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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND LAMAR GREEN,

APPELLANT

APPELLATE CASE NO. 2024-000119

RECORD ON APPEAL

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INDEX

INDEX i

TRIAL TRANSCRIPT DATED JANUARY 16, 2024 1

DEFENDANT'S MOTION TO BIFURCATE THE TRIAL 4

RULING OF THE COURT DENYING MOTION TO BIFURCATE 21

OPENING STATEMENT BY MS. MALONE 54

OPENING STATEMENT BY MS. TOLLEY 57

TESTIMONY

ALLYSON MOREIRA
Direct Examination by Ms. Malone 59
Cross Examination by Ms. Tolley 61

CHELEEN DOE
Direct Examination by Ms. Malone 63
Cross Examination by Ms. Tolley 70
Redirect Examination by Ms. Malone 72

NK
Direct Examination by Ms. Malone 76
Cross Examination by Ms. Tolley 85

DANIEL IRELAND
Direct Examination by Ms. Malone 87
Cross Examination by Ms. Tolley 98
Redirect Examination by Ms. Malone 103
Re-Cross Examination by Ms. Tolley 104
Further Redirect Examination by Ms. Malone 105

TRIAL TRANSCRIPT DATED JANUARY 17, 2024 111

RENEWAL OF DEFENDANT'S MOTION TO BIFURCATE THE TRIAL 113

RULING OF THE COURT DENYING MOTION TO BIFURCATE 115

THE STATE RESTS 123

MOTION FOR DIRECTED VERDICT 126

RULING OF THE COURT DENYING MOTION FOR DIRECTED VERDICT 129

COLLOQUY WITH THE DEFENDANT REGARDING HIS RIGHT TO TESTIFY 129

CLOSING ARGUMENT BY MS. MALONE 139

CLOSING ARGUMENT BY MS. TOLLEY 142

CHARGE ON THE LAW 150

VERDICT 171

SENTENCING 179

INDICTMENT 183

CERTIFICATE OF COUNSEL 185

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS #3, #4, #5, #6 & #7 (PHOTOS)

1

STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF BEAUFORT

State of South Carolina,

vs. Transcript of Record
2019-GS-07-01270

Desmond Lamar Green,

Defendant.

January 16, 2024
Beaufort, South Carolina
Volume I of II

B E F O R E:

The HONORABLE JENNIFER B. MCCOY

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

Mary Jordan Lempesis, Assistant Solicitor
Sara Malone, Assistant Solicitor

Juan Tolley, Representing the defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

INDEX

WITNESS/EXAMINATION

Witness Name	Page	Line
Allyson Moreira		
Examination By Ms. Malone	101	16
Cross By Ms. Tolley	103	23
Cheleen Moreria		
Examination By Ms. Malone	105	11
Cross By Ms. Tolley	111	25
Re-Direct By Ms. Malone	114	19
[redacted]		
Examination By Ms. Malone	118	20
Cross By Ms. Tolley	127	10
Daniel Ireland		
Examination By Ms. Malone	129	22
Cross By Ms. Tolley	140	1
Re-Direct By Ms. Malone	145	18
Re-Cross By Ms. Tolley	146	14
Re-Direct By Ms. Malone	147	20
Certificate of Reporter	151	1

E X H I B I T S

COURT EXH. 1, Motion; 1/16/15	80	5
COURT EXH. 2, 911 Call	80	7
STATE EXH. 1, 911 Call	102	15
STATE EXH. 1, 911 Call	103	11
STATE EXH. 2, Photo; House	120	3
STATE EXH. 2, Photo; House	121	1
STATE EXH. 6, Photo; Inside of House	121	15
STATE EXH. 6, Photo; Inside of House	122	7
STATE EXH. 3, Photo	135	1
STATE EXH. 4, Photo	135	3
STATE EXH. 5, Photo	135	5
STATE EXH. 7, Photo	135	7
STATE EXH. 3, Photo	137	6
STATE EXH. 4, Photo	137	8
STATE EXH. 5, Photo	137	10
STATE EXH. 7, Photo	137	12

names mentioned or any of the topics raised. Everything that you need to reach a verdict be given to you here in this courtroom, and we ask that you not do any independent reading up on any of these topics or any of these people in the meantime. Okay?

So with that, I will release you to our apt bailiffs and we'll see you back at 1:15. Thank you so much.

THE BAILIFF: Please follow me.

(Jury exits the courtroom at 11:30 a.m.)

THE BAILIFF: The jury has left the courtroom.

THE COURT: Thank you.

Briefly, attorneys, I'm happy to take up pretrial motions now or we can wait until after lunch. It's up to you-all. Whatever you'd like.

MS. LEMPESIS: We're ready to go now. Miss Malone is going to handle the pretrial argument for us. I think it's just a matter of the bifurcation of the trial.

THE COURT: Okay.

MS. LEMPESIS: That's the only pretrial issue.

THE COURT: I'm happy to hear from you.

Tell me your first and last name again for the record.

MS. MALONE: Yes, Your Honor. This is Sara Malone for the State.

THE COURT: What the State's motion?

MS. MALONE: The State's motion is for this trial to not be bifurcated.

THE COURT: Okay.

MS. MALONE: That is based on the recent case law. I have several where originally under *Chubb v. State*, which is a South Carolina Supreme Court case, they ruled that a bifurcated trial is not required in a non-capital case.

THE COURT: Uh-huh.

MS. MALONE: And then *State v. Cross* which was an exception for sexual-related offenses when the defendant's priors were of criminal sexual conduct of a minor.

THE COURT: Right.

MS. MALONE: Recently in 2023, *State v. Bright* was a case where the defendant was charged with possession of a firearm by a person convicted of a violent felony. And, in that case, the trial court's decision was affirmed where they decided

not to bifurcate the trial for this defendant's two burglary convictions.

THE COURT: Right.

MS. MALONE: Specifically providing the procedure that the defendants -- the defendant argued that he should be allowed to stipulated. In this case, he was asked and we're happy to take a stipulations as to the prior convictions. However, the defense has declined to proceed that way. But also in *State v. Bright*, they limited it to no evidence of the actual offenses themselves and an elimination instruction that they are only allowed to discuss the fact of the prior conviction, not any of the details.

THE COURT: Right.

MS. MALONE: Currently, there is no case, other than in a sex-related offense where a trial is bifurcated, and, in that case, they specifically stated that when a prior conviction is an element of the crime, it is highly probative. But also that there is a specific limitation when it comes to sex-related offenses where they are -- by their very nature, they are a special case of unfairly prejudicial evidence where it is necessary to bifurcate.

However, even the dissent discusses that there is no procedural rule that they intended to create that would require bifurcation in any case where there is a prior conviction. The State would argument -- and I have *State v. Bright*, a copy of that, if you would like to review it.

THE COURT: I'm happy to review it, sure.

MS. MALONE: The State would argue that two prior convictions for domestic violence, one being DV 3rd and the other being for DV 1st can come anywhere close to the level of prejudice that you would you see with the criminal sexual conduct of a minor in the first degree when the defendant is also being charged with criminal sexual conduct of a minor in the 1st degree as well as a lewd act on a minor.

In this case the -- just like in all three of those cases, the prior convictions are an element of the crime. The State is happy to except a stipulation, if defense would prefer, which is what has happened -- defense, in all of these cases, has requested a stipulation, and, in all of those cases, the State declined. We're not doing that here. We are perfectly happy with

that. We're also perfectly -- completely see the value in an eliminating instruction where the jury is informed to only consider it as to those elements specific to the 1st degree element, but the State does feel that there is no reason why a trial should be bifurcated in this particular setting, just like prior burglaries and prior armed robbery were never bifurcated in the past. The only exception that currently exists is for sexually-related offenses.

THE COURT: Okay.

All right. Miss Tolley, happy to hear from you.

MS. MALONE: Oh --

THE COURT: I'm sorry.

MS. MALONE: I'm so sorry. I also wanted to draw attention to the fact that this defendant actually has three prior convictions and we are limited just to the two necessary to prove the conviction in this case.

THE COURT: Okay.

All right.

MS. TOLLEY: Thank you, Your Honor. May it please the Court? First, with regard to the number of convictions, we are not aware of the one

from -- they've given us from Beaufort County and they also advised that there was possibly one from Hampton County that we're not aware of or that we've been provided a certified copy of or any information with regard to that particular conviction. So the only two that we are aware of that they have made us aware of are the two from Beaufort County, and we're not sure that either of those should be admitted.

But with regard to whether or not the trial should be bifurcated, we believe that State vs. Cross controls here. And, in that case, the court decided that bifurcation was required, that the judge can make a determination about whether the evidence or the prior conviction could be admitted because when it was admitted wouldn't make a difference.

Obviously, if the prior convictions are admitted during the case in chief, that would tend to prejudice the defendant given the fact that they are the same charges. They're asking that two charges for domestic violence be admitted during their case in chief rather than bifurcating it and having a second stage hearing with regard to those to establish -- to establish the elements

of their charge.

So based on that, we would assert that the trial should be bifurcated based by on South Carolina Rules of Evidence 609, South Carolina Rules of Evidence 403, and State v. Cross and all the subsequent cases.

Criminal sexual conduct and domestic violence are similar in that they -- if it's the same crime -- I think in *State vs. Cross*, it was a similar crime -- then that would be controlling given those circumstances.

MS. MALONE: Your Honor, I actually have a copy of *State v. Cross* that specifically provides on page 9 that two-part jury trials are rare and that they're never compelled by the Court as a matter of constitutional law, statutory law, or even a matter of procedure. In this instance, *State v. Cross* itself specifically states the element of a prior crime -- or sorry. A prior conviction when it's an element of a prior crime, there is no argument that it is admissible. There's the two.

THE COURT: Thank you.

MS. MALONE: And not only that, but under rule 403, rule 403 only provides whether or not

evidence should be excluded if it's unfairly prejudicial, not when it should be excluded.

So the State's position is that 403 would not be relevant to an argument for bifurcation. And under rule 609, the defense stated as its argument is a rule about impeachment. I'm not sure quite how that would apply here.

THE COURT: These priors from the indictment only list two, but it says there's -- let's see. There was a criminal domestic violence in June 2014 in general sessions court; is that right? Is that one of your priors?

MS. MALONE: He has a -- yes, Your Honor. And then a --

THE COURT: Refresh my memory, 2014, was not -- what was the variety of that CDV?

MS. MALONE: That is a domestic violence third offense within 10 years and two prior convictions. So that would be a DV 1st, I believe. And then the same for -- there's a 2013, which is also a domestic violence.

THE COURT: Do you have those certified copies?

MS. MALONE: Yes.

THE COURT: You can just hand those up.

Okay. One of these is a 30-day offense. The date of the offense was July 5, 2013. The date of the conviction, June 19, 2014. And the other conviction date, sentencing date, March 25, 2014, which I'm a little confused because it says the date of the offense, on this same sheet, October 14, 2014. Have you-all seen that?

MS. TOLLEY: I have, Your Honor, and that's one of our concerns.

THE COURT: Do you-all see that? Have you seen that? A typo or something. Here you go. I'll hand it back to you. It's a little confusing.

MS. MALONE: We have not seen that.

THE COURT: I'll tell you what, I'm going to give you-all some time to sort through that, because I doubt you know it on the fly. So we'll take our lunch break. We'll be back about -- it's 11:45. We'll resume this about one o'clock. See you-all then.

(A break was taken from 11:45 a.m. to 1:15 p.m.)

THE COURT: We're back on the record. It's 1:15. I took the break to, kind of, review the case law, re-review it. Once again, that was

submitted to me from the State. I will note, I think the State, kind of, jumped the gun a little bit. The defense has to make a motion to bifurcate. There's no such thing as a motion to not bifurcate the trial. The assumption is, the trial is not bifurcated, in other words. So absent a motion from the defense to bifurcate, I really don't need to consider any of this.

Does the defense have any motions it would like to make?

MS. TOLLEY: We would move to bifurcate, Your Honor.

THE COURT: Okay. I'm happy to hear from you on why it should be bifurcated. I've obviously heard the State's response, but what would you like to tell me?

MS. TOLLEY: Thank you, Your Honor. We would base our motion on *State vs. Cross*. In *Cross,* the defendant was charged with criminal sexual conduct with a minor. He claimed the State violated rule 403 under South Carolina Rules of Evidence by introducing his prior sex crime conviction before proving he was guilty of the sexual battery for which he was charged, that -- the Supreme Court agreed and held that the

probative value of the prior conviction at the time it was introduced was substantially outweighed by the risk of unfair prejudice to the defendant.

And, based on that, we would ask the Court to bifurcate the trial.

In this case, it's a domestic violence charge. The charges that they're trying to -- prior convictions that they're trying to introduce, or the similar crimes, two domestic violence charges. In *State vs. Stephon Robinson*, the Court notes that evidence of similar offenses inevitably suggest to the jury the defendant's propensity to commit a crime with which he is charged. The risk is not eliminated by a limiting instruction, and they cite the *Colf* case, 347 S.C. at 628, 525 S.C.2d 249: *When the prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that the prior offense weighs against it's submission.*

Back to *Cross*, *Cross* sets forth the process by which the trial would be bifurcated, and it indicates that the State obviously could present its case if they're able to prove that a

domestic violence in this case did actually happen, that -- then, at the second stage of the trial, they could present the evidence of the prior convictions if that's the basis for the charge being a domestic violence first degree. But before any of that can happen, they would have to prove that there was actually a domestic violence charge. The jury would have to consider that, reach a decision about that, and then we would move on to the second stage.

The danger of unfair prejudice is high in this particular case given that the crimes are similar. I mean, if they were something different -- there's also a stigma attached to domestic violence cases, similarly to criminal sexual conduct cases. There are all kinds of collateral consequences as a result of that. And so based on that, we are asking that the Court bifurcate the trial.

In addition, we were just provided notice of these two particular charges last week. We were provided with the two, I guess, certified copies that they were trying to use. The case management -- docket management order specifically says that timing of production and supplementation

of discovery materials in accordance with rule 5 needs to be timely made and that it's paramount. Given the short notice of this and given the inaccuracies in, at least, one of those documents, we would ask the Court to, one, possibly omit that as one that should be admitted and counted against him for purposes of enhancement to domestic violence first. Not only is it an error on the Court's record, it's also an error on the indictment. The indictment also specifically lists, I think, June 14th. June 19, 2014, and March 25th, 2014, which is, according to them, an error.

So, I think there's confusion. I think to omit it, would be grounds for prejudice and confusion, and, therefore, should be omitted.

In addition, he was originally charged with domestic violence second degree, so the warrant does not provide us sufficient notice. The warrant does not provide us sufficient notice. And we were not provided the certified copies until, I think, Thursday or Friday.

THE COURT: Okay. Happy to hear from the State. Obviously, I know your position on the case law regarding bifurcation. You don't need to

repeat any of that or anything. But as to these other issues, I'm happy to hear from you.

MS. MALONE: Yes, Your Honor. First, I would like to address the error that was pointed out in the sentencing sheets right before we broke for lunch. Your Honor, it's the State's position that is a scrivener's error based on the fact that the other dates that are provided in the same prior conviction are signed as March 25, 2015.

THE COURT: Wait. 2015?

MS. MALONE: 2015 is the date that's on the other forms that are attached to the sentencing sheet. I'm happy to pass it up to you.

THE COURT: Okay. So the indictment is the scrivener's error.

MS. MALONE: The judge accidentally, it appears, signed as March 25 of 2014, when it's really March 25, 2015.

THE COURT: But the indictment says March 25th -- I don't need to see it again.

MS. MALONE: Yes, Your Honor.

THE COURT: 2014.

MS. MALONE: The case was indicted in January -- on January 29th of 2015, and the actual signature date from this is March 25, 2015, at the

very bottom.

THE COURT: Right. I meant the indictment for which the defendant is on trial today. That indictment says that the prior conviction was from March 25th of 2014.

MS. MALONE: It does, and that's a scrivener's error, Your Honor. In addition, I do have -- if you'll beg the Court's indulgence for one second -- I mean, I beg the Court's indulgence. I do have case law that states that, as long as a recidivist statute is included on an indictment, that that provides proper notice that a recidivist of any kind of prior record would be used against the defendant.

THE COURT: Okay.

MS. MALONE: As well as just an indictment charging him with a statute that is a recidivist statute. And, in this case, the indictment clearly alleges the domestic violence first-degree recidivist statute and clearly indicates that this is based on his prior record.

THE COURT: You said you have a case on that or something you said? What's that?

MS. MALONE: One moment, Your Honor.

MS. TOLLEY: Just for the record, Judge, the

indictment has the wrong date, as does the sentencing sheet.

THE COURT: Right, okay.

MS. MALONE: Your Honor, the case the *State v. Burdette*.

THE COURT: Okay.

MS. MALONE: It's a South Carolina Supreme Court case.

THE COURT: What's that case cite?

MS. MALONE: That case cite is 335 S.C. 34, and it states that the indictment, along with notice of recividous statute would apply, satisfies the fully informed requirement of South Carolina Constitution, Article I, Section 14. And that once the indictment informed the indictment of the charge against him, that it only requires the solicitor to inform the defendant that the recividous sentencing statute will be applied.

THE COURT: Okay.

MS. MALONE: In addition, the defense was provided the defendant's rap sheet, and that would provide notice of all of the prior convicts that were against him, and that would include the additional one from Hampton County that we are not

presenting here today.

MS. TOLLEY: We reviewed the rap sheet and it didn't include the one from Hampton, nor did it include the one from June 19th of 2014. They did not include those as convictions.

THE COURT: On the rap sheet?

MS. TOLLEY: That's correct.

THE COURT: Okay. Well, that date is ostensibly correct.

Do I have a power outlet up here near this bench?

(Off the record.)

MS. TOLLEY: This is the rap sheet that we were provided.

MS. MALONE: Your Honor, I'll also point out that in the event that this rap sheet doesn't have it, defense counsel also represents the defendant on, I believe, his three or four other domestic violence cases in which case she has four different rap sheets for the same defendant for each case.

MS. TOLLEY: I'm not sure what the relevance of that is.

