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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLIFTON KIMBLE,

APPELLANT

APPELLATE CASE NO. 2024-002126

RECORD ON APPEAL

MOLLY M. KEEGAN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARK FARTHING
Senior Assistant Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-4117

ATTORNEY FOR APPELLANT

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
PO Box 192
Columbia, SC 29202
(803) 576-1802

ATTORNEYS FOR RESPONDENT

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**[THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 1 (911 CALL)]**

State of South Carolina	)	Court of General Sessions
	)	
County of Richland	)	2020-GS-40-4512
	)	2020-GS-40-4513
	)	2020-GS-40-4514
State of South Carolina,	)	
	)	
v.	)	
	)	
Clifton E. Kimble	)	
Defendant.	)	

December 9-12, 2024

Columbia, South Carolina

B E F O R E:

The Honorable Jocelyn J. Newman, Judge

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

On Behalf of the State: Anna Browder, Esquire
 Joseph Kreush, Esquire
 Assistant Solicitors

On Behalf of the Defendant: Jonathan Harvey, Esquire
 Jonathan Harvey, Attorney at Law

Brandi J. Berry, CVR
 Judicial Circuit Court Reporter

STATE'S OPENING STATEMENT

MR. KREUSH: Ladies and gentlemen, some people just can't take no for an answer. That's what happened on June 5th of 2020 when the Defendant, Clifton Kimble, went to the house of Ms. Melissa Cupid, forced his way into the residence and attacked her.

Just moments -- minutes before, they were on a trip together to the grocery store, got into an argument, as a result of that argument, Ms. Cupid leaves the Defendant there and returns to her home alone.

I want to emphasize "her home", not the Defendant's home. The Defendant didn't live there. Defendant was an ex-boyfriend who just happened to have a few items of property still there.

So what did he -- what she did was pick up that property, put it down on the front porch and lock her and her four children inside the home. About 15 minutes later, Defendant returns to that residence, banging on the door. This is heard by Ms. Cupid's oldest son, I.O. [REDACTED] Unfortunately for him, he also hears everything else that happens after that.

Ms. Cupid had three other children asleep at the house, or at least trying to sleep. So she goes

1 outside to try and get him to stop. She opens the
2 door. The first thing that the Defendant does is step
3 towards her.

4 She tells him, "No, you're not allowed in." It
5 was the first time she says, "no." Defendant then
6 says he needs to use the bathroom. She says, "No, you
7 cannot come in. You need to leave." Second time she
8 says, "no." Ms. Cupid then tries to shut the door,
9 telling him again for the third time, you're not
10 allowed in here.

11 He's had enough at this point. He forces his way
12 through the door, grabs her by the throat, starts
13 strangling her, pulls her outside. He then steps in
14 the doorway, standing there. Tells -- tells Ms.
15 Cupid, "now you see what it feels like."

16 Eventually, he stepped out of the way. That's
17 when Ms. Cupid goes inside her home. Ms. Cupid then
18 for the fourth time tells him, "No, you're not allowed
19 to be here." He then loses it. He starts strangling
20 her again. This time --

21 MR. HARVEY: Objection, Your Honor.

22 THE COURT: Overruled.

23 MR. HARVEY: Thank you.

24 MR. KREUSH: Fingers pulsating on her throat,
25 squeezing harder. He -- he only stops strangling her

1 just to beat on her. During this time, the -- Ms.
2 Cupid goes and tries to defend herself, reaching out
3 of space, doing what she can. Unfortunately, it
4 doesn't work. Eventually, she falls unconscious.

5 I.O. hearing all this, waits to hear Mr. --
6 Mr. Kimble leave. When he leaves, he tries to go and
7 check on his mother. The door to the bedroom of where
8 she's in is locked on the inside. He's forced to go
9 all the way around the house to the front door and
10 sees Ms. Cupid laying on the ground, barely coming .
11 It's at that point a 14-year-old son has to call 911
12 for his mother.

13 The Judge has already gone over with you all the
14 charges of what he's going -- what -- what's what he
15 -- the Defendant's facing in this case. But I just
16 briefly want to give you guys a quick overview.

17 As the judge has already said, she's going to go
18 over these at the end of the trial and take her word
19 for what is said. Okay. But the first charge of what
20 he's facing is burglary, first degree.

21 That's the entering of another dwelling without
22 consent and with intent to commit a crime therein, and
23 then while in there. Entering while in there or while
24 leaving causes physical injury to another. Okay.

25 Second charge, assault and battery of a high and

1 aggravated nature. Okay. So first, it's unlawful
2 injuries to another causing great bodily injury or
3 acts likely to accomplish great bodily injury or
4 death.

5 And the last one is kidnapping. Kidnapping
6 occurs when a person unlawfully seizes, confines,
7 abducts, or carries away another without authority of
8 law.

9 During this case, you're going to hear from
10 members of law enforcement, you're going to hear from
11 the doctor who treated Ms. Cupid, Ms. Cupid's son,
12 **I.O.** and Ms. Cupid herself.

13 They're going to tell you facts about a man who
14 couldn't take no for an answer that night after being
15 told four times at least. He took actions of his own
16 and those facts that we're going to talk about will
17 convince you beyond a reasonable doubt that Defendant
18 Clifton Kimble is guilty of all charges. Thank you.

19 THE COURT: Mr. Harvey.

20 MR. HARVEY: May it please the Court?

21 THE COURT: Yes, sir.

22 DEFENSE OPENING STATEMENT

23 MR. HARVEY: Good morning.

24 THE JURORS: Good morning (In unison).

25 We prepare remarks. We have speeches and we have

1 a game plan. There's one thing I must add to my game
2 plan right now before I go into my prepared remarks.
3 If you'll remember just a few moments ago, Her Honor
4 instructed you that what lawyer's say is not evidence.
5 What you've heard isn't evidence. You've got to
6 remember that.

7 You've taken a solemn oath to keep an open and
8 fair mind until you've heard everything that happened.
9 I just want to remind you of that.

10 So right now after you've heard from a very fine
11 Prosecutor, I find myself in the position of having to
12 address you. Well, again, my name is Jonathan Harvey.
13 I'm a lawyer from Columbia and I represent Clifton E.
14 Kimble. My duty is to represent my client.

15 My client is this young man, Clifton Kimble, who
16 just waved his hand. You're going to come to learn
17 about Clifton Kimble over the trial of the case.
18 You'll come to learn that he's from the Charlotte area
19 of North Carolina.

20 You're going to come to learn that this case
21 involves an incident on June 5th, 2020, at [REDACTED]
22 Claudia Drive. Now, I know that you were just
23 overcome with joy when you received your jury summons.

24 No doubt you thought, I don't have enough to do
25 at home. I don't have enough to do at work. I'm not

1 busy enough. I'm not busy enough at home. I'm not
2 busy enough at work. What I want to do -- what I want
3 to do, is come here, and put my life on hold for the
4 week of December 9th. What I want to do is come to
5 the courthouse this week, a couple weeks before
6 Christmas, and have to be on jury duty, and have to
7 render a judgment on a fellow citizen.

8 I recognize you don't want to be here. You did
9 not volunteer to be here. You know Mr. Kimble does
10 not want to be here. Even though none of us wants to
11 be here, in spite of our forced relationship, in a
12 very colloquial way to describe a forced relationship
13 is that old school expression, shotgun marriage.
14 We're forced to be here for this period of time.
15 We've got a relationship that we find ourselves
16 together. You didn't volunteer to be here. You got
17 picked. But we're going to make our relationship
18 work. We're going to collaborate. We're gonna work
19 together to make our relationship and your role as
20 jurors a success. Well, how are we going to make this
21 a success?

22 Each of us has a part to play in the trial. Each
23 of us -- each of us must work together. I'm confident
24 that will happen today and I'm confident that will
25 happen during the trial.

1 Initially, I asked you, I urge you to set aside
2 your displeasure at being picked for jury duty. We
3 can agree there are a number of other things you'd
4 rather be doing at this time, but we're not. We're
5 all here. We all have to do our part. Your role is
6 not to let your displeasure of being selected for jury
7 duty cause you to prejudge this case.

8 Your role is not to let passion, not to let
9 prejudice, or not to let frustration about the serious
10 social issue of crime make you not abide by your sworn
11 duty. What is the thing that happened with you all
12 today?

13 The very first thing you did is you took a solemn
14 oath. You took an oath to discharge your duty as a
15 juror. That's a very important function that you
16 have. It's so important we ask each and every one of
17 you to take an oath. I understand that when you were
18 informed about the alleged conduct, when you heard
19 from my colleague from the Solicitor's Office about
20 alleged conduct -- because it hasn't been proven yet
21 -- that could be a burglary, an assault of a high
22 aggravated nature in a kidnapping. I assume your
23 first response was why? What?

24 Those are serious crimes. But this case isn't a
25 referendum on whether or not crime is bad. This case

1 is not a referendum of your approval of criminal
2 activity or a lifestyle or a relationship that you
3 don't approve of. This case is not a referendum on
4 those issues.

5 It's just not that simple. It's not as simple as
6 taking a vote. If we took a vote, I believe there
7 would be unanimity. We -- we would all agree there
8 wouldn't be a need for a trial because we can all
9 agree that crime is bad.

10 I don't think so little of each and every one of
11 you. I don't think so little of your time. I don't
12 think so little of the sacrifice that you've made this
13 week that I would ask you to condone criminal
14 behavior.

15 I don't think so little of the time, like I said,
16 that you've been asked to sacrifice, and I don't think
17 so little of your duty that I would ask you to condone
18 criminal activity. I would not and I will not demean
19 your presence by making such a request.

20 Now, this case is going to be a test. A test,
21 Mr. Harvey? What will be tested? Your resolve and
22 your courage will be tested. Why is this case a test
23 of your courage? Because at the end of the case, the
24 end of the case, you -- what you may want to do is not
25 what you have sworn to do.

1 You must do what you have sworn to do. Because
2 you don't like what you've heard, because you don't
3 like what you've seen, because you don't like being
4 informed about a very unsettling set of circumstances
5 or an unsettling situation, does not mean that the
6 State has met its burden of proof.

7 The State has made specific allegations. The
8 State, as in every criminal case, has the burden of
9 proof. This case is about if the State can prove its
10 allegation. Can the State show the participation of
11 Clifton Kimble to prove the crimes it alleges?

12 Now, think about what you heard. You heard about
13 three serious crimes. One of the things you heard in
14 there was the word intent. Intent. You also heard
15 about Mr. Kimble entering 742 Claudia Drive.

16 Pay close attention to the facts and
17 circumstances around this event. Because the State
18 can present evidence, because the State can show you
19 certain acts, does not mean it's presented its case.
20 Because it presents similar conduct, is that conduct
21 alleged in the indictment? Let me explain it this
22 way: The facts presented to you must convince you of
23 my client's guilt beyond a reasonable doubt. What
24 does that mean? First of all, it's important that all
25 of you know Mr. Kimble -- Mr. Kimble comes into this

1 courtroom presumed innocent.

2 And, if you remember, Her Honor instructed you
3 that indictments have no evidentiary way due to means
4 that he got into court. Listen to what Her Honor will
5 tell you at the end of the case about the law and what
6 you're supposed to take from that.

7 First of all, it's important that all of you know
8 Mr. Kimble comes into this court presumed innocent.
9 Mr. Kimble comes into this courtroom presumed
10 innocent. What am I -- what I'm saying is this. What
11 the State alleges is just that, an allegation. What
12 the State -- what the State does in its allegations is
13 the same no matter who's on trial.

14 Everybody is presumed innocent, and allegations
15 are just that -- what that is. If Johnson Harvey's on
16 trial, or each and every one of you are on trial, you
17 come into this courtroom presumed innocent.

18 Well, this is a criminal case. That means it has
19 special rules for the jurors. The rule is that under
20 the constitution of South Carolina, the State of South
21 Carolina must prove the charges against him, must
22 prove his guilt beyond a reasonable doubt.

23 In this case, the State of South Carolina must
24 prove beyond a reasonable doubt that on June 5th,
25 2020, at [REDACTED] Claudia Drive, that he unlawfully

1 entered 742 Claudia drive with the intent to commit a
2 crime and unlawfully restrain and assaulted Melissa
3 Cupid.

4 Another way to conceptualize what this means,
5 another way to conceptualize the presumption of
6 innocence is to express it this way. There are two
7 flags in the Courtroom. The flag of the State of
8 South Carolina and the flag of the United States.

9 Two flags in this courtroom. The presumption of
10 innocence can best be conceptualized by understanding
11 that Mr. Kimble arrived in this courtroom and six
12 before each and every one of you with each flag
13 wrapped around him like a cloak.

14 And what do I mean by that? Each flag, the
15 constitution of the United States, the constitution of
16 the State of South Carolina says that he is presumed
17 innocent. He remains wrapped in those flags.

18 He remains wrapped in those cloaks of innocence
19 until the evidence convinces you to completely unwrap
20 those flags. The evidence must unwrap those flags and
21 leave you firmly convinced of my client's guilt.

22 Before you convict, you must not have a reason to
23 doubt. You must not have a fact that causes you to
24 hesitate to act. You must not think, well, you must
25 not think, may be. You Must not hesitate. You must

1 be firmly convinced that the State has proved guilty
2 beyond a reasonable doubt.

3 Well, what is beyond a reasonable doubt? It's
4 just what the words say. If there is a reason from
5 what has been shown and what has not been shown,
6 presented to you by the State, then by your oaths as
7 jurors, you've sworn to find my client not guilty.

8 Where are the reasons to doubt my client's guilt
9 going to come from? They're not going to come from
10 Jonathan Harvey, the Defense lawyer. They're not
11 going to come from these two fine prosecutors from the
12 Solicitor's Office. The reasons to doubt Mr. Kimble's
13 guilt are going to come from one place, and one place
14 only. Right here (indicating) on this witness stand.

15 What reasons are going to come from the witness
16 stand? You're going to have to decide if the State of
17 South Carolina, on that June 5th, 2020, date, at [REDACTED]
18 Claudia Drive, Mr. Kimble unlawfully entered [REDACTED]
19 Claudia Drive -- Mr. Kimble entered [REDACTED] Claudia Drive
20 with the intent to commit a crime and that the State
21 has proven to you beyond a reasonable doubt that he
22 assaulted Ms. Cupid as the State claims.

23 You're going to meet me here from several
24 witnesses. You're going to meet me here from county
25 deputies, 911, and ER doctors. Now, Richland County

1 is known as RCSD. 911 -- is known by 911 and ER is an
2 acronym for emergency room. So acronyms are
3 important.

4 The most important acronym in this case -- I want
5 you to keep in mind over the duration of the case is
6 an acronym called DIDT. DIDT -- Doubt in the Details.
7 That acronym DIDT, Doubt in the Details.

8 You can tell I got terrible grades for penmanship
9 and I should have -- a sharpie, but I can tell all of
10 you are paying so close attention you can read those
11 letters, DIDT. You'll have the opportunity to hear
12 from these witnesses and observe what they recall.

13 You're going to have an opportunity to hear what
14 they did, saw, or said. And more importantly, what
15 they did not observe and did not document about this
16 incident.

17 Now, I've asked you to look at the facts. I've
18 asked you to evaluate the evidence. I've asked you to
19 find that doubt in the details. Well, "Mr. Harvey,
20 you've told me what to do. How do I do it?" Well, I
21 submit you have two tools available to you to evaluate
22 the evidence. Two tools: You've got the tool of
23 experience and you've got the tool of common sense.
24 Experience and common sense.

25 Let's talk about common sense. Okay. All

1 because Your Honor is presiding, lawyers are arguing,
2 doesn't mean when you parked your car, your truck,
3 your SUV and you got out of it when you closed the
4 door, that doesn't mean your common sense was left in
5 your car.

6 When you walked into the courthouse -- to the
7 courthouse door and you went through security, and you
8 went to your jury room, your common sense wasn't left
9 outside on Main Street. It's with you here today.
10 It's here with you now and remains with you through
11 the trial.

12 Let's talk about experience. Life teaches us
13 many lessons. We all learn from experience. All of
14 you bring the cumulative wisdom of your years to the
15 jury. Why is it on job applications there's always a
16 section about prior jobs, about your experience?
17 Because employers value the knowledge that comes with
18 experience.

19 It's been said many times that the risk is
20 sounding trite. I want to say an expression that I'm
21 referring to about experience. Experience is the best
22 teacher. There are no dropouts from experience.

23 King Solomon said it this way: "The light that
24 comes from wisdom never goes out." I urge you to use
25 common sense and experience as a juror. I urge you to

1 use those tool -- those tools, excuse me, to temper
2 the evidence that's presented to you. I urge you to
3 temper the evidence and the witnesses, and these tools
4 will enable you to see what the evidence will show
5 you.

6 After you take in the totality of all the events
7 of June 5th, 2020, at [REDACTED] Claudia Drive, you will not
8 be firmly convinced that Mr. Kimble committed the acts
9 that the State alleges happened at [REDACTED] Claudia Drive,
10 and you will not be firmly convinced those events
11 happened with the intent of state of mind that the
12 State alleges about Mr. Kimble.

13 Good news is I'm about to finish my remarks. I'm
14 about to sit down. But as I finish with my remarks, I
15 want you all to know that I'm a former Assistant
16 Solicitor here in Richland County. I'm a former
17 Assistant Attorney General under Attorney General
18 Travis Medlock. As a former Prosecutor, I know this
19 case is important to the State of South Carolina, but
20 by the same token, I know for my client it's important
21 that you keep an open, an open and fair mind until all
22 the evidence is heard.

23 Now, have -- after having had the opportunity to
24 learn about you during the jury selection process and
25 watching you here today, I'm confident that your

1 diligence will make sure that justice is served.

2 On behalf of my client, I'm thanking you in
3 advance for your efforts. I urge you that you keep in
4 mind a passage -- a passage from Proverbs that seems
5 to capture the essence of what you've sworn to do in
6 this case. And its message provides all of you with
7 insight into this process. It's proverb chapter --

8 MR. KREUSH: Objection, Your Honor.

9 THE COURT: Sustained. Move on.

10 MR. HARVEY: I'm about to finish, Your Honor.

11 THE COURT: Move on from that -- skip over that.
12 That objection is sustained.

13 MR. HARVEY: Sure. This is where we are. It's
14 my job as the lawyer for my client to question. It's
15 your duty to your oath to question as well. As you
16 sit through the trial, please remember that acronym
17 D.I.D, please remember Her Honor's instructions, which
18 you've sworn to do, and what you've sworn to do based
19 upon all the -- all the evidence that's presented to
20 you. On behalf of my client, I want thank you again
21 for your service and for your time. Thank you.

22 THE COURT: Call your first witness.

23 MS. BROWDER: State calls Tia Frey.

24 **TIA FREY,**

25 Having been first called as a witness was duly sworn and

1 testified as follows:

2 THE CLERK: Thank you, ma'am. Please have a seat
3 in the witness stand and state your full name for the
4 record.

5 DIRECT EXAMINATION

6 BY MS. BROWDER:

7 Q. State your name for the record.

8 A. Tia Frey.

9 Q. And where are you employed?

10 A. Columbia, Richland 911.

11 Q. Okay. And at Columbia Richland 911, what is your
12 job?

13 A. I'm the custodian of records.

14 Q. And what is that?

15 A. I maintain the audio and the CAD incident reports
16 for any incoming 911 calls.

17 Q. And when a 911 call comes into a call center,
18 explain to the jury how y'all document those calls, how
19 they're recorded and how they're stored.

20 A. Simultaneously as the person is calling into 911,
21 the call taker is writing down facts and statements that
22 are being said over the phone by the caller. At the -- at
23 the same time, the call is being recorded instantly when it
24 comes into 911.

25 Q. Okay. And do y'all do that for every 911?

1 A. Every 911. Yes.

2 Q. And once that call has been completed, is it
3 stored anywhere?

4 A. Yes, it is.

5 Q. And where is it stored?

6 A. In our digital system.

7 Q. Okay. Do y'all do that in the regular course of
8 business?

9 A. Yes, ma'am.

10 Q. Okay. And how long do you see those 911 calls?

11 A. 911 calls are -- are kept 90 days unless they've
12 been requested, and then they're kept indefinitely.

13 Q. Okay. And when those 911 calls are being
14 recorded, it being done simultaneously -- the callers on
15 the phone?

16 A. Yes.

17 Q. And as a custodian of record, is it -- is it your
18 job to make sure that everything is stored and everything
19 is done properly?

20 A. It is, yes.

21 Q. Okay. I'm show you what's been marked as State's
22 Exhibit 1. I'm going to show you what's been marked as
23 State's Exhibit 1. Do you recognize this?

24 A. Yes, ma'am. I do.

25 Q. And what is that?

1 A. This is a recording of 911 call.

2 Q. Okay. And is it a 911 call from June 5th, 2020?

3 A. Yes, ma'am.

4 Q. Okay. And how do you know that that is the phone
5 call?

6 A. I have it dated and my initial are --

7 Q. Okay. So you actually listened to that and
8 verified that that is a phone call --

9 A. I have. Yes, ma'am.

10 Q. And is it fairly and accurately represented as a
11 custodian of 911 records call that was --

12 A. It's the complete call. Yes, ma'am.

13 Q. And that call was kept in the ordinary course of
14 business?

15 A. It was.

16 MS. BROWDER: At this time, Your Honor, I'd like
17 to enter State's 1 into evidence.

18 MR. HARVEY: Your Honor, just in order to
19 preserve my previous objection -- thank you, Your
20 Honor. I want to make --

21 THE COURT: Yes, sir. State's 1 is admitted over
22 the Defendant's objection.

23 MS. BROWDER: Thank you, Your Honor. Permission
24 to publish?

25 THE COURT: Yes, ma'am.

1 (Video played.)

2 MS. BROWDER: No further questions, Your Honor.

3 THE COURT: Any cross-examination?

4 MR. HARVEY: If I may, Your Honor?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. HARVEY:

8 Q. Good morning.

9 A. Good morning.

10 Q. You are the records custodian for 911?

11 A. I'm a custodian of records. Yes, sir.

12 Q. Thank you for being here. You don't have any
13 personal knowledge of the events that transpired on that
14 recording, do you?

15 A. No, sir. Other than the -- the call that was
16 attached to the CAD report that came in.

17 MR. HARVEY: Thank you. That's it.

18 THE COURT: Okay. Anything further, Ms. Browder?

19 MS. BROWDER: No, ma'am, Your Honor.

20 THE COURT: Thank you. You may step down.

21 Call your next witness.

22 MR. KREUSH: State calls Deputy William Taylor.

23 **DEPUTY WILLIAM TAYLOR,**

24 Having been first called as a witness was duly sworn and
25 testified as follows:

1 THE CLERK: Thank you, sir. Please have a seat
2 in witness stand and state your full name for the
3 record.

4 DIRECT EXAMINATION

5 BY MR. KREUSH:

6 Q. Deputy, do you mind stating your name for the
7 record?

8 A. William Yago Taylor.

9 Q. Deputy, where are you employed?

10 A. Richland County Sheriff's Department, K-9
11 section.

12 Q. How long have you been employed with Richland
13 County?

14 A. First time, five years, and I recently came back
15 in April.

16 Q. Altogether?

17 A. Five and a half.

18 Q. Okay. How long have you been in law enforcement?

19 A. Eight years.

20 Q. Eight years. Okay. What is your current
21 position?

22 A. K-9 unit.

23 Q. K-9. What does -- what does that job entail?

24 A. Basically, we -- as K-9, we go out to what we
25 call big buyer soliciting weapons, drugs. We actually do

1 tracking, which entails that if a suspect runs, we have our
2 dog that tracks the suspect down. We also do the high risk
3 take downs, meaning if there's somebody who has a high
4 aggravated felony, that's what K-9 is used for.

5 Q. Were you in that position the June of 2020?

6 A. No. I was not. I was actually road deputy in
7 that time.

8 Q. What does that job entail?

9 A. Basically -- well, I was -- I was assigned to
10 Region 2 and we basically took care of all the calls that
11 Region 2 was responsible for, all the way from Two Notch,
12 Percival Road to Decker Boulevard, all the way to Farrow
13 Road.

14 Q. Were you working the night of June 5th, 2020?

15 A. Yes.

16 Q. Do you recall receiving a call that night?

17 A. A call came out for a domestic at [REDACTED] Claudia
18 Drive. Myself and Deputy Gordillo also received that call.

19 Q. Is that Richland County?

20 A. Yes, in Richland County.

21 Q. Okay. Do you know what the basis of that call
22 was?

23 A. The basis -- the only information we received was
24 that there was a 911 call in reference to someone's mother
25 was -- some type of domestic happened and she was injured.

1 Q. Okay. Do you remember what happened?

2 A. Yes. When myself and Deputy Gordillo arrived on
3 scene, I made contact at the front -- the side garage door.
4 And when they opened the door, I saw Ms. Cupid. She was
5 standing there in the doorway with her children, with the
6 white towel over her mouth.

7 Q. Do you recall what time that was?

8 A. I don't recall the time.

9 Q. Okay. Did you have your body cam on?

10 A. Yes, I did.

11 MR. KREUSH: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 BY MR. KREUSH:

14 Q. Deputy Taylor, I'm showing you what's been marked
15 for identification purposes as State's Exhibit 2. Do you
16 recognize that?

17 A. Yes, I do.

18 Q. Can you tell the Court what that is?

19 A. This is where I made initial contact with Ms.
20 Cupid and she was standing there with her towel over her --
21 over her place while her children were at the door.

22 Q. It's a picture? It's a picture, correct?

23 A. Yes, it's a picture.

24 Q. Where -- where'd that picture come from?

25 A. Off my body cam.

1 Q. Off body cam. Okay. Does it accurate depict
2 what you remember from that night?

3 A. Yes, it is.

4 Q. Okay. So when you met with Ms. Cupid, did you --
5 what did you observe about her when you saw her?

6 A. I observed the fact that she was holding her
7 towel to her mouth. I asked what happened and she was
8 disoriented and she said she didn't know what had happened.
9 So Deputy Gordillo pulled her out of the house and I went
10 to focus on the children, and talked to whoever made the
11 911 call to make sure the children were okay.

12 Q. Okay. The children in particular, did -- what
13 was their demeanor?

14 A. I'm a -- like I.O. was the oldest and -- he was
15 more distraught than the rest of them. He started crying
16 -- crying in front of me, basically telling something had
17 happened and his mom was injured.

18 Q. Did you -- did you notice any injuries with her?

19 A. Yes, I did notice Ms. Cupid's eye had -- was
20 swollen and then -- I was -- I actually looked at her lip,
21 which was bleeding.

22 Q. Okay. Did you do anything to take care of those
23 injuries?

24 A. No. I -- I -- while we were there, EMS arrived
25 and we just escorted her to the EMS to have her -- get --

1 take a look at from there.

2 Q. Okay. Well, what were the concerns to -- to call
3 EMS?

4 A. My concern was she kept saying that she did not
5 know what happened. She was disoriented and she had no
6 memory of time about what was going on.

7 MR. KREUSH: Okay. Beg the Court's indulgence.
8 Your Honor, at this time we -- we move to submit
9 State's Exhibit 2 into evidence.

10 THE COURT: Any objection?

11 MR. HARVEY: No, Your Honor.

12 THE COURT: State's 2 is admitted without
13 objection.

14 (State's Exhibit 2 was marked.)

15 MR. KREUSH: Permission to publish, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. KREUSH:

18 Q. Now, Deputy, could you just point out for us if
19 you remember who these -- who's in this picture?

20 A. I'm assuming the two youngest were -- the two
21 youngest, the one in the far back with the white T-shirt,
22 that was the one I was concerned for because he was the one
23 that made a 911 call.

24 Q. Okay. And then that's -- is that Ms. Cupid then?

25 A. Yes. That is Ms. Cupid.

1 MR. KREUSH: No further questions.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. HARVEY:

5 Q. Good morning --

6 A. Good morning.

7 Q. -- Deputy Taylor.

8 A. Good morning.

9 Q. Deputy Taylor, you've got eight years in law
10 enforcement, right?

11 A. Yes, sir.

12 Q. And at the time you were a road deputy, correct?

13 A. Yes, sir.

14 Q. And part of what road deputies do, K-9 officers
15 do now, is when you respond to a call, call for service,
16 you believe there's a report, right?

17 A. Yes, sir.

18 Q. In this instance, you didn't make an incident
19 report, did you?

20 A. No, sir. I did not.

21 Q. Okay. So you came to the scene that you
22 described, encountered these individuals in the state that
23 you described but you didn't generate an incident?

24 A. No. I -- when Ms. Cupid was escorted to EMS, I
25 left the scene due to the fact that there was another call

1 coming out.

2 Q. Okay. And did you take the time to walk around
3 the front of the house?

4 A. No. I -- my concern was the children and making
5 sure that she saw EMS.

6 MR. HARVEY: Okay. Now, you were handed State's
7 Exhibit Number 1. May I -- may I hand this to the witness,
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. HARVEY: Deputy, look at State's witness
11 number two and tell me -- may I stand by the witness,
12 Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. HARVEY:

15 Q. I'm going to stand next to you, Deputy Taylor.
16 And as we look at State's Number 2, there's a doorway. You
17 agree with me this is the doorway?

18 A. Yes.

19 Q. And the doorway has two sides. And you'll agree
20 with me this -- this is some type of device in the garage,
21 correct?

22 A. Uh-huh (affirmatively.).

23 Q. Is that a -- typically a ring camera type of
24 device?

25 A. I don't know what type of device that is.

1 Q. But it's not a light switch. It's some sort of
2 device that is used in home security, right?

3 A. I -- I don't know what that is. I'm not familiar
4 with that.

5 Q. Did you bother to ask --

6 A. No, I didn't.

7 Q. -- any -- anybody there? Did you bother to ask
8 anybody if there were any cameras or ring devices?

9 A. No, I did not.

10 MR. HARVEY: Beg the court's indulgence one
11 moment?

12 THE COURT: Yes, sir.

13 BY MR. HARVEY:

14 Q. Do you know if any of the other responding
15 deputies filed a report?

16 A. Not to my knowledge, no.

17 Q. Okay. And how many deputies responded?

18 A. Just three of us.

19 Q. Okay. And you didn't gather any evidence from
20 the scene, did you?

21 A. No.

22 Q. You didn't call for any investigative assistance?

23 A. No.

24 Q. And did you escort Ms. Cupid to EMS?

25 A. EMS came and approached us at the doorway and we

1 walked back to the end of the carport when we gave them the
2 privacy with Ms. -- Ms. Cupid.

3 Q. Okay. Is that when you left?

4 A. Yes, that was when I actually turned off my body
5 cam. I left to go to another car.

6 MR. HARVEY: Thank you. Beg the Court's
7 indulgence one moment?

8 THE COURT: Yes, sir.

9 MR. HARVEY: That's all we have, Your Honor.

10 THE COURT: Any -- any redirect?

11 MR. KREUSH: Your Honor, no, there will be no
12 redirect.

13 THE COURT: Okay. Thank you. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Call your next witness.

16 MS. KREUSH: State calls Ceara Forbes.

17 **CEARA FORBES,**

18 Having been first called as a witness was duly sworn and
19 testified as follows:

20 THE CLERK: Thank you, ma'am. Please have a seat
21 in the witness stand and state your full name for the
22 record.

23 DIRECT EXAMINATION

24 BY MR. KREUSH:

25 Q. Ms. Forbes, please state your full name for the

1 record.

2 A. Ceara Forbes.

3 Q. Ms. Forbes, where are you employed?

4 A. Currently, I am a permanent substitute teacher
5 with the Kershaw County School District.

6 Q. Where were you employed in June of 2020?

7 A. I was working as a deputy at Richland County
8 Sheriff's Department.

9 Q. And what did your job entail there?

10 A. So I was at the headquarters at the desk. So
11 basically, I answered the phones, taking reports over the
12 phone, whether it's over the phone or in person.

13 Q. Okay. What did the -- those things in person
14 detail. What were your job duties if someone show up in
15 person?

16 A. If someone did show up in person, first I would,
17 you know, basically, you know, see what they would need.
18 Sometimes people would need to ask questions about, you
19 know, fingerprints for CWP's, or you want to do a police
20 report. And when they do a police report, you know, I'll
21 take them to the back and ask them a few questions about
22 the incident that happened. And I document, do a report
23 and give him case number.

24 Q. Okay. And when you document, do you do anything
25 else? Is -- is there any recordings, photos, anything like

1 that?

2 A. So depending on the incident, you know, I would,
3 you know, take any photos if there's any injuries or if
4 there are any incidents where, you know, the complainant
5 comes in with like any documentation, like maybe some
6 doctor notes or anything that they want to include into the
7 report, you know, I will get a copy of that and then -- and
8 attach it to the report.

9 Q. Do you recall someone filing a report on June
10 6th, 2020?

11 A. Yes.

12 Q. Okay. Do you -- do you recall who that was?

13 A. Ms. Cupid.

14 Q. Okay. And without going any details of what
15 specifically was said, do you recall what that meeting was
16 about?

17 A. Yes. In regards of her being a assaulted by the
18 Defendant.

19 Q. Did you notice anything about her?

20 A. Yes. She did have visible injury. She had -- I
21 remember her cheek was swollen, and also she had a -- a
22 busted lip.

23 Q. Did you take photos of those injuries?

24 A. I did.

25 MR. KREUSH: Your Honor, may I approach the

1 witness?

2 THE COURT: Yes, sir.

3 BY MR. KREUSH:

4 Q. I'm showing you what's been pre-marked as State's
5 Exhibit 8 and 9. Do you recognize these? You can take
6 them.

7 A. I do.

8 Q. Okay. Can you describe those for me?

9 A. It's a photo of Ms. Cupid with her injuries.

10 Q. Is that from the night of June 6th? For the day
11 of June 6th? I apologize. Did you take them?

12 A. Yes.

13 Q. Okay. Do they accurately represent what you saw
14 that night -- or that day? Sorry.

15 A. Yes.

16 MR. KREUSH: Okay. Your Honor, at this time we'd
17 like to offer State's Exhibits 8 and 9 into evidence.

18 THE COURT: Any objection?

19 MR. HARVEY: No, Your Honor.

20 MR. KREUSH: Permission to publish?

21 THE COURT: State's 8 and 9 are admitted and you
22 may publish.

23 (State's Exhibit 8 & 9 were marked for evidence.)

24 MR. KREUSH: Permission to publish to the jury?

25 THE COURT: Yes, sir.

1 BY MR. KREUSH:

2 Q. Now, Ms. Cupid had injuries. Did -- did you get
3 her medical attention?

4 A. Excuse me?

5 Q. Did you have -- did you get her medical
6 attention?

7 A. No. At -- not at that time because she informed
8 me that she came from the hospital.

9 Q. Okay. And she -- did she provide you any proof
10 of that?

11 A. Yes. She gave me like her -- I guess her
12 discharge paperwork. So I attached that to the report.

13 MR. KREUSH: No further questions, Your Honor.

14 THE COURT: Cross-examination?

15 MR. HARVEY: May it please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. HARVEY:

19 Q. Ms. Forbes.

20 A. Yes.

21 Q. I would guess that working in a Sheriff's
22 Department is a good training to be a substitute teacher,
23 isn't it?

24 A. Well, I mean, previously I was a school resource
25 officer, so kind of stuck with -- with kids.

1 Q. All right. Okay. Now, you had testified in
2 response to the Solicitor's questions that you were working
3 in -- was it headquarters?

4 A. Yes.

5 Q. And you were almost -- you were the first person
6 someone would see when they came in, right? Or they would
7 be referred to you?

8 A. Yes.

9 Q. All right. So they would be referred to you and
10 what you did was pretty important. You would document what
11 transpired when somebody came to the Sheriff's Department
12 and you took information, right?

13 A. That is correct.

14 Q. And you received some training on how to prepare
15 reports, right?

16 A. Yes.

17 Q. Okay. And you were taught to prepare complete
18 and accurate reports, right?

19 A. Correct.

20 Q. And that's because you were taught to include
21 everything about the incident that was important, right?

22 A. Correct.

23 Q. And that's because you, the Sheriff's Department,
24 even the Solicitor's Office, all rely on that report to
25 make an evaluation of a case, right?

1 A. Correct.

2 Q. Okay. And you were taught to write down in your
3 report to reflect what a complaining witness might say
4 about an incident, right?

5 A. Correct.

6 Q. And you wanted to make sure if you had a prepared
7 report that it would be complete and accurate, right?

8 A. Correct.

9 Q. Now, and you would include everything that was
10 important, right?

11 A. Correct.

12 Q. Now, the purpose of the report is to have an
13 accurate record of what you heard or saw or what
14 information you gathered, right?

15 A. Correct.

16 Q. Now, on June 6th, Ms. Cupid came to the Sheriff's
17 Department, right?

18 A. That's correct.

19 Q. And she told you about the events, and when the
20 Solicitor asked you a question, you responded what she told
21 you about it, right?

22 A. Correct.

23 MR. HARVEY: And that would've been in your
24 report? So -- may I approach the witness?

25 THE COURT: Yes, sir.

1 BY MR. HARVEY:

2 Q. Did you review your report before you came to
3 court today?

4 A. Yes.

5 Q. So you actually reviewed your report before you
6 testified today, right?

7 A. Yes.

8 Q. So if we'll go to the second full paragraph --
9 tell me if I'm reading correctly. Because you had
10 testified that she had gotten some medical attention,
11 right?

12 A. Correct.

13 Q. And your statement says "Cupid went to Providence
14 Health to seek medical treatment." And you testified
15 earlier, and it's reflected in your report, her discharge
16 paperwork is attached to the report, right?

17 A. Correct.

18 Q. Tell me if I'm reading correctly.

19 MR. KREUSH: Objection; Your Honor.

20 THE COURT: Sustained.

21 BY MR. HARVEY:

22 Q. As a result of your investigation in
23 communicating with Ms. Cupid, did you come to learn, and
24 she informed you that she had cameras -- before the
25 incident?

1 MR. KREUSH: Objection --

2 THE COURT: Let me see that.

3 MR. HARVEY: It's the second paragraph, Your
4 Honor.

5 THE COURT: Overruled. Proceed.

6 BY MR. HARVEY:

7 Q. When you interviewed Ms. Cupid, did Ms. Cupid
8 inform you that she had cameras that recorded the incident?

9 A. Yes.

10 MR. HARVEY: Thank you. No further questions.

11 THE COURT: Any --

12 MR. HARVEY: Beg the Court's indulgence one
13 moment?

14 THE COURT: Oh, yes, sir.

15 BY MR. HARVEY:

16 Q. Did she ever come back to the Sheriff's Office to
17 provide you with those cameras or any information?

18 A. No. She did not.

19 MR. HARVEY: Thank you.

20 THE COURT: Any redirect?

21 MR. KREUSH: Briefly, Your Honor?

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. KREUSH:

25 Q. Ms. Forbes, are you an -- are you an

1 investigator?

2 A. I'm not.

3 Q. Okay. Your job is -- you said was just limited
4 to basically intake?

5 A. That is correct.

6 Q. Okay. So when someone comes in and takes a
7 report, do -- do you do any further than that?

8 A. No. So when anyone has any additional
9 information, I always refer them to speak with their
10 investigator.

11 MR. KREUSH: No further questions, Your Honor.

12 MR. HARVEY: Briefly.

13 THE COURT: Yes, sir.

14 BY MR. HARVEY:

15 Q. In this instance, not only did you take a report,
16 but you took it one step further, you took pictures, right?

17 A. Yes.

18 Q. So you did more than just take a report in this
19 case?

20 A. Yes. So typically, when any responding officer,
21 if there's any, you know, injuries or anything, you will
22 take pictures and attach it to the report for
23 documentation.

24 MR. HARVEY: Thank you.

25 THE COURT: All right. Thank you. You may step

1 down.

2 All right. Ladies and gentlemen, it looks like
3 we're going to take a lunch break at this point. Be
4 back in your jury room at 1:45. Don't discuss the
5 case amongst yourselves or with anyone else. Don't do
6 any research about the case. Enjoy your lunch and
7 we'll see you at 1:45. Thank you.

8 (Jury exits the courtroom.)

9 THE COURT: All right, counsel. If there's
10 nothing we need to discuss, I'll see you at 1:45.
11 Thank you. Thank you.

12 (A lunch recess was had.)

13 THE BAILIFF: Court come to order. All rise.
14 Please be seated.

15 THE COURT: All right. Good afternoon, folks.
16 Are you ready? Okay. I've got a note from the jury.
17 They would like to take notes. Does the State have
18 any objection to them taking notes?

19 MS. BROWDER: No, ma'am.

20 THE COURT: Any objection from the Defense? Yes,
21 sir. Yes, sir.

22 MR. HARVEY: I'm concerned with Mr. Kimble and
23 discussed with Mr. Kimble the circumstance of the
24 jury's request. I've given him the full advice as to
25 his options. He has responded to me and authorized me

1 to advise the Court that he responds into the -- in
2 the affirmative for the jury to be able to take notes.

3 THE COURT: Wonderful. All right. With that
4 consent, I believe a bailiff has already may be -- or
5 is getting the notepads. We'll pass them out when
6 they come in. We just need to make sure we have a
7 writing utensil for each of them.

8 THE BAILIFF: Yes, ma'am.

9 MR. HARVEY: Okay. Well, I've never known --

10 THE COURT: Okay. Mr. Bowen's on it apparently.

11 THE BAILIFF: Yes, ma'am.

12 THE COURT: Okay. And once I know that he's
13 ready to pass them out, we can bring the jury in. I
14 just want to make sure he's got them first.

15 THE BAILIFF: Your Honor, may it please the
16 Court? Do you -- do you need me to bring the jury in
17 and then pass them out? How would you like it?

18 THE COURT: Are they ready to be passed out? Do
19 you have the notepads?

20 THE BAILIFF: We don't have them yet, ma'am.

21 THE COURT: Okay. No. Let's wait on the jury
22 then.

23 THE BAILIFF: Okay. Yes, ma'am.

24 (Jury brought to the courtroom.)

25 THE BAILIFF: Your Honor, all jurors are seated.

1 THE COURT: Thank you. Welcome back, ladies and
2 gentlemen. Obviously I've received your note asking
3 permission to take notes. So you should each have a
4 notepad to allow you to take notes during the trial of
5 this case. However, please remember that the notes
6 that you take are for your purposes only and should
7 not be discussed with anyone.

8 In addition, you must not allow your note-taking
9 to keep you from observing and listening to the
10 witnesses. So don't sit over there doodling and being
11 distracted. It's important that you, you know, not
12 only hear the witnesses, but watch them as well and
13 pay attention to the attorneys and exhibits and all of
14 that.

15 But with that said, we're back on the State's
16 case. They're going to call their next witness.

17 MS. BROWDER: Thank you, Your Honor. State calls

18 I.O. .

19 I.O. ,

20 Having been first called as a witness was duly sworn and
21 testified as follows:

22 THE CLERK: Please have a seat in the witness
23 stand, and state your full name for the record and
24 spell your last name.

25 THE WITNESS: My name is I.O. , last name

I.O., I.O.

DIRECT EXAMINATION

BY MS. BROWDER:

Q. And how old are you, I.O.?

A. I'm 18.

Q. 18. Okay. And do you know Melissa Cupid?

A. Yes.

Q. And how do you know her?

A. She's my biological mother.

Q. Your mother. Okay. And do you live with your mother?

A. Yes.

Q. And do you have any brothers and sisters?

A. Yes.

Q. And how many brothers and sisters do you have?

A. Two brother, one sister.

Q. Okay. And how old are they?

A. I don't really remember.

Q. How -- are you the oldest, in the middle, or?

A. Yeah, I'm oldest.

Q. Okay. And what are their names?

A. Ali, Elijah, and Imani.

Q. Okay. And Imani. So you have one sister?

A. Yes.

Q. Okay. And back in June of 2020, were you living

1 here in South Carolina?

2 A. Yes.

3 Q. Okay. And who was living with you at that time?

4 A. My mother and my siblings.

5 Q. And do you know Clifton Kimble?

6 A. Yes.

7 Q. Okay. And how do you know him?

8 A. He was -- he was dating my mom and he's also the
9 attacker.

10 Q. Okay. And -- you said he was dating your mom,
11 did he live with y'all?

12 A. No, he did not.

13 Q. Okay. And back in June of 2020 when this
14 incident happened, do you remember if he had a key to the
15 house?

16 A. He did not have a key, no.

17 Q. Okay. And would he still come over to help y'all
18 at that time?

19 A. Yes, occasionally.

20 Q. Okay. And when he would come over, how would he
21 get in the house?

22 A. By my mom.

23 Q. Okay. And if your mom wasn't home, who would let
24 him in the house?

25 A. Probably me.

1 Q. Okay. And how often would he come over?

2 A. Not too often. I'd say like maybe two or three
3 times a week.

4 Q. Okay. Now, I'm going to take you to June 5th,
5 2020, which is the reason we've been here. Do you remember
6 calling 911 that day?

7 A. Yes.

8 Q. Okay. And how old were you back in 2020?

9 A. 14.

10 Q. 14. And why did you call 911?

11 A. Because of the incident that happened at our
12 home.

13 Q. Okay. And when you say "the incident that
14 happened," tell the jury -- I guess I'm going to show you a
15 picture first. I'm going to show you what's been marked as
16 State's Exhibit 3. Do you recognize this?

17 A. Yes, I do.

18 Q. And what is that?

19 A. That is the house that I was living in when I was
20 14.

21 Q. Okay. And does it show the different rooms?

22 A. Yes, it does.

23 Q. And is that a fair and accurate representation of
24 what the house and the rooms were at that time?

25 A. Yeah. It is.

1 MS. BROWDER: Okay. At this time, Your Honor,
2 we'd like to enter State's Exhibit 3.

3 THE COURT: Any objection?

4 MR. HARVEY: No objection.

5 THE COURT: State's 3 is admitted without
6 objection.

7 (State's Exhibit 3 was marked.)

8 MS. BROWDER: Permission to publish, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. BROWDER:

11 Q. Is it on your screen right there so you can see
12 it? Okay. So at the bottom of the screen where it says
13 "Melissa's bedroom," is that your mother's bedroom?

14 A. Yes, it is.

15 Q. Is that the front of the house or the back of the
16 house?

17 A. It is the front of the house.

18 Q. Okay. And that little thing where the door is,
19 right in front of that, what is that, the little gray box?

20 A. That is the porch.

21 Q. The porch. Okay. And then your bedroom is right
22 next to hers?

23 A. Yes.

24 Q. Okay. And then your sister Imani is next to
25 that?

1 A. Yeah.

2 Q. And then where's -- is the carport, the garage?

3 A. Yeah, it is.

4 Q. Okay. Now, I'm going to show you what's been
5 entered as State's Exhibit 2. Do you recognize that
6 picture?

7 A. Yes, I do.

8 Q. Okay. Who is in that picture?

9 A. My two little brothers, my mom, and myself.

10 Q. Okay. And which one are you?

11 A. The one in the white t-shirt.

12 Q. In the back?

13 A. Yeah.

14 Q. Okay. And at that time you were up to almost
15 your mother's shoulder?

16 A. Yes.

17 Q. Okay. How tall are you now compared to her?

18 A. A few inches.

19 Q. Okay. So you're a little bit shorter than or
20 now?

21 A. Uh-huh (affirmatively).

22 Q. And who was that in the front?

23 A. That is my little brother, Ali.

24 Q. Okay. And do you know how old he was at the
25 time?

1 A. No.

2 Q. Okay. And then who is that to the right in the
3 white shirt?

4 A. My little brother, Elijah.

5 Q. Elijah. And then is that your mother?

6 A. Yes.

7 Q. Okay. And that's how y'all looked that night?

8 A. Yeah.

9 Q. Okay. So all -- that night before you called
10 911, what caught your attention first? How did the
11 incident start from what you heard?

12 Well, let me ask you this. What were you doing
13 earlier the day?

14 A. Around that time, I was in my brother's room. We
15 were all going to watch a movie together.

16 Q. Okay. And that's Elijah's room?

17 A. Yes.

18 Q. Okay. And do you remember what movie you were
19 going to watch?

20 A. No.

21 Q. All right. So you were going to watch a movie
22 together, then what happened?

23 A. And then a few minutes after trying to get
24 everything set up, we heard banging on the door.

25 Q. Okay. And how did you know it was banging on the

1 door? What did you hear?

2 A. Because we could hear it all the way from the
3 back.

4 Q. Okay. All right. So you were in Elijah and
5 Ali's bedroom?

6 A. Yes.

7 Q. Okay. And you could hear the banging from the
8 front door?

9 A. Yeah.

10 Q. Okay. And was anybody saying anything? Did you
11 know who was banging?

12 A. I did.

13 Q. Okay. And who was banging?

14 A. Clifton.

15 Q. Okay.

16 MR. HARVEY: I'm going to object to him
17 knowing who was banging.

18 THE COURT: Overruled.

19 BY MS. BROWDER:

20 Q. And how did you know it was Cliff?

21 A. Because he was speaking back and forth with my
22 mom.

23 Q. Okay. And how long did you know Cliff at that
24 point? Do you know?

25 A. Six years.

1 Q. Okay. So were you familiar with his voice?

2 A. Yes.

3 Q. Okay. So you knew it was Cliff banging on the
4 door?

5 A. Yes.

6 Q. Okay. And could you hear what he was saying?

7 A. He was trying to get inside or just talk his way
8 in.

9 Q. Okay. And when you heard him banging on the
10 door, what would -- could you hear what your mom was doing?

11 A. Yeah.

12 Q. And what was -- what could you hear her doing?

13 A. She was telling him that he needed to leave and
14 basically denying him entry.

15 MR. HARVEY: Object to hearsay.

16 THE COURT: Overruled.

17 BY MS. BROWDER:

18 Q. Okay. So you hear the banging on the door, what
19 do you hear next?

20 A. I hear the door like open just a bit.

21 Q. Okay. And how did you hear the door open? How
22 did you know it opened up?

23 A. It was very heavy, so it made a lot of noise on
24 the ground.

25 Q. Okay. And so when the door opened, what'd you

1 hear after that?

2 A. I heard like my mom tell him to leave multiple
3 times.

4 Q. Okay. And what was -- could you hear him doing
5 anything?

6 A. No, I didn't hear anything yet.

7 Q. And where were you at this time? Were you still
8 in Elijah's bedroom?

9 A. No. I was starting to walk over -- down the
10 hallway.

11 Q. Okay. And where down the hallway were you in
12 relation to your bedroom?

13 A. Around the bathroom area.

14 Q. Okay. The bathroom next to Elijah or the one
15 next to that?

16 A. Just like in the hallway, kind of near my room
17 and the bathroom.

18 Q. Okay. All right. So you had gotten closer to
19 your mother's bedroom?

20 A. Yeah.

21 Q. All right. How many doors did your mother's
22 bedroom have?

23 A. It had two.

24 Q. Okay. And so there's that one in the front and
25 then there's another one off the hallway?

1 A. Yeah.

2 Q. Okay. So you hear the front door open. What do
3 you hear next after your mom tells him to leave?

4 A. I hear a bunch of banging and yelling.

5 Q. Okay. And who's doing the yelling?

6 A. Clifton.

7 Q. Okay. Could you hear what he was saying?

8 A. It was mainly about an argument that they had
9 earlier, I'm guessing.

10 Q. Okay. And you heard the banging. What -- what
11 happened next?

12 A. Whenever I got closer to the door, I heard -- it
13 sounded like choking.

14 Q. Okay. And when you say "it sounded like
15 choking," what did that sound like?

16 A. Gasping.

17 MR. HARVEY: Your Honor, I'm going to renew my
18 previous objection to that testimony. Thank you.

19 THE COURT: Yes, sir. Overruled.

20 BY MS. BROWDER:

21 Q. Okay. What did that choking sound like?

22 A. Gasping for air.

23 Q. Okay. And was she speaking at that point?

24 A. A little bit, but it was hard to really
25 understand.

1 Q. Okay. But she was gasping for air?

2 A. Yeah.

3 Q. And could you hear Clifton doing anything?

4 A. Yeah. He was talking.

5 Q. Okay. After you heard the gasping for air, what
6 did you hear next?

7 A. More banging.

8 Q. Okay. Then what?

9 A. And then I heard a thud, and I heard him leaving.

10 Q. Okay. And how'd you hear him leaving?

11 A. Exiting back out the door. Was kind of in a
12 hurry.

13 Q. Okay. And how did he get to the house that day?
14 Do you know?

15 A. I'm pretty sure a walk.

16 Q. Okay. Did he -- did he have a car there?

17 A. Yes.

18 Q. Okay. So he drove initially to the house?

19 A. Yeah.

20 Q. Okay. So you hear him leave. Does he leave?

21 A. Yeah. He leaves.

22 Q. Okay. And what did you do once he left?

23 A. I went to go and check on my mom.

24 Q. Okay. And where did you go to do that? How'd
25 you try to get into her bedroom?

1 A. I left through the carport and went in the same
2 way he left.

3 Q. Okay. And why couldn't you get in that back
4 door? That -- off the hallway?

5 A. It was locked.

6 Q. It was locked. Okay. Does your mom always keep
7 that door locked?

8 A. Yes, mostly.

9 Q. Okay. So that door was locked. So you said you
10 went through the carport, the garage?

11 A. Uh-huh (affirmatively).

12 Q. Okay. And then where did you go once you went
13 through there?

14 A. To the front entrance.

15 Q. Okay. And when you got to the front entrance and
16 went into the room, what did you see?

17 A. My mom laying on the ground. She was not
18 responding and her breathing was really weird.

19 Q. Okay. And when you say she was not responding,
20 what do you mean by that?

21 A. I tried to shake her a bunch of times.

22 Q. So was she like unconscious or --

23 A. Yes.

24 Q. Okay. And about how long do you think you were
25 shaking her to try to get her to wake up?

1 A. Maybe like a minute, two minutes while on the
2 phone with the police.

3 Q. Okay. Did she eventually wake up?

4 A. Yes, she did.

5 Q. Okay. And when she woke up, what was her
6 demeanor like? How was she acting?

7 A. She was confused.

8 Q. Confused. And why do you say she was confused?

9 A. She didn't remember who I was.

10 Q. Okay. And you've been living with her for, at
11 that point, 14 years?

12 A. Yeah.

13 Q. Okay. You said she didn't know who -- who she
14 was -- or who you were. Did your brothers and sisters come
15 in later to the room or --

16 A. Yes.

17 Q. Okay. Did she know who they were?

18 A. No.

19 Q. And you called 911, the police and the ambulance
20 came. At some point, did she start to remember who you
21 were?

22 A. Briefly.

23 Q. Okay. And of course today, does she remember --
24 does she know who you are?

25 A. Yes.

1 MS. BROWDER: Okay. Beg the Court's indulgence?

2 THE COURT: Yes, ma'am.

3 BY MS. BROWDER:

4 Q. When you went around through the carport to go
5 into your mother's bedroom from the front, how was the
6 door? Was it open or closed?

7 A. It was open.

8 Q. It was open. Okay. Is there a screen door or
9 anything, or is it just a door?

10 A. Just a door.

11 Q. Okay. I'm going to show you what's been entered
12 as State's Exhibit 9. Do you recognize this person in this
13 picture?

14 A. Yes.

15 Q. Okay. And who is that?

16 A. That is my mom.

17 Q. Okay. And does your mom -- does she look
18 different in that picture than she does today?

19 A. Yes.

20 Q. And why does she look different?

21 A. Because of the bruise on her cheek and lip.

22 Q. Okay. And is that how she looked that night when
23 you saw her?

24 A. Yes.

25 Q. Okay. Now, I.O. you stated you know Cliff and

1 you know his voice, do you see Cliff in the courtroom
2 today?

3 A. Yes.

4 Q. Okay. Can you point him out for the jury and
5 tell them what color of shirt he's wearing?

6 A. Purple shirt.

7 Q. Okay. And is that the man that you heard yelling
8 at your mother when you heard the -- the thuds and the
9 gasping?

10 A. Yes.

11 Q. Is that the man you saw run out of the house?

12 A. Yes.

13 MS. BROWDER: No further questions, Your Honor.

14 Cross-examination?

15 MR. HARVEY: Beg the Court's indulgence?

16 CROSS-EXAMINATION

17 BY MR. HARVEY:

18 Q. Good afternoon, I.O.

19 A. Huh?

20 Q. Can you hear me okay? You need to speak up so
21 everyone can hear you; so the court reporter can take down
22 what you say. It's really important, okay?

23 A. Yes.

24 Q. Thank you. Now, I.O., let's talk about the
25 events -- the Prosecutor asked you about the events of June

1 5th.

2 A. Yes.

3 Q. And you seem to remember the events of June 5th,
4 right?

5 A. Yes, mostly.

6 Q. Mostly. Okay. So when you say you mostly
7 remember the events of June 5th, you had an opportunity to
8 go to the Sheriff's Department to get a statement, right?

9 A. Yes, I did.

10 Q. And when you gave the statement to the Sheriff's
11 Department on -- I believe it was -- might have been one or
12 two days after, but pretty close to June 5th. You agree
13 with me you never mentioned the part that you testified
14 here today about watching a movie with your brother, did
15 you?

16 A. No.

17 Q. Okay. And then you actually -- over the course
18 of the case, you met with representatives of the Sheriff's
19 Office and the Solicitor's Office, and you met with them
20 again and you never told them about watching the movie when
21 you met with them again, right?

22 A. Yes.

23 Q. You agree with me, you didn't tell them?

24 A. Yes, I agree.

25 Q. Okay. So that's -- and that detail was omitted,

1 correct?

2 A. Correct.

3 Q. Okay. And also on June 20th, the Solicitor asked
4 you about Mr. Kimble and Mr. Kimble coming to your home.
5 Remember that question, how did he get there. And you said
6 he drove, right?

7 A. Yes.

8 Q. Okay. So when Mr. Kimble drove to your home on
9 June 5th, 2020, he came there earlier in the day, didn't
10 he?

11 A. Yes, I'm pretty sure.

12 Q. Well, let's make sure you're sure, sure. Okay.
13 Back in June of 2020, you were attending therapy sessions
14 over the internet, right?

15 A. Yes.

16 Q. And Mr. -- and on June 5th, 2020, you had a
17 therapy session, right?

18 A. No, I didn't.

19 Q. You didn't?

20 A. I didn't end up attending.

21 Q. I'm sorry?

22 A. I didn't attend the therapy session.

23 Q. Right. But one was scheduled, right?

24 A. Yes, it was scheduled.

25 Q. And Mr. Kimble was invited by your mom to come to

1 your house to assist you with your -- to set up the therapy
2 session, right?

3 A. Right.

4 Q. Okay. So you had mentioned how long you had
5 known Mr. Kimble, and you'll agree with me, your testimony
6 was he was present at that house at least two or three
7 times a week, right?

8 A. Right.

9 Q. Okay. Now, this house has got three doors,
10 exterior doors, that means outside doors. Would you agree
11 with me to that?

12 A. Yes.

13 MR. HARVEY: And State's Exhibit Number 3 -- may
14 I hand this to the witness, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. HARVEY:

17 Q. Please look at State's Exhibit 3 as -- as we look
18 at it together, okay? On State's Exhibit 3, there's a
19 carport.

20 A. Yes.

21 Q. There's an exterior door in the carport, correct?

22 A. Correct.

23 Q. There's something that's denominated on this
24 exhibit as a living room. Do you see that?

25 A. Yes.

1 Q. Is there an exterior door on the living room?

2 A. Yes, there is.

3 Q. And the Solicitor asked you about this gray area
4 on the front of State's Exhibit 3, and you stated that was
5 the porch, correct?

6 A. Yes.

7 Q. So the same door -- now, did you -- you had a
8 key, right?

9 A. No, I didn't.

10 Q. You didn't have a key?

11 A. No.

12 Q. So you didn't have a key to any of these doors?

13 A. No.

14 Q. That's your testimony? Okay. Well, do you know
15 if the same key -- did you ever unlock any of these doors?

16 A. No, I didn't need to.

17 Q. So the time that you were living there -- because
18 y'all moved there in 1919, right?

19 A. Yeah.

20 Q. So the whole time since 1919, you're living in
21 this house, your testimony is you never unlocked the door?

22 A. I never had a key.

23 Q. You'll agree with me that your testimony is you
24 never had a key and you never unlocked the door? All
25 right, let me move on. Now, you testified about your mom's

1 room, correct?

2 A. Yes.

3 Q. So your mom's room had an exterior entrance
4 that's from the outside, right?

5 A. Yes.

6 Q. And it also had what I'll call an interior
7 entrance. Her room could only be unlocked from the inside,
8 right? You live there, you know.

9 A. During the incident?

10 Q. No, sir. The time that you lived there -- this
11 is your mom's room.

12 A. Yes.

13 Q. State's Exhibit Number 2 has a door and an egress
14 -- and an entry way and an -- and a way in and a way out of
15 your mom's bedroom from the back door?

16 A. Uh-huh

17 Q. And that door can only be unlocked from the
18 inside, correct?

19 A. Correct.

20 Q. So your mom could lock you guys out of her room,
21 correct?

22 A. Correct.

23 Q. Okay. Now, when Mr. Kimble came to visit you on
24 June 5th, was your hairstyle different then?

25 A. Yes.

1 Q. Did Mr. Kimble cut your hair back then?

2 A. No.

3 Q. He never cut your hair?

4 A. No.

5 Q. Did he cut your brother and sister -- your
6 brother's hair?

7 A. Yes. I'm pretty sure.

8 Q. Did you ever -- or -- I mean, you said he came
9 two to three times a week and you -- and you knew him for
10 considerable period of time. Did you ever see him cut your
11 brother's hair?

12 A. Yes.

13 Q. Okay. And Mr. Kimble even kept hair clippers at
14 the house, right?

15 A. Yes.

16 Q. Okay. And on June 5th, Mr. Kimble was present
17 and it turned out that the therapist couldn't make the
18 therapy session and that's why y'all couldn't have the
19 remote therapy session, right?

20 A. Right.

21 Q. Okay. And how often were you taking therapy
22 sessions back then?

23 A. I remember just starting.

24 Q. Just starting. And are you in therapy now?

25 A. No.

1 Q. Okay. And after the therapy session, Mr. Kimble
2 remained in the home, right? Claudia Drive?

3 A. No.

4 Q. He left right then and never --

5 A. He left with my mom to go to a grocery store.

6 Q. Didn't y'all have supper together?

7 A. No.

8 Q. Your sister and your mom -- supper that night?

9 A. No.

10 Q. So after -- your testimony is after the therapy
11 session, he left to go to the grocery store with your mom?

12 A. Yes.

13 MR. HARVEY: Beg the Court's indulgence one
14 moment please?

15 THE COURT: Yes, sir.

16 MR. HARVEY: Thank you.

17 BY MR. HARVEY:

18 Q. Now, we've established that Mr. Kimble came to
19 your house sometime on the afternoon of June 5th, correct?

20 A. Correct.

21 Q. Now, when Mr. Kimble came to your house on the
22 afternoon of June 5th to help you with that therapy
23 session, where was your mom?

24 A. I don't remember.

25 Q. I'm -- I'm going to show you State's Exhibit 2.

1 Do you see that?

2 A. Yes.

3 Q. Okay. And you were asked by the Solicitor what
4 this was a picture of, right?

5 A. Yeah.

6 Q. And you'll agree with me this is a picture from
7 the carport looking into the house, correct?

8 A. Correct.

9 Q. And you'll agree with me in State's Exhibit 2
10 there's a white door -- two white frame?

11 A. Yes.

12 Q. And there's a door that's opened and the door --
13 is opened and that's you standing in the back?

14 A. Yes.

15 Q. Right?

16 A. Yes.

17 Q. Okay. And on State's Exhibit 2, I'm pointing
18 with my pen to an object that's on the wall. Do you see
19 what I'm pointing to?

20 A. Yes.

21 Q. Now, you lived in the house for at least a couple
22 of years, right?

23 A. Yes.

24 Q. How many times a day do you think you went in and
25 out of that carport?

1 A. Probably a lot. I can't put it into a number.

2 Q. Five times a day?

3 A. Yes.

4 Q. So five times a day. If there's seven days in a
5 week, that's 35 times in a week, right?

6 A. Yes.

7 Q. And if they're 52 weeks in a year, you multiply
8 35 times 52. That's a lot of going back and forth, isn't
9 it?

10 A. Yes.

11 Q. So you're familiar with this wall (indicating),
12 right?

13 A. Yes, I am.

14 Q. What is that?

15 A. That is a Ring doorbell camera.

16 Q. A Ring doorbell camera. A Ring doorbell camera.
17 So the house had a Ring doorbell camera in the carport,
18 correct?

19 A. Yes.

20 Q. Did the house have cameras in other locations?

21 A. Yes.

22 Q. Oh, where were the cameras in the other
23 locations? I'm asking you, sir.

24 A. Oh, sorry.

25 Q. Where were the cameras in the house? Let's do it

1 this way. Were there cameras that --

2 MS. BROWDER: Your Honor, let him answer the
3 question.

4 MR. HARVEY: I understand, Your Honor. Thank
5 you.

6 BY MR. HARVEY:

7 Q. Mr. I.O., I apologize. Sometimes lawyers go too
8 fast. Let me ask the question a different way. We called
9 the front of a house, the front or the exterior, right?

10 A. Yes.

11 Q. And we call the back of the house, the back of
12 the house. It's part of the exterior?

13 A. Yes.

14 Q. Do you agree with me with that?

15 A. Yes.

16 Q. Okay. So in the front of the house, where were
17 the Ring cameras -- or cameras on the front of the house?

18 A. There was only one in the porch, because we had
19 one Ring doorbell camera.

20 Q. On the porch?

21 A. I mean the carport.

22 Q. So your testimony is there's no other cameras in
23 the house -- at the house?

24 A. There -- there are, but there is only one Ring
25 doorbell camera.

1 Q. Okay. Again, I wish I was as smart as I thought
2 I was. Let me ask the question another way. Were there
3 other cameras on the exterior in the front of the house?

4 A. There was one.

5 Q. One?

6 A. Yes.

7 Q. On the exterior?

8 A. Yes.

9 Q. And where was that?

10 A. It was near my bedroom.

11 Q. And was there another camera on the other side of
12 the house?

13 A. Yes.

14 Q. Okay. Was that -- so there were -- we're talking
15 about the exterior?

16 A. Yes.

17 Q. So in the front exterior, there's a camera over
18 your bedroom?

19 A. Yes.

20 Q. Did you ever have an occasion to view something
21 from that camera?

22 A. Yes.

23 Q. Did it point towards the porch?

24 A. No.

25 Q. Okay. Was there another camera at the front of

1 the house that pointed towards the porch?

2 A. No.

3 Q. That's your testimony?

4 A. Yes.

5 Q. So we talked about what I call the exterior
6 cameras, right?

7 A. Yes.

8 Q. And your testimony that you remember from this
9 house is there was a camera in the carport and a camera on
10 the outside, over your bedroom?

11 A. Yes.

12 Q. Was there a camera in the inside of the house?

13 A. No.

14 Q. And you don't know -- Mr. Kimble came to your
15 house on June 5th, right?

16 A. Yes.

17 Q. And you didn't tell anything the three times that
18 you met with the -- the sheriff, or agents of the sheriff,
19 or with Solicitors that you let him in the house on June
20 5th, did you?

21 A. No.

22 Q. So if you didn't let him in and the door was
23 locked, how would he get in a locked door? He could use a
24 key, right?

25 A. He had no key.

1 Q. Well, that's what -- how do you -- okay. You
2 believe he had no key, right?

3 A. I know he had no key.

4 MR. HARVEY: Okay. Beg the Court's indulgence?
5 Thank you.

6 THE COURT: Yes, sir.

7 MR. HARVEY: Thank you, Your Honor. We're done.

8 THE COURT: Ms. Browder.

9 REDIRECT EXAMINATION

10 BY MS. BROWDER:

11 Q. I.O., before today had anybody ever asked you
12 what you were doing earlier in the day?

13 A. No.

14 Q. So if you hadn't told the Sheriff's Department
15 that, or our office that, would it be because we didn't ask
16 you?

17 A. Yes.

18 Q. And today, when you were testifying on direct,
19 did I actually ask you for the first time that you were
20 doing earlier that day?

21 A. You did.

22 Q. Okay. And as to your therapy session, Cliff came
23 over to help you?

24 A. Yeah.

25 Q. Okay. And you testified earlier, but if Cliff

1 did not have a key to the house, how would he normally get
2 in if your mother was not home?

3 A. She would probably tell me to let him in.

4 Q. Okay. So is it possible you let him in earlier
5 that day?

6 A. Yes.

7 Q. And again, earlier that day, that was an activity
8 earlier in the day, nobody had ever asked you about that
9 activity earlier in the day, had they?

10 A. No. No one has.

11 Q. Now, at the time, you were how old?

12 A. 14.

13 Q. Okay. And the Ring doorbell that was on the
14 garage, in the carport, is that where you heard Cliff
15 yelling at your mom that night banging on the door?

16 A. No.

17 Q. Okay. And do you know, at 14, where all the
18 cameras were on the house?

19 A. I knew where most of them were.

20 Q. Okay. So it was possible to have cameras you
21 didn't know about?

22 A. Yes.

23 Q. Okay. And you said earlier in that day he was
24 invited over to help you with a therapy session. That
25 night when you heard your mother and him yelling, was she

1 inviting him inside?

2 A. No.

3 Q. What was she saying?

4 A. She was telling him to leave.

5 MS. BROWDER: Okay. No further questions, Your
6 Honor.

7 THE COURT: Anything further, Mr. Harvey?

8 MR. HARVEY: Beg the Court's indulgence one
9 moment. Thank you.

10 No further questions. Thank you, Your Honor.

11 THE COURT: Okay. Thank you, I.O. You can
12 step down.

13 THE WITNESS: (Complies.)

14 THE COURT: Call your next witness.

15 MS. BROWDER: State calls Melissa Cupid.

16 **MELISSA CUPID,**

17 Having been first called as a witness was duly sworn and
18 testified as follows:

19 THE CLERK: Please have a seat in the witness
20 stand and state your full name for the record.

21 THE WITNESS: Melissa Cupid.

22 DIRECT EXAMINATION

23 BY MS. BROWDER:

24 Q. Okay. Ms. Cupid, where are you originally from?

25 A. Pennsylvania.

1 Q. Okay. And at some point in your life, did you
2 move here to South Carolina?

3 A. Yes.

4 Q. Okay. And what'd you move here to South Carolina
5 for?

6 A. Just to start over, I guess.

7 Q. Okay. And you have children?

8 A. Yes. I have four kids.

9 Q. Okay. And what are their names?

10 A. I.O. Imani, Elijah and Ali Junior.

11 Q. And how old are they?

12 A. 18, my daughter's 15 now, and I've a 12-year-old
13 Elijah, and then my youngest is 10.

14 Q. And when you were here in South Carolina, where
15 did you live?

16 A. I lived at Claudia Drive.

17 Q. Okay. And when did you move to that address?

18 A. I moved to the address June, 2018.

19 Q. Okay. And did you live somewhere in South
20 Carolina before that?

21 A. Yes. Rock Hill, South Carolina.

22 Q. Okay. So you moved from Rock Hill to the
23 Columbia area June, 2018?

24 A. Yes.

25 Q. And at that time, were you in a relationship with

1 anybody?

2 A. Yeah, we were on and off.

3 Q. And who was we?

4 A. Sorry. Clifton and I. We were on and off.

5 Q. Okay. And how long had you been with Clifton
6 Kimble?

7 A. Six and a half years.

8 Q. Okay. And that was in 2020 or 2018?

9 A. No. We started the relationship in -- like, we
10 started being around each other in 2016.

11 Q. Okay. And then when you moved in 2018, did y'all
12 ever live together?

13 A. We never lived together. He had his own
14 residence.

15 Q. Okay. And where did he live?

16 A. He lived in Charlotte, North Carolina.

17 Q. Okay. That's when y'all met, was when you were
18 in Rock Hill and he was in Charlotte?

19 A. Yeah.

20 Q. Okay.

21 A. Well, sorry, I take that back. I was in
22 Charlotte as well.

23 Q. Okay.

24 A. I lived on one side of town. He lived on the
25 other.

1 Q. Okay. And then you moved to Rock Hill and then
2 to Claudia Drive?

3 A. Yeah.

4 Q. None of those addresses y'all lived together?

5 A. No, we never lived together.

6 Q. At some point in time, did he have a key to any
7 of those residences?

8 A. Yes. At some point in time he did.

9 Q. Which residences?

10 A. For my apartment in Rock Hill, he had it, and
11 shortly for the house at Claudia Drive. But at the night
12 of the incident, he did not have no key.

13 Q. Okay. When -- you said you moved June, 2018. Do
14 you remember when you took the key back?

15 A. I can't really answer it.

16 Q. Okay. Was it before the incident?

17 A. Yeah, it was before the incident?

18 Q. Shortly before or way before? Approximately.

19 A. About a month before.

20 MR. HARVEY: Asked and answered. Your Honor, she
21 can't remember.

22 THE COURT: Overruled.

23 MR. HARVEY: Thank you.

24 BY MS. BROWDER:

25 Q. Sorry, what was your answer?

1 A. What -- can you rephrase the question?

2 Q. Was it shortly before the incident date or --

3 A. Yes. It was -- it was about a month before. A
4 month and a month and a half before.

5 Q. Okay. And how often at that point in time, I
6 guess, the beginning of June, May, would Mr. Kimball come
7 over to the home?

8 A. He made his presence known just about every day.

9 Q. Okay. And were y'all together at that point?

10 A. No. We were amicably trying to split.

11 Q. Okay. And the father of your children, did they
12 live in the Columbia area?

13 A. No, they did not. They lived in Pennsylvania.
14 It was just me and my children.

15 Q. Okay. So who helped you with the children here
16 in Columbia?

17 A. He did help me out whenever he could.

18 Q. Okay. And on June 5th -- I'll get to that day.
19 What were you doing that day?

20 A. I was at work. I worked at Fresenius. I've been
21 in the medical field 20 years. But at the clinic you have
22 to be there at 4:30 in the morning, so I was at work. And
23 I had asked Mr. Clifton if he could please go to my house
24 and make sure that I.O. gets online for his therapy.

25 Q. Okay. And so you worked during the week?

1 A. Yeah.

2 Q. Okay. So this was a weekday?

3 A. Yes.

4 Q. Okay. And what did you do at the clinic?

5 A. I was a patient care tech, so, you know, I was
6 gowned up, always in PPE and troubleshooting machines and
7 getting blood samples and get starting people on their
8 treatments.

9 Q. Okay. And in 2020, was that due during the Covid
10 era?

11 A. Yeah.

12 Q. Okay. Is that why -- why was [I.O.] home that
13 day? During the day, during the week?

14 A. He had just got out of the hospital.

15 Q. [I.O.] had?

16 A. Yeah. He had sickle cell disease.

17 Q. Okay. Because of sickle cell?

18 A. Yeah.

19 Q. Okay. And what time was his therapy appointment?

20 A. It was at noon. And not --

21 Q. And you were at work?

22 A. Yeah, and I was at work.

23 Q. Okay. So you said you asked Mr. Kimble to come
24 over to help him?

25 A. Yeah, via text since I was on the floor.

1 Q. Okay. And as far as you know, did he go over
2 there to help I.O.?

3 A. Yeah. He would always give me like a text by
4 text play. And that day I remember the kids were still
5 sleeping. Well, I.O. was still sleeping. So I know that
6 there was a little bit of delay of him getting in the
7 house, but he did get in the house.

8 Q. Okay. And so the -- if you weren't home, how
9 would he get in the house?

10 A. I would call I.O. and, you know, say -- let them
11 know who was coming to the house and to unlock the door.

12 Q. Okay. And didn't I.O. have a key?

13 A. No. I only had the key. They -- we had a spare
14 key put up --

15 Q. Okay.

16 A. -- for the kids, but.

17 Q. Okay. So after the therapy session, you're at
18 work, what time did you come home from work, approximately?

19 A. Usually about 5:30.

20 Q. Okay.

21 A. Sometimes 6:00. If there's something wrong with
22 the machines and the patient's treatment runs a little
23 over.

24 Q. Okay. And when you got home that particular day,
25 was the Defendant there?

1 A. Yes, he was there.

2 Q. Okay. And were you okay with him being there at
3 that point?

4 A. Yeah. He -- yeah. We --- like I said, we were
5 texting back and forth and he asked if he could stay. I
6 said that he could stay as long as things remained calm.

7 Q. Okay.

8 A. And I said -- and I did ask him -- I said, if
9 things did not remain calm, you know --

10 MR. HARVEY: Your Honor --

11 A. -- would he be willing to leave?

12 MR. HARVEY: I would -- Your Honor, may I
13 approach with the -- or restate my objection?

14 THE COURT: Yes, sir.

15 MR. HARVEY: Your Honor --

16 THE COURT: Well, let's approach.

17 (Sidebar discussion was held.)

18 THE COURT: Objection is overruled.

19 MS. BROWDER: Thank you, Your Honor.

20 BY MS. BROWDER:

21 Q. So at that point, y'all weren't together as a
22 boyfriend and girlfriend?

23 A. Right.

24 Q. Okay. So y'all were trying to get back together?

25 A. No. We were just trying to be friends, honestly.

1 Q. Okay. Okay. So he stayed. At some point, did
2 y'all go somewhere?

3 A. Oh, yeah, we went to the store.

4 Q. Okay. And how did y'all -- well, I guess how did
5 he get to your house originally?

6 A. He drove in his vehicle.

7 Q. Okay. And when y'all went to go to the store,
8 whose vehicle did you take?

9 A. In my vehicle.

10 Q. Okay. And who was driving your vehicle?

11 A. I was driving.

12 Q. Okay. And what store were you going to?

13 A. We were going to Food Lion.

14 Q. Okay. And Food Lion where?

15 A. Food Lion, it was -- off of Decker.

16 Q. Off of Decker.

17 A. Yeah.

18 Q. How far away is that drive for you?

19 A. The drive is maybe five minutes if --

20 Q. Okay.

21 A. -- if you hit every light.

22 Q. And as y'all were going to the store or after
23 store, did something -- did y'all get in an argument?

24 A. Yeah, we were -- yeah, we were arguing.

25 Q. Okay. And as a result of that argument, what

1 occurred?

2 A. I gave him the option to either to drive back or
3 walk back. He offered to walk, so I drove back to the
4 house. We were still talking on the phone and I said, I'm
5 just going to go ahead and put your things outside. And
6 that's what I did. I had locked -- I didn't know --

7 Q. Okay. I'm going to stop you for a minute. Okay.
8 So you're driving back and he's walking. About what time
9 of day is this?

10 A. This was late.

11 Q. Okay.

12 A. It was -- I remember it was nighttime.

13 Q. It was nighttime?

14 A. Yeah.

15 Q. Okay. So he's walking back and you get back home
16 and you said you put his stuff on the front. How much
17 stuff did he have at your house?

18 A. I think it was like maybe two or three bags.

19 Q. Okay.

20 A. Little grocery bags.

21 Q. Okay. So you put those on the front porch?

22 A. Yeah.

23 Q. All right. After you put those on the front
24 porch, where did you go?

25 A. I went into my room.

1 Q. Okay. And I'm going to show you State's Exhibit

2 3. All right. State's Exhibit 3, that's your room there
3 in the bottom left next to the carport?

4 A. Yes.

5 Q. Okay. How many doors does that room have?

6 A. Two.

7 Q. And where do those doors lead to?

8 A. One leads to outside and the other one leads into
9 -- leads into the kitchen.

10 Q. Okay. And the door to the outside, once you put
11 his stuff on the front porch, what did you do with that
12 door?

13 A. I closed it and locked it.

14 Q. Okay.

15 A. I secured both doors.

16 Q. Okay. So the back door into the hallway was --

17 A. Yeah.

18 Q. -- locked as well? Okay. So at some point, did
19 Mr. Kimble get back to the house?

20 A. Yes.

21 Q. Okay. When he got back to the house, tell the
22 jury what happened next.

23 A. When he walked back to the house, he knocked on
24 the door, rang the doorbell. First it was like, I just
25 want to talk to you. Then it was, open the door, I need to

1 use the bathroom. And I said, no, we're not doing that.
2 You can go to the bathroom down the street because there
3 are just Circle K at the end of our -- near our house.
4 Yeah, it was just basically one excuse after the other as
5 to why I should open the door.

6 Q. Okay. And when you said he knocked on the door,
7 what kind of knock was it?

8 A. It was more like pounding.

9 Q. Okay.

10 A. Like just agitation, just constant knocking on
11 different surfaces.

12 Q. And his voice, what was the decibel level of his
13 voice? Was it soft --

14 A. Annoying.

15 Q. Annoying?

16 A. Yes.

17 Q. Okay. Was it soft, loud?

18 A. Medium.

19 Q. Okay. What happened next?

20 A. So after that, I got tired of it because I had
21 told the kids to go to sleep, and I opened the door after
22 he kept doing all that, and I walked out a little bit and I
23 said, stop. Enough. We're not going to do this. I said,
24 the kids are trying to go to sleep. Like, just go home,
25 you have your stuff. Go.

1 Q. Okay. At that point, did you invite him in the
2 home?

3 A. No, I never invited him in my home.

4 Q. Okay. After you told him to go, what was his
5 response to that?

6 A. He got mad and upset and he -- that's whenever he
7 choked me and --

8 Q. Okay. Let's stop right there. Where are you
9 standing when he first started choking me?

10 A. He grabbed me on the outside and then we --
11 pushed me back into the house.

12 Q. Okay. And in your bedroom, can you kind of tell
13 the jury a little bit where things are in your bedroom?

14 A. Okay. So by the -- the outside door, I had a
15 long dresser with a mirror. And then at the end of the
16 dresser near the other door, I had a big black file of
17 cabinet and a TV sitting on top of that.

18 Q. Okay. And when he pushed you back into the room,
19 you said he was choking you, how was he choking you?

20 A. Like this. And talking to -- and talking to me
21 while he was choking me, pulsating on my throat.

22 Q. Okay. And when you say like this, just for the
23 court reporter, he had his thumbs on the middle of your
24 throat?

25 A. Yeah. And pressing down in various areas.

1 Q. Okay. During that time, could you breathe?

2 A. No.

3 Q. And you said he was talking to you. What was he
4 saying?

5 A. Just talking crap, basically how does it feel?
6 And --

7 Q. Okay. And at that point, how were you feeling?

8 A. At that point, I realized it was me or him, so I
9 was fighting for my life.

10 Q. And how were you doing that?

11 A. So whenever I was pinned up against the dresser
12 -- and he -- he had his body weight on me while he was
13 choking me, so I slid all the way to the end of the dresser
14 and there's like a little space between the door and my
15 dresser that I was able to get his body weight off of me
16 and we fell back against the wall, and then I was able to
17 push him off of me to this little -- it was the corner
18 between the window and the door frame.

19 Q. Okay. At that point, once you were able to get
20 out of that strangling situation, what happened next?

21 A. Then I attacked him.

22 Q. Okay. You were trying --

23 A. I was attacking him, trying to get him out of the
24 -- because the door was still open, and I was trying to get
25 him back out of the door.

1 Q. Okay. And were you able to get him out of the
2 door?

3 A. No.

4 Q. Did he try to get out of the door?

5 A. No.

6 Q. Okay. What did he do?

7 A. He ended up punching me back and that's whenever
8 I --

9 Q. And he punched you?

10 A. Yeah.

11 Q. Okay. And is he right-handed or left-handed?

12 A. He's left-handed.

13 Q. And where on your face did he punch you?

14 A. Here, here and here.

15 Q. So on the right side of your face?

16 A. Yes.

17 Q. Okay. And when he punched you, did he say
18 anything?

19 A. No.

20 Q. Okay.

21 A. No. It was just anger at that point.

22 Q. He just what?

23 A. It was just anger at that point.

24 Q. Okay.

25 A. Just action.

1 Q. So after he punched you, what happened?

2 A. After he punched me, I -- my son saved my life.
3 I remember him woke -- he woke me up or wherever. And --
4 I'm going to just say it. I remember being dead, and if it
5 wasn't for my son shaking me and screaming my name, I
6 wouldn't be here, to be honest. When I woke up, I didn't
7 know why they were crying, why they were hysterical. When
8 authorities came, I didn't know what was going on at all.
9 And I do remember texting Mr. Kimble and asking him what
10 happened because I did not know. I didn't know my kid's
11 name. I didn't know where I was. And the person that took
12 me to the hospital, she had begged me to go because I
13 thought we were going to the club or something. I was so
14 adamant.

15 Q. Okay. Now, as he was strangling you and
16 pulsating his --

17 MR. HARVEY: Object to the form of the question.
18 That's a leading question.

19 MS. BROWDER: I didn't even ask the question.

20 THE COURT: Right. Let me hear the question.

21 BY MS. BROWDER:

22 Q. As he was strangling you, as you said, pulsating
23 on your neck, at that point, what did you feel like was
24 going to happen to you?

25 THE COURT: Objection is overruled. You can

1 answer. Go ahead.

2 THE WITNESS: I thought I was going to die.

3 BY MS. BROWDER:

4 Q. Okay. Now, after [I.O.] woke you up, you said
5 someone took you to the hospital. Who took you to the
6 hospital?

7 A. My neighbor.

8 Q. Okay. And you went to the hospital?

9 A. Yeah, I did go to the hospital.

10 Q. And when you went to the hospital, did you see a
11 doctor?

12 A. Yes, I did see a doctor.

13 Q. And did you receive medical treatment for the
14 injuries?

15 A. Yes. They gave me pain medicine. My tooth went
16 through my lip, so they gave me six stitches and pain
17 medicine -- yeah, pain medicine -- what do you call it?
18 Muscle relaxers because I had bruises and everything.

19 Q. Okay. And then you left the hospital and went
20 back onto your children?

21 A. I walked from the hospital back to the house.

22 Q. At some point, did you start remembering what
23 happened?

24 A. I haven't forgot what happened.

25 Q. Okay. Well, you said originally you didn't know

1 what was going on, what happened, you didn't know who your
2 children were. At what point did you remember -- start
3 remembering what happened?

4 A. Oh, well, the parts that I told you, that's what
5 I remember.

6 Q. Right.

7 A. You know. But I can't really say because I fully
8 just got my memory back.

9 Q. Okay. How did your memory come back? Was it
10 just full or in pieces or how --

11 A. It came back -- it finally came back fully.

12 Q. Okay.

13 A. But up until this point, it's been pieces.

14 Q. Okay. Now, I'm going to show you what's been
15 marked as State's Exhibits 4, 5, 6, and 7.

16 MR. HARVEY: Your Honor, I would just renew the
17 objection at this time. Thank you.

18 THE COURT: Yes, sir. That's overruled.

19 MR. HARVEY: Pursuant to the motion -- thank you.

20 THE COURT: Yes, sir.

21 BY MS. BROWDER:

22 Q. Do you recognize these photographs?

23 A. Yes. This is the night of the incident at the
24 hospital.

25 Q. Okay. Pictures of you?

1 A. Yes.

2 Q. Okay. And then those other two pictures, I
3 believe those are 6 and 7. Don't show them yet. Okay. Do
4 you recognize those?

5 A. Yes.

6 Q. And what are those pictures of?

7 A. These are the marks on my back.

8 Q. And when were those pictures taken?

9 A. That was taken the day -- the next morning.

10 Q. Okay. And those fair and accurate
11 representations of the injuries?

12 A. Yes.

13 Q. Okay. This time, Your Honor, we'd like to enter
14 into evidence State's 4, 5, 6, and 7.

15 THE COURT: State's 4, 5, 6, and 7 are admitted
16 over the -- over the Defendant's objection.

17 (State's Exhibit 4, 5, 6, and 7 was marked for
18 evidence.)

19 BY MS. BROWDER:

20 Q. I'm going to show you first State's Exhibit 4.
21 That photograph, what does that photograph show? Is that
22 you?

23 A. Yes, that's me.

24 Q. Okay. And what does that photograph show?

25 A. My busted lip, that's where my teeth went through

1 my lip.

2 Q. Okay. Is that a picture you took or somebody
3 else?

4 A. That's the pictures that I took on my phone.

5 Q. Okay.

6 A. I actually took it to send to him.

7 Q. Okay. So I guess when you take it on your phone,
8 it flips, so it looks like it's on the left side of the
9 face, but it -- actually you got hit on the right?

10 A. Yeah.

11 Q. Okay. Did you look like that before the incident
12 that night?

13 A. No.

14 Q. Okay. And in this particular picture, do you
15 have any black eyes or anything?

16 A. No.

17 Q. Okay. I'm going to show you what's already been
18 entered. It state's Exhibit 9. In this photograph, is
19 there a difference?

20 A. Yeah. That's the next day. Injuries were able
21 to set in more.

22 Q. Okay. And did you have two black eyes?

23 A. Yes.

24 Q. Okay. And were those there the night before?

25 A. No.

1 Q. Okay. Now, I'm going to show you state's Exhibit
2 5. What does that picture show?

3 A. It shows the stitches, the cut in my lip.

4 Q. Okay. Is that before or after the stitches?

5 A. It looks like before.

6 Q. Okay. And where were the stitches when you got
7 the stitches?

8 A. Right where you see the -- the cut mark in my --

9 Q. The red cut mark --

10 A. Yes.

11 Q. -- under the middle of your lip, to the right a
12 little bit?

13 A. Yes.

14 Q. Okay. And you said how many stitches?

15 A. Six, I believe, they gave me.

16 Q. Okay. Next, I'm going to show you state's
17 Exhibit 6. And what is this photograph of depict?

18 A. It's a picture of my back.

19 Q. Okay. And did you have bruising on your back?

20 A. No. But not prior to the incident.

21 Q. Well, I mean in this picture --

22 A. Well, yeah.

23 Q. You said this was taken the next morning?

24 A. Yes.

25 Q. Okay. But prior to that, you did not have a

1 bruise on your back?

2 A. Yeah.

3 Q. Okay. Where's the bruise on your back in this
4 picture?

5 A. It's exactly where I was pressed up against the
6 dresser.

7 Q. Okay. Is that kind of the middle of your back on
8 the left?

9 A. Yeah. Because I'm taller than he is, so I was
10 pushed back.

11 Q. Okay. And then in State's Exhibit 7, what is
12 that picture?

13 A. That is bruises from my shoulder.

14 Q. Okay. And the bruises that go down in like
15 little lines, is that where your bra was?

16 A. No. That's one being pushed up against the wall.

17 Q. Okay. Did you have those bruises prior to June
18 5th, 2020?

19 A. No.

20 Q. Now, are there cameras at your home?

21 A. Say that again?

22 Q. Are there cameras at your home?

23 A. Yes. I had cameras on the outside of my home.

24 Q. Okay. Where on the outside did you have cameras?

25 A. In the front of the house. I had it at the

1 corner and then I had it at the other corner by the carport
2 on the outside. And then I had the Ring doorbell in the
3 carport, and then I had one camera in the back -- one
4 camera in the back to see the whole backyard.

5 Q. Okay. Were they recording that night, as far as
6 you know?

7 A. Yes, they were.

8 Q. Did you make law enforcement aware that you had
9 my photo -- or Ring or camera?

10 A. Yes. They -- yeah.

11 Q. Did they ever ask you for those?

12 A. Not that I can recall, no.

13 Q. Okay. And if they had, would you have given
14 them?

15 A. Yes.

16 Q. And the Defendant's build -- how tall are you?

17 A. I'm 6'3".

18 Q. 6'3". And how tall is he?

19 A. I believe he is like 5 '10", 5'11".

20 Q. Okay. And what is his build? Is he skinny,
21 overweight, bulky?

22 A. Bulky.

23 Q. Bulky?

24 A. Yeah.

25 Q. Okay. Was he strong?

1 A. Yes.

2 Q. All right. Now, on that night you had come home
3 from work, had you been drinking or doing anything?

4 A. No. It was a work night.

5 Q. It was a work night?

6 A. Yeah.

7 MS. BROWDER: Okay. Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 BY MS. BROWDER:

10 Q. And when you were fighting back against Mr.
11 Kimble, who started hitting who first?

12 A. He put his hand on me first.

13 Q. And he was -- when did you start fighting back?

14 A. Once he laid his hands on me.

15 Q. Okay. Is it after he began strangling you?

16 A. Yes.

17 Q. Okay. Did you ever invite him into the house
18 that night?

19 A. No.

20 Q. Did you ever tell him to leave?

21 A. Yes.

22 Q. Do you know -- do you remember how many times you
23 told him to leave?

24 A. About four or five, six times. I just kept
25 repeatedly saying it as he was pounding on the door trying

1 to get in.

2 Q. Okay. Clifton Kimble, the man who strangled you,
3 threw you up against the dresser, punched you to the point
4 that you were unconscious, do you see him in the courtroom
5 today?

6 A. Yes.

7 Q. Can you point him out for the jury and tell the
8 jury what color shirt he's wearing?

9 A. He's wearing purple -- he's wearing a purple
10 shirt and a tie and a suit.

11 MS. BROWDER: Okay. Your Honor, let the record
12 reflect she's identified the Defendant.

13 THE COURT: Yes, ma'am.

14 MS. BROWDER: No further questions, Your Honor.
15 Please, answer any questions Mr. Harvey has for you.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. HARVEY:

19 Q. Good afternoon, Ms. Cupid. You moved to [REDACTED]
20 Claudia Drive in summer 2019, right?

21 A. '18.

22 Q. Summer 2018. And you moved to [REDACTED] on Claudia
23 Drive with four kids, right?

24 A. Uh-huh (affirmative).

25 Q. And as any mom would want to do, you made sure

1 you felt -- you wanted to make sure your home was secured,
2 right?

3 A. Yes.

4 Q. Now, the doors and windows had locks, right?

5 A. Yes.

6 Q. In addition to doors and locks, as you testified
7 to today, you had security cameras, right?

8 A. Yes.

9 Q. And you testified today that those security
10 cameras were operative on June 5th, 2020, correct?

11 A. Yes.

12 Q. And you testified here today in this matter that
13 you went to talk to the police about and you informed the
14 police on June 5th, 2020, that you had video of the
15 incident, correct? You said you had cameras and you had
16 video of the incident, correct?

17 A. I never said I had videos of the incident. I
18 said I had cameras at my residence.

19 Q. And you just testified a moment ago that your
20 cameras were working, correct?

21 A. Yes, but they were on the outside of the house.

22 Q. Okay. They're on the outside of the house. And
23 those cameras can depict what occurs on the porch, correct?

24 A. Yes.

25 Q. Okay. So you testified in response to the

1 Solicitor's question that this incident -- what you allege
2 -- this alleged incident began on the porch, correct?

3 A. No.

4 Q. Your bedroom door opens to the porch, correct?

5 A. Yes. But the incident did not start on the porch
6 -- well, yes, it does.

7 MR. HARVEY: Okay. So the -- the -- you -- on
8 State's Exhibit Number 3 -- may I hand it to the
9 witness, Your Honor?

10 THE COURT: Yes.

11 BY MR. HARVEY:

12 Q. Look at State's Exhibit Number 3 for me, please.

13 A. Okay.

14 Q. And there's a gray area in State's Exhibit Number
15 3 on the front porch, correct?

16 A. Yeah. That's the front porch.

17 Q. That's the front porch. And the front porch
18 opens to your bedroom, correct?

19 A. Yes.

20 Q. Now, your bedroom has an exterior or lock, right?

21 A. Yes.

22 Q. It also has an interior lock, right?

23 A. Yes.

24 Q. So you can lock your kids out of your room,
25 correct?

1 A. That is correct.

2 Q. So if you're doing something in your room, then
3 you don't want the kids to know about it, you can lock them
4 out, right?

5 A. Incorrect.

6 Q. Well, if the room only opens from the interior,
7 the kids can't enter from the exterior, can they? They're
8 locked out.

9 A. No. But to be specific, I locked that door that
10 night because I knew that he was upset and I was to the
11 house first, so that was to secure my kids from him.

12 Q. My question, ma'am, is not -- that isn't the
13 question I asked. The question I asked, is your bedroom
14 open to the front porch, correct?

15 A. Yes.

16 Q. And that's an exterior lock that has to be opened
17 either from the inside or from the outside, correct?

18 A. Correct.

19 Q. Now, the lock in your bedroom that opens up to
20 the interior of the house, that can only be unlocked from
21 your bedroom, correct?

22 A. Right.

23 Q. Okay. So that enables you to lock your children
24 out of your bedroom. That's all I'm simply asking, ma'am.
25 Yes or no?

1 A. I can't answer that because --

2 Q. You can't answer whether or not locking that door
3 would keep your kids from being able to get into your
4 bedroom?

5 A. Not for the case that you're trying to point out.

6 Q. Ma'am, I -- I'm asking about every day, you are
7 able to lock your kids out of your bedroom. It's a simple
8 yes or no question, ma'am.

9 A. I guess -- yeah, I guess

10 Q. You guess. All right. Now, did you ever take
11 any pictures of your back in 2016?

12 A. No.

13 Q. Now, the house had cameras at least in the two
14 corners in the front exterior, correct?

15 A. Yes.

16 Q. And then the front -- on the corner above the
17 carport -- there's also a camera on the front, in the
18 corner, and the exterior on the right front corner,
19 correct? So if we're looking at State's Exhibit Number 3,
20 and my index finger is over the carport, there'd be a
21 camera -- and my index finger's pointing towards the middle
22 of the house, right? Because you want to get the
23 perspective and then there's a camera right here
24 (indicating), correct?

25 A. There's a camera here and a camera there.

1 Q. And those cameras -- can you see what's happening
2 on the porch from those cameras?

3 A. From this camera, you should have been able to,
4 yes.

5 Q. Now, so we know, based on your testimony here
6 today, so far, at least one camera was angled towards the
7 front door and could have depicted conduct that took place
8 on the front door, correct?

9 A. Yes.

10 Q. All right. Now, I'm really not much of a
11 technology person, but you had -- on June 6th, you
12 mentioned security cameras to Richland County Sheriff's
13 Department, right?

14 A. Yes.

15 Q. And you actually had an app that you could access
16 your security camera and see what the security cameras were
17 viewing at that time through the app, correct?

18 A. Yes.

19 Q. Okay. And at some point in time, prior to this
20 incident, you had used the app to send Mr. Kimble a picture
21 of the front of the house, correct?

22 A. You said prior to the incident?

23 MR. HARVEY: Yes. I showed you this -- now --
24 may I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 MR. HARVEY: I -- this is the Defendant's Number
2 1 for identification.

3 THE COURT: Yes, sir.

4 MR. HARVEY: May I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. HARVEY:

7 Q. Before I go onto this. Ms. Cupid, the prosecutor
8 asked you about your stature and Mr. Kimble stature. Can
9 you stand up for me? Can you step down here for me for a
10 sec? I'm a pretty big guy. You're a pretty big person.
11 What -- you're 6'2", 6'3".

12 A. 6'3".

13 Q. 6'3". How much, 252?

14 A. 210, 220.

15 Q. Back in the day, you were at 250, weren't you?
16 Isn't that what you told --

17 A. 270 back in the day.

18 Q. So when you went to the hospital, you told them
19 you at least weighed 250, correct?

20 A. No. I was 270 back when --

21 Q. 270. 6'3", 270. Okay. Let's look at this. Do
22 you recognize this?

23 A. Yes, that's in front of my home. That's the
24 camera towards the neighbor -- towards the car park --
25 carport.

1 Q. Is this the -- is this the -- the camera on the
2 carport?

3 A. No. That's not the Ring camera. That's the
4 camera on the outside by the carport.

5 Q. On the -- up on the roof?

6 A. Yeah.

7 Q. Like the --

8 A. Well, yeah.

9 Q. Like the song, up on the roof? You ever heard
10 that song?

11 A. No, sir.

12 Q. Okay. All right. So we've got a camera. And
13 the camera angle depicts a subject in a walkway, right?

14 A. Yeah.

15 Q. Okay. Is this the walkway that's in the front of
16 your house?

17 A. Yes.

18 Q. And if we make a left on this walkway, it goes to
19 the porch, correct?

20 A. Yes, that's correct.

21 Q. So that camera angle in State's -- excuse me --
22 Defendant's Exhibit 1 that's been marked for
23 identification, if that camera was operative at the time of
24 this incident, that camera would've been able to capture
25 what happened on the porch, correct?

1 A. Yeah, that's correct.

2 MR. HARVEY: All right. I'd like to move this as
3 Defendant's Exhibit 1.

4 THE COURT: Any objection?

5 MS. BROWDER: No, ma'am.

6 THE COURT: Defendant's 1 is admitted.

7 (Defendant's Exhibit 1 was marked for evidence.)

8 MR. HARVEY: Your Honor, permission to publish?

9 THE COURT: Yes, sir.

10 BY MR. HARVEY:

11 Q. So you'll agree with me that camera -- those
12 cameras that were offered, that's a shot onto the porch,
13 right?

14 A. Uh-huh.

15 Q. You testified that you moved to Claudia Drive
16 from Rock Hill, right?

17 A. Uh-huh (affirmatively).

18 Q. And you had lived in Charlotte before Rock Hill,
19 right?

20 A. Yes.

21 Q. And that's where you met Mr. Kimble, right?

22 A. Yeah. Yeah.

23 Q. Now, when you met with representatives of the
24 Solicitor's Office and Investigator Rains, you discussed
25 your family situation, right?

1 A. Not really. It was just about the incident.

2 Q. Okay. And you testified earlier that you had
3 been at least friends with Mr. Kimble for considerable
4 period of time, right?

5 A. Yes.

6 Q. And you saw each other with frequency and
7 regularity, right?

8 A. Just about every day.

9 Q. Okay. And he would come over and visit you and
10 visit the kids, right?

11 A. Yes.

12 Q. So he was involved with you and your family,
13 right?

14 A. Yes.

15 Q. And eventually, and he was involved with the
16 family in Rock Hill and he was involved with the family in
17 Columbia, right?

18 A. From day one.

19 Q. Now, eventually, when you moved from Rock Hill to
20 Columbia, you were working as a CNA; isn't that right?

21 A. Yes.

22 Q. Okay. And you found employment as a CNA. Once
23 you got settled with the job, you moved to Claudia Drive,
24 right?

25 A. I had a job the whole time.

1 Q. You had a job, did you find another job?

2 A. I had stable employment the whole time.

3 Q. Yes, ma'am. My question is, you were Rock Hill
4 and moved to Columbia. Did you move to Columbia after you
5 found a job in Columbia?

6 A. It was with the same company.

7 Q. But you found a job. I'm simply asking, ma'am,
8 did you find --

9 MS. BROWDER: Your Honor, she's asked and
10 answered that question.

11 MR. HARVEY: No, she hasn't.

12 THE COURT: She has. She said she worked for the
13 same company.

14 MR. HARVEY: Thank you, Your Honor.

15 THE COURT: Move on.

16 BY MR. HARVEY:

17 Q. Now, Mr. Kimble, we've established was a frequent
18 visitor in Columbia Drive, right?

19 A. Yes.

20 Q. And Mr. Kimble provided you with a vehicle when
21 you were traveling back and forth between Rock Hill and
22 Columbia, and for a while you used this vehicle when you
23 first moved to Claudia Drive, right?

24 A. Yes.

25 Q. And the transmission in that car eventually was

1 disabled, and I believe your dad provided you with a VW,
2 right?

3 A. Yes.

4 Q. Okay. Now, during the time you were living at
5 Claudia Drive, Mr. Kimble helped you in many ways, did he?
6 He helped with the yard work?

7 A. His help came with the cost.

8 Q. Ma'am, I'm simply asking, did Mr. Kimble help
9 with things at Claudia Drive? He helped maintain the yard,
10 correct?

11 A. We all did the yard.

12 Q. Okay. So you all did the yard, but Mr. Kimble
13 brought a lot more and yard implements then left them at
14 Claudia Drive, correct?

15 A. No. He transported them in his trunk actually.
16 He did not leave his stuff at my house.

17 Q. All right. So -- and he -- so he even had a
18 lawnmower and yard tools at Claudia Drive because he would
19 cut the grass and perform other lawn chores?

20 A. Again, he transported them in his trunk from his
21 place of residence in Charlotte, North Carolina to Claudia
22 Drive when I needed assistance.

23 Q. Now, he was already -- he was very helpful to you
24 and your children, correct? He -- he helped you with
25 finances from time to time, correct?

1 A. Not in Claudia Drive.

2 Q. Not in Claudia Drive. Now, you -- you mentioned
3 that you have a total of four kids, right?

4 A. Yes.

5 Q. How many of them are full siblings?

6 MS. BROWDER: Objection, Your Honor. Relevance.

7 THE COURT: Sustained. Don't answer that
8 question.

9 BY MR. HARVEY:

10 Q. Now, one of your children that was home on 6/5
11 was I.O. [REDACTED], right?

12 A. Yes.

13 Q. Now, I.O. [REDACTED] is an important figure for the events
14 of 6/5/2020, right?

15 MR. HARVEY: Objection, Your Honor. That's an
16 opinion.

17 THE COURT: Sustained.

18 BY MR. HARVEY:

19 Q. I.O. [REDACTED], he testified he had sickle cell, right?

20 A. Yes, he does.

21 Q. And I.O. [REDACTED] was 11 at the time on 6/5/2020.

22 A. He was 14.

23 Q. He was 14. Okay. He's now 18?

24 A. Yes.

25 Q. And he says he's almost as tall as you, right?

1 A. Yes.

2 Q. Okay. Now, we had heard discussion of [I.O.]'s
3 therapy session, correct?

4 A. Yes.

5 Q. If in -- during that day you agree with me that
6 you had sent text messages to Mr. Kimble asking him to come
7 to Claudia Drive and assist with [I.O.]'s therapy session?

8 A. Yes. Earlier that day.

9 Q. Okay. So on June 5th, 2020, you felt comfortable
10 enough to have Mr. Kimble in your home, right?

11 A. Yes.

12 Q. And you felt comfortable enough with Mr. Kimble
13 to have him assist [I.O.] with the therapy session?

14 A. Yes. On those conditions.

15 Q. And -- and over time, had Mr. Kimble cut your
16 kids' hair -- did -- did -- didn't he provide haircuts --

17 A. Yes. Yes. He even pulled out a couple of their
18 tooth -- teeth.

19 Q. Okay. So he was very helpful around the house.
20 And you'll agree with me that there -- as you testified to,
21 there were texts back and forth because you needed Mr.
22 Kimble's help with [I.O.]'s therapy session, right?

23 A. Yes. Earlier in that day.

24 Q. Okay. And you and Mr. Kimble were in
25 communication on June 5th, 2020, correct?

1 A. We talk every day, yes.

2 Q. Okay. Now, you went to the Sheriff's Department,
3 and you testified about going to the Sheriff's Department,
4 and you saw pictures that were taken at the Sheriff's
5 Department in close proximity to the time of the incident.
6 Do you remember doing that? Going to the Sheriff
7 Department --

8 A. Yes, the following day.

9 Q. Okay. And when you went to the Sheriff's
10 Department, you told the Sheriff's Department that you and
11 Mr. Kimble went to a smoke shop?

12 A. I don't -- if we did, we did -- I did possess a
13 Pennsylvania medical marijuana card, for the record.

14 Q. So, for the record, did you or did not -- did you
15 not tell the Sheriff's Department that where you and Mr.
16 Kimble went that night was the Smoke Shop?

17 A. I don't -- I may have said that.

18 Q. You may have said that. And you'll agree with me
19 if you may have said that, you may have changed your
20 testimony today that you said you went to the Food Lion?

21 A. Because the Food Lion is by the Smoke Shop.

22 Q. Okay. Now, you agree with me that -- now, did
23 I.O. [REDACTED] cook dinner that night?

24 A. I don't recall who cooked dinner. No.

25 Q. But Mr. Kimble was there for dinner, correct?

1 A. So what I recall, we were going to the Food Lion
2 to get food.

3 Q. Oh.

4 A. That's why I said Food Lion.

5 Q. But you didn't mention that to the Sheriff's
6 Department when you first went to the Sheriff's Department,
7 did you?

8 A. No.

9 Q. And you didn't mention when you met -- when you
10 met with representatives of the Solicitor's Office or the
11 Sheriff's Department to prepare for this case, that you
12 were going to get food, did you?

13 A. No.

14 MR. HARVEY: Okay. Now -- may I approach the
15 witness, Your Honor.

16 THE COURT: Yes, sir.

17 MS. BROWDER: Your Honor --

18 (Sidebar discussion was held.)

19 THE COURT: Okay. That objection to the extent
20 it was, was overruled. You may proceed, Mr. Harvey.

21 MR. HARVEY: Okay.

22 BY MR. HARVEY:

23 Q. I'm going to hand you what's been marked State's
24 Exhibit Number 2 for identification. What do you see in
25 State's Exhibit Number 2?

1 A. Us standing together?

2 Q. When you say us, can you identify --

3 A. The whole family standing together with Mr.

4 Kimble?

5 Q. Are you standing next to Mr. Kimble?

6 A. Yes.

7 Q. And you're standing up and he's standing up?

8 A. Yes.

9 Q. And it -- it -- it depicts -- okay. And you'll
10 agree with me that's a reasonable and accurate depiction of
11 what you, Mr. Kimble, and the children looked like in that
12 picture?

13 A. What we looked like? Yeah.

14 Q. Okay.

15 A. I'm standing right there.

16 MR. HARVEY: Okay. Now, also -- beg the Court's
17 indulgence one moment.

18 THE COURT: Yes, sir.

19 MR. HARVEY: I move to introduce State -- excuse
20 me -- Defendant's Exhibit Number 2.

21 THE COURT: Defendant's 2 is admitted without
22 objection?

23 MS. BROWDER: Without objection.

24 (Defendant's Exhibit 2 was marked for evidence.)

25 MR. HARVEY: Permission to publish?

1 THE COURT: Yes, sir.

2 BY MR. HARVEY:

3 Q. Defendant Exhibit 2 depicts you standing next to
4 Mr. Kimble, correct?

5 A. Yes.

6 Q. And that photograph depicts your height and his
7 height, correct?

8 A. Yes.

9 Q. Okay. And that reflects what it looks like when
10 he's standing next to you, correct?

11 A. Yes.

12 Q. And you'll agree with me, his shoulders come to
13 your elbow?

14 A. What? No. His shoulders are past my elbow.

15 Q. Between your elbow and your shoulder?

16 A. His shoulders are like almost to the top of my
17 shoulders.

18 Q. They're between your elbow and shoulder, correct?

19 A. Yeah.

20 Q. Okay. Ms. Cupid, you testified that you were --
21 after you went to what may have been a Smoke Shop, may be
22 the Food Lion, you returned home, correct?

23 A. Yes, by myself.

24 Q. When you returned home by yourself, your
25 testimony was you put Mr. Kimble's belongings --

1 A. Outside.

2 Q. And his belongings had been in your bedroom,
3 correct?

4 A. Yes.

5 Q. Okay. And you placed his belongings outside on
6 the porch, correct?

7 A. Yes.

8 Q. Now, your testimony is -- let me make sure I
9 understand that. After you placed his belongings on the
10 porch, you'll agree with me, Mr. Kimble took his belongings
11 off the porch?

12 A. I -- yes, he -- that was the first thing he did
13 before he started knocking.

14 Q. Okay. And your testimony is that you and Mr.
15 Kimble -- Mr. Kimble incessantly -- words to that effect --
16 banged on the door. You told him to go away and that -- I
17 want to be clear on this. Did you ever come out of your
18 house and talk to Mr. Kimble on the porch prior to this
19 alleged altercation?

20 A. No.

21 Q. So your testimony is that this incident -- all of
22 the conduct in this incident occurred in your bedroom?

23 A. No. It -- well, the -- the physical part, the
24 hands-on part, yes. He put his hands on me outside
25 whenever I opened the door to tell him to stop. Put his

1 hands on me, and then pushed me back in the house.

2 Q. Okay. So you'll agree with me that -- your
3 testimony, you don't deny at some time in this allegation
4 you were on the porch?

5 A. Yes. Telling him to stop knocking and pounding
6 on the door.

7 Q. Okay. And you'll agree with me based on your
8 earlier testimony, that -- that the camera in Defendant's
9 Exhibit 1 would've been able to capture the sequence of
10 events on that porch on June 5th, 2020?

11 A. Yes. I'd like to say something about your
12 Exhibit 1 though.

13 Q. No, ma'am. Please answer my question.

14 A. I said, yes, but your exhibit, though, he
15 actually went into the system and got that picture himself.
16 That's nothing that I actually screenshot and sent to him,
17 because he had access to the cameras as well.

18 Q. Ma'am, my -- it's been admitted into evidence.
19 My question simply is, ma'am, on June -- if this came --

20 A. You asked me --

21 Q. Ma'am, I'm sitting asking a question. June 5th,
22 2020, you described an altercation and you admitted at some
23 time you were on the porch during this altercation. My
24 question was simply, would this camera have been able to
25 capture the conduct at that time?

1 A. Yes, it should have.

2 Q. Okay. Now, you had let the jury know that --
3 that you and Mr. Kimble's relationship was -- from your
4 perspective, was it a -- maybe what you might term a final
5 phase, but yet you'll agree with me, you felt comfortable
6 enough with Mr. Kimble and relied on Mr. Kimble enough that
7 same day on June 5th, 2020, you sought Mr. Kimble's
8 assistance to intercede on your behalf with the landlord,
9 didn't you?

10 A. What?

11 Q. Didn't you ask Mr. Kimble to call the landlord on
12 June 5th, 2020?

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

14 Q. You don't recall having a conversation with Mr.
15 Kimble asking Mr. Kimble to get in touch with the landlord
16 and Mr. Kimble told you he couldn't talk to him unless you
17 sent an email authorizing him to speak to the landlord?

18 MS. BROWDER: Objection, Your Honor. He's
19 testifying --

20 THE WITNESS: I don't -- I really don't know what
21 you're talking about.

22 THE COURT: Overruled. Not that anybody's paying
23 attention.

24 BY MR. HARVEY:

25 Q. So you don't know what I'm talking about and you

1 can't tell this jury definitively if you sought the
2 assistance on June 5th, 2020, for Mr. Kimble to intercede
3 on your behalf with the landlord?

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

5 Q. It could have happened, right?

6 A. It didn't happen because June 5th is when rent is
7 due. So I don't know -- why would I ask him to call the
8 landlord?

9 Q. Well, weren't you having some issues with your --

10 A. No, I wasn't. I was actually current.

11 MR. HARVEY: Okay. We'll -- we'll deal with
12 that. Thank you. Beg the Court's indulgence one
13 moment?

14 THE COURT: Yes, sir.

15 MR. HARVEY: That's all I have, Your Honor.

16 THE COURT: Ms. Browder.

17 REDIRECT EXAMINATION

18 BY MS. BROWDER:

19 Q. Ms. Cupid, you testified that Mr. Kimble helped
20 you a lot, right?

21 A. Yes.

22 Q. After this incident, did he help you anymore
23 after that?

24 A. No. He completely disappeared.

25 Q. In fact -- and did you have to move?

1 A. Yes, I did have to move.

2 Q. Okay. And when you moved, do you have help now
3 with your children?

4 A. No, I do everything on my own.

5 Q. Okay. So he was helping you with your lawn care,
6 he was helping you with your children's therapy, helping
7 you cut their hair, and now you have zero help, right?

8 A. Right. I have zero help.

9 Q. And early in the day when you were comfortable
10 with him coming over to [I.O.] were you comfortable with
11 him strangling you?

12 A. No.

13 MR. HARVEY: Objection. Asked and answered, and
14 there's no --

15 THE COURT: Overruled.

16 BY MS. BROWDER:

17 Q. Were you comfortable letting him in your house
18 that night when he was banging on the door?

19 A. No.

20 Q. Did you ever tell him he could come in that
21 night?

22 A. No.

23 MS. BROWDER: No further questions, Your Honor.

24 THE COURT: Anything further, Mr. Harvey?

25 RE CROSS EXAMINATION

1 BY MR. HARVEY:

2 Q. We go back to the questions that you're asked by
3 the Solicitor. You'll agree with me the cameras would've
4 shown that --

5 MS. BROWDER: Objection, Your Honor. Scope of --

6 THE COURT: Sustained. You don't have to answer
7 that question. It's beyond the scope of the redirect.

8 BY MR. HARVEY:

9 Q. Well, we'll go to the redirect. You moved from
10 20 -- from 720 Claudia Drive, right?

11 A. Yes.

12 Q. And when did you move from 7 -- 7 --

13 A. Immediately after that happened.

14 Q. Even though you had paid your rent?

15 A. No. I used that rent since that incident
16 happened on June 5th. I used the rent to actually move
17 back to Pennsylvania. Because that was the monies that I
18 had. I was on a budget and income.

19 THE COURT: You're finished, Mr. Harvey?

20 MR. HARVEY: Yes, Your Honor.

21 THE COURT: Okay. Thank you. You may step down.
22 Ladies and gentlemen -- let's -- well, let me let her
23 get down, but we're going to take a short break.
24 Please return to your jury room for about 10 or 15
25 minutes. Do not discuss the case -- case amongst

1 yourselves. We'll bring you back shortly.

2 (Jury exits the courtroom.)

3 THE COURT: Okay. Let's take a 10 minute break.

4 (A brief recess was had.)

5 THE COURT: Okie dokie. Everybody good? Okay.

6 You can bring the jury, please.

7 (The jury enters the courtroom.)

8 THE BAILIFF: The jury is seated, Your Honor.

9 THE COURT: Thank you. The State is going to
10 call its next witness?

11 MR. KREUSH: Yes, Your Honor. State calls
12 Michael Hayes -- Doctor Michael Hayes.

13 **DOCTOR MICHAEL HAYES,**

14 Having been first called as a witness was duly sworn and
15 testified as follows:

16 THE CLERK: Please have a seat in the witness
17 stand and state your full name for the record.

18 THE WITNESS: Michael Thomas Hayes.

19 DIRECT EXAMINATION

20 BY MR. KREUSH

21 Q. Good afternoon, Dr. Hayes. For the Court, what
22 is your occupation?

23 A. I -- I'm a physician and I'm an attorney.

24 Q. Okay. How long have you been practicing
25 medicine?

1 A. Graduated medical school in 1990, and started
2 residency. Been practicing ever since.

3 Q. Okay. Where do -- where do you practice?

4 A. For the last 30 years, I've practiced what used
5 to be the Providence hospitals, now is Medical University
6 of South Carolina Emergency Department, both on Forest
7 Drive and in the Northeast.

8 Q. Is that -- is that Providence Health?

9 A. It was Providence Health.

10 Q. It was Providence Health. All right. What do
11 your duties entail now?

12 A. I'm an emergency doctor.

13 Q. Any kind of --

14 A. Bring it. Whatever you want.

15 Q. See anything every day. What -- what's a typical
16 day?

17 A. Before I came here, it was 2-year-old cardiac
18 arrest.

19 Q. Okay. You get a little bit of everything coming
20 --

21 A. Terrible.

22 Q. What kind of training have you received for that?

23 A. Medical residency and a bunch of experience.

24 MR. KREUSH: Your Honor, at this time the State
25 would like to offer Dr. Michael Hayes as an expert in

1 the field of emergency medicine.

2 MR. HARVEY: Without objection.

3 THE COURT: All right. Ladies and gentlemen,
4 generally, a person -- a witness must testify as to
5 their personal observations and not, for the most
6 part, give opinion testimony. However, when a person
7 is qualified by virtue of their education, training,
8 and experience to be an expert in some art, science,
9 or other field, they are permitted to give you
10 testimony -- opinion testimony within the field of
11 their expertise and the reasons for those opinions.

12 Dr. Hayes is qualified as an expert in the field
13 of emergency medicine and will be permitted to testify
14 to opinions and conclusions within that field.
15 However, like any other witness, you give his
16 testimony the weight and credibility you think it
17 deserves. You may proceed. Mr. Kreush.

18 MR. KREUSH: Thank you.

19 BY MR. KREUSH:

20 Q. Dr. Hayes, you mentioned that your employment has
21 changed names. Do you recall it being Providence Health in
22 June of 2020?

23 A. Yes.

24 Q. Okay. Did -- were you -- do you remember if you
25 were working on June 5th and June 6th of 2020?

1 A. I do not remember that, but the medical record
2 reflects that.

3 Q. Okay. Do you recall being in contact with Ms.
4 Melissa Cupid?

5 A. I do not. The medical record reflects that.

6 Q. Medical record. Okay. According to those
7 medical records, was there any injuries that she had?

8 A. From my review of -- of it -- I'll just tell you
9 what I -- what I remember from the review of the record.
10 There was a laceration to the lower lip that needed to
11 repair. There was concern for facial fracture, so there
12 was CT scanning in the face. There was injury to the head,
13 so CT scanning in the head. And typically when we CT scan
14 the head, we also CT scan the cervical spine.

15 In her -- in her situation, there was choking. And so
16 you worry about the trachea. Although I didn't have a
17 large concern for trachea injury or else I would've added
18 contrast to that scan. So she got a CT scan in cervical
19 spine basically for injury to the head with a -- with a
20 kind of a sneak look at the anterior neck. And for brain
21 injury, for bleeding generally. And the scans turned out
22 to be negative.

23 Q. Okay. Have you seen those types of injuries
24 before?

25 A. A lot.

1 Q. Okay. Can you -- do you recall what those might
2 be indicative of?

3 A. So -- so it can be intracranial hemorrhage,
4 bleeding in the brain, you know, it can be cervical spine
5 injury, it can be tracheal injury, it can be facial
6 fractures. All the -- all the traumatic things that you
7 can imagine, blunt force to your head or neck. I mean
8 there are multiple derivations of -- of those particular
9 injuries.

10 Q. What about possible assault by someone else?

11 A. Very common.

12 Q. Okay. Did you notice anything else about Ms.
13 Cupid or at least by your medical records?

14 A. Not that was recorded.

15 Q. Okay. Do you recall diagnosing her with any type
16 of head injury other than the lacerations in between --

17 A. Concussion.

18 Q. Concussion.

19 A. And likely the -- it -- it said contusion head,
20 contusion face, cervical strain.

21 Q. Okay. Can -- can you -- you explain for the
22 Court what a concussion?

23 A. So there are different kinds of concussions.
24 There's concussion with loss of consciousness. It implies
25 a brain injury that -- it lasts a variable amount of time.

1 We can't really -- you know, the brain's a big magic box.
2 We don't really know what happens when -- when you injure
3 your brain. Sometimes it's as subtle as memory loss.
4 Sometimes it's headache and dizziness for weeks on end.
5 Sometimes people never get better. And so it's not an
6 easily definable condition. We know that if you have a
7 concussion, you need to avoid any more injury because
8 concussion on concussion leads to a more permanent
9 disability.

10 Q. Okay. Now, you mentioned -- correct me if I'm
11 wrong -- you mentioned a lack of oxygen might have caused
12 concussions. Is that what you said before?

13 A. I didn't say that.

14 Q. What did you say? I probably misheard you.

15 A. No, no. So concussion is some alteration of your
16 sensorium. You -- you don't remember, you lost memory, you
17 lost consciousness. You're dizzy, you're having headaches,
18 you're not right. Things aren't exactly what it was before
19 you had the injury.

20 Q. Okay. And blunt force can cause that?

21 A. Commonly.

22 Q. Okay. Now, loss of memory, is that -- that's
23 something that happens a lot with concussions?

24 A. Yes.

25 Q. Okay. Is there any set rule for how long loss of

1 memory could be?

2 A. No.

3 Q. And what about any set rule about how memory's
4 supposed to come back?

5 A. No.

6 Q. Okay. So, you know, some people get it piece by
7 piece, some can get it all at once?

8 A. Completely variable and unpredictable.

9 MR. KREUSH: Beg the Court's indulgence.

10 THE WITNESS: Your Honor, I apologize for gasping
11 when you called for a recess.

12 THE COURT: That's quite all right.

13 THE WITNESS: Been here a while.

14 THE COURT: Yes, sir.

15 BY MR. KREUSH:

16 Q. And all those injuries that you just described,
17 and we've talked about, you -- you diagnosed Ms. Cupid with
18 those, correct?

19 A. I did.

20 MR. KREUSH: No further questions, Your Honor.

21 THE COURT: Cross-examination, Mr. Harvey?

22 MR. HARVEY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HARVEY:

25 Q. Good afternoon Dr. Hayes.

1 A. Good afternoon.

2 Q. Coming into your field -- vision. Dr. Hayes,
3 you're quite an impressive guy. When you talk to your
4 doctor friends, they're mad that you're a lawyer and you're
5 a doctor. You talk to your lawyer friends, they get upset
6 with you being a doctor. I understand what being in a
7 tough situation could be like.

8 A. Thank you.

9 Q. I have a son who's a flight sergeant in the Navy.
10 Thank you for what you do. Okay. So Dr. Hayes, you were
11 on duty on the late evening of June 5th, early part of June
12 6th when Ms. Cupid was seen at Providence Hospital,
13 correct?

14 A. It appears so.

15 Q. Yes, sir. And when you met with Ms. Cupid, you
16 had thoroughly reviewed all the information that was
17 gathered about why she was at the ER. The emergency
18 department gathers information, they speak with her
19 primarily, and the information that's in -- part of your
20 record is information that was presented by Ms. Cupid to
21 another department at the --

22 A. The nursing staff takes the intake?

23 Q. The nursing staff.

24 A. Yes.

25 Q. Okay. The nursing staff intake. Now, you talked

1 with her -- at that time, you spoke with her about her
2 injury, correct?

3 A. Yes.

4 Q. Okay. And as a result of talking with Ms. Cupid
5 and examining her injuries, you testified you requested
6 some radiological -- some CT scans, correct?

7 A. Correct.

8 Q. This is because CT scans could provide more
9 information about what she described as the source of her
10 injury?

11 A. Correct.

12 Q. Okay. So when you talk about -- and you had
13 mentioned to the Solicitor -- you used a phrase, there was
14 some choking, that's based upon --

15 A. Her history -- her history.

16 Q. Her history, not -- right. Okay. So before you
17 ordered the CT scans, you performed an examination that was
18 appropriate for the presenting complaints, right?

19 A. Yes.

20 Q. Okay. And you ordered three CT scans, right? A
21 CT head without contrast, that was to check initial
22 injuries to the head, right?

23 A. Yes.

24 Q. Okay. A CT facial sinus without contrast, that
25 was to check on injuries to the face, including any

1 fractions for bone injury, correct?

2 A. Correct.

3 Q. All right. And the CT cervical spine without
4 contrast, that would be able to distinguish if there were
5 any damage to the neck or throat area, correct?

6 A. True. Yes.

7 Q. And I believe I heard your testimony earlier, in
8 response to the Solicitor's questions, that those tests
9 were all negative?

10 A. Yes.

11 Q. Okay. Now, the -- the cervical spine scan could
12 be an indicator of injuries, right?

13 A. Yes.

14 Q. And now you'll agree with me that the CT head
15 scan finding was unremarkable?

16 A. Yes.

17 Q. The CT facial scan was unremarkable?

18 A. Yes.

19 Q. And the CT cervical spine was unremarkable?

20 A. Yes.

21 Q. Now, based on those diagnostic tests, in your
22 observation, you could not determine if the conclusion of
23 what you observed on this -- the contusions you observed on
24 Ms. Cupid's throat were the result of choking? You can
25 only determine the presence of contusions, correct?

1 A. I don't believe that there was any designation of
2 bruising on the throat.

3 Q. Okay. No designation for bruising on the throat?

4 A. I may -- I may be wrong, but I don't --

5 Q. No, sir, I -- I wouldn't -- now, you were able to
6 determine that Ms. Cupid did not suffer damage to her
7 spine, her face?

8 A. Yes.

9 Q. Now --

10 A. Well, she had a laceration on her lips, so. It
11 would be on her face.

12 Q. Yes, sir. You're -- you're -- you're correct,
13 sir. Now -- now, when you -- you saw Ms. Cupid, did the
14 examination -- you didn't notice any hemorrhaging or -- or
15 hemorrhage type of injuries in the eyes, did you?

16 A. I did not.

17 Q. Okay. Now, your treatment of Ms. Cupid did not
18 require any type of partial admission with anesthesia, did
19 it?

20 A. No.

21 Q. In this case, after treating her injuries, you
22 did not have any reason to believe that the injuries
23 would've any prolong -- prolonged impact on her organs, on
24 her function, right?

25 A. So organs know that functioning -- a concussion

1 is a -- a variable injury that you can't predict it's
2 length --

3 Q. Right. So -- so it's variable -- it's different.

4 A. It's very different.

5 Q. Okay. But based upon what you observed, there
6 was no reason for any type of admission?

7 A. That's right.

8 Q. Now, you can only tell the jury about your
9 observations. You can't tell the jury how the contusions
10 or the injuries occurred. You can only use the information
11 that was provided?

12 A. That's true.

13 Q. Okay. Now, some people told me I played too much
14 without a helmet. Okay. But concussions can concur and
15 all concussions don't lead to a loss of consciousness,
16 correct?

17 A. Sure.

18 Q. And a lot -- so a concussion and loss of
19 consciousness, one doesn't -- one isn't dispositive of the
20 other, correct?

21 A. Concussion, with or without loss of
22 consciousness, is how I would designate it.

23 Q. Okay. And -- now, when someone sustains
24 injuries, like the injury you described on Ms. Cupid's
25 face, that type of injury can occur through blunt force,

1 correct?

2 A. Yes.

3 Q. Now, blunt force is a fancy way to talk about a
4 fall because when someone falls the -- the floor -- the
5 floor is denser than the lift and that -- that can cause
6 injury, correct?

7 A. We would say direct blow.

8 Q. Direct blow. So her injuries were consistent
9 with some type of direct blow?

10 A. Yes.

11 MR. HARVEY: Okay. Well, beg the Court's
12 indulgence one moment. Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HARVEY: Excuse me, one second.

15 BY MR. HARVEY:

16 Q. Okay. When you did the -- the CT facial scan,
17 that was to check for fractures in the face area, and
18 typically in this type of scenario -- and the Solicitor
19 asked you about common assault injuries, we often see
20 orbital fractures, right?

21 A. Yes.

22 Q. I mean, that's very common. That wasn't present
23 in this case. And I may have inartfully asked a question,
24 but can you explain what was meant by hemorrhaging in the
25 eye and what was not present in this situation?

1 A. So I guess I'd ask you to -- to rephrase it as to
2 -- in the eye itself or surrounding the eye, behind the
3 eye?

4 Q. Surrounding the eye. Or you're --

5 A. Are you talking about a black eye? Are you
6 talking about actual hemorrhage in the eye?

7 Q. Right. Your -- your report -- if I --

8 A. None of those things were present.

9 Q. None of those things were present. Also, one of
10 the reasons why he did that cervical spine, you had
11 mentioned it can be -- and I am not doctor using the right
12 word -- but it can be an indicator of throat injury. And
13 -- and in this instance, when you did that cervical spine
14 and did your examination follow up, you noted contusions,
15 but that was it?

16 A. I think it's cervical strain where I put -- I
17 don't know if it was a contusion.

18 Q. Cervical?

19 A. So -- so a cervical spine injury is -- or
20 cervical spine CT scan is mainly focused on the vertebra
21 and surrounding tissues. But it comes all the way around
22 and you get a look at the trachea and the soft tissues of
23 the neck. If the person has strider, which is that croup
24 noise (demonstrating), then you worry there's tracheal
25 injury and you add contrast to the CT scan to look and see

1 better the soft tissues of the neck. But I didn't have a
2 high index of suspicion for tracheal injury, so I did not
3 add contrast.

4 MR. HARVEY: Thank you. Beg the Court's
5 indulgence one moment.

6 BY MR. HARVEY:

7 Q. So when we talk about hemorrhaging in the eye,
8 with the eye injuries that we discussed, you didn't see --
9 those type of injuries can come from blunt force trauma,
10 correct?

11 A. Correct.

12 Q. And those -- do those injuries also come from
13 choking?

14 A. Yes.

15 MR. HARVEY: Thank you. You did -- thank you.

16 THE COURT: Any redirect?

17 MR. KREUSH: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. KREUSH:

20 Q. Dr. Hayes, that concussion you stated does not
21 always lead to loss of consciousness, but it can?

22 A. That's true.

23 Q. Blunt force, that could be a punch to the face,
24 right?

25 A. Yes.

1 Q. Okay. And just because there's no orbital
2 fracture, does that mean that no blunt force to the face
3 occurred?

4 A. No.

5 Q. Okay. Can you be strangled without a tracheal
6 injury?

7 A. Commonly.

8 Q. Okay.

9 A. Most times.

10 Q. And -- and does hemorrhaging always occur when
11 you're strangled?

12 A. No.

13 Q. Okay. Also, just to bring a further point, you
14 mentioned unremarkable in your report. That doesn't
15 necessarily mean that an injury has or hasn't happened,
16 does it?

17 A. That's right.

18 Q. Okay. You -- you're just viewing what you see at
19 that time, correct?

20 A. So that's the -- the radio -- radiologist's
21 interpretation of those images. I mean, certainly, if you
22 were to do MRI of all those parts that'd be more subtle
23 soft tissue injury that would be picked up. We're just
24 looking for things that are worrisome from standpoint of
25 the health of the person.

1 You know, our focus is not medical-legal, right?
2 We're -- we want to be sure that the -- there's nothing bad
3 happening to this person and, you know, those kind of scans
4 will allow you to safely discharge them and let them follow
5 up somewhere else. But certainly, the more intricate --
6 for example, brain injury, there are -- there are very
7 sophisticated, not readily available, scans of your brain
8 that can pick up micro hemorrhaging that we just don't use
9 because it's not available and it's not common -- commonly
10 used.

11 But brain injury lawyers, they do. And -- and so, you
12 know, there -- there are things out there that are not
13 commonly used that can pick up more subtle injury.

14 Q. And so when you're in the ER, you're not always
15 getting the full picture of the whole situation?

16 A. I think that's accurate -- accurate
17 characterization.

18 Q. You guys might find new things such as, you know,
19 bruising, things like days later?

20 A. Sure.

21 Q. Okay. Is that something that can happen with
22 blunt force trauma?

23 A. Yes.

24 MR. KREUSH: No further questions, Your Honor.

25 THE COURT: Anything further, Mr. Harvey?

RECROSS EXAMINATION

BY MR. HARVEY:

Q. The test -- the contrast that you ordered -- the treatment --

A. There -- there was no contrast.

Q. Excuse me. The CT scan --

A. Yes.

Q. Without the contrast?

A. That's right.

Q. Ms. Cupid presented to the ER, and based upon what was presented, you did what was reasonable at the time with the information and conditions that were presented to you, right?

A. That's what I think.

Q. Okay. And do you have confidence she was ordered to be discharged, correct?

A. Yes.

MR. HARVEY: Thank you very much.

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

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MS. BROWDER: At this time, the State rest, Your Honor.

THE COURT: All righty. Okay. All right.

1 Ladies and gentlemen, that's all the testimony and
2 evidence you're going to get from the State. There
3 are now certain matters of law that I need to discuss
4 with the attorneys outside of your presence, but since
5 we're a little late in the day, I'm going to go ahead
6 and just excuse you for the day.

7 Be back tomorrow morning at 9:30. Do not discuss
8 the case amongst yourselves or with anyone else.
9 Don't do any research about the case. Just have a
10 good evening and we'll see you tomorrow morning at
11 9:30.

12 (The jury exits the courtroom.)

13 THE COURT: Any motions?

14 MR. HARVEY: Yes, Your Honor. The State has
15 rested its case. I would make a motion for a directed
16 verdict. I have -- Your Honor, has ruled on the
17 previous motion. They were objected on the record.
18 So I would move for a directed verdict at this time
19 knowing -- not knowing what Your Honor may rule, but
20 it still -- it's incumbent upon me to make this motion
21 at this juncture.

22 THE COURT: Of course. That motion is
23 respectfully denied.

24 MR. HARVEY: Thank you, Your Honor. We will have
25 a colloquy with the Court after our meeting with Mr.

1 Kimble regarding presentation of what -- if any, what
2 we're going to do in the Defense case. I just need
3 some time to meet with him.

4 THE COURT: Sure. But -- so that we can end for
5 the day and you can have until 9:30 tomorrow morning,
6 you know, whatever time I'm going to go ahead and
7 advise him of his rights. And then you can -- I'll
8 get his answer in the morning.

9 MR. HARVEY: In the morning, yes, ma'am.

10 THE COURT: But I'm going to go ahead and advise
11 him.

12 So, Mr. Kimble, if you would stand. Mr. Clerk,
13 would you place Mr. Kimble under oath, please?

14 **CLIFTON E. KIMBLE,**

15 Whereupon, the Defendant, having been duly sworn, testified
16 as follows:

17 THE COURT: All right. Mr. Clifton Kimble, at
18 this time I'm going to explain to you certain of your
19 rights. If you do not understand anything I say,
20 please let me know, or if you want me to explain
21 anything in more detail, please let me know. Do you
22 understand?

23 THE DEFENDANT: Okay.

24 THE COURT: Okay. We have now reached the stage
25 of the trial you -- where you may present your

1 defense. You have the right to claim the protections
2 given to you by the Fifth Amendment to the
3 Constitution of the United States. This Amendment
4 states, in part, "no person shall be compelled in any
5 criminal case to be a witness against himself."

6 This means that you cannot be required to testify
7 in this case. You have the right to testify on your
8 own behalf; however, no one can make you testify.
9 This is a personal right, and no one can waive this
10 right except you. If you decide to testify, you'll be
11 subject to the same rules that govern other witnesses,
12 and you may be examined and cross-examined on any
13 relevant issue in this case.

14 In addition, if you have any criminal convictions
15 involving dishonesty or false statement, or for crimes
16 punishable by imprisonment for more than one year --
17 and this Court determines that the probative value of
18 admitting this evidence outweighs its prejudicial
19 effect to you, the Solicitor will be able to introduce
20 your criminal record to attack your credibility.

21 If you decide to testify, this decision on your
22 part must be freely, voluntarily, and intelligently
23 made with knowledge of the protections given to you by
24 the Fifth Amendment and the consequences of your
25 decision to testify.

1 If you decide not to testify, I will instruct the
2 jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever, and that there
4 is to be absolutely no prejudice to you because you
5 did not testify.

6 It is left entirely up to you whether or not you
7 testify. You may talk with your attorney, your family
8 and friends, or anyone else, but the final decision
9 will be left entirely up to you. Do you under -- do
10 you understand what I -- what I have explained to you?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. You have any questions about
13 what I just explained to you?

14 THE DEFENDANT: I'm okay.

15 THE COURT: Okay. And am I correct, did we go
16 over this? Mr. Kimble does not have any impeachable
17 convictions?

18 MS. BROWDER: Correct. Yes. Yes.

19 THE COURT: Okay. Okay. So I read that part
20 about your criminal record being introduced to attack
21 your credibility. Apparently, that's not an issue in
22 this case. You -- you don't have any convictions for
23 crimes that would qualify and the Solicitor's not
24 going to try to use your criminal record. I don't
25 even know if you have a criminal record, but if you

1 do, apparently whatever those convictions are will not
2 be brought up in this case.

3 So -- so with that, I'm going to -- you can have
4 a seat. I'm going to ask you in the morning after you
5 meet with your attorney -- you know, again, talk to
6 your friends, family, whoever, and I'll ask you in the
7 morning whether you choose to testify.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay.

10 THE DEFENDANT: Thank you.

11 THE COURT: Anything else, Mr. Harvey?

12 MR. HARVEY: No, Your Honor.

13 THE COURT: All right. Anything from the State
14 before we break?

15 MS. BROWDER: No.

16 THE COURT: See y'all at 9:30 tomorrow morning.

17 (The proceedings were adjourned for the day.)

18 **Wednesday, December 11, 2024**

19 THE BAILIFF: All rise! Court come to order.
20 You may be seated.

21 THE COURT: Good morning, folks. We had a chat
22 in chambers about Ms. Browder. I think I've heard
23 from everyone. I know we need to put it on the
24 record, but we're going to pause the case and go until
25 tomorrow. I would like to bring the jury in and go

1 ahead and dismiss them before we put it on the record.

2 So have I heard everything that I'm going to hear
3 with regard to the request for continuance?

4 MR. HARVEY: Your Honor, I would like to be able
5 to articulate -- I'll leave it to the Court's
6 discretion. I just think it's -- I think the better
7 procedure would be for me to articulate my objection
8 on the record. And if Your Honor does rule consistent
9 with what we discussed, there would be a record before
10 the jury is dismissed --

11 THE COURT: Before the jury is dismissed. That's
12 fine.

13 MR. HARVEY: Thank you. Your Honor. I just --
14 may it please the Court?

15 THE COURT: Oh, let me hear the formal motion
16 first, so that there's an appropriate record of that.

17 MR. KREUSH: Your Honor. The Court's aware, Ms.
18 Browder's fallen ill, unable to come to court today
19 for those reasons. She -- this was her case. She's
20 been managing this. I'm obviously assisting her.

21 But for those reasons. The State would ask for a
22 continuance until tomorrow.

23 THE COURT: Yes, sir, now Mr. Harvey?

24 MR. HARVEY: May it please the Court?

25 THE COURT: Yes, sir.

1 MR. HARVEY: As counsel for my client. I
2 vehemently oppose to continuance. The State has
3 assigned two lawyers to the case. Mr. Kreush is a
4 very capable, experienced lawyer. He's been working
5 on the case for considerable amount of time. I'm
6 confident in his abilities, having worked in that
7 office, I know that there are screening processes for
8 Assistant Solicitors. The fact that he's there is an
9 indication of his competence. He displayed his
10 competence in addressing the jury and addressing
11 witnesses.

12 Your Honor, so we have two lawyers. I'm quoting
13 from Trial Paperwork for South Carolina, Fifth
14 Edition, by Alexander Sanders and John Nichols -- the
15 2024-2025 book. I would use this as authority that I'm
16 relying on Your Honor --

17 THE COURT: Yes, sir.

18 MR. HARVEY: -- for the position, a common --
19 but seldom successful -- argument is that counsel
20 cannot be present or participate due to health
21 problems.

22 Relevant considerations are as follows: Now, I'll
23 leave to the Court's discretion what weight to give
24 what was presented to the Court about Mr. Browder's
25 condition.

1 But if I may, just articulate the standard:
2 "were there any medical affidavits or certificates
3 offered to support the assertion or inability to try
4 the case? That's *Timmons v. South Carolina*
5 Tricentennial Commission, 175 SE 2nd, 805 (1970),
6 affirming that no medical certificate did not indicate
7 any impairment of health from courtroom appearance,
8 whether there is any showing that or indication during
9 the trial that the attorney's health was impaired?

10 Your Honor, I guess one of the -- not, I guess
11 I'm confident that in this situation, we have two
12 attorneys assigned to the case. My client -- this
13 case is finally reached the jury stage. It's finally
14 -- the State has closed, as Your Honor is aware of --
15 my client is driving back and forth every day from
16 Charlotte.

17 Your Honor, we believe that when balancing the
18 competing needs and the resources available to the
19 State and the standard articulated by Sanders and
20 Nichols that looking at the totality of circumstances
21 and the resources available to the State, including an
22 abundance of other Assistant Solicitors who are in
23 court that the confidence that that office routinely
24 displays in front of Your Honor on a common basis,
25 they're adequate resources to move forward, to present

1 the State's case and have the case proceed as the
2 Court planned and also we believe moving forward
3 today, an ancillary benefit, is the use of judicial
4 resources, so that the Court may use the resource of
5 this jury panel to address other matters.

6 And lastly, Your Honor, I do have a concern. I
7 wish Ms. Browder a speedy recovery. And again, as I
8 said my position and my client's position is not
9 antagonistic towards Ms. Browder in any fashion, is
10 not indicative of -- it's not animosity based or based
11 upon anything that's transpired into trial. It's based
12 upon my client wanting to move forward and have his
13 day in court and probably resolve the case.

14 So having articulated those reasons, we believe
15 that as Your Honor may reconsider the argument and
16 reconsider the competing interests that Your Honor
17 reconsider and grant -- deny the State's motion for a
18 continuance. Thank you, Your Honor.

19 THE COURT: Yes, sir. Any response from the
20 State?

21 MR. KREUSH: Yes, Your Honor, it's Wednesday.
22 Defense is indicating he only has two witnesses left.
23 I will just leave that in closing. Regardless of Ms.
24 Browder's condition, tomorrow, the State will be
25 ready to move forward. That's plenty of time to

1 resolve this case. The intent is not prejudiced in
2 any way by moving this case.

3 THE COURT: Okay. Thank you, sir. And would you
4 confirm it's my understanding from our conversation
5 off the record that Ms. Browder notified you, Mr.
6 Kreush, of her health condition, her ill health at
7 approximately 6:30am today?

8 MR. KREUSH: Correct, Your Honor.

9 THE COURT: Okay, thank you. So I'm going to
10 grant the State's motion for continuance. Just
11 addressing Mr. Harvey's arguments. While there have
12 been two lawyers participating in the trial of this
13 case, and I don't know what happened prior to the
14 trial, the only attorney of record, frankly, is Ms.
15 Browder.

16 As to the fact that there are -- there is an
17 abundance of Assistant Solicitors working in that
18 office, I would simply state that as attorneys, we
19 know how absolutely difficult it is to step into a
20 case knowing little or nothing about the case and
21 immediately be prepared to try the case.

22 I'm not saying it's impossible. I've done it a
23 time or two myself, but that is a heavy burden. So
24 while there are available attorneys, those attorneys,
25 as far as I know, have not participated in preparation

1 and are not particularly familiar with this case.

2 As to the issue of medical proof or medical
3 certificate. I'm going back to *Timmons versus South*
4 *Carolina* Tricentennial Commission. It's a 1970 case,
5 which is before the Rules of Civil Procedure were
6 implemented. The citation is 254 SC 378, but even --
7 and I generally don't like procedural cases decided
8 before the Rules of Civil Procedure were implemented.

9 But -- but even if this is still good law, and it
10 appears to be, the circumstances in that case were
11 different. In that case, it appears that there were a
12 number of days at least between the medical
13 certificate from the Aiken County Hospital Emergency
14 Room and then it looks like a request for continuance
15 some days later, this is more of an emergency
16 situation.

17 I suppose it's been now not even four hours
18 since, since the other Assistant Solicitors or anyone
19 was notified of Ms. Browder's health condition, which
20 frankly, isn't sufficient time to necessarily get
21 medical proof or even go to a doctor or figure out
22 what's wrong with you or and, and you know there may
23 not have been any indication of her impairment during
24 this trial.

25 But it's my understanding that the nature of her

1 illness is not necessarily one that we would have seen
2 warning signs of. It's not a cold where you first
3 have a tickle in your throat and then your nose starts
4 running, and then, you know, by day three or four,
5 you're down for the count. It's something more acute
6 than that.

7 In addition, I'll just mention the fact that the
8 opposition to the continuance and desire for speedy
9 resolution of the case seems a bit odd, given the fact
10 that 24 hours ago, the Defendant himself was
11 requesting a continuance for some considerable period
12 of time in order to hire a new attorney, and that new
13 attorney would have had to get up to speed on the
14 case, otherwise we could have paused the case
15 yesterday, sent him out to find an attorney, and had
16 that attorney come right in, sit down and start trial
17 yesterday, which is essentially what you'd be asking
18 Mr. Goldberg or anyone else from the Solicitor's
19 office to do.

20 I didn't require that of Mr. Kimble, because
21 that's not reasonable to just grab an attorney and say
22 "you're you're in trial right now". And I'm not going
23 to require that of the State, but certainly there was
24 little interest in the speedy resolution of this case
25 24 hours ago.

1 But be that as it may as Mr. Kreush indicated the
2 State will be ready to proceed tomorrow. In any
3 event, whether Ms. Browder is available or not
4 available, I discussed with them that they should be
5 ready. It gives them time. I mean, the State has
6 rested, but it gives them time to at least read the
7 file and know what the case is about, and prepare
8 cross examination and closing arguments, jury charges,
9 and all of those things.

10 So it's my instruction to the State that they
11 remain in touch with Ms. Browder, if she's able to
12 come tomorrow, great. If she's not, they need to know
13 that, of course, as soon as possible, so that they can
14 be fully prepared.

15 And maybe you just prepare anyway, in case she is
16 unable to come tomorrow, whether that's because she's
17 not better, or she has something that's contagious, or
18 whatever that is.

19 So the case will finish 24 hours later than it
20 would have otherwise, which isn't a significant delay
21 in the opinion of this Court. So for all those
22 reasons, the motion for continuance is granted till
23 tomorrow. We'll begin or resume this trial at 9:30
24 tomorrow morning.

25 You can bring the jury in, please.

1 (The jury enters the courtroom.)

2 THE BAILIFF: Your Honor, all jurors are seated.

3 THE COURT: Good morning, ladies and gentlemen,
4 once again, I apologize for having you wait for so
5 long. Concealed in that -- not concealed, captive.
6 That's what I want to say, captive in that room back
7 there. Okay. having you wait for so long captive in
8 that room back there. I know that's no fun, but as I
9 told you, sometimes matters of law come up that I need
10 to discuss with the attorneys outside of your
11 presence.

12 I try to predict how long that will take, and I'm
13 not always accurate in my predictions, one such matter
14 has arisen this morning, which is a big reason for the
15 delay so far, but also we've not resolved that issue.

16 And so rather than keep you sitting back there,
17 we are just going to take a pause in the trial so that
18 I can work out things with the attorneys, which means
19 we will not finish this case today.

20 I'm going to let you go for the day and bring you
21 back tomorrow. We will finish the case tomorrow,
22 unless some other crazy unforeseen emergency situation
23 comes up so but I can't conceive of what that might
24 be.

25 So you are free for the day and be back in your

1 jury room tomorrow morning at 9:30 don't discuss the
2 case amongst yourselves or with anyone else. Don't do
3 any research about the case. Just have a good night
4 and we'll See you tomorrow at 9:30. Thank you.

5 (The jury is excused for the day and exits the
6 courtroom.)

7 THE COURT: I can't start talking again until the
8 door is closed (laughing). It's okay. Let me just
9 really quickly before we break, clarify or correct a
10 portion of my ruling, I was reading from my notes,
11 that I scribbled while Mr. Harvey was making his
12 argument, and not from the case itself.

13 Now, that I've looked up at the screen, my
14 computer screen in that *Timmons* case, the, one of the
15 factors that that court considered was not whether
16 there had been any indication of counsel's impairment,
17 but whether the -- whether counsels health condition
18 would be impaired by being required to be in trial in
19 the courtroom, and frankly, I find that Ms. Browder's
20 health would be impaired by requiring her to be in
21 trial due to the nature of her illness -- ailment this
22 morning.

23 So I just wanted to correct that so that the
24 Court of Appeals doesn't think that I don't know what
25 I'm doing. Anything else before we break for the day

1 from the State?

2 MR. KREUSH: No, Your Honor.

3 THE COURT: From the Defense?

4 MR. HARVEY: No, Your Honor.

5 THE COURT: All right. I'll see you at 9:30
6 tomorrow. Have a good afternoon.

7 (The proceedings were adjourned for the day at
8 11:15am.)

9 **Thursday, December 12, 2024**

10 THE COURT: Good morning.

11 COURT STAFF: Good morning.

12 THE COURT: Do we need to discuss anything before
13 we bring the jury in from the State?

14 MS. BROWDER: Your Honor. One thing, Mr. Harvey
15 sent us two exhibits last night. He intended to use.
16 They are letters or envelopes from previously when Ms.
17 Kimble had her mail forwarded from Rock Hill from two
18 separate addresses. We're objecting to these being
19 used for two reasons. One, he just turned it over when
20 this is something he had he turns it over now in the
21 middle of the trial versus beforehand, in addition
22 Your Honor, the timeline of when she moved is a
23 collateral issue that has nothing to do with that
24 night and what happened that night. So we would object
25 to extrinsic evidence being used on a collateral issue

1 like that under the case law.

2 THE COURT: Okay, let me see the exhibits Mr.
3 Harvey.

4 MR. HARVEY: If I may, Your Honor? With respect
5 to it being a collateral issue --

6 THE COURT: Sure. I just want to know what we're
7 talking about while we're talking about it.

8 MR. HARVEY: Actually, what I propose, what I
9 said to the Solicitor's Office, and we had talked
10 about it during the -- after court ended, it wasn't
11 said last night because Your Honor and specifically
12 said we're going to use testimony for everyone to
13 prepare and address and get ready for today. So --

14 THE COURT: Not quite my quote, but okay.

15 MR. HARVEY: So we are -- we had sent the State a
16 color copy of just -- not the letter -- but the front
17 page of the letter --

18 THE COURT: Sure.

19 MR. HARVEY: With respect to the issue, Ms. Cupid
20 was adamant about the date that she moved there. And
21 of course, as we all know, Ms. Cupid's credibility is
22 the linchpin of the State's case, and that shows a
23 difference of a considerable period of time when that
24 residency began. And that's the purpose of that
25 letter.

1 THE COURT: Okay

2 MR. HARVEY: For the purpose of those exhibits,
3 it's not a letter it's a copy of a bank statement to
4 Mr. Kimble and Ms. Cupid, and it shows the forwarding
5 the date that the mail was forwarded to him at that
6 address.

7 MS. BROWDER: Your Honor, again, this is a
8 collateral issue, because it's when she's living in
9 Rock Hill before, when she moved there is not relevant
10 to what happened in 2020, Your Honor. And to be
11 honest, maybe I'm gonna be wrong, I don't know, but I
12 don't think you can even tell on the front when the
13 UPS sent this. I mean, it could -- she could forward
14 her address a year later. I mean, she doesn't have to
15 forward it the day she moves. She could have
16 forwarded it several months later.

17 THE COURT: Mr. Harvey?

18 MR. HARVEY: Your Honor, the Postal service
19 forwards the mail for a limited amount of. This,
20 again, goes to show -- we heard testimony that was
21 adamant, if memory serves me correct. Now, I remember
22 that portion of the testimony because I kept calling
23 it 1919 rather than 2019 --

24 MS. BROWDER: Your Honor, that was during [REDACTED]'s
25 testimony that he was saying "1919."

1 THE COURT: That's correct.

2 MR. HARVEY: Okay, Your Honor. Well, I'm glad
3 everyone... It was also testimony about when a key was
4 taken -- Ms. Cupid also testified about when keys
5 were taken away from Mr. Kimble. And then it goes to
6 the credibility of Ms. Cupid.

7 THE COURT: I don't know how that makes these
8 admissible.

9 MR. HARVEY: Well, Mr. Kimble can certainly
10 identify mail that was addressed to him. He has it.
11 He's had it in his he had it. He recognizes it. It's
12 been with his --we're not trying to admit the contents
13 of it. We're trying to admit that when it was sent
14 and where it was sent to.

15 THE COURT: You're trying to buttress his
16 testimony. This isn't even -- you didn't offer these
17 through Ms. Cupid for impeachment purposes or
18 something like that. You want him, the Defendant, to
19 testify about this, and then buttress that testimony
20 by admitting these into evidence.

21 MR. HARVEY: That goes when he testifies briefly
22 about who he is, his relationship with Ms. Cupid -- if
23 you get to the events of the day -- we're not that --
24 certainly he... It goes along with his testimony as to
25 the timeline of when he interacted with Ms. Cupid at

1 Claudia Drive.

2 MS. BROWDER: Your Honor, again, it goes to the
3 issue of -- we file reciprocal Rule 5. These were not
4 turned over until yesterday, after the State's case-
5 in-chief had been closed, and that's something he's
6 intended to use in his case-in-chief.

7 THE COURT: What about that part? Mr. Harvey?

8 MR. HARVEY: Ma'am?

9 THE COURT: What about that argument?

10 MR. HARVEY: Well, we've had a very cordial
11 discovery relationship. Information has been back and
12 forth. We've received stuff last week, I said this in
13 our continuing effort, as soon as I became aware of
14 this and notified the State...

15 So you know Your Honor, they got it yesterday. I
16 can't deny that. My preparation is ongoing. It's not
17 finite. We didn't stop, even though trial begins. So
18 I became aware of this.

19 I notified them and I notified them, them, excuse
20 me, the State -- those other items that we have
21 declined for reasons to not use. But I think if you
22 look at the totality of circumstances and the totality
23 of the relationship between the respective offices.
24 This came up at a late hour, and as soon as it came
25 up, it was provided to him.

1 And again, I have to go to Your Honor's
2 discretion as to the Rule 5 issue, but the timeliness
3 of it is a function of my ongoing efforts to zealous
4 and represent Mr. Kimble and that's how I can best
5 characterize it.

6 THE COURT: Yes, sir, those letters, envelopes
7 will not be admitted into evidence. At best, they
8 should have, or at worst, I guess I should say, they
9 should have come to light on Monday, maybe. And
10 that's really worst case scenario. And that would
11 only happen perhaps if something was sparked in the
12 memory about those by Ms. Cupid's testimony, but that
13 happened on Monday, which is the same day that the
14 State renewed their discovery motion, and both the
15 State and the Court were given an assurance that all
16 requirements had been complied with at that time.

17 In addition, as I've said, it's really an attempt
18 to introduce, not evidence of the crime, not
19 exculpatory evidence, not inculpatory evidence, not
20 any evidence related to the ultimate issues that the
21 trier of fact must determine. It is an attempt to,
22 to, I'm trying to think of, whenever you introduce
23 evidence. That simply challenges a witness's
24 credibility.

25 He could testify about it all day. He can say

1 that he got it, and whether they believe her or
2 believe him, I don't know, but to the extent he wanted
3 to challenge her testimony or impeach her or challenge
4 her credibility. That should have been done through
5 Ms. Cupid, and even then, they wouldn't have been
6 admitted into evidence. You might have handed them to
7 her to refresh her recollection, she would have been
8 asked about them, and I'm sure the State would have
9 redirected and given her an opportunity to explain, et
10 cetera, et cetera.

11 So for all of those reasons, those will not be
12 admitted into evidence, anything else from the State?

13 MS: BROWDER: No, ma'am.

14 THE COURT: Anything from the Defense? Before we
15 bring the jury.

16 MR. HARVEY: Your Honor, if my memory serves me
17 correct. Mr. Kimble was placed under the warning of
18 his right not to testify, if memory serves me correct.
19 I don't know if we went through that colloquy. And I
20 don't know if Your Honor wants to go through that
21 colloquy now?

22 THE COURT: I did, in fact do that, but the next
23 order of business, if you have no motions, discovery
24 issues, is to now ask Mr. Kimble, who is still under
25 oath, do you have any questions about what I explained

1 to you on Monday afternoon?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you had sufficient time to talk
4 to your lawyer or whoever else you wanted to talk to
5 about your decision to testify?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you wish to testify?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay, and the State has confirmed
10 that there are no convictions that can be used for
11 impeachment purposes --

12 MS. BROWDER: Right.

13 THE COURT: So that issue is settled. Okay. You
14 can have a seat. Mr. Kimble, anything else, Mr.
15 Harvey?

16 MR. HARVEY: No, ma'am, just a matter of
17 housekeeping. Is Your Honor going to have a charge
18 come -- I don't know Your Honor's, practice or prep
19 plan -- rephrase that as a preference on how to
20 proceed. So I have submitted jury charges. The State
21 provided me with a copy of its proposed jury charge. I
22 don't know the Court's preference on when it or if the
23 Court ever does advise counsel what charges be
24 presented? It's a procedural inquiry.

25 THE COURT: Yes, sir. We will do that on record

1 at the close of the evidence, because it is impossible
2 to finalize, you know, the charges and what particular
3 aspects of the law need to be charged until the
4 evidence is closed. So we'll do that after the Defense
5 rest. Okay, let's bring -- oh, you're down there.
6 (Looking for the Bailiff) Let's bring the jury,
7 please.

8 THE BAILIFF: Yes, ma'am.

9 (The jury enters the courtroom.)

10 Your Honor, all jurors are seated.

11 THE COURT: Thank you. Good morning, folks.

12 JURY EN MASSE: Good morning.

13 THE COURT: What did I tell you -- well, you know
14 that the State rested its case. It's now time for the
15 Defense to present their case. We should finish this
16 trial today, just so that you know -- for planning
17 purposes.

18 So the Defense will present its case. We'll then
19 have a short break. We have ordered lunch for you.
20 And so you'll be able to eat that lunch when it
21 arrives. We'll have to sort of figure out in the
22 timing of trial, when is a good time for you to eat
23 it, but then you'll hear the closing arguments of the
24 attorneys, and I'll charge you on the law that applies
25 to the case.

1 After that, you will deliberate and continue to
2 deliberate until you've reached a verdict. I don't
3 know how long that will take. You don't know how long
4 that will take, but once you begin deliberating, you
5 can't leave the jury room. I'm just telling you all of
6 this for planning purposes.

7 So we're now going to start on the Defense case
8 and call Mr. Harvey to call his first witness.

9 MR. HARVEY: May it please the Court?

10 THE COURT: Yes, sir.

11 **CLIFTON E. KIMBLE,**

12 Having been first called as a witness was duly sworn and
13 testified as follows:

14 THE CLERK: Please have a seat on the witness
15 stand and state your full name for the record.

16 DIRECT EXAMINATION

17 BY MR. HARVEY:

18 Q. Good morning, Clifton. Please state your full
19 name.

20 A. Good morning. My name is Clifton Eugene Kimble.

21 Q. You have to speak up so the jury can hear also
22 the young lady seated next to you is the Court Reporter --
23 you've got to speak up loud enough so she can hear what you
24 say.

25 A. Can you hear me?

1 Q. Yes.

2 Okay. So, Cliff, Where's your hometown?

3 A. My hometown is Charlotte, North Carolina, born
4 and raised.

5 Q. Okay. And your family is from Charlotte?

6 A. Yes.

7 Q. What part of Charlotte did you grow up in?

8 A. I grew up in the West side of Charlotte.

9 Q. And is that -- does that have a name? Does your
10 name -- what name is your neighborhood?

11 A. Well, I grew up in Regal Heights, Columbus
12 Circle.

13 Q. Okay. And you grew up with -- your mom was Ms.
14 Erma White?

15 A. Yes, as a matter of fact, today is her birthday.
16 She would have been 75 today.

17 Q. And your dad was Mr. Eugene White?

18 A. Yes.

19 Q. He's passed?

20 A. He's passed as well. Yes.

21 Q. Okay. And you have a sibling De --

22 A. Carlton Kimble.

23 Q. -- DeAndre?

24 A. No, Carlton Kimble. That's my brother.

25 Q. Carlton Kimble.

1 A. Yeah, he, he died in 2016, April 2.

2 Q. Okay? And that was a tough month for you. Why
3 was April a tough month?

4 A. It wasn't a tough month it was a tough year.

5 Q. Why was that tough year?

6 A. It was a tough year because three months later, my
7 oldest son, DeAndre White, he died, July 5, 2016. He was
8 murdered.

9 Q. Was that case ever solved?

10 A. No.

11 Q. Now you grew up in the Regal Heights area in
12 Charlotte. Where'd you go to elementary school?

13 A. I went to Ashley Park, Elementary school,
14 probably two miles away from home.

15 Q. And where'd you go to middle school?

16 A. I went to a small middle School, probably a mile
17 from home. I walked every day.

18 Q. So how about high school? Where'd you go to high
19 school?

20 A. High school -- I went to Harry P. Harding, High
21 School, which is about three miles away from home.

22 Q. Is that a historic high school for residents of
23 the Regal Heights neighborhood?

24 A. It is, it is my, my parents went to West
25 Charlotte, so it was always a rivalry. I'm going to

1 Harding and they went West Charlotte. Same colors, so...
2 It was terrible (giggles).

3 Q. When you went to Harding, did you play any
4 sports?

5 A. I did. I played basketball, football, baseball,
6 and I ran track as well.

7 Q. Now, you were in the class of 1994, is that
8 right?

9 A. That's correct.

10 Q. Now, just tell the jury -- just put this in
11 perspective about Harding, it's role in the athletic world
12 in Charlotte -- can you briefly tell us the names of some
13 of your classmates who you know?

14 MS. BROWDER: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. HARVEY:

17 Q. You mentioned you played football. Who'd you
18 play football with?

19 A. I played with a lot of -- a lot of --

20 MS. BROWDER: Objection, Your Honor. Same.

21 THE COURT: Sustained. It's not relevant, Mr.
22 Harvey.

23 BY MR. HARVEY:

24 Q. All right. So after you graduated from Harding,
25 what did you do?

1 A. Well, I had an offer to play football at Clemson
2 University. My 11th grade year, they started grooming me.
3 I started going to football campus during the summer. It
4 was with Tony Hatton at the time -- Coach Hatton at Clemson
5 University. But I had tragedy in my home. My father took
6 sick. My mother told me to go on and everything would be
7 okay. But what kind of guy would I be, knowing what kind
8 of condition my father was in, to go on with my life? So I
9 made a sacrifice.

10 Q. Where did you go to school?

11 A. I went to Harding University, then... I -- I
12 meant Harding High. And then I went to Central Piedmont
13 Community College.

14 Q. What did you study at Central Piedmont?

15 A. Transportation Technology.

16 Q. Did you finish from Central Piedmont?

17 A. I did. You know, I took a two-year course there
18 under the Automotive Technician Department. But it all --
19 it took me almost three and a half years to finish,
20 because, you know, I was dealing with my father.

21 Q. After you finished with Central Piedmont, did you
22 begin to work?

23 A. I was working already. I created my own job. I
24 started a business called Clifton's Automotive. And what I
25 did was automotive work and design stereo systems -- that

1 type of thing -- dealing with our interface with technology
2 and computers.

3 Q. And have you remained working in the automotive
4 industry?

5 A. I have.

6 Q. What automotive certifications do you hold?

7 A. Well, I'm an ASE Master Technician.

8 Q. What does ASE stand for?

9 A. It stands for Automotive Service of Excellence.

10 Q. In addition to the automotive field, you can work
11 in other areas as well.

12 A. Yes, in 2012 I graduated from Central Piedmont
13 Community College, and so, two years later, I went full
14 circle. I started working at the school. I started
15 working in the lab, and my thing was -- my job was to
16 transition students from the classroom into the hands-on
17 part, in other words, making it relevant.

18 Q. Are you still working today?

19 A. I am.

20 Q. What are you doing today?

21 A. Well, I also have my CDL license, so I got those
22 at Central Piedmont when I was working there. But due to
23 this -- these charges, I couldn't use my CDL anymore, so I
24 started Ubering and DoorDashing, which was something just
25 to make a living.

1 Q. Do you work in the HVAC field?

2 A. Well, while this trial -- I mean, while these
3 charges were going on these last couple of years, I decided
4 to go into HVAC, and I got my certification in HVAC, and I
5 wanted to start up a company.

6 Q. Now, we're gonna back up a little bit -- move
7 forward a little bit --

8 A. Okay.

9 Q. -- after you got out of school and after you
10 began working, you had an occasion to meet Melissa Cupid,
11 correct?

12 A. I met Melissa in, I think, 2004.

13 Q. And when did you get reacquainted with Melissa?

14 A. Well, it was September the fourth -- well,
15 actually it was September 3rd of, 2016. But I actually saw
16 her, September 4, 2016.

17 Q. Okay. Where did you see her?

18 A. She was at an acquaintance house of hers.

19 Q. And after y'all got reacquainted, did your
20 friendship continue?

21 A. Yeah, yeah.

22 Q. Okay. Your friendship continued into a
23 relationship, right?

24 A. Yeah.

25 Q. You and Melissa were acquainted when Melissa was

1 living in Rock Hill. Did you visit, her?

2 A. Right.

3 Q. Okay, and when Melissa -- when you visited
4 Melissa in Rock Hill, you became acquainted with her
5 family, right?

6 A. Right.

7 Q. Now, when Melissa moved from Rock Hill to
8 Columbia, did you still maintain your relationship with
9 her?

10 A. Well, she and I were the ones that moved from
11 there.

12 Q. Okay. And when Melissa moved to Columbia, did
13 you provide her -- you would come and visit frequently?

14 A. I would. Yes.

15 Q. Okay, and you came to know her children
16 frequently -- you came to know her children through your
17 frequent visits, right?

18 A. Well, let, let's back up. In 2004, when I met
19 Melissa, I met her two children at the time, and that was
20 I.O. and Imani -- she was a baby. So, she left Charlotte
21 going back to Pittsburgh, and I hadn't seen her for about
22 10 years earlier. And so, when she came back to Charlotte
23 in 2016, she had two more kids. And so, I was, I was
24 already familiar with two, and so the last two were Ali and
25 Elijah, and I was introduced to them.

1 Q. And so when Melissa moved to Columbia, you were
2 familiar with her kids --

3 A. Yes.

4 Q. -- with her kids?

5 A. Yes.

6 Q. And you had mentioned you had moved -- helped her
7 move to Columbia. Where did she move to in Columbia?

8 A. Now, she moved to [REDACTED] -- [REDACTED] Claudia Drive.

9 Q. And you're familiar with [REDACTED] Claudia Drive?

10 A. Right. Before she moved there, I came down and I
11 did a walk-through, and I told her I was impressed, you
12 know, with what she picked. So we decided that, she -- you
13 know, that it was good enough, and we moved there.

14 Q. Okay. Now -- excuse me. When Melissa moved to
15 [REDACTED] Claudia Drive, did you have keys to that residence?

16 A. I did. As soon as we moved there, I went and had
17 keys made.

18 MR. HARVEY: (Showing a document to the
19 Counsels.)

20 MS. BROWDER: Your Honor, we object to this
21 exhibit. Foundation.

22 THE COURT: Y'all approach and bring the exhibit,
23 please.

24 (A sidebar conversation was had between Counsels
25 and the Court.)

1 Ladies and gentlemen, there are matters of law
2 that I need to discuss with the attorneys outside of
3 your presence, please return to your jury room and do
4 not discuss the case. Thank you.

5 (The jury exits the courtroom.)

6 MS. BROWDER: My objection is, this is a receipt
7 -- a picture of a receipt from Lowe's -- as to keys
8 that were made. One, objection on foundation, as this
9 is a business record from somewhere else that he
10 cannot verify, that it is an actual business record
11 for them.

12 Two, Mr. Kimble can testify as the keys being
13 made all day long. But that doesn't mean that this
14 business record that we're objecting on one foundation
15 is relevant as to these are the keys that were made
16 for this particular case. If that's what he's
17 claiming. I'm assuming that's what he's going to say,
18 is he made keys to the house.

19 THE COURT: Mr. Harvey?

20 MR. HARVEY: Your Honor, we had engaged in an
21 open and continuous exchange. Each of evidence for a
22 considerable period of time, longer than the period of
23 time that it was seeking the State's position with
24 respect to, I'll call it the mail that based upon that
25 dialog between the parties, it was my impression that

1 the exchange of exhibits that were going to be used
2 that were going -- it was my impression that the
3 exchange of exhibits, and exhibits that were going to
4 be used, were going to be used as exhibits in the
5 trial.

6 MS. BROWDER: Your Honor, I'm not required to
7 tell him if I'm gonna object to one of his exhibits.
8 In addition, in his pre-trial, he did exact same
9 thing. I've been giving all these pictures to him of
10 the injuries, and he objected to multiple photographs,
11 which we had cut down on the photographs. But it's
12 the exact same situation.

13 THE COURT: Well, the exchange of evidence is one
14 thing -- that, that is a totally separate matter from
15 the issue raised in this moment. If there were some
16 stipulation as to admissibility of exhibits that could
17 have and should have been placed on the record either
18 before the beginning of the trial, before the
19 Defendant's case-in-chief, or at any point really, but
20 clear -- evidently, there is not a stipulation.

21 MR. HARVEY: That is --

22 THE COURT: So what I'm looking for you --
23 looking for from you now, Mr. Harvey, is your legal
24 argument. The legal foundation for your offering that
25 exhibit into evidence.

1 MR. HARVEY: Legal Foundation. The legal
2 foundation, I've offered that exhibit into evidence,
3 is when Mr. Kimble goes to Lowe's. Mr. Kimble
4 purchases the keys. Mr. Kimble's provided a receipt.
5 Your Honor's correct, that there wasn't a stipulation
6 per se to this evidence.

7 So in view of Your Honor's ruling, with respect
8 to that, I think it would expedite the process of the
9 trial, and possibly, while the jury's out, we could
10 use this time not to have this situation occur again.
11 If I may, we may use this break to see if we can
12 resolve some of those issues.

13 THE COURT: Yes, sir, let's take a 15 minute
14 break.

15 MS. BROWDER: Can I get a ruling as to the
16 receipt?

17 THE COURT: Well, I didn't know if y'all needed
18 to talk about it some more. I don't know. I can
19 address them all at once, the ones that the State
20 objects to. I don't know.

21 MS. BROWDER: The other -- just the text messages
22 and his injury pictures. We don't object to those.

23 THE COURT: There may be something else. I don't
24 know.

25 MS. BROWDER: If there's something else we

1 haven't been given it, so...

2 THE COURT: Well, since the jury's out, we're
3 going to take a 15 minute break. I'll be back with
4 y'all.

5 (A brief recess was taken.)

6 (Counsels and the Court Reporter go through exhibits.)

7 THE BAILIFF: All rise. Court, come to
8 order.

9 THE COURT: You all may be seated, please.
10 Yes, sir.

11 MR. HARVEY: Your Honor, in the interim, during
12 the recess, I've been able to confer with my
13 colleagues from the Solicitor's Office. We have
14 reached a stipulation. If I may announce it to the
15 Court.

16 THE COURT: Yes, sir.

17 MR. HARVEY: So, the document I hold in by hand -
18 - (demonstrating) we've agreed this will be State's -
19 - Defendant's Exhibit Number 3 for identification.

20 THE COURT: Okay.

21 MR. HARVEY: Thank you, Your Honor. May I give
22 it to the Court?

23 THE COURT: Yes.

24 MR. HARVEY: This is for identification only.

25 THE COURT: Okay.

1 MR. HARVEY: Your Honor, this would be
2 Defendant's Exhibit Number 4. Exhibit Number 4 -- we
3 stipulated to the admissibility of Defendant's Number
4 4.

5 THE COURT: And those appear to be text messages;
6 is that right?

7 MR. HARVEY: Yes, ma'am.

8 THE COURT: Is that correct? Ms. Browder?

9 MS. BROWDER: Yes, ma'am.

10 THE COURT: Okay.

11 MR. HARVEY: Your Honor, just -- for the Court
12 Reporter, I have stickers for Defendant's Exhibit on
13 each page, but we can put Defendant's Exhibit for
14 whatever preference on each sticker, or we can prefer
15 one sticker?

16 THE COURT: Can they be stapled together?

17 MR. HARVEY: Yes, ma'am. I can handle a stapler.

18 THE COURT: Well, I didn't know if they all go
19 together. Yes, sir. Yeah, staple them together and
20 it can just be one exhibit -- Defendant's 4.

21 All right, anything else?

22 MS. BROWDER: Your Honor, the State stipulates 5
23 through 10.

24 THE COURT: Five through ten.

25 MS. BROWDER: I guess that's the three and we'll

1 just get a rule -- unless Your Honor intended to.

2 THE COURT: Are you still intending to offer
3 Defendant's 3 -- the Lowe's receipt?

4 MR. HARVEY: Your Honor, I intend to use the
5 Lowe's receipt by way of identification, have him
6 identify it, testify what it is.

7 MS. BROWDER: Your Honor, I don't think that's
8 the same thing as using the exhibit as an exhibit. He
9 can testify he bought the keys from Lowe's.

10 THE COURT: Listen, let me just step in here. I
11 actually would allow the exhibit. I mean, while it
12 does buttress his testimony, it is -- not as to
13 credibility -- it's as to a key fact, an issue, an
14 element of the crime, whether he did or did not have
15 permission, as it were, to be in the home. And you
16 know, purchasing, and having, and keeping a key could
17 be some circumstantial evidence of permission to be
18 there.

19 So, I actually do think it's relevant and
20 admissible. I mean, it is a business record, but no
21 more than you know, a medical bill is when someone
22 gets medical treatment, they can testify about the
23 bill they received, how much they paid, who issued the
24 bill, et cetera, et cetera.

25 So, he can't, of course, try to interpret it,

1 because he's not a representative of Lowe's, and tell
2 us what all the numbers at the top mean. And you
3 know, but those things that are obvious, of course,
4 the date, the time, the price, he can point out.

5 So, 3, admitted over the State's objection.
6 Anything else Mr. Harvey?

7 (Defendant's Exhibit 3 was admitted.)

8 MR. HARVEY: Yes, ma'am. I'm just gonna hand
9 Madam Court Reporter, which would be the last 2 --
10 which would be 9 and 10 (handing up exhibits).

11 THE COURT: Any other matters to put on the
12 record before we bring the jury, Mr. Harvey?

13 MR. HARVEY: No, ma'am.

14 THE COURT: All right. Bring the jury, please.

15 (The jury enters the courtroom.)

16 THE BAILIFF: Your Honor, all jurors are seated.

17 THE COURT: Thank you. Welcome back, folks.
18 Just before you leaving the courtroom, you heard Mr.
19 Harvey offer Defendant's Exhibit 3 into evidence. I
20 had to talk about some things with them, but
21 Defendant's Exhibit 3 has been admitted while you were
22 out, though we also took the liberty of going through
23 all of the other Defense exhibits and determining
24 their admissibility.

25 So any exhibit that he's offering, unless there's

1 some curve ball, has been admitted into evidence while
2 you were outside of the courtroom, either by Court
3 ruling or by stipulation of the attorneys. I only
4 explain that so that you understand why Mr. Harvey
5 stops offering them and giving them a chance to
6 respond.

7 You know, just because the procedure will be a
8 little bit different, hopefully it'll fast track
9 things, a little bit, streamline it, and we don't have
10 to send you in and out quite so much. So Defendant's
11 -- at this point it's Defendant's 1 through 10 are
12 admitted into evidence.

13 (Defendant's Exhibit 1-10 was admitted into evidence.)

14 Mr. Harvey's now going to resume his direct
15 examination.

16 MR. HARVEY: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION RESUMES

19 BY MR. HARVEY:

20 Q. Mr. Kimble --

21 MR. HARVEY: May I approach the witness?

22 THE COURT: Yes, sir.

23 Q. Mr. Kimble?

24 A. Yes.

25 Q. I'm going to show you Defendant's Exhibit Number

1 3. What is that (indicating)?

2 A. It's a receipt from Lowe's, 7441 Two Notch Road.
3 And it's for keys.

4 Q. The receipt is from Lowe's, what is the receipt
5 for?

6 A. For keys.

7 Q. What are the keys for?

8 A. The key was for the home.

9 Q. What home?

10 A. For the home at [REDACTED] Claudia Drive --

11 THE COURT: You need to speak up, Mr. Kimble.

12 THE DEFENDANT: Okay.

13 A. [REDACTED] Claudia Drive.

14 Q. And when? What's the date on the receipt?

15 A. The date on the receipt is July 19, 2019.

16 Q. And how many keys?

17 A. Four.

18 Q. Thank you.

19 MR. HARVEY: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q. Now, Mr. Kimble, you stated earlier you had a
22 friendship, a relationship, with Ms. Cupid; is that
23 correct?

24 A. It is.

25 Q. Now, that relationship continued beyond 2019 into

1 2020.

2 A. It did.

3 Q. Okay, and I'm going to call your attention
4 specifically to June 5, 2020 --

5 A. Okay.

6 Q. -- okay. Now, on June 5, 2020, were you in
7 communication with Ms. Cupid?

8 A. I was. The whole day, yes.

9 Q. Now, on June 5, 2020, did you have your cellphone
10 with you?

11 A. I did.

12 Q. Do you recall your cellphone number?

13 A. Yes. Shall I say it?

14 Q. Yes, sir.

15 A. 704-891-1634. I had this number for 30 years.

16 Q. Do you recall communication with Ms. Cupid
17 throughout the day of June, 5, 2020.

18 A. Yes.

19 Q. How were you in communication? Was it by phone
20 calls and text messages?

21 A. By both, yes.

22 Q. Do you recall how you had Ms. Cupid's contact
23 saved in you phone?

24 A. That's hard because I got multiple numbers so...

25 Q. During the course of our investigation, do you

1 recall turning over to my investigators text threads of you
2 and Ms. Cupid for June 5, 2020?

3 A. Yes, I do.

4 Q. Now, I'm going to show you what's been marked as
5 Defendant's Exhibit Number 4.

6 MR. HARVEY: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. HARVEY:

10 Q. Please, take a moment and look at Defendant's
11 Exhibit Number 4 (indicating).

12 A. (Complies.)

13 Q. Please, hang on to Defense Exhibit Number 4.
14 Now, according to Defense Exhibit Number 4, which is in
15 evidence, is there a reference to a text at 7:14am that
16 day?

17 A. Yes.

18 Q. What is that text?

19 A. It says, "Good morning. Hope you're having a
20 good day."

21 Q. Who is the sender of that text?

22 A. That's me to Ms. Cupid.

23 Q. At 7:47pm, is there a text recorded on Defense
24 Exhibit Number 4?

25 A. Yeah --

1 Q. -- 7am I apologize. Same day, June 5.

2 A. Yes.

3 Q. What is that text?

4 A. Um, Ms. Cupid responds. She says, "Good morning.
5 Yes, it has been a great morning so far. I did fantastic -
6 - I did fantastic. I even got a compliment from my
7 trainer. How are you?"

8 Q. It's 7:48, is there a text?

9 A. Yes.

10 Q. What does that say?

11 A. Well, it's from me. I said, "That's great. Keep
12 winning. I'm okay. I'm so happy for you."

13 Q. Now at 12:42pm on June 5, 12:42pm is there a text
14 reflected in State's Exhibit Number 4? At 12:42pm?

15 A. Yes.

16 Q. What is that text? And who is it from?

17 A. It's from me, it says, it says, "Got it. I'll be
18 heading out in 30 minutes."

19 Q. All right. At 12:30am, is there a text earlier
20 in Defendant's Exhibit Number 4? And what's the context of
21 the 12:30pm --

22 A. 12:30pm?

23 Q. -- 12:30am -- it will be 12:30pm.

24 A. Okay, 12:30pm (looking through document.)

25 Q. Is there -- is there a text in Defense Exhibit

1 Number 4 from Ms. Cupid, advising you about --

2 MS. BROWDER: Objection, Your Honor. Leading.

3 THE COURT: Sustained.

4 BY MR. HARVEY:

5 Q. I call your attention to Defense Exhibit Number
6 4: Is -- there's a -- do you see a text at 12:31pm?

7 A. I do.

8 Q. Okay. What is that text?

9 A. It's -- it's from Melissa. It says, "You gotta
10 come here. I had to rush."

11 Q. Okay. So that's Ms. Cupid to you?

12 A. Right.

13 Q. And the 12:42pm text -- that you just mentioned,
14 what is that text?

15 A. (Looking through document.)

16 Q. Did you -- did you respond to Ms. Cupid?

17 A. I did.

18 Q. And when did you do that?

19 A. I responded at 12:32pm.

20 Q. And what was that response?

21 A. It says, "Okay, thank you for your insight. Send
22 me the link."

23 Q. When you said, "send me the link." What did you
24 mean by that?

25 A. Well, I.O. had a therapy appointment, and so I

1 needed the link.

2 Q. Why did you need to link?

3 A. For the Zoom call?

4 Q. Where was the Zoom call going to take place?

5 A. At: [REDACTED] Claudia Drive.

6 Q. And the purpose of you having the Zoom link was?

7 What did -- what did that allow you to do by having the
8 Zoom link?

9 A. Well, it would allow me to use my phone to set up
10 so he could use my phone for his therapy.

11 Q. So in response to Ms. Cupid's text request that
12 you come to the residence, what did you do?

13 A. I went.

14 Q. Okay. Now, in Defense Exhibit Number 4, do you
15 see a text at approximately 2:17pm?

16 A. Yes.

17 Q. What is that text?

18 A. Um, Melissa told me to "download Zoom on your
19 phone."

20 Q. In response to the 2:17 text, what did you do?

21 A. At 2:19 I said, "I already have it." I already
22 had the app.

23 Q. Okay, was there a response to your 2:19 text?

24 A. Yes. She said, "Okay, then good. She will send
25 you the link."

1 Q. Now, in Defense Exhibit Number 4, is there a text
2 at 2:29pm?

3 A. Yes. She said, "Okay" -- well, I said, "Okay."
4 And then she said --

5 Q. -- what is the context of the text?

6 A. She said, "I'm going back to work. We can try
7 and call the rental place. I've been on hold. I just
8 called."

9 Q. What is the rental place?

10 A. The rental place is the place she was renting the
11 home from.

12 Q. And what did you interpret, "Can you call the
13 rental place? I've been on hold," to mean to you?

14 A. Meant that you wanted me to get in contact with
15 the rental people at that time, and so I did so.

16 Q. Okay. At 3:44, on Defense Exhibit Number 4, is
17 there a text?

18 A. Yes. I text her back, "They won't talk to me
19 without you."

20 Q. What did that mean?

21 A. Well, the rental people told me that they
22 wouldn't they wouldn't talk to me. They would have to
23 verify an email to her so they would be able to talk to me.

24 Q. At 3:44 -- approximately 3:44, is there another
25 text message depicted on Defense Exhibit Number 4?

1 A. Yes.

2 Q. What is that?

3 A. Where -- it says 4:15, the next one. It says,
4 "Call them back. I'll send the email to give them
5 permission. Why do you send me -- your email." And so I
6 got crossed up. So I thought they were going to send me
7 the email, but she had to send an email, so that's what she
8 was saying why was I sending her my email, because I was
9 like, "I didn't get anything."

10 Q. Now, we go to 8:22. A time of 8:22, in Defense,
11 Exhibit Number 4, you see that email at 8:22pm?

12 A. I see a text.

13 Q. Text, I apologize, you're right. It is a text.

14 A. Yes.

15 Q. I stand corrected. What's the text email say?

16 A. Uh, it says, "I'm tired."

17 Q. When you received that at 8:22 -- text message,
18 where were you?

19 A. I was in the home. I was at [REDACTED] Claudia Drive.

20 Q. All right, let's back up a little bit on June 5,
21 2020, what time did you arrive at Claudia Drive?

22 A. I arrived at like 2:58 somewhere around there. I
23 was pushing time, because around about 12:34 that day, I
24 told her I would go. I would be down there. I was
25 preparing to leave at 12:30 in 30 minutes. So, I had to

1 fuel up, which I fueled up in Rock Hill -- from Dave Lyle
2 Boulevard, and then I headed down. So...

3 Q. What was the significance of being there in a
4 certain time in relation to therapy sessions?

5 A. Well, his therapy was set up for three o'clock,
6 and so I had to get there. And so I was also texting the
7 therapist. I told her -- I got in contact with her -- told
8 her who I was -- I was his stepfather, and that I would, I
9 would call as soon as I got there. And so she was telling
10 me, "Well, look, you gotta hurry up." And I told her, "I'm
11 pushing, I'm trying to get there."

12 Q. What if anything happened with the therapy
13 session that day?

14 A. Well, like I said, I got there about 2:58, I
15 backed in to the front yard, and near the sidewalk, I got
16 out my car, I went to the front door, used my key open the
17 door, and I heard Ali. Ali said, "Mom's home, Mom's home."
18 And so I was like, "Oh, well, it's going to be a good one,"
19 because it's me and not mom. So I opened the door. I
20 hadn't seen him in two and a half weeks, so I opened the
21 door and Ali and Elijah, were like, "Cliff, what, Cliff --

22 MS. BROWDER: Your Honor, hearsay.

23 MR. HARVEY: Just tell us what you did in
24 reference to the therapy session.

25 A. Okay, so after greeting them, greeting everybody

1 in the home, I told I.O. look, we don't have too much
2 time. We gotta get this set up. And he wasn't too
3 enthusiastic at the time. And I told him, we need to do
4 this.

5 Q. What happened with the therapy session?

6 A. The therapist said, "Well, look, I had her for
7 3:30 and that I had some other clients and that you are
8 gonna have to reschedule.

9 Q. Okay, now, after the therapy session was
10 canceled, did you remain at Claudia Drive?

11 A. I did.

12 Q. As you remained at Claudia Drive, do you
13 recall -- after the therapy session was canceled -- what
14 did you do next?

15 A. Well, I went back out to my car, popped my trunk,
16 and I got my clipper box out. Because I --

17 Q. You got your clipper box out. After you got your
18 clipper box out -- why did you get your clipper box out?

19 A. Well, I cut the boy's hair.

20 Q. Okay, and when you got the clipper box, what did
21 you do?

22 A. Oh, well, first -- first I opened the door to the
23 bedroom. She has a speaker in there that you can
24 Bluetooth. And I put some music on, put Marvin Gaye on,
25 and they didn't like that at all, they were like "Oh, man."

1 So I tried something else, and eventually, I think we
2 listened to Sade or something like that.

3 Q. Okay. After you put the music on, what happened
4 next?

5 A. I proceeded to cut Ali hair first.

6 Q. Ali is the --

7 A. -- is the youngest. The youngest one.

8 Q. After you cut Ali's hair, what happened then?

9 A. Then I cut Elijah hair.

10 Q. What did you do with your clippers and after you
11 cut Elijah's hair?

12 A. Well, I cleaned them. And then I cut [I.O.] 's
13 hair.

14 Q. After you cut [I.O.] 's hair, what did you do?

15 A. Well, I cleaned up. We got to -- clean up
16 because it was in, like the dining area. I cleaned up,
17 swept the floors, and I put my clippers up, put them back
18 in the car.

19 Q. Did you remain in the home after you cut the boys
20 hair?

21 A. I did.

22 Q. At some point in time, did you share a meal with
23 people at [REDACTED] Claudia Drive?

24 A. I did.

25 Q. What was it? When was that? Who prepared the

1 meal?

2 A. Well, I.O. prepared the meal. And, you know,
3 because I -- at that point -- after I cut their hair, I was
4 -- I was ready to go. I had came to do what I was supposed
5 to do. That was to get in on a Zoom call, which didn't
6 happen, and I groomed the boys, and so I was ready to go.

7 Q. As you remain in the home, who did you eat supper
8 with?

9 A. I had supper with the whole family.

10 Q. Pardon me?

11 A. I had supper with the whole family.

12 Q. Had Ms. Cupid returned home prior to supper?

13 A. Right. She got home, I guess around about six
14 something.

15 Q. And so on June, 5th 2020, you had supper with
16 everyone who at Claudia Drive?

17 A. Right.

18 Q. So after supper, did you remain at the home?

19 A. Yes, I did. That's when I got the text.

20 Q. Okay, so sometime after supper, you said, "text"

21 A. Mm-Hmm (affirmatively).

22 Q. What text are you referring to?

23 A. What text I'm referring to is, "I'm tired".

24 Q. Okay, after you received that text, what did you
25 do?

1 A. I remained at the kitchen table. Because I was
2 still talking and conversing with kids. So...

3 Q. When did you encounter Ms. Cupid next after you
4 received that text?

5 A. When she --

6 Q. -- when did you encounter Ms. Cupid next after
7 that text?

8 A. She was leaving out of her room. She was going
9 to the bathroom. And you know, it was around about, like
10 I said, 6:30 or so, so I was looking at -- World News comes
11 on, so I was catching the tail end of it in her room.

12 Q. All right. At some point after you received the
13 text from Ms. Cupid, where, if anywhere, did you did and
14 Ms. Cupid go from [REDACTED] Claudia Drive? After you received
15 the text, what happened next?

16 A. Okay, well, I was looking at World News, and she
17 came out the bathroom and she said, "Well, I'm getting
18 ready to go." I said, "Yeah, me too, I'm ready to go as
19 well." She reached down in the hamper and threw me two
20 tee-shirts. And she asked me, she said, "Would you, would
21 you go to the Smoke Shop with me?"

22 Q. After she asked you to go to the Smoke Shop with
23 you, what happened next?

24 A. So we got in the car --

25 Q. You said a car? Whose car? What car?

1 A. Oh, it was Melissa's car. We got in her car, and
2 we went to the Smoke Shop.

3 Q. You're saying Smoke Shop, do you remember the
4 location of the Smoke Shop?

5 A. Yes. It's on Decker Boulevard, yes.

6 Q. Okay. And you and Melissa rode to the Smoke
7 Shop?

8 A. Right.

9 Q. About how long of a drive was it?

10 A. It was about eight minutes at the most.

11 Q. Okay, when you arrived at the Smoke Shop, what
12 happened next?

13 A. Well, it seemed like she was trying to pick an
14 argument with me. And so I was -- I wasn't going to argue.
15 I mean, this was one of the good days of my life. First of
16 all, I.O. he was getting some help with his therapy, you
17 know. That was a big plus.

18 MS. BROWDER: Objection. Your Honor.

19 THE COURT: Sustained.

20 BY MR. HARVEY:

21 Q. After you arrived at the Smoke Shop. What
22 happened next?

23 A. Well, she started arguing with me.

24 Q. After she started arguing with you. What
25 happened next?

1 A. So we got out the car.

2 Q. After you got out of the car, what happened next?

3 A. I opened the door to the Smoke Shop, and I
4 allowed her to go in, in front of me.

5 Q. After she went into the Smoke Shop. What
6 happened next?

7 A. I entered after her and we was in the Smoke Shop.
8 She was waiting to be helped, and I told her -- I looked
9 around, I was like, "I don't have any business in here,
10 because I don't smoke or drink." So I said, "Well, let me
11 get your keys. I'll sit in the car and wait on you."

12 Q. After that, what happened?

13 A. She told me, "No!"

14 Q. After she told you, "no", what did you do?

15 A. I just exited the Smoke Shop and I started
16 walking back toward Claudia Drive.

17 Q. Okay. After you started walking back to Claudia
18 Drive, what happens next?

19 A. So... I already knew it was and it was assumed
20 that it was going to be some kind of conflict. And so I
21 was just trying to figure out what was going on. I didn't
22 understand. We just had a nice meal. I came down here. I
23 did what I was supposed to do. I didn't understand why
24 this was going on. So I was like, "Man!" So, I started
25 walking.

1 Q. How did you get to Claudia Drive?

2 A. Well, first thing I wanted to do was get off the
3 main road, because I knew she could see me. So I made a
4 quick left onto Oneil. And I walked down Oneil. By that
5 time, I knew it was coming, because she started calling me.

6 Q. After you started walking back, you got the call.
7 What happened next?

8 A. Well, I declined the call like three times.

9 Q. Okay, after you declined the call, what happened
10 next?

11 A. She told me to pick up the phone. "Well, don't
12 pick up the phone. "Okay? And so she called again, I
13 picked up the phone.

14 Q. After you picked up the phone, did you still
15 continue to go to Claudia Drive?

16 A. Yes.

17 Q. Where was your vehicle?

18 A. My vehicle was at Claudia Drive, in the yard.

19 Q. Did you make it to Claudia Drive?

20 A. I did. Eventually, a time later, yes.

21 Q. When you arrived at Claudia Drive, what happened
22 next?

23 A. Well, she had text me that, you know, she gon' --
24 some explicit words that --

25 MS. BROWDER: Objection, Your Honor. Hearsay.

1 THE COURT: Is that, not in the --

2 MS. BROWDER: It's not in the text messages.

3 THE COURT: Sustained.

4 BY MR. HARVEY:

5 Q. When you arrived at Claudia Drive.

6 What happened next? What did you do next, when you arrived
7 at Claudia Drive?

8 A. Right. I arrived at Claudia Drive and I seen my
9 stuff on the front porch.

10 Q. After you saw your stuff on the front porch, what
11 did you do?

12 A. I popped the trunk to my vehicle.

13 Q. Okay, you popped the trunk to your vehicle. What
14 did you do then?

15 A. I started loading my -- my -- my -- my, some of
16 my belongings into the vehicle.

17 Q. You say some of your belongings, were there other
18 belongings that weren't on the porch?

19 A. Right.

20 Q. And if there were, just tell us what those
21 belongings were?

22 A. Well, I mean, like my lot, my lawn mower, my
23 blower, my vacuum cleaner, all that stuff was, it was all
24 scattered all over, you know, I had my lawn mowers and
25 stuff in the back, in the back utility house.

1 Q. Okay. Why would your lawn mower and blower and
2 vacuum be in separate side -- from 4720 Claudia Drive?

3 A. Well because I thought it was important and that
4 we had to. I mean, the way her lease was set up, that
5 someone had to take care of the yard, they didn't do it. So
6 it was up to us to do it.

7 Q. Okay. So your items are on the porch. Did you
8 go to the porch to retrieve your items?

9 A. I did.

10 Q. After you retrieved your items, what happened
11 next?

12 A. Well --

13 Q. After you retrieved your items, what happened
14 next?

15 A. Well, so I was about to leave, and I forgot I
16 didn't shut the trunk, and so I turned around to go shut
17 the trunk. She came out the front door.

18 Q. When you say she, who do you mean by she?

19 A. Melissa Cupid. She came out the front door.

20 MR. HARVEY: May, I approach the witness, Your
21 Honor?

22 THE COURT: Yes, sir.

23 BY MR. HARVEY:

24 Q. Mr. Kimble, I'll show you State's Exhibit Number
25 3 (indicating.)

1 A. Okay.

2 Q. Where on State's Exhibit Number 3, is the front
3 door?.

4 A. It's right here (indicating).

5 Q. Okay. And that's the porch we're talking about.

6 A. Right.

7 Q. Now... Defense Exhibit --

8 MR. HARVEY: May I approach?

9 THE COURT: Yes, sir.

10 MR. HARVEY: (Approaches the Court.)

11 BY MR. HARVEY:

12 Q. I'll show you Defense Exhibit Number 8. Do you
13 recognize what's depicted in Defense Exhibit Number 8?

14 A. It's the carport, the front -- front porch and
15 the front door.

16 Q. And railing is depicted on the porch?

17 A. Correct.

18 Q. Is that the same railing that was there on June
19 5, 2020?

20 A. Yes.

21 Q. And the railing -- and I'm gonna show you the
22 Defense Exhibit Number 9.

23 A. Okay.

24 Q. Does Defense Exhibit Number 9 also depict -- what
25 does it show you?

1 A. The railing -- the railing, the porch, the front
2 door.

3 MR. HARVEY: May I request to publish, Your
4 Honor?

5 THE COURT: Yes, sir.

6 BY MR. HARVEY:

7 Q. Mr. Kimble, the railing that you talked about,
8 it's on both sides of the porch?

9 A. Yes.

10 Q. And that railing is shown in Defense Exhibit
11 Number 8, correct?

12 A. Yes.

13 Q. Defense Exhibit Number 9 also shows the railing,
14 correct?

15 A. Yes.

16 Q. So the railing is on both sides of the porch,
17 correct.

18 A. That's correct.

19 Q. And the railing goes to the house, correct?

20 A. That's correct.

21 Q. So it basically closes in the porch area?

22 A. Yes.

23 Q. Okay. You've gathered your belongings from the
24 porch. You went to your car, correct?

25 A. Yup, went to my car.

1 Q. After -- where did you put your belongings in the
2 car?

3 A. I put it in the trunk.

4 Q. After you put your belongings in the trunk, what
5 happened next?

6 A. Well, I stepped -- I got -- opened my driver's
7 side door, I put one foot in the door. Forgot to close the
8 trunk. So I had to get back out. Close the trunk.

9 Q. When you got out, did you close -- after you
10 closed the trunk, what happened next?

11 A. She came out the house.

12 Q. When you say, "she", who do you mean by that?

13 A. Melissa Cupid.

14 Q. And when Ms. Cupid came out of the house, what
15 part of the house did Ms. Cupid come out?

16 A. The front door.

17 Q. The front door?

18 A. Yes.

19 Q. When Ms. Cupid came out of the front door, what
20 happened next?

21 A. Well, she was yelling at me. She said, I didn't
22 care anything about --

23 MS. BROWDER: Objection, Your Honor. Hearsay.

24 THE COURT: Sustained.

25 BY MR. HARVEY:

1 Q. After Ms. Cupid came out of the house, what did
2 you do next?

3 A. Well, I turned around and looked at her.

4 Q. After you turned around and looked at her, what
5 happened next?

6 A. And I walked towards her.

7 Q. When you're walking towards her, where are you
8 walking to?

9 A. Well, I stepped on one of the steps -- second
10 step on the porch.

11 Q. Why did you want to walk to the step?

12 A. Well, I was trying to console her.

13 Q. Okay, when you went to the step, what happened
14 next?

15 A. So she turned around and went to shut the door.

16 Q. Okay, when you say she went to turn around and
17 shut the door, was she still on the porch?

18 A. Yes.

19 Q. After she turned around and shut the door, what
20 happened next?

21 A. By that time I had stepped up on to the porch.

22 Q. You had stepped up onto the porch.

23 A. Yes.

24 Q. After you stepped onto the porch, Ms. Cupid had
25 closed the door. What happened next?

1 A. Well, she turned around and she was still yelling
2 at me, and I was just trying to -- trying to talk to her.
3 You know, "I'm here. I came here because I care."

4 Q. After you said that to her, and she had turned
5 around, where were you on the porch?

6 A. I was right between the railway on the top step.

7 Q. And where was Ms. Cupid on the porch?

8 A. Oh, she was facing me.

9 Q. After Ms. Cupid turned around and was facing you
10 --

11 A. Right.

12 Q. What happened next?

13 A. She bumped me with her body. I said, "Oh, whoa."

14 Q. Okay, after Ms. Cupid bumped you with your body,
15 what did you do next?

16 A. I just said, "Whoa!"

17 Q. Where were you on the porch, when that happened?

18 A. I was standing between the two -- I was on the
19 porch, the top deck, between the two rails.

20 Q. After you went, "Whoa!", what happened next?

21 A. I stepped to my left.

22 Q. Okay. After you stepped to your left, what
23 happened next?

24 A. She bumped me again. I was like --

25 Q. After she bumped you again --

1 A. -- right.

2 Q. What happened next?

3 A. Well, she was still talking, and I was still
4 trying to consol her, like, you know, and it was about --
5 calling, about -- talking to someone about the rent. And I
6 told her she could do that Monday, you know, the time we
7 called was like, four something, and on a Friday.

8 Q. Okay. After you moved to your left and she had
9 bumped you, and you're trying to control her --

10 A. Right.

11 Q. What happens next?

12 A. Well, I was talking to her, the next thing I
13 know, I got hit you.

14 Q. And you say that, who hit you?

15 A. Ms. Cupid.

16 Q. Where were you when Ms. Cupid hit you?

17 A. I was on the porch. I was like, so if the door
18 is 12 o'clock, I was sort of like seven o'clock, eight
19 o'clock at that time.

20 Q. After you received the first blow, what happened
21 next? Describe where you were on the porch?

22 A. Well, when she hit me, you know, I tried to -- it
23 really dazed me, because I wasn't expecting it. I wasn't
24 expecting to be hit. And so I tried to -- I was like,
25 "Don't do that again". I pointed out at her.

1 Q. Okay, after you said that, what did you do next?

2 A. I stepped to my left again, and she hit me again.

3 Q. As you're stepping to your left -- on the clock,
4 you were at seven o'clock, where were you on the clock?

5 A. Probably about nine o'clock.

6 Q. Okay, are you moving? How is your movement in
7 relationship to the door?

8 A. I was -- I was getting -- I was -- I was like, at
9 nine o'clock. So, I mean, at this time, I'm just trying to
10 recover. I don't know why I got hit.

11 Q. And after you're at nine o'clock and trying to
12 recover, what happens next?

13 A. Well, she was about to hit me again.

14 Q. Okay. What happened after that?

15 A. Okay, so I took my left hand and I grabbed her
16 right hand right, right along in here (demonstrating). I
17 grabbed it. When I did that, she tried to hit me with her
18 left. So I grabbed her with my right. And it's a struggle
19 now, at this point.

20 Q. All right, after that happened, where were you in
21 relationship to the door? What happened next?

22 A. I was probably like 11 o'clock. I was right
23 between the brick wall and the window. You know, I'm
24 struggling with her. So -- and I'm just like, "Wow, I
25 can't even believe this happened." But at the same time

1 I'm still dazed. I mean, she got me.

2 Q. What did you do next?

3 A. So finally, I used the wall as leverage, and I
4 pushed her away from me.

5 Q. After you pushed her away from you, what did you
6 do next?

7 A. I opened the door to the house and I ran in.

8 Q. When you open the door to the house and ran in,
9 why did you go into the house at that time?

10 A. Because I didn't want to get hit again, but she
11 was on my six. I mean, she was right behind me.

12 Q. Okay. Was Ms. Cupid in her house at that time?

13 A. No, no. We were struggling with the door.

14 Q. Okay, when you went in the house, what was your
15 goal?

16 A. My goal was just to, just to get away from being
17 attacked again. So I shut the door and locked it.

18 Q. Okay, you shut the door and locked it. What
19 happened next?

20 A. Well, I was talking to her through the door, I
21 told her to calm down. "The kids can hear it. Like, the
22 kids can hear -- they don't need to see that."

23 Q. After you were talking to her -- while you were
24 talking to her through the door, what did you observe about
25 -- what was Ms. Cupid doing?

1 A. She was beating on the door.

2 Q. Okay. And about how long was she banging on the
3 door?

4 A. Well, look, she was in a -- in a lingerie, and
5 she was barefoot, so I wasn't gonna leave her out there
6 long.

7 Q. How long was she banging on the door?

8 A. It's hard to tell, I guess, about, about a minute
9 and a half.

10 Q. Okay, after the yelling and the banging on the
11 door, what happened next?

12 A. So I told her to calm down. And I thought she
13 was calmed down. So...

14 Q. After you thought she was calmed down, what did
15 you do next?

16 A. I unlocked the door.

17 Q. When you unlock the door, what happened next?

18 A. When I unlocked the door and it came about that
19 much opened (demonstrating), she forced the door open. And
20 I was flying back about two or three feet, I guess.

21 Q. You go back, she enters the room --

22 A. Right.

23 Q. What happens next?

24 A. She was she was hot, and so I told her I'm
25 getting ready to leave.

1 Q. What happened after she entered the room and you
2 had gone back, what happened next? Did Ms. Cupid approach
3 you?

4 MS. BROWDER: Objection, Your Honor. Leading.

5 THE COURT: Sustained.

6 A. She didn't, she didn't approach me. She charged
7 me. She charged.

8 THE COURT: Okay, stop there. Ask a new
9 question.

10 BY MR. HARVEY:

11 Q. When Ms. Cupid entered the room after you had
12 backed up, what happened next?

13 A. She charged me.

14 Q. Okay, where were you when Ms. Cupid charged you?

15 A. At this time, the door was wide open. So that's
16 12 o'clock. I'm facing straight out the door, but she's
17 between me and the door.

18 Q. When Ms. Cupid is charging you, what happens
19 next?

20 A. I took cover.

21 Q. What do you mean by taking cover?

22 A. I went to the -- well, I couldn't go fully to the
23 fetal position, but I covered my cover my head
24 (demonstrating). And I was asking her, "Why? Why? Why is
25 this happening?" I still don't know why -- I mean, I took

1 the walk. I still don't know what's going on.

2 Q. Okay, so you're covering yourself --

3 A. Right.

4 Q. While you're covering yourself, what happened?

5 A. She was hitting me with blows. She was hitting
6 me with blows. I mean, you know, at the time, I'm still
7 trying to talk to him, but at the same time, you know, I'm
8 just, I just don't understand what's going on. How can we
9 go from eating dinner, to now receiving blows, I'm being
10 attacked. I don't understand.

11 Q. Okay, so you're covering up, you're receiving
12 blows, where are you in the room?

13 A. Well, like I said, I was at 12 -- I was like,
14 three feet from the door, but I was 12 o'clock. I could
15 see the door.

16 Q. Okay, what happened after you received the blows
17 and you covered up?

18 A. Well, she was yelling at me. She was yelling at
19 me.

20 Q. Okay, while she was yelling at you, what did you
21 do?

22 A. Well, I knew the door was at 12 o'clock, but I
23 was trying to move so I can get to the door.

24 Q. So what movement did you take -- make next?

25 A. So if that's 12 o'clock, I moved five o'clock. I

1 moved to my right, trying to -- by this time I look up at
2 the door, it's not all the way opened, and I sort of move,
3 sort of check so I still can see outside, but --

4 Q. So, you're at five o'clock, and you can see
5 outside? A. Right.

6 Q. When you're at five o'clock, what happens next?

7 A. Well, she backed up for a second.

8 Q. She backed up, what did you do next?

9 A. Well, I was still trying to talk. I'm just trying
10 to figure out, why is this happening. Why is this
11 happening?

12 Q. So after you -- after you were still -- after
13 that, what happened next?

14 A. Well, she came back in start attacking me again.

15 Q. Was she in the room?

16 A. Yeah, she was in the room, yeah. She pushed me
17 back in the room, yeah. So she was in there, and I was
18 covered up. And then I started to notice that on my left
19 hand, blood was trickling down. I could see the blood
20 dripping to the floor.

21 Q. So what happened next?

22 A. Well, I don't know where this blood coming from,
23 number one. So, I'm just trying to figure out. I'm
24 telling her, "Stop, just stop. Stop this." And I just
25 don't understand. So, you know, she was still hitting me,

1 and so I pushed her out the way. I just pushed out the way.

2 Q. After you pushed her out of the way, what
3 happened next?

4 A. Well, it was like in slow motion when I pushed
5 her. And so, I was about to walk out, but I could see her
6 falling back. It was just like in slow motion. And she hit
7 the filing cabinet. When she hit the filing cabinet, she
8 fell to the floor. It was, it was just in slow motion. And
9 so when I pushed her, I went back the other way. So I went
10 toward the -- she had a section in the room, and I seen the
11 TV tilt on her.

12 Q. Okay. Where was the TV?

13 A. It was on top of the filing cabinet.

14 Q. Okay, what did you do?

15 A. I ran over and I straddled her and stopped the TV
16 before it fell on. It was on, you know, so and so I looked
17 at her, you know, I seen her lip was busted, and I told
18 her, "Look, I'm going to get some ice."

19 Q. All right. After you told her that, did you
20 leave?

21 A. Yes, I left. I left to go get ice.

22 Q. Did you ever return?

23 A. No, I didn't.

24 MR. HARVEY: I beg the Court's indulgence.

25 Q. Mr. Kimble, I'll show you Defendant's Exhibits

1 5,6,7, and 10. Please look at Defense Exhibit Number 5 and
2 tell us what that is?

3 A. Well, that's a defense wound where I was
4 scratched up on my elbow, on the right, right side, on the
5 left arm.

6 Q. Okay. And when you say the wounds, this is the
7 wound you sustained as a result of the incident of June --

8 A. 5th, yes.

9 Q. I'll show you Defense Exhibit Number 6, describe
10 for the jury what is Defendant's Exhibit Number 6?

11 A. Well, that' where my left eye, it was swollen.
12 It was from the assault, you know, I covered up this way so
13 if -- someplace I could fold where she couldn't hit me.

14 Q. Okay, and that's a depiction --

15 A. Yes

16 Q. Of an injury you sustained during the June 5th
17 incident, is that correct?

18 A. That's correct.

19 Q. Here is Defense Exhibit Number 7, please describe
20 what that is?

21 A. Well, that's my right jaw. And also, up here
22 (indicating) my right side of my forehead here is swollen,
23 and my lip was swollen, too.

24 Q. And were these injuries you sustained in the June
25 5 incident?

1 A. Right?

2 Q. This is Defense Exhibit Number 10. Please
3 explain to the jury, what that is?

4 A. Well, it's scratches on my neck.

5 Q. And when did you sustain those scratches?

6 A. June, 5.

7 MR. HARVEY: May, I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 BY MR. HARVEY:

11 Q. Mr. Kimble, will you hand me...

12 MR. HARVEY: Permission to publish Defense
13 Exhibit Number 4?

14 THE COURT: Yes, sir.

15 BY MR. HARVEY:

16 Q. Mr. Kimble --

17 MR. HARVEY: May, I approach?

18 THE COURT: Yes, sir.

19 BY MR. HARVEY:

20 Q. Mr. Kimble, what's being published now -- those
21 are the text messages you testified to concerning Defense
22 Exhibit Number 4. And the messages are depicted in
23 different colors. Do you see that screen?

24 A. I do.

25 Q. The darker color, who would be the party to that

1 -- initiating that text?

2 A. That's me.

3 Q. The lighter color, who would be the party
4 initiating that text?

5 A. That would be Ms. Cupid.

6 Q. And for what's being shown on the screen, is the
7 color pattern consistent throughout the text messages?

8 A. That's correct.

9 Q. So who again is the dark color?

10 A. The dark color is me.

11 Q. Okay. And the light color.

12 A. Is Ms. Cupid.

13 Q. Now, the text that we just viewed, the text
14 occurred in a chronological order as depicted in the text
15 thread, correct?

16 A. Well --

17 Q. The first one to the second one.

18 A. Well, actually, you just showed them backwards,
19 but yes.

20 Q. Right, correct. What we showed was in reverse
21 chronological order. They occurred in the chronological
22 order.

23 A. Yes, they did.

24 Q. Now, I'll show you Defense Exhibit Number 1, do
25 you see that?

1 A. I see it.

2 Q. Okay. Now that was gotten -- from a camera,
3 correct?

4 A. That's correct.

5 Q. What if any access did you have, if any, to the
6 camera system?

7 A. Oh, none.

8 MR. HARVEY: I beg the Court's indulgence.

9 Q. On June, 5, 2020 at [REDACTED] Claudia Drive when you
10 entered [REDACTED] -- [REDACTED] Claudia Drive, to the front door, what
11 was your on your mind?

12 A. Protection.

13 Q. Now...

14 MR. HARVEY: I beg the Court's indulgence, one
15 moment.

16 Q. Mr. Kimble, my colleague, from the Solicitor's
17 Office, is gonna come here and ask you questions. Please,
18 pay close attention to those questions --

19 MS. BROWDER: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q. Speak loud enough so the Court Reporter can hear
22 you.

23 A. That's fine.

24 Q. Thank you.

25 THE COURT: Cross examination?

CROSS EXAMINATION

BY MS. BROWDER:

Q. Mr. Kimble, do you have to be in control of everything?

A. No.

Q. Well, then how come when Ms. Kimble was moving down you said, and I quote, "I came down to look at the rental place. I decided it was good enough where she was going to move."

A. No, it wasn't that way. And that's not Ms. Kimble. That's Ms. Cupid.

Q. Ms. Cupid, I'm sorry.

A. Right. So Ms. Cupid, she asked me to come down.

Q. Okay.

A. So obviously I got a little bit of -- I guess she, she values my opinion, and I told her, and I told her, "You did a good job."

Q. So she values your opinion, she respects you then, right?

A. Yes. Hey, this day, she didn't.

Q. Okay. Well, on this day, you went to the Smoke Shop and you asked for the keys, and she told you no --

A. Right.

Q. And you got mad, right?

A. No.

1 Q. So then why walk back to the apartment and just
2 wait or to the house instead of just waiting in the car for
3 her.

4 A. Because I didn't want to argue.

5 Q. Okay, so --

6 A. The arguing had already had started before we got
7 out the car.

8 Q. Then why didn't you just get out of the car at
9 that point? Why did you even ask to get the keys to the
10 car?

11 A. No, I went into the Smoke Shop --

12 Q. Right.

13 A. I don't smoke --

14 Q. Right.

15 A. So she actually invited me to go to the Smoke
16 Shop with her.

17 Q. Okay.

18 A. So I don't smoke. So -- why I'm mad.

19 Q. So then why did you go?

20 A. Because she asked me to go with her.

21 Q. Okay, so just because she didn't give you the
22 keys, that don't mean you can't just still stand at the car
23 and wait --

24 A. Why would I do that.

25 Q. -- why be in the Smoke Shop?

1 A. Why would I stand at the car?

2 Q. Because you rode there with her.

3 A. That's fine, but I already know I don't want to
4 argue with her either, because it's a great day.

5 Q. So it has been a great day?

6 A. Yes. Yeah.

7 Q. You've had no problems with her all day long did
8 you?

9 A. Well, she wasn't there too long, but me and the
10 kids had a great time.

11 Q. But y'all been texting all day. You were happy
12 for her. She was excited to tell you she did good at the
13 gym. You got a compliment from her trainer.

14 A. She wasn't at the gym.

15 Q. What was the trainer, I guess, in those text
16 messages?

17 A. She was at work.

18 Q. Is that -- where's the --

19 A. She was training at work. And the trainer gave
20 her a compliment.

21 Q. Okay, gotcha.

22 A. Okay.

23 Q. But you were excited about that for her right?

24 A. Oh, yes.

25 Q. Okay, so she was excited to tell you about that?

1 A. Mm-hum (affirmatively).

2 Q. All right, so she was excited to tell you about
3 that, right?

4 A. Yes.

5 Q. So earlier in the day, she asked you to come down
6 to help with [I.O.] right?

7 A. Right. And I was excited.

8 Q. So she was comfortable with you being there at
9 that point, right?

10 A. Right.

11 Q. And she didn't ask you to leave once [I.O.] was
12 done with his therapy session, which y'all didn't get to, I
13 know, but she didn't ask you to leave after that, did she?

14 A. I was ready to leave.

15 Q. But she didn't ask you to leave.

16 A. She wasn't there.

17 Q. And you're ready to leave because you don't live
18 there, correct?

19 A. I'm in and out of there.

20 Q. Okay, but you don't live there, right?

21 A. Well, I spent three to four days out of week
22 there, so.

23 Q. Okay, but you have your residence in Charlotte,
24 correct?

25 A. I do. Okay.

1 Q. And you actually had to drive down that day
2 because you were in Charlotte, correct.

3 A. Right.

4 Q. All right. So get to the issue of the keys. Why
5 do you have four keys made?

6 A. Well, it was two sets of keys.

7 Q. Okay, why is there two sets of keys?

8 A. Because I was the one to install the door that
9 locks from the inside of the interior. So I had a key for
10 the interior, and then I had a key for all the ulterior
11 [sic] doors. So I had two sets because I got two cars.

12 Q. Okay, so she gave you a set of keys that you
13 made, but she gave you a set of keys.

14 A. I had two sets of keys.

15 Q. Okay, why did you have two sets? The interior
16 and the --

17 A. Because I had two cars. It's four keys. Okay, I
18 had a set for the exterior. I had two -- two sets for the
19 exterior, and then I had two sets for the door that locks
20 from the rest of the house.

21 Q. And that was because she gave you permission to
22 have this right?

23 A. Right.

24 Q. Okay, and so you had to have permission to go
25 into her home when she told you, you could come in, right?

1 Even though you had a key, you still had to have permission
2 to be at her house, right?

3 A. No, not necessarily.

4 Q. So you didn't have to have --

5 A. Because sometimes I was there. I was there when
6 she wasn't there. I was there when the kids wasn't there.
7 So I -- you know -- anytime I come this way, or we made
8 plans to do something, I was there.

9 Q. Okay, but you didn't live there, right?

10 A. Well, I was paying bills there, so it's sort of.

11 Q. So why have two residences, why go back and forth
12 to Charlotte?

13 A. Well, the reason why we -- the reason why she
14 wasn't in Charlotte, because she told me, she said, the
15 reason why --

16 Q. I didn't ask you that. I said, why were -- why
17 did you have two residences? If you were living in
18 Charlotte and supposedly living here. Why have two
19 residences?

20 A. Well, I didn't say I was -- wait, I got three
21 residences, if you want to put it that way.

22 Q. So where do you live primarily, Charlotte?

23 A. Charlotte.

24 Q. And you came down here when she asked you to come
25 down here to help her out. Correct.

1 A. Correct.

2 Q. Okay, so she gave you permission to come down
3 here, right?

4 A. Yeah.

5 Q. All right. Now get to the day of -- you came
6 down. You helped him, you stayed around. She said she was
7 tired, right?

8 A. Mm-hum (affirmatively.)

9 Q. You're in the same home with her when she's
10 texting you this, right.

11 A. Right.

12 Q. Where was she at?

13 A. She was in the bedroom.

14 Q. Okay, and where were you?

15 A. I was at the kitchen table with kids.

16 Q. And you told her to go to bed.

17 A. Mm-hmm (affirmatively.)

18 Q. Okay. And she said, she wanted to go get
19 something to help her, right?

20 A. No. She told me, "You make me".

21 Q. Where's that in these text messages?

22 A. Oh, it should be there.

23 Q. The last text here is, "go to bed." Where is it
24 maybe?

25 A. Did you make a copy of that?

1 Q. You can't ask the attorney questions? Where
2 does it say that?

3 A. Well, it's not on here, but I could pull the
4 phone --

5 Q. Where are the phone calls that you said she gave
6 him, text messages where she said, "pick up the phone",
7 from that night when she's calling you when you're walking
8 home. Where's that in these text messages?

9 A. You saying -- you saying that, what?

10 Q. That night, when you were walking home, you said,
11 "She was calling, calling, calling. I was declining. Then
12 she said, pick up the phone," which would have been a text
13 message, correct?

14 A. Right.

15 Q. Where's that text message?

16 A. Oh, well, obviously I gave it to him, so I don't
17 know where it's at. I -- I --

18 Q. Well, it's not in this exhibit. Correct?

19 A. No, they didn't put it in.

20 Q. Okay. So everything past where you started
21 walking --is not like 10 messages, right?

22 A. No.

23 Q. So, and when you said you got there that day, you
24 opened the door and the kids are excited to see you. You
25 said you hadn't seen them in two and a half weeks, correct?

1 A. That's correct.

2 Q. So that would indicate that you don't live there,
3 right? That, that is not your home?

4 A. Well, no. That's not true.

5 Q. Where you been for those past two and a half
6 weeks?

7 A. I've been communicating with her, but I just
8 hadn't seen the kids.

9 Q. But that would mean you're not living there.
10 Correct?

11 A. Well, sometimes it depends on what I got to do,
12 like if I got things to do in, in Charlotte, then I'm
13 there. But if I got things to do there, I'm there.

14 Q. But for two and a half weeks you haven't been
15 anywhere around. Correct?

16 A. Well, I hadn't been around, but I was talking to
17 her.

18 Q. Okay. In fact, the rental place wouldn't talk to
19 you because you weren't on the lease, right?

20 A. Right. That was my choice.

21 Q. Okay, that was the day of. As of that day you
22 were not on the lease, the rental company wouldn't even
23 talk to you?

24 A. Well, the thing was --

25 Q. No. That is a yes or no question.

1 MR. HARVEY: Your Honor, he's entitled to explain
2 his answer.

3 THE COURT: He's got to answer the question.

4 BY MS. BROWDER:

5 Q. The rental company would not talk to you because
6 you did not live here, correct?

7 A. Yes, with an explanation. And explanation is the
8 reason why they weren't talking to me because I didn't want
9 to be on lease, and the reason why I was called is because
10 the lease was up, so we was trying to negotiate a new
11 payment for the lease.

12 Q. But if you're not on the lease, then why do you
13 care about negotiating anything?

14 A. Well, because she still had to have a place to
15 stay.

16 Q. So that night you're walking back, you said you
17 go to the Smoke Shop that's next to the Food Lion, right?

18 A. It was. It's not there anymore.

19 Q. Well, at the time after June 2020. It was next
20 to the Food Lion off of Decker, right?

21 A. It wasn't, right there -- It's one directly next
22 to it now, but it wasn't then. It was at the end.

23 Q. It was -- but I'm saying -- I meant in the
24 general area?

25 A. Yeah.

1 Q. In the shopping area?

2 A. Yeah.

3 Q. Okay. So you say about an eight minute drive
4 there. Correct?

5 A. About, yes.

6 Q. How long do you -- does it take to walk back to
7 walk versus drive?

8 A. Well, I never looked at it --

9 Q. Well, about how long did it take you that night
10 to walk back?

11 A. I would say about 15 -- 15 minutes, so.

12 Q. So an eight minute drive, it only takes you seven
13 more minutes to walk back. Were you running?

14 A. Well, no, I wasn't running. I was just -- matter
15 of fact -- I tried to --

16 Q. Well, that's basically two miles in -- that's
17 basically two miles in 15 minutes. That's a quick pace.

18 A. Well you told me approximate. So I'm at -- I
19 mean, it could have been 20 minutes.

20 MR. HARVEY: Your Honor, I object to the mileage
21 issues, there's no basis for it.

22 THE COURT: Overruled.

23 BY MS. BROWDER:

24 Q. If somebody were to run for a mile -- a real good
25 pace for a mile is seven to eight minutes. I know I can't

1 run that fast. How fast do you run? Do you know?

2 A. I don't. But I do know, I run 40 in 4:52.

3 Q. That's a football thing, right?

4 A. Right.

5 Q. Okay.

6 A. So I'm pretty --

7 Q. But that's sprinting right?

8 A. Right.

9 Q. Well are you sprinting back home?

10 A. No, but I'm in shape.

11 Q. Okay. Because you work out, right?

12 A. Not really work out. But I play basketball.

13 Q. Okay, so that means you're muscular -- you're in
14 good shape, you're healthy?

15 A. Well, four years ago, I was.

16 Q. Okay. So, when you're walking back from Decker
17 to Claudia Drive, you said you turned on Oneil Court?

18 A. Oneil?

19 Q. Yes.

20 A. Uh-hum, yeah.

21 Q. Why would you turn on Oneil Court to go back to
22 Claudia Drive when it goes the opposite way to Claudia
23 Drive?

24 A. Well, number one, I don't really know my way
25 around there, but I wanted to get off main road.

1 Q. I thought you said you came here a lot and lived
2 in her house a lot.

3 A. No, I mean, we only been here a year, yeah, I
4 still don't know everything.

5 Q. So you turned to go the opposite way from her
6 house. It still only took you 15 minutes to get back home.

7 A. Well, I don't know exactly how many minutes, but,
8 I mean, only way I can tell you is through the text, so.

9 Q. But we don't have the rest of the text messages.
10 And you said you can remember everything else on that
11 night, but you can't remember how long it took you to get
12 back home, back to her house?

13 A. Well, I didn't, I didn't really try to remember
14 how long -- I was, just trying to defuse the situation. So
15 I mean, even if it took me two hours to get back, I would
16 have been glad with that.

17 Q. Okay, but even still, you didn't even go back to
18 her house the right way. You went a complete opposite way,
19 right?

20 A. Well, the reason why I went down Oneil is to get
21 off the main road so she wouldn't see me at all.

22 Q. But you went right on -- Oneil goes right off of
23 Decker it -- doesn't it go left?

24 A. What do you mean?

25 Q. If you're walking back, Oneil does not go that

1 way. You had to turn the other way to go down Oneil.

2 A. When I -- when I was walking down Oneil, I took a
3 right. I took a right --

4 Q. Okay.

5 A. Right past the elementary school.

6 Q. I'm gonna show you a map -- to help refresh
7 your recollection. Does that help you? If I show you a
8 map, would that help -- refresh your recollection?

9 A. Sure.

10 Q. Okay. So if a Smoke Shop and Food Lion is right
11 around here (indicating on map) and Claudia Drive is right
12 around here, here is Oneil Court.

13 A. Okay.

14 Q. Why would you turn right on Oneil Court? Does
15 that help refresh your recollection as to where Oneil is
16 compared to the home.

17 A. Why wouldn't I. I wasn't -- I wasn't in a hurry
18 to get back.

19 Q. But you said it only took you 15 minutes, and you
20 weren't running. So how did you get back --

21 A. It might have took me 30 minutes. I mean, it
22 really didn't matter how long it took. Aye! The longer,
23 the better, I thought at the time, because I wasn't in any
24 hurry.

25 Q. That gave you time to think about and keep

1 stewing over the fact that she told you, "no", right?

2 A. "No", about what?

3 Q. Get the car keys so you can drive back.

4 A. That didn't bother me at all.

5 Q. What were you gonna do with the car keys?

6 A. Sit in the car.

7 Q. So why can't you sit in the car and wait for her
8 without the car keys?

9 A. Because the door was locked.

10 Q. Okay? So you get, you don't get the car keys.
11 You don't wanna go and just sit outside?

12 A. No.

13 Q. So you decide just to walk back?

14 A. Right.

15 Q. It's a little bit hotter walking back?

16 A. Getting hot? No.

17 Q. It's June 5th. It's hot.

18 A. June 5th at eight o'clock at night. I don't
19 think it's hot.

20 Q. Well, you get back, you say you see your stuff on
21 the front porch?

22 A. Right.

23 Q. All right. You get your stuff. But you know she
24 doesn't want you around anymore, right?

25 A. Well, at this point, it didn't really matter to

1 me.

2 Q. Okay, so then -- you get your stuff? You know,
3 she has put your stuff outside. She does not want you in
4 that home, right?

5 A. That's fine.

6 Q. Okay. And what kind of car you drive?

7 A. Which one?

8 Q. The one you took that day.

9 A. Oh, it's a 98 Buick Riviera.

10 Q. What is that? I don't -- just because I don't
11 know what that is?

12 A. It's a coupe, it's two-door coupe.

13 Q. Two-door coupe. Okay. And you had a couple
14 bags. You said you had lawnmowers and all this other stuff
15 that you were going to get to, right?

16 A. No, on direct, you just said you had other --
17 when you put some stuff in the car and then you had to go
18 back because you had a lawn mower and tools and all kind of
19 other stuff too, in a little shed or a little something in
20 the back.

21 A. No, that wasn't the question. He asked me, what
22 else did I have around me.

23 Q. Why were you going to get back more stuff if
24 you'd already put everything in the trunk of your car?

25 A. That wasn't the question. I had put everything

1 in the car --

2 Q. I'm asking you --

3 MR. HARVEY: Your Honor, he's entitled to answer
4 and explain the question.

5 THE COURT: Is that an objection?

6 MR. HARVEY: Yes, it.

7 THE COURT: Overruled.

8 MR. HARVEY: Thank you.

9 THE COURT: Continue.

10 BY MS. BROWDER:

11 Q. You testified earlier. You picked your stuff up
12 off the front porch and went and put it in the back of your
13 car, correct?

14 A. Right.

15 Q. Okay, so you left the door open. You were going
16 because you said you were -- had to go back to get more
17 stuff. You testified to that earlier, correct?

18 A. Right.

19 Q. So you're denying you said that now?

20 A. No, I went and got everything in the car. I had
21 one foot in the car. Forgot to shut the lid.

22 Q. That's not my question.

23 A. Okay.

24 Q. My question was, you're denying that you
25 testified earlier that you put some stuff in the car --

1 MR. HARVEY: Your Honor, the question has been
2 asked and answered and testified. What he's testified
3 to is objective to the repetitive question that's been
4 asked and answered.

5 THE COURT: And your objection is overruled.

6 Thank you, sir.

7 BY MS. BROWDER:

8 Q. So you're denying earlier that you said you put
9 stuff in the car and then went get -- went to go back to
10 get more stuff. You're denying you made that statement on
11 direct testimony?

12 A. Yeah, well, I was talking about the stuff on the
13 board.

14 Q. Okay. So you say that she then came out at you,
15 right?

16 A. As I was shutting the lid, she came out the door.

17 Q. Okay, that's what you're saying. In lingerie?

18 A. Yes.

19 Q. So you're telling me, she came out in lingerie,
20 and barefooted, to pick a fight with you? A physical fight
21 with you?

22 A. Well, what she was saying -- do you want me to
23 tell you what she was saying?

24 Q. You can't say what she's saying.

25 A. Okay.

1 Q. She came out in lingerie, and barefooted, to get
2 in a physical fight with you; is that what you're
3 testifying to?

4 A. I don't think -- I don't think -- I don't think
5 she was, she was doing that, but I think she was -- she was
6 coming out to express herself.

7 Q. Okay. So she wasn't coming out to fight you, and
8 that's what you just said, right?

9 A. Right. I don't think she came out to fight me,
10 but that's what it escalated to.

11 Q. Okay. And then you stated you pushed her away,
12 grabbed her right hand, and then you ran into the house,
13 correct?

14 A. No, I said, I grabbed her right hand and her left
15 hand. We was in a struggle on the front porch.

16 Q. Right, but you said, at some point you ran into
17 the house, right?

18 A. I pushed her away, and then I ran into the house.

19 Q. Okay, on this picture, where was your car?

20 A. My car was right here (indicating).

21 Q. Okay. You could have run out to your car,
22 correct?

23 A. No, because of the railing.

24 Q. Isn't there an opening in the railing right there
25 (indicating), that you can get down?

1 A. No.

2 Q. But you just said you pushed her away.

3 A. No, after I pushed her away, she was there, and I
4 had to go into the house. I couldn't go down the steps.

5 Q. Okay. And then you locked the door?

6 A. Yeah.

7 Q. And then you unlocked the door?

8 A. Right.

9 Q. Why would you unlock the door if you're so scared
10 of her?

11 A. Because she had lingerie on, and I thought she
12 had calmed down.

13 Q. Why would you -- thought she had calmed down? If
14 she was banging on the door, saying to get in -- as I
15 quote, "she was hot."

16 A. Yeah.

17 Q. So how is that calming down?

18 A. She was hot at that time, but at some point she
19 stopped banging. And so I listened, and I was still
20 talking to her, and so I took a chance.

21 Q. Okay. And then you said you got into the fetal
22 position, correct?

23 A. Well, no, not necessarily fetal. I was still
24 standing.

25 Q. But at some point, you said you got into the

1 fetal position, and she was just wailing on you, right?

2 A. And I corrected myself, and I'm standing up with
3 my hands over my head.

4 Q. Okay. So where was she hitting on your back?

5 A. On my back, my, my shoulder, my head, everywhere.

6 Q. On all these pictures right here (indicating),
7 where are your injuries on your back?

8 A. Well, I didn't have anyone to take them for me.
9 I'm sorry.

10 Q. All right, so, conveniently, you did not have
11 anybody to take these -- those pictures for you of your
12 back?

13 A. I took those. But I didn't have anyone to take
14 pictures of the back.

15 Q. You've never stood in the mirror and took a
16 picture of -- showing things in the back?

17 A. No, not -- I mean not -- no really.

18 Q. Where on here is your lip swollen?

19 A. On that side (indicating), that eye, and above
20 here (indicating).

21 Q. Okay, but if your hands were above your head like
22 this (demonstrating), how was she getting to that?

23 A. Well, it wasn't there all the time. I mean, I'm
24 talking to her just like this, trying to figure out, why am
25 I getting assaulted like this?

1 Q. At what point did you punch her?

2 A. I didn't punch her at all.

3 Q. You didn't punch her at all? How did she end up
4 with a busted lip?

5 A. I don't know how it happened, but I pushed her
6 away from me.

7 Q. So when was that? When, when did the busted lip
8 happen?

9 A. I don't know. I don't know when it happened
10 because, like I said, I was in the fetal position, but --

11 Q. So she hit herself while she's hitting you to
12 have a busted lip?

13 A. No, what I'm saying is, I was in a fetal position
14 -- only reason why I even pushed her in is because I seen
15 blood running down my arm, and so I had to figure out where
16 it's coming from.

17 Q. Where is the blood coming from on your arm?

18 A. No, it was running down my arm. I'm at home.
19 I'm at home now at that point.

20 Q. Okay, so you weren't bleeding at all, right?

21 A. No, I was bleeding.

22 Q. Where? Where were you bleeding from?

23 A. I was bleeding from my hand.

24 Q. Where's a picture of your hand and the injuries
25 on your hand? Nope. Can't look again (pulling document

1 back). These are what's in exhibits.

2 A. Oh, okay.

3 Q. Where's the picture of your hand?

4 A. I don't know what you did with it.

5 Q. Okay, so there's no pictures of injuries on your
6 back, when you said you were going -- bleeding on your
7 back. There's no pictures of you bleeding from your hand,
8 correct?

9 A. Right.

10 Q. And you don't know when she got the swollen lip.

11 A. Well, I'm suspecting when I pushed her away from
12 me.

13 Q. How does -- can you step down for me, please?

14 A. (Complies.)

15 Q. If you are pushing somebody away -- of course,
16 I'm not going to actually push you -- how do you bust her
17 lip? Show me.

18 A. Well, first of all, I didn't push her up here
19 (demonstrating). I was in this position (demonstrating). I
20 didn't even see it when I was pushing.

21 Q. So if you're pushing right here (indicating) --

22 A. Right.

23 Q. You're not hitting her hip.

24 A. Well, she did hit -- she did hit the file
25 cabinet.

1 Q. You said she went backwards on the filing
2 cabinet, right?

3 A. Well, I don't know how she went.

4 Q. You said you saw where it was like, "slowed
5 motion."

6 A. It was.

7 Q. She went backwards onto the filing cabinet. How
8 does that bust her lip?

9 A. Well, I guess when she hit the floor. I don't
10 know,

11 Q. But if she was already bleeding earlier, where
12 you were in the fetal position --

13 A. Obviously, here (indicating) --

14 Q. But there's not a picture of that is it? You
15 don't show your injuries of that do you? You can take a
16 seat.

17 A. Well, I wish they would've.

18 Q. Now, you said you eventually was so concerned for
19 her that you went to get ice.

20 A. Yes.

21 Q. Where were you going to get ice?

22 A. At the Circle K. The one we frequent.

23 Q. Was there not ice in the refrigerator or freezer?

24 A. No.

25 Q. Frozen peas or green beans or anything?

1 A. Well, I don't know what the inventory was at that
2 particular time, but I knew I wasn't gonna let -- I didn't
3 want my -- the kids to see that.

4 Q. Was -- where was she when you went to go get her
5 ice?

6 A. I had her pulled up. She was leaning up against
7 the bed.

8 Q. Was she conscious?

9 A. Yeah, I talked to her. I told her I was going to
10 get ice. I left it -- I shut the front door. I left it
11 unlocked.

12 Q. Okay, but you didn't want the kids to see her
13 that way. But you left her by herself with the children?

14 A. No, the children weren't in there. The door was
15 locked from the interior.

16 Q. But you left the front door unlocked?

17 A. Right. Well, I didn't think they would come out
18 and do that because, you know, they didn't know what was
19 going on.

20 Q. You didn't think they could hear y'all yelling?

21 A. I wasn't yelling.

22 Q. You didn't think they could hear her yelling,
23 according to your story?

24 A. Well, they could've.

25 Q. But you left her alone with the children,

1 correct?

2 A. No, I didn't leave alone. I left her alone by
3 herself to go get ice and come back. She called me later
4 on -- on the ride.

5 Q. So you testified earlier that you play football?

6 A. Right.

7 Q. What position did you play?

8 A. Well, I was a DB.

9 Q. A defensive back?

10 A. Yes.

11 Q. Okay, so you know how to tackle people?

12 A. I do.

13 Q. Okay. And you know -- you also learned how to
14 block and stuff as well. Correct? Everybody learns how to
15 block, whether you're defense or offense, right?

16 A. That's true.

17 Q. And when you're blocking somebody, you get up
18 under them, right?

19 A. That's true.

20 Q. You don't go above or anything. You get up under
21 the block?

22 A. Sometimes.

23 Q. Is that how you pushed her?

24 A. No.

25 Q. Okay, so you just pushed her like this

1 (demonstrating)?

2 A. Right. Because I didn't want to hurt her.

3 Q. You didn't want to hurt her, but you left her
4 alone, almost unconscious, with her children in a heap on
5 the floor.

6 A. No, I checked --

7 MR. HARVEY: Your Honor, I object to --

8 THE COURT: Overruled.

9 A. I checked her, and I told I was going to get ice.
10 She called me later on, asked where I was, and I told her
11 where I was. I was coming back with ice.

12 BY MS. BROWDER:

13 Q. But you never went back did you?

14 A. Well, because it's conversation with her -- and
15 that's where, and that's where I made a mistake right
16 there.

17 Q. What about calling 911 for her afterwards? Did
18 you call 911 for her or for yourself?

19 A. No, I don't want to get her in trouble?

20 Q. Did you call 911 for her?

21 A. Why would I do that when I know she's okay?

22 Q. Why would you never -- what -- well if you were
23 going to get ice, you obviously didn't think she was okay.
24 So why didn't you come back and make sure she was okay?

25 A. I went to go get ice so her lip wouldn't get

1 swollen. She's a beautiful woman.

2 Q. So then, why didn't you come back to help her if
3 you said you wanted to --

4 A. I was coming back, but at that time, she was
5 already up and she was -- she was moving around.

6 Q. So you didn't go back to make sure she was okay?

7 A. I knew she was okay. I'm talking to her.

8 MR. HARVEY: Objection. Your Honor, that's been
9 asked and answered repetitively. It's repetitive
10 questions going over evidence that's already before
11 the Court. Thank you, Your Honor.

12 THE COURT: Objection is overruled.

13 MS. BROWDER: Thank you.

14 BY MS. BROWDER:

15 Q. All right, you stated when you ran into her
16 house, it was your goal to get away, right?

17 A. Right.

18 Q. You shut the door and lock it.

19 A. That's correct.

20 Q. You could've then gone out the back door,
21 correct?

22 A. Right. I didn't want the children to get
23 involved with this at all.

24 Q. But the children did get involved -- but didn't
25 they?

1 A. Later on, yeah, and I, I still regret it to this
2 day.

3 Q. So, did you ever get any medical treatment for
4 your injuries?

5 A. No, I mean, like you say, I'm a football player.
6 I get hurt all the time.

7 Q. You're used to tackling and hurting people,
8 right?

9 A. No, I play basketball. I mean, it's the same
10 injuries there, so. It's just, it's part of it.

11 Q. And just because she bumped your body, you didn't
12 think you had to leave, did you?

13 A. When she bumped my body?

14 Q. You said it, yeah -- that's the first thing you
15 said she did --

16 A. Right.

17 Q. -- she bumped my body?

18 A. Right.

19 Q. You didn't feel like you had to leave at that
20 point, did you?

21 A. Well, she didn't tell me to leave.

22 Q. Oh, so you're waiting for her to tell you to --
23 that she -- that you could leave?

24 A. No.

25 Q. Okay. So she didn't tell you to leave, then what

1 were you waiting for to leave?

2 A. I was trying to calm her down about what she was
3 talking about.

4 Q. So when you saw that she wasn't going to calm
5 down and you said she was trying to pick a fight with you
6 earlier, why didn't you just get in the car and leave when
7 you got in the house?

8 A. Well, 2020 hindsight is pretty good. Yeah, I
9 could have thought about that now, but in the heat of the
10 moment I was -- I was worried about her and how she was
11 thinking about me and -- and in her place to live.

12 Q. If you're so worried about her, you left her
13 alone and never went back?

14 A. No, I talked to her on the phone. That's the
15 reason why I didn't have to go back.

16 MS. BROWDER: No further questions, Your Honor.

17 THE COURT: Any redirect, Mr. Harvey?

18 REDIRECT EXAMINATION

19 BY MR. HARVEY:

20 Q. You were asked on your cross examination by the
21 Solicitor, about entering the home at [REDACTED] Claudia Drive,
22 what was on your mind the moment you entered that home?

23 A. Protection.

24 MR. HARVEY: Thank you. That's all I have.

25 THE COURT: Anything further, Ms. Browder?

1 MS. BROWDER: All right, thank you. You may step
2 down, sir.

3 THE WITNESS: (Complies.)

4 THE COURT: Mr. Harvey, call your next witness.

5 MR. HARVEY: Your Honor, in view of the
6 stipulations, the Defense rests.

7 THE COURT: Okay, all right, ladies and
8 gentlemen, there are certain matters of law that I
9 need to discuss with the attorneys outside of your
10 presence.

11 Also, lunch is here, so we are going to break
12 until one o'clock. I better make it 1:15 because I
13 need to eat, too. So, lunch is in the jury room. You
14 don't have to stay in the jury room with the lunch. It
15 comes in a box, usually, or, you know, Styrofoam
16 container. So you should be able to take it outside
17 to your car if you want, or and you could have your
18 phones, things like that. I didn't know that when I
19 ordered it, but I think in light of where we are in
20 the trial, we'll break to 1:15 don't discuss the case
21 amongst yourselves or with anyone else. Don't do any
22 research about the case. And you're welcome to stay
23 in the jury room if that's what you would like to do.
24 You don't have to go anywhere, but we'll bring you
25 back at -- be back in your jury room at 1:15. Enjoy

1 your lunch. Thank you.

2 (The jury exits the courtroom.)

3 Any motions?

4 MR. HARVEY: Yes, Your Honor. I have a -- I
5 would like to renew my motion basis for that motion
6 for a directed verdict. And if I may, just for
7 purposes of the record, I'll articulate the basis for
8 that motion.

9 THE COURT: Yes, sir.

10 MR. HARVEY: I made a motion previously, Your
11 Honor, the motion for a directed verdict and we will
12 start with the assault charge. Your Honor, assault
13 and battery of a high and aggravated nature there's
14 been no testimony as to a great bodily injury, which
15 is one element of assault and battery of a high and
16 aggravated nature. And if you recall Your Honor,
17 there was a question to the doctor. The doctor's
18 testimony did not lay the requisite evidentiary
19 foundation for what the statute defines with
20 particularity as great bodily injury.

21 I would submit, based upon the doctor's
22 testimony, the doctor's testimony, there was not a
23 sufficient -- it wasn't sufficient evidence that it
24 was -- the act was accomplished by means likely to
25 produce death or great bodily injury.

1 I guess the issue is from the greater weight --
2 from the weight of the evidence, whether or not the
3 act was accomplished by means likely to produce death.

4 The Doctor, he didn't say definitively, this was
5 likely the context. So that's the assault of a high
6 and aggravated nature. Those are elements that must
7 be put forth in the State's case in respect of that
8 charge.

9 THE COURT: Yes, sir. As to that motion, that
10 motion is respectfully denied. There is evidence,
11 particularly if the jury were to find Ms. Cupid to be
12 credible, that this great bodily injury did, in fact
13 occur, and it occurred in the way she described.

14 As you know, Mr. Harvey, you talked about the
15 weight of the evidence, but as you know, the Court at
16 this stage is concerned with the existence of the
17 evidence, not its weight.

18 The weight of the evidence is a matter for the
19 finder of fact, which in this case is the jury. As to
20 the issue of great bodily injury, the victim testified
21 that she -- well first, the doctor testified that she
22 had a concussion.

23 She testified that she hit her head and had
24 memory loss for a substantial period of time, which
25 would fit the statutory definition of great bodily

1 injury, in that it would be protracted loss or
2 impairment of the function of a bodily member or
3 organ.

4 I think the brain is certainly a bodily member or
5 organ that would qualify for all those reasons your
6 motion is denied.

7 MR. HARVEY: Yes, Your Honor. With respect to
8 kidnapping, the evidence shows that a confrontation
9 took place. The evidence shows that in the course of
10 a confrontation, the parties were engaged with each
11 other. Clearly, the kidnapping statute in some of the
12 language -- I believe what's most appropriate in this
13 instance -- is the restraint portion of the statute.

14 The statute has elements that we don't have -- I
15 believe the issue is seizure. It doesn't -- from the
16 evidence -- I would respectfully submit that first of
17 all, there's no evidence as to inveigle, decoy,
18 kidnapp, abduct or carry away.

19 I think the issue is seizure of confinement, and
20 I would respectfully submit that the testimony has to
21 enter it inside Claudia Drive does not rise to the
22 level of a seizure or confinement of.

23 There's no testimony that would support those
24 elements and I would renew my motion and state those
25 as particular grounds.

1 THE COURT: As to that motion for me to grant it
2 would be to completely discount the testimony of
3 Melissa Cupid. There is, in fact, evidence in the
4 record from which the jury could conclude that the
5 Defendant did kidnapp Ms. Cupid, according to the
6 statutory definition of kidnapping.

7 You started out with the evidence shows XYZ, but
8 that is the evidence placed in the record by the
9 Defendant and really discounts and ignores the State's
10 case. I don't want to argue about it. I'm ruling --

11 MR. HARVEY: Yes, Your Honor, I just didn't
12 articulate the position previously.

13 THE COURT: I understand. I need to articulate
14 my ruling too, though. So there it is.

15 MR. HARVEY: I'm so sorry I was talking when you
16 were talking.

17 THE COURT: Yes, sir.

18 MR. HARVEY: I apologize, Your Honor. You can't
19 hear when you're talking, so I apologize, Your Honor.
20 Can you repeat that? I'm so sorry. The motion is
21 denied. And I was simply articulating on all of the
22 State -- the basis for purposes of it. Thank you.

23 THE COURT: Was the court reporter able to make a
24 record of my ruling?

25 MADAM COURT REPORTER: Yes.

1 THE COURT: Yes, thank you.

2 Okay. Next motion, sir.

3 MR. HARVEY: I would just renew the motion with
4 respect to the burglary charge.

5 THE COURT: Did you want to make a record of your
6 reasoning?

7 MR. HARVEY: I'm cognizant of what the testimony
8 was, and the elements are different for burglary. The
9 other offenses have elements that are unique to those
10 offenses. The burglary, I would just renew the motion
11 with respect to the burglary based upon the general
12 insufficiency.

13 THE COURT: Yes, sir, that motion is respectfully
14 denied as well. Anything else? Mr. Harvey?

15 MR. HARVEY: No, I'm just standing. Because I'm
16 standing, Your Honor, and I assumed we're gonna
17 address the some more issues.

18 THE COURT: Okay, we are proposed jury charges. I
19 believe the State submitted only a charge on criminal
20 intent. Is that correct?

21 MR. KREUSH: That's correct. Your Honor, we do
22 have, we do have some remarks regarding Mr. Harvey's
23 whenever the time is right.

24 THE COURT: Yes, sir. Mr. Harvey, I assume
25 there's no objection to the -- a charge on criminal

1 intent. I mean, that's standard in criminal cases.
2 And I haven't even read the language proposed by the
3 State. I trust my law clerk that it's substantially
4 similar to the language that I always use, and so the
5 Court will just use its charge on criminal intent.
6 I'll give you all a copy of it before I charge it, so
7 that you can, you know, make sure that I'm not leaving
8 anything out. But there's no objection to that,
9 correct, Mr. Harvey?

10 MR. HARVEY: I beg the Court's indulgence for a
11 moment. I had it in front of me. I just wanted to
12 renew it one more time.

13 THE COURT: Well, that's what I'm saying. It's
14 not specifically that language necessarily. I don't,
15 I don't know, because I've not looked at that, at the
16 State's proposed charge, but you do agree that a
17 charge on criminal intent is appropriate?

18 MR. HARVEY: I would anticipate that the Court
19 and I send a proposed charge on criminal intent. I
20 would assume that the Court -- and I don't mean to be
21 intruding in the Court's prerogative in any way by my
22 assumption, but I would assume there would be a charge
23 on direct and circumstantial evidence in that -- those
24 charges would, I believe, give a more succinct charge
25 than the State's proposed charge.

1 I don't object to a charge on intent, and I don't
2 object to a charge on what may be determined by
3 circumstantial evidence, but I do not believe it's
4 necessary to have a charge that criminal intent may be
5 inferred from the circumstances shown to exist in the
6 intent.

7 THE COURT: Is that not a correct statement of
8 the law?

9 MR. HARVEY: Your Honor, again, my position is
10 that Your Honor could charge on criminal intent in
11 direct and circumstantial evidence.

12 THE COURT: Yes, sir.

13 MR. HARVEY: Thank you.

14 THE COURT: Yes, sir. That portion about it is
15 not necessary to establish intent by direct and
16 positive evidence, but intent may be established by
17 inference in the same as -- in the same way as any
18 other fact, etc, etc, taken into account facts and
19 circumstances. That's in the court standard charge.

20 And I'll keep it. Again, I'll give you a copy of
21 it so we can talk about it one final time before I
22 read the charge.

23 Mr. Kreush, let me now hear the State's
24 objections to the Defendant's proposed jury charges.

25 MR. KREUSH: Your Honor, the first one I'll point

1 to, "to my presumption of innocence." We've just
2 asked that the victory of Nebraska language be added.
3 I looked at some of the other jury charges specific --
4 is specifically *State v Keegan Profit*.

5 I believe if you add it, the language would be is
6 "in criminal cases states proof must be more powerful
7 than that must be beyond a reasonable doubt. Proof
8 beyond a reasonable doubt is proof that leaves you
9 firmly convinced of Defendant's guilt. There are very
10 few things in this world that we know with absolute
11 certainty, certainly."

12 THE COURT: Yes, sir. That is in the Court's
13 standard charge.

14 MR. KREUSH: Your Honor, I'd also then like to
15 point out there is a request for necessity. Your
16 Honor, at this point, the number of reasons that go
17 into why we believe it's not proper, first and
18 foremost, the separate harm emergency is of such a
19 nature as to induce a well grounded apprehension of
20 death or serious bodily harm. The act is not done.

21 Your Honor, there was no testimony of any serious
22 act of bodily harm, and it's clear that Mr. Kimble
23 didn't believe it. So when he -- actually according
24 to his own testimony, invited the victim back in --
25 into the residence. He had ample opportunities to go

1 and disappear. He could have went other ways. There
2 was a car outside. He was on a porch -- not to
3 mention there was -- there was, there was plenty of
4 time they were, they were literally separated at one
5 point. He could have gone any way, but he chose to go
6 inside the home.

7 And Your Honor, I think there might be a little
8 confusion as well, as opposed to whether he actually
9 was acting out of a pure necessity, at which necessity
10 is -- he had to break the law at this point, he's
11 made pretty clear to his testimony he had a key he
12 said that entitles him to be there. It wasn't at an
13 absolute necessity.

14 THE COURT: Yes, sir.

15 MR. HARVEY: Your Honor, necessity is applicable
16 to the circumstance. He's charged with burglary. At
17 the time -- it's from the testimony -- he didn't
18 initiate confrontation. There's testimony about the
19 railing. There's testimony about his passage being
20 blocked by Ms. Cupid.

21 So in order -- she's attacking him. There's
22 testimony in the record that she was assaulting him
23 and attacking him on the porch. He didn't -- the key
24 issue is irrelevant to what transpired on the porch.
25 He entered the dwelling on the porch. He said to

1 avoid -- his word was "protection."

2 That's to avoid harm, to avoid imminent error.
3 He was asked, "Could you go to this direction?
4 There's railing? Could you go in the other direction?
5 "No." Could you go down the steps? "No." So he said
6 he went into that home for protection, to avoid
7 imminent peril, according to the testimony that was
8 brought on by her initiation of the physical
9 confrontation on the porch.

10 THE COURT: Mr. Kreush, any response to that?

11 MR. KREUSH: Yeah, Your Honor. We're speaking to
12 his memory at the moment of when he did this. It's
13 not -- peril is not enough. It is an emergency of
14 such a nature that he thought he was going to die or
15 get serious injury. And this -- is he never testified
16 to any part of that.

17 MR. HARVEY: He testified he was being attacked,
18 Your Honor, and he testified at that moment, the only
19 option to avoid attack or to sustain serious bodily
20 injury was to, as he said, enter the home for
21 protection.

22 THE COURT: The Court will charge necessity over
23 the State's objection. I will not use this specific
24 language provided by Mr. Harvey. I'm going to start
25 with the Court's -- sort of standard charge -- and we

1 can tweak it later if necessary. Next, Mr. Kreush?

2 MR. KREUSH: Your Honor, they didn't preserve
3 evidence or disclose any evidence. There's been no --
4 I haven't heard any allegations of that.

5 THE COURT: Mr. Harvey?

6 MR. HARVEY: There's testimony on the 10th day,
7 December, at 12:10 at Richland County Sheriff's Office
8 that it was notified by Ms. Cupid of a video of this
9 incident. The Sheriff's Department was notified of a
10 video of this incident. The Sheriff's Department
11 undertook no action to present a follow up in its
12 investigation on the existence of that evidence, it's
13 in the record that the Sheriff's Department was aware
14 in its -- when that witness testified she assigned
15 that case a case number, took photographs, to be used
16 in the investigation of the case. The State was aware
17 of that -- cameras. And those cameras. Ms. Cupid
18 informed the State, it's written in their incident
19 report.

20 THE COURT: That's not evidence.

21 MR. HARVEY: I understand the person who
22 interviewed Ms. Cupid testified that Ms. Cupid
23 informed her that there were videos of this incident.

24 THE COURT: No sir, she testified in a pre-trial
25 hearing. There's no evidence before this jury from

1 Vicki Rains. She didn't testify in their case-in-
2 chief.

3 MR. HARVEY: The person who interviewed Ms.
4 Cupid, Ceara -- I forget her last name -- was the
5 second witness. She was the second witness who
6 testified about Ms. Cupid coming to the Sheriff's
7 Department. She interviewed Ms. Cupid. She generated
8 a report. Her report is not in evidence, but her
9 testimony is that she interviewed Ms. Cupid, wrote
10 down what was -- saving information and was notified
11 that Ms. Cupid told her Ms. Cupid had a video of the
12 incident. That was her testimony.

13 THE COURT: Mr. Kreush, was that her testimony?

14 MR. KREUSH: Your Honor, I don't recall that
15 testimony myself. Your Honor, but --

16 MR. HARVEY: I cross examined her about what Ms.
17 Cupid told her and it was at 12:10 --

18 THE COURT: Okay, let's stop. Let's pause.
19 Because I don't even know that that matters to the
20 issue. Number one, I don't, I don't have it in my
21 notes, which, of course, are not a transcript. She
22 talked about discharge paperwork that she attached to
23 a report. But again, that's not dispositive of the
24 issue. Just because a witness had something in their
25 possession and the law enforcement did not collect it

1 from them, that's not the same as failure to preserve
2 or destruction of evidence.

3 Failure to preserve is the something they have in
4 their possession, in the possession of law
5 enforcement, and they toss it in the trash. They
6 leave it in the garage. They forget about it in the
7 trunk. The samples degraded because of something they
8 did. That's what failure to preserve evidence is, but
9 something that is not in their possession, they can't
10 fail to preserve it. It is not in their possession.

11 Now you can argue to the jury all day long that
12 they should have collected it, but that doesn't rise
13 to the level of a charge on the law regarding failure
14 to preserve evidence. So that will not be charged.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: Mr. Kreush?

17 MR. KREUSH: Your Honor, the early first degree -
18 - I'm sorry if I have all these out of order.

19 THE COURT: I kind of do too though. Go ahead,
20 Mr. Kreush.

21 MR. KREUSH: Your Honor, we don't have much of a
22 problem other than the -- the mention of if you're
23 seeing the first line, "In the nighttime". Your
24 Honor, that's that's not part of the actual charge of
25 burglary first. It's an additional factor. And in

1 this case, we have not done an indictment for
2 nighttime either way. So, the way it's worded as it
3 is as an additional element that's not, that's not
4 listed in the statute.

5 THE COURT: Yes, sir. And in fact, I had that in
6 my charge until I read the indictment, and that the
7 nighttime hours were, you know, during nighttime is
8 not alleged in the indictment, so I will remove that
9 from the charge.

10 MR. KREUSH: There's also -- I guess I could do
11 these in bulk, Your Honor. As the resolution of doubt
12 in favor of the Defendant, a little kidnapping,
13 burglary first degree, same title and the ABHAN, same
14 title, sufficient guilt, Defense request to charge
15 multiple charges, Defense request to charge multiple
16 indictments, separate consideration for each
17 indictment.

18 These are all generally -- these are all from my
19 understanding, covered by the Court's general
20 instruction. I don't think we need to add.

21 THE COURT: I agree. Anything to say on that,
22 Mr. Harvey? Those things are covered in the charge
23 that I would typically get. And it's less repetitive
24 than this.

25 MR. HARVEY: I understand, Your Honor. Again,

1 the purpose of submitting these charges, I believe
2 they're accurate. However, if the Court advises that
3 the substance of these charges are going to be
4 charged, the purpose of submitting the charges would
5 ensure that at that phase of the case the requisite
6 charges are presented to the jury.

7 So I understand that the State does not object to
8 the resolution of doubt in favor of Defendant charge.
9 The State -- I do believe a suspicion of guilt charge
10 is appropriate, and I do believe the charge on the --
11 the charges I presented on multiple charges and
12 multiple indictments on separate consideration as
13 detailed that are appropriate.

14 THE COURT: Okay, I think those are already
15 included, and again, I will show you, give you a copy
16 of what the Court proposes to read.

17 MR. KREUSH: Your Honor, also the extent to the
18 general charge on proof on all three charges as well.

19 THE COURT: Yes, sir.

20 MR. HARVEY: I'm sorry. I didn't get that.

21 MR. KREUSH: The request for general charge on
22 proof regarding all three charges also -- also
23 published by general charges.

24 MR. HARVEY: I do think because of the number of
25 charges and unique elements in each charge, it would

1 help the jury -- some direction to understand that
2 each charge deserves their individual deliberation.

3 THE COURT: Yes, sir. And I will tell them that.

4 MR. KREUSH: Your Honor, to get to the witness
5 charges themselves, "There's a failure to produce a
6 witness." We hadn't had any issues with that.

7 THE COURT: You don't think you have any -- say
8 it again.

9 MR. KREUSH: I don't think we had any, any issues
10 with that during trial.

11 THE COURT: Oh, gotcha, okay. Why does that need
12 to be charged, Mr. Harvey?

13 MR. HARVEY: That would go to Your Honor's
14 previous ruling on it was -- submitted again, we heard
15 from Deputy Taylor, didn't hear from the other
16 deputies, didn't hear from EMS, and didn't hear from
17 any Richland County Sheriff's Department Investigators
18 after the initial statement was taken and after the
19 Sheriff's Department put on notice as to the
20 existence.

21 THE COURT: Mr. Kreush?

22 MR. KREUSH: Your Honor. All these are also
23 common on the facts as well all these witness as far
24 as credibility of witness, law enforcement officer,
25 number of witnesses, testimony of a child -- I.O. was

1 18 --

2 MR. HARVEY: Your Honor, I can --

3 MR. KREUSH: -- and as far as all these other
4 witnesses that were allegedly not produced, there was
5 nothing preventing the Defense from calling them.

6 MR. HARVEY: Your Honor?

7 THE COURT: Yes, sir.

8 MR. HARVEY: Credibility of witnesses is a
9 standard charge that the Court charges a jury. I
10 don't know if the State is objecting to my credibility
11 of witness charge in particular, or the subject matter
12 of credibility of witnesses.

13 So if they're objecting, I don't see how the
14 State can object to a jury charge from Your Honor,
15 whether it's mine or the court standard charge. How
16 the jury is the arbiter of the credibility of
17 witnesses.

18 You know, I misunderstood the objection, or I
19 don't see a basis for there not being a jury charge
20 from Your Honor as to the credibility of witnesses.

21 THE COURT: The Court will charge on the
22 credibility of witnesses. I'm going to interrupt you.
23 Maybe the best thing to do is for me to give you the
24 charge that I have, and we can kind of go from there
25 as to whether anything needs to be added. But I will

1 certainly charge on credibility of witnesses.

2 MR. HARVEY: Your Honor, just a number of
3 witnesses, that's the typical charge in cases, expert
4 witness, they heard from the PR doctor. Your Honor,
5 certainly charges an expert witness. That's a charge
6 that's appropriate.

7 Your Honor, again, I'm not sure what the
8 objection is to the credibility charges.

9 MR. KREUSH: Your Honor, I'm going to withdraw
10 the credibility.

11 THE COURT: Yes, sir, we're going to take a
12 short break, and in the interim, I'm going to eat my
13 lunch, but also my Clerk is going to bring you a copy
14 of a charge so that you can review it, and we can go
15 from there.

16 Okay, I'll see -- y'all hang out. And then, I'll
17 come back in about, in about 15 minutes, like to talk
18 about the charges further.

19 (A lunch break was taken.)

20 THE BAILIFF: All rise! Court come to order.

21 THE COURT: Y'all can be seated.

22 All right. The Court has provided its proposed
23 charge. I recognized some minor issues in it, but let
24 me hear from the State.

25 MR. KREUSH: Your Honor, the only issue we have.

1 It might just be a typographical error -- on page 11.
2 Under "necessity", it says, "Defendant's raise the
3 defense of necessity in order to excuse the crime on
4 the ground of necessity. The Defendant must". And
5 that says three things, we just ask to prove --

6 THE COURT: You ask what?

7 MR. KREUSH: "Prove" -- the Defendant -- Your
8 Honor, the first paragraph under "necessity" --

9 THE COURT: Oh yeah, "prove".

10 MR. KREUSH: -- "The Defendant must prove three
11 things."

12 THE COURT: Yes, and it should actually be
13 "proved by the greater weight of the evidence."
14 That's one of the things I noticed -- because there's
15 no standard of proof listed there, and it's actually a
16 preponderance standard.

17 But so that I don't have to define all of that,
18 I'm just going to say "the greater weight of the
19 evidence." Anything else from the State?

20 MR. KREUSH: No, Your Honor.

21 THE COURT: Mr. Harvey?

22 MR. HARVEY: Yes, Your Honor. Your Honor, page
23 10 of 14 --

24 THE COURT: Yes, sir.

25 MR. HARVEY: Excuse me, please, for not standing,

1 Your Honor (stands up). I apologize. On page 10 of
2 14.

3 THE COURT: Yes, sir.

4 MR. HARVEY: There is a charge for assault and
5 battery of a high and aggravated nature. I just want,
6 at this time, to articulate for the record and review
7 where we are. That I have consulted with Mr. Kimble
8 and given him some advice as to what I believe could
9 be an objection and what could lead to charging --
10 because I had submitted charge of assault and battery
11 of a high and aggravated nature of a lesser-included
12 offenses --

13 THE COURT: Yes, sir.

14 MR. HARVEY: Lesser included offenses are not
15 contained in this jury charge.

16 THE COURT: Yes, sir.

17 MR. HARVEY: I want the Court -- excuse me, not
18 the Court, the record. The record -- for purposes of
19 the record, and I consulted with Mr. Clifton E. Kimble
20 about the jury charge and about the ability to object
21 to a jury charge.

22 He isn't aware of it, but I'm aware of what the
23 law is -- if there's evidence that could support a
24 lesser-included charge.

25 And after discussing this, Mr. Kimble advises me

1 and wants to move forward with the assault and battery
2 of a high and aggravated nature charge as is.

3 But, Your Honor, I just, out of abundance of
4 caution, where we have been in this matter, I wanted
5 that to be reflected in my comment to the Court.
6 Your Honor, that's all I have. Thank you, Your Honor.

7 THE COURT: Okay. State ready for closing
8 argument?

9 MS. BROWDER: Yes, ma'am.

10 THE COURT: Defense ready for the jury -- for
11 closing?

12 MR. HARVEY: Yes, ma'am.

13 THE COURT: Okay. Give me one moment.
14 You can bring the jury, please.

15 THE BAILIFF: (Complies.)

16 MS. BROWDER: Just real quick while you're doing
17 that.

18 THE COURT: Yes.

19 MS. BROWDER: Just make sure for the record, I
20 go, then Mr. -- and I give him a chance for a reply?

21 THE COURT: Yes.

22 (The jury enters the courtroom.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: Thank you. Welcome back, ladies and
25 gentlemen. It is now time for the closing arguments

1 of the attorneys, and my charge to you on the law, and
2 as I told you, after that, you will deliberate and
3 continue to deliberate until you've reached a verdict.
4 I don't know that, that microphone really works
5 anyway, y'all heard me, right?

6 MS. BROWDER: Yes.

7 THE COURT: Okay, good. So, I'm going to ask you
8 to give Ms. Browder your undivided attention for her
9 closing argument.

10 MS. BROWDER: Your Honor, may it please the
11 Court?

12 THE COURT: Yes.

13 STATE'S CLOSING ARGUMENT

14 MS. BROWDER: Control is something that everybody
15 wants and that everybody needs in their life -- but
16 it's something that can get out of control. And
17 someone can be greedy.

18 On June 5, 2020, Clifton Kimble got greedy. He
19 had everything he wanted. He had a girl who lived in
20 Columbia. He had his own place in Charlotte -- a
21 place that he approved of in Columbia. Came down to
22 help. He had a good relationship with Ms. Cupid.

23 And then, when she told him "no" on the night of
24 June 5, 2020, he didn't like it. And he took that
25 "no", and he started walking -- slowly or fastly,

1 depending on how quick he got back to -- [REDACTED] Claudia
2 Lane. And he stewed on it. He stewed on that "no,"
3 because she wouldn't give him a set of car keys.

4 And when he got back, he saw that there was
5 another "no", because she had put his stuff on the
6 front porch. He snapped. It was his actions that day
7 -- and his decisions -- that have you here today.

8 Now you've sat here for the past several days,
9 being attentive, listening to testimony, looking at
10 exhibits, and you hear about something that's -- most
11 people don't have to feel it -- don't have to think
12 about occurring in their lives. And Mr. Kreush and I
13 thank you for that. I'm sure Mr. Harvey does as well.

14 But as you sit here, now again, remember: this is
15 about Clifton Kimble's actions. His decisions. And
16 the consequences that have to come from those
17 decisions.

18 This whole time, everybody's been thinking: Ms.
19 Cupid versus Mr. Kimble. That's what the Defense
20 wants you to think. They forget about one person --
21 that one person who was laying down with his brother
22 that night to watch a movie. That person who hears --
23 the man who's been in their lives the last six years -
24 - yelling and banging on the door to let him in.

25 It's about the young man who heard his mother

1 yelling -- had began to leave, get out, leave, and
2 then hear his mother gasping for air, being slammed to
3 the ground and hearing her -- his mom dying.

4 He then hears the Defendant leave, and he goes in
5 there and he goes in there and finds her unconscious.
6 That's what they want you to forget -- that [REDACTED]
7 [REDACTED] was just as involved in this as everybody
8 else. And he's the one that had to call 911 that
9 night. He's the one that had to nurse his mother as
10 she could not remember who he was until law
11 enforcement got there.

12 This isn't just Ms. Cupid versus Mr. Kimble.
13 This is about the one other person in the house -- who
14 heard exactly what happened that night.

15 Now, before I get into the witnesses, I want to
16 talk to you a little bit about the law. Because, as
17 the Judge is going to tell you -- and as you've heard
18 kind of throughout this whole thing -- it's up to us
19 to prove to you beyond a reasonable doubt that Mr.
20 Kimble committed a burglary first-degree, assault and
21 battery of a high and aggravated nature, and
22 kidnapping. And Mr. Kreush and I welcome that one
23 hundred percent. That is our burden and we welcome
24 it.

25 Now, proof beyond a reasonable doubt is a proof

1 that leaves you firmly convinced. It doesn't require
2 proof that overcomes every doubt. It's not proof
3 beyond all doubt. It's proof beyond a reasonable
4 doubt. There's few things in life that we know occur
5 for certain: The sun rises in the east, sets in the
6 west. Mothers give birth to children.

7 There's few things that we know that are for
8 certain: nobody else was there that night, except for
9 Ms. Cupid, Mr. Kimble and I.O. [REDACTED] and the other
10 children who were asleep in the home.

11 Now, if based on your consideration of evidence,
12 you're convinced that he is guilty beyond a reasonable
13 doubt, you must find him guilty, ladies and gentlemen.

14 Now, if you don't, you must find him not guilty,
15 but I submit to you that we have shown to you beyond a
16 reasonable doubt, and I will get to the evidence and
17 the witnesses as to that in a second -- but that Mr.
18 Kimble is guilty.

19 Now, there's three separate charges that he is
20 charged with. The first is burglary in the first
21 degree, and you're gonna hear from the Judge that
22 burglary in the first degree is entering a dwelling --
23 which I don't think anybody disagrees that he entered
24 into a dwelling.

25 Mr. Kimble even said he entered into a dwelling

1 without consent. I don't think anybody disagrees with
2 that either. Because he also said he's claiming
3 necessity, and you're gonna hear that in a minute
4 about necessity and what the offense is.

5 But he's claiming necessity -- he
6 had to go into that house. Because he was scared.
7 Because he thought he was going to be hurt. So he
8 agrees. He went in without consent. So that's not
9 disagreed with. With intent to commit a crime in the
10 dwelling, and while in the dwelling, he injures
11 another who is not a participant in the crime.

12 So that's what you have to figure out, ladies and
13 gentlemen as to the burglary first. Did he go in with
14 the intent of hurting Ms. Cupid. And we submit to
15 you: he did. It started on the front porch. He
16 moved it inside. He strangled her, punched her until
17 she was unconscious, and then left her there.

18 Now the second, is assault and battery of a high
19 and aggravated nature. Assault and battery of a high
20 and aggravated nature. Is that the person commits the
21 offense if he unlawfully injures another person, and
22 the act is accomplished by means likely to produce
23 death or great bodily injury.

24 Now, the Defense may get up here and say, "Well,
25 she didn't have long lasting injuries", or "She wasn't

1 gonna die", but that's not what it is, ladies and
2 gentlemen. It's the substantial risk that it could
3 have happened.

4 You heard her testify, that she thought she was
5 gonna die. She was passed out, unconscious. And
6 great bodily injury, ladies and gentlemen, means
7 bodily injury which causes a substantial risk of death
8 or causes serious permanent disfigurement or
9 protracted loss or impairment by the function of a
10 vital memory or organ.

11 You've heard she had memory loss. Deputy Taylor
12 even told you on scene that he was really worried
13 about her because she was disoriented. She was
14 accused so much he had to call EMS. Dr Hayes tells
15 you that memory loss, dizziness, blunt force trauma to
16 the head can cause serious memory loss or other
17 injuries.

18 And then the last one you have is kidnapping.
19 And kidnapping isn't what you think it is when you see
20 it on TV. Somebody ties you up and takes somebody
21 away on a chair and sit there and put a light on them
22 and hold them for ransom. Kidnapping in South
23 Carolina has other definitions as well, and the ones
24 that you need to focus on is unlawfully seizes or
25 confines another.

1 So as he has her strangled up against the
2 dresser, she said she couldn't get away. She was
3 trying everything she could. She was stuck there.
4 She could not move. He seized her body. He confined
5 her to that area so he could continue pulsating on her
6 neck until she passed out.

7 That's kidnapping, ladies and gentleman. It
8 doesn't have to be for long periods of time. You
9 don't have to be tied up. In South Carolina, is for a
10 moment or second, where you are seized or confined.

11 Now, the witnesses, in this case, you heard, we
12 put up multiple witnesses and exhibits. And the way I
13 like to explain it to everybody is it's like a puzzle.
14 When you open a puzzle, you have all these pieces that
15 are kind of all over the place. You don't know what
16 the picture is going to show, but as you start putting
17 the pieces together. You start showing a picture.
18 That's what each witness in this case is like.

19 Now, to prove beyond a reasonable doubt, again,
20 we look at these puzzle pieces. The first is the 911
21 call -- and I'll get to the 911 call later too. But
22 the 911 call, I submit to you: is probably the most
23 important piece of evidence, because you hear in real-
24 time what is happening from I.O. [REDACTED]'s point of view, to
25 what he is hearing, to what he is perceiving, to what

1 he sees when he walks through that door and sees his
2 mother on the ground.

3 Deputy Taylor, again, so concerned about Ms.
4 Cupid that he calls EMS. She didn't know what was
5 going on. He knew she had some sort of head trauma,
6 and she wasn't making sense. He called EMS. The
7 Defense may try and say, "well, he didn't even do a
8 report that night." Okay. What does that have to do
9 with beyond a reasonable doubt whether he wrote a
10 report or not, you can see a picture right here
11 (indicating) from his body cam. His body cam was
12 recording the entire time. Why did he need to write
13 a report when his body cam showed everything he did
14 that night? If you look at this very close again, it
15 all comes back to I.O. I.O. is 14-years-old.

16 In State's 2 -- we don't have that one in -- so
17 it's okay. I'll just use this. This is State's 2
18 (heavy coughing) -- you can look, you will see I.O. .
19 He looks terrified. He looks scared. Either I.O. is
20 the best 14-year-old actor who conspired with his mom
21 from the time 911 was called, until law enforcement
22 got there, to create this whole story, or while he was
23 on the phone with 911 to create this whole story, or
24 it happened, as he said it happened.

25 He told you, when he got on the stand -- look at

1 him here (indicating). Look how scared he is, ladies
2 and gentlemen, that is not the face of a kid that's
3 acting. That's not the face of a child who knows
4 exactly what his mother told him. This is the face of
5 the kid who has never been in this situation. He
6 looks terrified. He doesn't know what's going on.
7 Police are at his door. His mother is holding
8 something over his face after he had just found her --
9 he arose her from being unconscious.

10 And if you listen, remember in his opening
11 statement, Mr. Harvey put up. D.I.D.T. -- Doubt in
12 Details? Think about it, ladies and gentlemen, what
13 details did I.O. give you -- he gave you when he was
14 on that stand testifying?

15 As you will hear on the 911 he was -- he heard
16 Cliff banging on the door. He heard his voice. He
17 knew his voice. He heard him say, "let me in".
18 There's a detail. He hears his mother being
19 strangled. And when asked, "What does that sound
20 like?" She's gasping for breath. She's gasping for
21 air. He was able to distinguish that sound versus
22 some other sound because he heard that happen.

23 He then talks about how he was trying to get in
24 the door. So then he hears Cliff leave, and he knows
25 it's Cliff because he gets in the car, he sees him

1 leave. He goes around that front, he walks in, and he
2 sees the chaos in that room, and his mother -- doubt
3 in the details.

4 What details did he miss there? Just because he
5 was not in that room doesn't mean he doesn't know what
6 happened. He could have been hiding in his closet.
7 It's called circumstantial evidence, ladies and
8 gentlemen, you're going to hear the Judge talk to you
9 that circumstantial evidence is just as important as
10 direct evidence.

11 When you look at Ms. Cupid, ladies and gentlemen,
12 she got up here, of course, she's not happy about this
13 whole thing. She didn't want this relationship to
14 end. Think about it. She had everything. She had a
15 great job here. She had her kids, Mr. Kimble, who
16 she'd been with for six years. And even though they
17 were -- might not have been together at that point --
18 she said they were on and off. She was happy with
19 him. He was helping her with the kids.

20 What does she gain from this? Absolutely
21 nothing. She had to move. She no longer has help for
22 her children. She no longer has her job here, because
23 she had to move back up north. She lost everything
24 because of this incident.

25 If this didn't happen the way she said it

1 happened. Why would she be here four years later,
2 talking about this? She would have just said, "I want
3 to stay up here" or "I'm not gonna come back",
4 because she lost everything because of what he did to
5 her that night.

6 And when you look at her injuries compared to his
7 -- and I'll get to exactly his too, how they could
8 have possibly occurred -- you start with the night of
9 the hospital. She's completely swollen on that side
10 of the face where he is left-handed. It is on her
11 right side of the face because that is a Selfie. It's
12 imposed. Because you can see on this one
13 (indicating), the next day -- it does show on the
14 right side of her face, when somebody else actually
15 takes the picture.

16 And you see the black eyes on this picture
17 (indicating). This is not from -- randomly falling
18 after hitting backwards on the filing cabinet. He
19 says he didn't punch her. How else does this happen?
20 She didn't punch herself to the point that her tooth
21 went through her lips so that she would have had to
22 have stitches.

23 And her back photographs wound up exactly like
24 she said by being pushed against that dresser and the
25 bruises that she was being strangled, they corroborate

1 her story from beginning to end.

2 I'm sure the Defense is going to get up here and
3 say, "Well, you know, there's a big height
4 difference." He made a point to have her stand up to
5 show that she was pretty tall compared to him. To Mr.
6 Harvey, she is 6'3", and Mr. Kimble's a little bit
7 smaller.

8 I don't know if anybody's ever watched the Rocky
9 movies -- but in Rocky 4, Rocky Balboa -- a little,
10 tiny guy, probably about my height, I don't know.
11 He's going against Ivan Draco, big, muscled Russian.
12 Rocky is the underdog all day long. Nobody thought
13 Rocky could even take down the old man from Russia.
14 Guess what -- he did.

15 So just because Mr. Kimble is smaller doesn't
16 mean that he can't do what he did to Ms. Kimble -- or
17 to Ms. Cupid. He was a football player, a defensive
18 back. He knows how to take someone down. He knows
19 how to get somebody bigger than him. That's not an
20 issue for him.

21 But let's be clear, ladies and gentlemen, like
22 Rocky, Mr. Kimble is not a hero in this. Rocky was
23 fighting for his country and for his fallen comrade.
24 Mr. Kimble -- he did this because of his pride. His
25 own pride from being told, "no". And from being in

1 front of that -- and not being let in the house after
2 she put his stuff on the front porch and said, "We're
3 done". He didn't like that.

4 Now, I'll get to talk to you a little bit later,
5 but I want to go ahead and talk about a couple things
6 I think the Defense may bring up. Just go ahead and
7 cut that off. I'm sure they're going to get up here
8 and say, "Well, where are the two other officers who
9 were on scene that night". Why did we have to put up
10 three officers who were on the scene instead of just
11 one? Deputy Taylor was there. Deputy Taylor talked
12 to the victim or talked to Ms. Cupid. He saw the
13 children. He saw her injuries. He called EMS.

14 What are those other two going to say that he
15 couldn't say. "Well, you know, they didn't put up
16 Investigator Vicki Rains,". Was she there that night?
17 No. Is she gonna be able to tell you what happened?
18 No. Who can tell you what happened is I.O. Ms.
19 Cupid and Mr. Kimble -- his story.

20 Then finally, what about this (indicating) Ring
21 camera? You know what Ladies and gentlemen, there's
22 not a Ring camera. But that doesn't mean it's not
23 beyond a reasonable doubt. It's not evidence that Mr.
24 Harvey wants it to be for beyond a reasonable doubt.
25 It's: Do you believe beyond a reasonable doubt?

1 Ladies and gentlemen, I mentioned these things
2 because, again, they want to take your focus off of
3 what we did. They don't want you to focus on [I.O.]
4 They don't want you to focus on Ms. Cupid. They want
5 you to focus just on Mr. Kimble.

6 While Ms. Cupid is the one who lost everything
7 that night. They want you to forget that [I.O.] or
8 that Ms. Kimble -- or Ms. Cupid. I'm sorry, Ms. Cupid
9 have black eyes. They want you to forget the fact
10 that she had a concussion. They want to forget the
11 fact that [I.O.] heard the yelling as he is calling
12 911.

13 And they want you to forget the fact that she had
14 been strangled. They want you to forget all of these
15 things. And what Ms. Cupid and [I.O.] told you,
16 because they don't want you to focus on those things
17 they want to use this Ring Doorbell or cameras over
18 here (indicating). Forget about that.

19 Now, the Defendant got up here and testified, and
20 you're gonna hear from the Judge and the defense of
21 necessity. And this defense of necessity, it's a
22 little bit different.

23 While we have the burden to prove to you, beyond
24 a reasonable doubt that this crime occurred, which we
25 submit to you it did. The Defense has to prove to

1 you, by a greater weight of the evidence, that it was
2 necessity. It's not for us to prove to you. It's for
3 them to prove to you greater weight of necessity.

4 I'm going to show you why, ladies and gentleman,
5 necessity does not apply here. Necessity has three
6 things that they have to prove to you.

7 The first: is there present and imminent
8 emergency arising without fault apart from the act or
9 concern. So, ladies and gentlemen, that's going to
10 come down to who you believe. Do you believe Ms.
11 Cupid, or do you believe Mr. Kimble? Do you believe
12 I.O. or do you believe Mr. Kimble? And I'll get to
13 some of his statements in a minute -- but keep that in
14 mind as part one.

15 The second is: the emergency of such a nature as
16 to induce a well-grounded apprehension of death or
17 serious bodily harm if the act is not done. Ask
18 yourself: how many times did you hear Mr. Kimble right
19 here (indicating) -- from the stand -- say he was
20 worried about death from Ms. Cupid? Zero. How many
21 times did you hear him say he was worried about
22 serious bodily harm? Zero. And look at his injuries,
23 ladies and gentlemen. Does this (indicating) look like
24 any of those things? No. So the second prong they
25 have to prove.

1 And the third that they have to prove -- which
2 all of these have to be proved, is that there's no
3 other reasonable alternative, other than committing
4 the crime to avoid the threat of harm. You heard him
5 testify he could have gone out one of the other doors.
6 He said that. He could've run back to his car, ladies
7 and gentleman. He said she was in the way. He was a
8 football player. He knows how to block he knows how
9 to push somebody out of the way. He could've gone
10 back to his car. But he didn't.

11 He chose to go into that room, according to his
12 story. And then, he opened the door to her. He was
13 so scared of death or serious bodily harm -- he opened
14 the door and let her in. None of that stands up for
15 necessity, ladies and gentlemen. So we submit to you:
16 you cannot find that they have proved necessity in
17 this case.

18 Now, what Mr. Kimble got up there and told you,
19 ladies and gentlemen -- "Doubt in the details." Look
20 at his details. When asked how long it took him to
21 walk back, he was like, "I don't know, 15 minutes
22 maybe." Think about it, ladies and gentlemen. An
23 eight-minute drive is not a 15-minute walk back. An
24 eight-minute drive is at least a 45-minute walk back.
25 Of course, that's for you to determine, use your

1 common sense.

2 But he walked back that time. He didn't even --
3 couldn't even tell you what way he went. He said he
4 went over on Oneil Court. But when I confronted him -
5 - "Well, why would you have gone on the Oneil Court?
6 That's the opposite way?" He said, "Oh, I didn't
7 really know the area." But yet, he said he'd been
8 down here all the time to be with them, hang out with
9 them. You would know which way to go, to go back to
10 the house.

11 Of course, he said he was so concerned with her,
12 he was going to get ice. Okay. Why couldn't he have
13 gotten ice in the house if he didn't want the kids
14 involved? Yet he left her alone with the kids there.
15 He would have heard I.O. screaming as he's on 911,
16 because I.O. was on the phone with 911.

17 You'll hear and then he heard him leave, so he
18 ran around so he could have heard I.O. at that door.
19 He knew I.O. was already involved. He ran and he
20 left, and he didn't come back, because he knew what he
21 had did was wrong.

22 He wasn't going to get ice. He could have gotten
23 an ice pack. Like I said. He could have gotten peas
24 or green beans or something out of the freezer. He
25 was not coming back. He left because he was mad. He

1 knew what he did was wrong, and he didn't want to face
2 the consequences.

3 And he says, "You know, she was mad, she was
4 calling me. She was doing all these things. She was
5 texting me." Well, text messages -- I'm not sure
6 where they went, but look at them again. Those aren't
7 all there.

8 Conveniently, the text messages go up to the
9 point that him and Ms. Cupid agreed to what was going
10 on that day. He was coming over to help [I.O.] what
11 was going on with therapy session, all of that. But
12 conveniently, those text messages are gone.
13 Conveniently, he says he's in a fetal like this
14 (indicating). She's hitting him all over in the back
15 -- where are the pictures from his bruises on his
16 back, they're not there.

17 And if you look at his injuries -- ladies and
18 gentlemen -- again, use your common sense and think of
19 it: If somebody's strangling you, what are you trying
20 to do to get off of them? You scratch at their neck
21 and their hands.

22 If he had a scratch on his hand, like he said he
23 did. Maybe it's because he was strangling her and she
24 was trying to get him off. This on your neck
25 (indicating) -- it's exactly that, "Please get off of

1 me. Get off of me."

2 This right here (indicating). You don't get this
3 from defending yourself. If you're in a fetal
4 position, you're like this (indicating). You're not
5 up like this (indicating). This is from her defending
6 herself.

7 And ladies and gentlemen, honestly, I don't know
8 what this picture shows. He says his lip is swollen.
9 He says he's got something on his head -- that's up
10 for you to determine. That picture (indicating) and
11 this picture (indicating) . You tell me what really
12 happened.

13 Now I, when I was younger -- six -- I had a cast
14 on my arm. And my brother -- he's three years younger
15 than me -- he had a grape soda. I love grape soda. I
16 wanted some, he said no. He told me, you can't have
17 any because it was his.

18 As he went to drink it, I flipped it like this
19 (indicating) and bust his lip open. I thought, I
20 can't get in trouble -- I gotta cast on my arm. My
21 parents won't do anything to me. But guess what?
22 Good people can do bad things, sometimes. Looks can
23 be deceiving, sometimes.

24 In that case, I got my butt whooped. There were
25 still consequences to what I did. Mr. Kimble may have

1 had great high school careers, had some things happen
2 to him. He may be a good person, but sometimes good
3 people do bad things. They snap -- in the moment.
4 Just like I snapped with my little brother that day
5 because he told me no.

6 Sometimes, the simplest explanation is the right
7 explanation. Ms. Cupid got nothing out of this. She
8 had to move. Kids had a new school. She has no help
9 with the kids now. Use your common sense.

10 I want you to listen again, ladies and gentlemen.

11 (The 911 call is played.)

12 You can't make that up. At 14 years old, [I.O.] had
13 experienced something that he should have never had to
14 experience.

15 As Clifton Kimble cowardly ran away leaving
16 Melissa Cupid on the floor, [I.O.] became the man of
17 the house, and he had to take over and take care of
18 his mother.

19 "Doubt in the details"? There's no doubt in the
20 details. Ladies and gentlemen, he did it. He did it.
21 Find him guilty.

22 THE COURT: Mr. Harvey?

23 MR. HARVEY: I beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. HARVEY: May it please the Court?

1 THE COURT: Yes, sir.

2 DEFENSE CLOSING ARGUMENT

3 MR. HARVEY: Good afternoon. Afternoon, ladies
4 and gentlemen of the jury, one thing I didn't do out
5 of respect for my colleague, was object during her
6 argument. Just one thing I want you to know, whether
7 it's what I say or what she says about the evidence,
8 it's up to you to determine what the evidence is.

9 The presentation by the State and their spin on
10 it -- or "Rocky Balboa" -- or any other movie that
11 you've seen, or any childhood incident with a cast on
12 an arm. That is, in fact, your job -- as Her Honor
13 will instruct you.

14 Your sole job is to find the facts, to find out
15 what happened. So I want you to understand -- I agree
16 with my colleague from the Solicitor's Office: the
17 Defense is going to talk about what the Sheriff's
18 Office didn't do.

19 What the Defense is going to talk about -- and we
20 just heard -- because I.O. on that 911 tape says he
21 hears things. I.O. says -- I don't doubt this
22 happened -- he said he found his mom on the floor, but
23 that was after he heard a loud bang.

24 I.O. can tell you what he heard, and a lot of
25 what I.O. heard is consistent with what you've heard

1 from that stand. There's testimony about her banging
2 on the door, there's testimony about her falling --
3 [I.O.] heard that. And I don't doubt [I.O.]'s
4 sincerity.

5 And in retrospect -- so you know -- being a
6 lawyer is similar in this aspect to being a coach or
7 an athlete. You always look at the game film, and wish
8 you had been in this position or called that play.

9 So when I talked to [I.O.], maybe in retrospect, I
10 needed to have the perspective that [I.O.] is a 14 year
11 -- was a 14-year-old kid, good kid. He loves his mom.
12 He's doing the best that he can, and he's doing the
13 best that he can on that tape. He is.

14 But sincerity isn't the test of credibility. I
15 don't doubt [I.O.]'s sincerity -- nobody does. But as
16 the prosecutor mentioned, it was an impassioned
17 moment.

18 [I.O.]'s 14. You've met and heard from [I.O.]
19 I'll let you decide about [I.O.]. I think he's doing
20 the best that he can. But I don't think [I.O.] gave a
21 100% report on what happened. There's no doubt [I.O.]
22 reported on what he heard and saw. But [I.O.] started
23 his testimony that he was in a back room where there's
24 other siblings, and they were getting ready to watch a
25 movie.

1 And I.O. [REDACTED]'s testimony was he found her mom and he
2 found -- excuse me -- his mom. He found his mom at
3 the conclusion of the event. So I also agree with my
4 colleague from the Solicitor's Office: that this is
5 the phase of the case, the part of the case where I
6 thank you for being here. I thank you for your
7 attention. I thank you for your diligence.

8 And I do, because I know how it's been a short
9 trial, but it's very difficult. And I appreciate your
10 attentiveness. I appreciate your devotion to the
11 solemn oath that you took.

12 I appreciate your devotion to that solemn oath
13 that you took that the State must prove Mr. Kimble's
14 guilt beyond a reasonable doubt.

15 You know, as I speak to you, I would like to be -
16 - since we talked about movies -- I'd like to be like
17 a lawyer in a movie or on a TV show. Because when you
18 watch those lawyers and their summations, they take
19 about two and a half to five minutes. I wish I could
20 do that. But this case is so important to my client,
21 I owe it to him -- and y'all owe it to him -- to go
22 with me as we review where the reasonable doubt is
23 going to come in where he showed, by the preponderance
24 of the evidence, the defense of necessity.

25 Now the State mentioned the Defendant's burden

1 and Her Honor will charge you at the end of the case
2 about the defense of necessity. So let me put it to
3 you this way, if I may. Let me draw an analogy.
4 Beyond a reasonable doubt is; you get the ball on your
5 side of the field, you break your goal -- 1 to the
6 20,40,30 -- and beyond a reasonable doubt is you take
7 it to the other team's end zone and you score.

8 Listen to what Her Honor will tell you about Mr.
9 Kimble's defense of necessity by a preponderance -- by
10 preponderance. And whatever Her Honor says about the
11 law is what you must take the law as it is.
12 It's not what Jonathan Harvey says the law is. It's
13 not what the Solicitor's Office says the law is. It's
14 what Her Honor will tell you.

15 And her honor will tell you as to the defense of
16 necessity -- he's got to get the ball across the 50.
17 Beyond a reasonable doubt -- it's going to be in that
18 end zone. And you got to be firmly convinced. You've
19 got to hesitate to act to find him guilty.

20 We heard from lots of witnesses -- not a
21 multitude -- but each witness was important. Each
22 witness was important to the State, and each witness
23 was equally important to Mr. Kimble.

24 You heard from the 911 call. Then you heard --
25 and I'm not sure if it was exact sequential order --

1 we heard from Deputy Taylor. But before we even get
2 into Deputy Taylor, let's talk about reasonable doubt
3 one more time -- and let's talk about what's doubt,
4 what is not in doubt.

5 My client is not asking you to be a doubting
6 compass about what's in doubt and what's not in doubt.
7 When? June 5th, 2020. Where? [REDACTED] Claudia Drive. And
8 who? We know the "who". We know the "who", Mr.
9 Kimble and Ms. Cupid. Is anyone asking you to doubt
10 that?

11 What is in doubt is the what. What happened?
12 That's the salient issue -- what happened. On the
13 10th day of December at 12:10 in this courtroom, I
14 asked the Richland County Sheriff's Department
15 employee who took the initial report: Was the
16 Sheriff's Department informed about the cameras.
17 12:10, on the 10th day -- it just struck me -- the
18 12th -- 12:10. 12:10 -- and you all heard that the
19 Sheriff's Office was informed that there were cameras.

20 You heard about Ms. Cupid's memory loss. You
21 heard Ms. Cupid testify about her memory loss and how
22 it just came back in sequence. And Ms. Cupid -- as I
23 recall her testimony -- and again, when I use the
24 phrase "recall," that's my recalling evidence.

25 I ask each and every one of you to use your own

1 memory to recall. Listen to what Her Honor will tell
2 you about that. You've got to use your own
3 deliberation. You've got to recall what Ms. Cupid
4 said. "Oh, because I'm remembering testimony, my
5 memory is all coming back. It's all came back to me
6 today."

7 Well, what's the one thing that could have
8 cleared up those memory issues? Why -- I beg your
9 pardon -- as I look for the exhibits (looking through
10 the exhibits.) Why was Mr. Harvey asking these
11 questions about the video camera? Why was he asking
12 the representative from the Sheriff's Department? Why
13 did he ask Ms. Cupid? Why did he introduce these
14 photographs of the house -- Defense Exhibit Number 9,
15 which shows the porch, okay, which shows the railing
16 on the porch.

17 Defense, Exhibit Number 8, the porch with the
18 railing on the other side of the porch.
19 So when a prosecutor said, "Well, he could have just
20 gone off the porch." It's locked in. It's a
21 photograph of the angle from the camera that Ms. Cupid
22 testified were operating at the time of this incident.
23 What's the one thing that could have cured that
24 memory?

25 What's the one thing that could present it to you

1 all? Because who's got the burden of proof? Listen to
2 what Her Honor will tell you. Who's got the burden of
3 proof? Listen to what Her Honor will tell you about
4 robes and innocence. Who's got the burden of proof?

5 Look at that angle. What would it depict? What
6 did Mr. Kimble say happened? I'm sure there's going
7 to be some spin, because whatever Mr. Harvey says has
8 to be spun. Because you just you can't listen to him
9 -- there's gotta be another reason.

10 But guess what you don't have? You don't have
11 that video. I'll let you -- you heard argument from
12 the Solicitor. Ms. Cupid's been around on this case
13 for a long time. How hard would it have been to get
14 that video from that app?

15 Ask yourself, what life was -- I asked you to use
16 what you've learned from life, and what life teaches
17 you. How burdensome of a task was that? What's
18 common sense tell you? Well, it doesn't matter what
19 someone says after I sit down -- those facts are
20 before you.

21 While we're on the subject of Ms. Cupid -- I
22 asked Ms. Cupid some questions because that's what I'm
23 supposed to do. And what, what I wanted you all to
24 hear and see is -- I wanted you to meet and hear from
25 Ms. Cupid.

1 Now, Ms. Cupid, is essential to the State's case.
2 I agree with my colleague that I.O. [REDACTED] certainly --
3 I.O. [REDACTED] certainly could testify to circumstances that he
4 observed -- that I.O. [REDACTED] observed. But when we talk
5 about Ms. Cupid -- Ms. Cupid, there's really -- I'm
6 sure they're going to show you the picture again. We
7 know -- I knew what the doctor said, but no one's
8 doubting Ms. Cupid sustained some injury.

9 The issue is the what, and how it happened, and
10 it's dependent -- the doctor wasn't there. The doctor
11 wasn't there. And the doctor saw Ms. Cupid. He
12 ordered CT scans that are -- all know are remarkable.
13 The doctor talked with her. Did the doctor talk to
14 you about any back injury? And the doctor felt based
15 upon what he did at that time, what he knew and
16 experience -- you heard his experience. He's a lawyer
17 and a doctor, a lawyer and a doctor, so he's got a
18 unique perspective.

19 He even mentioned about brain injury lawyers in
20 his testimony. Remember, so someone with that
21 knowledge, that expertise, he felt comfortable in
22 releasing her that day. She wasn't admitted. He
23 said, memory can occur and cannot occur.

24 A concussion can occur with or without a loss of
25 consciousness. Recall his testimony about what he

1 didn't observe on Ms. Cupid. So one of the things
2 that's interesting about Ms. Cupid's testimony is --
3 she states she came onto the porch. She states she
4 struck him.

5 Now, one of the things you heard the prosecutor
6 make a big deal about was he graduated from high
7 school in 1994. He was a pretty good high school
8 athlete. Okay. And because he was a good high school
9 athlete, that means that -- boy fast forward to 2020 -
10 - he must be a bad guy using those skills because he
11 played football 20 years ago or longer.

12 Okay. Now, one thing you can't shake -- as I
13 introduced into the evidence -- a picture of Mr.
14 Kimble, Ms. Cupid, and the children.

15 And remember, I asked Ms. Cupid, where Mr. Kimble
16 came to her, and I said, "the elbow." And she
17 corrected me, "No, it's more in between my shoulder
18 and my elbow."

19 You can't change 6'3", 275 -- look at the stature
20 of Ms. Cupid, 6'3", 275 by her own admission. Okay,
21 look at this (indicating). Look at Ms. Cupid when she
22 stands next to Ms. Browder.

23 Now, she testified her memory all came back and
24 she mentioned a neighbor brought her to the hospital.
25 You hear from a neighbor? You hear a neighbor's name?

1 Oh, Mr. Harvey's gonna make a big deal about what Mr.
2 Taylor did. But didn't Mr. Taylor mention there were
3 other deputies at the scene? Did you hear from any
4 deputy at the scene who bothered to walk around the
5 house with your body camera and ask anybody, "hey,
6 where did this happen? What happened"? Deputies with
7 body cameras -- someone didn't write a report.

8 How else can you spin it? He had his body
9 camera. But three deputies, who were called there for
10 this serious situation, did not bother to write a
11 report.

12 Of course, they're going to be -- I don't know
13 how to say it, but let's belittle what Mr. Harvey
14 said, and point out the irony. Just -- gosh -- that's
15 what he said.

16 Is that a "doubt in the detail", is that a detail
17 that would have helped you? What's the one thing that
18 would have helped Ms. Cupid's memory loss? That
19 video.

20 Now, about -- I can't remember how long ago --
21 but I asked Ms. Cupid questions, whose memory suddenly
22 came back all today, about questions with the
23 landlord. I ask you to recall the questioning by me
24 of Ms. Cupid asking Mr. Kimble -- I have a funny way
25 of speaking. Maybe my vernacular wasn't clear -- but

1 the gist of the questions was: did Mr. Kimble, at your
2 request, call the landlord or try to interact with the
3 landlord? What was her response? Emphatically no.
4 Emphatically no.

5 What does the Defense exhibit of the text
6 messages show you? "Come down here" -- I.O. [REDACTED]'s got a
7 therapy appointment to try to schedule the therapy
8 appointment, and there's an exchange in text messages
9 back and forth about getting in touch with the
10 landlord. "I can't get in touch with the landlord
11 without your permission." There's back and forth
12 about what they try to do to talk to the landlord.
13 Oh, the Solicitor might say, "Well, that's not that
14 significant." Really? Really? When you're being asked
15 to believe a sequence of events, you got to look at
16 what you heard from this stand and decide about the
17 credibility of the person who can tell you how it
18 happened.

19 And by the same token, I'm sure my colleague from
20 the Solicitor's Office is going to come and follow me
21 to talk about the credibility of Mr. Kim [sic], you're
22 going to have to decide about Mr. Kim [sic] -- excuse
23 me, Mr. Kimble -- I apologize in my haste to argue.

24 I said -- I didn't mean to say Mr. Kim [sic]. So
25 I want to apologize to Mr. Kimble and apologize to all

1 of you for that slip of the tongue. That's on me.
2 Don't let my slip of the tongue be on Mr. Kim [sic].
3 Mr. Kimble -- here we go again.

4 Okay, all right. You've heard from him. You
5 heard about where he's from, what he's done, his
6 involvement with Ms. Cupid, and why he was down there
7 that day to help her son with his therapy. Then he
8 stays, he testifies, he has dinner at the house.

9 You know, again, Ms. Cupid -- there are
10 inconsistencies with her statement. And was it the
11 Food Lion? Was it the Smoke Shop? And why would
12 someone just not want to be forefront? And then, what
13 did having a weed permit in Pennsylvania have to do
14 with what you said you went to do originally. What
15 does that tell you about credibility and
16 believability?

17 Her Honor is gonna charge you on the law. In
18 this case, Her Honor is gonna give you instructions
19 about how you are to apply the law to the facts as you
20 determine it.

21 One of the issues of law -- you're gonna have to
22 determine -- is necessity. What does that mean? What
23 that means is -- excuse me -- what that means is, when
24 Mr. Kimble, as he testified he came to that porch, Mr.
25 Kimble testified that he was not the party that

1 initiated the physical contact.

2 Mr. Kimble talked about how he was on the porch,
3 which is closed in on both sides. She's blocking the
4 hallway, and Mr. Kimble described his motion in that
5 clockwise rotation on this porch (indicating) as he
6 moved on this porch (indicating) clockwise to the door.

7 He's rotating clockwise to the door. Why was it
8 necessary? There was an altercation that he didn't
9 initiate. He couldn't avoid being seriously harmed,
10 and he said he went in to that house -- what were his
11 words "for protection."

12 At the time he entered that house, he did so for
13 protection -- because, listen to what Her Honor will
14 instruct you that must accompany every physical act in
15 this case. Listen to what Her Honor has told you
16 you've sworn to do, which is listen to Her Honor and
17 apply the law to the facts.

18 Listen to what Her Honor will tell you about his
19 intent when he went into that home... protection.
20 When he went into that home, he didn't have the intent
21 to commit a crime. He did not have the intent to
22 commit a crime. He has proven to you, he's gotten the
23 ball to the 50, and he's working his way to the
24 opponent's goal on the defense of necessity.

25 You heard from the Solicitor what the elements

1 are, and you're going to hear from Her Honor again,
2 what the elements of necessity are. Then you're also
3 gonna hear from Her Honor that every charge in this
4 case must be accompanied by criminal intent.

5 And one of the other things that this case may
6 involve -- and you may hear a charge about direct
7 evidence, circumstantial evidence and credibility --
8 and this is the State's case right here on top
9 (demonstrating by stacking water bottles one on top of
10 the other).

11 But if you have a doubt -- somebody drank some of
12 the water that I was gonna use to balance -- okay,
13 direct evidence, circumstantial evidence, credibility,
14 circumstantial evidence, direct evidence and
15 credibility: The State's case -- still can't do it
16 (trying to stack the water bottles). But I'm
17 determined to do it, and I did it earlier.

18 What -- the point is -- credibility -- Ms. Cupid.
19 I'll never make it in the circus as a juggler. Y'all,
20 I probably wouldn't make it doing much else than being
21 a lawyer, but I'm giving it the best shot to my client
22 to illustrate the point.

23 I'm having a hard time illustrating the point,
24 but you get the point. What happens when credibility
25 of the State case goes? What happens when the

1 credibility on simple matters with Ms. Cupid didn't
2 convince you? What happens with credibility? What
3 happens to the State's case?

4 Let's move away credibility. The case collapsed.
5 You haven't been shown beyond a reasonable doubt.
6 That never happened to *Matlock*, did it? It worked on
7 the first try for him, right? Well, it didn't work on
8 the first try for me because I'm engaged, I'm
9 enthusiastic, and I'm fighting hard for my client.
10 Because this is so, so, so important for him.

11 Her Honor, is going to remind you -- I submit
12 with the jury charges -- that the fact that he's been
13 charged and arrested and indicted isn't evidence in
14 this case. Listen to what Her Honor will tell you
15 about that. Listen to what Her Honor will tell you
16 about the presumption of innocence, because it's going
17 to be very thorough, and I urge you to pay attention
18 to her charge on presumption of innocence.

19 I urge you to pay equal attention to Her charge
20 of unreasonable doubt, then Her Honor will explain to
21 you, do you hesitate to act? Have you been firmly
22 convinced? Because if you haven't been firmly
23 convinced, it's your sworn duty to equip.

24 Her Honor's gonna charge you about the
25 credibility of witnesses. So you're going to find

1 out, oh, this isn't something that Mr. Harvey pulled
2 out of the hair just to get your attention.

3 Listen to what Her Honor will tell you about the
4 credibility of witnesses, and what you can do. Her
5 Honor will tell you about expert witnesses. And as we
6 talk about expert witnesses, I ask you to recall the
7 doctor's testimony because the doctor's testimony was
8 he made a diagnosis -- he testified that there were
9 no testimony of complaints or injuries to the fact all
10 CT scans were negative. Concussions can occur without
11 the loss of consciousness. No bruising on her throat
12 area. We know from his testimony the injuries
13 occurred from blunt force trauma because he said so.
14 And we know blunt force trauma can occur in many ways.
15 And we know from the testimony that there was a fall,
16 and the doctor said a fall can be blunt force trauma.
17 Imagine 6'3", 275 falling on this floor. Imagine
18 6'3", 275 falling on the floor and injuring her face.
19 There was no surgical procedure. There was no
20 anesthesia, there was no permanent treatment.

21 I had mentioned to you earlier, when I first met
22 you about using common sense. I want you to use
23 common sense about what Dr. Hayes gave for the reasons
24 that he ordered the scans and what the scans didn't
25 show you. And what Dr. Hayes also talked about the

1 absence of injury in the eye area.

2 Listen to what Her Honor will tell you about
3 someone being merely present. And listen to what Her
4 Honor will tell you about necessity. And what Her
5 Honor will tell you about finding a doubt.

6 So these (indicating), are going to go back to
7 the jury room. I ask you to look these over and look
8 at the part that was so emphatically denied.
9 Emphatically denied because you're going to have the
10 Defense exhibits that display Mr. Kimble's injuries.
11 Mr. Kimble testified about what happened in the
12 incident. The key -- keys that Mr. Kimble had, the
13 physical disparity, the layout of the house where
14 I.O. says he was in a different part of the house
15 that will go back. All the exhibits are to go back.
16 I ask you to use that common sense in what you know
17 about life as you weigh the exhibits.

18 Now the good news is: I'm almost done. But one
19 of the things I want you all to understand -- and I
20 thank you for being patient, I really do -- and I know
21 you're patient because I know all of you are thinking,
22 if I were in Mr. Kimble's shoes --

23 MS. BROWDER: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. HARVEY: I know all of you are being patient

1 because you know what's important to do. Now, the
2 State will have the last argument. The State gets the
3 last argument because, under our system of justice, I
4 guess it's always viewed as the "home team," and they
5 get the last battle.

6 As you listen to the Solicitor make her argument,
7 I want you to keep in mind: How would Mr. Harvey have
8 responded on that subject if he could respond? Keep
9 in mind, what Mr. Harvey would say if he were given an
10 opportunity to respond? And while we're on the
11 subject of Mr. Harvey -- while we're on the subject of
12 Mr. Harvey -- it's a big, tall subject. Okay. I want
13 to make sure that you all understand that if I've done
14 anything, if I've done anything during the trial -- my
15 latest episode with water bottles included -- if I've
16 done anything during this trial that's caused you to
17 think of Mr. Kimble in a negative way, don't hold that
18 against Mr. Kimble. Don't hold that against him.
19 Don't hold my zealousness. Don't hold my advocacy
20 against Mr. Kimble.

21 So I urge you, if I've done anything, don't hold
22 that against Mr. Kimble. I'm confident that you will
23 give Her Honor, and Her Honor's charges your undivided
24 attention. I'm confident that after you apply the law
25 of this case, you'll allow Mr. Kimble to leave this

1 courtroom as he came in.

2 Because -- listen to what Her Honor will tell you
3 about the robes of justice. Remember what I told you
4 about the cloaks of innocence. Allow Mr. Kimble to
5 leave this courtroom as he walked in: an innocent man.
6 Thank you.

7 Your Honor, I'm going to collect the water
8 bottles.

9 THE COURT: Yes, Sir.

10 MR. HARVEY: Madam Clerk, thank you.

11 THE COURT: Ms. Browder?

12 MS. BROWDER: How would Mr. Harvey respond when I
13 say to you to use your common sense about the Ring
14 photo or the Ring camera. When I tell you in 12:10 --
15 at 12:10pm, Ceara Forbes, the Richland County Deputy
16 took the incident report, wrote down in it, Ms. Cupid
17 said it should show it. Ms. Cupid was never trying to
18 hide that video. If it didn't happen, how she said it
19 happened, why would she tell them about the video?
20 Use your common sense.

21 Height difference? You can punch someone that
22 takes that height and suffer out real quick when they
23 fall to the ground. Ladies and gentleman, it doesn't
24 matter how big you are, how small you are. When you
25 punch somebody and sucker punch them, and they go to

1 the ground, you're winning now. You're on top of
2 them.

3 And I'm going to submit to you that the way he
4 explained reasonable doubt -- if you have to get all
5 the way in the end zone -- that's beyond every doubt.
6 Ladies and gentlemen, a score is a score. A field
7 goal -- that's not all the way in there. But just
8 because you don't have that Ring camera, it's a score.
9 It's a win. Those are points. And when you look at
10 the puzzle pieces -- as you put them together beyond
11 every doubt -- just like a touchdown would be up --
12 beyond every doubt you had, if there was a 100-piece
13 puzzle and you have all 100 pieces, just because a
14 couple pieces might be missing here or there, you can
15 still see the big picture and say, beyond a reasonable
16 doubt what that puzzle was made of.

17 Just because I.O. heard things doesn't mean he
18 doesn't know what happened.

19 When he put his little bottles up here, he saw
20 direct and circumstantial evidence were right next to
21 each other. I.O.'s testimony is just as important as
22 what Melissa said happened. And she didn't sit up
23 here and say, "Oh, all of a sudden, I got it back
24 today, as I'm testifying." She said, "Today, I have
25 all of my memory back now," because the doctor said it

1 could come back over time. And she said it has come
2 back in pieces over time. She did not sit there and
3 say it came back all of a sudden, while she was
4 sitting on the stand.

5 And as to Dr. Hayes -- as it's unremarkable --
6 well, you've heard him say "bruises can come up
7 later." Well, that's exactly what this shows in the
8 hospital. She doesn't have black eyes the next day at
9 the Sheriff's Department. And guess what? She might
10 not have had bruises on her back at the hospital, but
11 the next day, a couple days after, she sure did. Just
12 like those (indicating). Just because it's
13 unremarkable that one day doesn't mean they don't come
14 the next day or the next after that. Use your common
15 sense about how you get bruises. Sometimes I get
16 bruises. I don't even know where they came from. You
17 don't know when you got it. They might show up the
18 next day.

19 And he said, a concussion can happen without a
20 loss of consciousness. It can also happen, let's not
21 forget, ladies and gentlemen, that strangling somebody
22 to the point that they're unconscious or that they
23 can't breathe, which you can hear strangling again use
24 your common sense. You can hear somebody being
25 strangled. You hear the gasping from here. You hear

1 the gurgling, just like I.O. said that he heard, that
2 can cause serious bodily harm. That's meant -- you
3 use your common sense. If somebody's being strangled
4 to the point that they can't breathe, that can cause
5 death.

6 Assault and battery of a high and aggravated
7 nature. Doesn't have to be it did happen; it's got to
8 be that it's a substantial risk of occurring.

9 He wants to make a big deal about -- she couldn't
10 remember about the landlord. Okay -- she couldn't
11 remember if it was a Smoke Shop or a Food Lion. Is
12 that all he's got.

13 There's two minute details that have nothing to
14 do what have happened. She remembers now everything
15 that happened that day because that was a traumatic
16 incident for her. I.O. remembers everything that
17 happened because it was a traumatic incident for him.
18 He may not remember what time his therapy session was
19 every Monday -- because that wasn't important to him.

20 Just like it may not -- think about what you were
21 doing, ladies and gentlemen, do you remember what you
22 were texting somebody four years ago? My guess is you
23 don't.

24 So dumb little details like that -- don't go for
25 those little details ladies and gentleman. That's

1 just stuff normal people forget from day to day,
2 average places.

3 As for necessity -- pay attention -- because he
4 leads everything up to what happens in that room. He
5 switches everything, exactly as Ms. Cupid said it
6 happens. Everything is exactly the opposite -- until
7 he decides that he wants to be the one that's the
8 victim in this case.

9 He didn't go into that home first. He pushed her
10 in -- up against the dresser -- that caused those back
11 injuries. He then punched her, so she's on the floor.
12 And he told you, back four years ago, he was in great
13 shape. He said, "Maybe not today I'm not, but back
14 then I was". Playing football in high school doesn't
15 mean you're not in good shape now as you were back
16 then.

17 He went in. He strangled her. He punched her to
18 the ground. It's time now for that cloak of innocence
19 that he's had on him to be ripped off -- and you find
20 him guilty.

21 **JURY CHARGE**

22 THE COURT: Okay, ladies and gentlemen, it's now
23 time for me to charge you on the law which applies to
24 this case. I remind you that during this trial, you
25 and I have certain duties to perform. As the trial

1 judge it is my responsibility to preside over the
2 trial of this case. And I also have the duty to rule
3 on the admissibility of the evidence offered during
4 this trial.

5 You are to consider only the competent evidence
6 before you, including the testimony which has been
7 presented from this witness stand, any exhibits which
8 have been made a part of the record in this case, and
9 any stipulations of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding Judge, I am
12 the sole Judge of the law of this case, and it is your
13 duty as jurors to accept and apply the law as I now
14 state it to you.

15 If you already have any idea as to what the law
16 is or what the law ought to be, and it does not agree
17 with what I now tell you the law is, you must abandon
18 this idea. Because you are sworn to accept the law
19 and apply the law exactly as I state it to you. In
20 every case tried in this court before a jury: the jury
21 becomes the sole and exclusive judges of the facts.

22 A trial judge cannot intimate, state, comment on
23 or make any statement to a trial jury about the facts
24 in a case. Since you, the jury, are the sole judges
25 of the facts in this case, do not infer from anything

1 that I have said or done during the progress of this
2 trial, or anything that I say to you now during the
3 course of this, this instruction to you, that I have
4 any opinion about the facts in this case.

5 The law does not allow me to have an opinion
6 about the facts in this case, this is a matter solely
7 for you, the jury, to determine.

8 The indictments charge the Defendant with assault
9 and battery of a high and aggravated nature, burglary
10 first degree, and kidnapping.

11 I remind you that the fact that the Defendant was
12 arrested, charged, and indicted is not evidence in
13 this case, and cannot be considered by you as evidence
14 of guilt in this case. Nor do they create any
15 presumption of inference or guilt.

16 These documents are simply the formal written
17 instruments which contain the charges made against the
18 Defendant. They are the formal documents by which
19 this case was brought into this court.

20 The Defendant has pled not guilty to each of
21 these indictments, and that plea puts the burden on
22 the State to prove the Defendant guilty of each of the
23 offenses charged in each of these indictments.

24 A person charged with committing a criminal
25 offense in South Carolina is never required to prove

1 himself innocent.

2 I charge you that it is an important rule of the
3 law that the Defendant in a criminal trial, no matter
4 what the seriousness of the charge may be, will always
5 be presumed to be innocent of the crime for which the
6 indictment was issued, unless guilt has been proven by
7 evidence satisfying you of that guilt beyond a
8 reasonable doubt.

9 This presumption of innocence does not end when
10 you begin your deliberations, but it accompanies the
11 Defendant throughout the trial until you reach a
12 verdict of guilt based on evidence satisfying you of
13 that guilt beyond a reasonable doubt.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the
16 Defendant, which remains with the Defendant until it
17 has been stripped from him by evidence satisfying you
18 of the Defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not a mere legal
20 theory; it is not just a legal phrase. It is a
21 substantial right to which every Defendant is
22 entitled, unless you, the jury, are satisfied from the
23 evidence of the Defendant's guilt beyond a reasonable
24 doubt.

25 Now, what is a reasonable doubt in the law? A

1 reasonable doubt is the kind of doubt that would cause
2 a reasonable person to hesitate to act. The State has
3 the burden of proving the Defendant guilty beyond a
4 reasonable doubt.

5 Some of you may have served as jurors in civil
6 cases, where you were told that it is only necessary
7 to prove that a fact is more likely true than not
8 true, such as by the preponderance or greater weight
9 of the evidence.

10 In criminal cases, the State's proof must be more
11 powerful than that. It must be beyond a reasonable
12 doubt.

13 Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's guilt.

15 There are very few things in this world that we
16 know with absolute certainty, and in criminal cases,
17 the law does not require proof that overcomes every
18 possible doubt.

19 If, based on your consideration of the evidence,
20 you are firmly convinced that the Defendant is guilty
21 of the crime charged, you must find the Defendant
22 guilty.

23 If, on the other hand, you think that there is a
24 real possibility that the Defendant is not guilty, you
25 must give the Defendant the benefit of the doubt and

1 find him not guilty.

2 There are two types of evidence generally
3 presented during the trial: direct evidence and
4 circumstantial evidence.

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact, such as an
7 eyewitness. It is evidence which immediately
8 establishes the main fact to be proved.

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of a
11 fact. It is evidence which immediately establishes
12 collateral facts from which the main fact may be
13 inferred. Circumstantial evidence is based on
14 inference and not on personal knowledge or
15 observation.

16 The law makes absolutely no distinction between
17 the weight or value to be given to either direct or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than of
20 direct evidence. However, to the extent that the
21 State relies on circumstantial evidence, the
22 circumstances must be consistent with each other, and
23 when taken together, point conclusively to the
24 Defendant's guilt beyond a reasonable doubt. If these
25 circumstances merely portray the Defendant's behavior

1 as suspicious, the proof has failed.

2 The burden of proof rests with the State,
3 regardless of whether the State relies on direct
4 evidence, circumstantial evidence, or some combination
5 of the two. You should weigh all of the evidence in
6 the case. After weighing all of the evidence, if you
7 are not convinced of the Defendant's guilt beyond a
8 reasonable doubt, you must find the Defendant not
9 guilty.

10 Necessarily, you must determine the credibility
11 of witnesses who have testified in this case.
12 Credibility simply means believability. It becomes
13 your duty as jurors to analyze and to evaluate the
14 evidence and determine which evidence convinces you of
15 its truth.

16 In determining the believability of witnesses who
17 have testified in this case, you may believe one
18 witness over several witnesses, or several witnesses
19 over one witness. You may believe a part of the
20 testimony of a witness and reject the remaining part
21 of the testimony of that same witness. You may
22 believe the testimony of a witness in its entirety or
23 reject the testimony of a witness in its entirety.
24 You may consider whether the witness has exhibited to
25 you any interest, bias, prejudice or other motive in

1 this case.

2 You may also consider the appearance and manner
3 of a witness while on the witness stand.

4 The rules of evidence ordinarily do not permit
5 witnesses to testify to opinions or conclusions. An
6 exception to this rule exists for witnesses we call
7 expert witnesses. A witness who, by education and
8 experience, has become expert in some art, science
9 profession or calling, may state an opinion as to
10 relevant and material matter in which the witness
11 claims to be an expert, and may also state the reasons
12 for the opinion.

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

22 An expert witnesses testimony is to be given no
23 greater weight than that of other witnesses simply
24 because the witness is an expert. Further, you are
25 not required to accept an experts opinion, even though

1 it is not contradicted.

2 An issue in this case is the identification of
3 the Defendant as the person who committed the crime
4 charged. The State has the burden of proving identity
5 beyond a reasonable doubt. You must be satisfied
6 beyond a reasonable doubt of the accuracy of the
7 identification of the Defendant before you may convict
8 the Defendant.

9 Identification testimony is an expression or
10 belief of impression. Expression of belief or
11 impression by a witness. You must determine the
12 accuracy of the identification of the Defendant. You
13 must consider the believability of each identification
14 witness in the same way as any other witness.

15 You may consider whether the witness had an
16 adequate opportunity to observe the offender at the
17 time of the offense.

18 This will be affected by things like how long or
19 short a time was available, how far or close the
20 witness was, the lighting conditions, and whether the
21 witness had a chance to see or know the person in the
22 past.

23 Once again, I instruct you: the burden of proof
24 on the State extends to every element of the crimes
25 charged. This specifically includes the burden of

1 proving beyond a reasonable doubt the identity of the
2 Defendant as the person who committed the crime.

3 If, after examining the testimony, you have a
4 reasonable doubt as to the accuracy of the
5 identification, you must find the Defendant not
6 guilty.

7 Mere presence at the scene of a crime is not
8 sufficient to prove someone guilty of a crime. A
9 Defendant's presence where a crime is being committed,
10 or mere association with a person who commits a crime
11 does not make the Defendant an accomplice or an aider
12 or abettor of the person committing the crime, nor
13 does it prove him guilty of a crime.

14 The burden is on the State to prove every element
15 of each of the crimes charged. If, after reviewing
16 all of the evidence, you find that the State has
17 proved that the Defendant was only present at the
18 scene of a crime, and that they have not proven beyond
19 a reasonable doubt any participation in the crime,
20 then you must find the Defendant not guilty.

21 The law is that proof of the Defendant at the
22 scene of a crime, by itself, is not sufficient to find
23 someone guilty. In order to establish criminal
24 liability, criminal intent is required.

25 For example, the mental state required to be

1 proven by the State for a particular crime might be
2 purpose, intent, knowledge, recklessness or criminal
3 negligence.

4 Criminal Intent must be proven by the State
5 beyond a reasonable doubt. Criminal Intent is always
6 a matter that must be determined by the jury from the
7 circumstances surrounding the situation.

8 There is no way to prove intent to a mathematical
9 certainty. There is no way medical science can
10 dissect a person's brain and determine what the person
11 had in mind.

12 So, the law says that criminal intent may be
13 inferred from the circumstances shown to have existed.
14 This is how you make a determination of whether or not
15 the element of intent was present.

16 It is not necessary to establish intent by direct
17 and positive evidence, but intent may be established
18 by inference in the same way as any other fact -- by
19 taking into consideration the acts of the parties and
20 all of the facts and circumstances of the case.

21 Criminal Intent is a mental state -- a conscious
22 wrongdoing. It is up to you to determine what the
23 Defendant intended to do based on the circumstances
24 shown to have existed.

25 The Defendant is charged with assault and battery

1 of a high and aggravated nature. The State must
2 therefore prove beyond a reasonable doubt that: the
3 Defendant unlawfully injured another person; and
4 either: that great bodily injury to another person
5 resulted; or that the act was accomplished by means
6 that likely produced great bodily injury or death.

7 Great bodily injury means: bodily injury which
8 causes a substantial risk of death, or which causes
9 serious, permanent disfigurement, or protracted loss,
10 or impairment of the function of a bodily member or
11 organ.

12 The Defendant is also charged with burglary in
13 the first degree. The State must therefore prove
14 beyond a reasonable doubt that the Defendant entered a
15 dwelling without the consent -- without consent and
16 with intent to commit a crime in the dwelling, and
17 that either while affecting entry or while in the
18 dwelling or an immediate flight from the dwelling.

19 I'm sorry. Let me start over with first word,
20 I'm getting tongue tied. Okay, burglary in the first
21 degree, the State must prove beyond a reasonable doubt
22 that: the Defendant entered a dwelling without
23 consent and with intent to commit a crime -- crime in
24 the dwelling; and that when in effecting entry, or
25 while in the dwelling, or in immediate flight from the

1 dwelling, he caused physical injury to another person
2 who was not a participant in the crime.

3 A dwelling means the living quarters of a
4 building which is used, or normally used for sleeping,
5 living, or lodging by a person; enters a building
6 without consent means to enter a building without the
7 consent of the person in lawful possession or to enter
8 a building by using deception, artifice, trick or
9 misrepresentation to gain consent to enter from the
10 person in lawful possession of the building.

11 The Defendant has raised the defense of necessity
12 in order to excuse the crime on the ground of
13 necessity, the Defendant must prove three things by
14 the preponderance, or greater weight, of the evidence:
15 There was a present and immediate -- or present and
16 imminent -- emergency which arose without fault on the
17 part of the Defendant; the emergency was of the type
18 which would call a well-grounded fear -- goodness
19 gracious -- which would cause a well-grounded fear of
20 death or serious bodily injury if the act was not
21 done; and there was no other reasonable alternative
22 other than committing the crime to avoid the threat of
23 harm.

24 If you find that the Defendant has proved the
25 defense of necessity, you must find the Defendant not

1 guilty.

2 The Defendant is also charged with kidnapping.
3 Therefore, the State must prove beyond a reasonable
4 doubt, that the Defendant unlawfully seized, confined,
5 inveigled, decoyed, kidnapped, abducted, or carried
6 away any other person by any means whatsoever, without
7 authority of law, except when a minor is seized or
8 taken by his parent.

9 Now, there are two possible verdicts which you
10 may find for each of the indictments in the case:
11 "guilty" or "not guilty." There is no significance
12 whatsoever in the order in which I read these possible
13 verdicts. It's simply that one must be stated first.

14 Now you have been chosen and sworn to give the
15 parties in this case a fair and impartial trial. When
16 you have done so, you will have complied with your
17 oath, and no one will have the right to criticize your
18 verdict.

19 You must not be influenced by opinions or
20 expressions of opinion you may have heard outside of
21 the courtroom, but rather, should base your verdict
22 solely on the testimony of the sworn witnesses who
23 took the stand the exhibits received into evidence and
24 the law which I have stated.

25 You should not be swayed by caprice, passion,

1 prejudice, or improper sympathy for or against anyone
2 in this case. Remember, you have no friends to
3 reward, and no enemies to punish, and all parties are
4 entitled to a fair and impartial trial.

5 It is your duty as jurors to consult with one
6 another and to deliberate in an effort to reach an
7 agreement.

8 As I stated earlier, you are judges, judges of
9 the facts. Your verdict must represent the considered
10 judgment of each juror. In other words, your verdict
11 must be unanimous.

12 Now you may have noticed that I've read these
13 instructions. I do so to give you the law as
14 accurately as possible.

15 Now, when I excuse you from the courtroom, the
16 first thing you're going to do is return to the jury
17 room and choose a foreperson. You'll write that juror
18 number down on a piece of paper and hand it to the
19 bailiff, who will bring it to me. The foreperson will
20 have the added duty to preside over the jury's
21 deliberations.

22 If, during the deliberations you should desire to
23 communicate with the Court, please reduce your message
24 or question to writing, signed by the foreperson and
25 foreperson only, and pass the note to the bailiff, who

1 will bring it to my attention, and I will then respond
2 as promptly as possible, either in writing or by
3 having you return to the courtroom.

4 Now, you have heard the evidence and you have
5 heard the law. Whatever your verdict, the foreperson
6 will indicate it on the indictment, and sign it on
7 behalf of the jury. Remember that although the
8 foreperson is the only juror who writes the verdict,
9 it is not theirs alone.

10 The verdict has to be unanimous, and the
11 foreperson is not authorized to write the verdict
12 until all jurors have agreed on that verdict.

13 Now, the bailiff will bring you the evidence for
14 you to review. He will also bring you the
15 indictments. On each indictment, there is the face of
16 the indictment, which has the title of the crime and
17 the description of what is alleged to have occurred.
18 And then if you flip it over -- sort of sideways -- in
19 the bottom left corner, there's a place to write the
20 verdict: "guilty" or "not guilty." And then the
21 foreperson will sign and date it down here
22 (indicating) in this bottom corner, and that's for
23 each of the three indictments.

24 Now, this is the last time I will tell you not to
25 discuss the case. I'm sending you to the jury room.

1 You'll select the foreperson, the bailiff will bring
2 you the evidence. Once you receive the evidence, then
3 you begin deliberating. That's your signal to begin
4 deliberations, and you will continue to deliberate
5 until you have reached a verdict.

6 So please retire to your jury room, and the two
7 alternates can stay in the courtroom. Thank you.

8 (The jury exits the courtroom.)

9 Any objections to the jury charge from State?

10 MS. BROWDER: We have none.

11 THE COURT: From the Defense? Mr. Harvey?

12 MR. HARVEY: Yes, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HARVEY: The objection is in failure to
15 charge on multiple charges or multiple indictments.
16 My concern is, while you charge on multiple offenses,
17 I had submitted jury charges called multiple charges
18 on multiple indictments. And because there are
19 multiple charges, I don't -- as I articulated in the
20 jury charge that was proposed -- it would provide for
21 ensuring that the jury would give each charge its own
22 individual deliberation, and finding on one would not
23 necessarily lead to finding.

24 Your Honor, I'm quoting from *Sanders and People*
25 "counsel must object to an instruction out of the

1 hearing of the jury before they retire, and consider a
2 verdict before the objection is made."

3 Your Honor, simply, I would ask that Your Honor
4 note our objection to the failure to charge
5 Defendant's requested charging multiple charges on
6 multiple indictments for separate consideration of the
7 indictment.

8 THE COURT: What's the State's position?

9 MS. BROWDER: Your Honor, we really don't have a
10 position. However we believe the charge is correct as
11 it is. We had a specific copy of the charge with the
12 indictments before we even started jury charge -- or
13 the charges before we even started. There was no
14 objection to that not being there at that point.

15 THE COURT: While I'm looking for that. Let me
16 excuse the alternates. Thank you for being here,
17 ladies and gentlemen. This completes your jury
18 service. We had you as backup jurors in the event
19 that something happened, you know, family emergency or
20 something with one of the other jurors, because all 12
21 have made it to the finish line so far, you will not
22 be permitted to deliberate, but that does conclude
23 your jury service. It also it's supposed to give you
24 a pass under the law for not being required to serve
25 on jury duty in Circuit Court for the rest of the

1 calendar year.

2 I mean, given that it's December 12, that doesn't
3 give you much of a break. But if you are summoned for
4 jury duty in 2025 or 2026 you will have to show up for
5 jury duty, but you can exercise an exemption. Just
6 tell the judge that you served on a jury this week,
7 the Clerk's Office will verify it, and if you choose
8 to be excused, you can be excused from jury duty.

9 You are now free to discuss the case with whoever
10 you want to discuss it with -- anyone, everyone, no
11 one -- doesn't matter. And I hope you found it at
12 least educational. And we thank you for your time.
13 Don't forget your cell phones. And if you have lunch
14 left over -- do you have things in the jury room?
15 Okay. They can go back into the jury room because
16 they're not supposed to be deliberating yet. Don't
17 talk about anything that I just said though, just grab
18 your stuff and go, okay. Thank you.

19 (The juror alternates leave the courtroom.)

20 And I will give the additional charge to the
21 jury. In fact, you can bring the jury in.

22 THE CLERK: Okay.

23 THE COURT: Whoever is back there. You can bring
24 the jury, please. Bring the jury back in.

25 THE CLERK: The Foreperson, said they have a

1 question.

2 THE COURT: You can bring the jury back in.

3 THE BAILIFF: Okay. Thank you.

4 (The jurors enter the courtroom.)

5 THE COURT: Ladies and gentlemen, I omitted one
6 charge on the law when I previously gave you the jury
7 charges, so I will read that to you now. You are to
8 consider this in addition to everything that I've
9 already read to you.

10 The indictments in this trial allege several
11 different offenses against the Defendant. The charges
12 are kidnapping, burglary first degree, and assault and
13 battery of a high and aggravated nature. As you may
14 note, each indictment charges a separate and distinct
15 offense. You must decide each charge separately. You
16 must decide each charge on the evidence and the law
17 applicable to each indictment or charge.

18 Your decision must stand uninfluenced by your
19 decision as to any other indictment or charge. The
20 Defendant may be acquitted or convicted on any or all
21 of the offenses charged, and you will, in fact -- as I
22 showed you on the indictments, -- write a separate
23 verdict of "guilty" or "not guilty" for each of the
24 indictments.

25 Now, please retire to your jury room. And in

1 just a moment, the bailiff will bring you the evidence
2 and the indictments. At that point, you can begin
3 your deliberations. Thank you.

4 (The jurors exit the courtroom.)

5 Any additional objection, Mr. Harvey?

6 MR. HARVEY: No, Your Honor.

7 THE COURT: Okay, we have a note from the jury.
8 Already asked, "Can we get a copy of the 911
9 transcript?" If I recall that is not in evidence,
10 correct?

11 MR. KREUSH: Right.

12 THE COURT: There's no official transcript. So I
13 would just write them a note back saying you have all
14 of the evidence. I can't add to it or subtract from
15 it. There is a copy of the 911 recording, though. Is
16 there a means for them to play it?

17 MS. BROWDER: Yes, Your Honor. We have a clean
18 computer. Mr. Harvey, can look at it if he wants to,
19 as well as a CD player to send back there.

20 THE COURT: Is that okay with you? Mr. Harvey

21 MR. HARVEY: (Nodding head yes.)

22 MR. KREUSH: Your Honor, I also had a computer
23 for him to view and make sure there's nothing else on
24 it before we bring it back.

25 THE COURT: Okay.

1 MR. HARVEY: I guess the clerk is going to bring
2 it back there.

3 THE COURT: We'll hand it to a bailiff to take
4 that there. But yes.

5 MR. HARVEY: If the bailiff can send a blank
6 computer, just use that device as a device to play the
7 recording.

8 THE COURT: Okay

9 MR. HARVEY: There's no other information on it.

10 THE COURT: Okay. And we should have 10 Defense
11 exhibits and 9 State's exhibits. Let's make sure
12 they're all there so they can go back to the jury. And
13 we'll be in recess.

14 (The jury began deliberating at 3:30pm.)

15 All right, we have a note from the jury. Can we
16 please get the definition of great bodily injury, I
17 can either bring them back in and read it to them, or
18 I can send them a copy of just that charge. Or I can
19 send them a copy of all charges. What says the State?
20 It's literally a single sentence.

21 MS. BROWDER: if you just send back the chart of
22 what great bodily injury is.

23 THE COURT: What says the defense?

24 MR. HARVEY: Your Honor, an excerpt from your
25 charge, yes, sir, I can read it to you? As I said

1 it's a single sentence. (As read): "Great bodily
2 injury means bodily injury which causes a substantial
3 risk of death or which causes serious permanent
4 disfigurement or protracted loss or impairment of the
5 function of a bodily member or organ.

6 MS. BROWDER: Your Honor, I'd like to change my
7 answer.

8 THE COURT: Sure (laughing).

9 MS. BROWDER: Perhaps, we can send back the whole
10 ABHAN Statute, because it's part of that Statute. So I
11 would like the entire -- so it's just incomplete just
12 the ABHAN -- I think with that.

13 MR. HARVEY: Your Honor, I disagree with my
14 colleague from the State. I think what the jury asked
15 was for that definition. You've charged it; you gave
16 an adequate charge. There was no objection other than
17 the objection about the lesser included we resolved --
18 excuse me. There was no objection. I have talked --
19 after talking with Mr. Kimble about that, I would
20 respectfully request pulling that sentence -- either
21 be charged or sent back, which you just read. I don't
22 think it's necessary for the entire -- that's their
23 question. And that's my position.

24 THE COURT: Yes, sir. I will send to the jury
25 only that single sentence that they have requested.

1 So I'm going to have my clerk really just copy and
2 paste that onto a new document, just the single
3 sentence that's found on page 10 of the charge. We'll
4 mark it as a Court's Exhibit, but send it into the
5 jury room. Okay.

6 MR. HARVEY: Thank you, Your Honor.

7 THE COURT: We'll be in recess.

8 (Recess began during jury deliberation at
9 2:47pm.)

10 THE COURT: Okay, all right, folks, I received
11 another note from the jury. Can we get transcripts of
12 Ms. Cupid's and Mr. Kimble's testimony?

13 So, I initially responded in writing.
14 "Unfortunately, no if you would like to re-hear the
15 audio of any portion of the testimony, please identify
16 what you would like to re-hear as best you can."

17 And so they then responded "Ms. Cupid's testimony
18 from when she first hears Mr. Kimble knocking on the
19 door to the end of the event," and then in parentheses
20 during State's initial questioning.

21 So the Court Reporter has that cued up and is
22 ready to play the audio any position from the State?

23 MS. BROWDER: No, Your Honor.

24 THE COURT: From the Defense?

25 MR. HARVEY: May, I?

1 THE COURT: Yes, sir.

2 MR. HARVEY: Your Honor again, in view of where
3 we are in the case me and -- Mr. Kimble and I as well
4 as the status of the case, I've confirmed with Mr.
5 Kimble to advise him about what Your Honor has
6 proposed, and the understanding that the Court
7 Reporter, without objection, is going to play that
8 portion Ms. Cupid's testimony.

9 THE COURT: Okay, and then, because it's during
10 the cross examination -- no -- Ms. Cupid's testimony --
11 -- during the State's direct, I will, obviously,
12 there's much more to her testimony. And so, I will
13 just simply ask the jury to raise their hands, the
14 foreperson to raise his hand when we can stop, when
15 they feel like they've heard the portion that they
16 were seeking, because otherwise we'll be listening to,
17 you know, hours of testimony. It could go on and on.
18 So we will do it that way. Please bring the jury.

19 THE BAILIFF: Yes, ma'am, Your Honor.

20 (The jury enters the courtroom.)

21 THE BAILIFF: The jury is seated Your Honor.

22 THE COURT: Thank you. Folks, I received your
23 note, and so we have the Court Reporter -- there is no
24 transcript -- that takes time to prepare. So that --
25 hence the response to the initial question, but the

1 Court Reporter does have cued up the audio recording
2 of that testimony.

3 So she's going to come over, approach you, and
4 play that. Because it's playing from her laptop. So
5 she's going to get a little bit closer to you. I'm
6 just gonna ask -- you all know what you're looking for
7 or what you wanted to hear? So after we've reached
8 that point, and you've heard what you were looking
9 for, if Mr. Foreman could just raise his hand and let
10 us know that we can stop playing it, so that we don't
11 have to spend unnecessary time listening to the entire
12 the entirety of the testimony. Okay. Madam Court
13 Reporter.

14 MADAM COURT REPORTER: (Playing back 5 minutes of
15 Ms. Cupid's testimony as instructed by the Court.)

16 (The jury returns to the jury room after the
17 portion of the testimony was played and continues
18 deliberating at 4:32pm.)

19 VERDICT

20 (A verdict was reached at 5:30pm.)

21 THE BAILIFF: All rise!

22 THE COURT: Y'all can be seated. Okay, I
23 understand we have a verdict. Mr. Bailiff, bring the
24 jury, please.

25 THE BAILIFF: (Complies.)

1 (The jury enters the courtroom.)

2 THE COURT: Thank you. Welcome back, ladies and
3 gentlemen. Mr. Foreman, I understand the jury has
4 reached the verdict.

5 THE FOREMAN: Yes, Your Honor, we received an
6 unanimous verdict.

7 THE COURT: Okay on all three charges?

8 THE FOREMAN: Yes, ma'am.

9 THE COURT: Okay. If you would hand those
10 indictments to the bailiff, please.

11 All right, Mr. Clerk, would you publish the
12 verdict.

13 THE CLERK: Yes, Your Honor.

14 Docket number: 2020-GS-40-04514, the State of
15 South Carolina, County of Richland in the Court of
16 General Sessions, the State versus Clifton E. Kimble
17 indictment for assault and battery of a high and
18 aggravated assault; jury finds the Defendant, guilty.
19 Signed, the Foreperson.

20 Docket number: 2020-GS-40-04512, State of South
21 Carolina, County of Richland, in the Court of General
22 Sessions, the State versus Clifton E. Kimble;
23 indictment for kidnapping; the jury finds the
24 Defendant, not guilty. Signed, Foreperson.

25 Docket number: 2020-GS-40-04513, State of South

1 Carolina, County of Richland, in the Court of General
2 Sessions, State versus Clifton E. Kimble; indictment
3 for burglar first degree; the jury finds the
4 Defendant, not guilty. Signed, Foreperson, December
5 12, 2024.

6 Mr. Foreman, is this the verdict of the entire
7 jury?

8 THE FOREMAN: Yes, it is.

9 THE CLERK: Thank you, sir.

10 THE COURT: Anything from Counsel before the jury
11 is released, Mr. Harvey?

12 MR. HARVEY: No, Your Honor.

13 THE COURT: All right, ladies and gentlemen,
14 thank you very much for your time, your patience, your
15 service. I apologize for each and every time that I
16 had y'all sitting and waiting. It's just like that
17 sometimes and sometimes that's unforeseeable. I hope
18 it was at least educational for you. Most people
19 don't enjoy serving on jury duty, but we can't do what
20 we do without people like you showing up and doing
21 what you have done.

22 So I appreciate what you have done, and clearly
23 you took your time and deliberated over the evidence.
24 And as I told you, no one really has the right to
25 criticize your verdict.

1 So that completes your jury service for this week
2 and this year. I mean, it's the end of the year, so
3 that doesn't really give you much of a cushion. If
4 you're summoned for jury duty in 2025 or 2026 then you
5 will have to show up, but you can exercise an
6 exemption, and tell the judge that you served on this
7 jury this week. You can choose to serve or choose not
8 to serve.

9 In addition, you're now free to discuss the case
10 with whoever you want to discuss it with -- anyone,
11 everyone, no one. Does not matter.

12 The next phase of this process for us -- I'm
13 going to release you -- but the next phase will be for
14 me to sentence Mr. Kimble for the assault and battery
15 of a high and aggravated nature. In some places, in
16 federal courts or other states, that sentencing often
17 happens weeks or months later. In State Court, here
18 in South Carolina, we typically do it the same day.

19 So, unless there is some specific reason that
20 these attorneys tell me why it should not happen
21 tonight, it's going to happen in the next 5,10,
22 minutes. You're not required to stay for that.
23 You're welcome to stay if you want to.

24 So what I'm going to do is release you. You'll
25 go back to the jury room. The clerk is going to come

1 back and talk to you -- probably bring you work
2 excuses -- and all that kind of stuff. You'll get
3 your cell phones and all of that.

4 We, in here, are going to take a short break if
5 you want to be here for the sentencing, you can come
6 back in the courtroom through this (indicating) back
7 door.

8 You'll go out, you know, the same way you've been
9 coming in and out. But you can come back into the
10 courtroom and sit back here in the gallery. If you
11 don't want to, that's fine, too.

12 A deputy will escort y'all across the street to
13 your cars, and I think that's it. Thank you for your
14 service. You're now free to go. Thank you.

15 THE FOREMAN: Thank you.

16 (The jury exits the courtroom.)

17 (A brief recess was had.)

18 SENTENCING OF THE COURT

19 THE COURT: Any motions, Mr. Harvey?

20 MR. HARVEY: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 10-minute break while the State gets sentencing
23 sheets together. I'll hear any motions that Mr.
24 Harvey may have at that time. 10 minute recess.

25 (A brief recess was taken.)

1 THE BAILIFF: Please, be seated.

2 THE COURT: Post trial motions, Mr. Harvey.

3 MR. HARVEY: Yes, Your Honor. At this time, I
4 renew all of my previous motions and incorporate those
5 motions. And to the motion to set aside the verdict.
6 Your Honor, based upon the rulings previously which
7 allowed the admission of certain evidence to be before
8 the Court. I believe that evidence and the jury's
9 difficulty in coming to terms with the charges and its
10 verdict, the verdict should be set aside.

11 Your Honor, making the motion to set aside the
12 verdict, I would ask Your Honor, to issue a -- make a
13 motion for a new trial conjunction with a motion to
14 set aside, because that would be consistent with the
15 same. Your Honor, those are my two post trial
16 motions.

17 You also, Your Honor -- with respect to going to
18 the sentencing phase of the case, as Your Honor, has
19 noted in presentation to the parties with the
20 chronology of the case, the Court's basis in ruling
21 for continuances, not granted continuances, granting
22 continuances.

23 The Court is well aware that this case has been
24 pending for some time during the time that the case
25 has been pending. Mr. Kimble has been compliant with

1 all the terms and conditions and bond given the nature
2 of the case, seriousness of the case, and what Your
3 Honor has in her discretion with the range of
4 sentencing.

5 I would also move that we defer sentencing so the
6 Court may get the Probation Department to do a three
7 sentence report and have sentencing at a later date,
8 Mr. Kimble has proven that he is a reliable
9 individual.

10 And I'd ask that where we are -- that didn't,
11 Your Honor, consider that. If the Court isn't intent
12 on doing that, I will address mitigation at the
13 appropriate time. Thank you.

14 THE COURT: Yes, sir.

15 Ms. Browder, did you want to respond to this
16 Defense motion for new trial and to defer sentencing.

17 MS. BROWDER: Your Honor, regarding a new trial,
18 we believe the jury looked at all the evidence, they
19 determined very clearly what they believed, what they
20 didn't believe.

21 So I don't believe the verdict should be set
22 aside for any reason. All the prior objections
23 regarding whether the 911 one tape should come in, or
24 anything of that nature would believe the proper
25 rulings were made and that everything came in properly

1 regarding deferring sentencing, we would object to
2 that.

3 Your Honor, this has been pending for four years.
4 Everybody knew this was ending today. I don't believe
5 a pre-sentence report is needed. That is very rare
6 here that we're doing those in Richland County. In
7 addition, he testified that, that pretty much
8 everything you would hear about his background from
9 the time he was born, to elementary school, to middle,
10 school to high school, to what he did after that. He
11 went into what his life was.

12 I don't believe in what he was working, and his
13 jobs that he was doing. So I don't believe that PSI
14 is necessary. This has been pending for four years --
15 it's been a long time. Ms. Cupid is here, and her son
16 down from up north, where they had to move to. So we
17 would prefer it go to Court today, Your Honor.

18 THE COURT: Okay.

19 As to renewing the motions. Of course, my
20 rulings remain the same. Motion for a new trial is
21 respectfully denied, and the request to defer
22 sentencing is also denied.

23 I don't see the necessity of it in this case. So
24 does the State have a sentencing sheet prepared? Can
25 you pass that?

1 MS. BROWDER: Your Honor, I just gave it to
2 Mr. Harvey for his signature.

3 THE COURT: Ms. Browder, Mr. Kreush, any
4 additional information from the State?

5 MS. BROWDER: Your Honor, you obviously heard the
6 facts, so I'm not going to go back through those. I
7 do believe Ms. Cupid would like to address the Court.
8 As to sentencing, his prior record is minimal, Your
9 Honor. They're from the 1990s, he had a possession of
10 cocaine and PWID cocaine, as well as, I think, a
11 failure to surrender his driver's license. That is
12 all he has on his record.

13 Your Honor, Ms. Kimble would like to -- or Ms.
14 Cupid, I'm sorry I keep doing that -- Ms. Cupid would
15 like to address the Court at the appropriate time.

16 THE COURT: Yes, ma'am.

17 MS. CUPID: I'm Melissa Cupid. I've been waiting
18 four years for this, and it's been a long journey.
19 And I thank the Court for the just sentencing, and I'm
20 asking for the max. I'm asking because, for the last
21 four years, we haven't had the security to safely move
22 on like we should -- and now we finally do, knowing
23 that he will be put away for the things that he's
24 done.

25 I wrote something... Even as of one day before I

1 walked in here, I was in tears knowing that he was
2 going to get prison time and that he wasn't going to
3 be around with his children. Even so -- after four
4 and a half years -- I still have taken his life into
5 consideration. I never wanted any of this. I just
6 wanted us to amicably split.

7 But I'll just say this while you're locked up and
8 that depression hits you, at least you get three meals
9 a day. At least you get four walls. You don't have
10 to maintain while you are in there -- and I've had to
11 maintain since you did what you did to me -- by myself
12 on my own, while being a single parent and trying to
13 heal my children.

14 You took away so much from all of us. It's time
15 for you to sit down, because only today they know of
16 the one thing that you did -- and that you finally got
17 caught for. But we all know out of all those years,
18 it's been more than that.

19 So just know: that every time you file anything,
20 regardless, we -- all five of us -- are going to have
21 a say. And just like whenever I begged you to stop
22 and you said, "you'll be done with me when you're
23 finished,". I feel the same way.

24 MS. BROWDER: Your Honor, we are also requesting
25 a permanent restraining order. I've handed that up to

1 the Court. Requested one for 20 years, which, of
2 course, would protect her children as well.

3 THE COURT: Okay. Mr. Harvey, Mr. Kimble, would
4 you stand with your Counsel, please.

5 MR. HARVEY: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. HARVEY: Mr. Kimble's birthday is [REDACTED]
8 [REDACTED], 1976. Mr. Kimble has lived in the Charlotte area
9 for most of his most, if not all of his life. His
10 parents were Irma White and Eugene White. His dad,
11 Eugene, worked for the A2 Fruit [sic] -- Freight
12 Company, which supplied supermarkets. And his parents
13 were deceased. He's got siblings in the Charlotte
14 area. And Your Honor heard, he lost Carlton Kimble in
15 April, 2016. Several months later, he lost his son,
16 DeAndre -- DeAndre in an unsolved murder in Charlotte.

17 Your Honor, he is separated from Linda Kimble --

18 THE DEFENDANT: Carol Kimble.

19 MR. HARVEY: Carol Kimble, I apologize, Your
20 Honor. Linda is his sister. She's been here one day
21 this week. He's got two nieces, one great nephew, and
22 two -- two great nephews in Charlotte area. He's got
23 a large, extended family, including the Macleod
24 family. Mr. Elton Macleod who's his brother, who's
25 been here the entire time. Elton is from Pageland.

1 He's got multiple nieces and nephews in that area.

2 Your Honor heard he was raised in Regal Heights.
3 Regal heights is an historically, historically African
4 American neighborhood -- it would be analogous to
5 Waverly or Booker T. in Columbia.

6 Your Honor heard he went through the education
7 system and graduated. It was in the class in 1994.
8 Just so Your Honor will note, some of his classmates
9 were Ray Durham, who played with the San Francisco
10 Giants in the baseball; Mr. Jeff McManus played in the
11 NBA in Charlotte, and in Denver, and he was a member
12 of some North Carolina baseball team. His coach was
13 Mr. Tommy Knox, who was a well regarded mentor of
14 young men in the Charlotte area.

15 You also heard about his educational
16 accomplishments, his devotion to his family and going
17 to school, working his way to school. He's
18 demonstrated, over his lifetime, an extraordinary work
19 ethic.

20 When I interviewed Clifton, while we were doing
21 our trial prep, he asked me -- I asked him about his
22 car care business. Your Honor heard he's an ASC
23 certified technician. And one of the things he said,
24 and I've got it right here in my notes, he told me,
25 customers are valued and quality is demanded. He

1 wanted to meet both of those milestones in what he
2 did.

3 Your Honor, again, we didn't go into all of this,
4 but he worked for Goodyear in Hickory, and what he did
5 for Goodyear in Hickory -- because he was able to
6 utilize the machines -- Goodyear contracted him to do
7 diagnostic work at the Goodyear place in Hickory.

8 He has got a lot of training in automotive, the
9 automotive industry. He's been certified as a ASC
10 mechanic for 30 plus years and had to pass an exam.

11 Your Honor, you also heard from his testimony
12 that he, he's always been working. He's been
13 employed. And one of the things we didn't dwell on in
14 the case, is at the time this case began -- first of
15 all, Your Honor -- he contacted me -- I contacted the
16 Sheriff's Office, and he voluntarily surrendered. So
17 he voluntarily surrendered.

18 He was placed on bond during the initial six
19 months of bond, he was on electronic monitoring.
20 Electronic monitoring impacted his work, and these
21 charges when you heard that he was a CDL driver the
22 NTSB has different certifications that allow truck
23 drivers to go to certain ports, perform certain
24 transportation things. The mere existence of charges
25 in the NTSB's regulatory scheme, whether there's been

1 a finding like today of not guilty on two charges,
2 which tells us the jury has -- he had some credibility
3 with the jury. He lost his ability to work as a CDL
4 Driver. So that's that's been the past four years.

5 Also, Your Honor, over the past four years,
6 there's been absolutely no bond issues. There's been
7 absolutely no contact. He had a hearing before the
8 court -- the court in this County, General Sessions,
9 removed the requirement of electronic monitoring, so
10 he was on electronic monitoring approximately six
11 months now.

12 Your Honor, he has children of his own, and
13 during the trial, when I would call him in the
14 evening, or our staff would call him in the evening.
15 He was attending basketball games --

16 THE DEFENDANT: Practice.

17 MR. HARVEY: Practice for his daughters. He's got
18 an 11 year old daughter whose name is Free K [REDACTED] --

19 THE DEFENDANT: Son.

20 MR. HARVEY: That's his son. I apologize. His
21 son is Free. A daughter, is Journey, she's 15. I
22 don't want to mispronounce anybody's name and have it
23 appear as being disrespectful, but K-Z-A-R-A, K [REDACTED],
24 she's 17. Azaria and Jaden Kimble, who's 19, is
25 attending UNC at Chapel Hill. That speaks volumes

1 about Mr. Kimble.

2 There's another thing I noticed in my review of
3 the body cameras on the refrigerator in the Cupid
4 residence was a chore chart, and Mr. Kimble put up the
5 chore chart in that -- on that refrigerator to make
6 sure that his relationship with Mr. -- Ms. Cupid also
7 endured to the benefit of those children. You've
8 heard Ms. Cupid say she's been a single parent since
9 then. But during this time, he was involved in, in a
10 constructive way for these children.

11 You heard him testify by cutting their hair,
12 grooming them. On this incident date, Ms. Cupid
13 texted him to come and help with the child's video
14 therapy question, and what did he do? He came there.
15 What did he also say? He also said he had dinner that
16 was cooked by Imani.

17 So, Your Honor, when the Solicitor said, "do you
18 know anything about Mr. Kimble", now, trials are
19 different. Certain things come out in trials, certain
20 things come out at sentencing. So I believe we have
21 presented the total picture of Mr. Clifton Kimble.

22 Your Honor, the legislature in its wisdom with
23 the statute that's before us, there's no mandatory
24 minimum. And there are lifetime sanctions that go
25 with this offensive conviction. It's serious. So it

1 takes strike. The legislature has classified it as
2 violent. So that has other implications in terms of
3 calculation of sentence, other ancillary
4 ramifications, collateral consequences.

5 So Mr. Clifton Kimble, who you heard from the
6 State, record is remote. The State's own
7 characterization of it wasn't I can't speak. I can
8 speak about Ms. Browder, but I'm not going to speak
9 for her. Her characterization of his record wasn't
10 that it was serious and it was very remote. This case
11 -- and you also have an opportunity to meet and hear
12 from Mr. Kimble who has been here every day.

13 He was in Charlotte. He came, Your Honor -- at
14 your discretion, allowed him to remain on bond in face
15 of these very serious charges, and we're grateful for
16 that, and appreciable to that, but I believe that
17 demonstrates his ability to be responsive to
18 instruction and given the lack of communication over
19 four years. We don't know where Ms. Cupid resides,
20 nor are we inquiring about it. We know where Mr.
21 Kimble resides in Charlotte there's been no mention of
22 any contact whatsoever.

23 Your Honor, the gist of my presentation, and all
24 these factors are, the legislature and it's wisdom,
25 says we're going to delegate to the trial judge who

1 has the best view of the Defendant.

2 Now, the jury has spoken, Your Honor. I
3 understand, Your Honor. The jury has got a very
4 arduous task in front of -- but the jury has also
5 spoken about the other charges. Mr. Kimble has
6 demonstrated that he by his conduct of the last four
7 years, that he is an excellent candidate to function
8 well under supervision.

9 Now, the Solicitor has asked for a restraining
10 order. Given the fact that there's been no contact
11 and no notion of her whereabouts, we hope that Your
12 Honor will give due deliberation to that and decide if
13 that's necessary in this instance. I would
14 respectfully submit, had there been a history of
15 contact, had there been a history of problems online,
16 that may prove to be a different matter.

17 Your Honor, the events of June 2020 on Claudia
18 Drive have impacted a lot of folks. And there's no
19 denying there's impact. But, Your Honor, Mr. Kimble
20 stands before you, and Your Honor, has the
21 discretion. I would respectfully submit that, when we
22 look at the totality of circumstances with Mr. Kimble
23 and the jury's decision on all the charges, that he is
24 an appropriate candidate for a probationary sentence.

25 Your Honor, I know Mr. Kimble would briefly like

1 to allocute to the Court. And I also left off one
2 other item. Mr. Kimble attends -- he is -- he attends
3 the Kingdom Hall in Charlotte. He came to that -- he
4 was raised in the Jehovah Witness faith, and he
5 actually goes to his childhood church. He was -- so
6 there's continuity with Mr. Kimble in working, there's
7 continuity. To me, he's a good candidate for
8 probation, and the legislature has delegated to Your
9 Honor. And I recognize you can say, well, Mr. Harvey,
10 the legislature has granted the Court a range of
11 sentence, but in this particular instance, with this
12 particular Defendant, I believe a probationary
13 sentence with the attendant ancillary ramifications,
14 collateral, consequences will be sufficient to have a
15 sentence that meets the sentencing purposes and no
16 greater than necessary to serve the interest of
17 justice. Thank you, Your Honor.

18 THE COURT: Mr. Kimble?

19 THE DEFENDANT: Can, I speak to Ms. Cupid? Can I
20 --

21 THE COURT: -- You can face me. She can hear
22 you. Don't turn towards her, but yeah, you can say
23 something to her. Just keep facing me.

24 THE DEFENDANT: Please -- I would have been
25 reached out to you, but the probation -- the terms of

1 my probation. I couldn't. I just couldn't. I would
2 -- this would have been healed. But the system was
3 designed this way. So, I apologize for any grief I
4 caused you and the kids because I missed them dearly.
5 I still do. You know, I pray for you guys every
6 night. I didn't know how to reach out to you. I
7 really didn't. I hope this is a healing process for
8 you. I just should've stayed. I should've came back.
9 That's all I could say. It was -- it was just, just a
10 misunderstanding.

11 MR. HARVEY: If I may, Your Honor, just to
12 clarify his remarks. When he says, "his probation", I
13 advised him that he was under bond and there was no --
14 way -- no matter what his intentions were -- to
15 contact Ms. Cupid.

16 I've also neglected in my presentation, to tell
17 the Court that Mr. Kimble was aware of [I.O.]'s medical
18 condition -- was aware of how [I.O.]'s medical
19 condition impacted him at school, impacted his ability
20 to function in a school environment, and how [I.O.]
21 found himself on the receiving end of some less than
22 enlightened treatment by other kids. And Cliff tells
23 me that he would spend time with [I.O.], trying to
24 mentor [I.O.], and tell [I.O.] he's going to have to get
25 through this, and he'll be there for him. And that's

1 been demonstrated the evidence that was in the court
2 by him participating in [I.O.]'s therapy session in the
3 comfort that Ms. Cupid had in [I.O.] -- Mr. Kimble
4 being present at home.

5 We also heard about Mr. Kimble's having his lawn
6 equipment and being involved trying to be helpful --
7 he was trying to be helpful on that day he contacted
8 the landlord.

9 So Your Honor, we have these factors that I urge
10 -- at the risk of being repetitive. I understand
11 that repetition doesn't add validity, but sometimes,
12 as lawyers, we're so concerned about being advocates
13 for our client, we want to cover the entire spectrum
14 of issues.

15 Thank you for being attentive, Your Honor. I'm
16 well aware that Your Honor has been attentive during
17 the trial. I'm grateful for that. I'm grateful for
18 Your Honor for giving me the opportunity to make a
19 full and lengthy presentation at this late hour. And
20 I feel I owe it to my client for Your Honor to know
21 the -- all the issues.

22 So when we have a sentence, it will be balanced.
23 And if Your Honor does see fit to issue a restraining
24 order, a restraining order in conjunction with the
25 probation has a mechanism in place to assuage the

1 concern that Ms. Cupid articulated to the Court. So
2 thank you. I beg the Court's indulgence for one
3 moment.

4 THE COURT: Yes, sir.

5 MR. HARVEY: Thank you.

6 THE COURT: Anything else? Mr. Kimble.

7 THE DEFENDANT: Yes, Your Honor. Today is my
8 mother's birthday. I lost her last year in October.
9 During this time -- this four year stinch -- stitch
10 over my head -- it was over her head too -- and so I
11 didn't have a chance to really enjoy that time with
12 her.

13 I got a son who was murdered, and I only have one
14 more. And he needs me -- I know he needs me. He may
15 not think so, 11 years old, but he does right? But I
16 got children that need me. Need me to provide for
17 them. And I thought -- I told myself over the course,
18 please, just let me do parole -- not anything else. I
19 mean, I was taking care of somebody else family. But,
20 I got my own too.

21 MR. HARVEY: Again, Your Honor, that's Mr.
22 Kimble's heartfelt comment to the Court, and I hope
23 the Court will give what is appropriate to his
24 comments in his desire to be a mentor and a provider
25 to those who need it. Thank you.

1 THE COURT: Anything else from the State?

2 MS. BROWDER: Yes, ma'am, Your Honor. Just
3 regarding the restraining order, he just admitted
4 himself that he would have reached out to her and
5 wanted to reach out to her -- so I think it's very
6 important that that be put in place.

7 Also, during that entire presentation, Your
8 Honor, Mr. Kimble spoke, it's very telling that while
9 he apologized for the grief he may have caused her, he
10 called it a "misunderstanding." He did not take
11 responsibility for hitting her -- saying he had intent
12 to hit her -- which is what the jury found. He said
13 it was just a misunderstanding.

14 So, Your Honor, just because -- while I do
15 empathize with him as to his family history, and
16 everything that has happened -- it doesn't excuse what
17 happened on June 5, 2020. Just because he has not
18 contacted her while on bond for four years, and his
19 conduct of those four years, doesn't excuse what
20 happened that night.

21 It affected Ms. Cupid and all of her children in
22 more ways than just June 5, 2020. They had to move.
23 The kids had to move school. The kids lost somebody
24 who had been around them for five and a half years,
25 that was like a father figure to them -- and they've

1 had to adjust. And they have had problems.

2 So we do ask, Your Honor, to give an appropriate
3 sentence with all that in consideration.

4 MR. HARVEY: If, I may, Your Honor?

5 THE COURT: Yes, sir.

6 MR. HARVEY: With respect to the Solicitor's
7 comments, he was arrested and voluntarily surrendered
8 on June 22, 2020. Since that time, he has been
9 prohibited in having any contact with Ms. Cupid.
10 There's no indication that there was ever any contact
11 with him. And whatever decision Ms. Cupid made about
12 moving that circle, that's Ms. Cupid's prerogative.
13 But I just didn't want there to be an impression that
14 that move was a catalyst with him being out on bond
15 and coming around, when he was given explicit order of
16 the court that he complied with.

17 And if Your Honor does do the restraining order
18 in conjunction with a probationary sentence, where
19 he'll be under supervision, that provides a mechanism
20 -- as did the bond order -- to assuage the concerns
21 that Ms. Cupid may have about contact with Mr. Kimble.

22 And again, Your Honor, Mr. Kimble asserts his
23 innocence. He's aware of what Your Honor has been
24 empowered to do. So I think it's not unusual at this
25 stage of the proceeding to hear comments from the

1 Defendant who is similarly situated again.

2 So I thank you, Your Honor, for being
3 extraordinarily patient, because I don't think people
4 see me coming and associate that with bravery, so I
5 thank you, Your Honor.

6 THE COURT: Mr. Harvey, how long did your client
7 spend in jail?

8 MR. HARVEY: He was in jail from June 22 to, I
9 believe, January... He was on an ankle monitor. I
10 don't know how long I believe he may have spent --

11 THE COURT: Mr. Kimble, how long were you in
12 jail?

13 THE DEFENDANT: About two days.

14 MS. BROWDER: And Your Honor, there was not a
15 house arrest on the ankle monitor.

16 THE COURT: Right. So, he would not be entitled,
17 by statute, to credit for time that he was on the
18 ankle monitor because he was not on house arrest. The
19 statute requires that.

20 So I've got to decide how long Mr. Kimble should
21 spend in prison -- anywhere between no time and 20
22 years, which, of course, is not a simple task. I
23 don't doubt that Mr. Kimble can be responsive to
24 instruction.

25 I believe it's what Mr. Harvey said in that he

1 showed up for court -- which he's legally required to
2 do -- that he did not contact Ms. Cupid -- which the
3 court ordered that he not do. All of these things
4 under threat of going to jail -- and that usually gets
5 people's attention. Not always, but it usually gets
6 people's attention and prevents them from violating
7 the rules when they know they'll be sitting inside a
8 jail cell if they violate those rules.

9 You know, he's -- I believe -- you said you have
10 continuity in working. Okay. As a productive member
11 of society, when you grow up, and get out of school,
12 that's what you're supposed to do. So I don't really
13 put tremendous value on that. I'm a working person.
14 You're a working person. You're supposed to have a
15 job, and particularly if you have children to support.
16 That's kind of what you're supposed to do.

17 And I think Ms. Browder said it best when she
18 said, "Good people can do bad things." I'm not here
19 to judge people. I'm here to determine the
20 consequences of the bad things that they do. Whether
21 he's a good person or not, it's between him and the
22 Lord. I don't know anything about that.

23 And you know, to the extent that he's a good
24 person -- he goes to work, he takes care of his own
25 children, he took care of Ms. Cupid's children -- that

1 is admirable. But on June 5, 2020, he went into her
2 home. Look, she's not even safe in her own home. He
3 went into her home -- maybe with a key. I don't know.
4 Maybe that's the reason for the acquittal of the
5 burglary charge. I don't know, and it's not my place
6 to determine that. The jury's made that
7 determination. But I'll assume he had a key. Fine.

8 He still went into her home, into her bedroom,
9 and beat her up. And you just don't get to do that.
10 You don't -- listen -- you don't get to do that.
11 Where I'm concerned. You don't get to do that under
12 the law. You don't get to do that, and then just do a
13 little bit of probation, having spent only
14 approximately two days in jail. And busting her lip,
15 got her tooth coming through her lip, bruises on her
16 back -- and all of that -- you don't just go home
17 after you do that. And that's not a quote-unquote
18 "misunderstanding."

19 I've had misunderstandings with people time and
20 again. You know it happens every so often. None of
21 those end up with either of us putting our hands on
22 each other -- and certainly not going to the emergency
23 room with serious bodily injury, loss of memory, a
24 loss of consciousness. You don't get to choke someone
25 out to the point that they lose consciousness and then

1 say, "But can I go home?"

2 There's some collateral consequences associated
3 with this conviction. Those collateral consequences -
4 - "consequences" being the important word -- there are
5 consequences of your actions. So yes, there are
6 consequences. That is life. There's a consequence to
7 each and everything you do.

8 And so to the extent that you can't drive long
9 distances or maintain your CDL or put that -- that's
10 as a result of your actions. Not anyone else's.
11 So it's unfortunate. But you choose the conduct, you
12 choose the consequences.

13 And I hate it for your children, because that's
14 so unfair to them. Because as their father, you're
15 supposed to live your life and make decisions with
16 their best interest in mind. And it's certainly not
17 in their best interest for you to be sitting in the
18 South Carolina Department of Corrections for up to 20
19 years. But you weren't thinking about that when you
20 entered this lady's bedroom and put your hands on her.

21 And so, I hate that for them -- because they have
22 a father who -- listen, we all make bad decisions.
23 I'm not calling you a bad person or a bad father. But
24 they do have a father who, in that moment, lost his
25 way. And did something that -- not only wasn't in his

1 own best interest, Ms. Cupid's best interest, her
2 children's best interest, their best interest. It was
3 in no one's best interest, no one, and so --

4 THE DEFENDANT: Your Honor?

5 THE COURT: -- I just -- it's not a give and
6 take, it's not a back and forth. I've heard from you
7 twice, and now I am pronouncing sentence. You were
8 preoccupied while the charges were pending -- that
9 might have just been guilt weighing heavy on your
10 mind. I don't know, for a quote-unquote
11 "misunderstanding" -- misunderstanding is the exchange
12 of words, and somebody says something, and you thought
13 they meant something else. That's a misunderstanding.
14 It doesn't end up in the hospital.

15 And I think, to sum it up, maybe the 14-year-old
16 **I.O.** said it best when he said, "What kind of man is
17 that?"

18 And so I've heard all of the evidence. I've
19 considered all of the arguments.

20 And so on the charge of Assault and Battery of a
21 High and Aggravated Nature: First, I have her sign --
22 I have signed the permanent restraining order that
23 prohibits you from having any contact whatsoever with
24 Melissa Cupid or her children for a period of 20
25 years. Any violation of this order is a crime unto

1 itself. That's no phone calls, no letters, no text
2 messages. It is a court order -- the same as when you
3 were on bond and you were ordered not to contact her.
4 So you couldn't. I find -- but you otherwise would
5 have -- I find it necessary to issue a court order.
6 Because apparently, you'll abide by those -- just not
7 the law that requires you to keep your hands to
8 yourself. So I have signed that.

9 But on your sentence, on the charge is that you
10 be committed to the State Department of Corrections
11 for a period of **10 years**. You'll get credit for the
12 two days that you served. Good luck to you, sir.
13 Court is adjourned for the week.

14 (Court adjourned at 6:35 p.m)

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24
25 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED BRANDI J. BERRY, CERTIFIED COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 12TH DAY OF DECEMBER, 2024.

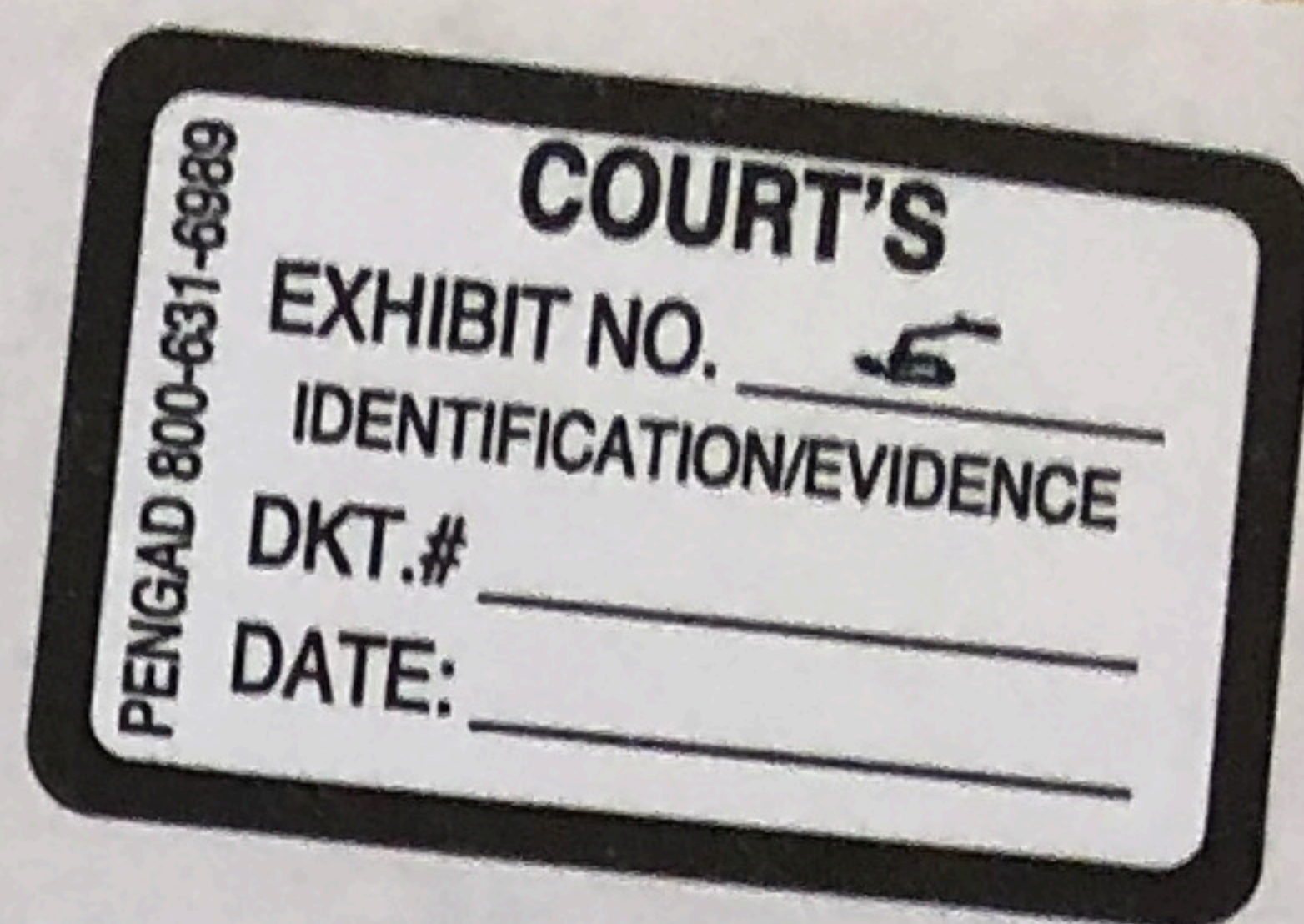
I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Brandi J. Berry, CVR

COLUMBIA, SOUTH CAROLINA

JUNE 12, 2025

#291



Can we get transcripts of
Ms Cupid's and Mr Kimble's
testimony?

Unfortunately, no. If you would like to
rehear the audio of any portion of the
testimony, please identify what you would
like to rehear as best you can.

Judy Muma

Ms Cupid's testimony from when
she first hears Mr Kimble knocking on
the door to the end of the
event. (During states initial questioning)

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>6</u>
	IDENTIFICATION/EVIDENCE
	DKT.# _____
DATE: _____	

Can we please get the
definition of great bodily
injury?

Great bodily injury means
bodily injury which causes a
substantial risk of death or
which causes serious,
permanent disfigurement or
protracted loss or impairment of
the function of a bodily member
or organ.

365

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>7</u>
	IDENTIFICATION/EVIDENCE
	DKT.# _____
DATE: _____	

WITNESSES

(S) Vicki L Rains
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2020A4011200456

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury NOV 05 2020
Date:

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 12 DEC 20

DOCKET NO. 2020GS4004514

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2020

11

THE STATE
vs.

Clifton E Kimble

Indictment for
ASSAULT & BATTERY OF A HIGH &
AGGRAVATED NATURE

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

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2020,
 the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That Clifton E Kimble did in Richland County on or about June 5, 2020, commit an assault and battery of a high and aggravated nature upon the victim, MELISSA CUPID, constituting an unlawful act of violent injury to the person of the said victim that resulted in a great bodily injury and/or the act was caused by means likely to produce death or great bodily injury, to wit: the victim was strangled to the point of unconsciousness, received a concussion, and received an injury to her lip. All in violation of the Common Law of South Carolina.

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


 BYRON E. GIPSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

RECEIVED

Dec 11 2025

SC Court of Appeals



Molly M Keegan
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 11th day of December, 2025.

RECEIVED

Dec 11 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLIFTON KIMBLE,

APPELLANT

APPELLATE CASE NO. 2024-002126

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 11th day of December, 2025.



Molly M Keegan
Appellate Defender

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

ATTORNEY FOR APPELLANT