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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICO ANTONIO FUNDERBURK,

APPELLANT

APPELLATE CASE NO. 2024-000172

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VOLUME II OF II

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT 9 (BODY CAMERA), STATE’S EXHIBITS 54-56
(PHOTOGRAPHS), STATE’S EXHIBIT 57A-P (CELLPHONE VIDEOS), STATE’S
EXHIBITS 59-60 (TEXT MESSAGES), STATE’S EXHIBITS 72-99 (PHOTOGRAPHS)]**

1 pictures was taken on my cell phone by Ms. KS whenever she
2 was trying to apply for a loan on linley.com.

3 Q: Okay. Let's have state's Exhibit 54. Did KS still
4 take this picture too?

5 A: No, ma'am. That photograph was taken by me.

6 Q: And why'd you take that picture?

7 A: Because she said that she wanted to see where exactly she
8 had marks on her body.

9 Q: So you accommodated that request; is that correct?

10 A: Yes, ma'am.

11 Q: So you didn't take that picture to humiliate her?

12 A: No, ma'am.

13 Q: And it looks like she's wearing makeup in that picture.
14 Did you put makeup on her?

15 A: I did not. But she is, I do believe wearing makeup.

16 Q: So even though -- so she put makeup on and then asked you
17 to take a picture, so she could see how her body was marked,
18 is that correct?

19 A: Yes, ma'am.

20 Q: Okay. So she covered up the marks before she asked you
21 to do that; is that correct?

22 A: No. The marks were covered that morning.

23 Q: Okay.

24 A: Prior to checking into the hotel.

25 Q: Okay. Can we see State's Exhibit 55 please? Okay. Is

1 this a picture that you took?

2 A: Yes, ma'am, it is.

3 Q: Why'd you take this picture?

4 A: Per her request.

5 Q: She requested that you take this picture; is that
6 correct?

7 A: Yes, ma'am.

8 Q: Why?

9 A: Because we were in the vehicle and she was explaining her
10 injury and she said she wanted to see it, and we were actually
11 sitting, I think she was on the passenger side. I could be
12 wrong. She was on the passenger side and I was sitting -- on
13 the driver's side, but I could be mistaken. And she said that
14 she wanted me to take a picture to see what it looked like.

15 **MS. WALLER:** Okay. Court's indulgence, Your Honor.

16 **BY MS. WALLER:**

17 Q: Okay. We've talked a lot about drugs and getting
18 drugged; is that correct?

19 A: Yes, ma'am. We have.

20 Q: And it -- it looks to me as if -- and I think a lot of
21 people -- you documented a lot of your relationship with
22 KS, short as it was, through photographs and
23 videos; is that correct?

24 A: Yes, ma'am. But not necessarily to document it. It's
25 just like, for example, those two pictures that you just

1 showed me weren't for my safekeeping.

2 Q: I don't think I used the word safekeeping, did I?

3 A: No. You said documented, and I kind of throw that in the
4 same category. I apologize if I'm wrong for that.

5 Q: It's just not my word. I just meant that you documented
6 what was happening.

7 A: Oh, well, like I said, excuse me. I do apologize. My
8 mistake.

9 Q: In all these videos and all these photos that you took,
10 that are on your phone --

11 A: Yes, ma'am.

12 Q: There's nothing on there showing any kind of drugs of any
13 sort, ever. Why is that?

14 A: I can't tell you exactly why there's no -- because the
15 purpose of the videos was to have proof of her admitting out
16 of her mouth what she did.

17 Q: Okay.

18 A: Which the State overlooked.

19 Q: So you thought that videos of her saying she gave you
20 drugs were more valuable than pictures of the actual drugs she
21 gave you. Is that correct?

22 A: It's kind of hard to take a video of somebody slipping
23 you drugs. That's the point in them slipping you drugs.

24 Q: Oh, I don't mean take a video of it occurring. I mean
25 take a video of the drugs that you say you found. Did you do

1 that?

2 A: No, ma'am. It wasn't a situation where I could just flip
3 out my phone and say, oh, I found this. Or just like the --
4 the Wendy's situation, whenever she had it all over and when I
5 questioned her about it, she's in the process of scaring it
6 off, getting it off of her clothing.

7 Q: If she was with you 24/7 as you say, then when would she
8 get these drugs?

9 A: At one period of time. And she would sneak out during
10 the middle of the night. And when she did accumulate a large
11 sum, which she told me that she did commit sexual favors to
12 accumulate those drugs, that I guess she would kind of hold
13 them and do her own little thing, do little small increments
14 at a time like she admitted in the video.

15 Q: So you're saying that she was committing sex acts to get
16 these drugs now?

17 A: I'm not saying that. Well, I am saying that, but I'm
18 saying that's what she told me. I'm not saying that's what I
19 seen her do. I did see her leave out of the hotel room. I
20 did catch her slipping out on multiple occasions. I did catch
21 her staying up multiple nights in the road.

22 Q: You said you caught her slipping out of the hotel room,
23 right?

24 A: Yes, ma'am.

25 Q: If she's free to leave, why does she have to slip out of

1 the hotel room?

2 A: Well, whenever you're going downstairs -- excuse my
3 language. I hope the Court forgives me. Whenever you're
4 sneaking -- well, when you're in a relationship or supposed to
5 be in a relationship or a casual friendship or whatever it's
6 called, I don't really think you want your partner knowing
7 that you're going downstairs to perform oral sex to accumulate
8 drugs. I think that's kind of something you keep private.

9 Q: Okay.

10 A: Wouldn't you say so?

11 Q: I think I'm asking the questions here, not the other way
12 around.

13 A: Oh, well, I apologize. This is my first rodeo. I've
14 never done this before.

15 **MS. WALLER:** Court's indulgence, Your Honor.

16 **THE COURT:** All right.

17 **BY MS. WALLER:**

18 Q: You said that -- you talked a lot about being given drugs
19 today, haven't you?

20 A: Yes, ma'am.

21 Q: You also said that **KS** became -- and I wrote this down
22 because it struck me -- dominant, aggressive, and mean.

23 A: Yes, ma'am. That's correct.

24 Q: Is that what caused you to hit her when she became
25 dominant, aggressive and mean?

1 A: No, ma'am. Actually it's not.

2 MS. WALLER: No further questions, your Honor?

3 THE COURT: Redirect?

4 MR. HILLER: Nothing further, Your Honor.

5 THE COURT: All right. You may step down. Defense can
6 call you next witness.

7 MR. HILLER: Your Honor, at this time the Defense rests.

8 THE COURT: All right. Anything in reply from the State?

9 MS. WALLER: No sir, Your Honor.

10 THE COURT: All right.

11 MS. WALLER: I'm sorry, Your Honor. You mean, do I have
12 another witness?

13 THE COURT: Yes.

14 MS. WALLER: I do have another witness, Your Honor, but
15 the witness will be here tomorrow morning.

16 THE COURT: Let me see the attorneys.

17 REPORTER'S NOTE: (Whereby bench conference is held).

18 THE COURT: All right. Ladies and gentlemen, the Defense
19 has rested their case, and just like the closing of the
20 State's case, now is the time of the trial where I have to
21 address some matters of law with the attorneys. Also, with it
22 being given the time of day this is going to take a while, so
23 I'm going to go ahead and excuse you for the remainder of the
24 day. I'm going to ask that you please be back at 9:15
25 tomorrow morning and we'll get started then. Again, do not

1 discuss the case even among yourselves. Don't conduct any
2 independent investigations. I hope everybody has a good
3 evening and we'll see you back at 9:15. Thank you very much.

4 **REPORTER'S NOTE:** (Jury exits the courtroom at 3:33p.m.)

5 **THE COURT:** All right. Any motions at this point in
6 time?

7 **MS. WALLER:** Nothing from the State.

8 **THE COURT:** All right.

9 **MR. HILLER:** Yes, Your Honor. At this time the Defense
10 having rested, renews the motion to ask this court to grant a
11 directed verdict, the reason stated before and also the
12 addition of Mr. Funderburk's testimony.

13 **THE COURT:** All right. I'm going to deny the motion.
14 All right. Anything else?

15 **MR. HILLER:** No, sir, Your Honor.

16 **THE COURT:** All right. They're coming in at 9:15, taking
17 the bench at 9:30. We're going to start at 9:30 tomorrow
18 morning. Okay. We -- I don't know why we've had delays. I
19 want to make sure Mr. Funderburk is here, dressed, ready to go
20 by 9 -- well, let's say 9:15. If they have to get him here at
21 8:30. I want to be able -- because we've had too much delay.
22 Tomorrow -- and with tomorrow being Friday, we've still got
23 reply, closing arguments, charges, deliberations -- I mean
24 closing arguments, charges and deliberations alone are going
25 to take -- I have to three quarters of a day. So I'll take

1 the bench at 9:30. We'll start right at 9:30. Okay? All
2 right. Anything from the State before we recess?

3 **MS. WALLER:** Your Honor, we -- at lunch we had -- just
4 before lunch we talked about the indictment issue with the
5 ABHAN and the DVHAN.

6 **THE COURT:** Right.

7 **MS. WALLER:** Mr. Martin has done some research on that
8 issue and has an argument for the court. We think we have --
9 we have at least an answer on our side. If you want to take
10 that up now we can, or if you'd prefer to take that later

11 **THE COURT:** Now, let's go ahead and get whatever we can
12 get done now. Done, done.

13 **MR. MARTIN:** Your Honor, I believe when we left off, the
14 issue before the Court that you had brought up was whether or
15 not double jeopardy would in fact attach if we were to handle
16 domestic violence in a high and aggravated nature, and assault
17 and battery of a high and aggravated nature. And both charges
18 be sent to the jury for deliberation.

19 State v. Easler, which is 327 SC 121. We're going to
20 approach and hand Your Honor a copy. It's from 1997. There's
21 a second case, State v. Warn. I'm not going to hand that one
22 up to Your Honor. It essentially -- it was overturned on
23 other grounds, but essentially is echoing what is being said
24 in Easler. In Easler, before the court was a felony DUI
25 situation where the defendant was charged and indicted for

1 felony DUI and assault and battery of a high and aggravated
2 nature. The court said that we are following the tests set
3 forth by the supreme court, which is the Blockburger analysis,
4 which as Your Honor knows, and basically what the court is --
5 what they're saying is double jeopardy clause, as Your Honor
6 knows, protects the defendant from being punished for the same
7 offense essentially.

8 And your question to us was, is essentially assault and
9 battery of a high and aggravated nature a lesser and clear
10 offense of domestic violence of a high and aggravated nature.
11 Here it is not. The test that we apply is to determine
12 whether or not these two offenses have, number one, is one
13 more serious than the other. Here they're not. They're the
14 same. They carry the same amount of time. It's not like
15 you're dealing with, you know, domestic violence first degree,
16 and then under that domestic violence second degree. These
17 two charges have separate elements. And like we put on the
18 record earlier -- and I'm going to read those elements out
19 just so it's clear as to what they are.

20 **THE COURT:** Well, I know what the elements are. Just
21 tell me what has to be proved for --

22 **MR. MARTIN:** Yes.

23 **THE COURT:** Assault and battery of a high aggravated
24 nature that is not required for domestic violence of a high
25 aggravated nature.

1 **MR. MARTIN:** The difference there, and it is extremely
2 technical with how the General Assembly wrote the statute, but
3 there is a difference. First of all, in the domestic violence
4 statute, it lists what are lesser included. It says assault
5 and battery second is a lesser included of DV second and DV
6 first. But it does not say assault and battery of a high and
7 aggravated nature is a lesser included of DVHAN.

8 Additionally, to prove DVHAN you have to show that great
9 bodily injury resulted, or the victim reasonably feared great
10 bodily injury or death. With assault and battery of high
11 aggravated nature, you have to show that great bodily injury
12 resulted, or -- here's the difference -- the act is
13 accomplished by means likely to produce great bodily injury or
14 death.

15 So if DVHAN, it's GBI occurred, or if it didn't occur,
16 could the victim have perceived under the circumstances that
17 death or serious great bodily injury could have resulted.
18 With ABHAN, it's -- did GBI occur? If it did not, did the act
19 itself, could it have resulted by the defendant's actions,
20 could great bodily injury or death have occurred? And that is
21 the major difference between the two.

22 **THE COURT:** But what's the distinction?

23 **MR. MARTIN:** That is the distinction, Your Honor. It is
24 the act versus what the victim perceived. And the case law
25 actually makes it clear if there is any difference between the

1 two charges, they are not lesser included offenses and double
2 jeopardy does not attack.

3 **THE COURT:** So you're saying that with domestic violence
4 of a high and aggravated nature, regardless of whether the act
5 could cause death or serious bodily harm, it's based
6 exclusively on the victim's perception. So if the victim
7 perceived that an eye dropper would cause death or serious
8 bodily harm, that's a violation of domestic violence?

9 **MR. MARTIN:** If the jury believes that. So again,
10 though, it's not -- it's great -- if great bodily injury
11 occurs, obviously the jury --

12 **THE COURT:** Yeah. Great bodily injury takes the equation
13 for both of them.

14 **MR. MARTIN:** Yes. So now we're dealing with the --
15 sorry.

16 **THE COURT:** Well, and the problem I'm having in this case
17 is the evidence of great bodily injury. Can that in this case
18 result in a conviction for domestic violence of a high
19 aggravated nature and a conviction of assault and battery of a
20 high aggravated nature? Can this defendant be convicted of
21 both of those crimes?

22 **MR. MARTIN:** Yes.

23 **THE COURT:** Based upon the same set of facts.

24 **MR. MARTIN:** Yes.

25 **THE COURT:** That's on trial here today.

1 **MR. MARTIN:** Yes. And double jeopardy would not attach.

2 **THE COURT:** What's the Defense's possession?

3 **MR. HILLER:** We might -- if Your Honor let us both
4 address the Court at some point. This is something that the
5 State brought up late in the game because of the concern over
6 cohabitation.

7 **THE COURT:** I know that's -- that what they said at the
8 outset. Was that they charged assault and battery of high and
9 aggravated nature simply because they feared that might be a
10 question as whether or not the victim was a household member.
11 Now, they're taking the position that's got nothing to do with
12 it. They're seeking a conviction on both charges regardless.

13 **MS. WALLER:** I'm not taking -- that's not the position
14 we're taking, Your Honor. I made that representation to the
15 Court, and that is true, but I've always said from the outset
16 that I would not have indicted assault and battery of high and
17 aggravated nature if I didn't think there -- if I thought
18 there was just one event and one injury that went for both, I
19 would've elected at that point, but I didn't. What I've said
20 is there's four different things that could be both. And the
21 choking could go to the perception.

22 **THE COURT:** Well, let me ask this. Is the State seeking
23 a conviction for domestic violence of a high aggravated nature
24 and assault and battery of a high aggravated nature?

25 **MS. WALLER:** Your Honor.

1 **THE COURT:** It's yes or no. You're wanting to convict
2 this Defendant of both of those, based upon the fact that if
3 one, the Defendant perceives serious bodily harm or death, and
4 in the other one the Defendant committed an act of serious
5 bodily harm or death.

6 **MS. WALLER:** I think the State is entitled to send both
7 of those indictments to the jury. Yes, sir.

8 **THE COURT:** So you are seeking a conviction for both of
9 them. Okay. You're seeking a conviction for both of them,
10 regardless of why they first sought the indictment. All
11 right. Now, let me hear from the defense your position on
12 that?

13 **MR. HILLER:** The injuries that the doctor testified to on
14 the stand are the same injuries for which the State would seek
15 the conviction for both DVHAN and ABHAN. I suppose they could
16 argue in close that the help, he is going to kill me. I
17 actually perceived (inaudible) ran. He said he was going to
18 take me to the other spot and kill me there. They could --
19 Presumably that's the alternative theory or the alternative, I
20 guess separate facts that would not -- that would not -- well,
21 I don't want to say that would not be ABHAN.

22 I guess that would be the difference because I think I'm
23 thinking right, and I apologize, that there would be no actual
24 injuries, so no ABHAN, but the threat plus the perception,
25 plus the great disregard for human life, whatever else the

1 State argues, I guess could get them there. But it
2 ultimately, I do think it -- if it doesn't trigger double
3 jeopardy, which I think it does, it dances right up to the
4 line and is not appropriate. It also -- I mean it has a
5 chance to confuse the jury. Could certainly see some
6 questions coming back.

7 **THE COURT:** All right. Well, I mean -- I guess I'll do
8 some research tonight and then -- so. All right. I don't
9 know what I'm going to do. I need do some research and let
10 you know.