MS. MALONE: It would just be that the State has provided several rap sheets for the

defendant that are consistently up to date over the course of the last four years since 2019.

MS. TOLLEY: I represent him on this particular charge. We are being tried on this particular charge and this is the discovery that was provided in this particular charge.

THE COURT: Okay. You can give that back to Miss Tolley if you don't mind.

All right. Let me look up this case real quick.

All right. She brought up a couple other issues. Let's see. What else did she bring up, or is that it?

MS. MALONE: In regard to the other issues, in *State v. Cross*, the defense argued that the prior conviction was bifurcated based on rule 403 and the -- the State would just like to argue that the unduly prejudicial value of a charge of criminal conduct in the first degree with a minor is significantly different than a domestic violence charge like this. This is -- one of his prior convictions is a 30-day misdemeanor and it can't possibly be held to have the same prejudicial value that one would find with the aggravated sexual assault of a child under the age

of 11 as it was in *Cross*. Currently, that's the only case where the Court has ruled that a specific crime would be considered unduly prejudicial to be included. There is no other case law that the State has come across for -- a procedural rule or Constitutional law that would require bifurcation.

THE COURT: Okay.

All right, I am going to -- Miss Tolley, did you want to reply at all? You don't have to. Anything else you want to tell me?

MS. TOLLEY: Nothing that I haven't already said.

THE COURT: Okay.

MS. TOLLEY: I can distinguish the *Bright* case, which is the one that she sent up and it says specifically at the top of that case that it's not to be used for precedential value, and that the prior convictions were not the same offenses for which he was being tried, which also distinguishes it from our case and *Cross*.

THE COURT: Well, as I stated earlier, I did a re-review of the case law, and I have met this issue before, I am not going to bifurcate the trial. I think that the *Cross* ruling really is

specifically limited to the type of case in *Cross*, the CSC with a minor. And the language that the Supreme Court uses in that case was the quote, unquote, ". . . inherantly prejudicial stigma of a prior sex-related offense . . . " that that undoubtedly carries. And that really is not the same as a domestic violence incident.

I think the Court in that case was concerned with the stigma of sexually-related offenses as they relate to minors and the public, sort of, feeling that once you're prone to that type of conduct with -- sexual conduct toward minors that you're, sort of, always as such prone to that type of conduct.

So I don't believe that they intended for it to carry over to the domestic violence cases. Obviously, they delineated it from the burglary cases. This is a little different. So I understand the defense's motion, but, nevertheless, I disagree. I don't agree that 403 requires us to bifurcate the prior convictions.

I would -- I'll leave it to the defense on how these priors are going to be admitted; either by stipulation or if they're going to have the State, you know, bring it out in evidence.

But, obviously, I think the less prejudicial way and manner to do that would be by stipulation of the two prior offenses.

Now, I understand then we got to get to the situation with the indictment having the wrong year. Instead of 2014, it should say March 25th, 2015. I do think that's a scrivener's error. I think the indictment clearly notices the defendant of the charge he is charged with, as well as the fact that he has two prior offenses that would give rise to the first-degree charge. I think it's a scrivener's error obviously on the sentencing sheet and the Solicitor was just copying the sentencing sheet. But the judge obviously wrote in the wrong year when they signed the sentencing sheet and these things happen.

So I think -- you know, the purpose of the indictment is to give notice of the crime charged. I think certainly it did that. There's no doubt it had the correct victim and it had that he had two prior convictions for criminal domestic violence, so I think it did its job of giving him notice of why he's in court today.

So, with that, I will leave it to the State on how they intend to present their evidence

of these prior convictions, but I would encourage you to do it by stipulation. I think that's what the case law does contemplate as being the least prejudicial way to do it. Otherwise, you run a foul of possibly getting appealed on that issue, so there's always that.

Okay?

MS. MALONE: The State is happy to stipulate in the event defense would like us to prove those charges. We would keep it to just the prior conviction, no facts, and request a limiting instruction.

THE COURT: Yes. They will be instructed at the time that those stipulations, if that's how they're going to be presented, are introduced. That they are to consider them only as to the element that would give rise to the first-degree charge and not any other facts or circumstances on which they are committed.

If you have a specific limiting instruction you want the Court to entertain, I'm happy to do that at that time. If there's some specific language you want me to use, I'm happy to do that.

MS. TOLLEY: Thank you, You Honor.

THE COURT: Sure, okay.

All right. What's else? Any other motions from the defense at this time?

MS. TOLLEY: We do have a concern about one of the other charges that they're going to use against him. This is the one -- or the one- to five-year statute where I think he was sentenced to four years. It appears that, on that particular charge, he was not represented by counsel. We would assert the right to counsel is paramount, and that if he, in fact, were not represented by counsel in that particular charge that would raise some issue about whether or not he had a fair trial under those circumstances and whether or not this is a conviction that should be used against him for purposes of enhancement and/or for purposes of impeachment.

THE COURT: Okay. And which charge is that?

MS. TOLLEY: This is, it looks like indictment number 2014-GS-07-02009.

THE COURT: Okay. We have the sentencing sheet from that. He did not have an attorney representing him at the time of that; is that right?

MS. LEMPESIS: He did, Judge. The attorney just didn't sign. It was a conviction after trial.

THE COURT: Oh, a conviction after trial.

MS. LEMPESIS: Yes, Your Honor. And so our prosecutor, Brian Holland, prosecuted the case. He signed it, but we often don't sign -- have defense -- we often don't sign the sentencing sheets after trial. I think he signed it, but it was a conviction after trial.

THE COURT: And he was represented at trial?

MS. LEMPESIS: He was represented. I'm sure he was represented by appellate defender counsel Jessica Saxon, who was a previous public defender.

MS. TOLLEY: She represented him on the other charge. I don't see where there's any indication about who an attorney was on this other charge.

MS. LEMPESIS: It's noted on the public index that he was represented by Jessica Saxon. I can affirm to Miss Tolley and the Court, I was present during that trial and he was represented

by counsel. He did not proceed pro se. Certainly, Mr. Green would probably say the same, but he was represented by at least a public defender. I'm not sure if it was Jessica Saxon, but he was represented and it's stated on the public index as well.

THE COURT: Okay, he was represented.

MS. TOLLEY: Okay. I mean, I think they're required to prove that in order to use it, so I'm not sure --

THE COURT: Well, they said the public index.

MS. TOLLEY: So sometimes the public index is not exactly accurate. I know the clerk's office does an amazing job, however --

THE COURT: Well, let's do this: Let's see if they have -- would they have a letter of representation from that particular charge on file?

THE CLERK: What was the GS again?

MS. LEMPESIS: The indictment number was 2014-GS-07-02009.

MS. TOLLEY: While she's checking that, I think I mentioned to the Court while we were in chambers, along with the solicitor, that my client

had requested a continuance so that he could obtain other counsel, and he wanted to put that formally on the record.

THE COURT: Yeah.

MS. TOLLEY: He is asking that he be allowed to obtain private counsel, and that he's already spoken with private counsel and that private counsel is in need of a continuance.

THE COURT: Okay.

All right. While she's printing this prior counsel's letter, Mr. Green, how are you?

MR. GREEN: Good.

THE COURT: I understand Miss Tolley has said you've retained another lawyer or you've talked to another lawyer; is that right?

MR. GREEN: Yes, ma'am.

THE COURT: When did you do that?

MR. GREEN: Three days ago.

THE COURT: Three days ago.

MR. GREEN: Yes, ma'am.

THE COURT: Okay. Well, it doesn't really work like that. You can't just get another trial.

MR. GREEN: I understand.

THE COURT: You know, get a continuance

because you talked to another lawyer. Of course, I understand your position and that's fine. You can always get whatever lawyer you want, but that doesn't make your trial automatically continue. You know?

MR. GREEN: Yeah.

THE COURT: Of course, I'm sure you can understand why we can't go around doing that. People could just swap lawyers every time they had a trial date coming up.

Is there anything you wanted to tell me, specifically?

MR. GREEN: I wanted to say I wanted to get a lawyer. I know I waited too late to get one. I'm trying to make it better.

THE COURT: I understand. You have excellent representation. Miss Tolley has been doing this a long time.

MR. GREEN: Yes, ma'am.

THE COURT: So I think you're in excellent hands.

So, respectfully, your continuance is denied. We're going to go ahead and try the case. Okay?

MR. GREEN: Yes, ma'am.

THE COURT: All right. Thank you, sir.

She's going to print that for me. We'll just make it a court exhibit and let everyone have the opportunity to review it, whatever it says.

So the clerk has handed me a motion from that prior representation. It was a motion to revoke bond obviously filed by the State back then. That was Assistant Solicitor Brian Holland and it was directed to Miss Jessica Saxon, attorney for the defendant. The date of that particular motion was January 16th of 2015, two months before the conviction.

So I think that's -- it's unusual for a sentencing sheet -- for someone convicted at trial. I can't think of a time that any conviction has ever been signed by the defendant or his attorney. They're just handed straight from the Court from the solicitor and the judge just signs the sentencing sheet. So I don't think the fact that the sentencing sheet is not signed by the defendant or the defense attorney is indicative of the fact that he was, in fact, represented at the trial.

You got something else for me?

THE CLERK: No, no.

THE COURT: Okay. So anything else on that particular issue?

MS. TOLLEY: Nothing, Your Honor.

THE COURT: Okay. Anything else from the State before we begin?

MS. LEMPESIS: Your Honor, at this time, we move forward with our motion to revoke bond. We'd ask the Court to hear the motion to revoke bond that we filed on January 3rd.

THE COURT: Okay. I'm happy to hear from you. What would you like to tell me?

MS. LEMPESIS: Yes, Your Honor. I'll hand up the clocked copy for Your Honor.

THE COURT: Uh-huh.

MS. LEMPESIS: Basically, in summation, it's based on the fact that he has been rearrested multiple times while out on bond. His original bond in this case before you is from 2019. I beg the Court's indulgence while I pull up my copy.

Your Honor, Mr. Green, obviously, is here on this case of domestic violence. It was originally charged -- as Miss Tolley has pointed out, it was originally charged second degree. It was indicted as domestic violence first degree. He was arrested for that on June 25th of 2019. He

had a $30,000 cash or surety bond, and, of course a condition being that he maintain good behavior.

While on that bond October 3rd of 2019, he was arrested -- I'm sorry. He was -- another incident occurred on October 3rd of 2019, however he was not arrested until June 4th of 2020 for that domestic violence first-degree incident. This is another domestic violence with the same victim.

He was arrested on June 4th of 2020, and he had a $20,000 cash or surety bond set by the magistrate.

Then, again -- so, at that point, he's out on bond from the June 25th, 2019, bond when he was arrested on June 4, 2020, on that DV first warrant. It was along with another charge for possession with intent to distribute methamphetamine, and that bond was set at $10,000.

So October 3, 2019, he's arrested for two separate incidents, a total bond of $30,000.

Then, Your Honor, while out on those bonds, he was arrested for the offense of domestic violence first degree. And that incident date is -- I hate to tell, Your Honor, that incident date was -- beg the Court's indulgence while I

pull that up.

THE COURT: Yes.

MS. LEMPESIS: That was May 9th of 2021. May 9th of 2021, he was arrested again for domestic violence first degree and he received a $250,000 cash bond.

And finally, Your Honor, on January 2nd of this year, 2024, he was arrested again. This time for domestic violence second degree, and he received a $10,000 cash or surety bond by the magistrate.

Your Honor, based on all those arrests while being out on bond and violating his conditions that he be on good behavior, we are asking that his bond be revoked and that he be taken into custody.

THE COURT: All right. Miss Tolley, happy to hear from you.

MS. TOLLEY: Thank you, Your Honor. May it please the Court? Mr. Green has been a member of this community all of his life. He is 40 years old now. He has kept in touch with our office. He has shown up today for trial, which is the purpose of bond. And the fact that he's here showing up for court without incident is reason

enough to not revoke his bond at this point, and we would ask the Court to not revoke the bond.

THE COURT: Okay. I'm going to take this under advisement until the conclusion of the trial. I will state that my practice is to keep defendants in custody during the pendency of their trial. I'm sure there is a couple of things -- I understand he's appeared and I appreciate that, but it also protects defendants and others from any interference during the trial process. So it's, sort of, for the good of everybody.

So during the pendency of his current trial, he will be in the custody of the Beaufort County Detention Center, but I'll reserve my ruling on a motion to revoke all bonds until the end of the trial. Okay?

All right. Anything else?

MS. TOLLEY: Judge, I believe they are going to try and introduce a 911 audio and we have some concerns about that.

THE COURT: Okay. So, sort of, a motion in limine on that?

MS. TOLLEY: That's correct.

THE COURT: What is your concern?

MS. TOLLEY: My concern is that during

the course of the 911 interview -- the person who made the call is Cheleen Doe, I believe. She is not the victim in the case. And while she is responding to questions from the 911 operator, she's getting answers from what appeared to be third-party people who are not actually involved in the conversation. For those reasons, we believe it should be excluded as hearsay.

THE COURT: I'll have to listen to it before I make a rule. Does the State want to -- and I intend to just reserve that until the time it's introduced. We can, kind of, take it up then more specifically. I'll have hear it, of course.

The State have anything else they want to say in response at this time? I don't know what the call sounds like. Are there a couple people talking to the dispatch operator or something?

MS. MALONE: Your Honor, what I imagine -- what I imagine is the issue is that Cheleen Doe was asleep across the street when she got a knock on the door and her five-year-old niece was there and told her that her mommy needed her -- her daddy was hitting her mommy and she needed help, and so she dialed 911. And, during that 911 call, the victim actually runs into her

yard and she explains to 911 what she is saying as the incident continues. She is describing what she is seeing in her front yard.

THE COURT: Who's describing it? Cheleen Doe?

MS. MALONE: Cheleen Doe.

THE COURT: Oh, okay.

MS. MALONE: The victim's sister who actually lives across the street. And that little girl is still there on scene. The statement that the little girl made to Cheleen is not being offered to prove the truth of the matter asserted. It's the effect on the listener, that she had a little girl saying, *Help, mommy needs help,* and so she -- because of that, she dials 911. And then the call itself is her witnessing what's happening. It's possible the voices she's hearing is the actual voices of the victim and the defendant in the altercation that's happening in front of her.

THE COURT: I'll have to listen to it. I mean, if it's as described, it sounds like an exception, the present sense impression exception to hearsay. But I'll have to take it up. I'll have to listen to it myself and make an educated

ruling at the time that it's sought to be admitted. Okay? So we'll just make sure. Maybe we can take a break right before that. You-all can, kind of, just let me know. Or is that the first thing we're going to do? Very first thing?

MS. MALONE: First thing.

THE COURT: You got a clip of it or something that you can send me?

MS. MALONE: Absolutely. Would you like me to send it to you or would you like me to play it?

THE COURT: Play it now, by all means.

And that prior motion to revoke, Madame Clerk, the representation on that prior offense, can we mark that, please, and give it to the court reporter? We're going to mark that Court's 1 for purposes of the record.

And this 911 tape being offered at this point in time for me to make an in-camera review is going to be marked Court's 2. It will be, possibly, duplicated later as another exhibit. But for now it will be marked Court's 2.

It needs to be -- do you have it on a disk you can give us later? If you don't have it right now, that's fine. Just get us a disk later with just

that.

MS. LEMPESIS: We'11 make an extra copy and enter it as a court's exhibit.

THE COURT: Thank you.

(COURT EXH. 1, Motion; 1/16/15, was marked for identification.)

(COURT EXH. 2, 911 Call, was marked for identification.)

(911 call played.)

MS. LEMPESIS: Your Honor, if we could pause while our bailiff turns up the speaker.

THE COURT: Oh, yeah. Yes.

(911 call played.)

THE COURT: Is that it?

MS. LEMPESIS: No.

THE COURT: What's the break?

MS. MALONE: Typically, when 911 puts it on pause to relate to law enforcement what's happening, it has this black out.

(911 call continued.)

THE COURT: Is that it?

MS. MALONE: Yes, Your Honor.

THE COURT: Okay.

All right. And so, Miss Tolley, your objection is to hearsay as to what, sort of, the

caller is being informed of during the time she is making the call; is that right?

MS. TOLLEY: That's correct.

THE COURT: I really -- to be honest with you, that's a very difficult 911 tape to even hear. I can't even hear anyone talking to the caller. To the extent she's being asked questions from a 911 dispatcher, it's about what she can see, sort of, going on, and she, I guess, responds to what she can see. I didn't hear any other voices. Certainly none that were audible to me during my review of it.

MS. TOLLEY: Okay. What I heard, Judge, in the very beginning is where she says -- the operator says, is he still hitting her. She asks someone else -- she repeats the question, *Is he hitting her like*, like she's asking someone else.

THE COURT: Uh-huh.

MS. TOLLEY: And then she says, *Is there a weapon?* And the caller repeats the question, *Does he have a weapon*, and the person responds.

THE COURT: Is it on -- I guess, is the response on the -- anything beyond the caller, sort of, reasking the questions, is the

information then given from the caller? If that makes sense.

MS. TOLLEY: The information that she relays back to the 911 operator is information that she got from the third person.

THE COURT: Whoever this third person is.

MS. TOLLEY: Yes.

THE COURT: All right. What does the State want to tell me, anything?

MS. LEMPESIS: The State would first argue that it's not being presented for hearsay purpose. It's the effect on the listener as to why she initially dialed 911. Because when she initially calls, it's because her niece showed up and told her she needed help. And it's during that call that the altercation stumbles into the yard and she sees it.

Regardless, the State would still argue it's a present sense impression or excited utterance. It clearly falls under either exception. It was a five-year-old little girl, Niasia, who is describing that her father was hitting her mom. I think she -- the part that Cheleen Doe relays to 911 is he was using his hands, and that will clearly fall under either

exception. And it could certainly -- Niasia is not here to testify, but it also wouldn't be considered testimonial because it's not part of the prosecution. It's clearly an ongoing emergency. She almost immediately after that sees the defendant in her yard attacking her sister.

So any concerns about hearsay, about not being trustworthy, are immediately rectified by the fact that the witness then gets to see exactly what's happening. The altercation continues on into her own front yard.

THE COURT: Okay. I'm going to allow it in over defense objection based on the fact that it, sort of, I think just lays the ground work of why 911 was called. You know, and then everything that is audible to the Court is really that which the caller is actually obstensibly observing herself after that. I don't think it's being used for the truth of the matter asserted so much as it's why she called 911 in the first place and picked up the phone.

So, again, over your objection, for the record, I'll allow that part in.

Okay. What else can we take up before we bring the jury in?

MS. TOLLEY: Nothing from the defense, Your Honor.

MS. MALONE: Nothing further from the State, Your Honor.

THE COURT: You-all ready to go?

MS. LEMPESIS: Can we take just a two-minute break?

THE COURT: You need a minute? Yeah, we'll take a five-minute break, and then bring the jury in when you get back.

MS. LEMPESIS: Thank you, Your Honor.

THE BAILIFF: Your Honor, the jury panel is ready.

THE COURT: Bring them on in.

(Jury enters the courtroom at 2:18 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. Sorry for the wait. You'll find this a common thing in trials, so we'll talk about that a little bit more here shortly. Before we get into that, I'm going to tell you about who everybody is in the courtroom.

Without naming everybody's names, generally speaking, this lady right here in front of me in the blue, who is the most important person in room, she's the court reporter. She is

physically taking down every word that is said in this courtroom and creating a record. So that is who that is. We've got some members of the clerk's office here too that will be in these seats from time to time. Your elected clerk of court, obviously, has been in here as well a couple times, and so you'll see them come in and out. Their duty is to keep up with all the documents, all the paperwork, and make sure the files are all squared away and that we're doing things in an organized way.

To my right over here is my law clerk. She is on a one-year rotation. She finished law school this past year, and so law clerks typically are on a one-year rotation. Her name is Madeline. She's my clerk this year. She'll be in and out as well, mostly with me, doing legal research and different things from time to time for me --

We've got, obviously, the attorney's at the tables, along with the parties they represent. The State sits closest to you because they bear the burden of proof in this case, and we'll talk a little bit about that more closely a little bit later on. But sometimes folks asks, *How do you know who sits at what table?* Whoever bears the

burden of proof always sits closest to the injury. All right? A little fun fact.

Okay. We got some other folks in here. Different deputies. Of course you met your bailiffs. The deputies are here with the Beaufort County Sheriff's Department. They're just here to keep the peace. They'll be rotating in and out, different shifts as well. So if you see them coming and going, it doesn't mean anything is wrong. It's just them rotating through different shifts and whatnot.

Of course, the courthouse is a public building, so anybody can come and watch court any time they want. Sometimes we have law students filter in and out or different members of the public. Don't equate any meaning with that. It's just that it's a public building and some folks just like coming and watching court every now and then.

With that, we will go ahead and jump right in. Before we begin this trial, I'm going to tell you that this trial will probably be a little bit different than what you might expect. Most people don't have the chance to attend court like you're doing right now, and so they think

from watching television or movies or reading John Grisham novels that trials are always full of high drama and an intense and riveting circumstances. And while those things can be true at times, this trial, ladies and gentlemen, is not for your entertainment. This is a fundamental part of our democracy. It's a part of our justice system to make sure justice is done among the parties. And doing that is often a very slow and deliberate process and repetitive. And it will require several breaks at different times for me to take up different things with these lawyers. So please be patient with us throughout that process and understand that's perfectly normal and part of trials.

This courtroom is a place of honor. It's dedicated to the protection, the preservation of your rights through what many have called the greatest justice system created on this earth.

The attorneys before you are advocates for the parties they represent, but first and foremost they are officers of this court. When they became lawyers, they took an oath to uphold the integrity of our judicial system. You can expect them to be professional and ethical in

their representation of their client's interests. In just a minute, you're also going to take an oath to be ethical and to reach a verdict.

We, obviously, appreciate your accepting this responsibility today. And what I'm next going to say is, sort of, to be an introduction to the trial. These remarks are not a charge on the law that applies in South Carolina. That's going to come at the end of the case. The law as it applies to this case will be the only law you can consider and that's what I'm going tell you at the end after the closing arguments. What I'm going to tell you now is, sort of, an explanation of the procedure you can expect so that you can have a better idea of, sort of, what's going on in the courtroom.

If you want to take notes, you can. Shortly after the openings, we can pass out notebooks and pens. Some people are note takers and some aren't. So whatever you're most comfortable doing, you're welcome to do. If you are going to take notes, I just ask that you not let it take your attention away from the witness stand. Make sure you keep your eyes and your wits about you as you're watching folks testify. Part

of what you're going to be doing as a juror is to determine the believability of witnesses who are going to testify in this case. And, obviously, to be able to do that, you're going to need to be able to observe them closely and watch them as they testify. They will be testifying right here from this witness stand between us, so you will have a chance to see them closely.

The defendant, ladies and gentlemen, is Desmond Green. He is charged by an indictment that we discussed earlier during the jury selection process. And that indictment, ladies and gentlemen, again, is just a piece of paper through which charges are brought to court. It's not evidence at all. He is charged with domestic violence first degree. The elements of that crime will be explained to you later.

It's going to be the State's burden to prove each of those elements beyond a reasonable doubt, and it's going to be your duty to decide whether or not the State has met that burden at the end of the trial once all of the evidence is admitted. Your purpose is to find and determine the facts of the case. You-all are the sole judges of the facts of the case. You are to

determine the facts from the testimony you hear and any other evidence introduced during the course of this trial. It's going to be up to you to determine what inferences you think may be properly drawn from the evidence by the end of the case.

On the other hand and with equal emphasis, the same law that makes you-all the judge of the facts, makes me the judge of the law. As I stated earlier, the law as given by the Court is the only law you can consider. You must accept and follow it even if you disagree with it. I'm not allowed to tell you what the facts are and you cannot disagree with me about what the law is or what it should be. Your job will be to take the law as I give it to you at the end and apply it to the facts as you have found them from the testimony of the witnesses, and, after doing that, you will render a verdict. It's as simple as that.

Until I advise you to begin your deliberations, you cannot discuss this case with anyone including your fellow jurors, your friends, your family members, and anyone involved in this case. That would include discussions face-to-face by

telephone, email, or text. You may not use a computer, a cell phone, or any other electronic device at any time during this or while you're in here or during your deliberations. Of course, during breaks for meals or overnight, we're going to give you your phones back and you can use them. But I'm going to instruct once again, don't ever use them to get or send information about this case or to try to look up any of the topics raised or any of the people you may see testify or be involved during the trial.

I'm also going to ask you -- I don't expect media to be present in this case for any reason whatsoever, but I also will instruct you not to read or listen to or watch any news reports about this case. Don't try to look up any past news articles, or anything like that, on the Internet. Okay? Once again, just don't do any independent research. All right?

Now, after this case is submitted to you, you must discuss it only in the jury room with all of your fellow jurors present. The attorneys and the parties in this case will be advised that they are not to talk to you at all. So, if you see any of these folks out in the hallways or during breaks and they kind of give you the cold shoulder

or turn the other way, it's just because I've told them to do that. They're not allowed to talk to you during the course of the trial.

It's important that you keep an open mind and don't decide any issue in the case until all the evidence has been presented, the parties have made their closing arguments, and I've instructed you on the law. It's your solemn responsibility to determine the facts of the case as it bears on the guilt or innocence of the defendant, and your verdict must be based solely on the evidence as it is presented during the course of this trial and on the law as I will instruct you at the end.

In just a moment, the solicitor will make what is called an opening statement in which the solicitor will explain to you the issues in the case, or at least what the solicitor thinks the issues are. The attorney for the defendant may also make an opening statement, although she is not required to do so. Now, what these attorneys tell you during their opening statements is not evidence in this case. It's only their contention as to what the issues are. The evidence in this case will be presented to you by the testimony of sworn witness from that witness stand and any

exhibits that might be introduced during the course of the trial. From time to time, you might hear these attorneys say something like, *Your Honor, we have an objection*, or, *We have a question of law to take up outside the jury's presence*, or sometimes I might need to excuse you for one or two reasons, that's because, obviously, you're the judges of the facts, and when I'm discussing matters with these attorneys, it might be necessary for me to make some sort of a comment on the facts. I don't want to tell you what the facts are, and it's going to be my intention not to do that and not to comment on the facts, so that's the reason for me excusing you from the courtroom during breaks. Okay?

Now, in evaluating the evidence in this case, you must decide whether or not the testimony of the witnesses is believable. It's going to be my responsibility to rule as a matter of law as to whether certain evidence is admissible. But once it is admitted, whether or not you believe is entirely up to you. Now, in determining whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the

opportunity for the witness to have seen the matters and the things about which the witness testifies, and the way the witness acts on the witness stand. You have a right to consider anything in the record that will help you evaluate the testimony of the witnesses. That means it's your duty to pay close attention to them. Observe them, listen to them, pay close attention to the attorneys, and to the Court. After the arguments of counsel and the charge on the law at the end, you will be in a position to determine what the facts are and to apply the law to those facts and render a verdict.

Who is my -- the gentleman right here in this front corner seat, tell me your number.

JUROR 208. 208.

THE COURT: 208. Sir, you will be the foreman of the jury. It's going to be your added duty at the end to preside in the jury room and be the jury's spokesperson here in court. It's also going to be your duty to write the verdict and sign your name, but I'll give you some more instructions about that at the end. You don't have any greater weight of a vote than anybody else on the jury. Okay?

In order to preserve everyone's rights, I'll give the parties an opportunity to object to anything I have said so far.

Are there any exceptions or objections from the State?

MS. MALONE: Nothing from the State your.

THE COURT: All right. Any from the defense at this time?

MS. TOLLEY: None from the defense, Your Honor.

THE COURT: Thank you very much. We will now begin the trial. Would anybody like a note book? Yeah, maybe one or two. If we could get just a couple ready and then deliver it to you after the openings. We'll be getting those ready. And before we do openings, I'll ask the clerk of court to swear the jury.

THE CLERK: Good afternoon. If you-all could stand and raise your right hand. Do you solemnly swear or affirm that you shall well and truly try and true deliverance make between the State of South Carolina and the accused and a true verdict give accordance to the evidence so help you God?

THE JURY: I do.

THE CLERK: Thank you. You may be seated.

THE COURT: All right. Thank you very much. I'm happy to hear from the State.

MS. MALONE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

OPENING STATEMENT

MS. MALONE: Ladies and gentlemen of the jury, the defendant here today, Desmond Green, is charged with domestic violence in the first degree. And while you've already heard that this is probably going to be a short trial, it still is a very serious one.

On June 23rd of 2019, Cheleen Doe woke to the sound of banging on her front door. When she stumbled out of bed and ran to the front door, she would find her five-year-old niece, Niasia begging for help. She will tell you that when she heard that little girl saying, *Daddy is hitting mommy*, that she immediately dialed 911.

You're going to hear the 911 call that she made following that. And then you're going to hear from Cheleen and she'll tell you that she was

on the phone with 911 when she actually saw her sister stumbling into her front yard while the defendant chased her down and continued to attack her. Cheleen is the victim in the case's sister, and on this night she happened to live right across the street thankfully.

The victim in this case, her name is NK and she is the mother of the defendant's five children. And you will hear from law enforcement who will tell you that when they arrived at the scene that afternoon -- I apologize, that morning, that, when he met with NK he immediately smelled lighter fluid.

You will also hear from NK herself. Now, NK is small spoken and mild mannered, and you will likely get the impression that she doesn't particularly want to be here. She doesn't want to be testifying against the father of her five children. However, this has to stop.

MS. TOLLEY: Objection.

THE COURT: What's your objection?

MS. TOLLEY: She's implying that -- if we can approach?

THE COURT: Yes.

(Bench conference.)

MS. TOLLEY: She said, "This has to stop," implying that there are many times where this has happened and there were acts --

THE COURT: Your tiptoeing on that whole golden rule. You can't really --

MS. LEMPESIS: Okay.

THE COURT: Okay, we'll continue. Thank you.

MS. MALONE: You will see images that were taken from the scene that day. You won't see dramatic injuries, bloody wounds. This is not Hollywood. However, a victim in a domestic violence case does not have to end up in a hospital bed for it be a very serious situation. And my job in this case is to prove domestic violence in the first degree beyond a reasonable doubt.

I'm going to meet that burden. And when I come back here, after you've spoken to all the witnesses and reviewed the evidence, I'm going to ask that you find the defendant, Desmond Green, guilty of domestic violence.

THE COURT: All right. Miss Tolley,

would you like to make an opening statement?

OPENING STATEMENT

MS. TOLLEY: Thank you, Your Honor. May it please the Court?

Good afternoon. This is a case about a family. This is a case about a family and the ups and downs that families go through.

My client under our law, in our courtroom, in our state, and our country is incident until proven guilty, proven guilty beyond a reasonable doubt by the government, and that's a pretty high burden. And at the end of this case, I'm going to ask you to make sure that you have -- you've considered whether or not they met their burden.

You might have heard the term "benefit of the doubt." I don't know where it comes from, but my guess would be that it comes some from the law. Guilty beyond a reasonable doubt. Give someone the benefit of the doubt. And at the close of this case, I'm going to ask you to give my client the benefit of the doubt.

I ask you to just keep an open mind, listen to the evidence, and we thank you for being here.

THE COURT: All right. Thank you so much.

The State may call its first witness.

While we're doing that, did we get any notebooks for the jurors that want some? Have they already been passed out?

THE BAILIFF: I have not passed them out.

THE COURT: If you could do that at this time, that would be great.

THE BAILIFF: You want me to pass them out?

THE COURT: Just raise your hand up if you need one. Anyone want a notebook? Just one or two. We'll leave them up there and you-all can get them as you need them.

THE BAILIFF: Okay.

THE COURT: Please proceed. Thank you so much. Yes, ma'am.

MS. MALONE: Thank you, Your Honor. The State will call Allyson Moreira.

THE CLERK: I need you to raise your left

hand for me. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this court so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

THE COURT: Just come around here if you will, please, ma'am.

THE CLERK: Say your first name and last name in the microphone and spell your last name for the Court. Thank you.

THE WITNESS: Allyson Moreria, M-o-r-e-r-i-a.

WHEREUPON:

ALLYSON MORERIA,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MALONE:

Q Good morning. Would you mind telling the court where you currently work at?

A The Beaufort County Sheriff's Office.

Q And what job do you specifically do for the Beaufort County Sheriff's Office?

A I'm a 911 audio clerk.

Q As part of your job, do you keep records of 911 calls that are made?

A Yes.
Q Are these calls kept in the ordinary course of business?
A Yes.
Q Did you specifically provide a phone call for the case that we're here for today?
A I did.
Q And did you review that call before trial?
A Yes.
Q I'm going to show you something that has been marked --
MS. MALONE: Permission to approach, Your Honor?
THE COURT: Yes.
(STATE EXH. 1, 911 Call, was marked for identification.)
BY MS. MALONE:
Q I'm going to show you what's been marked as State's Exhibit 1. Do you recognize that item?
A I do.
Q And how do you recognize it?
A It has my initials on it.
Q Would you mind telling the Court exactly what that item is?
A The 911 call from this incident.

MS. MALONE: And, Your Honor, at this point the State would move State's Exhibit 1 into evidence.

THE COURT: Any objection to the State's 1?

MS. TOLLEY: Subject to our previous objections.

THE COURT: Previous objection renewed you're telling me. For the record, it will be admitted over that objection. State's 1.

(STATE EXH. 1, 911 Call, was entered into evidence.)

MS. MALONE: Permission to publish to the jury.

THE COURT: Yes, ma'am.

(911 call played.)

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: Okay.

All right. Miss Tolley, any questions for this witness?

MS. TOLLEY: Just a couple, Your Honor.

CROSS-EXAMINATION

BY MS. TOLLEY:

Q Good afternoon. How you doing?

A Good.
Q Good.
You were not present at this incident, were you?
A I was not.
Q And you weren't the 911 operator?
A I was not.
Q And so you didn't speak with the caller of this 911 call?
A No.
MS. TOLLEY: Thank you.
THE COURT: Any other questions on direct?
MS. MALONE: No further questions from the State, Your Honor.
THE COURT: All right. You may step down. You are free to leave. Thank you very much.
The State may call its next witness.
MS. MALONE: Your Honor, next the State would call Cheleen Doe.
THE COURT: Okay.
THE CLERK: Raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this court so help

you God?

THE WITNESS: Yes.

THE CLERK: Have a seat right here. Say your first name and last name into the microphone and spell your last name for the Court. Thank you.

THE WITNESS: Cheleen Doe, D-o-e.

WHEREUPON:

CHELEEN DOE,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MALONE:

Q Good morning -- or afternoon. How are you?

A Good. How are you?

Q Good.

Where are you from?

A Beaufort, South Carolina.

Q Can I ask, have you lived in Beaufort your whole life?

A Yes.

Q And what do you currently do?

A I work on Hilton Head at the visitor center.

Q And does your family live in Beaufort as well?

A Yes.

Q And can you tell me, do you have any siblings?

A Yes, I have three sisters and one brother.
Q Is one of your siblings named NK [redacted]
A Yes.
Q And back in 2019, do you remember where you were living?
A Yes, The Point.
Q And on June 23rd of 2019, do you remember the specific address where you were living at?
A Yes. [redacted] Circle.
Q And did you live close by to any family members?
A My sister.
Q And that would be the sister we mentioned before, NK [redacted]
A Yes.
Q And did your sister or any other family members live close by to you as well?
A No.
Q So did your sister live alone?
A She lived with her kids and her -- the father of her kids.
Q Okay. And where was that, do you remember?
A Across the street.
Q What was that address, do you recall?
A No.
Q It was a long time ago.

A I know it's [redacted]-something [redacted] Circle. I don't know the exact address.

Q Is that in Beaufort, South Carolina?

A Yes.

Q Do you know what county that's in?

A I'm still in Seabrook.

Q Do you know what county Seabrook is in?

A No.

Q Do you know what county we're in right now?

A Beaufort.

Q And do you remember something that happened on June 23rd of 2019?

A I don't know the exact date, but I know something that happened in 2019.

Q Do you remember what happened for the case that we're here for today?

A Yes.

Q And do you remember that night -- because I know this was a while ago. Do you remember, kind of -- or that morning, can you recall -- can you, kind of, walk us through what that day was like for you at first?

A I don't remember exactly everything, but I can try.

Q That would be great.

A I remember waking up to the Ring, the Ring

camera that my mom had. I had it on my phone. It went off and my niece was at the door. So I opened the door for her and she told me that, *Daddy is hitting mommy.*

MS. TOLLEY: Objection; hearsay.

THE COURT: I'll sustain. If you could just, sort of, ask the witness not to, you know, quote other people. But just maybe rephrase the question so that we can understand what she came to know. Okay?

MS. MALONE: Absolutely.

BY MS. MALONE:

Q So just to go back a little bit. You were asleep.

A Yes.

Q And the Ring camera went off.

A Yes.

Q And so you checked the Ring camera, and who was it that you saw at the door?

A My niece, Niasia.

Q Tell me a little bit about Niasia. How old is she now?

A She will be 10 in two weeks.

Q And do you remember -- so this case is from 2019, do you remember how old she was back then?

A Oh, gosh. I don't know.

Q Is it safe to say she was maybe between the ages of five and six?
A Yes.
Q And so once you saw the Ring camera and you saw your niece, what did you do next?
A I immediately got up to open the door.
Q And after you open the door and you see your niece, what did you do after that?
A I asked her what was wrong.
Q And based on what she told you, what did you do after that?
A Called 911.
Q And while you're on the phone with 911, can you kind of describe what happened after that?
A I'm talking with her, and then my sister runs in the yard. I can't remember what liquid. I can't remember if it was gasoline or something, but she was saying that he poured the liquid on her.
Q And so are you still on the phone with 911 while this is happening?
A I'm not sure.
Q So, you say your sister ran into the yard.
A Yes.
Q Was there anyone else in the yard?

A I don't remember.
Q Okay. And so once you're on the phone with 911, can you kind of describe what happens after that?
A She slowly comes in the yard and the police arrive shortly.
Q Did you talk to the police once they arrived?
A Yes.
Q Okay. And do you recall whether or not you told the police what happened?
A I did. I did give my statement.
Q Okay. And can you, kind of, walk us through what it was that you told the police on that day?
A Yes. I told them how she came in the yard and had the gasoline on her and eventually he started punching her in the back of her head.
Q Okay. When you say he started punching her in the back of the head, do you recall who that was?
A It was Desmond.
Q Do you see the person who you call Desmond in this room here today?
A Yes.
Q Would you mind pointing out to the court who that is?
A (Indicating).
Q Just for the record, can you describe what that

person is wearing?

A Suit with the red tie.

MS. MALONE: Your Honor, if the record would just reflect that the witness has identified the defendant as Desmond Green.

THE COURT: It shall so reflect.

MS. MALONE: Thank you, Your Honor.

BY MS. MALONE:

Q And so once all this is settled down and you are with your sister, can you describe anything that you noticed about her physical presence?

A She was covered in liquid and she was crying. She was very -- really upset.

Q Do you know what that liquid was?

A I don't.

Q Do you recall any distinctive things that you remember about it?

A It smelled like gasoline, but I can't be too sure.

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: All right.

Miss Tolley, any questions for this witness?

MS. TOLLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. TOLLEY:

Q Good afternoon, Miss Doe.

A Good afternoon.

Q Now, were you present when this incident allegedly occurred -- began?

A No, I was home.

Q So you didn't witness the beginning of this incident?

A No.

Q So you don't know what happened before your niece came over to the house.

A Correct.

Q In your statement to the police, you said they were throwing things, like, both of them were throwing things; is that correct?

A I don't remember.

Q If I showed you your statement, would that refresh your recollection?

A It might.

MS. TOLLEY: May I approach the witness, Your Honor?

THE COURT: Oh, yes.

BY MS. TOLLEY:

Q Do you recognize that?

A Yes.

Q And is that your statement?
A Yes.
Q Okay. And does it say in that statement that they were both throwing things?
A Yes.
Q Thank you.
EMS was not called in this incident, were they?
A I don't remember.
Q Okay. You didn't see an EMS truck?
A I don't remember.
Q And, to your knowledge, your sister didn't go get medical treatment, did she?
A I don't remember.
Q Did you call EMS?
A No.
Q Did you take her to the doctor?
A I didn't have a car.
Q So the answer is no, you didn't take her to the doctor?
A No.
Q You didn't get anyone else to take her to the doctor?
A I was home alone.
Q The police didn't take her to the doctor?

A No.
Q Okay, thank you.
MS. MALONE: Just a few questions. I'm sorry. I thought she was done.
THE COURT: I'm not sure. I don't think she's quite finished.
MS. TOLLEY: Sorry.
BY MS. TOLLEY:
Q You also said there was no weapon; is that correct?
A Yes.
Q Okay, thank you.
MS. TOLLEY: That's it, Your Honor. Thank you.
THE COURT: Okay. Now. Thank you. Go ahead.
MS. MALONE: I was jumping the gun.
THE COURT: That's all right.
REDIRECT EXAMINATION
BY MS. LEMPESIS:
Q I just wanted to clarify a few things. So, I know we established you weren't there when this started.
A Correct.
Q But after your on the phone with 911, you said you -- you said that you saw your sister run into your

yard.

A Yes.

Q Do you know why she was running in the yard?

A He was chasing her.

MS. TOLLEY: Objection; calls for speculation.

THE COURT: Overruled. I'll allow it to the extent she has personal knowledge. You can maybe ask your question again.

MS. MALONE: Yes, Your Honor.

BY MS. LEMPESIS:

Q To the best of your knowledge, did your sister appear to be running away from someone?

A Yes.

Q And who was that person?

A Desmond.

Q And did you see Desmond do anything else to your sister other than chase her?

A He came into the yard and started punching her in the back of her head.

Q And how many times did you see him hit her?

A Two or three.

Q Do you know when Desmond stopped hitting your sister?

A When I said that the police was on the way.

MS. MALONE: Thank you. No further questions. Oh, I apologize. Just one second, Your honor.

BY MS. LEMPESIS:

Q That all started when you were woken up by Niasia. Where is she when all this is happening?

A I told her to go in the house.

Q Okay.

A My mom's house. I'm sorry.

Q And is she your only niece?

A No.

Q Were there other kids that were also there?

A Yes.

Q About how many?

A I have three nieces, and I believe she was pregnant with my nephew.

Q And where were they when all this is happening?

A They were home and they started walking to my mom's house.

Q And did you personally --

MS. MALONE: Actually, you know what, no further questions from the State, Your Honor.

THE COURT: All right.

MS. TOLLEY: Nothing, Your Honor.

THE COURT: All right. You may step

down.

THE WITNESS: Thank you.

THE COURT: State can calls its next witness.

MS. LEMPESIS: Your Honor, can we approach just regarding scheduling?

THE COURT: Yes.

MS. LEMPESIS: Thank you.

(Bench conference.)

MS. LEMPESIS: Your Honor, we got our victim up next. Can we just take -- I'm sorry to ask because I know we just sort of started, but can we just take, literally, a ten-minute recess and then we'll call her.

THE COURT: Sure.

All right. We'll take a quick break. Once again, ladies and gentlemen, sorry. Lots of breaks. We'll see you back here in about ten minutes. Please don't discuss the case. Just leave your notebooks on your seats if you will.

(Jury exits the courtroom at 3:02 p.m.)

THE BAILIFF: Jury is clear.

THE COURT: Thank you very much.

(A recess was taken from 3:02 p.m. to 3:12 p.m.)

THE COURT: We can bring the jury back

in.

(Jury enters the courtroom at 3:13 p.m.)

THE COURT: All right. Welcome back. The State can call its next witness.

MS. MALONE: Thank you, Your Honor. Next, the State calls NK [redacted]

THE CLERK: High NK [redacted] Raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this court so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: You can have a seat right up her. Say your first and last name for the Court and spell your last name for the Court. Thank you.

THE WITNESS: NK [redacted] NK [redacted].

WHEREUPON:

NK [redacted]

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MALONE:

Q Good morning -- good afternoon.

NK [redacted] where do you currently live?

A [redacted] Circle.

Q And what city is that in?

A Did you say city?
Q Yes.
A Seabrook.
Q Seabrook. Do you recall whether or not you lived there in 2019?
A I did.
Q Do you live there by yourself?
A No.
Q Who else is there with you?
A My kids and my -- their father.
Q How many kids do you currently have?
A Five.
Q What are their names?
A Niasia, Tinasia, Jolia, Josesia, and Allen.
Q And, in 2019 -- in June of 2019, how many kids did you have?
A Three.
Q Can you recall about how old they were back then?
A Six, four, and two.
Q That's a big family.
Do you also work?
A Yes.
Q Where do you currently work at?
A Bojangles.

Q And is that the only job that you have?
A I was working at UPS.
(STATE EXH. 2, Photo; House, was marked for identification.)
Q And I'm about to show you a photograph. If you wouldn't mind telling me whether or not you recognize the image in this photo.
MS. MALONE: Permission to approach, Your Honor?
THE COURT: Yes.
BY MS. MALONE:
Q Do you recognize the image in the photo?
A Yes.
Q Would you mind telling the Court what's in that image?
A My house.
Q Is that the same house that you live in since 2019?
A Yes.
MS. MALONE: Your Honor, at this time, the State moves State's Exhibit 2 into evidence.
THE COURT: Any objection to State's 2.
MS. TOLLEY: No objection, Your Honor.
THE COURT: All right. Without objection, State's 2 will be admitted.

(STATE EXH. 2, Photo; House, was entered into evidence.)

MS. MALONE: Permission to publish to the jury, Your Honor.

THE COURT: Yes, ma'am.

BY MS. MALONE:

Q So you said this is where you lived and this is where you lived since 2019?

A Yes.

Q Do you recall what you were doing on June 23rd of 2019?

A No, ma'am.

Q Okay. Can I show you another image?

A Uh-huh.

(STATE EXH. 6, Photo; Inside of House, was marked for identification.)

BY MS. LEMPESIS:

Q Would you mind saying if you recognize what's in that picture?

A Yes, ma'am.

Q And would you mind telling the Court what that is? And so that's the inside of your --

A House.

Q The inside of your house at [redacted] Circle?

A Yes.

MS. MALONE: Permission to enter State's Exhibit 6 into evidence.

THE COURT: Any objection to 6?

MS. TOLLEY: No objection, Your Honor.

THE COURT: All right. Without objection, State's Exhibit 6 will be entered.

(STATE EXH. 6, Photo; Inside of House, was entered into evidence.)

MS. MALONE: Permission to publish?

THE COURT: Yes.

BY MS. MALONE:

Q Do you remember speaking to a police officer on June 23rd of 2019?

A No, ma'am.

Q And do you have any recollection of writing a statement to law enforcement on June 23rd of 2019?

A No, ma'am.

Q Do you remember writing a statement to law enforcement that, *We were fussing*, and that, *He started pushing me and choking me. I told my daughter Niasia to run next door to get my dad. I finally got up and ran outside, and then he --*

MS. TOLLEY: Objection.

THE COURT: Yeah. Counsel, the appropriate way would be, let her review it and

she can either remember it or not. You have to let her review it first. Okay? You can't just publish it without her -- she just said on the stand she doesn't remember it. Do you want to show it to her and see if it refreshes her recollection as to her statement?

MS. MALONE: I apologize, Your Honor. I was just following the rule from 613 that states that extrinsic evidence of a prior --

THE COURT: Right.

MS. MALONE: -- statement can be introduced.

THE COURT: But first you got to give her the opportunity to review it and see if it refreshes her recollection. If she still doesn't, then, at that point, you can do what you're seeking to do.

MS. MALONE: Permission to approach, Your Honor?

THE COURT: Yeah, just show it to her.

MS. MALONE: Well, approach you, Your Honor?

THE COURT: Okay.

(Bench conference.)

MS. MALONE: I just want to make sure

that --

THE COURT: She didn't say she didn't make it. She says she doesn't remember. There's a big distinction there. So if she denied making it, then, yeah, go right ahead and start doing it. She didn't deny it. She's just like, *I don't remember.* So the appropriate thing would be let her look at it and then she either owns it or she doesn't. At that point, it's fair game. You can do whatever you want to with it. That's the appropriate thing to do.

MS. LEMPESIS: And our position in the past is that if she's failing to admit it -- you know what I'm saying?

THE COURT: I don't understand what you're saying. You just asked her does she remember. She said no. To me, that's not her saying, *I didn't do it.* She's not failing to admit. The way she asked the question was, *Do you remember?* She said, *No.* It's, kind of, semantics, but it's important.

MS. LEMPESIS: All right. That's how we've done it in the past, but I totally understand. So you want her to approach and have her read it. And when she doesn't remember,

because she's going to say she doesn't remember, then she can move it into evidence?

THE COURT: Correct. You'll still get it in, it's just how --

MS. MALONE: I apologize.

THE COURT: That's okay.

MS. MALONE: Permission to approach the witness?

THE COURT: Yeah, of course.

BY MS. MALONE:

Q I'm just going to show you this, and if you want to take a minute to review and let me know if that refreshes your recollection of making a statement.

A No, ma'am.

Q Do you mind if I take that from you?

A (Hands document.)

MS. MALONE: Your Honor, at this time, I'd ask the witness: Do you recall making a statement to law enforcement that, "We were fussing and then he started pushing me and choking me. I told my daughter Niasia to run next door and get my dad, and then I finally got up and ran outside. Then he threw lighter fluid on me and started hitting me on my shoulder. He sat out there until he saw the police, and then he walked

to the door and said, "If they want me, they're going to have to catch me'?"

THE COURT: I couldn't hear your response. Did you ask her if she remembers that, Solicitor? Is what you're asking her?

MS. MALONE: Yes.

THE COURT: Okay. What's your response, ma'am?

THE WITNESS: No, ma'am.

BY MS. MALONE:

Q And the person that you live with, the father of your children, what's his name?

A Desmond Green.

Q And do you recognize Desmond Green in this courtroom today?

A Yes.

Q Would you mind pointing out for the jury who Desmond Green is?

A (Complies.)

Q And what would you describe he's wearing?

A A tie and a suit. A red tie and suit.

MS. MALONE: Your Honor, if the record would just reflect that the victim has identified Desmond Kelly (sic) as the defendant.

THE COURT: Yes, ma'am. It shall so

reflect.

MS. LEMPESIS: Desmond Green.

MS. MALONE: I'm sorry. Desmond Green.

THE COURT: Right.

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: All right. Does defense have any questions for this witness?

MS. TOLLEY: Just a couple.

CROSS-EXAMINATION

BY MS. TOLLEY:

Q This incident happened back in 2019; is that correct?

A Yes, ma'am.

Q And after the incident, the alleged incident, you guys remained together?

A Yes, ma'am.

Q In fact, you had two more children together?

A Yes, ma'am.

Q And that was 2019, 2020, 2021, 2022, 2023, 2024.

MS. MALONE: Objection, Your Honor.

THE WITNESS: Yes, ma'am.

BY MS. TOLLEY:

Q So it's been six years.

THE COURT: What's the objection?

MS. MALONE: It was going to be was there a question.

THE COURT: I think she was just establishing --

MS. MALONE: Withdrawn.

THE COURT: So, withdrawn. Okay. Go ahead, Miss Tolley.

MS. TOLLEY: Okay.

BY MS. TOLLEY:

Q Have you let the solicitors know that you don't want Mr. Green prosecuted in this case?

A Yes, ma'am.

Q That you have kids together?

A Yes, ma'am.

Q That he helps you with the kids?

A Yes.

Q That he works?

A Yes, ma'am.

Q You didn't require medical treatment that day?

A Not that I can recall.

Q Okay. EMS wasn't called?

A Not to my knowledge.

MS. TOLLEY: I don't have any other questions, Your Honor.

THE COURT: Thank you. Any redirect for

this witness?

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: Okay.

All right. Ma'am, you can step down. State can call its next witness.

MS. MALONE: Next, the State would call Daniel Ireland.

THE CLERK: Can you raise your right hand? Do you solemnly swear or affirm to truthfully answer all questions asked of you by this court so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Have a seat right here and state your first and last name and spell your last name for the Court. Thank you.

THE WITNESS: Daniel Ireland, I-r-e-l-a-n-d.

WHEREUPON:

DANIEL IRELAND,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MALONE:

Q Where do you currently work?

A Beaufort County Sheriff's Office.

Q And when did you start with the Beaufort County Sheriff's Office?
A It was the last day of July of 2017.
Q So would you say roughly six-and-a-half years?
A Roughly.
Q What is your current rank?
A Current rank is a corporal?
Q In 2019, do you recall what you were ranked back then?
A I was PFC.
Q And what are the primary responsibilities of a PFC?
A Patrol deputy, or patrolman first class. Their Primary responsibility is to answer calls from dispatch on, like, domestic calls, breaking and enterings, burglaries, 911 hang-ups, activated alarms, and things like that.
Q And do you recall responding to a 911 call on June 23rd of 2019?
A I do.
Q And can you, kind of, describe to us what that -- what call did you get?
A I received a -- what we call a domestic in progress call from [redacted] Circle in the area of Seabrook, Beaufort County, South Carolina. I

believe dispatch let us know that it was in progress and it was the sister of the related incident that was calling. It wasn't the actual person involved.

Q And so once you arrive on scene, can you, kind of, describe what it is that you see when you pull up?

A Yes. I came around the corner. I didn't pull all the way into the driveway, but I did pull into the driveway by the street. I noticed a black female in the yard walking around and a black male up by the porch who eventually went into the residence.

Q And so what was the first thing that you did once you got out of the car?

A I made contact with the female. I asked her if she was okay, was she injured, did she need any medical attention to which she said she did not.

MS. TOLLEY: Objection, Your Honor. Well, I'd overrule myself.

THE COURT: Withdrawn. Go ahead.

BY MS. MALONE:

Q And so once you made sure that she appears to be safe, what do you do next?

A Because I saw the male go into the house, I asked who that was, and I learned it was

Desmond Green. I went around to the back of the residence to check the back door. It appeared closed. I believe I knocked on it, and then came around to the front to make contact with NK [redacted].

Q And did you make any immediate observations about NK [redacted]

A Yes. I did notice that her shirt was wet and she did smell like lighter fluid. She did appear upset. Her hair of disheveled. She was walking around the vehicles trying to -- appeared to be taking the tags off the vehicles in the front yard.

Q To your knowledge and from what you saw, do you know why she was trying to take those tags off of the vehicles?

MS. TOLLEY: Objection; speculation.

THE COURT: Overruled. If he has knowledge, he can answer.

THE WITNESS: I can go off of what she told me. But other than that, I just know she was trying to take the tags off the vehicles.

Q And I am going to ask what she told you just based on the present state of mind hearsay exception as to why she was taking tags off of vehicles.

MS. TOLLEY: Objection. The witness testified and she could have asked that question of the person who actually said it. So that person is present and she did not ask that question.

THE COURT: Sustained as the question is phrased. I'm not sure if there's some other way to get that information. Maybe you can rephrase it accordingly or something.

BY MS. MALONE:

Q Was there any information that you had to why someone would be worried about -- or based on your knowledge and experience as a law enforcement officer, do you know of a reason why people would be concerned about taking license plates off of vehicles?

A I imagine so they couldn't drive it on a roadway.

Q And why would someone --

MS. TOLLEY: Objection.

THE COURT: Let me hear the whole question.

MS. MALONE: We'll leave that one.

THE COURT: Okay.

BY MS. MALONE:

Q So what happened while -- while you're onsite, did

you speak to anybody else or were there any other people on scene that you speak to?

A I did. Cheleen eventually came across the street and met with us, but there were some folks coming down the other side of the road that looked like they wanted to start some kind of argument or further fighting, so I requested for more deputies to pick it up and get there quicker. So once the other deputies got there, we ended up clearing the residence. The three of us cleared the residence. We never found the male, Mr. Green. And then when I came back outside, by then Cheleen had come across to the street to talk to us.

Q Did Cheleen also make a statement to law enforcement?

A She did.

Q Okay. So once you've spoken to both the victim and Cheleen, did you gather -- or did you -- did you notice anything else about the scene that you found relevant to this incident?

A I did. I found the -- there was a bottle of lighter fluid up by the house, which I did photograph. I photographed -- I think I photographed all the way around the house. And then I took pictures of NK [redacted] as well.

(STATE EXH. 3, Photo, was marked for identification.)

(STATE EXH. 4, Photo, was marked for identification.)

(STATE EXH. 5, Photo, was marked for identification.)

(STATE EXH. 7, Photo, was marked for identification.)

BY MS. MALONE:

Q I am now going to show you what has been marked as State's Exhibit 3, 4, 5, and 7. If you want to take your time to look through, and let me know if you recognize those images.

MS. TOLLEY: If I can see them.

MS. LEMPESIS: You have copies.

MS. TOLLEY: I'm not sure which ones you're showing him.

MS. MALONE: This would be 3, 4, 5 and 7 of the photographs that I provided prior to trial.

Q Do you recognize those photographs?

A I do.

Q And would you mind telling the Court what they are?

A You want me to go picture by picture?

Q Sure, that would be great.

A Okay. Exhibit 3 is NK [redacted] and I talking in front of her resident. I was right up close next to her. I could smell the lighter fluid and then obviously see it on her shirt.

State's Exhibit 4 is just probably a little bit further along -- and these are still shots from my in-car camera. I parked to face the house. It's another picture of NK [redacted] and I talking in front of her house. She appears to be itching her back.

State's Exhibit 5, it looks more like State's Exhibit 3 where we're just talking back and forth.

And then State's Exhibit 7 is the bottle of lighter fluid in front of the house.

Q And are those pictures an accurate representation of what you remember from that afternoon?

A Yes.

Q And have they been altered or changed in any way?

A It doesn't appear so.

MS. MALONE: At this time, Your Honor, State would move State's 3, 4, 5, and 7 into evidence.

THE COURT: Any objection to those?

MS. TOLLEY: No, Your Honor. Thank you.

THE COURT: Okay.

MS. MALONE: Permission to publish to the jury.

THE COURT: Okay.

(STATE EXH. 3, Photo, was entered into evidence.)

(STATE EXH. 4, Photo, was entered into evidence.)

(STATE EXH. 5, Photo, was entered into evidence.)

(STATE EXH. 7, Photo, was entered into evidence.)

MS. MALONE: If you wouldn't mind starting with number 3.

BY MS. MALONE:

Q If you wouldn't mind just, kind of, walking us -- I know you sort of did this already, but if you wouldn't mind walking us through it.

A Yes. This is NK [redacted] and I talking in her front yard. I'm not sure exactly where in the video this is, but I would imagine it's right in the beginning of the video, so shortly after I got there.

Q And can you, kind of, describe what you're seeing

when you stated that you could see the lighter fluid on her shirt?

A Yes. You can see her shirt is partially wet at the top half. I believe the front half was more wet than the back, and it did smell of lighter fluid.

Q And she appears to have her arm backwards. Do you recall from the best of your knowledge what she was doing there?

A Yeah. Well, the whole time we were out with her and while we were clearing the residence, when I came back out, she was itching her top half.

Q And if you wouldn't mind going to number 5.

A That looks like just -- it looks like just another angle of us talking.

Q And the last one is number 7.

A And that's the bottle of lighter fluid that was in front of the -- the front yard.

Q So after everything has happened, can you describe what you did next?

A After that, we had -- well, we cleared up and prepared the call on your report. And then I went and saw Judge Brooks the next day -- I believe it was Judge Brooks -- and obtained an arrest warrant of domestic violence for Mr. Green.

Q And do you recall the date of birth of the individual for the arrest warrant that you saw?

A Yes, it was [redacted]. Let me refer to my warrant here. [redacted].

Q And then just lastly, I know you stated before, just going back to the very beginning when you saw a male in the yard when you first arrived, do you recognize that person here in this courtroom today?

A I do.

Q And what was his name?

A It's Desmond Green.

Q Would you mind pointing out to where he is in this room?

A Yes. He's sitting over there wearing a tie and a -- it looks like a pink tie and a dark-colored suit.

MS. MALONE: If the record would just reflect that law enforcement has identified the defendant as Desmond Green.

THE COURT: It shall so reflect.

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: Okay. Miss Tolley any questions for this witness?

MS. TOLLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. TOLLEY:

Q During your conversations with NK [redacted] did she say that -- did she say that she was not in fear of her life?

A She did say that.

MS. MALONE: Objection, Your Honor. Hearsay.

BY MS. TOLLEY:

Q During your investigation --

THE COURT: Let me ask her -- hold on real quick. Let me rule on that objection.

First of all, ladies and gentlemen, I'm going to ask you to not consider the prior statement from the witness.

I will sustain the objection and ask defense counsel to rephrase the question potentially. Okay, go ahead.

BY MS. TOLLEY:

Q During the course of your investigation, was it your impression from your conversations and investigation that NK [redacted] did not fear for her life?

A She was flustered, but, no, she did not appear to fear for her life.

Q When you were talking with her, did she talk about two girls or a girl that maybe wanted to --

MS. MALONE: Objection, Your Honor. First, I would object on the basis of relevance, and next I object based on hearsay.

THE COURT: Okay. She hadn't finished the question, so I'm not sure I can make a ruling unless I hear the whole question first. Let me let her get her question out first and then we'll go from there.

BY MS. TOLLEY:

Q During your testimony, you testified about people coming near the house or walking by the house; is that correct?

A Yes, they were coming toward the house. That's correct.

Q And did she mention that one of the girls was maybe interested in Desmond?

A I have to review the video, but I believe so, yeah.

Q And that she, in fact, said that one of the girls had come to her house at one point and maybe wanted to fight her?

MS. MALONE: Objection; hearsay. And objection, relevance.

THE COURT: Overruled on relevance.

Sustained on hearsay grounds. You can ask him -- maybe just rephrase it. Okay?

MS. TOLLEY: Okay.

BY MS. TOLLEY:

Q During the course of your investigation, did it come to your attention that one of the girls maybe wanted to fight her, came to her house and wanted to fight her about Desmond?

A Well, if we watch the video, there is a lot of words being thrown back and forth by the family. What I said was *family* in my reporting. Family yelling at her and then she was yelling back at them when I was actually trying to get her in the back of my car so nothing else happened to her.

Q Well, did she talk to you about a girl in a pink shirt? You said, *Let that go, let that go, We'll take care of that*?

A I don't recall that. No, I don't recall that.

Q Okay. We can play back the video.

A Could we?

Q Well, we will in minute maybe, if we get to that.

A Okay.

Q Didn't she say when the girl came to her house she said she -- it came to your attention that she's -- her opinion was that if the girl wanted him, she could have him?

A I never really got into it. As far as a non-heated interview, we never got into any of that. But when she was in the front yard flustered walking around, and when that family was coming down the street, there was a lot of words going back and forth.

Q You don't know who that family was?

A I do not, no.

Q It could have been the girl in the pink shirt.

A Yes. I believe in the video I said -- I said on the radio that more family was showing up, and then she might have said, *They're not family,* if I remember right. Yeah.

Q Okay. When you asked her about the throwing of the lighter fluid, did she -- was it your impression that it was just something that he grabbed and threw because it was there, not for any --

MS. MALONE: Objection, Your Honor. Calls for speculation.

THE COURT: He can answer to his knowledge to the extent he has knowledge.

THE WITNESS: I believe I wrote to that in my report. Can I just look at that?

THE COURT: Of course.

THE WITNESS: It's from her statement. It looks as if he threw the bottle at her, as I wrote in my report.

BY MS. TOLLEY:

Q Right.

And but it just happened to be something that was there. It wasn't like he was -- went out, grabbed lighter fluid, and threw it on her to set her on fire.

A That, I don't know.

Q Well, I think there was a specific question you asked her when you were interviewing her and her response was no.

A Okay. Yeah, that may have been at the end of the video. Yeah.

MS. MALONE: Objection, Your Honor.

THE COURT: Well, it's untimely, but overruled.

BY MS. TOLLEY:

Q By the way, you didn't witness any hitting or going or anything when you were there, did you?

A I did not.

Q And you weren't there, when this incident initiated; is that correct?

A That's correct.

Q So you don't know what prompted it; is that correct?

A Correct.

Q Or what happened before you got there.

A Right.

MS. TOLLEY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. TOLLEY: Okay. I don't have any other questions, Your Honor, at this time.

THE COURT: Okay. Any redirect for this witness from the State?

MS. MALONE: Yes, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. MALONE:

Q I'd just like to redirect your attention to the part of your report that you pointed out in regards to the bottle of lighter fluid. And would you mind just telling the Court, to your knowledge, exactly what -- exactly what happened with that lighter fluid as to your knowledge based on --

A Yes. In the -- well, I don't want to read exactly from the report, but -- yes, I was told that he threw a bottle of lighter fluid at her.

Q And based on all the witnesses that you spoke to in this, did any witness ever say that NK had started this argument?

A No, I don't recall being told that.

Q And how many witnesses stated that the defendant struck this victim?

A Two.

MS. MALONE: Thank you, Your Honor. No further questions from the State.

THE COURT: Okay. Any recross?

RECROSS-EXAMINATION

BY MS. TOLLEY:

Q You interviewed only two people; is that correct?

A That's correct.

Q And you didn't talk to Mr. Green, did you?

A No, I did not.

Q And you're the chief investigating officer on this case?

A That's correct.

Q And, as the chief investigating officer, you reviewed all of the videos and reports in regard to this matter?

A Leading up until today?
Q That's correct.
A Yes.
Q Was there video of the incident?
A No. There was no video of the incident, that I'm aware of.
Q Okay. It was caught with a Ring cam. It didn't show up on the Ring cam?
A I'm not sure I went over there and spoke to anybody at 27.

MS. TOLLEY: Okay, thank you.

THE COURT: All right. You can step down. Thank you, sir.

MS. MALONE: Your Honor, just -- I have brief redirect, if I am permitted.

THE COURT: Limited to the scope of the questions he was just asked?

MS. MALONE: Absolutely, Your Honor.

THE COURT: Okay. All right.

REDIRECT EXAMINATION

BY MS. MALONE:
Q You said that Desmond Green -- that you did not speak to Desmond Green.
A Correct.
Q And why was it that you didn't interview the?

defendant?

A I wasn't there. I mean, I wasn't in the house. I did try his phone number, and I was unable to get in contact with him. I did make an attempt to contact him, yes.

MS. MALONE: No further questions from the State, Your Honor.

THE COURT: Any final?

MS. TOLLEY: Your Honor, if we could approach for just a second?

THE COURT: Yes, sure. Can he step down, or you want to wait for a minute?

MS. TOLLEY: If he can wait.

THE COURT: Yeah.

(Bench conference.)

MS. TOLLEY: I may want to reserve the right to call him for further redirect.

THE COURT: Okay.

MS. TOLLEY: Is that possible?

THE COURT: Yeah, I mean, I haven't released anybody from subpoena or anything like that. I just let him know. That's fine. I think he's probably going to stick around.

MS. LEMPESIS: He'll be here the whole time.

THE COURT: All right. You can step down at this time. Thank you, sir.

THE WITNESS: You're welcome.

THE COURT: All right.

Okay. We've moved along a little faster than we initially thought. Does the State want to call it's next witness?

MS. LEMPESIS: Your Honor, can we approach again?

THE COURT: I should have asked while you were already up here.

(Bench conference.)

MS. LEMPESIS: At this point, it's just the stipulation into the record and then we would rest.

THE COURT: Okay.

MS. LEMPESIS: So I haven't written the stipulation yet, so --

THE COURT: That's fine. We still have to come back tomorrow anyway. I'm fine to just rest for the day and come back.

MS. LEMPESIS: Okay, perfect.

THE COURT: I'll have probably come in at 10:00. Is that okay?

MS. LEMPESIS: Yes.

MS. TOLLEY: Yes, Your Honor.

THE COURT: Great, thanks.

Ladies and gentlemen, once again I got some things I need to take up with these lawyers. We have moved along a little quicker than anticipated today. But, regardless, we'd still have to come back tomorrow morning so it's really not going to throw us off to release you a little bit early today. It's almost 4:00, and, hopefully, you-all can get a jump on some of the rain and all this afternoon. We'll let you go for the day. I'm going to ask that you return tomorrow at ten o'clock. We will -- we do anticipate, of course, finishing this trial tomorrow, so just, kind of, keep that in mind as you're planning your week. We appreciate your promptness today and we'll see you back tomorrow back at ten o'clock.

One final ask is that you, once again, don't discuss the case with anybody and don't do any independent research. We'll see you in the morning. Thank you very much.

(Jury exits the courtroom at 3:57 p.m.)

THE COURT: We'll be at ease until tomorrow at ten o'clock, everybody. We'll see you

then.

MS. LEMPESIS: Thank you, Your Honor.

THE COURT: I need a quick order. Thanks.

Mr. Green, it's nothing personal. I do this with all my trials all the time all around the state. I keep folks in custody during the pendency of their trial. Here's an order to that effect for the Beaufort County jail.

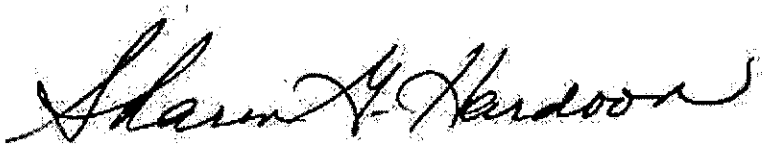
(Trial adjourned at 3:57 p.m.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

April 4, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF BEAUFORT

State of South Carolina,

vs. Transcript of Record
2019-GS-07-01270

Desmond Lamar Green,

Defendant.

January 17, 2024
Beaufort, South Carolina
Volume II of II

B E F O R E:

The HONORABLE JENNIFER B. MCCOY

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

Mary Jordan Lempesis, Assistant Solicitor
Sara Malone, Assistant Solicitor

Juan Tolley, Representing the defendant

INDEX

Certificate of Reporter	224	1

E X H I B I T S

Exhibit	Description	Page	Line
COURT EXH. 3,	Note From Jury	203	9
COURT EXH. 4,	Note From Jury	205	5

THE BAILIFF: All rise and come to order. This court is in session. The Honorable Jennifer McCoy presiding.

THE COURT: Please Be seated.

Good morning, you-all. You ready to proceed? State ready?

MS. LEMPESIS: Yes, Your Honor.

MS. TOLLEY: We do have a question about the stipulation.

THE COURT: All right. I don't have it. I mean, I understand it was emailed to my office last night. Do you have a paper copy or something I can look at? That would great.

MS. LEMPESIS: I can hand up a paper copy that I emailed.

THE COURT: Okay. Let me look at it and see. I know, I think, what the defense's objection is going to be. Go ahead, Miss Tolley. Happy to hear from you.

MS. TOLLEY: Thank you, Your Honor. We would, at this time, renew our motion to bifurcate. We think this stipulation supports our request that the trial should be bifurcated in that what it says sort of indicates that things are worse than they are, particularly the part

that says that -- the third offense within 10 years, which makes it seems like he's had, you know, many convictions and more than the two that they were going to introduce into the record to begin with. Yeah, I don't know how there would be any way to overcome this. It's going to be so prejudicial that there's not going to be any way that the jury is going to be able to distinguish.

I know that one of the things that we talked about yesterday was the fact that one of the domestic violence was a 30-day offense and not a big deal. But when the jury hears that he has two domestic violence charges, they're not going to be able to distinguish whether it's a 30-day offense or whether it's a 10-year offense or -- they don't actually know --

THE COURT: I don't think it matters for the purposes of the statute, my reading of it.

But let me hear from the State.

MS. MALONE: Your Honor, the State would argue that the prior convictions are necessary to prove under the statute as a material element of this offense. The State is happy to read them off as purely domestic -- as a prior charge of domestic violence and then the indictment numbers.

THE COURT: Yeah, you just need to take out the comma, first offense, comma, on that first one. On that other one, comma, third offense within 10 years, comma. Those don't need to be in the stipulation. You don't need it for --

MS. MALONE: I have no objection to that.

THE COURT: -- your elements that you're required to prove in this case. It's just two prior offenses for domestic violence.

All right. If we can make that amendment.

MS. MALONE: The State would renew all the State arguments that it made prior regarding an objection to bifurcating the trial.

THE COURT: Okay.

MS. MALONE: I know you probably wouldn't like me to repeat all of them, but ...

THE COURT: Well, I've already ruled on that. We're not bifurcating the trial. She's just reraising her objections sort of in conjunction with this stipulation language, I think.

Okay.

MS. MALONE: Thank you, Your HOnor.

THE COURT: If you-all can just change this stipulation to take out that comma, first offense, comma part, and then also the comma, third offense within 10 years, comma part, that would be good.

MS. LEMPESIS: I've changed it, Your Honor.

Donna, do you mind if I just email it to you to print?

THE CLERK: Absolutely.

MS. MALONE: Your Honor, would you prefer if the State read the stipulation into the record?

THE COURT: Yeah, I'll let you do that. I'm happy for you to.

MS. MALONE: Thank you.

THE COURT: Anything else before we bring the jury back in?

MS. MALONE: Nothing from the State, Your Honor. Just so that you're aware, the State would like to recall Corporal Ireland just for a short few questions to authenticate and introduce the written statement into the record. I'm sorry. The victim's written statement into the record.

THE COURT: Okay.

MS. TOLLEY: I don't know if she can do that.

THE COURT: What is your position on that?

MS. TOLLEY: Our position is that the witness already testified, and that if she wanted to introduce the witness's statement into the record, the appropriate time to have done that would have been when the witness was on the stand to begin with. So that would be our position. Also, to recall him about something that --

THE COURT: He could have done it -- in other words -- let's see. When did she -- he testified after her anyway, didn't he?

MS. MALONE: He did, Your Honor.

THE COURT: Why didn't you just do it then?

MS. TOLLEY: Plus, it would be bringing up something new that wasn't on cross-exam that -- she would going into something different at this time.

MS. MALONE: But, Your Honor, I know that yesterday there was a little bit of confusion about the procedure for the witness's prior inconsistent statement and introducing that extrinsic evidence. So I apologize for not --

THE COURT: You read it into the record.

There wasn't any confusion on my end. The way you phrased your question was, you asked her, *Do you remember making a statement?* And she said, *No.* If you would have just asked her, did you make a statement, and she said, no, then it's a field day. You do whatever you want. You still published her statement in the record. So what is it that you're trying to the get in? The written document now?

MS. MALONE: Yes. And under --

THE COURT: But why didn't you do that yesterday when he testified right after her anyway? Why didn't you do it at that time when the witness was on the stand? Did you forget?

MS. MALONE: I apologize for not having introduced it yesterday. It was an inadvertent mistake. And based on --

THE COURT: Okay. I'm sorry. I appreciate it. But for that inadvertent mistake, I can't let you recall a witness. You should have done it when he was on the stand yesterday. In other words, it's not -- you're not rebutting anything that they've done. So, in other words, there is no necessity out of, you know, you didn't know, or you couldn't have known. You see what

I'm saying?

MS. MALONE: Under 613(b), the reading of the statement was part of the requirement that we advise the witness of the substance of her statement.

THE COURT: Right.

MS. MALONE: And then under --

THE COURT: Which you did.

MS. MALONE: -- *State vs. Barnes*, the procedure for admitting that extrinsic evidence, the proper person to actually authenticate that would have been Investigator Ireland.

THE COURT: Right. But you didn't do it when he was on the stand.

MS. MALONE: Correct, I didn't. And I'm not trying to argue with Your Honor about that at all. I understand. After the slight confusion with not understanding the --

THE COURT: It's okay. I mean, I understand. I'm not frustrated with you. I'm trying to explain to you that, no, you can't recall him again just because you forgot to put in a statement, unless there's something that I'm not aware of.

MS. MALONE: I understand it's in the

discretion of the Court. I would just ask Your Honor to be able to recall him and authenticate just so that that written statement is introduced as a piece of evidence. I'm not planning on publishing to the jury today, or anything like that.

THE COURT: But you did publish it.

I guess -- there's a disconnect. You seem to be concerned that, like, it's not in. You read it in the record. Like, they heard it. You can argue that in closing all day long. You can reread it if you want to to them in closing. You've already published it to the jury. So I don't think you're prejudiced by a result of me not exercising discretion to let you recall somebody. You see what I'm saying?

MS. MALONE: Yes, Your Honor. I think just to be able to have it -- at the moment, it's been read into the testimony. However, that actual written document itself has not been introduced into evidence.

THE COURT: Right.

MS. MALONE: And so in order to be able to have introduced into evidence is why I would ask him to testify just briefly.

THE COURT: All right. Miss Tolley, anything else you want to say?

MS. TOLLEY: We would just say no, and ask that the Court not allow that to happen.

THE COURT: Okay. You know, I'm not trying to be difficult. It's just that's a highly unusual procedure. Okay? So I'm just not inclined -- I don't find that it's going to prejudice you. Like I said, you read it into the record. You know, you can still argue it in closing all you want. I have no problem with that. It's been published. I know you wanted the actual piece of paper in, but unfortunately the witness has already been off the stand. You already called him. He's already closed out that part of his testimony. So I don't think this is a reason to allow you to recall him out of order and get that in when it really is already in.

All right.

MS. MALONE: Thank you.

THE COURT: Sure, no problem.

What else? We'll bring the jury in and we'll read the stipulation on the record.

Does the State have any other witnesses?

MS. MALONE: The State does not have any

further witnesses, Your Honor.

THE COURT: Okay.

All right. Well, let's bring the jury in.

MS. LEMPESIS: Can we wait for --

THE COURT: I'm sorry. We are waiting for something to be printed. It's my fault.

MS. LEMPESIS: Your Honor, Miss Tolley is now saying she doesn't want the last sentence included. "This stipulation means that both parties have agreed that these prior convictions will be items of evidence," and, I guess, "And will be made valuable to you, the jury, during your deliberations."

THE COURT: That's just the definition of what a stipulation is.

I'm happy to hear from you, Miss Tolley. You can make your own objection.

MS. TOLLEY: Yes, that would be our objection. But we would defer to whatever the Court decides.

THE COURT: I think it's fine. I think it helps to explain what a stipulation is to the jury. Otherwise, they don't know that type of legal jargon. Let's leave it in there. It's

appropriate.

MS. LEMPESIS: Your Honor, I'll just hand it up for your final review before Miss Malone reads it.

THE COURT: Thank you. That's fine.

All right. So we're ready for the jury to come in now. Thank you so much.

MS. LEMPESIS: Judge, one other thing about the stipulation. Do we need to mark it as an item of evidence?

THE COURT: We will. At the time you admit it, we'll mark it as the next State's whatever.

MS. LEMPESIS: Yes, Your Honor.

THE BAILIFF: Jury is entering the courtroom, Your Honor.

(Jury enters the courtroom at 10:35 a.m.)

THE COURT: Good morning. Thank you for being so prompt. I think we are ready to proceed. Everybody can be seated at this time.

The State may call its next witness.

MS. MALONE: Your Honor, at this time, the State has no more witnesses, but the State does have the stipulations regarding the defendant's prior convictions.

THE COURT: Okay. I'm happy for you to read that into the record at this time clearly for the jury.

MS. MALONE: Thank you, Your Honor.

The defense and the State have stipulated for the admission of the defendant's prior convictions of domestic violence. The defendant, Desmond Green, was convicted on June 19, 2014, of criminal domestic violence in *State v. Desmond Green*, indictment number 2013-GS-07-01208, the defendant, Desmond Green, was convicted on March 25th of 2015 of criminal domestic violence in *State v. Desmond Green*, indictment number 2014-GS-07-02009.

This stipulation means that both parties have agreed that these prior convictions will be items of evidence and will be made available to you, the jury, during deliberations.

THE COURT: Okay. Thank you very much. We'll mark those the next State's Exhibit, which will be what?

MS. MALONE: State's Exhibit 10.

THE COURT: Thank you so much. Witnesses or anything else from the State at this time?

MS. MALONE: Nothing further from the

State, Your Honor. The State rests.

THE COURT: Thank you so much.

All right. Ladies and gentlemen, as silly as it seems, the State has now rested. It is necessary for me to excuse you from the courtroom and handle a couple of things with these attorneys. We'll bring you right back here very shortly. Thank you so much.

(Jury exits the courtroom 10:40 a.m.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: Great.

All right. Miss Tolley, have you discussed with your client whether or not he wishes to testify during his trial?

MS. TOLLEY: I have Your Honor.

THE COURT: Okay. Is he ready for me to go ahead and, sort of, advise him of his constitutional right in that regard at this time?

MS. TOLLEY: Yes, ma'am. Do we make motions?

THE COURT: We will. We will. I just wanted to give him that opportunity. Before we get into that, I wanted to make sure you had an opportunity to talk to him.

MS. TOLLEY: Okay.

THE COURT: But, yes, we'll go ahead and entertain motions at this stage of the trial. I'm happy to entertain any motions from the State or the defense at this time now that the State has rested.

Any from the State?

MS. MALONE: No further motions from the State, Your Honor.

THE COURT: Okay. Any motions from the defense at this time?

MS. TOLLEY: Your Honor, we would just make a motion for directed verdict at this time. We believe that the State has not met its burden. The evidence viewed in the light most favorable to the State does not warrant moving forward.

The elements of the case require that there be some sort of physical harm or injury to the person's own household, and I don't believe that that's been established in this particular case, or that the offer or attempt to cause physical harm or injury to a person's own household member or the apparent present ability under circumstances reasonably creating fear of imminent peril have been met in this case.

There was no testimony from Miss Doe that there was no injury, EMS was not called, and that she did not go the doctor. You heard from Officer Ireland that there was no fear.

And in order to convict someone of this particular charge, you have to have those elements, and we believe that they are missing in this case.

At this time, we would also renew all of our previous motions. Those with regard to -- all of them, but the ones regarding the 911 call, the admission of it, as being hearsay and/or testimonial, and all other objections thereafter.

THE COURT: Okay. All your objections are timely moved for purposes of the record. You know where I stand on those, but happy to hear from the State in response to their motion for directed verdict.

MS. MALONE: Yes, Your Honor.

The State would argue that the rules for directed verdict state that the case must be submitted to the jury if there is any substantial evidence that reasonably tends to prove the guilt of the accused, or from which he may be fairly deduced -- or his guilt may be fairly and

logically deduced.

For domestic violence the statute reads that the State must prove that the defendant either caused physical harm or injury to a person's own household member or offered or attempted to cause physical harm or injury to a person's own household member with the apparent present ability under circumstances reasonably creating a fear of imminent peril, and elevating it to first degree that he has two or more prior conviction of domestic violence within the past 10 years.

The State would argue that here we have submitted evidence from witnesses that the defendant struck the victim in the head multiple times, that the defendant threw gasoline or threw a box of lighter fluid at the victim. The two prior convictions have been stipulated to. Whether or not NK [redacted] testified that she feared for her life or not, it's still reasonably creating a fear of imminent peril, and we have testify that a five-year-old daughter ran across the street begging for help, that a 911 call was made, that he was attacking her. There is more than sufficient evidence to prove that the

defendant committed domestic violence in this case.

We argue against the directed verdict.

THE COURT: Okay. Anything else at this time?

MS. TOLLEY: Nothing, Your Honor. Thank you.

THE COURT: Okay. Well, obviously, I think the greatest testimony thus far is to the injuries. The sister, Miss Doe, clearly testified under oath that he started punching her in the back of the head, so I think that's certainly sufficient evidence to render a question of fact for the jury at this point, whether or not they find that to be credible or not.

So, we will respectfully deny your motion for directed verdict and move into, once again, whether or not your client would like to testify. Do you want to take a few more minutes to talk to him and then I'll read him his rights?

MS. TOLLEY: We're good, Judge.

THE COURT: Okay.

All right. Well, Mr. Green, if you can, if you're able to stand up, please do so at this time. I'm going to ask that you raise your right

hand for me. Do you swear or affirm that the answers you give will be the truth, so help you God, just to me?

THE WITNESS: Yes.

THE COURT: You can put your hand down. Mr. Green, at this time, I'm going to explain to you certain rights that you have. Okay? If you don't understand anything I say, I want you to stop me immediately and tell me so. Can you do that for me?

MR. GREEN: Yes.

THE COURT: Okay. We now reached the stage in the trial where you may present your defense. You have the right to claim the protections given to you by the 5th Amendment of our United States Constitution and that says in part that, *No person shall be compelled in any criminal case to be a witness against himself.* This means that you cannot be required to testify in this case. You have a right to testify on your behalf. However, no one can make you testify. You understand that?

MR. GREEN: Yes, ma'am.

THE COURT: Okay. This is a personal right and no one can give that right up except for

you. Okay?

MR. GREEN: Yes, ma'am.

THE COURT: If you decide to testify, you would be subject to the same rules that have governed every other witness on that witness stand, and you would be examined and cross-examined by the State on any relevant issues in this case. In addition, if you have any prior convictions involving dishonesty or false statement or for crimes that were punishable by prison of more than a year and I determine that the probative value of admitting that would outweigh any prejudicial effect to you, the solicitor would be able to introduce your record to attack your credibility. Do you understand that?

MR. GREEN: Yes, ma'am.

THE COURT: If you decided to testify, this decision on your part must be freely, voluntarily, and intelligently made with the knowledge of these protections given to you by the 5h Amendment.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration

whatsoever, and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. I'm going to let you talk to Miss Tolley a little bit more, any family or friends, if you want to, or anybody else, but the final decision is going to be left entirely up to you.

Do you understand that?

MR. GREEN: Yes, ma'am.

THE COURT: Do you understand everything I've explained to you so far?

MR. GREEN: Yes, ma'am.

THE COURT: Do you have any questions about what I've just explained to you?

MR. GREEN: No, ma'am.

THE COURT: Have you been able to discuss with your lawyers whether or not you should testify?

MR. GREEN: Yes, ma'am.

THE COURT: Okay. Do you need to talk to them any more at this time?

MR. GREEN: No.

THE COURT: Do you want to testify?

MR. GREEN: No, ma'am.

THE COURT: Okay.

Anything else, Miss Tolley, you need the Court to do with regards to his rights?

MS. TOLLEY: Nothing, Your Honor.

THE COURT: Okay, thank you so much.

You can have a seat now, Mr. Green. Thank you so much.

MR. GREEN: Yes, ma'am.

THE COURT: Miss Tolley, do you have any witnesses that you wish to call in addition to those that have already been called from the State or any you wanted to recall? You mentioned one yesterday that was a possibility.

MS. TOLLEY: No, Your Honor. The defense would rest.

THE COURT: Okay. Well, I'll bring the jury in, I'll let you do that, and then we'll excuse them one more time, and then we'll move straight into closings.

All right. You can bring them in. Thank you so much.

THE BAILIFF: Jury is entering the courtroom, Your Honor.

(Jury enters the courtroom at 10:48 a.m.)

THE COURT: Please be seated.

The State rested, ladies and gentlemen,

and now I'm going to ask the defense if there are any witnesses they would like to call in addition to those that have already been called.

Anything from the defense, Miss Tolley?

MS. TOLLEY: None from the defense.

THE COURT: In that case, does the defense rest?

MS. TOLLEY: The defense rests.

THE COURT: Ladies and gentlemen, I'm going to excuse you one more time even quicker than the last break. I have one more thing I need to take up with these attorneys and we'll bring you back in. At that time, we'll begin the end of the trial which will be the closing arguments and the charge on the law. Okay, thank you so much. I will tell you, that will take a little while so now is a good time, if you think you need use the restroom in the next hour or so, you might want to take this opportunity to do that now. Thank you.

(Jury exits the courtroom at 10:49 a.m.)

THE BAILIFF: Jury is clear.

Your Honor, may I approach?

THE COURT: Of course.

(Off the record.)

THE COURT: Okay. So I'm going to ask,

what's the best way for me to print the verdict form? Oh, you're going to do it.

All right. Any specific requests? I think it's a petty basic jury charge. Really, just one -- the alleged -- the only -- you know, in the domestic violence first degree, just to make it clear, I think our case law supports I'm only reading that aggravating factor that applies, really, to this case. In other words, I'm not going to confuse the jury with all the possible aggravating factors. I'm only going to read the one that includes, you know, the prior offenses for domestic violence. It reads, quote, "As it relates to the current charge," comma, "the State must also prove that the defendant has two or more prior convictions of domestic violence within 10 years of the current offense."

So that's how we're reading it. Okay? Any other specific ones that you think you would like charged?

MS. TOLLEY: I guess per her cross, the instruction about the fact that there was a -- there's a stipulation with regard to the prior record, that doesn't mean he committed this particular crime. Is there an instruction with

regard to that?

THE COURT: There might be. Let me see.

MS. MALONE: The State has no objection to limiting the instruction.

THE COURT: Yeah, okay. I'm just going through it. Bear with me one moment.

There's a charge that reads -- I do have a charge on that. It's similar to the one we use for, like, Lyle evidence, and basically it reads as this: "You have heard evidence that the defendant was convicted of a crime or crimes other than the one for which the defendant is now on trial. This evidence, if you conclude it as true, may only be considered by you on the question of prior record and for no other reason and no other purpose. You may give this evidence the weight and value, if any, that you find it should have on the sole issue of prior convictions. You must not consider evidence of the commission of another offense as proof of the defendant's guilt of the charge we are trying today." That's how it reads.

Is that sufficient for you, Miss Tolley?

MS. TOLLEY: Yes, Your Honor.

THE COURT: Okay. Any other specific requests? Obviously, I'm charging that they

cannot even consider the fact that he did not testify, and I'll charge them that may not even discuss it in the jury room.

And then my beyond a reasonable doubt reads: "A reasonable doubt is a doubt that make an honest, sincere, and conscientious juror hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt. There are very few things in this world that we know with absolute certainty. In a criminal trial, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. That's how that reads. Pretty straightforward.

Anything else before we bring the jury back in? I'll let you-all take a five-minute restroom break. We will take a break and you-all can come back.

MS. TOLLEY: Yes, Your Honor.

MS. MALONE: Thank you, Your Honor.

(A break was taken from 10:56 a.m. to 11:13 a.m.)

THE COURT: Are you-all ready to go?

MS. MALONE: The State is ready, Judge.

MS. TOLLEY: The defense is ready.

THE COURT: State will close first, followed by the defense, and then I will charge.

THE BAILIFF: Jury panel is entering the courtroom, Your Honor.

THE COURT: Okay.

(Jury enters the courtroom 11:13 a.m.)

THE COURT: Thank you-all so much. Please have a seat.

The parties have now presented their case, ladies and gentlemen of the jury, and it's now going to be time for these attorneys to make their closing arguments to you. These arguments of the attorneys are not evidence in the case, as they are meant to help you understand the evidence and apply the law to the evidence. But I want you to make sure that the remarks of the attorneys themselves is not evidence in the case.

All right. With that, I will turn it over to the attorneys and when they are finished, I'll give you the law that applies to the case and

you will retire to reach a verdict.

Happy to hear from you. The State will go first.

MS. MALONE: Thank you, Your Honor.

CLOSING ARGUMENT

MS. MALONE: Welcome back. Here is what we know in this case. We know that on June 23rd of 2019, a 911 call was placed by Cheleen Doe. We heard this call unfold in that call. We heard Cheleen tell 911 that her sister needed help. And then we heard when she saw her sister run into her own yard. And then shortly after that, we heard, when she told 911 that she saw the defendant, Desmond Green, strike her sister in the back of the head.

And then we heard from Cheleen Doe who stood up here yesterday and testified that she was on the phone with 911 when she told them that she saw her sister being chased by the defendant and that she saw him strike her in the back of the head. That she saw this and relayed it to 911 as it was happening.

We know that shortly after that call, 911 responded to the scene at [redacted] Circle. And that when Corporal Ireland arrived, that he saw

NK [redacted] and Desmond Green in the front yard of [redacted] Circle. And that, almost immediately after he arrived, the defendant left the scene.

We know that one of the first things he noticed about NK [redacted] was the odor of lighter fluid and her shirt that appeared to be soaked. And we saw those photos here on the screen yesterday of NK [redacted] that faint dark pattern from the middle of her back and all the way up. And we heard the officer testify that she couldn't stop itching because it was uncomfortable on her.

Now, we know that Miss NK [redacted] provided a statement to law enforcement on that day. And we know that, while she couldn't remember precisely what happened -- and that Desmond Green is the father of her five children. And it's clear, she did not want to testify, as she told defense, against that man.

However on that day, she did provide a statement immediately after it happened while it was still fresh in her mind. And we know that she told law enforcement in that statement, We were fussing and then he started pushing me and choking

me. I told my daughter Niasia to run next door to get my dad, then I finally got up and ran outside. Then he threw lighter fluid on me and started hitting me on my shoulder. He sat out there until he saw the police, and then he walked to the door and said, 'If they want me, they're going to have to catch me.' And soon after that, he left."

Defense made a point to mention that law enforcement never spoke to Desmond Green that day. That's because he wasn't there. He knew the police were there, but he left as soon as they arrived.

And, yes, when Desmond Green sat down here yesterday at the start of this trial, he was entitled to the benefit of the doubt. But as this case has moved forward, and as the truth has come out, it is clear we have presented our case beyond a reasonable doubt. It has been removed.

Domestic violence doesn't require that the victim end up in the hospital or that EMS was called out or that she had to go to the doctor, or that she had brutal injuries. The judge is going to instruct you on the law. And, in South Carolina, domestic violence requires that we prove that an assault happened by a person who is a

member of that person's household, and she'll clarify when she reads the law exactly what that means.

But Desmond Green the father of the victim's five children who lives with her at [redacted] Circle, we've heard chased her down and struck her, and that lighter fluid came at or on her.

I have proven my case beyond a reasonable doubt. And because this case is domestic violence in the first degree, it requires that we prove prior incidents that were convictions and you heard those stipulations in this record.

So when you go back to the deliberation room and review the evidence and start determining your decision in this case, I have no doubt that you will determine the defendant, Desmond Green, is guilty of domestic violence in the first degree.

Thank you.

THE COURT: All right. Miss Tolley.

MS. TOLLEY: Thank you, Your Honor. May it please the Court?

Good morning. You don't judge a man by what he has done in the past. You judge him by

what he is doing now, how things are going now. You've heard about the two prior convictions. The fact that he had two prior convictions does not mean that he committed this particular offense, that he did what they accused him of doing in this case. I don't think that the State presented enough evidence to prove that he did that in this case, and he is still entitled to the benefit of the doubt.

This is a case about family. This is a case about love. This is a case about jealousy. This is a case where families deals with ups and downs, couple goes through things, they have issues, but that does not make it domestic violence.

At the end of the day, this case is about evidence, and there is a lack of it in this case.

The only people you heard from in this case are one, the lady who talked about the 911 video, you heard from the sister of NK [redacted] you heard from NK [redacted] and you heard from Officer Ireland, and I'm going to talk about them a little bit and each of them and what they testified about.

The lady about the 911 tape, I'm not even

sure why she was here. She didn't take the 911 call. She didn't talk to Cheleen Doe who made the 911 call. She was never present on the scene. She didn't know what happened, so I'm not sure why she was here. So that's the first witness.

And then you heard from Cheleen Doe, who was the sister of the victim. And she testified that they were both throwing things, anything. She testified that she didn't know what happened before they came outside. She was the person who called the police. Of course, she's her sister, so she's going to be concerned about her sister and she's going to want to take her sister's side. She's going to do what -- she's going to, you know, want to say what she needs to say to help her sister.

You also heard from Officer Ireland. Officer Ireland testified that he didn't witness any hitting or throwing of things. We heard from Officer Ireland that NK [redacted] said that she was not fearful, that she was not afraid for her life. That's not domestic violence. In order to have domestic violence you have to have injury and you have to have fear, and I don't think we have that in this case. Officer Ireland testified that

there was no Ring camera. There's no video of this incident. There's talk about there being a Ring cam, but we never saw any video from that. He didn't talk to Desmond Green. Well, yeah, he wasn't there, but he has ways of talking to people and he could have easily reached out to him after. He didn't talk to the people that he referred to as family. The people that were coming by the house, talking, that were getting NK [redacted] upset. He said he had to calm NK [redacted] down because they were yelling things at her and she was getting worked up. And that one of those people was the girl in the pink shirt, the girl who was interested in Desmond who wanted to -- who had come to her house and wanted to fight her over Desmond. And the girl who, according to NK [redacted] said, *If she wants him, she can have him as far as I'm concerned.*

MS. MALONE: Objection, Your Honor. Facts not in evidence. There is -- that was a hearsay statement that was excluded, that was alleged to be in a video that we never saw.

THE COURT: I'm not sure that that was stricken, but she'll move on.

MS. TOLLEY: I'm pretty sure the officer

testified to that. However, it sounds like there's something else going on here. There was some jealousy going on, there's another woman involved. Another woman was walking by the house. Another woman had come by the house. That sounds like anger, jealously, and hurt to me. And when you're feeling that way, sometimes you act out in ways you don't show. You don't show yourself that reflect your best self. And then others respond to you in ways that don't reflect their best selves either. And I think that's what was happening in this case.

They were talking about this incident with the women. Things got heated and calculated, and things calmed down as quickly as they escalated. That's not domestic violence. That's people working through their issues.

MS. MALONE: Objection. This is all -- none of is --

THE COURT: Miss Malone, the jury is instructed that the arguments of the attorneys are not evidence in the case. They're just simply arguments. Thank you.

MS. MALONE: Sorry, Your Honor.

THE COURT: Okay.

MS. TOLLEY: There wasn't much investigation in this case either. The police simply relied on what was told to them by NK [redacted]. And I'm going to say this, you know, delicately, but in some cases, some instances, you know, there's an inherent bias that the woman is the victim in this case. You can tell that in this particular case by some of the questions of the 911 operator. She never asked if NK [redacted] was hitting Mr. Green. She never asked if NK [redacted] had a weapon.

The officer didn't think anything about talking to the family, including the girl in the pink shirt who was shouting things out at NK [redacted] NK [redacted] getting her all worked up. He didn't investigate. He didn't talk to any of them to see what they had to say. Clearly, the family had some opinions and possibly some that were not favorable to NK [redacted]. No one asked what was thrown at Mr. Green. No one asked if Mr. Green was injured. What about him? No one asked NK [redacted] what she did. There's an inherent bias and the process proceeds in that way once the case has begun. Once the police get involved.

You heard from NK [redacted]. She

testified, of course, that she didn't remember. The solicitor talked to you about what her statement was previously, that she told them she didn't want to prosecute this. She never wanted to go forward with this. Said they have children, he works, he helps. It sounds like this is a family matter. This is the family issue. That they worked through whatever their issues are. They worked through their ups and downs. That's what a family does. They might need some better coping skills to learn how to better resolve conflict, but that doesn't make it domestic violence.

If she doesn't want to go forward with it, why is the government so involved. There are plenty of things that the government can be involved in, but this isn't one of those matters where the government needs to be involved.

People have disagreements. People argue. People fight. That is not domestic violence. And, in this case, it's a couple working through their differences and their ups and downs.

You heard about the two prior charges and you haven't heard about any since then. Those are back in 2014 and 2015. It's been almost 10 years

since those happened. You didn't hear about any recent incidents.

At the beginning of this case, I talked to you about reasonable doubt and the benefit of the doubt, and that I would ask you at the close of this case to give him the benefit of doubt. Let's talk about some of the doubt. No injury. No fear of life. NK didn't call the police. There is a girl in a pink shirt and we don't know what her role in all of this is. There's jealousy. There's love. There's the six years they've been together since all of this. There's the children. There is no video of the incident. All of these things are doubt. No one knows what happened before they came outside. No one knows what started this. There was no testimony about that.

And the burden of presenting that is on the State. Not on us. Not on Mr. Green. He doesn't have to testify, and the judge will instruct you as to that, because the burden is on the State. Doubt, poor investigation. Doubt, inherent bias in the investigation. All of those things raise doubt.

And, at the end of the day, if there is a

reasonable doubt, and the judge will instruct you, that a verdict of not guilty would be called for in this case. We're going to ask you to give Mr. Green the benefit of the doubt.

Thank you.

THE COURT: Okay. Ladies and gentlemen of the jury, during this trial, you and I had certain duties to perform. As the trial judge, it's been my responsibility to preside over the trial of this case and I've also had the duty to rule on the admissibility of certain evidence offered during the trial. You are to consider only the evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record, and any stipulations of counsel.

I have the additional duty to charge you the law that applies to this case. As the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept it and apply the law as I now state it to you. If you already think you have an idea as to what the

law is or what it should be and it does not agree with what I now tell you the law is, you must abandon that idea because you are sworn, you have taken an oath to accept the law and apply it exactly as I now state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot comment on or make any statement to a jury about the facts in a case. Since you, the jury, are the sole judges of the facts, do not think from anything I have said during the progress of this trial that I have any opinion about the facts in this case whatsoever. I can assure you, I do not. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, the value, the weight, and the truth of the evidence presented during the trial.

When I use the word "defendant," I refer to Mr. Desmond Green. The defendant here has been accused in what we call an indictment. It's just a piece of paper upon which accusations against defendants are placed. Indictments are not evidence in the case.

Now, to this indictment, the defendant has rendered a plea of not guilty which then places upon the state the burden of proving beyond a reasonable doubt that the defendant is guilty.

In this state and in this country a person who is accused of a criminal offense is never required to come in and prove himself or herself innocent. This principle of law is called the presumption of innocence. Each of you is required under our law and by your oath to actively presume that the defendant is not guilty. The presumption of innocence is maintained at all times throughout the trial of this case. It is only removed when and if the State brings in enough evidence to persuade you beyond a reasonable doubt that the defendant is guilty.

What is reasonable doubt? A ready doubt is a doubt that makes an honest, sincere, or conscientious juror hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration

of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty.

If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

As the sole fact finders, you should have listened closely to the evidence presented. Weighing the evidence is entirely a mental process. You must weigh it using your good judgment and your common sense.

Ladies and gentlemen, cases can be presented or evidence can be presented in one of two ways: Direct evidence, or indirect evidence, which is also known as circumstantial evidence.

Direct evidence is when someone comes in and testifies to the commission of a crime that they perceive through your own senses. For example, if a witness saw someone committing a crime.

Indirect evidence or circumstantial is when someone testifies as to different events that occurred and when you link all of them together they point to the commission of a crime.

One or both methods can be used to present a case. Crimes may be proven by circumstantial evidence. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether they rely on direct evidence, circumstantial evidence, or some combination of the two.

The evidence you are to consider consists of the testimony of the witnesses who have testified, the exhibits that have been offered and received during the trial. Objections and rulings and matters that may have been excluded from the

record are not to be considered by you in any fashion. If it appears to you that I have commented about the trial during the trial or during the giving of these instructions, you must disregard that entirely. Also, the remarks of the attorneys are not evidence. Their statements and their arguments are intended to help you understand the evidence and apply the law, but you should disregard any remark, statement, or argument which is not supported by the evidence or the law as given to you by the Court.

So how do you decide of the facts of the case? You do it through the exercise of your good judgment, your common sense, your sense of logic and reasoning, and your experiences in everyday life. Every single day in your lives you judge credibility. You make decisions with regard to whether people are believable, persuasive, convincing, or not. You do the same thing as a juror.

In deciding believability, you may consider what was the manner and appearance of the witness who testified. Was she or he straightforward or hesitant in answering? Was the testimony of a witness consistent or inconsistent?

How did the witness come to know the facts that he or she testified to, or what was their ability to know these facts? Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced?

In determining the question of credibility or believability of the witnesses, you may believe one witness over several, or several witnesses over one. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You are to consider all the evidence in the case and determine what you believe to be the facts in this dispute.

I instruct you and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberation and your consideration on the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has a constitutional right to remain silent, and the

assertion of this right must not be considered by you in your deliberation. I repeat: Under your oath you are to draw no conclusion whatsoever from the fact the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The defendant is not required to come in and prove his innocence. The burden of proof remains on the State to prove beyond a reasonable doubt the defendant's guilt.

Now, I have the additional duty to charge on the law that applies to this particular case. As the presiding judge, once, again, I'm the sole judge of the law and it's your duty to apply it as I now state it to you.

The defendant is charged with first-degree domestic violence. The State must prove beyond a reasonable doubt that the defendant caused physical harm or injury to a member of the defendant's own household or that the defendant offered or attempted to cause physical harm or injury to a member of the defendant's own household with the apparent present ability to cause harm or injury under circumstances

reasonably creating a fear of imminent danger. A household member is a spouse, former spouse, a person with whom the defendant has a child in common, or a person of the opposite sex with whom the defendant is living or has lived in the past.

As it relates to the current charge, the State must also prove that the defendant has two or more prior convictions of domestic violence within 10 years of the current offense. You have heard evidence that the defendant was convicted of a crime or crimes other than the one for which the defendant is now on trial. This evidence may only be considered by you on the question of prior convictions and for no other reason and no other purpose. You may give this evidence the weight and value, if any, which you find it should have on the sole issue of prior convictions. You must not consider evidence of the commission of another offense as proof of the defendant's guilt of the current charge we are trying today.

Ladies and gentlemen, you are not supporters or promotors for the State of South Carolina or this defendant. You do not serve as jurors to reward friends or punish enemies. You have been selected by both the State and this

defendant as fair and impartial jurors. It is your duty then to determine the facts in this case giving to this defendant the benefit of every reasonable doubt. Then to the facts which you determine, you take and apply the law which has now been given to you by the Court and you arrive at a verdict. When you accomplish this and written your verdict, you will have satisfied your oath as jurors and you will have discharged your duty to this defendant and to the State. Your verdict must be a unanimous one, meaning all 12 of you must agree.

Mr. Foreman, when the jury agrees on the verdict, you will indicate by checking the line next to the verdict and signing your name as foreperson. You will then knock on the jury room door and inform the bailiff that you have reached a verdict. At that time, we will receive you back into the courtroom.

This is the verdict form which you will have back there with you. It says: "We, the jury, in the above-captioned case on charge of domestic violence in the first degree unanimously find Desmond Green," it says the foreperson will check one. They are not in any relevant order.

It's just that one simply has to come first. You either find him not guilty or guilty, and then the foreperson signs the form right there at the bottom. Okay?

Now, ladies and gentlemen, I'm now going to ask that you return to your jury room, but do not yet begin deliberating until you are told to do so by the clerk or bailiff. There are a few additional matters I must discuss with these attorneys before you begin these deliberations. Thank you so much.

(Jury exits the courtroom at 11:43 a.m.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: Any objections or exceptions to the charge as read from the State?

MS. MALONE: No objections, Your Honor.

THE COURT: Any from the defense?

MS. TOLLEY: None, Your Honor.

THE COURT: I'll let you-all review the evidence then, and we'll get that together along with the verdict form and deliver it to the jury and we'll inform them at that time to begin deliberations.

(Deliberations begin at 11:46 a.m.)

THE COURT: Well, thank you all so much. Just make sure we can get in touch with you if we need to. Maybe the clerk's office has some of you-all's numbers.

We'll be at ease. Thank you so much.

I'm just going to go and excuse the alternates right now.

(Off the record.)

(COURT EXH. 3, Note From Jury, was marked for identification.)

THE COURT: Okay. So we received a note that's been marked as Court's Exhibit 3. It said, "We need witness statements," and it's dated today and signed. There's two ways I can handle this. I can write a note back or I can bring them in. My response is going to be that you have everything that was admitted into evidence in the room with you. If you need to replay any testimony, we just need to bring them into the courtroom for that purpose.

MS. TOLLEY: We're okay with that, Judge.

THE COURT: Can I write it back? Can I reduce it to writing? Is that okay with you-all?

MS. TOLLEY: Yes.

THE COURT: And I'll let you see it before I send it back.

So, here's my response. If you-all want it see it, that's fine. Before I send it back, I'll let you look at it.

MS. TOLLEY: That's fine with the defense, Your Honor.

MS. MALONE: No objection from the State.

THE COURT: So give that to them. We'll be back at ease.

(Jury deliberations continue.)

THE COURT: Got another note. This will be marked Court's 4. It says: "What is the definitions of first-degree domestic violence?"

So I guess I'll have to bring them in for this to recharge them with that, as well as reasonable doubt again.

Any objection to that from the State?

MS. MALONE: No, Your Honor.

THE COURT: From the defense?

MS. TOLLEY: None, Your Honor.

THE COURT: Okay. I'll have to charge them the portion that dealt with, not only domestic violence, but also reasonable doubt as

well as that portion regarding elements of the crime.

Okay. You can bring the jury back. We'll mark this note as Court's 4.

(COURT EXH. 4, Note From Jury, was marked for identification.)

THE BAILIFF: Jury is entering the courtroom, Your Honor.

THE COURT: All right. Welcome back. We got a couple notes from you-all. I responded to the first note. You-all can discuss whether or not we're going to need to bring you back in to replay any testimony of witnesses. If we do need to, we would be required, and that's fine, to play it from the beginning to the end. We can't skip through and hit certain parts. It doesn't work like that, just so you know. Okay? That's fine. If you want to hear it, that's not a problem. You just need to let us know after you talk about it, if you don't remember anything.

All right. Next, on this next note it says: "What is the definitions of first-degree domestic violence." I will reread that part of the charge to you-all at this time. Okay? That's all I can do. I can't answer these questions. It

may seem a little silly to you, but all I can do is reread you what I've already told you. Okay? So I will do that at this time.

Okay. To the indictment against the defendant, the defendant has rendered a plea of not guilty which places upon the State the burden of proving beyond a reasonable doubt that the defendant is guilty. In this state and in this country, a person who is accused of a criminal offense is never required to come in and prove himself or herself innocent. This principle of law is called a presumption of innocence. Each of you is required under our law and by your oath to actively presume that the defendant is not guilty. The presumption of innocence is maintained at all times throughout the trial of this case and is only removed when and if the State brings in enough evidence to persuade you beyond a reasonable doubt that the defendant is guilty.

What is reasonable doubt? A reasonable doubt is a doubt which makes an honest, sincere, conscientious juror hesitate to act. Proof beyond a reasonable doubt is proof that leads you firmly convinced of the defendant's guilt. There are very few things in this world that we know with

absolute certainty, and, in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The defendant is charged with first-degree domestic violence. The State must prove beyond a reasonable doubt that the defendant caused physical harm or injury to a member of the defendant's own household, or that the defendant offered or attempted to cause physical harm or injury to a member of the defendant's own household with the apparent present ability to cause harm or injury under circumstances reasonably creating a fear of imminent danger. A household member is a spouse, a former spouse, a person with whom the defendant has a child in common, or a person of the opposite sex with whom the defendant is living or has lived in the past.

As it relates to the current charge, the State must also prove that the defendant has two

or more prior convictions of domestic violence within 10 years of the current offense. You have heard evidence that the defendant was convicted of a crime or crimes other than the one for which the defendant is now on trial. This evidence may only be considered by you on the question of prior convictions and for no other reason and no other purpose. You may give this evidence the weight and value, if any, which you find it should have on the soul issue of prior convictions. You must not consider evidence of the commission of another offense as proof of the defendant's guilt of the current charge we are trying today.

With that, I will release you back to your jury room. Thank you very much.

(Jury exits the courtroom at 12:17.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: Any objections to the response to question 4 -- or Exhibit 4 from the State?

MS. MALONE: No, Your Honor.

THE COURT: Okay. Any from the defense?

MS. TOLLEY: No, Your Honor.

THE COURT: Okay. We will be at ease

again then. I'll give this Court 4 back to the court reporter. Thank you.

(Deliberations continue.)

THE COURT: All right. So we got another note, Court 5. It says, "Can we listen to the 911 call." It's dated today and signed. I'll bring them back in here and let's listen to that whole witness from the beginning of the testimony all the way through the cross at the end. Okay? Unless you-all have something else you would like me to do that's different. Happy to entertain any other thoughts. They have a disk, right, too, I believe, in evidence with them, but don't have any way to play it.

MS. MALONE: We do have a disk. I have a plain disk player. They're welcome, if they'd like to just hear -- listen to the 911 call in their deliberations room.

THE COURT: Yeah, I don't know what you-all's facility has got. Is there a way to play disks in their?

THE BAILIFF: No. They don't have the technology.

THE CLERK: They usually come in here.

THE COURT: Just come back and play them?

THE CLERK: Yes.

MS. MALONE: Is it possible to have them hear just the 911 call itself?

THE COURT: Yeah. I mean, that's all they asked for. Do you have anything?

MS. TOLLEY: What else did you -- I wasn't clear on what you said.

THE COURT: It just says, "Can we listen to the 911 call?"

MS. TOLLEY: You were going to play the 911 --

THE COURT: I guess I was thinking it was in conjunction with the first witness. I was going to --

MS. TOLLEY: I would have cross-exam on that as well.

THE COURT: -- play the whole thing, but we don't have to.

MS. TOLLEY: Or the transcript as opposed to their disk. Is that what you're saying?

THE COURT: Right. Play back. Have the court reporter play back the entire thing. Or we can just send back a DVD player, or CD player, whatever.

MS. LEMPESIS: They don't really play it

in the jury room, Your Honor. We don't have a anything cleaned and scrubbed. So, if we just bring them in, we can play it rather then the whole testimony. It would be harder to hear that.

THE COURT: Oh, okay.

MS. TOLLEY: The testimony being the witness who introduced the 911 call or Cheleen Doe? I was confused about that part.

THE COURT: I was thinking the 911 dispatch custodian. But, really, that might be a step too far, to be honest. They just asked for the 911 call. So my proposal then would just be to come in here and play the 911 call. I think if we played back the play back of that, it would be extremely difficult to hear. And they're are only asking for the 911 call.

So, yeah, we can bring the jury. Are you cueing that up?

MS. LEMPESIS: I will cue it up.

THE COURT: Just for the record, that was State's Exhibit 1.

THE BAILIFF: Jury is entering the courtroom, Your Honor.

Thank you.

(Jury enters the courtroom.)

THE COURT: Welcome back in. We got your note.

Everyone have a seat, everybody.

So we'll play back the 911 call for you at this time. Are we ready to go? We'll cue that up and play that back now.

(911 call played in its entirety.)

THE COURT: Is that the conclusion?

MS. MALONE: Yes, ma'am.

THE COURT: All right. Ladies and gentlemen, we'll release you back to your jury room. Please continue with your deliberations.

(Jury exits the courtroom.)

(Deliberations continue at 12:54 p.m.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: We will be at ease until further notice.

(Verdict reached at 1:45 p.m.)

THE BAILIFF: Your Honor, we have a verdict.

THE COURT: Bring the defendant in. Bring them in.

THE BAILIFF: The jury is entering the courtroom, Your Honor.

THE COURT: Thank you.

(Jury enters the courtroom at 1:50 p.m.)

THE COURT: All right. Mr. Foreman, I understand the jury has reached a verdict; is that correct?

FOREMAN: Yes, Your Honor.

THE COURT: Pass it up to the bailiff and he will pass it over to me. Okay. The form has been filled out correctly. I'll pass it to the clerk for publication.

The defendant shall rise.

THE CLERK: All right. In the case of *State of South Carolina vs. Desmond Lamar Green,* indictment number 2019-GS-07-02170 in the charge of domestic violence first degree, the jury unanimously finds the defendant guilty.

THE COURT: All right. Mr. Foreman, is that the jury's verdict?

FOREMAN: Yes.

THE COURT: All right. Thank you very much.

Any post-verdict motions from the State before I released the jury?

MS. LEMPESIS: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MS. TOLLEY: Could we pole the jury, Your Honor?

THE COURT: Sure.

Ladies and gentlemen, we'll now conduct what's called a pole. The clerk of court will call each of you by your juror number. She will ask if this was your verdict and is it still your verdict, and you'll just answer yes or no accordingly. Okay?

Go ahead.

THE CLERK: Okay. As I call your number, I'm going to ask you the question that she had said. Just a yes or no answer.

Juror number 28, is this your verdict?

JUROR 28: Yes, ma'am.

THE CLERK: Is it still your verdict?

JUROR 28: Yes, ma'am.

THE CLERK: Juror Number 128 -- or 182, is this your verdict?

JUROR 182: Yes, it is.

THE CLERK: Is it still your verdict?

JUROR 182: Yes, it is.

THE CLERK: Juror number 257, is this your verdict?

JUROR 257: Yes.
THE CLERK: Is it still your verdict?
JUROR 257: Yes.
THE CLERK: Juror number 277, is this your verdict?
JUROR 277: Yes.
THE CLERK: Is it still your verdict?
JUROR 277: Yes.
THE CLERK: Is it still your verdict?
JUROR 277: Yes, ma'am.
THE CLERK: Juror number 22, is this your verdict?
JUROR 22: Yes, ma'am.
THE CLERK: Is it still your verdict?
JUROR 22: Yes, ma'am.
THE CLERK: Juror number 208, this your verdict?
JUROR 208: Yes.
THE CLERK: Is it still your verdict?
JUROR 208: Yes.
THE CLERK: Juror number 36, is this your verdict?
JUROR 36: Yes.
THE CLERK: Is it still your verdict?
JUROR 36: Yes.

THE CLERK: Juror number 150, is this your verdict?

JUROR 150: Yes, ma'am.

THE CLERK: Is it still your verdict?

JUROR 150: Yes.

THE CLERK: Juror number 46, is this your verdict?

JUROR 46: Yes.

THE CLERK: Is it still your verdict?

JUROR 46: Yes.

THE CLERK: Jury number 169, is this your verdict?

JUROR 169: Yes.

THE CLERK: Is it still your verdict?

JUROR 169: Yes.

THE CLERK: Juror 127, is this your verdict?

JUROR 127: Yes.

THE CLERK: Is it still your verdict?

JUROR 127: Yes.

THE CLERK: And juror number 12, is this your verdict?

THE COURT: No, ma'am. 223.

THE CLERK: Juror number 223, is this your verdict?

JUROR 223: Yes.

THE CLERK: Is it still your verdict?

JUROR 223: Yes.

THE CLERK: Thank you.

THE COURT: All right. The jury has been polled. Any further motions before I release the jury from the State or the defense?

MS. TOLLEY: Nothing, Your Honor.

THE COURT: All right.

Ladies and gentlemen, thank you for your jury service this week. I am really appreciative that you were so prompt and on time and patient with us. Like I said, it's kind of a tedious process with lots of breaks, but that's just normal in the process. I appreciate your patience with us.

You are hereby released from jury service. If you want to stay for next part of what's going to happen, which is my job in this process, I'm happy for you to stay and watch. Like I said earlier, it's a public courthouse. But, certainly, you're free to leave at this time if you choose to. Thank you very much.

You got a sentencing sheet for the defendant?

MS. LEMPESIS: We got it being brought up right now, Your Honor.

THE COURT: Okay.

(Jury excused at 1:54 p.m.)

THE BAILIFF: Jury is clear, Your Honor.

THE COURT: All right. Thank you, sir.

MS. LEMPESIS: I'll hand up the sentencing sheets, Your Honor.

THE COURT: All right. We're ready for the sentencing part of this process. Obviously, the jury reached a verdict, so here we are.

I'll hear from the State. Anything else they want to tell me, such as defendant's record, State's position on sentencing. Any position from the victim, I'm happy to hear as well.

Go ahead.

MS. MALONE: Yes, Your Honor. The defendant's prior record is a 2003 trespassing; 2005, possession of less than one gram of crack cocaine, driving under suspension, operating an uninsured vehicle and a vehicle without registration; 2008, driving under suggestion, second offense; 2009, reckless driving. In 2010, he has two separate charges for domestic violence

first offense; 2012 assault and battery in the third degree; 2014, domestic violence first degree -- I'm sorry. First offense.

THE COURT: Yeah.

MS. MALONE: 2015, domestic violence, third offense for which he received four years; a 2019, assault and battery third degree; and a 2021 position of marijuana and a violation of a city ordinance.

THE COURT: Okay.

MS. MALONE: The State's position as it comes to sentencing, the State would recommend 10 years based on the extensive prior record for domestic violence.

THE COURT: Okay. And the victim, I don't see her in here. I haven't seen her since yesterday. Have you been in contact with her?

MS. MALONE: We maintained contact. She did not wish to be today and she does not wish to make a statement.

THE COURT: Okay.

All right. Switch over to the defense. Miss Tolley, what would you like to tell me?

MS. TOLLEY: Thank you, Your Honor. May it please the Court?

We are simply asking the Court for leniency in this matter, particularly given [redacted] desire that he not be prosecuted that she testified to today -- or yesterday, given the fact that they have been in a long-term relationship, they have five children together.

Mr. Green is now 40 years old. He is from this area. He's a high school graduate. And we believe that he's worthy of some grace in this particular case.

And for that reason we're asking for the Court to not give the maximum penalty on this case. I believe there were previous discussions about an eight-year sentence suspended to four years and 18 months probation. We're asking for even possibly something less than that, Your Honor, or certainly nothing exceeding that.

THE COURT: Okay.

MS. MALONE: Your Honor, I would like to just correct for the record that the original recommendation that the defendant rejected last week on the record was eight years suspended to the service of five.

MS. TOLLEY: That's correct.

MS. MALONE: With 18 months of probation

to follow.

THE COURT: Okay.

Well, Mr. Green, you don't have to talk. I understand any reason you wouldn't after a conviction. I understand this isn't an admittance of guilt, but if there's anything else you want to tell me, I'll give you the opportunity.

MR. GREEN: No.

THE COURT: All right. Well, you know, certainly the Court doesn't look kindly on those who, sort of, beat up on the weaker sex, or weaker age, or anything like that. You've got some history with that. Your history, while repetitive, isn't the most violent. I try to keep sentence commensurate with the crimes, obviously, and the severity of the crimes and folk's prior records. You know, I understand the frustration with the State on the victim's position in these particular cases. I mean, 99 percent of the time, the victims don't want to prosecute domestic violence cases. But, nonetheless, I take that into some consideration. Obviously, I have to. I heard her yesterday. She's not even here to day, so that tells me a lot.

So the sentence today is going to be 10

years provided on the service of five years. The balance is suspended to probation for five years. A condition of your probation is going to be batterer's treatment once you are out, which I believe is required anyway under this particular law. I'm not indicating no contact with the victim. We don't have any victim to request that. The State hasn't made that request either. It's clear she's back with this gentleman. Obviously, if the State prefers to tell her if she ever needs an order of protection, she can seek that through the magistrate's court or some other family court potentially given there kinship.

Any other specific requests from the State or the defense that I haven't addressed?

MS. MALONE: Nothing from the State, Your Honor.

THE COURT: I do need to address the matter under advisement, which is the State's motion to revoke. This is the reason I held that under advisement. I'm not sure, if I granted that, they might hold him in the county jail as opposed to shipping him up the hill.

So would the State like to withdraw that at this time given the guilty verdict?

MS. LEMPESIS: Yes, we would, Your Honor.

THE COURT: All right. The motion to revoke your bond is withdrawn. The one that was filed in January of this year given the sentence.

The sentence, once again, is 10 years provided upon the service of five years. The balance is suspended to probation for five years.

MR. GREEN: Yes, Your Honor.

THE COURT: You will have to serve five. You get probation after that.

How much time did he spend on arrest, Miss Tolley?

MS. TOLLEY: Three days, Your Honor.

THE COURT: He gets credit for those three days.

Good luck to you, Mr. Green.

MS. LEMPESIS: Thank you, Your Honor.

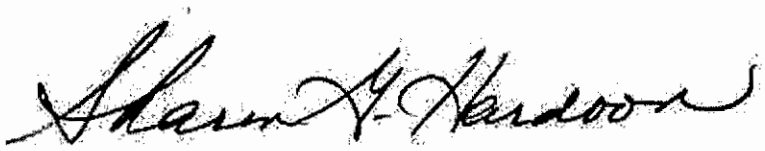
(Trial concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

April 5, 2024



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

WITNESSES

BCSO – TODA CALHOUN

ARREST WARRANT NUMBER

2019A0710400239

ACTION OF GRAND JURY

~~True Bill~~

Jan M. Asimus

Foreperson of Grand Jury

Date: DEC 19 2019

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO.: 2019GS0701270

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2019

THE STATE

vs.

DESMOND LAMAR GREEN

Indictment For

Domestic Violence - 1st Degree

SC Code: 16-25-20(A)(2), 16-25-20(B)(3)

CDR Code: 3811

RECEIVED
JAN 29 2024
SC Court of Appeals

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

Certified – A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Donna Perry

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2019GS0701270

At a Court of General Sessions, convened on December 19, 2019, the Grand Jurors of Beaufort County present upon their oath:

Domestic Violence - 1st Degree

That in Beaufort County, South Carolina, on or about June 23, 2019, the Defendant, DESMOND LAMAR GREEN, did cause physical harm or injury to [redacted] a household member of DESMOND LAMAR GREEN or offer or attempt to cause physical harm or injury to [redacted] a household member of DESMOND LAMAR GREEN, with apparent present ability under circumstances which reasonably created fear of imminent peril, and DESMOND LAMAR GREEN had two or more prior convictions of domestic violence within ten years of the current offense, to wit: Criminal Domestic Violence, June 19, 2014 in General Sessions, Beaufort County, of 16-25-20, in 2013GS0701208 and Criminal Domestic Violence, 3rd offense within ten years, March 25, 2014 in General Sessions, Beaufort County, of 16-25-20, in 2014GS0702009, all in violation of Section 16-25-20(A)(2), 16-25-20(B)(3), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

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Feb 24 2025
SC Court of Appeals

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of February, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND LAMAR GREEN,

APPELLANT

APPELLATE CASE NO. 2024-000119

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of February, 2025.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT