20 Q. When Mr. Brown went inside the first time, did he tell you
21 once he got back in the car he wasn't suppose to be there?

22 A. No. He just said that the security guard stated that Ms.
23 Keith did not want to see him.

24 Q. So, you thought it was good idea to, ah, stay relatively close
25 to the property so the security guard could come out again?

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED 149

1 A. I just turned around. He told me to wait a minute. He say
2 she was going to come out the back door. So, I just waited for a
3 few minutes until the security guard came back out and said, "You
4 know, you need to leave the property because she say she didn't
5 want to see you."

6 MISS BIAGIANTI: That's it. I don't have any further
7 questions.

8 THE COURT: Anything else?

9 MR. GOUDE: No.

10 THE COURT: Alright.

11 If you would, please, stay there for a second.

12 Ladies and gentlemen, it will be quicker for y'all walk out
13 first.

14 So, if you would, do not discuss the case. Step to the jury
15 room just for a minute.

16 (The jury retires to the jury room at 3:11 p.m.)

17 THE COURT: Now, ma'am, you may step down. You may return
18 to the audience or whatever you wish to do. Okay?

19 And thank you again, ma'am.

20 (The witness leaves the witness stand.)

21 JUROR #19 EXAMINED BY THE COURT

22 THE COURT: Now, what I want to do, I'm going to bring out
23 the juror who said she was related at one time by marriage to Mr.
24 Lowrimore. Let me just put on the record what she said so we all
25 know that, and at that point then y'all can tell me how you feel

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED 150
1 about it.

2 But as I understand, Ms. Biagianti has some concern about her
3 staying on the jury. So, to make sure there's no misunderstanding
4 about what she said, um, let's bring her out.

5 So, we ask if you would, Ms. Collins to come out, please.

6 (Juror #19, Ms. Annie Collins, stands before the Court.)

7 THE COURT: Ms. Collins, if you would, go there in front of
8 the mike so we can put on the record what you and I talked about.
9 Okay?

10 Alright.

11 You look at me. You look at me. No problem. Okay?

12 Hope you had a good lunch. We got back just in time before
13 the rain got here.

14 MS. COLLINS: Yes, I did.

15 THE COURT: Now, ah, when you - - you left just before
16 lunch, you wanted to me, and you came up and you told me about the
17 last gentleman that testified before we broke for lunch, Mr.
18 Lowrimore.

19 MS. COLLINS: Yes.

20 THE COURT: Now, tell me if you would, what you told me.

21 MS. COLLINS: Okay.

22 When we were from - - -

23 THE COURT: I had asked you if you know anybody.

24 MS. COLLINS: Yes.

25 THE COURT: In qualifying the jury.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

151

1 MS. COLLINS: Yes.

2 You said Heyward Lowrimore.

3 THE COURT: Uh-huh.

4 MS. COLLINS: I don't know a Heyward Lowrimore but when he
5 came in here today, I do know him. I know him as Melvin Lowrimore,
6 and, um, he is my ex-husband's nephew, and at lunch I was
7 reflecting back when the last time I saw him, and it's actually
8 been twenty-six years since I have seen him.

9 THE COURT: Well, did you go to the grandmother's funeral
10 about ten years ago? You may have seen him then or something?

11 MS. COLLINS: Ah, I - - I actually went to a funeral but I
12 haven't seen him.

13 THE COURT: Okay. You don't recall that. Okay.

14 MS. COLLINS: No.

15 THE COURT: Now, how did you recognize him then if you
16 hadn't seen him in so long?

17 MS. COLLINS: When he said his name, Melvin - - Heyward
18 Melvin Lowrimore, I - - I had never seen his wife. I didn't even
19 know her.

20 THE COURT: Okay. Alright.

21 MS. COLLINS: It was just the Melvin that caught my
22 attention.

23 THE COURT: Okay.

24 Now, would the fact that you say your husband was his uncle or
25 is his uncle - - your ex-husband is his uncle?

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

152

1 MS. COLLINS: Yes.

2 THE COURT: Alright.

3 And would that have any affect upon your ability to be fair
4 and impartial?

5 MS. COLLINS: No.

6 THE COURT: Would the fact that he testified at all, would
7 that make - - would that affect your decision in this case at all?

8 MS. COLLINS: No.

9 THE COURT: The fact that he's your ex-husband's nephew,
10 would that affect you at all?

11 MS. COLLINS: No.

12 THE COURT: Okay, ma'am.

13 Now, what I would do is I'm going to ask you not to step to
14 the jury room but if you would step outside with one of the
15 officers, and I'm going to bring you back out back here in a
16 minute. Okay.

17 And don't worry. You've done nothing wrong. Don't worry
18 about that, okay?

19 You just step outside just for a second.

20 MS. COLLINS: You want me to go outside now?

21 THE COURT: With the officer. I mean outside the
22 courtroom, not the building.

23 (Juror leaves the courtroom.)

24 THE COURT: I got to write that one down.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

153

1 True story. You know how the, ah, the Clerk - - off the
2 record, Linda, please.

3 (The Court goes off the record and then reconvenes the trial
4 of this case.)

5 THE COURT: Alright, now, Miss Biagianti, Mr. Goude, y'all
6 want me to ask her any other questions, and then do y'all have any
7 concerns?

8 MISS BIAGIANTI: Yes, sir, I have a concern.

9 When I spoke to Mr. Goude before lunch, it was my
10 understanding that, you know, I had the intention of bringing the
11 alternate on, and he said at that time that sure but he just now
12 told me that he doesn't have any problems with her but I just have
13 great concern because I would never put on a family member of a
14 witness.

15 THE COURT: An ex-family member.

16 MISS BIAGIANTI: Right, but I think she told you she has a
17 good relationship with her husband, and I'm fearful that one day if
18 they attend the same function, she'd be uncomfortable. I really
19 strongly would object to her being on here.

20 THE COURT: Okay, and she said they do have a child, by the
21 way, her and her husband.

22 MISS BIAGIANTI: And I'm sure they still interact because
23 of that child.

24 THE COURT: Well, she hasn't seen this gentleman that she
25 can remember in twenty-six years.

2 | said he saw her about ten years ago.

3 Q Well, it's sixteen years here or there with
4 body. Ten years is a long time one way or the other.

5 MYERS BIRGE Q: No, Your Honor, I would have known the
6 I would not. I would have struck her.

7 THE COURT: So, you're saying had own that she was -

9 MUSS BIAGIANTE: Family.

10 THE COURT: - - the ex-wife of his 'e, then you would -
11 - you would have struck her off the jury?

12 MISS BIAGIANTI: Yes, sir.

13 . THE COL T. Alright.

14 Mr. Goude, what is your position?

15 MR. GOODE: My position is that Mr. Lowrimore is an
16 impartial witness, not biased for the prosecution or defense. Mr.
17 Lowrimore is not a party - - -

18 THE COURT: I thought the State was trying to challenge his
19 credibility.

20 MR. GOUDE: Well, he told that what might be the truth.
21 He's just going to do his taxes and says that he sees. He is not
22 a party to the case.

23 The juror is not related to him. He is to be married to
24 his uncle.

25 THE COURT: Let me ask you t . You don't see his

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

155

1 testimony as different from that of the lady who called 911?

2 MR. GOUDE: No.

3 THE COURT: Then, I'm missing something.

4 MR. GOUDE: They do not disagree in any respect, Mrs. Browy
5 and Mr. Lowrimore. Mrs. Browy was in the back of the tax office
6 when Mr. Lowrimore saw what he said. When she went outside, he
7 didn't see what happened outside. They don't contradict each
8 other at all.

9 They both say that one guy came in and said call, "Call 911."

10 Mrs. Browy - - -

11 THE COURT: I thought there was some testimony of the
12 headlock thing as happening as going out the door of the tax
13 office.

14 MR. GOUDE: Mrs. Browy did not say that or see that. She
15 was in the back. The only one who said that was Mr. Epps and Ms.
16 Keith.

17 MISS BIAGIANTI: Your Honor.

18 THE COURT: Okay.

19 MISS BIAGIANTI: Well, I would consider it not alike at
20 all. She talked about hearing this loud bang. He doesn't - - -

21 MR. GOUDE: Mr. Lowrimore said he heard somebody slam in
22 the glass door.

23 THE COURT: Well, then he disagrees with the testimony of
24 Mr. Epps, and he disagrees with the testimony of the other person.

25 MR. GOUDE: Our - - my position is that the juror was

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

156

1 married to the uncle twenty years ago and has not seen this witness
2 in twenty years. I don't see how that's a close relationship.

3 THE COURT: No, here's the thing. Under the law the
4 question is would she have reasonably have struck the juror had she
5 known that information. I still would have qualified her as a
6 juror. The question is would Miss Biagianti have stricken the
7 jury, you know. That's the question.

8 MR. GOUDE: I know we have a problem with one of the
9 alternates.

10 THE COURT: We going to deal with that, too, right now.

11 MR. GOUDE: So, that's my position.

12 THE COURT: Alright.

13 Before I decide, bring out if you would for me young Mr.
14 Armour, Mr. Armour.

15 (The juror, Mr. Armour, stands before the Court.)

16 THE COURT: Mr. Armour.

17 MR. ARMOUR: Yes, sir.

18 THE COURT: Um, you remember me talking to y'all yesterday
19 about, ah, not discussing this case? You remember that?

20 MR. ARMOUR: Yes, sir.

21 THE COURT: I have people who tell me they heard you tell
22 someone you were on a jury and the nature of the case last night.
23 Now, did you?

24 MR. ARMOUR: Um, I've spoken about being on a jury.

25 THE COURT: You didn't say what the nature of the charges

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

157

1 were?

2 MR. ARMOUR: I said they were violent in nature.

3 THE COURT: You didn't say - - now, remember, now, let's
4 don't make it bigger than it is.

5 MR. ARMOUR: Yes, sir.

6 THE COURT: I can bring people in here to testify as to
7 what they heard you say.

8 Did you say it was assault and battery with the intent to
9 kill?

10 MR. ARMOUR: Ah, probably, yes, sir.

11 THE COURT: Okay.

12 How many people did you talk with?

13 MR. ARMOUR: I spoke to my mother.

14 THE COURT: You were at some sort of social function,
15 right?

16 MR. ARMOUR: Sir?

17 THE COURT: You were at a social function, weren't you?

18 MR. ARMOUR: Ah, yes, sir.

19 THE COURT: Ah, did you say anything about what witnesses
20 said?

21 MR. ARMOUR: Ah, I don't believe so. I mean, honestly, I
22 truly don't believe so.

23 THE COURT: Okay.

24 Did you say anything about - - -

25 MR. ARMOUR: I mean, I may have. I don't really remember

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

156

1 much talking about it.

2 THE COURT: Well, did anyone say anything to you?

3 MR. ARMOUR: Um, I - - I've been asked a lot about it.

4 THE COURT: Last night?

5 MR. ARMOUR: Yes, sir.

6 THE COURT: Things like what?

7 MR. ARMOUR: Just, you know, what's - - what's the deal and
8 all, you know. Just people asking me - - I was hanging out with
9 a bunch of people of work, and they knew that I was missing work
10 because of jury duty.

11 THE COURT: And, well, what would they ask you?

12 MR. ARMOUR: Just, you know, just asking me - - you know?
13 What - - what - - what's the charges. What's going on? You know.
14 Just stuff like that.

15 THE COURT: Well, what would you tell them?

16 MR. ARMOUR: I, basically, told them, you know, it was a
17 violent crime. I told them, you know, that, ah, the worst thing,
18 like, the worst charge, like, what the worst charge was.

19 THE COURT: And what would they say in return?

20 MR. ARMOUR: I mean, you know. I told them that it sounded,
21 you know, I - - I, basically, told them, you know, the charges
22 sounded worse than it was and that, you know, it wasn't as - - I
23 mean, I, basically, just tried to dance around it. I mean, I
24 don't really, honestly, I don't really remember exactly what they
25 said to me. I don't really remember the conversation, you know,

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

159

1 to a t.

2 THE COURT: Well, don't you feel you sort of violated my
3 instructed to you?

4 MR. ARMOUR: Ah, yes, sir, yes, sir.

5 THE COURT: You start school this weekend, do you say?

6 MR. ARMOUR: No, sir. I start school August 22nd.

7 THE COURT: You're moving in?

8 MR. ARMOUR: August 22nd.

9 THE COURT: You say you moving in this week?

10 MR. ARMOUR: Yes, sir. Our lease ends on the 31st of July.
11 So I have to move all of my stuff from our old apartment into my
12 new apartment.

13 THE COURT: And where are you going to be going to school?

14 MR. ARMOUR: College Of Charleston. Going into my second
15 year there, my fourth year in school.

16 THE COURT: What are you majoring in?

17 MR. ARMOUR: Business Administration.

18 THE COURT: So, there were several people you talked with
19 last night?

20 MR. ARMOUR: Ah, yes, sir, it was a group of people.

21 THE COURT: Do you have a place you can put him separate
22 than the other person? Just hold him there for a minute. It
23 won't take but a minute.

24 Alright. Go with them.

25 Know, I don't mean hold you in custody. Just put him

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

160

1 somewhere. You're not in custody.

2 Although it would - - -

3 Bring the other lady out of the rain now.

4 Alright.

5 What is the position of the State and defense on Mr. Armour?

6 Let's ask Mr. Goude first on this one.

7 You told me earlier you had no problem with him being
8 dismissed.

9 MR. GOUDE: As I see the jury situation, he may have told
10 people that he was talking to that he was on the jury and he was in
11 a case that involved something, assault and battery, kidnapping and
12 of this nature. Now, that may violate the Court's order.

13 At the same time - - -

14 THE COURT: And he also said something about the charges,
15 too.

16 MR. GOUDE: He may have said something about the charges.

17 Um, I think the juror is not suppose to form an opinion on the
18 case until he's heard all of the evidence. I think the juror is
19 not suppose to get any outside information coming in to the juror's
20 decision making process that's not evidence from the stand.

21 I don't know that he received any information like that. I
22 don't know that he's formed an opinion on the case. I have no
23 objection to the alternate juror, Mr. Armour, remaining on the
24 case.

25 THE COURT: Miss Biagianti.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

161

1 MISS BIAGIANTI: Your Honor, I heard him say that he didn't
2 think that the charges were as serious as they were alleged,
3 something to that effect. That gives me grave concern.

4 So, it puts me in a predicament but I know I would not have
5 put on the first lady because of the relationship.

6 THE COURT: Let's talk about Mr. Armour.

7 MISS BIAGIANTI: Mr. Armour, excuse me, I would like him
8 struck for that reason, and I don't know if he's saying that so as
9 not to get in trouble with the Court, you know. The charges
10 aren't really as they - - aren't as serious as they seem but with
11 that information, the State does not want him on the jury.

12 I think, thank God we have two alternates. So, I would ask
13 that they be struck and the last alternate be put on.

14 I'm willing to take my chances because I don't feel
15 comfortable with either one of them.

16 MR. GOUDE: I will note, Judge, that the juror, Mr. Armour,
17 said that he - - in response to the Solicitor's remarks, he said
18 that he downplayed the case so people wouldn't ask him questions.

19 But, anyway, the Court - - I would expect you to do what the
20 Court thinks best but it is our position as the defense that we
21 have no objection to the alternate, Mr. Armour, remaining on the
22 jury.

23 MISS BIAGIANTI: I think for the record, Your Honor,
24 they're both probably scared to death waiting out there, and
25 they're going to be in a predicament either way. So, I would ask

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

162

1 that we just start fresh and get rid of both of them.

2 THE COURT: We start what?

3 MISS BIAGIANTI: We start fresh and put the other alternate
4 on.

5 THE COURT: Yeah.

6 Alright. Here is my decision.

7 As to Ms. Collins, I think the law is clear that that was
8 information that had the State known they would have stricken her
9 but it's something that she didn't intentionally withheld - -
10 withhold but now you've got that she is the mother of the child who
11 is related to the witness, and credibility is an issue here with
12 that witness, ah, as opposed to Miss Keith and Mr. Epps.

13 Um, the name was given to me by the defense and I called the
14 name out just as the defense gave me.

15 I have an alternate. I'm going to take Ms. Collins off the
16 jury.

17 Now, Mr. Clerk.

18 DEPUTY CLERK OF COURT: Yes, sir.

19 THE COURT: Just as a matter of information, do you have
20 two sheets of paper? You don't have any information with the
21 names of the jurors on it, do you?

22 Tell you what you do. Huh?

23 Give me another sheet of paper like this. You got another
24 one? Make me two copies.

25 Give me two sheets. Okay.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

163

1 Miss Biagianti, Mr. Goude, here's what I'm doing. Just as a
2 matter of information before I rule on Mr. Armour one way or the
3 other, I have - - turn around, Mr. Clerk. Don't look at me.

4 I have two sheets of paper folded. These sheets of paper
5 contain the fourteen names of the juror. On one sheet of paper I
6 have circled the name of Armour. On the other sheet of paper I
7 have circled the name of Williams which, you know, are our two
8 alternates.

9 Just to see whether or not it's important about Mr. Armour one
10 way or another, if y'all have no objection to this process, I'm
11 going to let the Clerk just pick one of these sheets as if it were
12 a lot and see which juror would be the one that would be going on
13 in Ms. Collins' place.

14 Do y'all want to check to make sure that I have not got them
15 where somebody can see what it is?

16 Mr. Goude?

17 MR. GOUDE: No, Your Honor.

18 THE COURT: Okay.

19 Y'all have any problem with this process just to see if Mr.
20 Armour would be on the jury or not whatever I do?

21 MR. GOUDE: No objection.

22 MISS BIAGIANTI: No, sir.

23 THE COURT: Alright.

24 Mr. Clerk.

25 DEPUTY CLERK OF COURT: Yes, sir.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

164

1 THE COURT: Alright. Mr. Clerk, I don't know either but
2 I tell you what I'm going to do. I'm going to get the officer
3 involved.

4 Officer, somebody, officer, somebody hold it right here. No,
5 you turn around. Just hold it - - hold them out with one hand
6 like that, and let him pick on.

7 Alright. Pick one.

8 Alright. No, you open it up. See whose name is circled and
9 we'll know whether I've got to make a ruling here or not.

10 Alright, now. Look at the one she's got to make sure Armour
11 was circled.

12 No, no. Look at that one. Y'all come up, too. I want
13 everybody to come up and make sure everybody knows that the other
14 one she had was Armour was circled.

15 Open the one you had and make sure that Williams is the only
16 name circled on that one.

17 So, does everybody agree that the name he picked was the name
18 of Tammy Williams?

19 MISS BIAGIANTI: Yes, sir.

20 MR. GOUDE: Yes, Your Honor.

21 THE COURT: So, there's really no question about Mr. Armour
22 at this point in letting him off anyway.

23 Keep that as a Court's Exhibit, both of them.

24 (The Court Reporter accepts juror sheets as Court's Exhibits
25 #1 and #2.)

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

165

1 THE COURT: So, Ms. Williams is the one that's going to
2 replace Ms. Collins, and how I rule on Mr. Armour at this point in
3 time is not that important but I am going to strike him from the
4 jury because he did admittedly violate my admonishment not to talk
5 about this case, and he said with several people, and then he also
6 did indicate an opinion he had already. So he was forming an
7 opinion.

8 So, but it makes no difference because he wouldn't have been
9 on the jury anyway.

10 So, if you would, bring Mr. Armour and Ms. Collins in.

11 Listen to me carefully, Mr. Clerk, about Mr. Armour if you
12 would. He's losing his money as a juror.

13 You got all that down what we're doing, didn't you, Mrs.
14 McCall?

15 COURT REPORTER: Yes, sir.

16 THE COURT: Okay.

17 I just want to make sure that we had the selection process and
18 Ms. Williams was chosen and all that.

19 COURT REPORTER: Yes, Your Honor.

20 THE COURT: You did a good job there, Mr. Clerk. You need
21 to get you a job as a Lottery Commissioner.

22 If y'all would, both come around over here.

23 (The jurors stand before the Court.)

24 THE COURT: Mr. Armour, I'm very concerned with your
25 conduct of last night in talking about this case with other people

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED 166

1 and people talking about it with you. It, ah, really has a danger
2 of bringing in, ah, ah, feelings of people who might have concerns
3 about the fairness of the Judicial System if after a judge tells
4 people not to do something, they go out and do it.

5 Um, um, so for that reason, sir, I'm dismissing you from the
6 jury and, ah, I don't find what you did to be that much of
7 discussing but just to the point that you did tell them the nature
8 of the case, and, also, you indicate your thoughts a little bit
9 about something, I - - I'm going to require you at this time to
10 forfeit your jury money, um, which isn't but \$50.00 but that's
11 going to be forfeited, and that's, ah, what I'm going to do at this
12 time is you're discharged. Good luck in college. Leave, sir.

13 MR. ARMOUR: Yes, sir.

14 THE COURT: Ms. Collins, Ms. Collins, it's not your fault
15 that you didn't know who that person was. Obviously, you know,
16 that's something that the name you weren't familiar with. You
17 hadn't seen him in years, and, um, and that's not your fault.

18 Here's what the law is. The law is that if a juror is one and
19 maybe had one of the lawyers known, they may not have asked you to
20 be on the jury, and, um, um, you were, um, number eight on those
21 who were brought before us, and the State says that you - - you
22 even have a child that is related to Mr. Lowrimore through your
23 husband. Isn't that what you told me? That you had a child
24 that's from your ex-husband?

25 MS. COLLINS: Yes, I do.

JUROR #19 & #3 EXAMINED BY THE COURT/ALT. JUROR SEATED

167

1 THE COURT: Okay, and so it's not your fault. Please
2 understand. It's not your fault but to make sure everybody is fair
3 about everything, we've got the alternate, Ms. Williams. We're
4 going to let her finish up the case since we're that close to being
5 finished it, and we'll let you go home, and please understand,
6 ma'am. Nothing is your fault. You did a great job. Thanking you
7 for letting us know.

8 MS. COLLINS: Well, I'm sorry. I just - - I didn't recognize
9 the name Heyward. That was - - that was - - -

10 THE COURT: Don't worry, ma'am. I agree with you, and that
11 was the only name I was given. That's why we read out Heyward.
12 That was the only name I was given but I know you didn't do it. if
13 I'd have said Melvin, you would have said you know him, and that's
14 what the State has said would have made a difference, and which is
15 understandable, and we don't want to put you on the spot, and, you
16 know, you got a son. Who knows what kind of reunion may be going
17 on one day, and you'll feel uncomfortable one way or the other.

18 So, um, ah, we going to let you go, and they'll mail you a
19 check to you, okay?

20 MS. COLLINS: Yes. I'm sorry.

21 THE COURT: Everybody understands. Everybody understands.
22 Can I shake your hand, though? Can I go down there and shake
23 your hand?

24 Thank you. Thank you very much.

25 You don't have to come back. Your jury duty is through.

DECISION OF THE DEFENDANT TO TESTIFY

168

1 You're through for the week. Okay?

2 MS. COLLINS: Yes, sir.

3 THE COURT: Alright. See you later, Ms. Collins.

4 Now, see if they need to get anything out of the jury room.
5 If they do, get it for them, okay?

DECISION OF THE DEFENDANT TO TESTIFY

7 Alright.

8 Now, let's go back on the record regarding Mr. Brown.

9 Mr. Brown, have you made your decision yet, sir?

10 Please stand up for me, sir.

11 Mr. Brown, have you decided whether you wish to testify in
12 this case or not?

13 MR. BROWN: Yes, Your Honor. I have decided.

14 THE COURT: And what is that decision?

15 MR. BROWN: I have decided. Yes, sir.

16 THE COURT: And what will you do, testify or not testify?

17 MR. BROWN: Testify.

18 THE COURT: You decide to testify. Is that your decision?

19 MR. BROWN: Yes, sir. That's my decision and my decision
20 alone.

21 THE COURT: Your decision.

22 Not your lawyer's decision but yours?

23 MR. BROWN: Not his decision, it's mine.

24 THE COURT: Alright.

25 Then I find that you make a free, voluntary, knowingly

REMARKS OF THE COURT

169

1 decision to testify, and you'll be permitted to testify.

2 Okay. You may be seated.

3 Alright, Mr. Goude, is he going to be your final witness or do
4 you have others?

5 MR. GOUDE: This is my final witness, Judge.

6 THE COURT: Alright.

7 I'm going to explain to the jury briefly why I dismissed those
8 other jurors because they going to be wondering what happened, and
9 then we'll proceed. Bring them on in.

10 (The jury returns to the courtroom at 3:38 p.m.)

11 REMARKS OF THE COURT

12 THE COURT: Ms. Williams, you can move on over, now. You
13 are a member of the jury.

14 MS. WILLIAMS: Okay. Thank you, sir.

15 THE COURT: Ladies and gentlemen of the jury, Mr. Armour
16 was an alternate. However, last evening it came to my attention
17 that he had someone mention something to him, and he mentioned
18 about the case he was on. Anyway, I determined that he should not
19 remain on this jury.

20 As to Ms. Collins, it's not her fault but it turns out the
21 strangest thing is, um, um, you end up that there was some
22 relationship with one the witnesses that she didn't know. Hadn't
23 seen him in ten years and all of that but, anyway, it's best for
24 everybody that since we've got an alternate we're going to go this
25 far. Okay.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

170

1 So, we are now ready to go. Ms. Williams, you are now a full
2 member of the jury, and we now have our twelve. We have another
3 witness to proceed with the case.

4 So, if you would, we are now ready to proceed.

5 Mr. Goude, your next witness, please.

6 MR. GOUDE: Your Honor, we would call Robert Brown to the
7 stand.

8 THE COURT: Come around, Mr. Brown.

9 (The witness takes the witness stand.)

10 ROBERT DEXTER BROWN, being duly sworn,
11 testifies as follows:

12 DEPUTY CLERK OF COURT: Please state your name for the
13 record.

14 MR. BROWN: My name is Robert Dexter Brown.

15 THE COURT: Alright.

16 Your witness, Mr. Goude.

17 MR. GOUDE: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MR. GOUDE:

19 Q. Mr. Brown, what is your address? Where do you live?

20 A. I live at , Georgetown, South Carolina.

21 Q. What is your age?

22 A. I'm [REDACTED] old.

23 Q. What is your date of birth?

24 A. My birthday is

25 Q. How far did you go in school?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

171

1 A. I finished school.

2 Q. And Ms. Aldora Brown, she testified earlier. What relation
3 is she to you?

4 A. She's my mother.

5 Q. I want to direct your attention back to about November or
6 December of 2006. Did you meet the prosecuting witness, Tywanda
7 Keith, about that time?

8 A. Yes. I met Tywanda Keith through my cousin, Talisha.

9 Q. And after you met her, did she start living with you?

10 A. A little while after that, yes.

11 Q. About how long after you and she met did she move in with you?

12 A. Perhaps a month. Maybe a month.

13 Q. And were you living with your mother at that time?

14 A. Yes. I was living with my mother. I just moved here from D.

15 C.

16 Q. And did Ms. Keith start living with you at your mother's
17 house?

18 A. Yes, she did.

19 Q. And your mother has testified that you - - her house where you
20 were living is there at Kensington here in Georgetown?

21 A. In Kensington?

22 Q. Is that correct?

23 A. Yes, Kensington.

24 Q. Now, where in the house were you and Ms. Keith residing?
25 What was your bedroom in your mother's house?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

172

1 A. Ah, the bedroom was located in the back part of the house.
2 It's a real - - it's a real big house. So, it's like in the back
3 part. If you come into the driveway and you come around the back,
4 if you come in that door and if you come in that door, our room - -
5 the room that we stayed in is right there. So we're pretty much
6 separated from the house.

7 Q. And does that room show on Defendant's Exhibit #1, #D, is that
8 it?

9 A. Yes, sir, that is the bedroom where me and Tywanda Keith
10 stayed.

11 Q. Now, the - - when you guys move in together and when you say
12 it was about what month.

13 A. It was close to around December.

14 Q. Of what year?

15 A. Ah, it was in '06.

16 Q. Alright. Now, when you guys moved in together, how long did
17 you stay there at your mother's house before you and Tywanda moved
18 out to the C

19 A. Let's see. Oh, almost a year, almost a year. I would say
20 almost a year.

21 Q. And when you moved to Green Acres Trailer Park, about how long
22 did you live together there at . . . ?

23 A. We lived at Green Acres for approximately three months. Then
24 we started having little situations.

25 Q. Alright, and after you lived at . . . did you and Ms.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

173

1 Keith move back into your mother's house together?

2 A. Yes, we did. Yes, we did.

3 Q. Now, when did Ms. Keith move out of your mother's house?

4 A. Tywanda moved out, ah, I say about probably in January. I
5 would say probably about mid-January she moved out.

6 Q. When Tywanda moved out of your mother's house, were you still
7 living in your mother's house?

8 A. Yes, I would still living there. I was still there.

9 Q. When she was there in the house the last, ah, nights that she
10 lived in the house, did y'all still share a bedroom or y'all in
11 separate bedrooms at that time?

12 A. Um, we still shared the bedroom. We still slept together.
13 We still slept together.

14 Q. At some point shortly before Tywanda moved out, did she catch
15 you in the house there with another woman.

16 A. Yeah. One day Tywanda came in from work. She wasn't suppose
17 to be staying there. She said she was staying at a friend's house,
18 and, um, by - - I didn't even know she was coming that day, and she
19 came into the house, and she opened the door, and I was in there,
20 and I was kissing Betty but we were only kissing.

21 Q. Were y'all - - you and this other lady, you had your clothes
22 on? Were you in bed?

23 A. We had our - - we had our clothes on.

24 Q. You were in the bedroom, living room?

25 A. We were in the bedroom, and we had our clothes on.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

174

1 Q. Were y'all on the bed?

2 A. Yeah, we were sitting on the bed.

3 Q. Alright.

4 Now, after Tywanda moved out, did she learn where she was
5 staying and who she was staying with?

6 A. No. I didn't know where - - no, no, no. Let me correct that.

7 Tywanda told me she was staying with a girlfriend of hers.

8 That - - and we had agreed she would stay the girlfriend to work -

9 - to work things out.

10 She said, "I'm going to stay with my girlfriend until we work
11 things out."

12 Because we were having difficulties, you know, because I - -
13 you know, I always accused her of cheating.

14 She - - she, um, so I agreed. I say, "Hey, fine."

15 You know.

16 And she went - - that's when I realized that she wasn't really
17 staying with a girlfriend. I found out that she wasn't really
18 staying with a girlfriend because I called the girlfriend to verify
19 it, and she wasn't staying with the girlfriend. She was staying
20 with the guy she was cheating on me.

21 Q. And that gentleman's name was what?

22 A. Um, I learned that his name was Lee Epps.

23 Q. Up until then, up until Tywanda started staying with Mr. Epps,
24 did you know Mr. Epps?

25 A. No, I did not know Mr. Epps at all. I did not know him at

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

175

1 all.

2 Q. Before you and Tywanda started dating in December of '06, had
3 you ever met Mr. Epps?

4 A. No, I never met Mr. Epps or talked to Mr. Epps or anything.

5 Q. Did you know what he looked like or anything before you and
6 Tywanda started dating?

7 A. Never knew what he looked like, size, nothing. I never knew
8 anything about him.

9 Q. Alright.

10 When Tywanda moved in out in January from your house up until
11 February 21, 2008, the day we're here for, the date that these
12 charges are on you about - -

13 A. Yes, sir.

14 Q. - - did you date another woman during that time in January and
15 February?

16 A. In fact, I was dating two young ladies. I was dating a young
17 lady who worked at the Sunco, and we didn't hit it off too good,
18 and so I started dating someone else because the relationship
19 between me and Tywanda had basically ended by me. I am the one who
20 ended the relationship in my mother's livingroom. I'm the one who
21 ended the relationship because I realized she was cheating.

22 Q. Now, if you ended it, why did you have contact with her after
23 she moved out of your house?

24 A. Because I wanted to reconcile. I actually did. I mean, I
25 love her. I mean, I was in love with her, and, ah, I actually

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

176

1 wanted to reconcile, and I, you know, after I'd been with her for
2 that amount of time and, you know, you live with someone, and you
3 wake up with them and go to sleep with them, you know, you kind of
4 get attached to them, and I wanted to reconcile. I thought maybe
5 we could still work it out because you - - you - - we were like
6 twins. You see Tywanda, you see me.

7 Ah, dinners at her mom's. Dinner at my mom's. I've met her
8 whole family. I, you know, we had - - we - - we - - she was
9 suppose to get a divorce from her husband, and we were suppose to
10 be getting married.

11 That's the only reason, trust me, that we was at my mom's
12 house. My mom would never let anybody stay in her house and they
13 wouldn't married, especially if that woman was still married. My
14 mom would not have it, period. Trust me.

15 And so we had - - we stood in front of my mother in my
16 mother's bedroom.

17 MISS BIAGIANTI: Your Honor, I would object. This isn't
18 responsive to the questioning.

19 THE COURT: Continue on at this stage.

20 Q. After Ms. Keith moved out in January of '08, at some point
21 thereafter did you ask her to marry you?

22 A. Yes, I did.

23 Um, I still - - I knew - - I didn't know Mr. Epps but I had
24 actually, honestly, figured out when she was cheating. So, I knew
25 she was cheating.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

177

1 So, what I did I, you know, I got ah, I contacted a friend of
2 mine, and I made some arrangements, and I got a ring, and it was an
3 engagement ring.

4 So, I went up on her job. I got suited down, and I went up on
5 her job, and I - - I proposed to her, and I proposed to her in
6 front of her co-workers, almost thirty people. They took pictures
7 also. She stood there and she said yes.

8 At this time she had moved out. She wasn't staying with me.
9 I still was dating Betty but it wasn't - - hadn't gotten intimate
10 with Betty.

11 MISS BIAGIANTI: Objection. Again, non-responsive.

12 THE COURT: Yeah. You just asked if he proposed to her.
13 Let's proceed. What's your next question?

14 Q. Now, the time that you proposed, is that the time that Ms.
15 Keith was talking about earlier when you went over to the nursing
16 home with your mother and - - -

17 A. Yes, yes.

18 Q. Or is that a different occasion?

19 A. No. No, it was - - actually, no - - that was the same day,
20 as a matter of fact. That was the same - - see, she got off at
21 11:00 at night. So it was that morning that she started work at
22 3:00. So I went up to her work at 3:00. She - - she was still
23 living with me at the time she had the job.

24 Tywanda was to be to work at 3:00 and got off at 11:00 at
25 night.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

178

1 MISS BIAGIANTI: Judge, again - - -

2 THE COURT: What's your next question, Mr. Goude?

3 Q. Now, going up to February 21st of 2008, was that a Thursday?

4 A. Yes, sir, I believe it was a Thursday.

5 Q. I'm going to show you a calendar so you'll be sure.

6 Look at this marked Defendant's Exhibit #2 marked for
7 identification. February of 2008, the 21st.

8 A. That was on a Thursday.

9 Q. Thursday?

10 A. Yes, sir.

11 Q. Alright.

12 I direct your attention to that day. I won't move this into
13 evidence. As long as everybody knows, that's fine.

14 What was the first was the first contact you had with Tywanda
15 in any manner that day, that Thursday?

16 A. That Thursday?

17 Q. Yes.

18 A. Um, I called her from the house.

19 Q. Called Tywanda?

20 A. I called her from - - I called Tywanda from my mom's house.

21 Q. And does your mother have a telephone in the house you lived
22 in?

23 A. House phone, yes, house phone.

24 Q. Did you call on a cell phone at your house or on your mother's
25 phone?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

179

1 A. I called from the house phone to Tywanda's cell phone.

2 Q. And Tywanda had a cell phone?

3 A. Yes, she did.

4 Q. And is this the cell phone we talked about yesterday?

5 A. Yes, sir. That's the same cell phone.

6 Q. Now, when you telephoned her on her cell phone, did anybody
7 answer the cell phone?

8 A. Yes. Tywanda answered the telephone.

9 Q. What did you say to her?

10 A. Basically, I had a little chit-chat, and I asked her how she
11 was doing, and, um, then I asked. I said, ah, "You got some money,
12 \$20 on you?"

13 Because I was going to a church program that evening.

14 She said I was - - -

15 Q. Just listen to my question.

16 A. Alright.

17 Q. Just answer my question. I know you've had months to build
18 up where you want to get all of this stuff out so the jury hears
19 everything but just listen to my questions, and let me play my
20 little role in here, too.

21 When you called her on the cell phone, who answered the
22 telephone?

23 A. Tywanda answered the telephone.

24 Q. Alright.

25 Did you ask her where she was at or did she tell you where she

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

180

1 was at?

2 A. I asked her.

3 Q. And what did she - - what did she say?

4 A. I asked her where she was at. I asked her where she was at.

5 She said, "Oh, I'm here at Palmetto Taxes getting my taxes
6 done."

7 It's the only way I knew she was there.

8 Q. Did you ask her anything about any money?

9 A. Yes, I did.

10 Q. What did you ask her?

11 A. I initially asked Tywanda for \$20. I was going to a church
12 program that evening.

13 Q. And what did Tywanda say?

14 A. She said, "I don't know what I have. I'll have to look."

15 I said, "I'll - - I'll be up there in a few minutes. I'm
16 going to grab the bike."

17 And she was up there.

18 And then I hung the phone up.

19 Q. Did she tell you before you hung the phone up that she had any
20 money or not?

21 A. She said she was going to see how much she had.

22 Q. Did she check while you were on the phone and tell you she had
23 any or did not have any?

24 A. No, she didn't. No, she didn't. No, she didn't.

25 Q. Alright, and you were at your mother's house at that time?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

181

1 A. Yes, I was at my mom's. I had just gotten dropped off.

2 Q. That's in the - - -

3 A. In the back of Kensington.

4 Q. In the back of Kensington?

5 A. Yes.

6 Q. Okay.

7 How did you travel from your mother's home to the tax office?

8 A. I took my bike. I have a blue bike that I ride sometimes.

9 You know, sometimes I use it to go on certain jobs and stuff.

10 Q. Alright. Did anybody go with you from your house to the tax
11 office?

12 A. No. Nobody was with me. It was just me.

13 Q. Did you go anywhere else from the time you left your house
14 before you got to the tax office?

15 A. No. Straight there. Straight there. I was wanting to get
16 there and get back in time to be picked up by Betty.

17 Q. Speak louder now so we can hear you.

18 A. I said I wanted to get there and get back so that I could be
19 picked up by Betty. I had a church program to go to.

20 Q. Now, were you just riding around town that afternoon and
21 accidentally happened to stop by the tax office?

22 A. No, sir. I wasn't just riding around town and stumbled across
23 the tax place.

24 Q. Alright.

25 Well, when you just rode your bicycle from your home, you went

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

182

1 to where?

2 A. I went straight to Palmetto Tax place.

3 Q. Did you know where Palmetto Tax Service was located?

4 A. Yes, I did. Yes, I do. I'm sorry. I know where it's at.

5 Q. Had you ever been there before?

6 A. Yes, sir. I did my taxes at Palmetto Tax for two years. In
7 fact, ah, Ms. Kathy Browy did my amendment. If she check her
8 file, her records there, she'll find - - Tywanda was the one that
9 recommended Palmetto Tax to me for two years.

10 Q. Alright.

11 I show you Prosecution Exhibit #8.

12 A. Uh-huh.

13 Q. Is that Palmetto Tax Service?

14 A. That is Palmetto Tax Service.

15 Q. And #9?

16 A. That is Palmetto Tax Service.

17 Q. And #10?

18 A. Ah, yes, that is Palmetto - - that's, yeah, like - - that's
19 more like Fred's but that's in the area, yeah.

20 THE COURT: Speak louder, sir, please. Make sure we can
21 hear you.

22 MR. BROWN: Alright.

23 Q. And #11?

24 A. Palmetto Tax.

25 Q. And #12?

1 A. Palmetto Tax.

2 Q. And number - - do you recognize what the inside of Palmetto
3 Tax Service looks like?

4 A. Yes. I said I've been there before.

5 Q. Does #13 look like the inside of - - -

6 A. That is the inside of Palmetto Tax.

7 Q. And is #14 the inside of the service?

8 A. That is also Palmetto Tax on the inside.

9 Q. Alright.

10 Now, when you got to Palmetto Tax Service what did you do as
11 you were on the outside riding your bicycle?

12 A. When I - - I rode up on the bike. I parked my bike by - - by
13 where the trash can was. I got off my bike.

14 Q. Hold it right there.

15 And the Prosecuting Exhibit #8 shows the front of the tax
16 service. Where did you park your bicycle?

17 A. Right there. Right there.

18 Q. And you're pointing to the wall beside the trash can?

19 A. Right - - right beside, yes. Yes, right beside. Yes, right
20 there.

21 Q. Step right here in front of the jury.

22 If you would, point to the jury where you parked it right
23 here. Would that be the left side of the front entrance or on the
24 Fred side of the trash can that's here in the picture?

25 A. I was talking about here on the right.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

184

1 Q. Well, if we're - - if you're coming out of Palmetto, it's on
2 your right. If you're - - -

3 MISS BIAGIANTI: Your Honor, I object. Asked and
4 answered.

5 THE COURT: Just continue on, Mr. Goude.

6 MR. GOUDE: Yes, it's answered. I agree with that
7 statement.

8 Q. Ah, alright. So you parked your bicycle, and what did you do
9 then?

10 A. I got off my bicycle and went inside.

11 Q. When you walked inside the door, did you see, ah, if Ms. Keith
12 was inside? Did you look through the glass door or glass wall to
13 see if she was in there before you went inside?

14 A. No. I just went on in.

15 As a matter of fact, as I was going in I could see her tennis
16 shoes. I think there was a poster or something there at that time.

17 Q. Say that again about tennis shoes.

18 A. Yeah.

19 Soon as when you - - you - - you can - - it's a big glass.
20 You don't have to peek in. It's a big glass. It's a big open
21 window. As soon as you walk there, you can see everybody that's in
22 there.

23 Q. Okay. Alright.

24 Now, well did you see her in there before you went in the
25 door?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

185

1 A. No, no. It wasn't until I got off my bike and walked up that
2 I realized she was in there but I already knew she was in there.

3 Q. How did you know she was in there?

4 A. Because she waiting on me to get there.

5 Q. How do you know she was waiting for you to get there?

6 A. Because we - - we had agreed that I was on my way. I would
7 assume that she would have still been there but either way, as soon
8 as I got off my bike, I could see the tennis shoes. So, I knew
9 she was right there.

10 Q. You could see her feet through the glass of the door? Is
11 that what you - - -

12 MISS BIAGIANTI: Your Honor, I object. Asked and answered.

13 THE COURT: No. He's asking a question.

14 You can continue on.

15 Q. Ah, well, when you went in the reception area of the tax
16 service, ah, did you see Ms. Keith in there?

17 A. Yes.

18 Q. Where was she sitting?

19 A. Sitting to the - - sitting to the left.

20 Q. Now, we've got a Prosecution Exhibit #14 that shows three
21 chairs to the left side of the door as you come in. Correct?

22 A. Yeah.

23 Q. Are there other chairs on the left side of the wall other than
24 these three that's in the photos or is this all of the chairs or do
25 you know?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

186

1 A. It might be one - - one of the chairs. There were maybe like
2 four or something like that?

3 Q. Speak up.

4 A. Maybe about like four chairs there.

5 Q. Okay.

6 Now, where was Ms. - - -

7 A. The middle - - the middle chair right here.

8 Q. Like the second chair from the wall - - -

9 A. Right, from the window. Right. Right.

10 Q. And so what did you do?

11 A. I sat down beside her on - - on the right side.

12 Q. And you were on the chair closest to the front wall?

13 A. Yes, sir.

14 MISS BIAGIANTI: Your Honor, can I see.

15 THE COURT: She wants to see that.

16 MISS BIAGIANTI: Where were you pointing?

17 MR. GOUDE: He said the chair closest to the front wall is
18 where he sat.

19 MISS BIAGIANTI: He sat.

20 Q. So, what were you and Ms. Keith saying to each other when you
21 sat down?

22 A. Well, ah, I greeted her, basically. I greeted her like I
23 always did every time.

24 "How you doing?"

25 We talked.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

187

1 Q. You sat down beside her - - -

2 A. I greeted her like I always do.

3 I say, "Hey, baby. What's happening? How you doing?"

4 You know.

5 And she was like, "I'm okay. I'm okay."

6 So, we get to talking, and I actually asked her about the
7 ring, right. And she said, "Well, I left it at home."

8 So, I said something to the effect of, "I want my ring back.

9 You know what I'm saying. We not going to get married, I want my
10 ring back. Right."

11 So, I kind of got a little heated at that point, and she said,
12 "Well, come on. Let's go outside and talk about it not right
13 here."

14 Tywanda got up before I got up, and we - - and we - - she was
15 in front of me.

16 MISS BIAGIANTI: Your Honor, again, non-responsive to the
17 question.

18 THE COURT: Well, I'll let him continue on in this area.

19 You may proceed on, Mr. Brown.

20 A. And she - - -

21 Q. At some point - - at some point did you and Ms. Keith leave
22 out of the reception area and go outside?

23 A. Yes, we did.

24 Q. Whose idea was it to go outside?

25 A. It was Tywanda's idea to go outside.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

188

1 Q. And how - - how did she convey that idea to you? What did she
2 say to you?

3 A. "Let's step outside for a minute," and she whispered it.

4 MISS BIAGIANTI: Your Honor, I object to hearsay.

5 THE COURT: I will rule under Rule 801. You may proceed
6 (d).

7 Q. So, where did you and go from there?

8 A. We went out to the front. We went - - we went out the door.
9 She's in front of me. I hold the door like this for Tywanda.

10 Q. Alright.

11 A. And I opened the door like this, and Tywanda is in front of me
12 this way.

13 Q. Mr. Brown, when y'all get outside the door of the tax service,
14 where do you go from there?

15 A. To the right.

16 Q. And how far did you go down the sidewalk?

17 A. Two steps. Very - - just past that trash can.

18 Q. Okay.

19 So you're about where your bicycle is?

20 A. Yes, sir. Right past the bike. No further, no further. Not
21 - - not - - no, really not - - just past the window.

22 Q. At some point did she give you any money?

23 A. Yes. Tywanda gave me \$5.

24 Q. And you remember the prosecutor's had questioned before. Was
25 it pennies or quarters or - - -

1 A. It was a five dollar bill.

2 Q. A five dollar bill?

3 A. Yes, it was.

4 Q. Did you and Ms. Keith discuss anything else before Mr. Epps
5 came up?

6 A. No, not really. Not -- I wouldn't say discussed. Um, I was
7 more concerned, you know, where we -- where our relationship was
8 going. If it was even going to be a relationship, you know, and
9 then how if it's not, I wanted my ring, you know, and you can go
10 ahead about your life and do whatever you want to do.

11 That's basically what we were talking about.

12 I think my gesture maybe appeared like we was arguing but it -
13 - it really wasn't that much of an argument.

14 Q. At any point before you went out of the reception area, did
15 you pull out any kind of knife on Ms. Keith?

16 A. No, no.

17 Q. Did you have a knife on you?

18 A. No, I did not have a knife on me nor did I pull a knife out,
19 any kind of object in my hand at all.

20 Q. Did you carry a black handled serrated edge fixed blade, fish
21 knife type of thing --

22 A. Never.

23 Q. -- switch blade, fish knife type of thing in your pocket?

24 A. Don't do any fishing. Didn't have a fish knife, none of that.
25 Don't carry knives.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

190

1 Q. Had you seen a black handled serrated edge fixed blade, fish
2 knife before this day in anybody's possession?

3 A. Yes, I have seen that knife on many occasions.

4 Q. On whose possession?

5 A. It's Tywanda's knife. It's a knife that she's always carried.

6 Q. Where would she carry a knife?

7 A. In her pocketbook.

8 Q. Did she do that when you first met her?

9 A. Yeah. She - - her favorite words was, "I'll never leave home
10 without it."

11 Q. She do it the whole time she stayed at your house?

12 A. The whole time.

13 Q. At any time while you were in the reception room before y'all
14 got outside, did you put any kind of headlock on Ms. Keith?

15 A. Coming outside of the Palmetto Tax place?

16 Q. At any time in the reception area before you got outside the
17 door, did you put any kind of headlock on her?

18 A. I did not put Tywanda Keith into no headlock.

19 Q. Did you threaten her in any way?

20 A. I threatened her in no way, shape or form.

21 Q. When in there did you say, "I'm going to kill you, bitch."

22 A. I never said that to Tywanda. There was no reason to say it.

23 Q. Did you say that you were going to kill her in the reception
24 area?

25 A. Never said I was going to kill her.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

191

1 Q. When did she say, "Please don't kill me," in the reception
2 area?

3 A. She never said it. She never said it.

4 Q. When did you call her bitch in the reception area?

5 A. Never called her that.

6 Q. Is that a pet name that you had had - - -

7 MISS BIAGIANTI: Your honor, I would object to this point.
8 He's leading.

9 A. No, it is not.

10 THE COURT: I'll let him continue.

11 Q. You all were outside. At some point did Mr. Epps come up to
12 the sidewalk where you and Ms. Keith were?

13 A. My back was turned at the time but, yes, he did.

14 Q. Well, you say your back was turned. When you and she were
15 outside talking, where was - - what position was her body in
16 outside on the sidewalk? Was she facing the parking lot or facing
17 the tax service, facing Fred's, facing Subway?

18 A. She was on the sidewalk facing this way towards - - facing
19 Palmetto Tax. My back was to - - to Palmetto Tax's door.

20 In other words, I'm this way, and she's facing me. Palmetto
21 Taxes was facing this way.

22 Q. Were you facing Fred's door?

23 A. I was facing Fred's door.

24 Q. Alright.

25 Now, since you all were there, and what happened with Mr.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

192

1 Epps? What's the deal with Mr. Epps?

2 A. When I turned - - you know, I never even - - I'm - - I'm never
3 even - - Tywanda never said nothing. I did know he was behind me
4 because I'm looking at Tywanda's eyes, and I see her look like that
5 with her eyes kind of wide open.

6 Q. Staring - - turning her head and staring in the direction.

7 A. Right. So, she indicates to me what - - what's coming or
8 something, and I turned around. That's when I see Mr. Epps coming
9 up to me with the knife.

10 Q. Where was he at when you first saw him coming up to the
11 sidewalk?

12 A. My back was turned to him. I didn't - - -

13 Q. When you first saw him?

14 A. Uh-huh.

15 Q. Where was he then?

16 A. He was coming from the parking lot.

17 Q. And was he at the sidewalk or still back out where the cars
18 were or crossing - - -

19 A. No, he was coming right at me.

20 Q. Was he on the sidewalk yet?

21 A. He eventually got to the sidewalk.

22 No, he actually - - when I turned around and seen him, he was
23 coming towards the sidewalk. He was coming towards the sidewalk.

24 Q. Okay.

25 Let's see. Photograph - - Prosecution Exhibit #10 shows the

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

193

1 sidewalk and the fertilizer bags and stuff on it - - -

2 A. Uh-huh. Right.

3 Q. - - and shows the street with the yellow speed bumps. How far
4 away from the sidewalk, the yellow-edged sidewalk do you reckon he
5 was in feet when you first saw him?

6 A. Maybe about a good five feet, three feet, something like that.

7 Q. That's not very far, now. Three feet is a step.

8 A. Right.

9 Q. So, he was just one step from the sidewalk.

10 A. By the time I - - by time I turned around, he was pretty much
11 up on me.

12 Q. Okay.

13 At that point did you know who Mr. Epps was?

14 A. No, I didn't.

15 Q. Did you know right then when you saw the guy a step away from
16 the sidewalk, did you know he was Tywanda Keith's boyfriend when
17 you first saw him?

18 A. No, I didn't know that he was Tywanda Keith's boyfriend but it
19 didn't take me long to figure it out.

20 Q. Had you and he seen each other, did you and Mr. Epps who she
21 is living with now, did you and Mr. Epps seen each other before at
22 your house or somewhere else?

23 A. Me and Mr. Epps actually saw each other. Twice Mr. Epps was
24 at my mother's house.

25 Q. What was he doing there?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

194

1 A. The first time Mr. Epps was at my mother's house, he actually
2 dropped Tywanda off. I inquired who was that, and she said it was
3 a friend of hers from work. I remember that clearly because I
4 remember the car had Dodge on the back of it. That's how I knew
5 who Mr. Epps actually was.

6 Q. How long was that before she moved out from your house?

7 A. Tywanda was still living with me.

8 Q. When you saw Mr. Epps at your house, how long was that before
9 Tywanda moved away from your house?

10 A. About a month.

11 Q. And you said there was two times. Is there another time - - -

12 A. The second time he came, he came in the yard, and he actually
13 met my brother. It was my brother that came in the house and told
14 me some guy is out here is looking at Tywanda's car. Right? And
15 I came outside. When I came outside, Mr. Epps had already gotten
16 into his car but as he was backing out, you could see that he could
17 see me and he could see my brother, and I asked my brother, I said,
18 "Who was that?"

19 He said, "You know, some guy - - -"

20 MISS BIAGIANTI: Your Honor, hearsay.

21 THE COURT: Don't tell us what someone said.

22 MR. BROWN: Okay.

23 A. Well, that - - that was the second time I - - we actually saw
24 him but I never placed him. I asked Tywanda about him. She said
25 just some guy that was interested in the car.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

195

1 MISS BIAGIANTI: Your Honor, objection.

2 THE COURT: Sir.

3 MR. BROWN: Okay.

4 THE COURT: Do not tell us what someone said.
5 Please proceed.

6 Q. Now, when you turned around on the sidewalk and you see this
7 gentleman there, did you know then that that was Mr. Epps?

8 A. Not - - not right off, no.

9 Q. Alright.

10 Tell us happened when you saw him coming towards your side.

11 A. When I saw him coming towards me, he was coming towards me,
12 like, I saw a weapon. He - - -

13 Q. What kind of weapon?

14 A. The - - the knife with the black handle.

15 Q. And where was the weapon located?

16 A. The - - the knife was in his right hand.

17 Q. Could you tell that was in his right hand when you first saw
18 him?

19 A. Yeah. Yeah. Because that's the first - - that's the first
20 thing I saw - - -

21 Q. Tell us what happened then.

22 A. He came at me with the right hand running, right? Well, it's
23 a maneuver that you can do to - - to - - to - - -

24 Q. Just tell us what happened.

25 A. And I grabbed him. I grabbed his right hand. Flipped it

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

196

1 this way. Snatched the knife out his hand. Went forward.

2 Poked him and then switched over and caught him in the side.

3 He still was coming. There was a big thing going on. You
4 know, we were tussling, and, um, I guess you heard that but we was
5 tussling, and before I know it, it was all over with.

6 That's when he got - - that's when he got stuck. I'm sorry
7 that it happened like that but - - that's how - - that's exactly
8 how it happened.

9 Q. How close were you guys together when he got cut with the
10 knife?

11 A. We were mixing it up. He was trying to get it back. He was
12 trying - - he was trying to get it back, and there was no getting
13 it back. You know.

14 Q. Where were you guys in location to the front door of the tax
15 service?

16 A. We - - we were right at the door by then. You know, we were
17 pretty much mixing it up right there at the door.

18 Q. Where was Ms. Keith standing all this time?

19 A. She was just standing there. She was just standing there.

20 Q. Were you saying anything - -

21 A. She wasn't going no where.

22 Q. - - to Mr. Epps?

23 A. I'm sorry. I didn't hear you.

24 Q. Were you saying anything to Mr. Epps?

25 A. Me and Mr. Epps never exchanged one word.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

197

1 Q. Was Ms. Keith saying anything to either one of you?

2 A. No. She never even -- she never said anything, really. It
3 all happened so fast. It -- you know. Nobody really had a chance
4 to say anything. It happened so fast.

5 Q. Now, when Mr. Epps and you -- how did y'all stop the
6 tussling? What caused y'all to stop tussling? Did one of you
7 say, "Let's quit," or did one of you fall down or what?

8 A. No. I backed off. By the time he went in the door, I
9 backed off. When I backed off, that's when Ms. Lowrimore came to
10 the door, I mean, Mrs. Browy came to the door.

11 Q. Alright. When you backed off, what did Mr. Epps do?

12 A. I don't know. At that point, I walked -- I walked back over
13 to Tywanda.

14 Q. You walked back over where?

15 A. To Tywanda.

16 Q. When you walked back over to Tywanda, where did Mr. Epps go?

17 A. In the tax place.

18 Q. How long was he in there?

19 A. Ah, a few seconds I would say. Oh, he might have been in
20 there a little longer. I'd say maybe thirty seconds before he --
21 before he dashed back out of there and got in his car.

22 Q. While he was in the tax office, did you and Tywanda ever get
23 to say anything to each other?

24 A. When I turned back around, I said to Tywanda, "What's going
25 on?"

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

198

1 You know. I said, "What's going on?"

2 Right.

3 And that's when, ah, she - - she just looked at me, basically.

4 I'm trying to find out what's going on. You know. I'm just
5 as nervous and kind of baffled as every, you know, as they are, I
6 guess, as she is, you know.

7 So, I mean, "What's going on? Tywanda, what's happening?"

8 You know.

9 And she's looking at me her eyes bugged out because she's - -
10 I don't think she thought we was going to end up fighting. I don't
11 think - - -

12 Q. At some point did Mrs. Browy come to the door of the tax
13 service office?

14 A. Yes. Mrs. Browy came to the door.

15 Q. Did you know her at that time?

16 A. I recognized her from having done my taxes there, yes.

17 Q. Alright.

18 Now, was she holding a phone in her hand?

19 A. Yes. She was holding a phone in her hand.

20 Q. Did you and Mrs. Browy say anything to each other?

21 A. No, we didn't say anything to each other.

22 Q. Alright.

23 When Mrs. Browy - - was Mr. Epps when Mrs. Browy came out the
24 door of the tax service; was Mr. Epps outside on the sidewalk or
25 was he still inside the tax office?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

199

1 A. He was still inside. He was still inside the tax door.

2 Q. Alright.

3 And so what did you and Tywanda do there on the sidewalk when
4 Mrs. Browy came out of the door?

5 A. I was - - I was talking to Tywanda, and so I, you know, that's
6 when I grabbed the cell phone, basically. That's when - - -

7 Q. Where was the cell phone located?

8 A. The cell phone was in her purse. She had it in her hand at
9 first, and I think she was putting it back in her purse, and I was
10 like, "Oh, no, you don't."

11 Because the first thing that came to my mind was her erasing
12 the possibility that I had called her on the phone.

13 That - - that was detrimental to me. That's why I grabbed
14 the phone.

15 Q. That's the phone there?

16 A. That was the phone that I grabbed.

17 Q. It's, ah, Prosecution Exhibit #16?

18 A. Yes.

19 Q. Alright.

20 Now, Mrs. Browy said something about y'all backing down the
21 sidewalk past Fred's. Now, what happened there?

22 A. I - - I stepped past Tywanda. Just let me be sure. I stepped
23 past Tywanda, you know. I'm, like, "What's - - what's going on?"

24 And then as I turned when I hear the door bust open, that's
25 Mr. Epps coming back out of the tax place. I turn back around and

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

200

1 I'm heading back towards Mr. Epps because I'm thinking he wants to
2 mix it up some more or whatever. I don't know but at this point
3 I'm, like, mad. Right?

4 Tywanda is in front of me at this point.

5 "Dexter, no. Dexter, no."

6 You know what I'm saying.

7 I take Tywanda. I basically move her out of the way. That's
8 - - that's - - I grabbed her, like, chest-wise and just moved her
9 out of the way, and she stumbled back. I don't know if she fell or
10 not, you know.

11 And then I don't think she fell though because the next thing
12 I know, I'm getting a pull on my arm telling me, "No, no, no, no."

13 And that's when it broke off, and I walked to get my bike.

14 Q. Did y'all go back down the sidewalk a ways towards Fred's and
15 stuff while you and Tywanda were doing that?

16 A. Yeah. Yes. Not really that far. It wasn't, you know, it
17 wasn't no fifty feet. That's for sure. That wasn't no fifty
18 feet.

19 Q. Alright.

20 Now, and by this time, did you have this cell phone?

21 A. Yes, I got the phone.

22 Q. And what did you do then?

23 A. I, to be honest with you, I was going to try to say something
24 to Ms. Kathy Browy. I was letting her, "I'm Dexter. I'm Karen's
25 cousin."

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

201

1 You know, she says she doesn't remember my cousin but my
2 cousin actually worked there.

3 "You did my taxes," you know.

4 But now I see I look kind of crazy standing there with this
5 knife in my hand and a cell phone, and I see she's a little afraid.
6 So, I just grab my bike and get on my bike, and I'm starting to get
7 out of the way.

8 Q. Who was your cousin who worked there at the tax office?

9 A. Her name - - I don't know who Karen's maiden name is. My
10 momma might know but her name is Karen Wilson. She's a black woman
11 who worked in Palmetto Taxes when I did my taxes in '07.

12 Q. Alright.

13 So, you go on your bicycle, and where are Tywanda - - where is
14 Tywanda at that time?

15 A. Tywanda? Tywanda is still standing there. She's still
16 standing there.

17 Q. Where is Mr. Epps?

18 A. Mr. Epps just shot out of - - now, when I was going at him,
19 Mr. Epps done shot out of the tax place and then jumped into his
20 car.

21 So, now, I'm getting ready to - - I - - I am - - I see
22 Tywanda. She's still standing there. He passed me. Pulls up
23 beside Tywanda. Tywanda is trying to get in the car.

24 I'm on my bike and I'm trying to, you know, just get out of
25 here. You know.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

202

1 Q. Did you try to run over Tywanda with your bicycle?

2 A. No.

3 Q. Who is the biggest: You or your bicycle or Tywanda?

4 A. Tywanda.

5 Q. Ah, what kind of color car was it that, ah - - -

6 A. Mr. Epps was driving a white car. I don't know if it was a
7 Grand Am or not but it was a white car. It's a Grand Am.

8 MISS BIAGIANTI: It's a what? I didn't hear him.

9 Q. What color car did you say it was?

10 A. White.

11 MISS BIAGIANTI: No. What did he say after the color?

12 Q. What - - did you say what kind you thought it was?

13 A. I said I thought - - I think it was. I'm not actually sure.
14 A Grand Am.

15 Q. A Grand Am?

16 A. Yeah.

17 Q. Is that the same vehicle you saw Mr. Epps in at your mother's
18 house two times?

19 A. Yeah.

20 Q. Same white car?

21 A. Same white car.

22 Q. And you said you saw the word Dodge on the back of the car?

23 A. On the back of the car.

24 Q. Alright.

25 You got on your bicycle, and what did you do with the knife?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

203

1 A. I threw it.

2 Q. Where did you throw the knife?

3 A. I threw it back over - - over - - over by where, um, the ABC
4 Store is. It's, like, that's the last store going toward Merriman
5 Road.

6 It's like the last store going toward Merriman Road.

7 Q. Is that in the same shopping center?

8 A. It's in the same shopping center area.

9 Q. And just if you'd show them on Prosecuting Exhibit #10 with
10 the big red dots on the front of it.

11 A. That's the ABC Store. Stop sign right here. Pass that stop
12 sign, and there's a ditch right there, and I threw it over there.

13 Q. And come down here a second.

14 Now, the ABC Store where you threw the knife, is that - - -

15 A. The ABC Store is right here.

16 Q. That's where you pointing, two big ABC signs.

17 A. You can see the stop sign right here. A little further down
18 it's just like a little right here on the corner, Merriman Road.

19 Q. So, the Prosecution Exhibit shows this ABC Store.

20 A. That's the ABC Store.

21 Q. And is that where you threw the knife?

22 A. Yes, sir.

23 Q. Did you ever put the knife in your pocket while you were
24 driving your bicycle?

25 A. Never did that.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

204

1 Q. Did you ever stick it in there so you could stick - - was the
2 blade on that thing closed or not closed?

3 A. It wasn't ever closed.

4 These are the same jeans I had on that day, and it was never
5 closed.

6 MISS BIAGIANTI: Your Honor, I'm going to - - -

7 THE COURT: I couldn't even hear what he's saying.

8 MISS BIAGIANTI: He said - - when he was talking about the
9 knife, he said, "Well, these were the same jeans I had on that
10 day."

11 It's not in response to the question.

12 THE COURT: Well, I'll let him go on. If you want to cross
13 examine him about it, you can.

14 Q. Okay. So you went to get on your bicycle and started to
15 leave. Has Mr. Epps already gotten in the car and driven over to
16 Ms. Keith?

17 A. Yeah. Ms. - - he's all, yeah. All of that's - - he's, um,
18 I'm - - I'm ahead of him.

19 Q. Just yes or no.

20 A. Yes.

21 Q. When you get on your bicycle and start to go, you start going
22 towards the ABC Store and Fred's? Is that correct?

23 A. Yes. I started going towards the ABC Store on the bike.

24 Q. And when you get your bicycle off of the sidewalk that's by
25 the wall of Palmetto Tax Service, is Mr. Epps already ahead of you

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

205

1 over there by Fred's in his car?

2 A. Mr. Epps is already ahead of me. Tywanda is getting in the
3 car.

4 Q. Which seat in the car was she getting, the front or the back?

5 A. It to me it looked like the front. So I'm not - - I'm not
6 absolutely sure but to me it looked like the front of the car.

7 Q. Do you remember if she was getting in on the driver's side of
8 the car or the passenger side of the car?

9 A. When I saw her she was struggling to get on the passenger side
10 of the car.

11 Q. When you rode - - was the car still stopped when you rode by
12 it on your bicycle?

13 A. Yeah, it was still stopped.

14 Q. Do you remember if you rode between the car and Fred's or
15 whether you went on the parking lot side?

16 A. Between the car - - between Fred's and the car. Fred's here
17 and the car here. I'm going down the sidewalk side.

18 Q. Were you on the sidewalk or on the street?

19 A. I'm on the sidewalk.

20 Q. How far from the sidewalk is the passenger side of the car
21 where Ms. Keith is trying to get in?

22 A. I mean, well, enough room for me to get past her and the car.

23 Q. As you go by Ms. Keith on the bicycle, how far - - close - -
24 or how many feet away from Ms. Keith is your bicycle when you ride
25 by her?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

206

1 A. Oh, probably about a good twenty - - about fifteen feet,
2 something like that. I'm not absolutely sure. I'm not actually
3 sure.

4 Q. You don't know?

5 A. I'm not actually sure.

6 Q. Think about it now. Is she on the sidewalk when she's trying
7 to get in the car? Look at this exhibit - - Prosecution Exhibit
8 #10. Is she standing on the sidewalk when she's trying to get in
9 the car or she standing out on the driveway?

10 A. Okay. She's - - she's - - -

11 MISS BIAGIANTI: Your Honor, he's already asked and
12 answered that question.

13 A. She - - she's on this side.

14 THE COURT: Speak louder, sir.

15 I'll let him answer.

16 Speak louder, sir.

17 A. Alright.

18 She's on the - - -

19 Q. Let me ask you the questions.

20 A. I'm further back. This is not clear.

21 THE COURT: Sir.

22 MR. BROWN: Yes, sir.

23 THE COURT: Everyone has got to hear you when you speak,
24 sir. So, please, speak louder.

25 Q. Alright. You said the, ah, yellow-lined sidewalk, correct?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

207

1 A. Right.

2 Q. And the yellow lines on the sidewalk or the ending part of the
3 sidewalk toward the street goes in front of the mall. Correct?

4 A. Right. Right.

5 Q. If you're on the store side of the yellow lines - -

6 A. Right.

7 Q. - - you're on the sidewalk. Correct?

8 A. Correct.

9 Q. And the cars that would be driving would be on the driveway on
10 the street side of these yellow lines that border the sidewalk.

11 A. Right.

12 Q. When you - - and you see Fred's sign there on the door.

13 A. Right. Correct. Correct.

14 MISS BIAGIANTI: Objection, Your Honor. He's all leading.

15 THE COURT: That's fine.

16 Continue on, Mr. Goude.

17 Q. When you got on your bicycle, did you get out into the street
18 to peddle or were you peddling on the sidewalk?

19 A. Eventually I got out on the - - eventually, I got out on the
20 street to peddle but those beams end at a certain place.

21 Q. The ramps,.

22 A. Right here. These beams, yeah. I think they end at around
23 about that area right there. If you have another picture I could
24 show you what I'm talking about.

25 Q. Alright. Well, I see what you talking about.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

208

1 A. Alright.

2 Q. Now, when you - - -

3 A. But I had - - none of this stuff being here, rode right behind
4 her and hit - - hit the street.

5 Q. Alright.

6 When you rode by the car?

7 A. Uh-huh.

8 A. How close to the sidewalk, you know, like in steps do you
9 think the side of the car toward the store towards Fred's was like
10 one step, two steps?

11 A. Maybe about ten steps.

12 Q. How many?

13 A. Probably about ten steps.

14 Q. Alright. Ten steps.

15 Now, I'm going to say the sidewalk is here where you are?

16 A. Uh-huh.

17 Q. Ten steps is like this.

18 One, two, three, four, five, six, seven - - -

19 A. Oh, nah. Not that many.

20 Q. Not that many?

21 A. Not that many. No. No.

22 Q. Well, let me step them off, and you tell me about how far.

23 A. Stop right there.

24 MISS BIAGIANTI: Objection.

25 Q. About that many?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

209

1 MISS BIAGIANTI: I have an objection.

2 THE COURT: Proceed on. Proceed.

3 Q. Alright, and the sidewalk is here where you're at?

4 A. Right.

5 Q. And this is the yellow end of the sidewalk?

6 A. Right.

7 Q. And where I'm at now is the side of the car?

8 A. Right.

9 Q. And so Ms. Keith was off the sidewalk heading toward the car?

10 A. Right. Heading toward the car.

11 THE COURT: Now, sir, I didn't sustain leading questions
12 when you were pointing to a picture to something in a picture but
13 when you do questions like, that, sir, they are leading. Mr.
14 Goude, please do not ask leading questions. Ask question to which
15 the witness gives the answer, not you in your question.

16 MR. GOUDE: Alright, sir.

17 Q. What part of your bicycle touched Ms. Keith as you rode by
18 her?

19 A. No part.

20 Q. What part of your bicycle did you try to get to touch Ms.
21 Keith as you rode by?

22 A. No part.

23 Q. What part of your bicycle touched the car of Mr. Epps as you
24 rode by him?

25 A. No part of the bike touched the car.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

210

1 Q. When you - - alright. Strike that.

2 When you were in the reception area in the tax office, did you
3 remember seeing the Lowrimores, the couple that testified here
4 today? Do you remember seeing them?

5 A. Yes, I remember seeing the Lowrimores sitting across from
6 where we were sitting at.

7 Q. Did you know them before that day?

8 A. Didn't know neither one of them. Never saw them before.

9 Q. Did you - - did you ever talk - - did you talk with them in
10 your life?

11 A. Never talked to them a day in my life.

12 Q. Had you telephoned - - let me ask you this. Had Ms. Keith
13 asked you to use any particular code on the phone when you would
14 call her?

15 A. Yes, she did. It got to a point where Tywanda asked - -
16 well, she - - yes, yes. I would call her, um, * 67 private caller.

17 Q. Alright. Who told you to call * 67?

18 A. Tywanda told me to dial * 67.

19 Q. And what is the purpose of dialing? This is on a cell phone
20 you talking about or any phone?

21 A. You can call any phone * 67, and it will block your number.

22 Q. And do you dial * 67 before you dial the number or after the
23 number?

24 A. You dial * 67, and then you dial the number.

25 Q. And what is the purpose of that?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

211

1 A. To - - to protect your call.

2 Q. To protect whose call?

3 A. To - - to, um, to protect your number, the person making the
4 call. To protect the person making the call's phone number so it
5 will not be acknowledged on the other person's phone.

6 Q. So, if I used my cell phone or any phone in my hand and call
7 you at your house or somewhere and I dial * 67, how does that
8 affect what you see or know at your house whenever I call?

9 A. If you have a Caller ID, it comes up private caller or either
10 unknown caller.

11 Q. So, if you were at your house at Andrews and I'm here at
12 Georgetown and I called your house phone and I dial * 67 and you've
13 got a Caller ID on your phone in Andrews, then you won't be able to
14 tell that my cell phone number is calling your house?

15 A. True.

16 Q. And what was the purpose of her asking you to do that after
17 she moved in with Mr. Keith?

18 MISS BIAGIANTI: Your Honor, I object.

19 THE COURT: I'll sustain the objection.

20 Q. Well, did she tell you why she wanted you to dial * 67 after
21 she moved in with Mr. Epps?

22 A. Yes, she did.

23 Q. What did she say?

24 MISS BIAGIANTI: Your Honor, I object.

25 THE COURT: I overrule on 801 - - 801 (d).

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

212

1 A. She - - she said that Epps had seen the number on her phone,
2 and they were having problems about it. Don't call her from the
3 house no more. Call her from the * 67 number.

4 Q. That way your number that you were calling from would not show
5 up on his house phone?

6 A. Right.

7 Not his house phone. On her cell phone. He had been checking
8 her phone.

9 Q. Now, this day when you called her from your house and got her
10 at the tax service office, did you dial * 67 that day?

11 A. Yes. I dialed * 67 on the phone, I mean, on my phone so it
12 would drop the number to her - - on her cell phone so it would come
13 up private call or unknown call.

14 THE COURT: Any other questions, Mr. Goude?

15 MR. GOUDE: Just, basically, Judge, thank you. I'm
16 reviewing these notes to make sure I don't omit anything.

17 Q. Now, when you were - - were you arrested that same day for
18 this charge?

19 A. Yes, I was.

20 Q. And were you taken to the jail house and did they search you
21 before they send you into the inmates where they arrest people in
22 jail?

23 A. Well, actually, I was - - -

24 Q. Just listen to the question.

25 Did they search you at the jailhouse?

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

213

1 A. Yes, they searched me at the jailhouse.

2 Q. And did they do this Property Receipt Card showing what you
3 had on you?

4 A. Yes, they do.

5 Q. And did you still have the woman's cell phone? Is that on
6 this receipt, one cell phone?

7 A. Yes, I had the cell phone.

8 Q. Did you have the five dollars that she gave you?

9 A. And I had the five dollars - - and I had the five dollars
10 Tywanda gave me.

11 THE COURT: Now, is that in evidence?

12 MR. GOUDE: Yes, sir. That's in evidence.

13 MISS BIAGIANTI: It is, Your Honor, I believe.

14 THE COURT: Okay. Alright. In evidence.

15 Q. Now, when Ms. Keith got back in the car with Mr. Epps, did you
16 see him making any motion over toward her?

17 A. I could be mistaken but I thought I saw him grab her.

18 Q. Grabbed her where?

19 A. In her chest in a grabbing motion toward her chest.

20 MR. GOUDE: Thank you, Your Honor. That's all the
21 questions I have

22 THE COURT: Alright.

23 What we going to do, ladies and gentlemen, we're going to take
24 just a little break before we do cross examination and let you
25 refresh yourselves. So, please step to the jury room, please, if

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

214

1 you would.

2 By the way, I notice that some of you are writing notes. If
3 you would, please, leave whatever notes you have out here on the
4 chair. Um, I notice at least two of you there. There we go.

5 No one will look at them. I'll make sure no one looks at
6 them.

7 (The jury retires to the jury room at 4:34 p.m.)

8 THE COURT: Um, what is the position of the defense and the
9 State in regards to the two jurors who were taking notes? They
10 weren't taking notes before. They just started with this witness.

11 MISS BIAGIANTI: I don't have a position, Your Honor. I
12 think there's pros and cons.

13 MR. GOUDE: I have no position or objection, Judge, to what
14 they've done so far.

15 THE COURT: Well, normally, I tell them not to take notes.
16 I neglected to tell them that yesterday.

17 Um, my concern is they're only taking notes in one witness.
18 That's my concern. I think what I'm going to do is I'm going to
19 get envelopes when they come back out and let them put the notes in
20 the envelope, sealed envelope, and let them keep it then so they
21 know nobody is looking at it and then let them have it at the end
22 of the case.

23 MISS BIAGIANTI: I think I may have actually seen another
24 juror take notes yesterday, Your Honor.

25 THE COURT: Well, I missed that one.

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

215

1 MISS BIAGIANTI: Okay.

2 THE COURT: Alright.

3 Now, has anybody got an objection about doing the notes that
4 way?

5 MR. GOUDE: No, Your Honor.

6 THE COURT: Alright.

7 Now, we're going to step down for a minute or so.

8 Now, Mr. Brown, please understand that while we are on break
9 you're not permitted to discuss your testimony with anyone.

10 Obviously, you can talk to your lawyer. He's your lawyer but
11 not about your testimony. You're suppose to come back just as if
12 we did not have a break.

13 You understand?

14 MR. BROWN: Yes, sir. I understand.

15 THE COURT: Alright.

16 So, please, do not discuss your testimony. I'm going to ask
17 you that when we get back.

18 We'll take a break.

19 (The Court recesses the trial of this case and thereafter
20 resumes the trial of this case.)

21 THE COURT: Okay. Be seated.

22 Now, it is obvious to me that we're not going to charge this
23 jury today. Um, ah, because, obviously, we're going to get the
24 evidence in but it would be improper to charge the jury here around
25 5:30. So I'm assuming your cross examination is going to be twenty

MR. BROWN - DIRECT EXAMINATION BY MR. GOUDE

216

1 or thirty minutes at least, um, how long you wish it.

2 There may be redirect and may be responsive witnesses and
3 whatever.. Who knows but I am scheduled tomorrow to be at the
4 swearing in of my future colleague at the Court of Appeals. So,
5 I'm going to probably have this jury come back at 2:00, and we can
6 charge them then.

7 Is that fine with you all?

8 MISS BIAGIANTI: Ah, closing and charging tomorrow?

9 THE COURT: Yeah.

10 MISS BIAGIANTI: Yes, sir.

11 THE COURT: Yeah. I wouldn't -- I learned a long time ago
12 you do all that at one time. That way nothing happens tonight that
13 you say, "I need to do something else about my closing I forgot."

14 MR. GOUDE: That's fine, Judge.

15 THE COURT: Alright. Very good.

16 Alright. Bring the witness.

17 You need any questions about whether Mr. Brown has talked to
18 his lawyer or not or talked to about his or anybody else about his
19 testimony? Any questions from you, Miss Biagianti?

20 MISS BIAGIANTI: No, sir.

21 THE COURT: Any questions from you, Mr. Goude?

22 MR. GOUDE: No, sir.

23 THE COURT: Alright. Bring the jury in.

24 (The jury returns to the courtroom at 5:02 p.m.)

25 THE COURT: Okay. We'll now proceed with cross

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

217

1 examination.

2 Miss Biagianti.

3 MISS BIAGIANTI: Thank you, Your Honor.

4 CROSS EXAMINATION OF MR. BROWN BY MISS BIAGIANTI:

5 Q. You live with your mom, right?

6 A. Yes.

7 Q. ?

8 A. Yes.

9 Q. Kensington?

10 A. Yes.

11 Q. Mom's telephone number is Is that correct?

12 A. Yes, ma'am.

13 Q. You started living together in October or November of '06?

14 A. Around October.

15 Q. Didn't you go to D.C. around Thanksgiving time 2007?

16 A. No.

17 Q. You had visited with your son?

18 A. No. It wasn't - - it wasn't November of 2007.

19 Q. December of 2007, correct?

20 A. No.

21 Q. So, you lived with your mom but you didn't eat Thanksgiving
22 dinner with your mom?

23 A. Nope.

24 Q. Is that because you were with your girlfriend Betty Gibson?

25 A. Yes, I was.

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

218

1 Q. So, you were with Betty Gibson, and then you proposed to
2 Tywanda in January?

3 A. It wasn't - - me and Betty wasn't intimate. Me and Betty go
4 back from when we were kids. We were real close friends.

5 It never - - it never was intimate. It was just real good
6 friends.

7 Q. You kiss your friends?

8 A. Eventually, it got to that. It got to the kissing part but we
9 were just basically - - in other words, she was a childhood
10 sweetheart, and we hadn't got intimate. That day we were kissing
11 it was sometime later but I had explained to her about Tywanda.
12 So, she - - I was like a shoulder to cry on.

13 Q. So, what's good for the goose is good for the gander?

14 She walked out on you because you were cheating on her, and
15 three months later you proposed to her.

16 A. She wanted to reconcile. I mean, it's been like - - I still
17 have feelings for Tywanda.

18 Q. Well, speaking of feelings, you were so obsessed with her - -

19 A. No, I was not obsessed.

20 Q. - - you kept calling and calling and calling when she said,
21 "No, stop calling me."

22 A. That's incorrect.

23 Q. That's not true?

24 A. No.

25 Q. February 13th, 2006, you didn't - - you call and call and call

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

219

1 her?

2 A. No. I did not just keep calling and calling and calling her.
3 Me and Tywanda were related still. She's saying that but we were
4 actually relating. We were exchanging calls and conversations. It
5 was not like I was just calling and calling and calling and
6 calling.

7 Q. She didn't live with you?

8 A. No, she didn't.

9 Q. And you were not boyfriend and girlfriend. Correct?

10 A. No.

11 Q. Not boyfriend/girlfriend.

12 Was February 13th after you proposed to her?

13 A. A little while after that.

14 Q. And - -

15 A. We were still good.

16 Q. - - speaking of February 13th, weren't there so many unwanted
17 calls that she actually called the police?

18 A. It wasn't so many unwanted calls, and I mean - - I mean, if
19 they are saying that, there's actually no proof of unwanted calls
20 I don't think. I - - I don't know.

21 Q. Really?

22 A. I don't know. I haven't seen it but there weren't unwanted
23 calls.

24 Q. Oh, okay. Let me get this straight then.

25 Did you speak with a Deputy Jarod Bardon on October 13th when

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

220

1 you called Tywanda and the officer said, "This is Jarod Bardon with
2 the Sheriff's Department. Who are you, sir?"

3 And you identified yourself as Robert Dexter Brown.

4 A. Yeah. That's that one call and I remember that call very
5 well. I remember that call very well.

6 Q. I bet you do.

7 A. Yes.

8 Q. Because you spoke with the deputy and he said not to call here
9 anymore. Stop harassing Ms. Keith. He told you that, didn't he?

10 A. Yeah. It's a reason why that happened like that.

11 Q. I'm asking you. He told you that?

12 A. Yeah. Okay. Yes. He said - - he actually told me that.

13 Q. Okay.

14 And then eight days later there's a stabbing?

15 A. Eight days later?

16 Q. February 13th to the 21st. That's eight days. February 13,
17 14, 15, 16, 17, 18, 19, 20, 21.

18 A. Yes.

19 Q. Nine days.

20 A. I'm still relating with Tywanda.

21 Q. You were still relating with Tywanda even after the deputy
22 said to not call here anymore?

23 A. She's the one that called me and told me that, ah, that Mr.
24 Epps was taking out a warrant for me. She called me from the Bank
25 of America. I was at home, and she said - - she said that - - -

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

221

1 Q. And when did she call you from the Bank of America?

2 A. I think, ah, that was - - as a matter of fact, she called me
3 from the Bank of America right after that police officer told me
4 not to call there no more to let me know that Epps was taking a
5 warrant out on me.

6 Q. A warrant for what, sir?

7 A. For that phone call.

8 Q. Unwanted phone calls, right?

9 A. It --- it's a little more complicated than that.

10 Q. Sir, would you please just answer yes or not and then you can
11 explain.

12 A warrant for unwanted phone calls for both Mr. - -

13 A. Right. For Mr. Epps.

14 Q. - - Mr. Epps and Ms. Keith, correct?

15 A. I would assume so.

16 Q. Okay.

17 This is her cell phone?

18 A. That's her cell phone.

19 Q. The phone you were trying to call her number.

20 This is the same phone that was in your property at the jail?

21 A. Yes, ma'am. The phone that I had taken out of Tywanda's hand
22 when we were at Palmetto Taxes.

23 Q. You stole her phone from her that day. It wasn't yours. It
24 did not belong to you?

25 A. I don't know if you can call it stealing or not. It was me

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

222

1 protecting myself myself.

2 Q. You protected yourself?

3 A. Yes. because I had called her and I know her.

4 Q. But wait. You said earlier that you - - she told you to dial
5 * 67, right, and it blocked your number? And you testified
6 earlier that you dialed * 67 to her cell phone the date of the
7 incident. Correct?

8 A. Yeah. But I also knew she was going to protect Epps, too, at
9 all costs.

10 Q. Listen. Why do you want her phone if your number is on it?

11 A. Because it will come up private caller or unknown caller.
12 That's me.

13 Q. There's a private - - if there's a private number on this
14 phone, it's private. It doesn't state your ID.

15 A. Right.

16 Q. So why do you want the phone?

17 A. Because I'm the only one that would call her like that.

18 Q. So you don't mind if we scroll through it?

19 A. You can, um - - - incoming call.

20 Q. So, should be a private number in here from somebody?

21 A. Remember - - remember. She call always erase her phone calls.
22 So from the time that it left my property to you guys, I don't know
23 what's on that phone now but you can check it. It should be on
24 there.

25 Q. Okay.

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

223

1 A. But anybody can erase - - anybody can erase phone calls.

2 Q. So, you're assuming that someone at this jail - -

3 A. No.

4 Q. - - somehow knew this story and decided to erase the one
5 private call?

6 A. No, I didn't say that. I said anybody.

7 Q. Well, correct me if I'm wrong.

8 A. Uh-huh.

9 Q. You had the phone in your possession when you were arrested?

10 A. And then Officer Johnell came and got the phone. Officer
11 Spartman.

12 Q. The phone was taken from you at the jail, correct?

13 A. Right.

14 Q. Put on the Property Sheet?

15 A. Right.

16 Q. Right?

17 A. Right.

18 Q. And it has been at the jail this entire time until
19 Investigator Spartman did a search warrant on it last week?

20 A. Correct.

21 Q. That's funny. When Investigator Spartman tried to get the
22 phone, didn't you call Betty Gibson and ask her to come pick up
23 your phone, sir?

24 A. I asked Betty Gibson to call. I asked Betty Davis to pick
25 this phone up months before that.

MR. BROWN - CROSS EXAMINATION BY MISS BIAGIANTI

224

1 Q. Why was there a need to pick up this phone if there's not a
2 call?

3 A. Because of that call that's on there verifying that I called
4 Tywanda on that day. It should have the date on there and the
5 time on there if that private number is still in there.

6 Q. So someone must have mysteriously erased it if it's not there?

7 A. I don't know.

8 Q. Here. . You look at with me. You look at it. I don't want you
9 to think that I erased it.

10 And you called. We think we established yesterday that I
11 went over the outgoing calls, right? So let's look at incoming.

12 And read - - you read this to me. I'll let you read it.

13 A. That's not it.

14 Q. What date and time is it?

15 A. That's the 21st.

16 Q. What time is that call?

17 A. That's 11:55.

18 Q. The date of the stabbing?

19 A. Right.

20 Q. The second call, this - - who does that say?

21 A. That's on the 19th. That's from my mother.

22 Q. Any calls before 11:55, no, excuse me, before after 11:55
23 a.m., February 21, 2008?

24 A. After?

25 Q. Yes.

1 Incoming 1, you see that?

2 A. Uh-huh.

3 Q. That's the 13th. It rolls back around to February 14th.

4 So, fair to say, there was no calls after 11:55 a.m., February
5 21st?

6 A. Well, she did it. She got to it before I could get the phone.

7 Q. You told us earlier that you snatched the phone out of her
8 hand because you knew what she was like.

9 A. Right.

10 Q. And you didn't want her erasing it.

11 A. Right.

12 Q. She didn't have time to get the phone, did she?

13 A. Yeah. She had it in her - - -

14 Q. So, when you and she were in this struggle, you want us to
15 believe that she was somehow more concerned about erasing this
16 private number?

17 A. Yes.

18 Q. Okay. Stick with that.

19 Do you remember talking to the officers. You had two
20 interviews, correct?

21 A. Which officer?

22 THE COURT: Hold on. Let me talk to y'all. Come over
23 here.

24 (Bench conference held off the record in the presence of the
25 jury but outside the hearing of the jury.)

MOTION TO SUPPRESS - JACKSON V DENNO HEARING (IN CAMERA) 226

1 THE COURT: Ladies and gentlemen, I hate to ask you to do
2 this but there's something I've got to check right quick, and we
3 going to finish the testimony no matter how long it takes today.

4 So, if you would, please, step back to the jury room for a
5 minute.

6 (The jury returns to the courtroom at 5:14 p.m.)

7 MOTION TO SUPPRESS - JACKSON V DENNO HEARING (IN CAMERA)

8 THE COURT: Miss, ah, ah, if y'all would, stay in place.

9 Now, I assume, now, we're going to go into a purported
10 statement made by the defendant?

11 MISS BIAGIANTI: That's the case, sir.

12 THE COURT: I think now, are you planning to go into a
13 purported statement made by the defendant?

14 MISS BIAGIANTI: Yes, sir, to impeach him on his prior
15 inconsistent statements.

16 THE COURT: Alright.

17 Now, Mr. Goude, do you contend this statement was made
18 voluntarily, involuntarily, after Miranda Rights or what?

19 MR. GOUDE: Involuntarily and improperly made when he was
20 in custody.

21 THE COURT: Alright.

22 If you would, Mr. Brown, just step down over there a second if
23 you would.

24 Alright.

25 Who is your witness you want to bring up in regard to that?

MOTION TO SUPPRESS - JACKSON V DENNO HEARING (IN CAMERA) 227

1 MISS BIAGIANTI: Your Honor, we like to - - Investigator
2 Johnell Spartman.

3 THE COURT: By the way. If you want to while he's up here
4 see if he wants to verify his signature, I'd be glad to.

5 Mr. Brown. Mr. Brown, come back up one second, please, sir.
6 Mark that for ID if you would.

7 MISS BIAGIANTI: We did, sir.

8 THE COURT: Okay.

9 MISS BIAGIANTI: State's Exhibit #22 for ID.

10 THE COURT: Okay.

11 MISS BIAGIANTI: Tell this Court what the name of that form
12 is.

13 MR. BROWN: Miranda Warnings.

14 MISS BIAGIANTI: And do you recognize that signature?

15 MR. BROWN: Yes. That's my signature.

16 THE COURT: Okay.

17 You can step down for a second, now.

18 MISS BIAGIANTI: Your Honor, at this time the State would
19 call Investigator Johnell Spartman.

20 THE COURT: Come up, Mr. Spartman.

21 (The witness takes the witness stand.)

22 (IN CAMERA) INVESTIGATOR JOHNNELL SPARTMAN,
23 being duly sworn, testifies as follows:

24 DEPUTY CLERK OF COURT: Please state your name and spell your
25 last for the record.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI 228

1 INVESTIGATOR SPARTMAN: Johnell Spartman. My last name is
2 spelled S-p-a-r-t-m-a-n.

3 THE COURT: Alright. Your witness.

4 MISS BIAGIANTI: Your Honor, can I actually lead him in the
5 initial questioning.

6 THE COURT: Proceed on.

7 DIRECT EXAMINATION BY MISS BIAGIANTI: (IN CAMERA)

8 Q. You work at the Georgetown City Police Department?

9 A. Yes.

10 Q. Rank of Investigator?

11 A. Yes.

12 Q. How long have you worked there?

13 A. Nine years.

14 Q. And just tell us what are some of your duties as an
15 investigator.

16 A. Ah, pretty much, we investigate and follow up cases, mostly
17 felony cases, ah, any cases that require further investigation

18 Q. And are you familiar with the defendant in this case, Robert
19 Dexter Brown?

20 A. Yes.

21 Q. And are you familiar with, um, Miranda Warnings that suspects
22 often receive?

23 A. Yes.

24 Q. And did you have an occasion that another officer that you
25 work with advised Mr. Brown of his Miranda Rights?

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

229

1 A. Yes.

2 Q. What officer was that?

3 A. My Supervisor Sgt. James Burke.

4 Q. And you weren't there. Just so we're clear. You weren't
5 there when he Mirandized the subject but you walked in afterwards.
6 Correct?

7 A. Yes.

8 Q. And then there was also a second interview that you solely did
9 and at that time you inquired of the defendant, ah, you asked him
10 if he still understood he was under his Miranda Rights, and he said
11 yes?

12 A. Yes.

13 Q. And, um - - -

14 I'm showing you what's been marked as State's Exhibit #22 for
15 ID. Can you tell us what that is?

16 (Court Reporter accepts State's Exhibit #22 for identification
17 only.)

18 A. This is our department's version of the Miranda Warnings.

19 Q. And tell us for the record, um, the name, location and date of
20 this.

21 A. Location, GPD, initials for Georgetown Police Department. The
22 date is 2/21 approximately 3 - - I can't see the last.

23 Q. It was 3:50 something. Is that correct?

24 A. Correct.

25 Q. Last name, Brown. First name, Robert. Middle initial, D but

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

230

1 it's spelled out Dexter.

2 Address, ... n, South Carolina, 29440.

3 Social security number; date of birth,

4 Q. What else does it have on it? Type of offense?

5 A. Type of offense is assault and battery with a high - -
6 correction. Assault and battery with the intent to kill.

7 Also, there is a phone number that was provided.

8 Q. And are you familiar with that handwriting at the top of this
9 form?

10 A. Yes.

11 Q. And how are you so familiar with it?

12 A. It's the handwriting of my supervisor.

13 Q. How long have you worked with your supervisor?

14 A. Directly three and a half years.

15 Q. And how many interviews have you conducted with him during
16 this three and a half years approximately?

17 A. Several.

18 Q. And can you please read into the record exactly what the form
19 says and whether or not there is a checkmark by that warning.

20 A. The checkmark, you have each warning there. The checkmark
21 indicating that each warning was read.

22 Q. Is that the standard procedure?

23 A. Yes. We usually use a checkmark or a circle, whoever is
24 conducting that interview.

25 Q. Yes, sir.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

231

1 And go ahead and read for the record the checkpoints.

2 A. Number 1 states, "You have the right to remain silent."

3 Q. Was that checked off?

4 A. Yes.

5 Q. Number 2.

6 A. Number 2 states, "Anything you say can and will be used
7 against you in a court of law."

8 Q. Is that checked off?

9 A. Yes.

10 Q. Number 3.

11 A. "You have the right to talk to an attorney and have him or her
12 present while you are being questions."

13 Q. Is that checked off?

14 A. Yes.

15 Q. Number 4.

16 A. If you cannot afford to hire an attorney, one will be
17 appointed to represent you before any questions if you wish."

18 Q. Is that checked off?

19 A. Yes.

20 Q. And what is the last statement?

21 A. "You can decide at any time to exercise these rights and not
22 answer any questions or make any statements."

23 Q. And underneath for the record there's a cite that says,
24 "Waiver of Rights."

25 Please read the statement that is under that title.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI 232

1 A. "I understand my rights as stated above. I am now willing to
2 discuss this offense or offenses under investigation and make a
3 statement without talking to a lawyer first or without having a
4 lawyer present with me."

5 Q. And whose signature is on the second line?

6 A. Jimmy Burke.

7 Q. And underneath?

8 A. Jimmy Burke.

9 Q. What - - -

10 Now, have you seen - - while preparing for the case with me
11 seen the interview of this defendant?

12 A. Yes.

13 Q. And just for your - - so you're clear, you actually walked in
14 in the middle of the first interview and conducted the entire
15 second interview by yourself?

16 A. Yes.

17 Q. Okay.

18 MISS BIAGIANTI: Your Honor, can I - - can we approach.

19 I don't know if I need to ask any questions about
20 voluntariness because he wasn't in there.

21 THE COURT: No. But what about the issue of the tape.
22 You got the tape.

23 MISS BIAGIANTI: Yes, sir, Your Honor.

24 Q. Alright.

25 Where were the interviews conducted?

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

233

1 A. It's an interview room that's in the office of Criminal
2 Investigation Division.

3 Q. And are they - -

4 A. It's a separate room.

5 Q. - - is it policy that when an interview is started that it be
6 audio and video recorded?

7 A. Correct.

8 Q. And are you aware in this case whether both statements were
9 audio and video recorded?

10 A. Yes.

11 Q. And, um, I show you what's been marked as State's Exhibit #20
12 and #19 for ID. Are these the first and second interviews of the
13 defendant?

14 A. Yes.

15 MISS BIAGIANTI: Your Honor, at this time we'd like to view
16 the inter - - or at least the first portion of the interview.

17 THE COURT: Yes. Did you say he went over with him
18 whether he was given his rights by the other guy in the interview,
19 this Mr. Spartman?

20 MISS BIAGIANTI: I didn't understand you, Your Honor.

21 THE COURT: Did you say Mr. Spartman with this interview
22 discusses with the defendant, "Have you been given your rights?"

23 MISS BIAGIANTI: Yes, Your Honor. On the second interview,
24 he does say that.

25 THE COURT: I'd like to see that, please.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

234

1 MISS BIAGIANTI: First and the second?

2 THE COURT: Well, all I want to see is the second one where
3 he was talking.

4 MISS BIAGIANTI: Okay.

5 That is on State's Exhibit #19 for identification.

6 THE COURT: Okay.

7 MISS BIAGIANTI: Do you want us to your computer, Judge?

8 THE COURT: I'll walk down but we need it loud enough for
9 the Court Reporter to hear it.

10 No, it will be - - if no one talks, this will be an exhibit.
11 We're fine.

12 Madame Court Reporter, as long as no one is talking, we'll
13 just look at it.

14 (State's Exhibit #19 is played for the Court.)

15 MISS BIAGIANTI: But, Your Honor, the first statement you
16 can hear Investigator Burke going through the entire statement.

17 THE COURT: Let me see the first statement.

18 MR. GOUDE: Judge, before we hear this first one - - -

19 THE COURT: Let me just see the first one, Mr. Goude.

20 MR. GOUDE: Alright.

21 THE COURT: Alright. Let's get back on the record now.

22 Mark those CD's. Mark the CD's or DVD's or whatever they are
23 as exhibits.

24 MISS BIAGIANTI: They are already marked, Your Honor.

25 (The Court Reporter accepts State's Exhibit #19 and #20 for

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

235

1 identification only.)

2 THE COURT: Alright. Mr. Goude, you wanted to say
3 something. You can say something.

4 MR. GOUDE: Yes, Judge.

5 If the Prosecutor is through questioning this witness on the
6 suppression hearing or the voluntariness hearing, then I'll say
7 thank you.

8 We object to the first interview DVD/CD on the grounds that
9 the police officer, the officer who testified Mr. Spartman said
10 that gave him these Miranda Rights is not present here in the
11 court.

12 We would object to the CD/DVD of the first interview being
13 admitted on the suppression hearing on the grounds of hearsay.

14 MISS BIAGIANTI: I'm not planning, Your Honor, on admitting
15 the CD.

16 MR. GOUDE: Alright.

17 MISS BIAGIANTI: I'm only going to ask him about his
18 statement.

19 MR. GOUDE: Or the Court using it because of the issue of
20 the voluntariness of the statement by the defendant. We object to
21 the Court using the CD/DVD of the first interview where the Miranda
22 Rights are actually being given on the grounds that the police
23 officer is not present to testify, and, therefore, the CD or DVD
24 would be hearsay.

25 We object to the Miranda Form on the same hearsay grounds as

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI 236

1 being signed by, the names on here are Jimmy Burke who is not
2 present in court to testify that he signed that.

3 THE COURT: Is it Jimmy Brick or Jimmy Irvin?

4 MISS BIAGIANTI: Jimmy Burke.

5 MR. GOUDE: Burke on this form here.

6 THE COURT: Uh-huh.

7 MR. GOUDE: So, that's the objection on the first interview
8 that that testifying officer that the rights were given on the
9 first CD is hearsay and inadmissible on this grounds.

10 The second point we make is the second interview by Mr.
11 Spartman. He does not specifically advise Mr. Brown of his
12 rights.

13 He says, "I understand you had your rights. So they still
14 apply," or something.

15 He didn't enumerate the Miranda Rights. He said, "You still
16 have the same rights."

17 And Mr. Spartman has testified he was not present when Sgt.
18 Burke allegedly gave Mr. Brown his rights - -

19 THE COURT: Correct.

20 MR. GOUDE: - - and we object to both of them.

21 THE COURT: Alright.

22 Now, you have any other questions of this witness?

23 MR. GOUDE: No, sir.

24 THE COURT: You have any other questions of this witness?

25 MISS BIAGIANTI: No, sir.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

237

1 THE COURT: Okay.

2 You can step down.

3 (The witness leaves the witness stand.)

4 THE COURT: You have any witnesses you wish to put up, Mr.
5 Goude, regarding that?

6 MR. GOUDE: No, sir.

7 MISS BIAGIANTI: Your Honor, I would just rely on Rule 613
8 (b) which says extrinsic evidence of a prior inconsistent statement
9 of a witness, ah, is not admissible unless the witness is provided
10 with the substance of his statement and the time and place in which
11 it was allegedly made and the person to whom it was made and given
12 the opportunity to explain or deny the statement.

13 If the witness is not *** (unintelligible) a prior
14 inconsistent statement, extrinsic evidence of such statement is
15 admissible.

16 THE COURT: Alright. That's right. Rule 613. You're
17 correct.

18 We all know that the general principle is that a statement of
19 a defendant is not admissible unless the Court determines by the
20 preponderance of the evidence that it was given voluntarily and
21 after he was advised of his rights if he was in a custodial
22 situation.

23 There's no doubt he was in a custodial situation.

24 Miss Biagianti feels, though, that if it's used for
25 impeachment - - impeachment purposes after he has testified, if she

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI 238

1 has something she feels is inconsistent with what he's saying now,
2 she should be able to introduce if whether he gives it voluntarily
3 or not.

4 Is that your position?

5 MISS BIAGIANTI: Your Honor, I think Miranda doesn't apply
6 when someone gives an inconsistent statement.

7 THE COURT: Right.

8 You're saying what he said to the policeman voluntarily given
9 or not doesn't matter?

10 MISS BIAGIANTI: Well, I think that's different from what
11 I'm saying.

12 If he were to spontaneously on the way to the police
13 department say, um, you know, something about a fight, I can
14 impeach him on that if he denies. He's not under Miranda at that
15 time.

16 THE COURT: But my question to you is when he testifies if
17 he says something you feel is inconsistent to something he said to
18 a police officer while he was in custody, does it matter whether
19 what he said to the police officer was done voluntarily or not.

20 MISS BIAGIANTI: Well, I don't think Miranda applies.

21 THE COURT: I didn't say Miranda.

22 MISS BIAGIANTI: I know but I don't think I can answer your
23 question because I don't think Miranda applies at that point.

24 THE COURT: I didn't say Miranda.

25 MISS BIAGIANTI: I know you didn't.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

239

1 THE COURT: Miranda is different that voluntary.

2 I'm asking you, ah, Miranda is information, knowledge about
3 your rights. Voluntary is whether you said something without
4 being forced or coerced or something of that nature.

5 My question is is the issue of whether he said something
6 voluntary or not, um, is that important in regards to, ah, ah,
7 introducing it if it's introduced for impeachment purposes under
8 613?

9 Do we have to make sure it was done voluntarily or not?

10 MISS BIAGIANTI: I know what you're getting at, Judge.

11 THE COURT: No. I'm only getting at a question.

12 I thought it was your position that - - that whether it was
13 voluntary or not is not important. That once he testified - - -

14 MISS BIAGIANTI: I think the Court needs to make a
15 determination whether it was voluntary or not.

16 He said something. He says the sky is blue outside and I can
17 bring in a former statement where he said the sky is red, I think
18 I can bring it in.

19 He's charging to the jury later on that that's not voluntary.

20 THE COURT: So, therefore, you're saying that under the
21 case law as you read it that once he testifies and if he says in
22 court that the sky is blue and you have information that he told
23 the police officer while he was in handcuffs that the sky is red
24 that it is up to him to bring in the fact that the police officer
25 slapped around, hit him and kicked him and all of that and made him

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI 240

1 say, "You better say the sky is red or I'm going to knock you
2 around more."

3 He's got to bring all that in. You don't have to bring in
4 that it didn't happen. He's got to bring in that it did happen.
5 That's your understanding?

6 MISS BIAGIANTI: No, sir.

7 THE COURT: I thought that's what you said.

8 MISS BIAGIANTI: Well, I think - - I think I should be able
9 to impeach him on cross examination.

10 THE COURT: Right.

11 And, now, you're saying that you can impeach him and you don't
12 have to show that what he said that was inconsistent - - what he
13 said that was inconsistent at the time of the interview with the
14 police officer, you don't have to show that as a voluntary
15 statement?

16 MISS BIAGIANTI: I'd like to go look at the case law.

17 THE COURT: Well, I'm sincerely asking. I mean, it's an
18 interesting point.

19 Of course, once we do it, we're locked into it, and if you're
20 wrong, you're wrong. If you're right, you're right.

21 MISS BIAGIANTI: Well, that's why I don't want to give you
22 an answer.

23 I think I know - - I think I know I'm right but, ah, your
24 questions are not leading me down that path.

25 THE COURT: Well, my questions are sincere questions.

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

241

1 MISS BIAGIANTI: Right.

2 THE COURT: Ah - - -

3 MISS BIAGIANTI: Your Honor, I thought I knew the Rule that
4 he had subjected himself to cross examination, when he says, "I
5 didn't say that," denying his statement, I'm not asking the entire
6 statement. I'm only asking to impeach him about that one
7 statement. That's my understanding of the rule.

8 It's not my understanding that I have to prove voluntariness
9 because I don't want to get into a State v. Terry situation or ***
10 (unintelligible) where he doesn't take the stand, and - - and I'm
11 introducing - - giving him his defense without his taking the
12 stand.

13 THE COURT: Well, you want to look at the case law?

14 All I want to know from you is is voluntariness in your view
15 have anything to do with this now.

16 MISS BIAGIANTI: Can you give me two minutes?

17 THE COURT: Take more than that if you wish.

18 Do you have any case law saying otherwise, Mr. Goude?

19 MR. GOUDE: Yes, sir, Judge.

20 THE COURT: You do.

21 MR. GOUDE: Yes.

22 THE COURT: Remember, now, this is only in regards to the
23 defense - - oh, y'all want to share it. Go ahead.

24 MISS BIAGIANTI: He's showing me voluntariness of a
25 confession. This isn't a confession?

INVESTIGATOR SPARTMAN - DIRECT EXAM. BY MISS BIAGIANTI

242

1 THE COURT: No, Mr. Goude, that's not the point.

2 Mr. Goude, we all know the basic principles. The question is
3 that once the defendant takes the stand and says something and she
4 has information through at a statement that he made to police
5 officers that is inconsistent with what he said to the police.

6 In other words, if he did - - Mr. Goude, you listen to me. If
7 you want to talk to her, I'll be glad to take a break because if
8 I'm talking to you, it's courtesy that you listen to what I'm
9 saying.

10 If he says the sky is blue here today in court and we have
11 strong evidence he said the sky was red to a police officer and she
12 introduces the fact that he said it was red to your police officer
13 when he said, "No, I said it was blue".

14 MR. GOUDE: No. Yes, sir.

15 THE COURT: So, he's permitted to say something that is
16 directly opposite to what he said to a police officer?

17 MR. GOUDE: If it's not voluntarily made or if it was made
18 without his rights according to the trial handbook of - - -

19 THE COURT: Even if he was lying this time and he can say
20 it totally opposite, this Court can let something come in when
21 there's evidence he said something else.

22 That's an unusual thought.

23 MISS BIAGIANTI: Your Honor.

24 MR. GOUDE: If he said it to the police, that's correct.

25 THE COURT: Alright.

RULING OF THE COURT

243

1 Now, what's your position?

2 MISS BIAGIANTI: Your Honor, my position is State vs.
3 Brown, 296 SC 191.

4 THE COURT: The State versus who?

5 MISS BIAGIANTI: Brown.

6 The State can use a defendant's statement made in violation of
7 Miranda for the purpose of impeachment.

8 MR. GOUDE: That wasn't the Judge's question.

9 MISS BIAGIANTI: Yes, it was.

10 MR. GOUDE: He said voluntary.

11 MISS BIAGIANTI: Yes, it was.

12 THE COURT: Let me see the case right quick.

13 MISS BIAGIANTI: Well, I have the cite, Your Honor.

14 And that cite is Oregon vs. Hass 420 US 714.

15 THE COURT: This is a South Carolina case?

16 MISS BIAGIANTI: Yes, sir.

17 RULING OF THE COURT

18 THE COURT: Mr. Goude said according to his book, The Trial
19 Handbook for South Carolina Lawyers, it is not admissible in court.

20 Okay.

21 I have reviewed the totality of everything in this matter. I
22 have reviewed the DVD, the CD. Both the State and the defense says
23 they have no other witnesses regarding this issue other than the
24 State's introduction of the testimony of Mr. Spartman as well as
25 the two interviews I've seen on DVD.

RULING OF THE COURT

244

1 After looking at the totality of the issues, the Court's
2 determination, ah, on a confession issue is whether Miranda was
3 given and whether the defendant understood the Miranda. That's
4 totally a Court decision, and I looking at the DVD and the totality
5 of the matters and this in camera hearing which is not held to the
6 same standard of the evidence rules as a hearing in front of a
7 jury, ah, I find by the preponderance of the evidence that Miranda
8 ruling - - that Miranda was given and was understood by the
9 defendant.

10 As to the voluntariness of the issues, um, and the statement
11 by the preponderance of the evidence, I find it sufficient to
12 introduce the statement.

13 Here we're dealing with the defendant being impeached for
14 something that was stated, ah, that the State says that, ah, he
15 said something inconsistent during an interview than he did here on
16 the stand. Um, to me you look at it in it's totality but a little
17 bit different but, in any event, it seems to me from the DVD's and
18 no other testimony contradicting any of this that was shown to me
19 that he was totally talking voluntary after understanding his
20 Miranda Rights.

21 So, I will permit questions regarding the statements he gave
22 on the DVD, um, um, he will be able to be questioned under 613,
23 impeachment issues. If, in fact, he's asked if he made a statement
24 if he denies it, then you use extrinsic evidence.

25 After my finding on the preponderance of the evidence that it

RULING OF THE COURT

245

1 was voluntary looking at the totality of the circumstances

2 That's based on State v. Brown, ah, ah, which was decided as
3 296 SC 191 but it's also based on State v. Davis, um, a South
4 Carolina case. I'm trying to find the cite of it. South Carolina
5 Supreme Court case that I don't see right now but I'll get the cite
6 of it a little bit later. State v. - - State v. Chaffee 285 SC 21
7 (1984) and other cases I can cite tomorrow.

8 Alright. Let's proceed. Let me give these things back to
9 y'all.

10 MISS BIAGIANTI: Your Honor, may I ask Ms. McCall to - - -

11 THE COURT: What?

12 MISS BIAGIANTI: Can I ask Ms. McCall? Perhaps she can
13 tell me what the question was that I asked Mr. Brown since I lost
14 my train of thought.

15 THE COURT: What question did you ask? You asked him
16 something, and you said he was inconsistent with it.

17 MISS BIAGIANTI: I know but, Your Honor, there were many of
18 those. I'd ask her what the last one was.

19 THE COURT: You're asking what the last question was asked?

20 MISS BIAGIANTI: Yes, sir.

21 THE COURT: Okay.

22 Do you have question the cross was just before the jury went
23 out?

24 MISS BIAGIANTI: If you don't remember, that's okay. I
25 don't have to have you read it back.

RULING OF THE COURT

246

1 COURT REPORTER: I can play it, Your Honor.

2 MISS BIAGIANTI: That's alright.

3 THE COURT: That's alright.

4 Alright.

5 When the jury comes back, have them put their holdings here.

6 Alright.

7 Bring the jury back in, please.

8 Come on back to the stand.

9 (Mr. Brown resumes the witness stand.

10 The jury returns to the courtroom at 5:49 p.m.)

11 THE COURT: If y'all would, pick up your notes that were
12 sitting in your seats. Get them in your hands. There you go.

13 Now, did anyone else have any other notes? Did you have any
14 notes?

15 Well, we understand. I talked to somebody who said they
16 somebody else taking notes.

17 Okay. We got two people only.

18 THE COURT: Alright. If you would, hand them those
19 envelopes.

20 If you would, put your notes in the envelope. Seal it and I'm
21 going to give you a pen before we leave today and you can initial
22 the back of it. No one will look in the envelopes. I promise you
23 and when the trial is over, I'll give them back to you.

24 I should have told you. It's not appropriate to take notes
25 because some people may take notes. Others do not, and I'd rather

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

247

1 everybody be on the same playing field and base it on your memory.

2 But just seal it up and then we'll have you initial the back
3 of it over the seal and make sure no one's opened it, and we'll
4 give it back to you as soon as the trial is over.

5 Just hand the pen to each one of them.

6 Put your initials on the seal. That way you'll make sure no
7 one has opened it, and hand it to the bailiff.

8 You might have some other things in there you might, and hand
9 those to the Clerk.

10 And, Mr. Clerk, you just hold them and make sure you give
11 those back to, I think, Ms. Black and to, ah, Ms. let me get it
12 right here. Don't tell me here, Ms. Bradley.

13 No, Ms. Bradley. No, Ms. Bradley, I'm sorry. It's not Ms.
14 Bradley. It is Ms. Syr. Right? Ms. Syr and Ms. Black.

15 Okay. We'll do that during the trial.

16 You may proceed with your questioning.

17 MISS BIAGIANTI: Thank you, Your Honor.

18 CONTINUED CROSS EXAMINATION OF MR. BROWN BY MISS BIAGIANTI:

19 Q. Now, when you testified earlier, you told Mr. Goude that you
20 went straight from your momma's house to the tax office. Correct?

21 A. Correct.

22 Q. Now, correct me if I'm wrong, but it's in Kensington. If you
23 came straight from your momma's house to the tax office, you
24 actually were coming from the Subway side, not the Fred side.
25 Right?

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

248

1 A. Subway.

2 Q. Yes or no, sir?

3 A. Coming from -- yes. I would be coming, like coming past the
4 Sunco. Coming.

5 Q. Right.

6 A. Coming from the Sunco side.

7 Q. Right.

8 And Sunco, if anyone is familiar, if your looking to the
9 shopping center the Sunco is to the right of the shopping center.
10 Right.

11 A. Right.

12 Q. If you're looking at the shopping center.

13 A. Right. Right.

14 Q. Well, didn't you come from the lefthand side?

15 A. When I came in the parking lot -- see that car there. When
16 you coming into the parking lot, right, there's a street right
17 there. You come into the parking lot coming from, like, you're
18 coming from the, ah, what's that? Goodyear. When you come
19 through Goodyear and you come through that parking lot, right?
20 When you come through that parking lot, all you got to do is keep --
21 -- keep straight coming on around and right to that door. That's
22 the way I came there.

23 Q. And to do what you say you did?

24 A. Uh-huh. This street right there. This street right there.
25 Just across right there.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

249

1 Q. You would never bypass the liquor store. You would never go
2 in front of Fred's. You would just come from the Subway and zoom
3 into the tax office, right?

4 A. There's two ways to come out.

5 Q. So, you're talking - - you went behind the building and then
6 around and on to the tax office?

7 A. There's a - - - I - - I mean, I'm trying to explain to you how
8 I came in.

9 THE COURT: The question, sir, is did you do it as she
10 said. Yes or no?

11 MR. BROWN: The way she said it?

12 THE COURT: Yes.

13 MR. BROWN: No, no.

14 Q. You go around the building - - -

15 THE COURT: No, he did not.

16 MISS BIAGIANTI: Okay.

17 THE COURT: Do you wish to explain it?

18 MR. BROWN: Yes, sir.

19 THE COURT: Go ahead.

20 A. When you come from this, ah, there's a Sunco there, and
21 there's a Goodyear Station right there. Then there's a Chinese
22 Restaurant.

23 Then you can - - you can pass that. Then the bank is right
24 there, the back of the bank where the teller is. When you pass
25 that right there, you come through that area right there. Then

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

250

1 that Chinese Restaurant right there, you turn right there, and I
2 didn't come in - - I didn't turn into that first entrance into the
3 parking lot but at the next one, the next one, and I came in that
4 way. That's coming around. I don't know why I did it but that's
5 the way I did it.

6 Q. So, you talked to Tywanda that day?

7 A. Yes.

8 Q. Call from your mom's house to her cell phone?

9 A. Correct.

10 Q. Isn't her cell phone number a 357 number?

11 A. At this point I couldn't - - I've been at that jail six
12 months.

13 Q. I'm not asking you all that.

14 A. No, I don't know. I can't remember.

15 Q. I'm asking the day of the incident - -

16 A. I don't remember the number.

17 Q. - - did you remember the number then?

18 A. Yes. Then I remembered it.

19 Q. She's your girlfriend, right, according to you she's your
20 girlfriend?

21 A. No. She was my ex-girlfriend.

22 Q. So, you're denying that you told the police when they asked
23 you Tywanda's cell phone number, you said you didn't have it? Are
24 you admitting that or not?

25 A. At that time I knew the number. It's been six months later.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

251

1 I didn't - - I can't remember the number if you talk about it.

2 Q. I'm not asking that.

3 When you were arrested you went to the police department.

4 A. Uh-huh.

5 Q. You were interviewed. Correct?

6 A. Right.

7 Q. They gave you your Miranda Warnings?

8 A. Right.

9 Q. And you remember talking to Investigator Jimmy Burke one time?

10 A. Right.

11 Q. And Investigator Johnell Spartman?

12 A. Correct. Correct.

13 Q. And you actually did two interviews, right?

14 A. I did two interviews. I did two interviews.

15 Q. Okay.

16 And on the first interview Johnell Spartman asked you, "What's
17 her phone number?"

18 And you said, "Her phone number?"

19 And he said, "Yes."

20 And you said, "I can't remember. I always had it written
21 down."

22 And he said, "You called her. You called her on her cell
23 phone. You don't remember her number."

24 And you said, "Nah," because do you admit or deny telling the
25 police that?

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

252

1 A. At that particular time I can't - - I don't remember. I don't
2 remember if I said that or not.

3 Q. Well, would you like me to play it back for you?

4 A. You can. I don't remember saying it.

5 (The Solicitor plays various parts of the CD's which are
6 identified as State's Exhibit #19 and #20.)

7 Q. Is that your statement?

8 A. That's me talking on there.

9 Q. Does that refresh your memory? Isn't that what I just said?

10 A. No. It really doesn't refresh my memory because I wasn't
11 totally coherent at that particular time.

12 Q. Okay.

13 You're a professional boxer, right?

14 A. I'm an ex-professional fighter.

15 Q. Sparred with the best of them?

16 A. Golden Glove ESPN.

17 Q. You couldn't beat that guy, that little man, 5 feet six, 160
18 pounds, you couldn't beat him?

19 A. I didn't have a chance to even size him up or look at him, he
20 was coming so quick. Everything happened so fast.

21 Q. I think you told us today he had a knife when he approached.

22 A. Right.

23 Q. You remember telling the police, I don't know, two, three,
24 four times he didn't have a knife?

25 A. I was saying I didn't have a knife.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

253

1 Q. So you deny that you said he didn't have a knife?

2 I'll play it for you. Would you like me to play it for you?

3 A. I said I didn't have the knife.

4 Q. And I'm asking you. Did you tell the police whether or not he
5 had a knife?

6 You told the police, excuse me. You told our jury today that
7 he's the one that had the knife.

8 A. He's the one that had the knife.

9 Q. It was all his fault.

10 A. He had the knife.

11 Q. And - - -

12 A. All I kept saying was I didn't have the knife.

13 Q. So you're denying that you told the police that day, "He
14 didn't have the knife."

15 A. I said that he didn't have a knife?

16 That's what you just said I said?

17 Q. He didn't have a knife, sir. That's what I'm saying you said.

18 A. I'm not understanding the question.

19 Q. Did you tell the police when you were interview February 21,
20 2008, your first interview that that man, Mr. Epps, did not have a
21 knife?

22 A. I didn't tell them he didn't have a knife. I said I didn't
23 have a knife.

24 Q. Okay. Let me refresh your memory.

25 Well, let me back up.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

254

1 What - - you told the police he had the knife?

2 A. Yes.

3 Q. Now, it's yes?

4 A. I told the police that he had the knife.

5 Q. Okay. And what hand did he have it in?

6 A. He had it in the right hand.

7 Q. He had it in the right hand?

8 A. Yes.

9 Q. That's what you told the police that day?

10 A. I'm not sure I told the police that he had the knife. At
11 some point in time I was saying he had the knife.

12 Q. At some point in time.

13 A. I don't know. I don't believe that conversation - - I don't -
14 - -

15 Q. Wasn't it some point in time that your story - - -

16 THE COURT: Whoa, whoa. Remember, now.

17 She's a great Court Reporter but it's got to be one person at
18 the time.

19 COURT REPORTER: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 Q. You said, "At one in time." Right?

22 A. Right. Right.

23 Q. Isn't it at one point in time you told multiple stories
24 because none of the stories were making sense?

25 A. No.

1 I told them that one time at the ending of the second
2 interview.

3 (Solicitor plays CD.)

4 Q. So, he had the knife in his left hand. That's what you told
5 the police that day.

6 A. He got hit in the left hand.

7 Q. That's not what you said, sir.

8 A. Well, that's what I was trying to say. That he got hit in the
9 left hand.

10 I acknowledged that I ended up with the knife at the end of
11 the whole situation. I acknowledged that I had the knife after
12 everything was over. I said he got hit in the left hand.

13 As a matter of fact, I should have been in the hospital at
14 that point.

15 Q. Because of your severe injuries?

16 A. No. I had high blood pressure, and it was two hundred and
17 something over two hundred and something, and I was totally
18 incoherent during the whole interview. I asked Mr. Goude to get
19 that information for the Court. So I was not coherent at all.

20 Q. You've got defensive wounds on your hands, right?

21 A. I was in the Emergency Room after that.

22 Q. You were hurt so bad you had cuts all over your hands?

23 A. I had high blood pressure. So I wasn't really suppose to be
24 alive is what the doctor told me at the hospital. That
25 information can be got.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

256

1 So, I was not coherent during the whole interview.

2 Q. Did you not tell the officer, Sgt. - - excuse me.
3 Investigator Johnell Spartman? He asked you. "What hand did he
4 have the knife in?"

5 And you said, "He had it in his left hand."

6 A. He asked me what hand he had it in.

7 Q. Sir, sir. I'm not deaf.

8 A. I'm sorry.

9 Q. He continued. "Well, please explain to me how he stabbed
10 himself in the left hand if he had the knife in his left hand."

11 And you said, "I didn't say that."

12 And then you said - - and then Officer Spartman said, "You
13 just said that."

14 Are you admitting or denying you told the officer that, that
15 he had the knife in the left hand and he stabbed himself in the
16 left hand?

17 A. I'm saying that I was incoherent. I can't remember exactly
18 what I said at that point.

19 Well, watch me here.

20 (Solicitor plays CD.)

21 Q. Isn't that what that just said?

22 A. Yes, that's what that just said - -

23 Q. Okay.

24 A. - - but that doesn't necessarily mean it's correct.

25 Q. Tell the officers - - they asked you what time did you talk to

1 Tywanda that day.

2 You said two, right?

3 A. To be honest with you, I can't remember exactly what time it
4 was. So it had to have been somewhere around there. I'm not
5 absolutely sure. I probably did. It's been a while.

6 Q. Well, correct me if I'm wrong. Didn't we just look at the
7 phone, and there were no incoming or outgoing calls?

8 A. Yeah, well, unless I had a crystal ball, I don't know how else
9 I'd known Tywanda was there.

10 Q. You told the police that day that you and I think you
11 testified earlier or you told the police that you had never met him
12 before. Correct? Never met Mr. Epps?

13 A. No. I - - I - - no. I never met Mr. Epps face to face like
14 that. The two times I saw him was when he was in his car.

15 Q. Well, let me ask you. Didn't you tell the police that at some
16 point in time he threatened to blow your brains out?

17 A. That was by telephone call.

18 Q. You don't think that it was important to tell the jury today
19 about the two times - - that you spoke with Mr. Epps that he
20 threatened to blow your brains out?

21 A. Nobody asked me that question.

22 Q. Okay.

23 A. Yeah. I - - nobody brought it to my attention. I'm suppose
24 to answer questions that they ask me.

25 So, you want to ask me now?

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

258

1 Q. Correct me if I'm wrong. I think there were several
2 unresponsive remarks where you were trying to tell your story, and
3 it did not come supposedly that Mr. Epps threatened to blow your
4 brains out over the telephone. Never said that today?

5 A. I was never asked that question what the conversation was over
6 the telephone and what it was really about or how we came to that
7 point.

8 Q. Didn't you tell police in your first interview that you were
9 actually running? You never mentioned anything about a bike.

10 A. When Mr. Epps tried to run me over.

11 Q. Sir, you have to answer yes or no.

12 A. I was on my bike.

13 Q. Then you can explain your answer.

14 A. I don't understand what you're asking.

15 Q. Didn't you tell police during your first interview that you
16 were running? You never mentioned that you were on a bicycle?

17 A. Yeah. I said I was running.

18 Q. Well, why didn't you - - if you were on the bicycle, why not
19 tell them the truth and say, "I was on the bicycle"?

20 Why lie to them?

21 If you were the innocent party that day and you are the
22 victim, why do you lie to them?

23 A. I was really not lying to them. They are, basically,
24 barraging me in interrogation room. So I'm saying that the guy
25 tried to hit me. I - - I fell, basically, fell off that bike and

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

259

1 broke. He was trying to run me over with the car.

2 Officer - - I told Officer Spartman that the guy was trying to
3 run me over with the vehicle. That - - that - - that's an
4 assault. That's, basically, an assault.

5 Officer Spartman told me. I showed him where the guy ran over
6 the curb trying to hit me. He said he was going to try to take
7 pictures.

8 Q. Sir?

9 MISS BIAGIANTI: Your Honor, I'd move that this party - -
10 he's unresponsive to my question.

11 THE COURT: It's cross examination. Continue on.

12 What's your next question?

13 Q. Did you tell the officer at the first interview, "Tywanda
14 said, 'Derek, no. Derek, no.' I turn around. Right? He grabs
15 me. Right? When he grabbed me, he swings. So, when he swings,
16 I snatch away. I throw two punches. Then I break. Right? But
17 prior to him swinging, I did see him go into his pocket but I
18 didn't ever see nothing. Right? So as far as him getting hit, he
19 had to have gotten hit. He must have hit himself because I ain't
20 had no weapon.

21 I'm a professional fighter. I can defend myself."

22 You tell the police that on that day?

23 A. I was - - I said that but I was being sarcastic because of the
24 way they were coming at me.

25 Q. You want me to hear - - you want to hear how sarcastic you

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

260

1 were being?

2 A. Yeah, because you - - you not reading what they asked me.

3 Q. I don't want you to think I'm being unfair to you. So, I'll
4 play it.

5 (Solicitor plays CD.)

6 Q. Now, you hear it yourself.

7 "I ain't had no weapon."

8 A. I was being sarcastic. He did have the knife. He had the
9 knife but I was being sarcastic. I was being sarcastic by the way
10 the officers were coming at me barraging me.

11 Q. Investigator asked you that day, "Did you pick the weapon from
12 him and stabbed him it with it?"

13 And you said, "Nah."

14 A. Nah

15 Q. You didn't - - okay.

16 A. Yeah, I'd have to hear that because I know I took the weapon
17 from him.

18 (Solicitor plays the CD.)

19 Q. You remember it now?

20 A. I do not remember making that statement. There's a lot of
21 things about that tape I don't remember at all. My health - - I
22 was - - -

23 Q. I'm not asking you, sir, if you remember it.

24 THE COURT: Ma'am, let him finish.

25 Go ahead.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

261

1 A. My state of mind at that particular time, I - - when I get
2 high blood pressure at two hundred and two hundred and two hundred.
3 I have high blood pressure two hundred and something over two
4 hundred and something, I get severe migraines. I cannot function
5 or talk or speak. I went to the emergency right after that, and,
6 also, I am now taking medication like four different pills for high
7 blood pressure. I should have been dead that day.

8 I stayed in the Emergency Room overnight. So any - - any - -
9 anything that I said - - I don't even remember signing the Miranda
10 papers. I was totally incoherent. That was not the time to be
11 questioning me.

12 And any time - - if anybody knows anything about high blood
13 pressure, they know that.

14 Q. Showing you State's Exhibit #22 for ID.

15 A. I don't even remember signing it. It's on there but I don't
16 remember signing it. It's on there but I don't remember signing
17 it. It's on there but I don't remember signing this.

18 Q. Okay.

19 A. That's the Miranda Warnings.

20 Q. Is that your signature?

21 A. That's my signature. I don't remember even seeing the paper,
22 and that's the truth.

23 Q. Speaking of truth, would it be a fair statement if I told you
24 that between the two statements you gave police, you said, "I swear
25 to God I'm telling the truth, man," like twenty-plus times?

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

262

1 And why would you say that if that wasn't the truth?

2 A. Ma'am.

3 Q. Is there a need to say that?

4 A. Ma'am, I'm telling you. My - - my condition at that
5 particular time, it - -it's like when high blood pressure gets that
6 high, it's like being on alcohol, totally drunk. So you can't - -
7 your brain does not function at all.

8 THE COURT: Miss Biagianti, I would rather you ask
9 questions first to see if he denies or admits things, ma'am.

10 MISS BIAGIANTI: Yes, sir.

11 THE COURT: That's the only purpose I'm letting you use it.

12 MISS BIAGIANTI: Yes, sir.

13 Q. And that's your defense, your high blood pressure that day?

14 A. I do not remember that interview. I do not remember saying
15 some of the things that have been said on that tape. I know for a
16 fact that Mr. Epps did have the knife. I took it from him and I -
17 - Mr. Epps got stabbed by me, and at first I really didn't know he
18 had gotten stabbed or stabbed by me - - until the officer told me
19 had gotten stabbed.

20 And that's the truth.

21 Q. Well, let me ask you this.

22 If you're a professional boxer - -

23 A. Right.

24 Q. - - supposedly, if he was coming at you with a knife, can't
25 you knock him out? Didn't you tell the officer you could knock

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

263

1 him with a three piece that day?

2 A. Yes.

3 I'm also a martial arts artist, too. I - - I'm able to
4 defend myself against, you know, attacks like.

5 So it would have been - - if - - how can you explain it?

6 Q. Well, then why didn't you do that that day?

7 You're a martial artist. You're a professional boxer.

8 A. I did - - I did a maneuver that would subdue him. Exactly
9 what I did. I did a maneuver - - if you just - - if somebody
10 comes at you with a knife, you catch the hand. You turn the hand.
11 You - - you - - you can grab the weapon from there. Bring the
12 weapon up, and then it - - it's like a process move. It's a move,
13 it's like - - if you know anything about martial arts, once you
14 make the move, it's a done move, and that's the same thing with
15 fighting if you throw a three piece.

16 When I say a three piece, an underhand, a overhand, a hook - -
17 a right hand, underhand - - a right hand, a uppercut - - if you - -
18 that's a - - it's a combination punch.

19 And the same thing with martial arts. It's a combination
20 action.

21 So, you - - once you do it, it's almost impossible not to stop
22 - - to stop it, actually, because it's a whole motion.

23 Q. But you didn't have any defensive wounds on your hands or
24 anything?

25 A. No. Matter of fact, neither one of us at the time - - at the

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

264

1 time even though he was hit - - -

2 Q. You didn't have any wounds. He was bleeding out of his hand
3 and his side.

4 A. - - even though he was hit, none of that - - you couldn't tell
5 he was hit. He even said that.

6 Q. Well, let me ask you this.

7 Isn't it true you told officers that day, "I know I didn't cut
8 him. Let me explain. I at no point cut that guy. Not me. I'm
9 an ex-fighter, a pro fighter. He's about my size. I would have
10 had no problem whooping this dude, none. I could have knocked him
11 out with a three piece off the break.

12 I don't need no knife. I fought some of the biggest men."

13 Did you tell that to the officer?

14 A. Exactly what - - what I said, I said I didn't need no knife.
15 I didn't have no knife. I didn't have a knife.

16 Q. You said you did not cut that man that day.

17 A. I did not know he was cut at all. So when I said I did not -
18 - when I said I didn't cut him, it's because I didn't know that he
19 had gotten cut.

20 We were in - - we were in a tousel. And then in the process
21 of, you know, being in that tussle, I - - I pushed the knife. I
22 didn't know that I made contact, though. I didn't know that I had
23 made contact until way later.

24 That's the truth.

25 Q. You were the true victim - -

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

265

1 A. I never said I was a victim.

2 Q. - - of self-defense, why were you running? Why are you - -
3 why were you not calling the police saying, "This man is trying to
4 stab me. Please help me."?

5 A. Number 1, I don't have a phone.

6 Number 2, he was trying to run me over with his car.

7 Officer Spartman said he was going to take pictures of where
8 he came over the curb. Tywanda already made a statement that he
9 was trying to run me over, and she told him no.

10 How did I know that's what he was trying to do unless he was
11 actually doing it, you see?

12 So, you doggone right I'm going to run when this guy's got a
13 car an using it as a weapon.

14 And I - - I told Officer Spartman that I wanted to press
15 charges against him for trying to hit me with the car. Exactly.

16 Q. Well, let's go back to the telephone and you saying that she
17 asked you to dial * 67 to block your number even though Mr. Epps
18 was there for some of the phone calls.

19 You admitted to talking to the officer on February 13th,
20 correct?

21 A. That's right.

22 Q. And if I told you the officer came to the house about 2:10,
23 does that sound about right?

24 A. I wouldn't remember. I wouldn't know.

25 Q. Well, let's look at some phone records, some home phone

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

266

1 records of Mr. Epps.

2 THE COURT: Now, ma'am, are these things in evidence.

3 MISS BIAGIANTI: No, sir. I'm just going to ask him about
4 them.

5 THE COURT: Well, I'm not going to permit anything from
6 them, ma'am, unless they're in evidence.

7 MISS BIAGIANTI: I'm just referring to them.

8 THE COURT: Alright.

9 I don't mean to be disagreeable with you. I'm just letting
10 you know that.

11 Let's proceed on.

12 Q. Did you continue calling after you spoke with Deputy Martin on
13 February 13, 2008?

14 A. Tywanda called me.

15 Q. Did you call the house, Mr. Epps' house that day?

16 A. What's Mr. Epps' phone number?

17 Q. That was but I think you should remember that number,
18 right?

19 A. No. I mean, I've got - - I've got a lot of legal papers with
20 his phone number and everything else on it, social security card
21 number, everything on it. I can give you everything.

22 Q. Do you deny calling that house later that evening multiple
23 times?

24 A. I did not call that house that evening multiple times.

25 Q. So, if they have phone calls from one number at - - and I'm

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

267

1 talking about February 13th at 4:57, 5:03, 5:05 - - -

2 THE COURT: Remember, ma'am. What you say is not evidence.
3 So the jury cannot believe what you're saying is evidence.

4 Now, if you wish to put something in, I have to have it meet
5 the evidentiary standard, ma'am.

6 MISS BIAGIANTI: Well, Your Honor, I'm just asking him a
7 question about this.

8 THE COURT: Okay, ma'am.

9 As long as you understand that what you say is not evidence.

10 MISS BIAGIANTI: Yes, sir.

11 Q. You deny calling at 5:03?

12 A. Calling from what number?

13 Q. I'm asking you if you called their phone?

14 A. I can't remember. I have to know what number - - if there is
15 a number on there that was from me, then maybe I can - - I possibly
16 can remember.

17 Q. I'm just asking you if there were calls.

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

19 Q. Do you remember calling at 5:05?

20 A. I don't remember.

21 Q. 5:11?

22 A. I don't remember?

23 Q. 5:15?

24 A. I don't remember.

25 Q. 5:17?

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

268

1 A. I don't remember.

2 Q. 5:20?

3 A. I don't remember.

4 Q. 5:29?

5 A. I actually don't remember.

6 Q. 5:32?

7 A. I actually don't remember.

8 Q. 5:33?

9 A. That's impossible. I don't remember.

10 Q. 5:41, 42 - - -

11 THE COURT: Ma'am, let's go on to something else.

12 Remember, what you say is not evidence.

13 Let's proceed on to something else.

14 Q. Remember telling the police - - let me back up. Strike that.

15 Today testified, "Never touched Tywanda. Never hurt her."

16 A. Never touched her.

17 Q. Didn't you tell police that day that they asked you if you
18 grabbed around the collar, and you said, "We was outside. We was
19 outside. I hugged her."

20 A. When I made that statement - -

21 Q. Sir, you need to - - yes, or no.

22 THE COURT: Yes or no, did you make it, sir.

23 Then you can explain.

24 A. Yes. I think I remember making that statement.

25 Q. They questioned you about how Tywanda got cut on her neck,

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

269

1 freshly cut - - -

2 THE COURT: Ma'am, remember. The only purpose is to ask
3 him questions. If he denies or admits something, then you may use
4 something to impeach him.

5 MISS BIAGIANTI: Yes, sir.

6 THE COURT: You don't introduce it first.

7 Q. Did you tell the officer that day that she must have put the
8 laceration on herself?

9 A. Again, I can't remember much of that interview but, again, if
10 I did say that, I probably was being sarcastic for the way that
11 were coming off on me but I really don't remember.

12 I know that Tywanda said that I snatched her in her chest
13 while she was sitting inside the Palmetto Tax place, and I never
14 put my hands on her inside there.

15 (Solicitor plays CD.)

16 Q. She put it on herself.

17 A. Again, I'm being sarcastic for the way they were conducting
18 the interview.

19 Q. Sir - - -

20 A. And they are being funny.

21 It's the same way I said he must have cut himself. I'm being
22 sarcastic. And like I said, I'm very incoherent at the time
23 because my blood pressure is extremely high.

24 So, I'm being very - - they are bombarding me, and I'm saying
25 whatever. You know, whatever you want to believe.

CONTINUED CROSS EXAMINATION BY MISS BIAGIANTI

270

1 Q. Whatever?

2 A. Yeah, basically.

3 Q. They're saying these serious allegations, and you're saying,
4 "Whatever."?

5 A. I didn't know that anything was serious because I still didn't
6 know that the man had been hit, and, like I said, I was suppose to
7 be in the hospital during that interview.

8 Q. Later on in that first interview did you tell the officer, "I
9 never took the weapon away from her."

10 A. You say I said what?

11 Q. Yes.

12 A. I'm sorry. Would you repeat that?

13 Q. You told the officer in response to a question, "I never took
14 the weapon away from him."

15 A. From who? From Mr. Epps?

16 Q. Right.

17 A. I don't remember. I don't remember.

18 I really don't remember anything from that interview. In all
19 honesty, I really don't remember anything from that interview.

20 I left that day and got to the jail, I went straight to the
21 hospital.

22 Q. Did you tell the officer - -

23 A. Straight to the hospital.

24 Q. - - "He stabbed himself because I didn't have nothing."?

25 THE COURT: Can I see y'all over here to the side over

1 here, please?

2 (Bench conference held off the record and in the presence of
3 the jury but outside the hearing of the jury.)

4 THE COURT: Let's proceed.

5 Q. Isn't it true that after this first statement saying you
6 didn't see a knife on it that you decided to recant your story and
7 do another statement because the first one was somehow incorrect?
8 You admit or deny that?

9 A. I admit that, and the reason why I admit that is because
10 Officer Spartman told me. He said, "Mr. Brown - - -

11 MISS BIAGIANTI: Your Honor, I would move to strike. It's
12 hearsay telling what Officer - - -

13 A. Please let me explain.

14 THE COURT: Well, I mean - - yeah, but you asked. But you
15 opened the door.

16 Go ahead.

17 Q. Mr. Spartman told me. He said, "Mr. Brown, it don't look
18 good. You don't need - - you need to change your story. If you
19 don't change your story, you know, you're going to jail."

20 And that's what he told me.

21 Again, I said I was incoherent and I was listening to what the
22 officer trying to, you know, accommodate the officer.

23 When Mr. Spartman said that to me, I said, "Well, then, I need
24 to change the story."

25 I told Mr. Spartman that we got into the scuffle, and, yes, if