11 **MS. WALLER:** Your Honor, we'll do some additional
12 research to one of our attorneys to say that they don't think
13 the double jeopardy attaches him to sentencing, which I think
14 was Mr. Hiller's earlier argument that the charges may merge.
15 We can do research.

16 **THE COURT:** But I mean, I think the charges do merge. I
17 mean, I think if you -- I don't think you can convict a
18 defendant of two crimes based upon one set of facts for both
19 crimes.

20 **MS. WALLER:** Well, I think what we're saying is that --
21 I'm sorry. It is -- I think what we're saying is that it is
22 one long factual scenario, but there are independent things
23 that happened during the time that could be for these
24 different crimes. The State's not saying that what happened
25 is just one crime, multiple crimes occurred over the course of

1 this

2 **THE COURT:** Well, but the State is now changing its story
3 to a certain degree. There's no doubt, I was told at the
4 outset you sought an indictment for assault and battery of a
5 high and aggravated nature, because there was a question as to
6 whether or not the victim was a household member, and you
7 basically did not know whether or not assault and battery of a
8 high and aggravated nature was a lesser included offense. So
9 therefore, you did not want it to be a do or die situation on
10 the domestic violence charge.

11 **MS. WALLER:** That's absolutely correct, Your Honor.

12 **THE COURT:** Okay.

13 **MS. WALLER:** And -- but I also will say that I wouldn't
14 have done it if I didn't also have this other argument, at
15 which I also told you at the time on Monday that each
16 independent great and bodily injury could go for a different
17 charge. And I -- and I think if you recall, I said that at
18 the same time as well. I'm trying to be as honest and
19 forthcoming with the Court as I possibly can.

20 **THE COURT:** Yeah. All right. We'll do some research.
21 We'll meet tomorrow morning. Anything from the State before
22 we recess?

23 **MS. WALLER:** No, sir, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MR. HILLER:** Your Honor, think it would be premature to -

1 - I think that the final witness would need to speak before
2 addressing any other charges. So no -- nothing else.

3 **THE COURT:** Say that again now.

4 **MR. HILLER:** So I think that before addressing any other
5 potential charges in the charging conference-type setting, I
6 think Your Honor would need to hear from the doctors. So
7 nothing else at this time.

8 **THE COURT:** Okay. All right. All right. We'll be in
9 recess until 9:30 tomorrow morning.

10 **(COURT IS IN RECESS)**

11 **THE BAILIFF:** All rise.

12 **THE COURT:** Thank you very much. Please be seated.

13 All right. Anything from the State before we bring the
14 jury in?

15 **MS. WALLER:** No, sir.

16 **THE COURT:** Anything from the Defense?

17 **MR. HILLER:** No, Your Honor.

18 **THE COURT:** All right. Let's bring the jury in.

19 **REPORTER'S NOTE:** (Jury enters courtroom at 9:34am)

20 **THE COURT:** Ladies and gentlemen, welcome back. I hope
21 everyone had a good evening. We're ready to resume the trial.
22 When we left yesterday, the Defense has rested. So now is the
23 time of the trial where the State can present a rebuttal as to
24 anything that was brought up in the Defense of this case that
25 was not addressed in their case-in-chief. All right. State

1 can call your first witness.

2 **MS. WALLER:** Your Honor, the State calls Dr. Emily
3 Gottfried.

4 **THE COURT:** All right.

5 **EMILY GOTTFRIED, HAVING BEEN DULY SWORN TESTIFIES AS**
6 **FOLLOWS:**

7 **DR. GOTTFRIED:** Okay. Dr. Emily Gottfried, G-O-T-T-F-R-
8 I-E-D.

9 **REBUTTAL EXAMINATION OF EMILY GOTTFRIED BY MS. WALLER:**

10 Q: Good morning, Dr. Gottfried.

11 A: Good morning.

12 Q: What is your profession?

13 A: I am a clinical forensic psychologist.

14 Q: Are you licensed to practice in South Carolina?

15 A: I am.

16 Q: What licenses do you hold?

17 A: I have a license -- psychology license in South Carolina
18 and the state of Georgia.

19 Q: Okay. Tell me about your educational background. What
20 schools did you attend and what degrees did you receive?

21 A: For undergrad, I went to San Diego State and I majored in
22 psychology. Then I went to New York and I did a master's in
23 psychology at Columbia University. And then I attended
24 Florida State University where I obtained a master of science
25 degree in psychology, and then a doctor philosophy or a PhD in

1 clinical psychology.

2 Q: Do you have any professional associations?

3 A: I am a member of a number of professional associations.

4 Q: Can you just give us an example of some of them?

5 A: Sure. I'm a member of the American Psychological
6 Association, and then within that association they have a lot
7 of divisions. I am a member of Division 41, which is the
8 Psychology and Law Society. I am a member of the Society for
9 Personality Assessment. I'm on the board of directors for the
10 Association for the Treatment and Prevention of Sexual Abuse.
11 I'm on the American Academy of Forensic Sciences, and a couple
12 other ones.

13 Q: Thank you. Have you ever published any articles or
14 offered any instructional materials?

15 A: Yes.

16 Q: Okay. Can you just give us an example of some of those?

17 A: Sure. I believe I have 33 or 34 peer reviewed scholarly
18 journal articles, primarily focusing on personality assessment
19 and sexual behavior. I've authored five or six books -- book
20 chapters in like textbooks or scholarly -- scholarly texts.

21 Q: Okay. And where do you currently work?

22 A: I work at the Medical University of South Carolina in
23 Charleston.

24 Q: And what's your job title there?

25 A: I am an Associate Professor of Psychiatry and Behavioral

1 Sciences. I also serve as the director of our sexual
2 behaviors clinic and lab.

3 Q: How long have you been employed at the Medical University
4 of South Carolina?

5 A: I have worked there since August of 2015.

6 Q: Okay. You have a lot of job titles. I'm going to call
7 you a forensic psychologist. Will that be okay?

8 A: Yes.

9 Q: So can you explain to the jury what does a forensic
10 psychologist do?

11 A: So forensic psychologists take their expertise and
12 knowledge in mental health, so the diagnosis, assessment, and
13 treatment of mental illness, research, personality, treatment
14 and apply it to assist judges and juries in making decisions
15 related to mental health. So a forensic psychologist might
16 evaluate somebody who has criminal charges to see if they
17 understand what happens in court and they're competent to
18 stand trial. We might assess somebody's risk for future
19 violence or future sexual violence. We do evaluations for
20 example of candidates who want to be police officers to see if
21 they're psychologically suitable and stable for the work of
22 law enforcement. So pretty much anything that then could go
23 to court or be used in court.

24 Q: Okay. And you gave us a list, and one of those is you --
25 you make determinations whether in your opinion someone is

1 criminally responsible. Is that correct?

2 A: We -- yes. We do criminal responsibility evaluations.

3 Q: Okay. And your time at MUSC, how many evaluations have
4 you performed that you just described? The criminal
5 responsibility and the other types of evaluations?

6 A: For criminal responsibility, it is over 200 people,
7 probably around 250. I've done criminal responsibility, but I
8 do a wide range of forensic evaluations in the thousands in
9 the last eight and a half years.

10 Q: Okay. And have you ever been qualified as an expert in
11 any court of law?

12 A: Yes.

13 Q: Do you know how many times?

14 A: Forty-two times in South Carolina, and five or six times
15 in Georgia.

16 **MS. WALLER:** Your Honor, at this time the State offers
17 Dr. Gottfried as an expert in the field of forensic
18 psychology.

19 **THE COURT:** All right. Any questions or challenges?

20 **MR. HILLER:** No questions, no challenges.

21 **THE COURT:** All right. I find this witness to be an
22 expert in the field of forensic psychology.

23 **MS. WALLER:** Thank you.

24 **BY MS. WALLER:**

25 Q: So let's just talk about this case. In this case, were

1 you asked to evaluate the Defendant for what we are going to
2 call criminal responsibility?

3 A: Yes.

4 Q: Okay. What's the process you use to determine or to
5 evaluate a person for criminal responsibility?

6 A: So for criminal responsibility in this type of case, we
7 will receive an order that's signed by a judge to assess that
8 person's criminal responsibility. Then we will request or
9 receive all of the discovery documents. So all of the law
10 enforcement, the incident reports, any officer worn body
11 camera footage, reported interviews that detectives might have
12 done with the Defendant, victim statements, so all of the law
13 enforcement things. And then, any mental health records,
14 treatment records that the person has. Sometimes we get
15 school records. We get records from the detention center to
16 see how that person has been functioning since they were
17 incarcerated for criminal responsibility. We also look at the
18 period of time when they were first booked into the detention
19 center, and -- and then we'll schedule an appointment for the
20 examinee to undergo an evaluation at MUSC.

21 Q: Okay. And in this trial, which party, the State or
22 Defense asked you to evaluate the defendant for criminal
23 responsibility?

24 A: So this was requested as an ex parte evaluation. What
25 that means is it was requested by the Defendant's attorney.

1 And unless they raise the issue of criminal responsibility, it
2 stays private, and it only goes to the Defense attorney.

3 Q: And are -- in this case has the Defendant raised the
4 defense of not guilty by reason of insanity due to lack of
5 criminal responsibility?

6 A: That's my understanding of why I was called.

7 Q: Okay. So you just said what the process was, what
8 specific information -- so after you review all that, are you
9 then able to offer an opinion regarding the person's criminal
10 responsibility and their capacity to conform their behavior?

11 A: Yes.

12 Q: And can you tell me what your understanding of that
13 standard is?

14 A: Sure. So kind of generally, not guilty by reason of
15 insanity is an affirmative defense. So that means that the
16 person raising that defense has to say that they did it, but
17 they are saying that they did it, because of really
18 significant symptoms of a mental illness caused them not to
19 understand right from wrong. And so in South Carolina, it is
20 that the person had a mental illness or a -- a mental disease
21 or defect that caused them not to be able to appreciate moral
22 right from moral wrong, or legal right from the legal wrong.

23 Q: Okay. And what about the -- the part of it that talks
24 about capacity to conform behavior?

25 A: So capacity to conform their behavior to the requirements

1 of the law, that would be somebody who has a mental illness
2 and they knew it was wrong, but they couldn't stop themselves
3 or control themselves.

4 Q: Okay. So turn your attention to this case. I think you
5 just said that you evaluated the Defendant Rico Funderburk for
6 criminal responsibility. What specific background information
7 did you have for this evaluation?

8 A: For background information like collateral, things that I
9 received or from him?

10 Q: So collateral things that you received and then things
11 that you received from him as well. Just what did -- what was
12 the full picture of what you looked at to -- to make your
13 opinion?

14 A: I'm just going to refer to my report if that's okay.

15 Q: Yeah. If anytime you need to refresh your recollection,
16 please refer to your report, but just don't look at it when
17 you're testifying.

18 A: Sure. So for Mr. Funderburk's case, I received and
19 reviewed records from Grand Strand Medical Center, the
20 reported victim's medical records. I had documents from this
21 court to include the indictments and the arrest warrants for
22 the charges, I had records from J Reuben Long Detention Center
23 where he was being housed at the time of my evaluation. I had
24 his criminal history report, and then I had a number of
25 documents from Horry County Police Department and that

1 included photographs of the reported victim's injuries, two
2 interviews conducted by detectives with the reported victim.

3 I had about a four-hour long video of the interview that
4 -- that detectives conducted with Mr. Funderburk. I had all
5 of their incident and case reports. I also had photographs of
6 the contents of Mr. Funderburk's wallet after he was arrested.
7 And I had a number of photographs and videos that were
8 reportedly extracted from his cell phone. So screenshots of -
9 - or photographs of text messages that he had exchanged with
10 people, as well as a large number of videos reportedly taken
11 by him on his cell phone.

12 Q: Okay. Did you also conduct an interview with the
13 defendant?

14 A: I did.

15 Q: How was that interview conducted?

16 A: That was conducted on a virtual secure HIPAA-compliant
17 telehealth platform that we started using during the pandemic.
18 So he was located at the detention center, I was at my office
19 at MUSC, and so I did that virtually.

20 Q: Okay. And what relevant information did you learn
21 regarding his background from that interview?

22 A: I collected a lot of information from him trying to get a
23 sense of him looking at his whole life history. So I know he
24 reported being raised in Pageland, South Carolina. He was the
25 youngest of 15 siblings. He was raised primarily by his

1 mother. He reported some history of his own abuse
2 victimization. I know that he reported being expelled from
3 school. Let's see what grade he was in. He was expelled from
4 school during the 12th grade. He talked about working a large
5 number of different jobs, primarily he said marketing, so like
6 timeshares and things like that. Never been married, didn't
7 have any biological children, reported some problematic
8 alcohol and substance use in his past. Some problematic
9 gambling behaviors. No real significant mental health
10 history, no family history of mental illness, and that he
11 hadn't graduated from high school, and he hadn't gotten his
12 GED.

13 Q: Did you conduct a formal mental status exam?

14 A: I did.

15 Q: And did you observe his behavior?

16 A: Yes.

17 Q: Did you find evidence that his thoughts were, and
18 responses were logical and linear?

19 A: Yes. Totally logical, linear, so we're looking for
20 somebody who might have disorganized thoughts, not able to
21 like clearly have a -- a line of speech or conversation or
22 understanding the questions, but I had no concerns about his
23 mental state at the time that I evaluated him.

24 Q: Okay. Was he aware of who he was, where he was and the
25 time and place he was in?

1 A: Yes, he was totally oriented.

2 Q: Okay. What was your opinion of his mental status at that
3 time?

4 A: Well, the things that you said. So he was totally alert,
5 oriented. He seemed to be invested in the evaluation. He was
6 cooperative, he was pretty glib. So like his answers, he --
7 he had a lot of words, but they were kind of superficial. Not
8 a lot of depth to the -- the things that he was talking about.
9 And he talked a lot; he provided a lot of information. It was
10 a pretty long interview. At certain points seemed like he was
11 kind of trying to direct the -- the topics that we were
12 talking about.

13 Q: Okay. And did the Defendant meet the diagnostic criteria
14 for any many mental health disorders?

15 A: Yes.

16 Q: Which ones?

17 A: I diagnosed Mr. Funderburk with other specified
18 personality disorder, with mixed personality features. I
19 diagnosed him with gambling disorder and then I diagnosed him
20 with three severe substance-use disorders, including alcohol-
21 use disorder, cannabis-use disorder, and cocaine -- or, I'm
22 sorry -- codeine-use disorder.

23 Q: So you just named all the disorders. Did he exhibit any
24 features of any specific personality disorder?

25 A: Yes.

1 Q: And what were they?

2 A: So I diagnosed him with other specified personnel
3 disorder with mixed personality features. So what that means
4 is he had characteristics and symptoms of several personality
5 disorders. The first one that I noted was antisocial
6 personality disorder. So that is somebody who doesn't kind of
7 conform to the laws and rules and norms of society. So if you
8 think of pro-social behavior, like helping other people, anti-
9 social is kind of the opposite. So like doing things against
10 other people. Symptoms of antisocial personality disorder
11 could include, you know, repeatedly committing acts that are
12 grounds for arrest. Some aggressiveness and irritability,
13 irresponsibility, impulsivity. So I thought that he had
14 multiple symptoms of antisocial personality disorder.

15 I also noted that he had multiple symptoms of
16 narcissistic personality disorder. So narcissistic
17 personality disorder is this pervasive pattern of like overly
18 inflated, self-worth, self-esteem grandiosity. People who
19 have this disorder sometimes are preoccupied with fantasies
20 about like unlimited success. They think that they deserve
21 like special treatments. They're arrogant, entitled. So I
22 thought that he also had a number of symptoms of that.

23 And then he pretty clearly had a number of other symptoms
24 that don't fit very neatly into the persona disorder
25 diagnoses. So he, as I mentioned, was really glib and -- and

1 superficially charming. He's grandiose. He has this need for
2 stimulation, stir -- stir up some excitement, like from this
3 to boredom. There was a lot of data suggesting that he has a
4 history of pathological lying, conning and manipulating other
5 people, a lack of remorse, a lack of guilt, some callousness,
6 a parasitic lifestyle. So relying on other people for money,
7 trying to scam things, and for behavioral controls.

8 Q: Okay. Thank you. Did you ask the Defendant any
9 questions regarding allegations of this case?

10 A: Yes.

11 Q: Did he admit to you to having physical altercations with
12 the victim?

13 A: Yes.

14 Q: And did he explain that conduct to you?

15 A: Yes.

16 Q: And how did he explain it to you?

17 A: He told me that it was the result or the product of him
18 being drugged without his knowledge.

19 Q: Okay. Do you recall which drugs he said?

20 A: He said Molly or MDMA. I believe methamphetamine. Let
21 me just look.

22 Q: Yeah, take your time.

23 A: He said Xanax, which is a benzodiazepine,
24 methamphetamine, and Molly.

25 Q: Okay. And did you assess, based on that, the potential

1 defense of not guilty by reason of insanity by reason of
2 involuntary intoxication?

3 A: Yes.

4 Q: Is the standard for the -- not guilty by reason of sanity
5 due to involuntary intoxication any different than the
6 standard you just described?

7 A: Not really. The difference is that instead of it being
8 the symptoms of like severe mental illness, because somebody
9 was involuntarily intoxicated, they didn't know right from
10 wrong.

11 Q: Okay. Did you consider any potential psychiatric
12 symptoms or mental illnesses relevant to the Defendant's
13 assertion that he was not guilty by reason of insanity due to
14 involuntary intoxication?

15 A: Well, I kind of split it. So first I considered not
16 guilty by reason insanity due to mental illness. And then I
17 also looked at due to involuntary intoxication. So I consider
18 symptoms.

19 Q: So -- so I'll rephrase that question. I apologize. So
20 you first considered whether he was not guilty by reason of
21 insanity, not due to involuntary intoxication, whether there
22 was a mental -- I guess I'll call it a mental health disorder.
23 Would that be fair enough?

24 A: Yes.

25 Q: That could cause this behavior?

1 A: Yes.

2 Q: Okay. So what was your conclusions in regard to that?

3 A: Well, he didn't have a mental health treatment history.
4 And during my evaluation he didn't report symptoms of a mental
5 illness. So the only potential symptom that I thought was
6 worth exploring was delusional beliefs, potentially. So
7 delusional beliefs are fixed false beliefs that are maintained
8 even in the face of really strong evidence to the contrary.
9 So I considered whether his belief that he was being
10 involuntarily drugged and that he had people after him, I
11 considered if that was a delusional belief. But based on all
12 of the data that I had and my clinical interview, it's my
13 opinion that those were not delusional beliefs.

14 Q: Okay. So is it your opinion that he was experiencing any
15 psychiatric symptoms that rendered him unable to distinguish
16 between right and wrong at the time the offenses occurred?

17 A: No.

18 Q: Okay. Okay. Let's turn now to your evaluation of
19 whether or not he was not guilty by reason of insanity due to
20 involuntary intoxication. Do you have, first of all, any
21 personal knowledge of whether he was actually given any drugs?

22 A: I have no personal knowledge.

23 Q: So -- so do you know if he was intoxicated at the time of
24 the crimes?

25 A: I don't know. I -- I know that he reported that he

1 initially had speculated that the reported victim was using
2 drugs, and then that she was giving them to him without his
3 knowledge. But he had no urine drug screening, so I have
4 nothing to go on whether or not he was being drugged.

5 Q: Okay. But are you still able to render an opinion in
6 this case?

7 a: Yes.

8 Q: Okay. Is the State of being involuntary intoxicated
9 alone, would that render a person not guilty by reason of
10 insanity?

11 a: No.

12 Q: What else does it have to have?

13 A: So similar to insanity, they have that intoxication, that
14 involuntary intoxication had to have caused them to not
15 appreciate right from wrong.

16 Q: And how were you able to make a determination that the
17 Defendant's behaviors were not the product of involuntary
18 intoxication? What did you consider in making that
19 determination?

20 A: So I reviewed every piece of data that I had in this
21 case. I mentioned I -- I got a lot of videos, really long
22 videos. So I looked at all of the videos that he reportedly
23 took on his phone during the time and during the offenses. I
24 -- I listened to and watched what he told detectives. I read
25 the detective's report of what the victim, the reported victim

1 told the detectives. I also watched the two interviews or
2 listened to the two interviews conducted with the victim. And
3 then I did my own evaluation of him. So based on all of that
4 data that I had, I thought that there were a number of reasons
5 for why it wouldn't meet that standard.

6 And so with all those reasons, I kind of put them into
7 four categories. So one of the categories was the timing of -
8 - of all of this. Another was the level of behavioral control
9 that he demonstrated, the escalation in the violence and the
10 offense behaviors, and also his description of being
11 intoxicated. So all of those data, what I put together of
12 what led (inaudible).

13 Q: The first one you said were timing, timing
14 considerations. So what do you mean by that?

15 A: So from the data I reviewed it appears that the offenses
16 began prior to the time that Mr. Funderburk thought that the
17 victim was drugging him. So the reported victim told
18 detectives that it had started when they were staying at her
19 apartment. And Mr. Funderburk reported that it wasn't until
20 after the eviction that he suspected or he said, speculated
21 that she was drugging him. Also, it seems like the alleged
22 offenses occurred a lot more frequently than the number of
23 times that he said that she had drugged him. So he said it
24 was around six times, but he also said that they got into
25 fights, I believe, every two to three days. And I think that

1 she told detectives that like this was happening at least once
2 a day. So to me, that would not be the product of involuntary
3 intoxication, because it started before he believes that, and
4 was occurring much more frequently than he reported he was
5 being drugged.

6 Q: Okay. The second -- I said category; was behavioral
7 controls. What do you mean by that?

8 A: So from all of the data reviewed, Mr. Funderburk
9 demonstrated like a lot of control over his behavior during
10 the periods of time that he said he was intoxicated. I just
11 want to look at my report because I -- I had a lot of
12 examples. So when he told me that he had only -- when he had
13 just speculated where he didn't have any proof that she was
14 drugging him, he said like he couldn't have a reaction, so he
15 had to control his reaction. He talked about, like, having
16 the same tone of voice and like not reacting. And -- and I
17 witnessed that from the videos that he took on his phone of
18 him having control over his behavior. He didn't raise his
19 voice; he didn't act out of behavioral control. In fact, he
20 demonstrated a lot of control over his behavior, which would
21 be inconsistent with somebody unable to control their behavior
22 or acting on the fact that he was, you know, intoxicated and
23 couldn't control what he was doing.

24 Q: Okay. And -- and then you said escalation of behaviors,
25 I think was your third category.

1 A: Yes.

2 Q: What is that?

3 A: So from all the data I reviewed, it appears that the
4 violence started out more relatively minor, like smacking the
5 reported victim and twisting her ear, and then over time
6 progressed and escalated ---

7 A: -- so that didn't seem to fit well. And then also the,
8 like, method of administration. So he said that like putting
9 something in his drink or like her rubbing her feet on the
10 drug, that's not a way that someone would typically use
11 substances. So I thought all of that was inconsistent with
12 his report.

13 Q: Okay. Did the Defendant demonstrate that he understood
14 the wrongfulness of his actions?

15 A: Yes.

16 Q: Okay. And can you tell me how you came to that
17 conclusion?

18 A: So there were multiple data points that suggested he
19 appreciated the wrongfulness. He -- there were several
20 instances where he would apologize to the victim. He would
21 tell her that things would be different in the relationship
22 moving forward. Somebody who is in control or out of control
23 of their behavior and can't appreciate right from wrong, you
24 think, why would they apologize?

25 He -- let's see what else. He told me that he didn't use

1 any weapons during the assault, which suggest that he knows
2 that using weapons would be wrong. He told detectives that he
3 felt bad about it, suggesting that either, you know, he -- he
4 appreciated that that warranted an apology because it was
5 wrong, or that the detectives would look favorably upon him if
6 he apologized. He told me that he, quote, "Definitely had a
7 reaction that he wasn't proud of." That suggests that he
8 appreciated that those actions wouldn't pride on someone. So
9 I thought there were a lot of data points suggesting that he
10 knew it was wrong at the time of the offenses.

11 Q: Okay. Did he demonstrate to you that he understood and
12 was aware that his conduct was illegal?

13 A: Yes.

14 Q: Okay. And what considerations did you consider making
15 that opinion?

16 A: So after the reported victim was able to escape at
17 Walmart, he left the scene. He wasn't apprehended by police
18 for several days at least. He switched the license plate on
19 the car. So all of that suggests that he was trying to evade
20 arrest, avoid detection, which suggests that he knew that if
21 he was detected by police, he would be arrested for it. He --
22 he like maintained that he didn't use any weapons, and to me
23 that also suggests not only that he knew that it was morally
24 wrong, but that it was illegal, in that, he knew that like
25 weapon use could increase the severity of the charges.

1 He texted someone on his phone and said that he had
2 gotten into it with the reported victim and that he was on the
3 run, suggesting that he appreciated that if he wasn't on the
4 run, he would get arrested. There was a video where he said
5 that he was going fed after he beat up the victim or inflicted
6 violence on the victim, suggesting that he was aware that it
7 was illegal. Another one was he accused the reported victim
8 of doing something to him and said she was going to go to
9 prison for that, suggesting that he appreciated that when you
10 break the law you go to prison.

11 Q: Okay. What about -- what are -- what did you consider
12 making the determination offering the opinion that the
13 Defendant had the ability to conform his conduct to the
14 requirements of the law?

15 A: Yeah. So there are a number of things that you can look
16 at to see if they are able to control their behavior. So all
17 the things that I mentioned about behavioral control, those
18 are data points for that. He also like demonstrated an
19 ability to make choices. So there were some times where they
20 slept in the car and sometimes where they got a motel room.
21 He demonstrated a capacity for delay. So there were some
22 videos where he threatened to inflict violence on the victim
23 at some later time if she didn't change her behavior. He had
24 that regard for apprehension. So he, you know, switched the
25 license plate or the tag on the vehicle.

1 There was some like planning and a forethought that would
2 be inconsistent with being out of behavioral control. So the
3 reported victim said that he always had the child blocks on
4 the doors and the windows. So all of that suggests that he
5 was able to control his behavior and wasn't in control of his
6 behavior.

7 Q: Okay. In your opinion -- so I think you said that the
8 Defendant met the diagnostic criteria for personality
9 disorders during the period that these offenses occurred
10 previously. In your opinion, did any of those symptoms or
11 those diagnosis render the Defendant not guilty by reason of
12 insanity, or not guilty by reason of insanity due to
13 involuntary intoxication?

14 A: No.

15 Q: In your opinion, did the Defendant have the mental
16 capacity to distinguish moral or legal right from wrong at the
17 time of the offenses?

18 A: Yes, he did.

19 Q: Did he have the ability to conform his conduct to the
20 requirements of the law at the time of the offenses?

21 A: Yes, he did.

22 Q: In your opinion, were the symptoms of mental illness or
23 involuntary intoxication the cause of the offenses?

24 A: No.

25 **MS. WALLER:** No. All right. No further questions.

1 Please answer any questions the defense has.

2 **THE COURT:** Excuse me, cross-examination?

3 **MR. HILLER:** Yes, Your Honor. Thank you.

4 **CROSS-EXAMINATION OF EMILY GOTTFRIED BY MR. HILLER:**

5 Q: Dr. Gottfried, those last questions that this solicitor
6 has asked you all started off with, in your opinion?

7 A: Yes.

8 Q: And that is exactly your opinion, correct?

9 A: Correct.

10 Q: And you are the doctor who did this examination?

11 A: Yes.

12 Q: And is it true that department of -- and I guess, let me
13 ask this. The MUSC has a -- is it a contract with the
14 Department of Mental Health?

15 A: Yes.

16 Q: Okay. Can you tell the jury just a little bit about
17 that?

18 A: Sure. So the Department of Mental Health is the state
19 agency that does all of the court-ordered competency to stand
20 trial and criminal responsibility evaluations for the state.
21 MUSC has a contract to kind of act as DMH for a couple
22 counties. It's a little less than half the state, and so kind
23 of we're acting as DMH and doing those cases for that.

24 Q: Thank you. So through that court order, which you told
25 the jury about, the case with you, you reviewed everything.

1 And I know you're not -- I know you're an agent, I guess, so
2 to speak of the Department of -- of Mental Health, but you
3 obviously don't work for them?

4 A: Correct.

5 Q: Do you know if they have a policy against getting a
6 second opinion in cases like this?

7 A: I do not believe they have a policy against the second
8 opinion because I worked on cases where there were multiple
9 experts that were hired independently.

10 Q: Well, hired independently, but the Department of Mental
11 Health isn't going to seek out a second opinion. Are they?

12 A: I'm not sure I understand that question.

13 Q: Okay. So it -- has that ever been your experience that
14 MUSC conducts a second criminal responsibility evaluation on
15 the same individual?

16 A: I have conducted on the same individual, sometimes
17 different charges or sometimes like new data is discovered,
18 but it would be the same doctor.

19 Q: Same doctor. Has it ever been a second evaluation by a
20 different doctor in your experience?

21 A: No. I -- I don't know if that is a DMH policy, but it's
22 an MUSC policy that we don't -- for the same defendant, for
23 the same charge, that we wouldn't assign that to a different
24 doctor.

25 Q: Okay. And I guess that's what I was trying to get to. I

1 guess I maybe approached it wrong and I'm sorry if I did. But
2 it is true that a different, a doctor could review the same
3 data points and is not necessarily going to reach the same
4 opinion, correct?

5 A: I'd say in general that would be correct. I couldn't
6 testify to what another doctor would say about the data.

7 Q: Certainly not asking you to, but obviously these are
8 specialized opinions and every human is different, correct?

9 A: Correct.

10 Q: Do you have any experience with studying or knowledge
11 about how drugs -- how -- or how a human, you know, in an
12 ultimatum state how the drugs interact with that person?

13 A: I mean, I've taken some graduate level classes on drugs
14 and behavior and drugs on the brain, but it -- it is not
15 something that I study currently.

16 Q: Based on your knowledge of drugs in a, you know, not --
17 not your forte or your -- your main expertise, but would you
18 believe that somebody who orally ingested drugs would be under
19 some type of influence of that drug?

20 A: Yeah. I mean, I think that if you ingested substances
21 that it would have an effect on you.

22 **MR. HILLER:** I don't have any other questions, your
23 Honor.

24 **THE COURT:** All right. Redirect?

25 **MS. WALLER:** No, sir. Your Honor.

1 **THE COURT:** You may step down. Thank you.

2 **THE COURT:** State can call your next witness.

3 **MS. WALLER:** Your Honor, this concludes the State's case.

4 **THE COURT:** All right. Ladies and gentlemen, the State
5 has rested their rebuttal in this case. And again, just like
6 at the close of the State's case, at the close of the Defense,
7 now is the time where I have to address matters of the law
8 with the attorney. So I'm going to excuse you back to the
9 jury room. This one might -- since this is the end of the
10 testimony, this one might take a while. But we'll be with you
11 as quickly as we can. Do not discuss the case even among
12 yourselves. It's too early for deliberations. Don't conduct
13 any independent investigations and we'll run back out this.

14 **REPORTER'S NOTE:** (Jury exits the courtroom at 10:12am)

15 **THE COURT:** All right. Any motions at this time?

16 **MS. WALLER:** Nothing from the State, Your Honor.

17 **THE COURT:** All right. Anything from the Defense?

18 **MR. HILLER:** And in abundance of caution, Your Honor,
19 since this is yet another, I guess end of the case, the
20 Defense would renew all motions previously made for a directed
21 verdict on grounds previously stated.

22 **THE COURT:** All right. Your motion is noted. I'm going
23 to deny it. I guess the only thing we have left now is
24 closing arguments, jury charges, and deliberations. I've been
25 working on some charges. We can do one of two things. I can

1 -- I can get you a copy of my charges. You can take a look at
2 them and then we can make -- raise some objections then, or if
3 you have something you want to address right now, we can go
4 ahead and address it.

5 With regard -- I'll go ahead and tell you right now.
6 With regard to the charges for domestic violence of a high
7 aggravated nature and assault, and battery of a high
8 aggravated nature. Basically, I have Stated that the
9 indictments charged the Defendant with several different
10 crimes. The indictments charged the Defendant with domestic
11 violence of a high and aggravated nature, criminal sexual
12 conduct in the first degree of kidnapping.

13 The indictment for assault and battery of a high and
14 aggravated nature is combined with the indictment for domestic
15 violence of a high and aggravated nature. I'll give you
16 instructions on how to deal with those indictments later in
17 these instructions, and then later in the instructions, I
18 state that they consider both of those, they can find them
19 guilty of domestic violence of a high aggravated nature. If
20 they find that the State has not proven -- I kind of treat it
21 as a lesser included, even though I'm not so sure it is a
22 lesser included. I think the fact that the States got two
23 indictments simply because there was a question as to whether
24 or not the victim was a household member.

25 I'm going to leave that as the only real distinguishing -

1 - distinguishing matter.

2 **MS. WALLER:** So is it -- is it -- are you going to say it
3 -- my -- I'll tell you my only concern, Your Honor, that's
4 fine with me if it's an oral proposition, and I've said that
5 from the start, but I worry that if we call it a lesser
6 included or if it's presented to the jury that way we'll have
7 an appellate issue that may be unnecessary. So I just I guess
8 I need to look at it.

9 **THE COURT:** What I do -- and I'll let you see it. When I
10 discuss the indictments, I say those are just combined. And
11 then later I --

12 **MS. WALLER:** Your Honor --

13 **THE COURT:** -- charge them on the law of domestic
14 violence of high and aggravated nature.

15 **MS. WALLER:** Your Honor, in light of the confusion with
16 this issue, the State is willing to elect one of those and
17 proceed just under ABHAN. Just because of the confusion, I
18 don't know another better way to address it.

19 **THE COURT:** All right. All right. Anything from the
20 Defense in that regard?

21 **MR. HILLER:** I think that's clean and appropriate, Your
22 Honor. Okay.

23 **THE COURT:** All right, so you're just going to
24 voluntarily dismiss the domestic violence and we'll just go
25 with assault and battery of a high and aggravated nature.

1 **MS. WALLER:** Yes, sir.

2 **THE COURT:** Okay. All right. Sounds good. All right.
3 Anything further from the State?

4 **MS. WALLER:** No, sir, Your Honor.

5 **THE COURT:** All right. Anything from the Defense before
6 we take a break and finish up these charges?

7 **MR. HILLER:** Yes, sir, Your Honor. I remember at the
8 very beginning of this case we talked about the proper tests
9 for evaluating. Basically, the defense that my client has
10 raised, the defense of involuntary intoxication. I had
11 brought up a charge and at this time I understand the Court at
12 the beginning -- not without, you know, prejudging the matter,
13 but certainly I believe expressed a -- an opinion that Pittman
14 and the involuntary -- or that according to Pittman
15 involuntary intoxication should be analyzed under the Macon
16 standard.

17 **THE COURT:** Correct.

18 **MR. HILLER:** There are very little case law in the State.
19 I have pointed to a case called Safety Shan (ph) from I think
20 of 2019. I provided the cite earlier. I would ask that this
21 proposed request to charge under involuntary intoxication be
22 made of court's exhibit. I would ask the Court to charge it.
23 It basically does not require -- and this is of course from
24 the Ralph Anderson request to charge, Section 6 point -- or 6-
25 4. It's essentially similar to McNaught and -- but it's --

1 there are two types of intoxication, voluntary and in
2 involuntary.

3 Involuntary intoxication may result from innocently
4 consuming an intoxicated through being tricked into it by
5 another or being forced to take it, or perhaps through
6 unanticipated side effects from a prescription drug taken on
7 order of a physician. If you find that the defendant was
8 given drugs or alcoholic beverages without his knowledge, and
9 as a result he lost the ability to exercise independent
10 judgment and volition while committing the crimes alleged
11 against him, then it would be to your duty to find the
12 defendant not guilty. I would ask the Court to charge that.
13 Obviously, the charges are to be determined from the evidence
14 presented. That is about exactly what Mr. Funderburk has
15 said.

16 **THE COURT:** Cite any legal authority, because Pittman
17 says that it is the same standard as McNaught.

18 **MR. HILLER:** It does not.

19 **THE COURT:** You could distinguish legally and morally
20 distinguish between right and wrong.

21 **MR. HILLER:** It does not set any authority, Your Honor.
22 And I proceeded with the trial the way I did intending --
23 expecting, but I still think for the record, I have to make
24 the argument and the request and obviously understand and
25 proceed -- prepare to proceed with closing argument --

1 **THE COURT:** Right.

2 **MR. HILLER:** -- no matter how Your Honor rules. But I
3 think it's my, you know, my job to ask for the charge and have
4 this marked as a court's exhibit.

5 **THE COURT:** All right. We'll put that as Court's Exhibit
6 -- Court's Exhibit 3. We'll put as Court's Exhibit 3 for the
7 record, but I'm not going to charge that.

8 All right. Anything else?

9 **MR. HILLER:** No, Your Honor.

10 **THE COURT:** All right. Let's take a break. What I'll do
11 is I'll get you a copy of these charges. It might take a
12 little while, so go ahead and you'll need to get prepared for
13 your final arguments.

14 **MS. WALLER:** I'm ready Your Honor. The only thing I'll
15 just go ahead and tell you, we're going to -- I'm going to use
16 the TV screen. I'm going to move it closer, so I don't have
17 to stand so far away because I can be close to the --

18 **THE COURT:** All right. At this stage that wouldn't be a
19 problem. Anything from the Defense?

20 **MR. HILLER:** No, sir.

21 **THE COURT:** All right. Let's take a break.

22 **(COURT IS IN RECESS)**

23 **THE BAILIFF:** All rise.

24 **THE COURT:** Thank you very much. Please be seated.

25 All right. Ladies and gentlemen, I'll give you two

1 opportunities to raise any objections to the proposed charges
2 that I've given you. One now, and then another one after I
3 charge the jury because sometimes it does sound differently
4 when you hear it read versus when you just read it on paper.
5 But as far as having reviewed what I've submitted thus far,
6 any additions or challenges from the state on the proposed
7 charges?

8 **MS. WALLER:** No, sir.

9 **THE COURT:** Any from the Defense?

10 **MR. HILLER:** Not on your proposed charges, Your Honor,
11 but just in an abundance of caution. Object to the deletion
12 of the involuntary intoxication charge I proposed.

13 **THE COURT:** Okay. All right. Anything -- now, as I
14 understand since the Defense presented evidence by the
15 Defendant taking the stand, the State will close in full.
16 Defense will close in full, then the State will be allowed a
17 brief reply to anything addressed by the Defendant in their
18 closing argument that you did not address in your original
19 closing argument.

20 **MS. WALLER:** Yes, sir.

21 **THE COURT:** All right. Anything from the State before we
22 bring the jury in?

23 **MS. WALLER:** No, sir, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MR. HILLER:** No, Your Honor.

1 **THE COURT:** All right. Let's bring the jury in.

2 **REPORTER'S NOTE:** (Jury enters the courtroom at 11:13am)

3 **THE COURT:** Hi ladies and gentlemen, welcome back. We
4 ready to proceed with the trial of the case. All the evidence
5 has been presented to you, and now is the time of the trial
6 where the attorneys will make their closing arguments.

7 Now, just like their opening statements, these closing
8 arguments are not evidence in the case. It's simply the
9 attorney's contention as to what they think the evidence has
10 shown that the law will be applied in this case. If at any
11 time an attorney references a factual issue that is different
12 from the facts as you find them to be, or references the law
13 that is different from the law, as I will charge you at the
14 end of their closing arguments, then you're to disregard that
15 portion of their closing arguments, because this is not
16 evidence of the facts and it is not a charge on the law.

17 All right. Who wishes to close for the State?

18 **MS. WALLER:** Your Honor, I'm going to close for the
19 state.

20 **THE COURT:** Thank you.

21 **MS. WALLER:** Thank you, Your Honor. May it please the
22 Court?

23 **THE COURT:** Yes, ma'am.

24 **MS. WALLER:** A picture is worth a thousand words. I'm
25 sure that everybody here has heard that about a million times

1 in their life. It's a very cliché thing to say, but the
2 reason it's a cliché is because it's true. And if any case
3 has ever been a case where this is an appropriate statement, I
4 think this is the case, because this case is all about
5 pictures and videos. And ask yourself if a picture is worth a
6 thousand words and you saw a whole bunch of pictures, what's a
7 video worth? A video, it's usually about 24 frames per
8 second. So 24 frames, 24 pictures per second in a video. And
9 you're seeing videos of what occurred in this case. So you're
10 getting to see with your own eyes and ears what happened.

11 Does -- I tell this prettiest girl alive because it
12 struck me in that video that you saw with the Defendant at
13 half your time. This is what KS looked like when
14 she met the Defendant. And keep in mind that she met the
15 Defendant for the first time in person in July -- mid-July
16 2021. And she ran into that Walmart on August 28, 2021. So
17 in a very short period of time, this woman who looked like a
18 normal happy girl, went from looking like this to this.

19 You heard how the violence escalated against her. You've
20 seen video evidence where you can see the progression of the
21 violence that escalated against her. And I would put it to
22 you -- I know lawyers talk a lot; we've talked a lot and worn
23 you out. But I would put it to you that if you didn't know
24 anything about what you've seen this week, if you didn't know
25 anything anybody had said, just seeing this picture, you would

1 know that something awful, something horrible happened to this
2 woman, and you would be able to guess that crimes were
3 committed against her, just by seeing this picture. And
4 that's just a still shot from the last video that I played for
5 you in this trial.

6 Now, the judge, you'll hear, will instruct you on the
7 law, but it is your job as the witness -- as -- I'm sorry --
8 as the jury to determine whether the Defendant is guilty. And
9 you do that through judging the credibility of witnesses. So
10 you decide who to believe and what to believe. That's
11 completely up to you. But there's some guidelines. So the
12 question is, how did KS going from looking like
13 that happy, prettiest girl alive in the first picture to that
14 awful last picture.

15 And the State's proposition is that she went from looking
16 like that because crimes were committed against her by the
17 Defendant Rico Funderburk. And the first crime that the State
18 says -- the State contends is -- was committed against her is
19 assault and battery of a high aggravated nature. Now, that's
20 the crime that covers the beatings. And you heard a lot of
21 testimony about the beatings. You heard there were weapons
22 used, you've seen the weapons. A lot of them are over there
23 on that evidence table socket wrenches. You heard that he
24 beat her with his fist. He beat her with socket wrenches. He
25 beat her with what she called a carjack. He birthed and

1 mutilated her vagina. And this is the law.

2 In order to find that he's guilty of assault battery of a
3 high aggravated nature, you have to find that great bodily
4 injury to another person resulted, or the act was accomplished
5 by means likely to produce death or great bodily injury. You
6 heard Dr. Cobos, the doctor from Grand Strand Medical Center.
7 She's just a normal person like you who, like you got sucked
8 into this case because she was doing her job that night, the
9 same way you're doing your job as jurors now. But she saw
10 KS that night. You heard her testify how greatly
11 that impacted and affected her and her medical staff at the
12 hospital. When I contacted her about being a witness in this
13 case, she immediately knew what I was talking about. And she
14 literally sees thousands of patients a year.

15 But great bodily injury means an injury that causes a
16 substantial risk of death for which causes serious permanent
17 disfigurement or protracted loss or impairment of the function
18 of a bodily member or -- in this case, there are several
19 examples of that. This is a picture you saw of KS
20 's neck. One of the striking things that you'll see is -
21 - and Dr. Cobos has talked a lot about this, about there's
22 different stages of healing on her body. So you can see that
23 this event was a prolonged event that she was suffering for
24 multiple days and probably multiple weeks, but the worst part
25 of it occurred at the very end. But you also see these marks

1 on her neck, and those are strangulation marks. You heard
2 KS testify that she was strangled to the point of
3 unconsciousness. And you heard Dr. Cobos -- and I'm sure all
4 of you know from personal experience that if someone --
5 someone can show you to death. So this injury alone is enough
6 to get to the Defendant committed the crime of assault and
7 battery of a high and aggravated nature against KS
8 . This is a picture of her face.

9 You also heard about this area of her eye. This injury
10 to her eye is also great bodily injury because the injury
11 resulted in permanent impairment of her bodily function. She,
12 to this day testified that she still has some double vision
13 and doesn't have free range of movement of her eye, because
14 although doctors could repair it, they can't make it the way
15 God made it, which is what Dr. Cobos said. You can't -- they
16 can't -- they can't fix it like it used to be. And this
17 picture, you can see her eye coming down into her sinus
18 cavity, right here. This is what was repaired. If she hadn't
19 had that repair, she would've had an even worse impairment.
20 I'm sorry.

21 She also -- and I think she also had this broken nose and
22 you heard her testify that the Defendant would wiggle her nose
23 back and forth after it was broken, that she had trouble
24 sleeping because she would snore. There's one where he says -
25 - where she's talking about stuff leaking out of her nose

1 because of this injury. And then that same picture, it's more
2 difficult to see because we're not radiologists. But you can
3 see how her nose looks deformed, and she had to have that
4 repaired as well. If she hadn't had it repaired, she would
5 still have that injury today, which is also an impairment to a
6 bodily member or organ.

7 You also heard Dr. Cobos say that when [KS] came to
8 the hospital that night, she had fears that she could die just
9 from the state of her body -- from the state of her body
10 having suffered so much trauma over a prolonged period of time
11 that she could tell, because you can see these multiple stages
12 of healing, the burns, the lack of medical care. Being
13 injured, the longer you go without medical care, the more
14 likely you are to suffer a serious or permanent consequence of
15 those injuries, is what she said to us. And what you're
16 seeing here, I think [KS] testified is, these are -- this
17 is where the Defendant hit her with a bat.

18 Now, we didn't find a bat in his car, but please keep in
19 mind that the Defendant knew that the police were looking for
20 him. He sent texts saying that he was on the run. And just
21 because we didn't find it in this car doesn't mean it wasn't
22 there at some point. But like I say, it's up to you to decide
23 what and who to believe.

24 You also heard -- this is just another picture provided
25 because you can see the tool marks where [KS] says he was

1 using pliers, where he would use them to cut her. She also
2 said that he would beat her knees in particular with objects
3 because, number one, he thought it hurt more to be on joints.
4 And number two, that it meant that it would be more difficult
5 for her to get away or for her to run away from him.

6 So that brings us to the second crime that the State
7 alleges KS suffered and that's kidnapping. Now, when
8 you think about kidnapping, I always think about that movie
9 taken where someone just gets snatched up and they take you
10 away, and they kind of bind you and you're never allowed to
11 leave again. Kidnapping in South Carolina is an unlawful --
12 you can read the definition here -- but it's an unlawful
13 confinement of one person by another, without authority of
14 law, and it can be by any means. So unlawful means to do it
15 against the law. Knowingly means that you did it consciously
16 and not accidentally. The Defendant will allege that he
17 didn't know what he was doing, but will address that in a
18 moment. And once again, I'll leave you to make a
19 determination about that. But confine means to limit,
20 restrict, or enclosed within bounds or shut in or keep in.
21 I'm going to -- you that KS -- I'm going to State to you that
22 KS was kidnapped.

23 I'm sure at some point in the beginning of the
24 relationship she could have left, but at some point, after
25 these meetings started, she was no longer free to leave.

1 You've seen videos that the Defendants relying on the -- that
2 she -- that showed she had the ability to leave and that in
3 fact he asked her to leave and she wouldn't.

4 But I'll put it to you this way. If someone's free to
5 leave, why you need video proof that they were free to leave?
6 Why would you make a video of someone saying, you're free to
7 leave, aren't you? I want you to leave. Or, shouldn't you
8 leave? And then you'll notice in those videos -- and I wrote
9 this down, because it struck me where she says -- he says to
10 her, and you'll see it's in State's exhibit 57K. I'm not
11 going to play it, but if you want to re-watch it, you're more
12 than welcome to do it. You'll have an opportunity. He says,
13 last night you were trying to think of a reason of a way to
14 leave last night. So he even changes it and says, you were
15 thinking of a way to leave. And then she responds, oh, I was
16 just doing that last night, but I don't want to leave now. I
17 don't want to leave now. And if you listen to that video,
18 you'll hear that she's under duress at that point.

19 In one of the later videos, he says -- he asked her, do
20 you want cut ties? And there's a long pause and her response
21 is, are you going to be mad? And he just says -- excuse my
22 language -- answer my question bitch. And she says, I don't
23 want you to hit me. I know if I say yes, you're going to be
24 mad. And if I say no, I feel like I'm going to be beating me
25 either way. Do you ask yourself if that's -- if that's the

1 response of someone who actually has the choice of getting out
2 of that car and running away at that point, because I'm going
3 to put it to you that it wasn't.

4 You also heard testimony that KS -- and I'm sorry I
5 won't leave that up there for long -- but this is the picture
6 of her in the hotel room that the Defendant said she asked him
7 to take of her. Ask yourself, does that look like a person
8 who's posing for a picture they asked someone to take of them.
9 And then she said that he would make her be naked, that he
10 would unplug the telephone, that he would not allow her out of
11 the sight even to use the bathroom or take a shower, that she
12 wasn't allowed to move around at night or she would be accused
13 of trying to leave or get away.

14 You also heard testimony that he would beat her hands,
15 and you can see that bite mark. He even bit her there, and on
16 her neck, but you can just see it in this picture. So you
17 heard testimony that he would beat her hands to stop her from
18 escaping. Once again, he beat her knees. You can see that
19 there's a lot more swelling and injuries just around those
20 areas, which corroborates what she told us. And even her
21 feet. She's literally black and blue from head to toe, beaten
22 whole body consistently over the course of a time period.

23 These pictures are interesting. I asked the Defendant
24 about these -- if you'll recall yesterday on the stand --
25 about why he would have photographs of her driver's license

1 and her Social Security card. She said that he had threatened
2 her family and that this address was her mother and father's
3 address and that she believed he would go after her family if
4 she tried to get away or didn't comply, and probably come
5 after her as well. And she says that's why he took these
6 pictures.

7 She also says that he took her wallet and wouldn't give
8 it to her, and her car keys, and her phone. When I asked the
9 Defendant yesterday about these pictures, his explanation was
10 that [KS] took a picture of herself, which I'm going to --
11 I'm going to just direct your attention to the hands holding
12 those items, and you can address for yourself whether or not
13 you believe those are [KS]'s hands. And that she
14 did it to apply for a loan in this two-week time period when
15 these things occurred. So I think that is more evidence of
16 kidnapping.

17 The child locks is wrong in the back seat. So at some
18 point -- now, to kidnap someone, you don't have to kidnap them
19 for any certain period of time. This doesn't have to be
20 prolonged. It can actually be rather short. I contend in
21 this case that it was a prolonged kidnapping, but you the jury
22 can also find that it was a shorter kidnapping. That last
23 video, the picture, that second picture I showed you where
24 face black and blue, that's taken from that last video that
25 [KS] testified was taken approximately a day or so before

1 she ran into the Walmart.

2 So I'm going to ask you, do you think when she was in the
3 back of this car, in the parking lot of Walmart, before she
4 ran in, do you think she was free to leave? Because if she
5 was not free to leave, and you don't believe she was free to
6 leave, then the Defendant's guilty of kidnapped. And I'm just
7 going to point out, she said she couldn't get out of the car
8 from the inside and the child locks when the CSI processed the
9 car were on both doors, which also corroborates her story.

10 You also heard that this is [REDACTED] 's cell phone.
11 This phone was found in this location at the time the
12 Defendant was arrested, a couple of days after she ran into
13 Walmart. His explanation was that she gave him her phone,
14 that she said he could have it. I'm going to ask you, would
15 any of you voluntarily give your phone to anybody right now
16 for no fair reason? I can't imagine why someone would do
17 that. [REDACTED] 's explanation is that she wasn't allowed
18 to have her phone. And that's why he had it. There's even a
19 video where she's asking for it. He keeps saying it's in the
20 back. Like it's not there. Where is it? And you can watch
21 that for yourself as well.

22 You also saw text messages from someone named Glinda
23 saying, "Where is [REDACTED]? I just want to know if she's
24 alive." You saw responses from the Defendant's response
25 saying, "Basically, I don't know." And that was on August

1 27th, the day before she ran into the Walmart. So you ask
2 yourself if you think between the time period where she had
3 those worst last injuries and when she went into that Walmart,
4 if she was free leave.

5 Now, I'm going to show you the surveillance from which
6 she ran into Walmart that night. And I said at the beginning
7 that a picture is worth a thousand words, then what's of video
8 worth. Well, I'm going to put it to you this way. When you
9 watch this video, you ask yourself if you didn't know anything
10 else about this case, if you hadn't heard all the evidence
11 that we presented, could you -- would you know what's going on
12 in the case? Because I think you would. I think if you
13 watched it, you would know that there was a woman who got out
14 of a car, who ran into Walmart, that she's running away, that
15 she's escaping, and that something awful had happened to her.
16 You wouldn't know the details. You might not know that she'd
17 been beaten over the course of a time period. You might not
18 know that she had been sexually assaulted, but you would know
19 from just watching this that something horrible had happened.

20 Oops, sorry. I might need help making a play. And you
21 can see the Defendant just speeding away at that point. And
22 ask yourself, does this look like someone who is escaping, who
23 is running away? As Walmart witnesses certainly thought so,
24 this is Kelly (inaudible), you heard from. She certainly
25 thought when KS ran into her screaming, help me, help

1 me. He's trying to kill me that she was escaping a
2 kidnapping.

3 Okay. And you can see what she looked like at that time.
4 Had no shoes, nothing in her hands; no cell phone, no wallet,
5 nothing. She had the clothes on her back and nothing else.
6 And not even shoes at that point.

7 The last crime that we're going to talk about is criminal
8 sexual conduct. Criminal sexual conduct is what a lot of
9 people call rape. And when you first -- when you think about
10 rape, you kind of think kind of -- movie where they forcibly
11 hold people down or force them to comply. But rape is a lot
12 of different things in the law. And one of the things it is,
13 is about humiliation. It's about control. It's mutilating
14 someone's vagina with a lighter and penetrating their labia.
15 The legal standard is that the victim is -- the actor engages
16 in a sexual battery with the victim, and the victim is the
17 victim of a forcible confinement or kidnapping, which is
18 what's important here.

19 So there's two aspects to this. One is you heard
20 KS testify that while she was being beaten and the
21 Defendant was not allowing her to leave or have her phone or
22 call her mom, that she was complying with the sexual demands
23 in order to keep him happy and avoid further beatings. You
24 saw the state of her body. Ask yourself, if you think someone
25 in that state can consent to performing sex acts on the person

1 who's doing that to them and refusing to allow him to leave.
2 Because that is criminal sexual conduct in South Carolina.

3 It's -- a sexual battery is defined. And this is
4 important when it comes to the genital mutilation part of the
5 sexual assault. That part of the sexual assault is the sexual
6 assault because it involves the private parts of the person --
7 of a person. Like I said, it's not -- rape isn't always just
8 about sexual ratification. It can also be a sexual assault or
9 criminal sexual conduct because it involves the private parts
10 of a person.

11 And what the sexual battery law says is sexual battery
12 means sexual intercourse, which is clear cuddling (inaudible),
13 anal intercourse, or any intrusion however slight of any part
14 of her person's body, or any object into the genital or anal
15 openings of another person's body. And that it has an
16 exception from medical doctors, clearly.

17 But when that Defendant took that lighter and super
18 heated it up and burned her clitoris, which she and Dr. Cobos
19 said penetrated her vagina, penetrated her labia, which is
20 what this "however slight" language refers to, he committed a
21 criminal sexual conduct in the first degree. Because at the
22 time he did it, she was also the victim of a kidnapping. And
23 the kidnapping as well is this, you ask yourself if you think
24 that she voluntarily laid there without being forcibly
25 confined and allowed the Defendant to do that to her. Or do

1 you think is it more likely that he held her down and forcibly
2 penetrated her vagina with that lighter and caused those
3 burns?

4 I'm going to show you briefly that photograph one more
5 time, but I'm not going to leave it up there. I apologize for
6 having to show you some -- gruesome and intimate face. But
7 you see these are older burns, but this burn up here that Dr.
8 Cobos pointed out and that KS talked about, that's what
9 we're talking about. And he actually took a lighter and held
10 it lit for several minutes to make it super hot and burned her
11 vagina with that. He stuck it too there, and held her down
12 while he did it. And if you believe that he held her down and
13 forcibly confined her while he did that, then she was the
14 victim of a kidnapping and a sexual assault at the same time.

15 There's also -- I'm just going to put that back up. A
16 lesser included charge, criminal sexual conduct in the second
17 degree. And that is where a person sexually assaults someone
18 by penetrating their private part with an object or a part of
19 their body or forced them to engage in a sex act when they're
20 also -- where they do it because the person is -- let me get
21 the language real quick. Well, the person is using aggravated
22 coercion. I'm sorry I didn't even the word. Aggravated
23 coercion means the defendant threatened to use force or
24 violence of a high aggravated nature to overcome the -- person
25 if the victim reason believe that Defendant has even present

1 or ability to do -- to carry out that threat.

2 I'm going to say to you that she didn't just think he had
3 the ability, she knew it, because of the way her body looked.
4 And you've seen that. And I'm sorry, I know...

5 All right. Let's talk about what the Defendant said. You
6 heard him testify yesterday. The first thing that struck me
7 about that is that the difference in his demeanor whenever I
8 started questioning him versus his own attorney. He
9 immediately became aggressive with me. He became argumentative
10 and defensive. You saw that change in behavior. You saw one
11 person when his attorney was questioning him, and then when I
12 started questioning him, you saw the person -- the second
13 person. The person that you saw in the videos. You saw the
14 person that KS -- who just had to step out -- live with
15 it and was subjected to that horrible behavior.

16 But the first thing he said, he said it in open court, he
17 said he did it. He said he beat her. He said he had situations
18 and that he was guilty of beating her. But he came up with
19 excuses why he did it. He also said in those videos that you
20 saw, at least two of them -- and excuse my language -- he
21 said, I just had to beat the bitch. But he expects you to
22 believe that he was out of his mind when he did it. He says
23 he's the real victim here. He told you that yesterday. He said
24 that she raped him.

25 He said that she was mean, controlling, and aggressive,

1 and that he was the victim. He also said he had videos. He
2 said that to law enforcement when he got arrested, that he
3 wanted us to see. He mentioned them on the stand that he had
4 videos where she said she wanted to be with him and he was
5 telling her to get out of his car, and she wouldn't get out of
6 the car. He even tried to tell us that he tried to forcibly
7 remove her from his car and he wasn't able to do that. But he
8 was able to essentially break her face.

9 He expects us to believe that he couldn't have gotten
10 away from her. He said in the video where he got arrested by
11 the police that any actions he took were completely necessary.
12 And they have video proof to show it. I can't imagine -- and
13 what he meant, but you'll have to ask yourself, do you think
14 that anything KS could have done? He accuses her
15 of prostituting herself and other things. She completely
16 denies that since she was living 24/7 and that that did not
17 occur.

18 But let's say even if she was doing any of the things he
19 accused her of, were his actions necessary? And I'm going to
20 say they weren't necessary. They -- and they weren't legal.
21 Here's a picture. This picture just shows what she looked
22 like. These necessary actions that he took, these situations
23 that he was involved in. This picture is also taken from his
24 cell phone. This is another one of those pictures where he
25 said, she asked me to take it so she could see what her face

1 looked like. I'm going to ask you again. You can use your own
2 judgment. Does this look like the photo of a woman who's
3 posing for a picture to you, that -- so she can see what her
4 face looks like? I mean, even look at the way her eyes look.

5 So this is what the Defendants relying on, and you heard
6 Dr. Gottfried testify about this. The Defendant wants you to
7 believe that the victim who he had control of 25 hours a day,
8 seven days a week, whose cell phone he had in his possession,
9 whose wallet he had in his possession, was somehow getting her
10 hand on drugs and putting them in his mouth or sprinkling him
11 on his food, and causing him to be so high and so out his mind
12 that he didn't know what he was doing, essentially. That he
13 was insane at the time.

14 First of all, I think you'll recall when I asked him
15 yesterday about why he didn't have pictures of drugs. If she
16 was drugging you and you took pictures, I said, that you
17 document this relationship. You're documenting all these
18 things. Why didn't you document these drugs? And his response
19 was interesting because his response was, I didn't document it
20 for safekeeping. That's an interesting word. Because why would
21 he say safekeeping? I didn't say safekeeping and I didn't even
22 imply it.

23 I'll put the reason the State believes that he said
24 safekeeping is because he was, according to KS, making
25 her confess on tape to drugging him. Even though you'll hear

1 some of the tapes, she'll say that's not true. I just lied to
2 essentially tell you what you wanted to hear. But the
3 Defendant was filming her saying she drugged him, so that he
4 would have video proof that if he had to answer for these
5 crimes, he could show up here and say he was drugged against
6 his will.

7 So he's alleging that those drugs -- which there's no
8 evidence of, other than he says it happened -- caused him to
9 lack the capacity to distinguish moral right or wrong and
10 there -- and he couldn't conform, he couldn't comply with the
11 law because he was so out of it on these drugs. You've seen
12 videos of him with the victim. You've seen videos of him. In
13 one of them you could hear what sounds like a hit or a smack
14 and her recoil, and kind of cry, and he's driving a car. Ask
15 yourself -- I'm sure all of you have seen people under the
16 influence of something. Ask yourself if he looks like he's
17 under the influence of anything in these videos that looks
18 like he's out of his mind.

19 Now, Dr. Gottfried testified earlier today, she reviewed,
20 essentially, the same evidence that you've reviewed this week.
21 She said neither mental illness nor involuntary intoxication
22 was the -- can cause of the Defendant's actions. And he had
23 the ability at the time he committed these offenses to
24 distinguish right from wrong. She personally interviewed it,
25 she reviewed the evidence, and she relied most importantly on

1 her training as a medical, I mean, I'm sorry, as her training
2 and experience as a forensic psychologist.

3 And these are the reasons that she said he wasn't out of
4 his mind. I think you can probably establish this on your own,
5 but if you need her opinion, her expert opinion, she said he
6 began hitting the victim before he alleges the drugging
7 occurred. He was testing the waters. You see a lot of that on
8 those videos, because you see the progression of violence
9 escalate. And he was seeing how far he could go. He gave
10 statements that were inconsistent, where he said that it would
11 make -- the drugs would make him feel woozy. And he also said
12 they made him feel enraged and aggressive, which are
13 inconsistent statements about the drug.

14 He also said he could remain calm under the influence,
15 which is inconsistent with the report that the substances
16 caused him to commit these crimes. The Defendant also knew the
17 wrongfulness of his actions. If you listened to what he said,
18 and even when I questioned him yesterday and I asked him, I
19 said, this is a video of you driving a car. He didn't really
20 have an explanation for why there was a video where he hits
21 her and he's also driving a car and filming at the same time.

22 He knew to say he didn't use weapons. He evaded detection
23 for (inaudible) were illegal. He said in one of the videos,
24 which Dr. Gottfried referenced, that he's about to go fed for
25 being a bitch. He said he knew his actions when he got

1 arrested and they were completely necessary. He fled after
2 KS escaped and was on the run. If that's not evidence of
3 someone who knew their actions were wrong and illegal, I'm not
4 sure what is.

5 He also could have conformed misconduct to the
6 requirements of the law at that time. He demonstrated an
7 ability, according to Dr. Gottfried, to make choices. And she
8 said, you know, he decided whether or not to sleep in hotel,
9 in the car. The victim also testified that it was always him
10 who decided whether they slept in a hotel or in the car, or
11 which hotel they picked. He demonstrated a capacity for delay.
12 He threatened future violence against the victim based on her
13 actions.

14 He told her that every time would be 10 times worse. And
15 let me ask you this, if every time was 10 times worse, and
16 you've seen pictures of the escalation and how bad it got, but
17 if every time was 10 times worse and she was drugging him,
18 which was causing him to do that, would she continue to drug
19 him to cause him to do that? Does that make any sense to
20 anybody?

21 He also had a regard for apprehension. That just means
22 that he knew the police were after him and he was on the run
23 and he was trying to get away. There was a level of planning.
24 He kept the child locked and windows locked until that night
25 that she got away. He put makeup on her face when she had

1 bruises to cover her up. He made her take off her clothes in
2 the hotel room, so that she would be less likely to be able to
3 run away. He targeted beatings to body parts, her feet and her
4 knees and her joints. That would -- (inaudible) from running
5 away. He unplugged the telephone from the hotel room, which
6 would keep her from running away. He took her phone, her key,
7 her wallet. He knew what he was doing when he did this.

8 This is the video of his arrest. I'm just going to let
9 you see what he had to say. I don't have volume. So this is
10 the video that day that he got arrested, he made the statement
11 about his actions were completely necessary.
12 (Video played).

13 **MS. WALLER:** He even said he expected -- expect I would
14 get pulled over and have to answer some questions. He even
15 expected to have to answer for this one day. The striking
16 thing about this video is he says here, he wants law
17 enforcement to see the videos on his phone. The videos that he
18 said weren't per se keeping yesterday on the stand. In my
19 estimation, those videos are the most powerful evidence we
20 have in this case.

21 You saw a girl go from a normal woman, a normal young
22 woman in the beginnings of a relationship to a woman who's
23 beaten and battered, and then through a horrific ordeal. You
24 saw the person who she was in that relationship transgress
25 that relationship, the most intimate relationship that there

1 should be between humans. He just obliterated it. And then he
2 says -- he says that he wants us to see the videos that were
3 in his phone. So I'm going to show you.

4 (Video played.)

5 **MS. WALLER:** When you ask yourself how KS
6 went from looking like this to like this, if you believe that
7 the Defendant beat her with hands, fists, and weapons, that he
8 refused to allow her to leave when he was doing that. Or if
9 you believe that he mutilated her vagina with that lighter
10 which you saw a photograph of. He had even tried to stick
11 pliers in her anus, and that she complied with these sexual
12 demands because she was in this state, and she wasn't free to
13 leave, and she was just trying to survive, then there's only
14 one verdict at the end of this trial. That's guilty. Thank
15 you.

16 **THE COURT:** All right. Mr. Fox or Mr. Hiller?

17 **MR. HILLER:** Thank you, Your Honor.

18 **MR. HILLER:** The "what" is very hard to look at. It is.
19 You can't be a human and say that's not hard to look at. But
20 it doesn't change the "why." And the "why" is what Mr.
21 Funderburk's defense is. It's what he has said from day one.
22 It's what he told you about from the witness stand yesterday.
23 It's what is mentioned in those videos. It's what he also
24 said, roadside, to quote him, he said that "Any action that I
25 did possibly commit, I was under the influence of a substance

1 I knew nothing about." It's what he said in the interview.
2 Again, that's not in evidence, with Sergeant Fletcher back in
3 a couple of days after his arrest. Involuntary intoxication
4 brought on by intentional drugging.

5 When it was finally time for Mr. Funderburk to speak,
6 finally, his chance to tell his story, he had specific
7 instances of being drugged against his wills to include
8 specific physical reactions and physical specific mental
9 reactions to these drugs. He told you that he know -- really
10 knows right from wrong. His contention is, has always been,
11 and remains that at the time of the events that brought us --
12 that brought us here, took up this entire week of trial, that
13 he had no ability to tell right from wrong and no ability to
14 control or conform his conduct to what the law requires and is
15 sets of us. This is the affirmative defense known as insanity.

16 The judge will charge you on the law, but I also want to
17 comment on it and make sure that y'all understand what, from
18 our perspective, we're asking you to consider. And I am
19 reading a little, but just because it's technical and I want
20 to get the language right. So the burden is on the Defense to
21 prove that a person at the time of the act he committed as a
22 result of a mental disease or defect lacked the capacity to
23 distinguish moral or legal right from wrong and also lack of
24 capacity to recognize a particular act charged as morally or
25 legal wrong.

1 If the jury believes that statement, or believes that
2 then the proper verdict is guilty, but by reason of insanity.
3 So that's a lot of legalese, even for me, so proven, that's
4 the first thing. It's got to be proven. It's an affirmative
5 defense. Dr. Gottfried said that, the State said it. I'm
6 saying it, the judge, most importantly, will tell you that. So
7 it does fall to the Defense to prove insanity by a
8 preponderance of the evidence. Now, you heard earlier that the
9 state's burden is beyond a reasonable doubt. That's the
10 highest standard of evidence in the law. It's the protection
11 that criminal -- someone facing criminal charges is afforded
12 in this great nation of ours.

13 Preponderance of the evidence is a lower standard. And
14 Mr. Funderburk is not a professional. He told you he has some
15 marketing training, but he's, you know, he didn't finish high
16 school, and I don't mean that to disparage him at all. But
17 that's reality. He doesn't have any specialized training or
18 experience. You can't hold him to the standard of a lawyer or
19 someone with specialized training, especially when it comes to
20 technical, somewhat complicated legal defenses. So the
21 preponderance of evidence standard, a little lower for the
22 defense, it's basically a greater than 50 percent chance. So
23 51 percent chance that Mr. Funderburk was insane at the time
24 of this, insane by intentional drugging would carry his burden
25 of proof.

1 Mental disease or defect. That's another term or phrase
2 that's very technical and very important. We all do know that
3 illegal drugs affect both the mind and the body. That's
4 exactly why people seek them out and ultimately, sometimes,
5 unfortunately, find themselves addicted. I have a lot of
6 clients in the -- in my job as a public defender and we have a
7 database that stores all the files, and unfortunately, we have
8 some folks that we call frequent flyers, and a lot of times
9 it's drug action, and activity that brings them back and back
10 and back on small property crimes or drug possession,
11 something like that.

12 Anytime someone is booked into J. Reuben, they have a
13 booking photo and we document those, and sometimes it's just
14 heartbreaking to look at someone 10 years ago to where they
15 are today, and that's the addiction. It changes them both in
16 body and mind. But that's not what we have here. We do not
17 have a case of voluntary intoxication, which is of course a
18 defense to nothing. Mr. Funderburk made his views very clear
19 on drugs. He was from a economically depressed area where
20 people use drugs that had an impact on him. He left to make
21 himself better. Not a zero-tolerance policy for drugs is what
22 he said.

23 I'll say that, you know, well, you saw the -- you saw --
24 I heard, you know, I was also kind of struck by what -- by
25 what the solicitor said about how when Mr. Funderburk was

1 answering my questions, he acted one way and then when he
2 answered a, you know, answered hers, he acted another. Well,
3 I don't, you know, it's easy if you're -- if someone's asking
4 you questions that are just kind of, and then what happened?
5 But when someone's bearing down on you, getting you, you know,
6 trying to -- not trick you, but obviously cross-examination is
7 confrontational. I mean it's a tough spot to be in. That
8 doesn't mean him make it a different person because he's all
9 of a sudden basically being attacked versus, you know, just
10 asked to tell us what happened in his own words.

11 So just think about that, think about the whole of what
12 he said last -- or yesterday as you deliberate back there. I
13 mean, he put his defense out there. This case is not going to
14 be resolved anyway other than by jury verdict. And that's a
15 great thing, honestly. So I do submit that he has proven the
16 insanity defense by a preponderance of the evidence. I submit
17 to you that Mr. Funderburk is not guilty of the charges
18 brought against him because of the fact he was drugged against
19 his will. That act took away his ability to tell right from
20 wrong and his ability to conform his conduct to the
21 requirements of law.

22 I would ask you to go back deliberate and come back with
23 a guilty butt not guilty by reason of insanity verdict against
24 each of these charges.

25 **THE COURT:** Anything in reply?

1 **MS. WALLER:** Yes, very, very briefly, Your Honor.

2 He talked about his defense and what we're required to
3 prove, the State is required to prove that once. First of
4 all, I ask you, do you believe that Mr. Funderburk was being
5 drugged, first of all? Because if you don't, you can stop
6 your inquiry there. But if you do believe, then ask yourself
7 if that looked like the man -- a man who was on drugs. Was he
8 on drugs the entire time that all of these crimes occurred? I
9 think that you in your everyday capacity as a normal
10 (inaudible) can tell that that is not the case.

11 But if you need help making that determination, the one
12 and only opinion offered by an expert in this case came from
13 Dr. Emily Gottfried, who is a very experienced forensic
14 psychologist from the Medical University of South Carolina,
15 and she told you that in her expert opinion, that Mr.
16 Funderburk had the ability to know the difference between --
17 the difference between right and wrong at the time he
18 committed these offenses and that he had the ability to
19 conform his behavior to the requirements of the law. So I ask
20 you once again to return a verdict of guilty. Okay.

21 **THE COURT:** All right. Ladies and gentlemen, all of the
22 evidence has been presented to you. The attorneys have made
23 the opposing arguments, and now is the time of the trial when
24 I charge you with the law to be applied in this case.

25 The indictments charged the Defendant with several

1 different crimes. The indictment of charging the Defendant
2 with domestic violence of a high and aggravated nature has
3 been resolved. Therefore, the remaining indictments for your
4 consideration charged the Defendant with assault and battery
5 of a high aggravated nature, criminal sexual conduct in the
6 first degree, and kidnapping.

7 I remind you that the fact the Defendant was arrested,
8 charged, and indicted in this case is not evidence in this
9 case, and cannot be considered by you as evidence of guilt in
10 this case. Nor does the Defendant's arrest, charge, or
11 indictment create any presumption or inference of guilt.
12 These documents are simply the formal written instruments
13 which contain the charges made against the Defendant. They
14 are the formal documents by which this case is brought into
15 this court.

16 Each indictment charges a separate and distinct offense.
17 You must decide each indictment separately on the evidence and
18 the law applicable to it, uninfluenced by your decision as to
19 any other indictment. The Defendant may be convicted or
20 acquitted on any or all of the offenses charged. To be asked
21 to find a separate verdict of guilty or not guilty for each
22 indictment. The Defendant plead not guilty to these
23 indictments. That plea puts the burden on the state to prove
24 the Defendant guilty.

25 A person charged with committing a criminal offense in

1 South Carolina is never required to prove his innocence. I
2 charge you that an important rule of the law is that the
3 Defendant in a criminal trial, no matter what the seriousness
4 of the charge may be, will always be presumed to be innocent
5 of the crime for which the indictment was issued. Unless
6 guilt has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt. This presumption of innocence does
8 not end when you begin your deliberations, but it accompanies
9 the Defendant throughout the trial until you reach a verdict
10 of guilt based on evidence satisfying you of that guilt,
11 beyond a reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness, placed about the shoulders of the Defendant,
14 which remains with the Defendant until it has been stripped
15 from the Defendant by evidence satisfying you of the
16 Defendant's guilt beyond a reasonable doubt. The presumption
17 of innocence is not a mere legal theory. It is not just a
18 legal phrase. It is a substantial right to which every
19 Defendant is entitled, unless you, the jury are satisfied from
20 the evidence of the Defendant's guilt beyond a reasonable
21 doubt.

22 Now, what is a reasonable doubt in the law? A reasonable
23 doubt is the kind of doubt that would cause a reasonable
24 person to hesitate to act. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the Defendant's

1 guilt. We know very few things in this world with absolute
2 certainty, and in criminal cases the law does not require
3 proof that overcomes every possible doubt. If based on your
4 consideration of the evidence, you are firmly convinced that
5 the Defendant is guilty of the crime charge, you must find the
6 Defendant guilty.

7 If on the other hand, you think a real possibility exists
8 that the Defendant is not guilty, you must give the Defendant
9 the benefit of that doubt and find him not guilty. I remind
10 you that during this trial you and I have certain duties to
11 perform.

12 As the trial judge, my responsibility is to preside over
13 the trial of this case. I also have the duty to rule on the
14 admissibility of the evidence offered during this trial.
15 You're to consider only the competent evidence before you. If
16 any testimony was ordered stricken from the record in this
17 case during this trial, you must disregard that testimony.
18 You're to consider only the testimony which has been presented
19 from this witness stand, and the exhibits which have been made
20 a part of the record in this case, and any stipulations of
21 counsel. I have the additional duty to charge you the law
22 applicable to this case.

23 As the presiding judge, I'm the sole judge of the law of
24 this case. Your duty as jurors is to accept and apply the law
25 as I now stated to you. If you have any ideas to what the law

1 is or what the law ought to be, and your ideas from what --
2 your idea is different from what I now tell you the law is,
3 you must disregard your idea of what the law is or ought to
4 be, because you were sworn to accept the law and apply the law
5 exactly as I stated to you.

6 In every case tried in this court before a jury, the jury
7 is the sole and exclusive judge of the facts in the case. A
8 trial judge cannot intimate, state, comment on, or make any
9 statement to a trial jury about the facts in the case. Since
10 you, the jury are the sole judge of the facts in this case,
11 you're not to infer from what I have said during the progress
12 of this trial and ruling upon the admissibility of evidence or
13 otherwise; or anything I say now, during the course of this
14 instruction to you, that I have any opinion about the facts in
15 this case. The law does not allow me to have an opinion about
16 the facts in this case. This is a matter solely for you, the
17 jury to determine.

18 As jurors, your duty is to determine the effect, value,
19 weight, and proof of the evidence presented during this trial.
20 Necessarily, you must determine the credibility of witnesses
21 who have testified in this case.

22 Credibility simply means believability. Your duty as
23 jurors is to analyze and to evaluate the evidence, and
24 determine which evidence convinces you if it's true. In
25 determining the believability of witnesses who have testified

1 in this case, you may believe one witness over several
2 witnesses, or several witnesses over one witness. You may
3 believe a part of the testimony of a witness and reject the
4 remaining part of the testimony of that same witness. You may
5 believe the testimony of a witness in its entirety or reject
6 the testimony of a witness in its entirety. You may consider
7 whether any witness has exhibited to you in interest, bias,
8 prejudice, or other motive in this case.

9 You may also consider the appearance and manner of the
10 witness following the witness stand. The rules of evidence
11 ordinarily do not permit witnesses to testify to opinions or
12 conclusions. An exception to this rule exists for witnesses
13 we call expert witnesses. A witness who by education and
14 experience has become expert in some art, science,
15 professional, or calling, may state an opinion as to relevant
16 and material matter in which the witness claims to be an
17 expert. It may also state the reasons for the opinion.

18 You should consider any expert opinion received in
19 evidence in this case, and like any other evidence, give it
20 the way you think it deserves. If you decide that the opinion
21 of an expert witness is not based on sufficient education and
22 experience, or if you conclude that the reasons given in
23 support of the opinion are not sound, or that the opinion is
24 outweighed by other evidence, you may disregard the opinion
25 entirely.

1 An expert witness's testimony is to be given no greater
2 weight than that of other witnesses simply because the witness
3 is an expert. Also, you're not required to accept an expert's
4 opinion even though it is uncontradicted. And in order to
5 establish criminal liability, the State is required to prove
6 criminal intent. For example, the mental state required to be
7 proven by the State for a particular crime might be purpose,
8 intent, knowledge, recklessness, or criminal negligence.
9 Criminal intent must be proven by the State beyond a
10 reasonable doubt.

11 Criminal intent is always a matter that must be
12 determined by the jury, circumstances surrounding the
13 situation. Criminal intent cannot be proven to a mathematical
14 certainty, that the science cannot dissect the person's brain
15 and determine what the person had in mind. So the law says
16 that criminal intent may be inferred from the circumstances
17 shown to have existed. This is how you make a determination
18 of whether or not the element requiring intent is present.
19 Criminal intent does not have to be established by direct and
20 positive evidence. Intent may be established by inference in
21 the same way as any other fact, by taken into consideration
22 the acts of the parties and all the facts and circumstances of
23 the case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. You must determine what the Defendant intended to

1 do based on the circumstances shown to have existed. Criminal
2 intent can arise from an action or a failure to act. It may
3 arise from negligence, recklessness, or an indifference to
4 duty, or the consequences that is considered bylaw to be the
5 equivalent of criminal intent.

6 Statements alleged to have been made by the Defendant
7 have been admitted into evidence in this case. While the
8 court has determined that the statements are admissible, I
9 instruct you that you made the ultimate decision of whether or
10 not the Defendant made the statements. If the Defendant did
11 make the statement, you must determine whether the statement
12 was made by the Defendant voluntarily and of his own free
13 will. This means that the statement was not caused by
14 pressure, force, fear, threats, coercion, or intimidation, or
15 by hope or a promise of leniency, or a reward of any kind.

16 Determining whether the statement was voluntary, you
17 should consider both the characteristics of the Defendant and
18 the details of the questioning. Some of the factors that you
19 must consider are the age of the Defendant, the Defendant's
20 education or lack of education, the Defendant's mental ability
21 or capacity, the Defendant's IQ or intelligence, the
22 Defendant's background and environment, the place and length
23 of detention, the nature of the questioning, and the advice,
24 or lack thereof, to the Defendant of his constitutional
25 rights, including, but not limited to, the right to remain

1 silent that any statement could be used against him in a court
2 of law. The right to have a lawyer present. That if he could
3 not afford a lawyer or a lawyer would be appointed to
4 represent him without any cost and that he could stop making a
5 statement at any time.

6 You must carefully consider all of the surrounding
7 circumstances before you give any weight to an alleged state.
8 The State has the burden of proving beyond a reasonable doubt
9 that the alleged statement was voluntary. If you determine it
10 was, you may give the statement any further consideration that
11 you deem proper. You must decide what weight, if any, should
12 be given to the alleged statement. You determine the alleged
13 statement was not the free involuntary statement of the
14 Defendant, you should not consider the statement at all.

15 The Defendant is charged with assault and battery of a
16 high and aggravated nature. To convict the Defendant of
17 assault and battery of a high and aggravated nature, the State
18 must prove beyond a reasonable doubt that the Defendant
19 unlawfully injured another person, and great bodily injury to
20 another person results or the act as accompanied by means
21 likely to produce death or great bodily injury.

22 Great bodily injury means bodily injury which causes a
23 substantial risk of death, or which causes serious permanent
24 disfigure or protracted loss or impairment of the function of
25 a bodily member or organ. The Defendant is also charged with

1 criminal sexual conduct in the first degree. To convict the
2 Defendant of this crime, the first element that the State must
3 prove beyond a reasonable doubt is that the Defendant engaged
4 in a sexual battery with the victim.

5 A sexual battery is sexual intercourse, cunnilingus
6 (inaudible), anal intercourse, or any intrusion, however
7 slight of any part of a person's body or any object into the
8 genital or anal openings of another person's body, except when
9 the intrusion is accompanied for medically recognized
10 treatment or diagnostic purposes.

11 If you find that the State has not shown beyond a
12 reasonable doubt that sexual battery occurred, you must find
13 the Defendant not guilty of this crime. If you find that a
14 sexual battery did occur, you must then decide whether the
15 State has proven beyond a reasonable doubt that the Defendant
16 used aggravated force to accomplish the sexual battery, or
17 that the victim submitted to sexual battery while the victim
18 was also the victim of forcible confinement, kidnapping,
19 robbery, extortion, burglary, house breaking, or any other
20 similar act or offense. Aggravated force means the use of
21 physical force or physical violence of a high and aggravated
22 nature to overcome the victim. This includes the threat of
23 using a deadly weapon.

24 If you find that the State has failed to prove beyond a
25 reasonable doubt that the Defendant is guilty of first degree

1 criminal sexual conduct, you may consider whether the State
2 has proved that the Defendant is guilty of second degree
3 criminal sexual conduct. Second degree criminal sexual
4 conduct contains all of the elements of first degree criminal
5 sexual conduct, except the circumstances of aggravation.
6 Instead, the State must prove beyond a reasonable doubt that
7 the Defendant used aggravated coercion to accomplish the
8 sexual battery. Aggravated coercion means that the
9 Defendant threatened to use force or violence of a high and
10 aggravated nature to overcome the victim or another person if
11 the victim reasonably believe the Defendant had the present
12 ability to carry out the threat. Aggravated coercion may also
13 exist if the Defendant threatened to retaliate in the future
14 by the infliction of physical harm, kidnapping, or extortion
15 under circumstances of aggravation against the victim or any
16 other person.

17 The Defendant is also charged with kidnapping. To
18 convict the Defendant of kidnapping, the State must prove
19 beyond a reasonable doubt that the Defendant knowingly and
20 unlawful seized, confined, inveigle, decoy, kidnapped,
21 abducted, or carried away another person without authority of
22 law. Do a thing unlawfully is to do it willfully against the
23 law. Knowingly means with knowledge, consciously, not
24 accidentally. Seize means to take hold, or to take hold on
25 suddenly or forcibly. Confined means to limit or strict or

1 enclosed within bounds and prison or shut or keep in.
2 Inveigle means to lure, entice, or lead astray by false
3 representations, promises, or other deceitful means. Decoy
4 means to lure by or as if by decoy. A decoy is something to
5 entice a person into a trap. Kidnapped means to remove a
6 person against his will by unlawful force or by fraud. Abduct
7 means to carry off secretly or by force for an illegal
8 purpose. Carry away means to remove.

9 The State does not have to prove that the Defendant did
10 all of these things. Instead, if you find beyond reasonable
11 doubt that the Defendant did any of these things, you may find
12 the Defendant guilty of kidnapping. Something done without
13 authority of law and something which the law does not
14 sanction, permit, allow, condone, or provide justification
15 for. The kidnapping does not have to be for any personal or
16 monetary gain, for any illegal purpose, but maybe for any
17 reason whatsoever.

18 The Defendant raises the defense of insanity. Criminal
19 intent is required to prove that the Defendant is guilty of
20 the crime charged. A person who is insane cannot have
21 criminal intent, and therefore cannot be found guilty of a
22 crime. In order to be found not guilty by reason of insanity,
23 the evidence must show that at the time of the crime, the
24 Defendant had a mental disease or defect, which made him
25 unable to distinguish moral or legal right from wrong, or to

1 recognize the crime as morally or legally wrong. By raising
2 the defense of insanity, the Defendant does not necessarily
3 admit the crime was committed. The State must still prove
4 beyond a reasonable doubt that the Defendant committed the
5 crime. However, the Defendant must prove insanity by a
6 preponderance of the evidence.

7 A preponderance of the evidence simply means the greater
8 weight of the evidence, or by or more likely than not. If you
9 find evidence exists that at the time a crime was allegedly
10 committed, more likely than not, that because of a mental
11 disease or defect, the Defendant did not know the alleged
12 crime was morally or legally wrong, the State must then prove
13 beyond a reasonable doubt that the Defendant was sane. You
14 must decide what the condition of the Defendant's mind was at
15 the time the alleged crime was committed.

16 If you have any reasonable doubt as to the Defendant's
17 guilt after considering all the evidence, then you must find
18 the Defendant not guilty. If you have no reasonable doubt
19 that the Defendant committed the crime, but you find that more
20 likely than not because of the mental disease or defect, the
21 Defendant could not distinguish moral legal right from wrong,
22 or recognize the crime as morally or legally wrong, you must
23 find the Defendant not guilty by reason of insanity.

24 Another possible verdict is guilty but mentally ill. If
25 you have no reasonable doubt that the Defendant committed the

1 crime, and that the Defendant had the mental capacity to
2 distinguish moral or legal right from wrong, or recognize the
3 crime as morally or legally wrong, but you find that more
4 likely than not because of a mental disease or defect, the
5 Defendant could not follow the law, you must find the
6 Defendant guilty, but mentally ill.

7 As with insanity, the Defendant has the burden of proving
8 that he is guilty but mentally ill by a preponderance of the
9 evidence. The final possible verdict in this case is guilty.
10 You may only find the Defendant guilty if the State has proved
11 beyond a reasonable doubt that the Defendant committed the
12 crime, that the Defendant was able to distinguish moral and
13 legal right from wrong, and to recognize the crime as morally
14 and legally wrong, and that the Defendant was able to follow
15 the law.

16 As to the indictment, charging the Defendant with assault
17 and battery of a high and aggravated nature, you may either
18 find one of five possible verdicts. No significance should be
19 given to the order in which I state these possible verdicts to
20 you. I simply have to State one first, one second, one third,
21 and one fourth.

22 The possible verdicts on the indictments for assault and
23 battery of a high and aggravated nature are;

24 We, the jury, find the Defendant guilty of assault and
25 battery of a high and aggravated nature. Or, we, the jury,

1 find the Defendant guilty but mentally ill of assault and
2 battery of a high and aggravated nature. Or, we, the jury,
3 find the Defendant not guilty by reason of insanity. Or, we,
4 the jury, find the Defendant not guilty.

5 As to the indictment, criminal sexual conduct in the
6 first degree, you must find one of six possible verdicts
7 against the Defendant. Again, no significance should be given
8 to the order in which I state these possible verdicts too.
9 The possible verdicts for criminal sexual conduct in the first
10 degree are;

11 One, we, the jury, find the Defendant guilty of criminal
12 sexual conduct in the first degree. Or, we, the jury, find
13 the Defendant guilty of criminal sexual conduct in the second
14 degree. Or, we the jury, find the Defendant guilty but
15 mentally ill of criminal sexual conduct in the first degree.
16 Or, we the jury, find the Defendant guilty but mentally ill of
17 criminal sexual conduct in the second degree. Or, we the
18 jury, find the Defendant not guilty by reason of insanity.
19 Or, we the jury, find the Defendant not guilty.

20 As to the indictment charging the Defendant with
21 kidnapping, you may find one or four possible verdicts.
22 Again, no significance should be given to the order of which I
23 State these possible verdicts to you. The possible verdicts
24 for kidnapping are;

25 We, the jury, find the Defendant guilty. Or, we the

1 jury, find the Defendant guilty, but mentally ill. Or, we,
2 the jury, find the Defendant not guilty by reason of insanity.
3 Or, we the jury, find the Defendant not guilty.

4 As I previously instructed you, each indictment charges a
5 separate and distinct offense. You must decide each
6 indictment separately on the evidence and the law applicable
7 to it (inaudible) by your decision as to any other indictment.
8 The Defendant may be convicted or acquitted on one, more than
9 one, or all of the offenses charged. You must find a separate
10 verdict of guilty or not guilty for each indictment.

11 Now, ladies and gentlemen, your verdict must be
12 unanimous. For each indictment, Mr. Figuera (ph), as the jury
13 agrees on the verdict, you'll check the appropriate verdict on
14 the verdict form. When the jury has reached a unanimous
15 verdict on each indictment and you have completed the verdict
16 form, you'll sign it, and knock on the door, and let the
17 bailiff know that the jury has reached a verdict, and we'll
18 bring you back into the Court at that time.

19 I'm getting ready to excuse you back to the jury room,
20 but I ask that you not begin your deliberations at this time.
21 I've got to check with the attorneys to see if there's any
22 additional charges or any corrections to the charges that I've
23 made. If there is, and I deem them appropriate, I'll bring
24 you back into the courtroom and make whatever additional
25 charges or corrections are needed. If there are no additional

1 charges or no corrections to be made, I'll -- the exhibits
2 will be sent back to you with the verdict form, and the
3 bailiff will instruct you to begin your deliberation. But do
4 not begin your deliberation until you're instructed to do so
5 by the bailiff. Now, we've also ordered lunch for you.
6 When lunch gets here, if it's not already here, you can do one
7 of two things. You can continue to deliberate while you eat
8 your lunch, or if you prefer, you can stop deliberations, eat
9 your lunch, and then resume your deliberations. The only
10 requirement is that everybody must do the same thing. You
11 can't have some jurors stop deliberations and others conduct
12 deliberations. What everybody agrees to, you're at liberty to
13 do that. So I'm going to excuse you back to the jury room for
14 just a few minutes, but do not begin your deliberations until
15 you're told to do so by the bailiff. All right. Thank you
16 very much.

17 **REPORTER'S NOTE:** (Jury exits the courtroom at 12:33pm)

18 **THE COURT:** All right. Any challenges or exceptions or
19 additional charges by the State?

20 **MS. WALLER:** No, sir.

21 **THE COURT:** Any by the Defense?

22 **MR. HILLER:** No exceptions to the instructions as
23 charged. Just the objection to the Court's decision not to
24 charge the involuntary intoxication charge proposed by the
25 defense.

1 **THE COURT:** All right. All right. Let's make sure we've
2 got all the exhibits. Here is the verdict form.

3 **(BREAK IN RECORD TO REVIEW EXHIBITS)**

4 **THE COURT:** As often, it's -- since we still have our 12
5 jurors, the law does not allow you to participate in the
6 deliberations. I hate that because we make you sit through
7 the whole trial. We make you do everything that the jurors
8 do, but then we don't allow you to participate in
9 deliberations and reach a verdict.

10 You're free to go if you want to go. If you want to
11 stay, you can stay. If you want to stay a while and then go,
12 you can do that as well. We've got lunch for you. If you
13 want to stay and eat lunch, or if you want to just carry it
14 with you. Do either of you have anything in the jury room
15 that you need to retrieve?

16 **ALTERNATE JUROR:** We do.

17 **THE COURT:** You do?

18 **ALTERNATE JUROR:** Yeah.

19 **THE COURT:** All right. Just let the bailiff know what
20 you have in the jury room and they'll go in and get it for
21 you, okay? All right. Again, I thank you for your service.
22 You've got a one-year disqualification from serving jury duty.
23 You've got a three-year exemption. I hope you don't exercise
24 your exemption because we need good jurors, but that'll
25 conclude your duties as jurors for this case and for this

1 week. Thank you very much. Okay? All right.

2 If we could get somebody to find out what they got in the
3 jury room, go retrieve it for them, then as I said, they're --
4 they can do whatever they want. If they want to eat their
5 lunch, if you can find a place, if they come back in here and
6 wait, they can do that. Or if they want to leave, they're
7 free to go. Okay. Thank you very much.

8 **ALTERNATE JUROR:** Thank you.

9 **THE COURT:** All right. Anything from the State before we
10 recess?

11 **MS. WALLER:** No, sir, Your Honor.

12 **THE COURT:** Anything from the Defense?

13 **MR. FOX:** No, sir.

14 **THE COURT:** All right. We'll stay in -- stand in recess
15 until we hear from the jury.

16 **(COURT IS IN RECESS)**

17 **THE BAILIFF:** All rise.

18 **THE COURT:** Thank you very much. Please be seated.

19 All right. I understand the jury has reached a verdict.
20 Anything from the State before we bring the jury in?

21 **MS. WALLER:** No, sir.

22 **THE COURT:** Anything from the Defense?

23 **MR. HILLER:** No, Your Honor.

24 **THE COURT:** All right. Let's bring the jury in.

25 **REPORTER'S NOTE:** (Jury enters the courtroom at 2:04pm)

1 **THE COURT:** All right. Ladies and gentlemen, welcome
2 back.

3 Mr. Figuera. I understand the jury has reached verdicts,
4 is that correct?

5 **THE FOREPERSON:** Yes, Your Honor.

6 **THE COURT:** All right. Have you completed and signed the
7 verdict form?

8 **THE FOREPERSON:** Yes, Your Honor.

9 **THE COURT:** All right. If you please hand it to the
10 bailiff.

11 All right. I'll ask the clerk of court to please publish
12 the verdict.

13 **THE CLERK:** State of South Carolina, County of Horry
14 versus Rico Antonio Funderburk. As to indictment 2023-GS-2
15 605443, charging the Defendant with assault and battery of a
16 high and aggravated nature, we, the jury, unanimously find the
17 Defendant guilty of assault and battery of a high and
18 aggravated nature.

19 As to indictment 2021-GS-2604782, charging the Defendant
20 with criminal sexual conduct in the first degree, we, the
21 jury, unanimously find the Defendant guilty of criminal sexual
22 conduct in the first degree.

23 As to indictment 2021-GS-2604783, charging the Defendant
24 with kidnapping, we, the jury, unanimously find the Defendant
25 guilty.

1 Signed by foreperson, Ronald Figuera, dated February 2,
2 2024. Ladies and gentlemen of the jury, if this is your
3 verdict, so signify by raising your right hand.

4 **THE COURT:** All right. Let the record reflect that all
5 jurors raised their right hand. Any calling of the jury by
6 the Defendants?

7 **MR. HILLER:** No, Your Honor.

8 **THE COURT:** All right. All right. Ladies and gentlemen,
9 I want to thank you for your service in this case. That
10 concludes your service, not only for this case, but for this
11 week. I thank you for your service. You've got a one-year
12 disqualification from serving jury duty. You've got a three-
13 year exemption. I hope you don't exercise the exemption
14 because we do need good jurors, but that will conclude your
15 services. Now, those of you who want to stay for the
16 sentencing, you may remain seated where you are now. If
17 anyone wants to be excused at this time, you're free to go at
18 this time as well. Thank you very much.

19 All right. Do we have the sentencing sheets?

20 **MS. WALLER:** Your Honor, we sent someone to go bring
21 them. They'll be here momentarily.

22 **THE COURT:** All right. All right. Thank you

23 Mr. Hiller and Mr. Fox, I know these criminal procedure
24 give you certainly the time to file post-trial motions. Are
25 there any post-trial motions at this time?

1 **MR. HILLER:** Your Honor, we would again renew our
2 directed verdict motion and ask the Court to grant a directed
3 verdict in favor of Mr. Funderburk on grounds that the
4 evidence presented at trial does not support the verdict and
5 order a new trial in this matter.

6 **THE COURT:** All right. Your motions noted, I'm going to
7 deny it. Anything else?

8 **MR. HILLER:** At this time, Your Honor, no.

9 **THE COURT:** All right. The jury having reached a verdict
10 of guilty as to assault and battery of a high aggravated
11 nature, criminal sexual conduct in the first degree, and
12 kidnapping, Mr. Hiller, Mr. Fox, anything in mitigation at
13 this time before sentencing?

14 **MR. HILLER:** Your Honor, in presenting mitigation, I
15 believe my brother -- my client's brother, who's been here for
16 the vast majority of the week, would like to speak at the
17 appropriate time. Would that be all right with the Court?

18 **THE COURT:** All right. I'll hear from your client or
19 anyone that wants to speak on his behalf.

20 **MR. HILLER:** And perhaps my client's fiancé. But Your
21 Honor, this has been a hard week, as you know, from your
22 colloquy with Mr. Funderburk as to whether or not he would
23 testify, you inquired as to his record and you heard that he
24 has nothing in the -- but two misdemeanors on his record. His
25 30 years of, you know, being both a member of the (inaudible)

1 community, and then more recently being a member of the Horry
2 County community that's, you know, not something I can say for
3 a lot of clients who I represent both in pleas and in trials.
4 This, you know, before you, is a man with no felonies,
5 obviously these are felonies of which he has been convicted,
6 serious felonies, felonies that carry 85 percent time and
7 very, very serious collateral consequences as well, as Your
8 Honor is aware.

9 I would ask Your Honor, as you consider sentencing, and
10 as, you know, you have a very, very large range of sentences
11 that you could give him. As you know, there are no mandatory
12 minimums on any of these charges, and the legislature set a
13 wide range of anywhere from zero to 30 years on the CSC first,
14 anywhere from zero to 30 on the kidnapping, and anywhere from
15 zero to 20 on the ABHAN. That puts so much discretion in Your
16 Honor's hands to craft the sentence. We would certainly ask
17 that the sentences run concurrent so Mr. Funderburk can, you
18 know, have a chance at rehabilitation, have a chance at life.

19 Your Honor, he has been incarcerated at the J Reuben
20 Detention Center for 617 days. He has an additional 267 days
21 on an ankle monitor where he was on strict home detention.
22 Never had a violation, as you heard at the beginning of the
23 trial. He does -- I believe that, you know, humans are
24 complex. The jury has spoken as to these allegations, but I
25 believe very strongly there is much more to Mr. Funderburk

1 than just the charges for which the jury has convicted him. I
2 would ask Your Honor for -- to use your discretion and craft
3 the sentence that you do believe appropriate after hearing, of
4 course, from everyone else, but also Mr. Mark.

5 **THE COURT:** Mr. Mark, you need to come to the microphone.
6 Give the court reporter your name.

7 **MR. LOCKHART:** First of all, address court. I'm here on
8 behalf of Rico Funderburk.

9 **THE COURT:** I'm sorry, I couldn't understand you. Your
10 name?

11 **MR. LOCKHART:** Mark Lockhart.

12 **THE COURT:** Could you spell your last name?

13 **MR. LOCKHART:** L-O-C-K-H-A-R-T.

14 **THE COURT:** All right. Mr. Lockhart, what would you like
15 to say?

16 **REPORTER'S NOTE:** (Mr. Lockhart is very hard to hear and
17 understand)

18 **MR. LOCKHART:** First of all, I want to address the
19 courtroom. I'm sorry, on the (inaudible) stands here. I
20 appreciate all the love. My condolence go out to each
21 (inaudible) in this courtroom. I generally meet y'all on the
22 opposite side of these walls before you get here at your home,
23 but unfortunately, I'm in a situation where I'm here today
24 looking in front of y'all right now. I really don't know what
25 to say. So if for any words of mine is being quoted, please

1 fix what I'm saying. But I'm just speak briefly and shortly,
2 and I'm going to try to do the best of my ability.

3 I don't know. On behalf of my mother, Brenda Edgewood
4 Lockhart, with six boys and two girls, I've never in my life
5 had to be in a situation like this. That's why I worked so
6 hard to please each and every one of y'all as a y'all member.
7 I try -- I try the best of my ability and to my peers and the
8 people that around me to guide them and lead them in the right
9 direction of this work, being the youth congregation at the
10 Lamb of God church, what I am a part of, a member of.

11 But you Honor -- I'm sorry -- but I asked you, Your
12 Honor, that I love -- I love Rico Antonio Funderburk. He's a
13 sweet individual. I'm sorry, Your Honor, that I couldn't help
14 to support what I helped in the state of North Carolina where
15 my job is located, sir. If any one of my customers, which
16 would've been each and every one of y'all, if I was here, and
17 y'all -- and y'all don't know what town -- I come down here
18 with four boys and two girls. My kids biological. I've been
19 with their mother 14, going on 15 years, sir. And when we
20 come to Horry County, I respect the best of the ability that
21 every day in my life that I came down here to have the
22 opportunity to see the water, sir. Because in the situation
23 we couldn't see that, sir. We dreamed of seeing y'all.

24 So on my behalf, I can just say I love each and every one
25 of y'all as human beings in this courtroom. And I love my

1 brother Rico Antonio Funderburk. Is so much I can save y'all
2 as individual, but I'm at a spot in my life I don't know. I
3 just don't know. And I appreciate. My condolences goes out
4 to the victim, the most -- and my condolences goes out to you,
5 Your Honor. And each one of you can look in a man's eyes and
6 know when he's telling the truth and not telling the truth,
7 Your Honor. And you can look and tell. And I just want to
8 close this argument. I don't know if you might say, I can't
9 say it or not, but I'm going to say what I believe in and I'm
10 going to keep the faith. God is a good God, and one day I
11 will be have to judged by him.

12 **THE COURT:** Thank you, sir.

13 All right. Mr. Funderburk, wish to say anything? Ma'am,
14 your name?

15 **MS. BECKS:** My name is Mara Becks.

16 **THE COURT:** Mara?

17 **MS. BECKS:** Becks, B-E-C-K-S.

18 **THE COURT:** All right. And what is your relationship to
19 the Defendant?

20 **MS. BECKS:** He is my fiancé and the father of my 10-year-
21 old daughter.

22 **THE COURT:** All right.

23 **MS. BECKS:** And he's sweet. He's loving. He's caring.
24 He does all the things a husband should do. He's never been
25 mean or ugly to me in any kind or which way. He's great with

1 our daughter. He does everything for her and for us.

2 **THE COURT:** All right. Thank you.

3 **MS. BECKS:** He means the whole world to me.

4 **THE COURT:** Thank you. All right. Mr. Hiller, Mr. Fox,
5 does your client wish to say anything?

6 **MR. FUNDERBURK:** Your Honor, to -- to say that I'm -- I'm
7 shocked by the verdict would be an understatement, but I guess
8 I have been judged by jury of my peers, and I'd also like to
9 say regardless of the circumstances on record, I'd like to
10 apologize to the victim, regardless. Like I said, again,
11 regardless of the circumstances of the situation, looking back
12 on it with a clear state of mind, I do have a lot of regrets,
13 and there's a lot of things that I wish I can change. And due
14 to the fact of the conviction of these charges, my life will
15 be affected forever by those choice -- those choices and
16 decisions that I've made. But standing here in front of you
17 today, I can't change that.

18 I have put my best foot forward and try to become a
19 better person over the years since this situation. And I -- I
20 think I've done quite good on my own. But Your Honor, I just
21 like to ask that you please have mercy on me and please
22 consider the fact that this is my first time in General
23 Sessions court. This is my first time ever having to deal
24 with the situation even similar close to this. And I'd like
25 to close my statement with an apology, a sincere apology to

1 the victim as well. And I'd like to say that I wish things
2 were different. I wish it didn't go as far as it did, and
3 maybe one day when I appeal this situation, that facts of the
4 case will be more broad and understood. But for right now I'll
5 just like to say I am sorry.

6 **THE COURT:** Thank you, sir.

7 **MR. FUNDERBURK:** Yes, sir.

8 **THE COURT:** All right. Anything further from the Defense?

9 **MR. HILLER:** No, Your Honor.

10 **THE COURT:** All right. Does the victim wish to address
11 the court?

12 **MS. WALLER:** Yes, Your Honor.

13 **THE COURT:** All right. Please give the court reporter
14 your name.

15 **KS :** KS .

16 **THE COURT:** All right. Ms. KS , what would you like to
17 say?

18 **MS. KS :** I just want to first thank you for being --
19 everybody being here today. And I heard that he asked for
20 mercy, but when I was in the situation I wasn't -- I was
21 asking for mercy. I was -- I wasn't given -- mercy.

22 **THE COURT:** Thank you, ma'am. All right. Anything further
23 from the state?

24 **MS. WALLER:** Your Honor, there's not a lot more I can say
25 because you've seen the evidence and heard the testimony this

1 week. But I would like to say that these charges are some of
2 the most serious charges a person can be convicted of in the
3 state of South Carolina. Two of them are most serious charges,
4 and the horrific nature of these crimes, the abuse and the
5 torture that this woman went through, I think warrants the
6 maximum sentence that you can give her. And the State would
7 ask that you give consecutive time for the crimes that he's
8 been found guilty of.

9 **THE COURT:** All right. Prior record?

10 **MS. WALLER:** He has a two -- just a 2015 domestic
11 violence third degree, and a 2012 disorderly conduct.

12 **THE COURT:** All right, Mr. Funderburk, having been found
13 guilty by a jury of your peers on the charges of criminal
14 sexual conduct in the first degree, assault and battery of a
15 high and aggravated nature, and kidnapping, the sentence of
16 the Court is as follows; on the charge of assault and battery
17 of a high and aggravated nature, the sentence of the Court is
18 that you be confined to the State Department of Corrections
19 for 20 years. In the charge of criminal sexual conduct in the
20 first degree, sentence of the Court is that you be confined to
21 State Department of Corrections for 30 years. And on the
22 charge of kidnapping, sentence of the Court is that you be
23 confined to State Department of Corrections for 30 years. All
24 sentences will run consecutively to one another, you'll
25 receive credit for any time served. Does not get any credit

1 for any home detention time served. With regard to the
2 kidnapping, he will be required to register as a sex offender.

3 All right. Thank you very much. All right. Everybody,
4 please remain seated while we excuse the jury. Thank you very
5 much.

6 **REPORTER'S NOTE:** (Jury excised at 2:25pm)

7 **THE COURT:** All right. Anything from the State?

8 **MS. WALLER:** No, sir, Your Honor.

9 **THE COURT:** Anything from the Defense?

10 **MR. HILLER:** No, sir.

11 **THE COURT:** All right. Court is adjourned.

12 **(COURT IS ADJOURNED)**

13

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25

WITNESSES

James C Fletcher Horry County Police
Department

TYSHENNA MAY
DUSTIN SMAL

DOCKET NO. 2021GS2604782

The State of South Carolina

County of Horry

C. Leigh Andrew

21H04755

HORRY COUNTY

2021 OCT 21 P 12: 53

COURT OF GENERAL SESSIONS

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

OCTOBER, 2021 TERM

DATE RECEIVED FROM

GRAND JURY

ARREST WARRANT NUMBER

2021A2610201970

CDR: 0160 §16-03-0652

DOA: 9/2/2021

ACTION OF GRAND JURY

TRUE BILL

Rico Antonio Funderburk
B/M

VS.

THE STATE

ATTORNEY: Jonathan Hiller

Indictment for

Criminal Sexual Conduct, First Degree

Jimmy A. Richardson, II, Solicitor

VERDICT

Foreperson of Grand Jury
Date: OCT 20 2021

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2021, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

CDR: 0160 §16-03-0652

That Rico Antonio Funderburk did in Horry on or about or between August 9, 2021 and August 28, 2021, engage in sexual battery with K.S. [REDACTED], with the use of aggravated force and/or while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

DOCKET NO. 2023GSS2605443

JAMES C. FLETCHER
HORRY COUNTY POLICE DEPARTMENT

The State of South Carolina

County of Horry

Leigh A. Waller

211004765

FILED
HARRY COUNTY

2023 OCT 19 P 3:11

RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM

GRAND JURY

ARREST WARRANT NUMBER

2023DI2600348

CDR: 3411 16-03-0600(B)(1)

DOA: 9/2/2021

THE STATE

VS.

ACTION OF GRAND JURY

Rico Antonio Funderburk

TRUE BILL

Foreperson of Grand Jury

OCT 18 2023

Date

ATTORNEY: Jonathan Hiller

VERDICT

Indictment for

ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

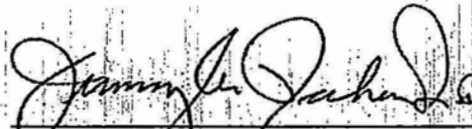
At a Court of General Sessions, convened on, OCTOBER 18, 2023, the Grand Jurors of Horry County present upon their oath:

ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE

CDR: 3411 16-3-600(B)

That Rico Antonio Funderburk did in Horry County on or about or between August 9, 2021 and August 28, 2021, commit an unlawful act of injury to K.S. which resulted in great bodily injury or the act was accomplished by means likely to produce death or great bodily injury to the victim in violation of Section 16-3-600(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSESJames C Fletcher Horry County Police
DepartmentTYSARENA MAY
DUSTIN SMALL

DOCKET NO. 2021GS2604783

The State of South Carolina

County of Horry

C. Leigh Andrew

21H04755

COURT OF GENERAL SESSIONS

OCTOBER, 2021 TERM

ARREST WARRANT NUMBER

2021A2610201971

CDR: 0095 §16-03-0910

DOA: 9/2/2021

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 20 2021

VERDICT

Foreperson of Petit Jury

Date:

RECEIVED
FEB 07 2024
SC Court of Appeals

THE STATE

vs.

Rico Antonio Funderburk

ATTORNEY: Jonathan Hiller

Indictment for

Kidnapping

A. Richardson, II, Solicitor
County of Horry
HORRY COUNTY, SC

CERTIFIED COPY

RENEE N. ELVIS

County of Horry

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 20, 2021, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 §16-03-0910

That Rico Antonio Funderburk did in Horry County on or about or between August 9, 2021 and August 28, 2021, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one KS [REDACTED], without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

Rico Antonio Funderburk

AKA: _____
 Race: BLACK Sex: M Age: 29
 DOB: _____
 Address: _____
 City, State: _____
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2604782A/W#: 2021A2610201970Date of Offense: 8/10/2021S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct 1st Degreein violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

72898

SCB76482

Waller, Leigh A. SC Bar # Defendant

Hiller, Jonathan
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment
 of \$ X; plus costs and assessments as applicable*; the balance is suspended with **probation** for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

2023 GS 2605443
2021 GS 2604783

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.
 _____ days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65
 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RECEIVED
 CLERK OF COURT
 HORRY COUNTY, SC
 024 FEB -21 P 3:05
 FILED
 HORRY COUNTY

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- | | | |
|---|---|---|
| ☐ Substance Abuse Counseling | ☐ Completion of GED | ☐ Random Drug/Alcohol Testing |
| ☐ Attend Voc. Rehab. or Job Corp | ☐ No Contact with Victim | ☐ Domestic Violence Intervention Program |
| ☐ Mental Health Counseling | ☐ May serve W/E beginning: _____ | |
| ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 | ☐ Public Service Employment 0 _____ days/hours | |
| ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. | | |
| ☐ Other: _____ | | |

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 Beginning 3/2/2024

§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:Renee Elvis
Sallie Beth ToddPresiding Judge:
Judge Code:
Sentence Date:Miguel C. Culbertson
2148
FEB. 2, 2024

STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

Rico Antonio Funderburk

AKA:

Race: BLACK Sex: M Age: 29

DOB: [REDACTED]

Address: [REDACTED]

City, S:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2023GS2605443A/W#: 2023DI2600348Date of Offense: 8/9/2021S.C. Code §: 16-03-0600(B)(1)CDR Code #: 3411

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery of a High & Aggravated Naturein violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

72898

SCB76482

Waller, Leigh A.

SC Bar #

Defendant

Hiller, Jonathan
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X; provided that upon the service of X days/months/years/Time Served and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with **probation** for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:2021 GS 26 047822021 GS 26 04783☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition

 2021 FEB -11 P 3:05
 Horry County
 Clerk of Court
 Horry County, SC

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.☐ Other: _____☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 Beginning 3/2/2104

§14-1-206 (Assessments 107.5 %)		\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$	
§50-21-114(BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)	TBD	\$	3.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender FundTOTAL \$ 128.75Clerk of Court/ Deputy Clerk:
Court Reporter:Benee Elvis
Sallie Beth ToddPresiding Judge:
Judge Code:
Sentence Date:M. J. T. Tucker
2148
Feb. 2, 2024

STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

Rico Antonio Funderburk

AKA:

RECEIVED
FEB 07 2024
SC Court of Appeals

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2604783A/W#: 2021A2610201971Date of Offense: 8/28/2021S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation By the State.
 ATTEST:

72898

Waller, Leigh A. SC Bar # Defendant

Hiller, Jonathan SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X ; provided that upon the service of X days/months/years/Time Served and or paymentof \$ X ; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:2021GS26047822023GS2605443☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

RECEIVED
 2021-10-2 P 3:05
 Horry County, SC

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.☐ Other: _____☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 Beginning 3/2/20

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☒ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

Clerk of Court/ Deputy Clerk:

Court Reporter:

Renée Elvis

Sallie Bern Todd

Presiding Judge:

Judge Code:

Sentence Date:

Matthew Culbertson

2148

Feb. 2, 2024

CERTIFICATE OF COUNSEL FOR APPELLANT

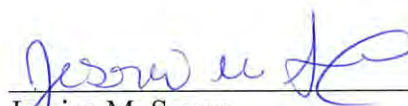
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 16 2025

SC Court of Appeals



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of July, 2025.

RECEIVED

Jul 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

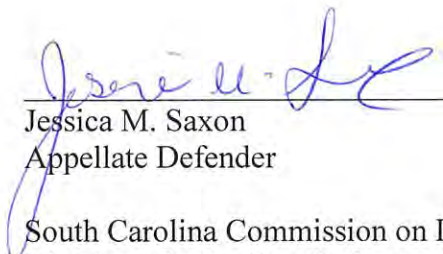
RICO ANTONIO FUNDERBURK,

APPELLANT

APPELLATE CASE NO. 2024-000172

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 Andrew D Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th day of July, 2025.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT